October 21, 2016

Dear [Redacted]

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 [Our File #: EC/39/2016]

On October 6, 2016, Executive Council received your request for access to the following records/information:

"Any documents in any way relating to the amendment made by section 7 of An Act to Amend the Workers' Compensation Act, S.N. 1994, c. 12, which added section 44.1(2) of the Workplace Health, Safety and Compensation Act."

I am pleased to inform you that a decision has been made by the Deputy Clerk of Executive Council to provide access to the requested information. These records are cabinet records which have been in existence for 20 years or more, therefore access is permitted. In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the Access to Information and Protection of Privacy Act (the Act). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner.

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John’s, NL. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act.
Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please feel free to contact me by telephone at (709)729-5691 or by e-mail at rachellecutler@gov.nl.ca.

Sincerely,

Rachelle Cutler
ATIPP Coordinator

Enclosures
CABINET DIRECTIVE

The following is a Copy of a Directive passed by Cabinet at a Meeting held on 1993-12-02.

ELR 49-93; SPC 96-93

The submission of the Honourable the Minister of Employment and Labour Relations respecting amendments to The Workers' Compensation Act was considered.

The draft bill, entitled "An Act to Amend the Workers' Compensation Act, a copy of which is on file with the Clerk of the Executive Council, respecting industrial diseases, and the application of pension rules, is approved for introduction into the House of Assembly.

Clerk of the Executive Council
SOCIAL POLICY COMMITTEE
Recommendation to Cabinet

Title: Other Considerations:

1. MC 93-0417 directed that the Act be amended to allow for wage loss compensation for injured workers with industrial disease in instances where the worker is not employed at the date of disability. This amendment was proposed in acknowledgement that some industrial diseases are present in the worker for some time before they cause serious impairment or death.

2. The second amendment is intended to clarify a long standing policy of the Commission that employer-sponsored pension plan benefits are to recognized as wages for the purposes of determining entitlement to compensation. This position is consistent with the way in which Canada Pension Plan disability benefits are treated. There should be consistency in the way in which pension benefits are treated and stating this policy in the legislation will offset the appeals being made by claimants on the grounds that the Commission has no such authority to consider pension plan benefits in this way.

3. The remaining amendments deal with minor housekeeping matters resulting from previous amendments to the Act.

Recommendation:

The Social Policy Committee recommended that the Minister's Submission be approved.

Unanimous 5 - 0

November 25, 1993
Title: Amendments to the Workers' Compensation Act

Other Considerations:

1. MC 93-0417 directed that the Act be amended to allow for wage loss compensation for injured workers with industrial disease in instances where the worker is not employed at the date of disability. This amendment was proposed in acknowledgement that some industrial diseases are present in the worker for some time before they cause serious impairment or death.

2. The second amendment is intended to clarify a long standing policy of the Commission that employer-sponsored pension plan benefits are to be recognized as wages for the purposes of determining entitlement to compensation. This position is consistent with the way in which Canada Pension Plan disability benefits are treated. There should be consistency in the way in which pension benefits are treated and stating this policy in the legislation will offset the appeals being made by claimants on the grounds that the Commission has no such authority to consider pension plan benefits in this way.

3. The remaining amendments deal with minor housekeeping matters resulting from previous amendments to the Act.

Secretariat Recommendation:

The Secretariat recommends that the Minister's Submission be approved.

November 23, 1993
EXECUTIVE COUNCIL

DATE RECEIVED: ____________

DATE SCANNED: ____________

Date received illegible on scanned submission.
Date received recorded at time of scanning.

ELR 49-93
MEMORANDUM TO THE EXECUTIVE COUNCIL

SUBJECT: AMENDMENTS TO THE WORKERS' COMPENSATION ACT

PURPOSE
The proposed amendments incorporate:

1. Provisions previously approved in principle by Executive Council which would allow compensation to be paid to injured workers with industrial disease who are not employed at the date of disablement;

2. A section providing for treatment of employer sponsored pension plan benefits in the same way as Canada Pension Plan disability benefits, pursuant to a recommendation of the Board of Directors of the Workers' Compensation Commission; and

3. A number of housekeeping changes to ensure the effectiveness of the amendments made in 1992.

BACKGROUND

1. INDUSTRIAL DISEASE - NO WAGE LOSS

   In accordance with the previous Minute in Council approving drafting of
these amendments, Clause 5 of the Bill would provide that worker or his or her dependents are entitled to receive compensation where the worker suffers from an industrial disease notwithstanding the worker is not employed at the date of disablement. It also provides that the amount of compensation is to be based on the workers' most recent wages indexed by the Consumer Price Index to the year of disablement.

This amendment would allow benefits to be paid to workers or their dependents as of January 1, 1994 regardless of the date of injury or death, but would not allow for the payment of benefits for any period before 1994.

2. **EMPLOYER SPONSORED PENSION PLAN BENEFITS**

Clause 4 of the Bill would provide that a benefit that a worker is entitled to receive under a registered employer-sponsored pension plan shall be considered as wages the worker is capable of earning in determining entitlement to compensation. This is the same way that Canada Pension Plan disability benefits are treated.

The Commission has been treating employer-sponsored pension plan benefits as wages since January 1, 1984, pursuant to policies approved by the Board of Directors from time to time. Recently, a few workers have been successful in appeals on the grounds that the Commission has no authority to
consider pension plan benefits in this way. While the Commission maintains that it is authorized to continue this practice, it is desirable to clarify the issue to ensure that all workers are treated the same. The amendment would be retroactive to January 1, 1984.

3. HOUSEKEEPING CHANGES

Clauses 1 through 3 deal with amendments which are consequential to the changes made to the Workers' Compensation Act in Chap. 29, SN 1992.

Clause 1 of the Bill would define "motor vehicle" for the purpose of section 44.1 of the Act, which creates an exception to the statutory bar which prevents workers from suing employers or other workers. This amendment would ensure that the exception would only operate with respect to accidents involving motor vehicles which must be covered by public liability insurance.

Clause 2 of the Bill would provide that where the Workers' Compensation Commission brings an action in court to recover amounts paid to an injured worker, it may recover amounts paid as medical expenses, rehabilitation and other expenses. This amendment is consistent with the right of subrogation given to the Minister of Health and MCP to recover the costs of treating an injured person from the party responsible for that injury.

Clause 3 of the Bill would repeal subsection 74(2.4) of the Act which deals with the rate of compensation to be paid when a worker's claim is re-
opened. The term re-opening is not defined in the Act or regulations and the Commission does not attach any special consequences to re-opening a claim. Therefore, this section is unnecessary and of no effect.

FINANCIAL CONSIDERATIONS

1. INDUSTRIAL DISEASE - NO WAGE LOSS

The financial considerations have already been presented. While this amendment would directly increase compensation costs, the increase is small relative to the total cost of compensation. As no retroactive benefits will be paid, the Commission will be able to account for this increase by collecting sufficient funds through assessments.

2. EMPLOYER SPONSORED PENSION BENEFITS

There are approximately 70 cases in which the Commission has considered employer sponsored pension plan benefits in calculating workers' compensation benefits paid to workers. A sizable percentage of these workers are employed by the provincial government, which is a self-insurer of the cost of workers' compensation benefits paid to its workers.

If this amendment was not made and the Commission was unsuccessful in defending its authority to consider these benefits, the cost of reimbursing the workers in all cases is estimated to be $1.2 million. Of this amount roughly 40%
would be chargeable to the provincial government in respect of compensation paid to its employees plus a 12.5% administration fee. More significantly, it is estimated that additional reserves of $3.8 million will be required for future funding of these cases. As additional cases arise, these figures will rise.

3. HOUSEKEEPING CHANGES

These changes are complementary to the amendments made previously to the Act. They raise no new financial considerations.

RECOMMENDATION

I recommend that the Workers' Compensation Act be amended as indicated.

ROGER D. GRIMES
Minister

November 22, 1993
AN ACT TO AMEND THE WORKERS' COMPENSATION ACT
EXPLANATORY NOTE

Clause 1 of the Bill would define "motor vehicle" for the purpose of section 44.1 of the Workers' Compensation Act.

Clause 2 of the Bill would provide that where the Workers' Compensation Commission brings an action in court to recover amounts paid to an injured worker it may recover amounts paid as medical expenses, rehabilitation and other expenses.

Clause 3 of the Bill would repeal subsection 74(2.4) of the Act which reads as follows:

"74. (2.4) Notwithstanding paragraphs (2)(b) and (2.1)(b), where a worker's claim for compensation is re-opened the rate used for calculating that worker's loss of earning capacity shall

(a) for the 1st 39 weeks after the claim is re-opened be 75%;

and

(b) after 39 continuous weeks be 80%

of the difference between the worker's average weekly net earnings at the commencement of his or her loss of earnings resulting from the injury, subject to the maximum prescribed amount under subsection 80(8), and the average weekly net earnings the worker is estimated to be capable of earning at a suitable occupation after sustaining that injury."

Clause 4 of the Bill would provide that a benefit that a worker is entitled to receive under a registered employer-sponsored pension plan shall be considered by the commission in calculating compensation to be paid to the worker.

Clause 5 of the Bill would provide that a worker or his or her dependents are entitled to receive compensation where the worker suffers from an industrial disease notwithstanding the worker is not employed at the date of disablement.

The amendment would also provide how the amount of compensation is to be determined and provide that the compensation is only payable from January 1, 1994.
A BILL

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT

Analysis

Section:
1. S.44.1 Amdt.
   No compensation payable
2. S.45(3) Added
   Amounts recoverable
3. S.74(2.4) Rep.
   Lost earning capacity

Section:
4. S.81 Amdt.
   Benefits to be considered
5. S.90.1 Added
   Industrial disease compensation

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1. (1) Section 44.1 of the Workers' Compensation Act is amended by renumbering it as subsection (1) and by adding immediately after subsection (1) the following:

   "(2) In subsection (1) "motor vehicle' means

   (a) a motor vehicle

   (I) registered under the Highway Traffic Act, or

   (II) authorized under section 12 or 17 of the Highway Traffic Act to be operated on a highway in the province without being registered under that Act,

   whether or not it is being operated on a highway; or

   (b) another motor vehicle while being operated on a highway in the province and
for the purposes of this definition 'highway' means a highway as defined in the Highway Traffic Act.

(2) Subsection (1) is considered to have come into force on January 1, 1993.

2. (1) Section 45 of the Act is amended by adding immediately after subsection (12) the following:

"(13) The commission may, in an action brought under subsection (8), also recover amounts paid to or on behalf of a worker or his or her dependents by way of compensation, including amounts paid as medical expenses, rehabilitation expenses and other expenses paid by the commission to or on behalf of the worker or his or her dependents."

(2) Subsection (1) is considered to have come into force on January 1, 1993.

3. Subsection 74(2.4) of the Act is repealed.

4. (1) Subsection 81(1) of the Act is repealed and the following substituted:

"81. (1) In fixing the amount of a weekly or monthly payment regard shall be had to a payment allowance or benefit which the worker may receive from his or her employer during the period of his or her disability."

(2) Section 81 of the Act is further amended by adding immediately after subsection (4) the following:

"(5) A benefit that a worker is entitled to receive under a registered employer-sponsored pension plan that is registered with and certified by the Superintendent of Pensions under the Pension Benefits Act shall be considered as wages that the worker is capable of earning in calculating the compensation to be paid by the commission for loss of earning capacity."

(3) Subsections (1) and (2) are considered to have come into force on January 1, 1984.
5. The Act is amended by adding immediately after section 90 the following:

"90.1 (1) A worker or his or her dependents are entitled to compensation under section 90 or 91 notwithstanding that the worker is not employed at the date of disablement.

(2) The amount of compensation payable under section 90 or 91 to a worker or his or her dependents referred to in subsection (1) shall be calculated, in accordance with section 74, on the basis of the worker's average weekly net earnings in his or her last trade, occupation, profession or calling prior to the date of disablement, adjusted to the date of disablement by the application of the Consumer Price Index for Canada as published by Statistics Canada.

(3) This section comes into force on January 1, 1994 and, notwithstanding a worker's date of disablement is before January 1, 1994, a worker or his or her dependents is only entitled to compensation from January 1, 1994."
CABINET DIRECTIVE

The following is a Copy of a Directive passed by Cabinet at a Meeting held on 1994-05-25

ELR 13-94

The submission of the Honourable the Minister of Employment and Labour Relations respecting amendments to the Workers' Compensation Act was considered.

The Office of the Legislative Counsel, in consultation with the Department of Employment and Labour Relations, is directed to prepare amendments to the Workers' Compensation Act to:

1. adopt a single adjudicator model for the appeal process and provide time limits for the adjudicative process;
2. restrict the basis of appeal by providing authority to determine whether the decision of the Workers' Compensation Commission was "reasonable" when examined in light of the policy and procedures of the Commission, and to repeal subsection 25(4);
3. eliminate a role for the appeal tribunal in policy review and appointment of medical panels;
4. provide the Commission with standing before the adjudicator;
5. clarify the standard of review to be exercised by the Trial Division by repeal of section 34 (the appellate standard) and retaining a section similar to subsection 25(2) (privative clause); and,
6. provide for transition for outstanding appeals.

Clerk of the Executive Council
Date received illegible on scanned submission.
Date received recorded at time of scanning.

EXECUTIVE COUNCIL

DATE RECEIVED: MAY 23, 1994

DATE SCANNED: July 13, 1995
MEMORANDUM TO THE EXECUTIVE COUNCIL

SUBJECT: WORKERS' COMPENSATION APPEAL TRIBUNAL

PURPOSE:

The purpose of this submission is to recommend revisions to the mandate and structure of the Workers' Compensation Appeal Tribunal.

BACKGROUND:

M.C. 94-0464 directed the Ministers of Justice and Employment and Labour Relations to re-examine the question of the appropriate appeal/review mechanism, if any, for workers' compensation matters. Following further consideration of this matter, the Minister of Justice and I have concluded that it is appropriate to recommend retention of an external process to review decisions of the Workers' Compensation Commission. Two other issues require consideration by my colleagues: the structure or model of this appeal body, and the type of review to be conducted. These issues have been discussed in ELR 29-'92 and ELR 7-'94/J 19-'94.

RECOMMENDATIONS:

1. It is recommended that the Office of the Legislative Counsel draft amendments to the Workers' Compensation Act for introduction to the House of Assembly to:
(a) adopt a single adjudicator model of adjudication and provide time limits for the adjudicative process;

(b) restrict the basis of appeal by providing the adjudicator only with authority to determine whether a reasonable decision had been rendered by the Commission and repeal of section 25(4);

(c) eliminate the Tribunal's role in the policy review process and appointment of medical panels;

(d) make it clear that the Commission has standing before the adjudicator;

(e) clarify the standard of review to be exercised by the Supreme Court by repeal of section 34 (appellate standard) and retaining a section similar to section 25(2) (privative clause);

(f) provide transitional provisions dealing with outstanding appeals.

2. It is further recommended that the appointments of the current members of the Appeal Tribunal be extended until December 31, 1994 to facilitate the transition.

ROGER D. GRIMES, M.H.A.
Exploits District
Minister

1994 05 20
The submission of the Honourable the Minister of Employment and Labour Relations respecting amendments to the Workers' Compensation Act was considered.

The draft bill, entitled "An Act to Amend the Workers' Compensation Act (No. 2)", a copy of which is on file with the Clerk of the Executive Council, respecting the Workers' Compensation Appeal Tribunal, is approved for introduction into the House of Assembly.
Date received illegible on scanned submission.
Date received recorded at time of scanning.

EXECUTIVE COUNCIL

DATE RECEIVED: May 31, 1994
DATE SCANNED: July 13, 1995
MEMORANDUM TO THE EXECUTIVE COUNCIL

RE: WORKERS' COMPENSATION APPEAL TRIBUNAL
LEGISLATIVE AMENDMENTS

PURPOSE:

The purpose of this submission is to provide my colleagues with a copy of the draft legislation prepared as a result of the directions of Cabinet contained in MC 94-0474.

BACKGROUND:

The draft Bill incorporates the provisions contained in Bill 4; amendments to the Workers' Compensation Act previously approved by MC 93-1059R.

The term "adjudicators" has been replaced by "appeal commissioners" since the Workers' Compensation Commission's internal review process uses "adjudicators".

The draft legislation incorporates all the provisions outlined in ELR 13-'94 and provides a transitional provision. The transitional provision allows the current Appeal Tribunal to hear all matters commenced on or before June 30, 1994 provided that the hearing has already commenced. It also provides that the matter under appeal must be completed within 90 days. All appeals currently filed but where no hearing has been commenced and all newly filed appeals will be heard under the new amendments which come into force July 1, 1994.
RECOMMENDATION:

That the proposed amendments be introduced into the House of Assembly forthwith.

ROGER D. GRIMES, M.H.A.
Exploits District
Minister

1994 05 31
AN ACT TO AMEND THE WORKERS' COMPENSATION ACT (NO 2)
A BILL

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT (NO. 2)

Analysis

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1. Paragraph 2(a) of the Workers' Compensation Act is repealed and the following substituted:

'(a) 'appeal commissioner' means an appeal commissioner appointed under section 22;

(a.1) 'appeal division' means the appeal division established under section 21';

2. Subsection 4(3) of the Act is amended by striking out the words 'chairperson of the appeal tribunal' and substituting the words 'chief appeal commissioner'.

3. Section 11 of the Act is amended by striking out the word 'tribunal' wherever it occurs and substituting the word 'division'.

4. Sections 21 through 34 of the Act are repealed and the following substituted:

'21. There shall be established an appeal division responsible for the review of appeals in accordance with this Part.'
22. (1) The Lieutenant-Governor in Council shall on the recommendation of the minister appoint to the appeal division a panel of persons to act as appeal commissioners.

(2) A panel appointed under subsection (1) shall not exceed 7 persons, 1 of whom shall be appointed by the Lieutenant-Governor in Council as chief appeal commissioner.

(3) An appeal commissioner appointed under this section shall not be a member of the board of directors or an employee of the commission.

(4) The terms of office, remuneration, benefits and expenses of the appeal commissioners shall be determined by the Lieutenant-Governor in Council.

(5) An appeal commissioner may be removed from the panel by order of the Lieutenant-Governor in Council on the recommendation of the minister where the minister is satisfied that there is reason for the removal.

23. The chief appeal commissioner of the panel appointed under section 22 shall review a matter appealed to him or her under subsection 28(1) or shall refer that matter to another appeal commissioner of the panel.

24. (1) There may be employed in the manner provided by law those officers, employees and advisors of the appeal division that are necessary to enable the appeal division to carry out its functions and the Lieutenant-Governor in Council may fix their terms of service.

(2) Notwithstanding subsection (1), those officers and employees employed with the appeal tribunal existing under Part II on June 30, 1994 who are considered by the minister to be necessary for the operations of the appeal division existing under Part II on July 1, 1994 shall be considered to have been employed in accordance with subsection (1).

(3) The Lieutenant-Governor in Council may determine the remuneration for services and allowances for travelling and other expenses that shall be paid to the officers, employees and advisors employed under subsection (1).
25. Expenses incurred in the administration of the appeal division, including those under section 24, shall be paid out of the Consolidated Revenue Fund and that fund shall be reimbursed by money from the injury fund.

26. (1) An appeal commissioner may review a decision of the commission to determine if the commission, in making that decision, acted in accordance with this Act, the regulations and policy established by the commission under subsection 5(1) as they apply to

(a) compensation benefits and rehabilitation services and benefits;

(b) an employer's assessment;

(c) the assignment of an employer to a particular class or group; and

(d) an employer's merit or demerit rating.

(2) An order or decision of an appeal commissioner is final and conclusive and is not open to question or review in a court of law and proceedings by or before an appeal commissioner shall not be restrained by injunction, prohibition or other process or proceedings in a court of law or be removable by certiorari or otherwise in a court of law.

(3) An appeal commissioner may for cause reconsider a matter that has been dealt with by him or her and may rescind, alter or amend a decision or order previously made by him or her.

27. (1) The appeal division may, subject to the approval of the Lieutenant-Governor in Council, in relation to the review of decisions as referred to in section 28, prescribe rules of procedure and evidence and may order the type and nature of information to be provided by a person to an appeal commissioner before or during a review and that person shall provide the information to the appeal commissioner.

(2) For the purpose of a hearing, an appeal commissioner has the powers that are conferred on a commissioner under the
Public Inquiries Act, and an appeal commissioner is considered to be an "investigating body" for the purpose of the Public Investigations Evidence Act, and there shall be full right to examine and cross-examine witnesses called to bring forward evidence in response and reply, and section 3 of the Public Inquiries Act shall apply to those witnesses.

28. (1) In relation to a review of a decision as referred to in subsection 26(1), a worker, dependent or an employer, either personally or through an agent acting on their behalf with written consent, may appeal to the chief appeal commissioner.

(2) An appeal commissioner shall not review a decision appealed under subsection (1) except in accordance with subsection 26(1).

(3) The commission shall have standing and may be heard and make representations itself or through an agent acting on its behalf on a matter being reviewed by an appeal commissioner and at further proceedings arising out of that matter.

(4) The chief appeal commissioner or an appeal commissioner to whom a matter has been referred shall

(a) notify the person seeking a review of a decision of the commission and the commission of the time and place of that review;

(b) review the matter; and

(c) confirm or deny that the decision of the commission was in accordance with this Act, the regulations and policy established by the commissioner under subsection 5(1), and shall order the remedy that he or she considers necessary.

(5) For the purpose of an appeal under subsection 28(1) a person may appear before the appeal commissioner on his or her own behalf or be represented by counsel or an agent and may accompany and appear with the counsel or agent before the appeal commissioner.
6. Where a person other than a person appealing under subsection 28(1) has an interest in a matter before the appeal commissioner, that person has the right to appear before the appeal commissioner either personally or represented by counsel or an agent and shall after indicating in writing to the appeal commissioner an intention to appear be notified of the time and place of the review of the matter being appealed.

7. Where the person appealing to the appeal commissioner or a person referred to in subsection (6) fails to attend, in person or by counsel or agent, unless that failure to attend is due to circumstances beyond the person's control and that person has, by written notice, advised the appeal commissioner that the person wishes to attend and sets out, in the notice, the circumstances that prevent the attendance, the appeal commissioner may proceed to examine witnesses and to review and adjudicate on the matter being appealed.

8. The appeal commissioner shall, within 6 months after an appeal has been first made under subsection (1), communicate in writing its decision with reasons and any order that he or she may make to the commission and to a person who appeared before him or her.

29. An appeal commissioner may not review a matter appealed to him or her under subsection 28(1) if he or she has a direct personal interest in that matter or if the chief appeal commissioner determines there is a conflict of interest.

30. The appeal division shall, not later than March 31 in a year, submit to the minister a report of the proceedings reviewed by the appeal commissioners under this Act for the preceding calendar year, and the minister shall lay the report before the House of Assembly within 15 days after it is submitted, or where the House of Assembly is not then in session, within 15 days after the beginning of the next session.

5. Subsection 36(1) of the Act is amended by striking out the figure and word "34 or".

6. Section 37 of the Act is amended by striking out the words and figures "appeals and stated cases referred to in sections 34 and 35"
and substituting the words and figures "stated cases referred to in section 35":

7. (1) Section 44.1 of the Workers' Compensation Act is amended by renumbering it as subsection (1) and by adding immediately after subsection (1) the following:

"(2) In subsection (1) 'motor vehicle' means

(a) a motor vehicle

(i) registered under the Highway Traffic Act, or

(ii) authorized under section 12 or 17 of the Highway Traffic Act to be operated on a highway in the province without being registered under that Act, whether or not it is being operated on a highway; or

(b) another motor vehicle while being operated on a highway in the province and

for the purpose of this definition 'highway' means a highway as defined in the Highway Traffic Act.

(2) Subsection (1) is considered to have come into force on January 1, 1993.

8. (1) Section 45 of the Act is amended by adding immediately after subsection (12) the following:

"(13) The commission may, in an action brought under subsection (8), also recover amounts paid to or on behalf of a worker or his or her dependents by way of compensation, including amounts paid as medical expenses, rehabilitation expenses and other expenses paid by the commission to or on behalf of the worker or his or her dependents.

(2) Subsection (1) is considered to have come into force on January 1, 1993.

9. Subsection 74(2.4) of the Act is repealed.
10. (1) Subsection 81(1) of the Act is repealed and the following substituted:

"81. (1) In fixing the amount of a weekly or monthly payment, regard shall be had to a payment allowance or benefit which the worker may receive from his or her employer during the period of his or her disability."

(2) Section 81 of the Act is further amended by adding immediately after subsection (4) the following:

"(5) A benefit that a worker is entitled to receive under a registered employer-sponsored pension plan that is registered with and certified by the Superintendent of Pensions under the Pension Benefits Act shall be considered as wages that the worker is capable of earning in calculating the compensation to be paid by the commission for loss of earning capacity."

(3) Subsections (1) and (2) are considered to have come into force on January 1, 1984.

11. The Act is amended by adding immediately after section 90 the following:

"90.1 (1) A worker or his or her dependents are entitled to compensation under section 90 or 91 notwithstanding that the worker is not employed at the date of disablement.

(2) The amount of compensation payable under section 90 or 91 to a worker or his or her dependents referred to in subsection (1) shall be calculated, in accordance with section 74, on the basis of the worker's average weekly net earnings in his or her last trade, occupation, profession or calling prior to the date of disablement, adjusted to the date of disablement by the application of the Consumer Price Index for Canada as published by Statistics Canada.

(3) This section comes into force on January 1, 1994 and, notwithstanding a worker's date of disablement is before January 1, 1994, a worker or his or her dependents is only entitled to compensation from January 1, 1994."
Transitional

12. (1) An appeal commenced in accordance with Part II of the Act on or before June 30, 1994 shall continue to be heard in accordance with Part II as it exists on June 30, 1994 provided that

(a) an appeal tribunal acting under that Part has commenced hearings on and is seized with the matter before it; and

(b) the matter under appeal is completed within 90 days after July 1, 1994.

(2) An appeal to which paragraphs (1)(a) and (b) do not apply shall be heard in accordance with Part II of the Act as it exists on July 1, 1994.

Commencement

13. Sections 1 to 6 of this Act shall commence on July 1, 1994.
AN ACT TO AMEND THE WORKERS' COMPENSATION ACT
(NO 2)
A BILL

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT (NO. 2)

Analysis

Be it enacted by the Lieutenant-Governor and House of Assembly
in Legislative Session convened, as follows:

1. (1) Paragraph 2(a) of the Workers' Compensation Act is
   repealed.

   (2) Section 2 of the Act is amended by adding immediately
   after paragraph (v) the following:

   "(v.1) "review commissioner" means a review commissioner
   appointed under section 22;

   (v.2) "review division" means the review division established
   under section 21;"

2. Subsection 4(3) of the Act is amended by striking out the
   words and comma "chairperson of the appeal tribunal, the".

3. Section 11 of the Act is amended by striking out the words
   "appeal tribunal" wherever they occur and substituting the words
   "review division".

4. Sections 21 through 34 of the Act are repealed and the follow-
   ing substituted:

2
21. There shall be established a review division responsible for the review of decisions of the commission in accordance with this Part.

22. (1) The Lieutenant-Governor in Council shall on the recommendation of the minister appoint to the review division a panel of persons to act as review commissioners.

(2) A panel appointed under subsection (1) shall not exceed 7 persons, 1 of whom shall be appointed by the Lieutenant-Governor in Council as chief review commissioner.

(3) The terms of office, remuneration, benefits and expenses of the review commissioners shall be determined by the Lieutenant-Governor in Council.

(4) A review commissioner shall hold office during good behaviour for a term that the Lieutenant-Governor in Council may establish.

23. The chief review commissioner of the panel appointed under section 22 shall review a matter brought before him or her under subsection 28(1) or shall refer that matter to another review commissioner of the panel.

24. (1) There may be employed in the manner provided by law those officers, employees and advisors of the review division that are necessary to enable the review division to carry out its functions and the Lieutenant-Governor in Council may fix their terms of service.

(2) Notwithstanding subsection (1), those officers and employees employed with the appeal tribunal existing under Part II on June 30, 1994 who are considered by the minister to be necessary for the operations of the review division existing under Part II on July 1, 1994 shall be considered to have been employed in accordance with subsection (1).

(3) The Lieutenant-Governor in Council may determine the remuneration for services and allowances for travelling and other expenses that shall be paid to the officers, employees and advisors employed under subsection (1).
25. Expenses incurred in the administration of the review division, including those under section 24, shall be paid out of the Consolidated Revenue Fund and that fund shall be reimbursed by money from the injury fund.

26. (1) A review commissioner may review a decision of the commission to determine if the commission, in making that decision, acted in accordance with this Act, the regulations and policy established by the commission under subsection 5(1) as they apply to

(a) compensation benefits and rehabilitation services and benefits;
(b) an employer's assessment;
(c) the assignment of an employer to a particular class or group; and
(d) an employer's merit or demerit rating.

(2) An order or decision of a review commissioner is final and conclusive and is not open to question or review in a court of law and proceedings by or before a review commissioner shall not be restrained by injunction, prohibition or other process or proceedings in a court of law or be removable by certiorari or otherwise in a court of law.

27. (1) The review division may, subject to the approval of the Lieutenant-Governor in Council, in relation to the review of decisions as referred to in section 26, prescribe rules of procedure and evidence and may order the type and nature of information to be provided by a person to a review commissioner before or during a review and that person shall provide the information to the review commissioner.

(2) For the purpose of the review of a decision as referred to in section 26, a review commissioner has the powers that are conferred on a commissioner under the Public Inquiries Act, and a review commissioner is considered to be an "investigating body" for the purpose of the Public Investigations Evidence Act, and there shall be full right to examine and cross-examine witnesses called to bring forward evidence in response and
reply, and section 3 of the Public Inquiries Act shall apply to those witnesses.

28. (1) A worker, dependent or an employer, either personally or through an agent acting on their behalf with written consent, may apply to the chief review commissioner for the review of a decision as referred to in subsection 26(1).

(2) A review commissioner shall not review a decision under subsection (1) except in accordance with subsection 26(1).

(3) The commission shall have standing and may be heard and make representations itself or through an agent acting on its behalf on a matter being reviewed by a review commissioner and at further proceedings arising out of that matter.

(4) The chief review commissioner or a review commissioner to whom a matter has been referred for review shall

(a) notify the person seeking a review of a decision of the commission and the commission of the time and place of that review;

(b) review the matter; and

(c) confirm or deny that the decision of the commission was in accordance with this Act, the regulations and policy established by the commission under subsection 5(1), and shall order the remedy that he or she considers necessary.

(5) A person who applies for a review under subsection (1) may appear before the review commissioner on his or her own behalf or be represented by counsel or an agent and may accompany and appear with the counsel or agent before the review commissioner.

(6) Where a person other than a person applying for a review under subsection (1) has an interest in a matter before the review commissioner, that person has the right to appear before the review commissioner either personally or represented by counsel or an agent and shall, after indicating in
writing to the review commissioner an intention to appear, be notified of the time and place of the review of the matter.

(7) Where the person applying to the chief review commissioner under subsection (1) or a person referred to in subsection (6) fails to attend, in person or by counsel or agent, unless that failure to attend is due to circumstances beyond the person's control and that person has, by written notice, advised the review commissioner that the person wishes to attend and sets out, in the notice, the circumstances that prevent the attendance, the review commissioner may proceed to examine witnesses and to review and adjudicate on the matter being reviewed.

(8) The review commissioner shall, within 6 months after an application has been first made under subsection (1), communicate in writing its decision with reasons and any order that he or she may make to the commission and to a person who appeared before him or her.

29. A review commissioner may not review a matter under this Part if he or she has a direct personal interest in that matter or if the chief review commissioner determines there is a conflict of interest.

30. The review division shall, not later than March 31 in a year, submit to the minister a report of the proceedings of the review commissioners under this Act for the preceding calendar year, and the minister shall lay the report before the House of Assembly within 15 days after it is submitted, or where the House of Assembly is not then in session, within 15 days after the beginning of the next session.

5. Subsection 36(1) of the Act is amended by striking out the figure and word "34 or".

6. Section 37 of the Act is amended by striking out the words and figures "appeals and stated cases referred to in sections 34 and 35" and substituting the words and figures "stated cases referred to in section 35".

7. (1) Section 44.1 of the Act is amended by renumbering it as subsection (1) and by adding immediately after subsection (1) the following:
(2) In subsection (1) "motor vehicle" means

(a) a motor vehicle

(i) registered under the Highway Traffic Act, or

(ii) authorized under section 12 or 17 of the Highway Traffic Act to be operated on a highway in the province without being registered under that Act, whether or not it is being operated on a highway; or

(b) another motor vehicle while being operated on a highway in the province and

for the purpose of this definition "highway" means a highway as defined in the Highway Traffic Act."

(2) Subsection (1) is considered to have come into force on January 1, 1993.

8. (1) Section 45 of the Act is amended by adding immediately after subsection (12) the following:

"(13) The commission may, in an action brought under subsection (9), also recover amounts paid to or on behalf of a worker or his or her dependents by way of compensation, including amounts paid as medical expenses, rehabilitation expenses and other expenses paid by the commission to or on behalf of the worker or his or her dependents."

(2) Subsection (1) is considered to have come into force on January 1, 1993.

9. Subsection 74(2.4) of the Act is repealed.

10. (1) Subsection 81(1) of the Act is repealed and the following substituted:

"81. (1) In fixing the amount of a weekly or monthly payment, regard shall be had to a payment, allowance or benefit which the worker may receive from his or her employer during the period of his or her disability."

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(2) Section 81 of the Act is further amended by adding immediately after subsection (4) the following:

'(5) A benefit that a worker is entitled to receive under a registered employer-sponsored pension plan that is registered with and certified by the Superintendent of Pensions under the Pension Benefits Act shall be considered as wages that the worker is capable of earning in calculating the compensation to be paid by the commission for loss of earning capacity.'

(3) Subsections (1) and (2) are considered to have come into force on January 1, 1984.

11. The Act is amended by adding immediately after section 90 the following:

'90.1 (1) A worker or his or her dependents are entitled to compensation under section 90 or 91 notwithstanding that the worker is not employed at the date of disablement.

(2) The amount of compensation payable under section 90 or 91 to a worker or his or her dependents referred to in subsection (1) shall be calculated, in accordance with section 74, on the basis of the worker's average weekly net earnings in his or her last trade, occupation, profession or calling prior to the date of disablement, adjusted to the date of disablement by the application of the Consumer Price Index for Canada as published by Statistics Canada.

(3) This section comes into force on January 1, 1994 and, notwithstanding a worker's date of disablement is before January 1, 1994, a worker or his or her dependents is only entitled to compensation from January 1, 1994.'

12. (1) An appeal commenced in accordance with Part II of the Act on or before June 30, 1994 shall continue to be heard in accordance with Part II as it exists on June 30, 1994 provided that

(a) an appeal tribunal acting under that Part has commenced hearings on and is seized with the matter before it; and

(b) the matter under appeal is completed within 90 days after July 1, 1994.
(2) An appeal to which paragraphs (1)(a) and (b) do not apply shall be heard in accordance with the review procedure of Part II of the Act as it existed on July 1, 1994 as if the appeal were an application made under subsection 25(1) on that date.

13. Sections 1 to 6 of this Act shall commence on July 1, 1994.
SIGNIFICANT CHANGES TO THE
WORKERS' COMPENSATION EXTERNAL REVIEW PROCESS

OLD

s.21 Appeal Tribunal

MEMBERSHIP
s. 21(1) Chairperson
s. 21(1) Vice-Chairperson
s. 21(2) Employer Representatives
s. 21(2) Worker Representatives

s. 26 HEARINGS
by a 3-person panel

JURISDICTION
s. 25 an appeal on listed grounds
(a) an injured worker's or dependent's entitlement to compensation benefits;
(b) an injured worker's entitlement to rehabilitation services and benefits;
(c) provision of medical care;
(d) an employer's assessments;
(e) assignment of an employer to a particular class or group;
(f) an employer's merit or demerit rating.

INTERPRETATION OF POLICY
s. 28 Tribunal had a role - Statutory Review Committee recommended deletion of the sections which gave Tribunal a role

APPLICATION FOR APPEAL
s. 30 Who may apply, right to appear, other interested persons, etc.

NEW

s. 21 Review Division

MEMBERSHIP
s. 22 Chief Review Commissioner
Panel of Review Commissioners
(up to 7 persons)

s. 23 HEARINGS
by the Chief Review Commissioner or a Review Commissioner appointed by Chief Review Commissioner

JURISDICTION
s. 26 A review to determine if Commission acted in accordance with Act, Regulations and policy of the Commission as it relates to
(a) compensation benefits and rehabilitation services and benefits;
(b) an employer's assessments;
(c) the assignment of an employer to a particular class or group; and
(d) an employer's merit or demerit rating

INTERPRETATION OF POLICY
s. 26 No role. Compliance with Policy. Review Commissioner determines compliance with policy.

APPLICATION FOR REVIEW
Remains the same with the addition of the right of the the Workers' Compensation Commission to make representation to the Review Commissioner.
RELATIONSHIP TO W.C.C.

s.4(3) Chairperson of Appeal Tribunal was a non-voting member of the Board of Directors of W.C.C.

s.4(3) Since Commission may now appear before Chief Review Commissioner, the Chief Review Commissioner is no longer a member of the Board of Directors.

DECISION MAKING

s.30 Confirm, vary or set aside the finding or decision of the Commission

s.28(4)(c) Confirm or deny that the decision of the Commission was in accordance with the Act, regulations or policy and shall order the remedy that he or she considers necessary.

TIME LIMITS FOR DECISION

- None in the Act.
- From filing to written decision 12-18 months.
- WCAT’s policy 90 days from hearing date

28(8) Written decision must be given six months after the application filed (not from hearing date)

ROLE OF THE SUPREME COURT

Two standards of review:

s. 25(2) Privative clause
(Review Only)

s. 34 Appeal on certain grounds

s.26(2) same as old 25(2) - Limited review by the courts.
TRANSITION

(1) Appeals commenced before June 30, 1994 continue to be heard under the old system provided that:
   (a) the Appeal Tribunal has commenced hearings and is seized with the matter, and
   (b) that matter is completed within 90 days after July 1, 1994 (by October 1, 1994).

(2) Appeals already filed but do not fall into categories (a) and (b) will be considered to be filed under the new system and will be heard under the new system.

(3) All new matters after June 30, 1994 will be filed as applications for review under the new system.