

1988 BILL 30

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Third Session, 21st Legislature, 37 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 30**

**WORKERS' COMPENSATION AMENDMENT ACT, 1988**

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THE MINISTER OF COMMUNITY AND  
OCCUPATIONAL HEALTH

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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## BILL 30

1988

### WORKERS' COMPENSATION AMENDMENT ACT, 1988

(Assented to \_\_\_\_\_, 1988)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

- 1 *The Workers' Compensation Act is amended by this Act.*
- 2 *Section 1(1) is amended by adding the following after clause (a.1):*
  - (a.2) "Appeals Commission" means the Appeals Commission established under section 6;
- 3 *Part 1 is repealed and the following is substituted:*

#### PART 1

##### WORKERS' COMPENSATION BOARD

- 2(1) The corporation previously established and known as The Workers' Compensation Board is continued.
- (2) The office of the Board shall be located in Edmonton.
- 2.1(1) Subject to subsection (2), the Board may not acquire or sell, lease or otherwise dispose of real property without the approval of the Lieutenant Governor in Council.
- (2) The Board may, without the approval of the Lieutenant Governor in Council, enter into an agreement as lessor or lessee of real property where the term of the lease does not exceed 10 years.
- (3) The Board may hire the employees it considers necessary for the purposes of the administration of this Act.
- 3(1) There shall be a board of directors of the Board, to be appointed by the Lieutenant Governor in Council, consisting of
  - (a) a member who shall be chairman,
  - (b) the President of the Board,
  - (c) not more than 3 members whom the Lieutenant Governor in Council considers to be representative of the interests of employers,
  - (d) not more than 3 members whom the Lieutenant Governor in Council considers to be representative of the interests of workers, and

## Explanatory Notes

- 1 This Bill will amend chapter W-16 of the Statutes of Alberta, 1981.
- 2 Definition.
- 3 Part 1 presently reads:

### *PART 1*

#### *WORKERS' COMPENSATION BOARD*

*2(1) The Workers' Compensation Board previously established is continued as a corporation.*

*(2) The Board shall consist of not fewer than 3 members appointed by the Lieutenant Governor in Council.*

*(2.1) The Lieutenant Governor in Council shall designate 1 member of the Board as chairman and may designate 1 or more other members as vice-chairmen.*

*(2.2) Where an appointment under subsection (2.1) results in a plurality of vice-chairmen, the Lieutenant Governor in Council may establish an order of precedence by which seniority of vice-chairmen shall be determined.*

*(2.3) At any time during which the office of chairman is vacant or the chairman is absent or unable to act as chairman, subject to section 4 the vice-chairman or the most senior vice-chairman, according to the order of precedence, who is available shall perform all the duties and functions, and may exercise all the powers, that are by this or any other Act or regulation imposed or conferred on the chairman.*

*(3) A member of the Board holds office for the period designated by his appointment but not exceeding 10 years from the effective date of the appointment.*

*(4) On the expiration of his term of office, a member may be reappointed.*

*(5) The Lieutenant Governor in Council shall fix the salary of each member of the Board.*

*(6) The members of the Board shall devote their full time to their duties under this Act.*

- (e) not more than 3 members whom the Lieutenant Governor in Council considers to be representative of the interests of the general public.
- (2) The Lieutenant Governor in Council may designate one or more members referred to in subsection (1)(c), (d) or (e) as vice-chairmen.
- (3) The chairman is an ex officio member of all committees of the board of directors.
- (4) In the event of the chairman's absence or inability to act, the senior vice-chairman shall act in his place and assume all of his powers and responsibilities.
- (5) A member of the board of directors, other than the President, shall be appointed for a term not to exceed 3 years, and is eligible for reappointment for 1 additional term, not to exceed 3 years.

**3.1** The board of directors

- (a) shall
  - (i) determine the Board's compensation policy,
  - (ii) review and approve the programs and operating policies of the Board,
  - (iii) consider and approve annual operating and capital budgets of the Board, and
  - (iv) hear appeals under section 117 from decisions of the assessment review committee,

and

- (b) may enact by-laws and pass resolutions for the conduct of the business and affairs of the Board.

**4(1)** Meetings of the board of directors shall be held at the call of the chairman at any place in Alberta that the chairman determines, and in no case shall more than 2 months elapse between meetings of the board.

(2) A majority of the members of the board of directors appointed constitutes a quorum at any meeting of the board.

(3) When there is a vacancy on the board of directors the remaining directors may exercise all of the powers of the board.

**4.1(1)** The Lieutenant Governor in Council shall appoint a person to be the President of the Board, to hold office for a term of not more than 5 years.

(2) The President is eligible for reappointment for additional terms of not more than 5 years each.

(3) The President shall

- (a) be the chief executive officer of the Board,
- (b) advise and inform the board of directors on the operating, planning and development functions of the Board,
- (c) be responsible for the implementation of policy as established by the board of directors,

*3(1) The chairman is the chief executive officer of the Board.*

*(2) The chairman may authorize a panel of any 2 or more members to conduct a hearing on behalf of the Board and those members may exercise the powers of the Board necessary for that purpose.*

*(3) A decision of a panel of members acting pursuant to subsection (2) is a decision of the Board.*

*4(1) In the case of illness or absence of the chairman or vice-chairman or any other member of the Board or of his inability to act from any cause, the Lieutenant Governor in Council may appoint an acting chairman or vice-chairman or an acting member who for the period of his appointment has all the powers and shall perform all the duties of the member in respect of whom he is acting.*

*(2) In the case of a vacancy in the office of the chairman or vice-chairman or any other member, the Lieutenant Governor in Council may appoint an acting chairman or vice-chairman or an acting member, and the person so appointed has all the powers and shall perform all the duties of the chairman or vice-chairman or the member, as the case may be.*

*5 The office of the Board shall be situated at Edmonton and meetings of the Board shall be held at any place the Board considers appropriate.*

*6(1) The Board may appoint the employees it considers necessary for carrying out this Act and the regulations and may prescribe their duties and fix their remuneration.*

*(2) An employee appointed by the Board holds office during pleasure of the Board.*

*(3) The Board may delegate all or any of its powers of administration to any employees it designates.*

*7 The Board, with the approval of the Lieutenant Governor in Council, may acquire real property and sell, lease or otherwise dispose of it.*

*8(1) The Lieutenant Governor in Council shall appoint an advisory committee to the Minister consisting of representatives of employers, workers, the Board and members of the Legislative Assembly and may authorize, fix and provide for the payment of remuneration and expenses to members of the committee.*

*(2) The advisory committee shall review annually the amount of all compensation payments being paid in respect of permanent disability and all compensation payments being paid to dependants, and shall make their recommendations in that regard to the Minister.*

*(3) The advisory committee shall, in addition to its duties under subsection (2), consider and make recommendations to the Minister on any matters the Minister refers to it.*

- (d) in accordance with policy as established by the board of directors, be responsible for all functions related to personnel, and
  - (e) carry out any other functions and duties assigned to him by the board of directors.
- (4) The President may in writing
- (a) delegate to an employee of the Board any of his powers or duties, subject to any terms and conditions set out in the delegation, and
  - (b) designate an employee of the Board to act in his place and assume all of his powers and responsibilities during his temporary absence.
- 5 The remuneration of the President and of the members of the board of directors shall be prescribed by the Lieutenant Governor in Council and be paid out of the Accident Fund.

#### **PART 1.1**

#### **APPEALS COMMISSION**

- 5.1(1) There is hereby established an Appeals Commission, to be appointed by the Lieutenant Governor in Council, consisting of
- (a) a chief appeals commissioner, who shall be chairman,
  - (b) 1 or more appeals commissioners whom the Lieutenant Governor in Council considers to be representative of the interests of employers,
  - (c) 1 or more appeals commissioners whom the Lieutenant Governor in Council considers to be representative of the interests of workers, and
  - (d) any temporary appeals commissioners appointed in accordance with subsection (3).
- (2) The following persons are not eligible to be or continue to be appeals commissioners:
- (a) employees of the Board;
  - (b) members of the board of directors.
- (3) One or more temporary appeals commissioners may be appointed for terms of not more than 1 year, and are eligible for reappointment for additional terms of not more than 1 year each.
- (4) An appeals commissioner other than a temporary appeals commissioner shall be appointed for a term of 5 years and is eligible for reappointment for additional terms of not more than 5 years each.
- (5) The chief appeals commissioner may designate one of the other appeals commissioners to act in his place as chief appeals commissioner and to assume all of his powers and responsibilities during his temporary absence.
- (6) The remuneration of the appeals commissioners shall be prescribed by the Lieutenant Governor in Council and paid out of the Accident Fund.



(7) Meetings of the Appeals Commission shall be held at any place in Alberta that it determines.

(8) Notwithstanding the resignation or expiry of the term of office of an appeals commissioner, he may continue to act as an appeals commissioner for the purpose of completing his duties in respect of matters arising before the effective date of the resignation or expiry of the term of office.

**6** The operating costs of the Appeals Commission shall be paid by the Board from the Accident Fund.

**7(1)** Subject to section 8(7), the Appeals Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act and the regulations in respect of

(a) appeals from decisions of the claims services review committee under section 40,

(b) appeals from decisions of the assessment review committee under section 116 where the subject matter of the decision consists only of a direction of the Board under section 89(2),

(c) appeals from determinations of the Board under section 16(3), and

(d) any other matters assigned to it under this or any other Act or the regulations under this or any other Act,

and the decision of the Appeals Commission on the appeal or other matter is final and conclusive and is not open to question or review in any court.

(2) The chief appeals commissioner may authorize a panel of 2 or more appeals commissioners to act on behalf of the Appeals Commission under subsection (1) and that panel may exercise the powers of the Appeals Commission for that purpose.

(3) Section 12(2) to (6) apply to the Appeals Commission as if it were the Board.

(4) The Appeals Commission may make rules governing the practice and procedure applicable to appeals before it and generally with respect to its operations.

**8(1)** An interested party who is dissatisfied with

(a) a decision of the claims services review committee or assessment review committee referred to in section 7(1), or

(b) a determination of the Board under section 16(3)

may, in accordance with the regulations and the Appeals Commission's rules, appeal the decision or determination to the Appeals Commission.

(2) In considering an appeal from a decision of the claims services review committee the Appeals Commission shall consider the records of the claims adjudicator and the review committee relating to the claim.

(3) In considering an appeal from a decision of the assessment review committee the Appeals Commission shall consider the





records and information available to the assessment review committee relating to the matter under consideration.

(4) In considering an appeal from a determination of the Board under section 16(3) the Appeals Commission shall consider the records and information available to the Board relating to the matter under consideration.

(5) In considering an appeal under this section the Appeals Commission shall give all interested parties an opportunity to be heard and to present any new or additional evidence.

(6) The Appeals Commission may confirm, reverse or vary the decision or determination appealed, and the Appeals Commission's decision may be enforced in the same way as if it were made by the Board.

(7) In the hearing of appeals under this section the Appeals Commission is bound by policy determined by the board of directors that relates to the matter under appeal, and where the board of directors considers that the Appeals Commission has not properly applied that policy or the provisions of this Act and the regulations that are applicable to the matter under appeal, the board of directors may in writing direct the Appeals Commission to rehear the matter and to give fair and reasonable consideration to that policy or those provisions.

(8) The board of directors may stay the decision of the Appeals Commission pending a rehearing of the subject matter of the decision under subsection (7).

*4 Section 12(1) is amended by striking out "The Board" and substituting "Subject to section 7, the Board".*

*5 Section 17 is amended*

*(a) by adding the following after subsection (1):*

(1.1) Where a worker referred to in subsection (1) or his dependant receives compensation under this Act in respect of the personal injury suffered by the worker, the worker or his legal personal representative or the dependant has the same right to recover the cost of that compensation from the person referred to in subsection (1) as he would have if the worker or dependant had been required to pay the whole cost of the compensation he received, and the Board is subrogated to the rights of the worker or his legal personal representative or the dependant in respect of that cause of action.

(1.2) Subsection (1.1) applies to causes of action under subsection (1) that exist on the coming into force of this subsection that have not on that date been settled or reduced to judgment.

*(b) in subsection (2) by striking out "subsection (1)" and substituting "subsection (1) or (1.1)".*

**4** Section 12(1) presently reads:

*12(1) The Board has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act or the regulations and the action or decision of the Board thereon is final and conclusive, and is not open to question or review in any court.*

**5** Section 17 presently reads in part:

*17(1) If an accident happens to a worker entitling him or his dependants to compensation under this Act and the circumstances of the accident are such as to also entitle the worker, his legal personal representatives or his dependants to an action against some person other than an employer or worker in an industry to which this Act applies in respect of the personal injury to or death of the worker, the Board is subrogated to the rights of the worker, his legal personal representatives or his dependants in respect of that cause of action.*

*(2) When the Board becomes subrogated to the rights of a worker, his legal personal representatives or his dependants under subsection (1),*

*(a) no payment or settlement shall be made to or with the worker, his legal personal representatives or his dependants for or in respect of those rights or for or in respect of any claim, cause of action or judgment arising out of them except with the consent of the Board, and any payment or settlement made in contravention of this clause is void,*

*(b) an action against any person arising out of injury to or the death of the worker may, with the consent of the Board and on the terms that are satisfactory to the Board, be taken by the worker, his legal personal representatives or his dependants, or by the Board in the*

6 *Section 41 is repealed.*

7 *Section 117 is repealed and the following is substituted:*

**117(1)** If an interested party is dissatisfied with a decision of the assessment review committee, other than a decision referred to in section 7(1)(b), he may appeal to the board of directors in accordance with the regulations.

(2) In considering an appeal from the assessment review committee the board of directors shall consider the records and information available to the assessment review committee relating to the matter under consideration and shall give all interested parties an opportunity to be heard and present any new or additional evidence.

(3) The board of directors may confirm, reverse or vary the decision appealed from.

8 *Section 147(1)(n) is repealed.*

9 *This Act comes into force on Proclamation.*

*name of the worker, his legal personal representatives or his dependants, without the consent of the person in whose name the action is taken.*

*(c) if an action is taken by the Board it shall indemnify and save harmless the worker, his legal personal representatives and his dependants from and against all costs and damages incurred in respect of that action, including costs and damages awarded by the court to the defendant, but excluding any costs that have been incurred by the worker, his legal personal representatives or his dependants without authority of the Board, and*

*(d) the Board may at any time, whether or not an action has been taken by the Board, the worker, his legal personal representatives or his dependants, and whether or not judgment has been given in any action, effect a settlement of the claim for any amount it considers advisable.*

**6** Section 41 presently reads:

*41(1) If an interested party is dissatisfied with a decision of the claims services review committee, he may appeal to the members of the Board in accordance with the regulations.*

*(2) In considering an appeal from a decision of the claims services review committee, the members of the Board shall consider the records of the claims adjudicator and the review committee relating to the claim and shall give all interested parties an opportunity to be heard and to present any new or additional evidence.*

*(3) The members of the Board may confirm, vary or reverse the decision appealed from.*

**7** Section 117 presently reads:

*117(1) If an interested party is dissatisfied with a decision of the assessment review committee, he may appeal to the members of the Board in accordance with the regulations.*

*(2) In considering an appeal from the assessment review committee the members of the Board shall consider the records and information available to the Board relating to the matter under consideration and shall give all interested parties an opportunity to be heard and present any new or additional evidence.*

*(3) The members of the Board may confirm, reverse or vary the decision appealed from.*

**8** Section 147(1)(n) presently reads:

*147(1) The Lieutenant Governor in Council may make regulations*

*(n) governing pensions payable to Board members;*

**9** Coming into force.