Confidential Memo to File  
Critical Incident – Workplace Fatality of  
CUPE Member  

(Insert date here)  

Re: Action Plan for OHS / Prevention and WCB Claims / Compensation Issues  
Arising from Fatality  
Name: (Insert name of worker)  
Local No.: (Insert Local number)  
Fatality Date: (Insert date of fatality)  
Employer Name: (Insert name of employer)  

A. Introduction  

As per WorkSafeBC (the “WCB”), in the event of a serious incident and / or fatality, there are specific actions, processes and procedures that must be taken. The following is an overview of these.  

This document is a step by step guide on addressing key OHS / Prevention and WCB Claims / Compensation issues that arise. Also see the CUPE Workplace Fatality Action Plan Table of Key Points, Actions and Procedures BC Region.  

I. Purpose of Action Plan:  

This Action Plan is a set of actions, processes and procedures that may need to occur after a workplace fatality. This document will:  

▪ Clarify responsibilities of the employer;  
▪ Help to ensure that health and safety concerns are rectified;  
▪ Assist in ensuring that the issues and risks that gave rise to the fatality are being addressed;
▪ Assist in ensuring that the incident is coordinated as there will be overlapping OHS / Prevention; WCB / Claims filing; WCB investigations including possible penalties; possible police or RCMP involvement; possible involvement by the BC Coroners Service grief counselling; media involvement; member mobilization; training; application of the Collective Agreement; application of various Provincial, Federal and Municipal legislation and regulations, etc.;

▪ Assist in ensuring that the Joint Health and Safety Committee (“JHSC”) is actively involved in gathering evidence as part of the mandatory investigation process;

▪ Help maintain contact with the employer and the WCB;

▪ Assist in ensuring that the employer follows up on any health and safety issues, including comprehensive Risk Assessments; and

▪ Assist with any related WorkSafeBC claims filed for both injured and deceased workers, including application for death benefits etc.

While the following Action Plan contents are laid out in a particular order, this order is subject to change depending on the circumstances.

Ensuring that workers are safe is the main priority. If there are ongoing health and safety issues, these need to be addressed immediately. Workers may need to exercise their Right to Refuse Unsafe Work (3.12) under the OHS Regulations. Workers may need to fill out the Exposure Registry Form (Form 41M1) at the WorkSafeBC website, if there are occupational exposures, at https://www.worksafebc.com/en/resources/health-care-providers/forms/exposure-registry-program-form-41m1?lang=en

II. Privacy Issues:

The contents of this internal Memo and Action Plan are confidential and should not be released to the employer, the media, CUPE members, etc.
There may be numerous *Freedom of Information and Protection of Privacy Act* (FOIPPA) and *Personal Information Protection Act* (PIPA) obligations as well as per [http://www.bclaws.ca/Recon/document/ID/freeside/96165_00](http://www.bclaws.ca/Recon/document/ID/freeside/96165_00) and [http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_03063_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_03063_01)

III. Forms that May be Required:

This document does not replace any of the numerous forms and reports required by the WCB, including, for example:

- Form 6
- Form 7
- Exposure Registry (online at WorkSafeBC)
- Form 8 / 11
- Accident / Incident Investigation reports e.g. Form 52E40

This document is not legal advice and does not replace legislation and Policy.

IV. Reporting Serious Incident and Fatalities Overview:

As per the WCB:

"Reporting serious incidents and fatalities

All fatalities must be reported to us immediately. Any serious incident, even one where no one gets hurt, must also be reported through our emergency reporting line.

Reporting a work-related emergency

To report a serious incident, call our toll-free emergency and accident reporting line."
Incidents that must be reported

Notify us right away about the following types of incidents:

- Serious injury to or death of a worker
- Major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system, or excavation
- Major release of a hazardous substance
- Fire or explosion that had a potential for causing serious injury to a worker
- Blasting incident causing personal injury
- Dangerous incident involving explosives, whether or not there is personal injury

Information needed to make an emergency report

When reporting a work-related emergency, you must provide:

- Your contact name and phone number
- The location/address of the incident
- The date and time of the incident
- The number of workers involved, and their names
- A brief description of the incident

An employer's obligation to investigate

Employers are obligated to investigate certain incidents and to report on these investigations. Learn more about when you need to conduct an investigation, and about writing incident investigation reports in Incident investigations.

Protecting an incident scene

Unless directed by one of our officers or a peace officer, you must not disturb the scene of an incident except to:

- Attend to persons injured or killed
- Prevent further injuries or death
- Protect property that is endangered as a result of the accident."
B. What Information is Required

There will be extensive investigation and information gathering, often by multiple parties including the employer, the Union, the WCB, police / RCMP, etc. This will vary depending on the circumstances. Each will have its own reporting and documentation requirements.

Here are some areas of information that should be gathered:


CUPE has also created a comprehensive list of resources on the CUPE National Health and Safety website at https://cupe.ca/health-and-safety-committee-resource-kit; and

the CUPE BC OHS Committee website at https://www.cupe.bc.ca/occupational_health_and_safety_committee

I. Background to Incident:

➢ Time:

➢ Location:

➢ Employer:

➢ Local:

➢ National Representative:
➢ Local President:

➢ Local Business
Agent:

➢ Start Date:

➢ Orientation Records:

➢ Job Duties:

➢ Job Descriptions:

➢ Types of Equipment Used:

➢ Equipment Maintenance Records:

➢ Training Records:

➢ Minutes of Performance Evaluation Meetings:

➢ Next of Kin:

➢ Mechanism of injury:

➢ Witnesses:

➢ Other e.g. records of Right to Refuse, JHSC minutes, JHSC
Recommendations, etc:

This is a small sample list. There are many other areas to address, including other
types of evidence such as photographs, video, etc.

II. Current Status:

Enter any actions taken by the WCB, police / RCMP, the BC Coroner Service, the
employer, the JHSC, the Local, etc.
C. Prevention / OHS Action Plan

The steps in this Action Plan will vary according to the particular facts of the incident. The order may need to be amended or adapted. Many of the resources referred to above will be required here. See the CUPE National Health and Safety website at https://cupe.ca/health-and-safety-committee-resource-kit

In the interim, it is crucial that the workplace hazards be rectified immediately using the Hierarchy of Controls with a focus on elimination.


Key points to remember:

- Employers must immediately address any workplace conditions that could be hazardous to other workers (see Section 115 of the Workers Compensation Act);
➢ Employers must ensure any injured worker(s) receive prompt first aid and medical treatment;

➢ Employers must contact the WCB Prevention immediately, as per the below:

Phone: 604.276.3100 (Lower Mainland)  
Toll-free: 1.888.621.7233 (1.888.621.SAFE) (Canada)

Hours of operation: Monday to Friday, 8:05 a.m. to 4:30 p.m.

Fatalities and serious injuries: Call the numbers above, 24 hours a day, 7 days a week.

“Reporting incidents to WorkSafeBC

As an employer, you are responsible for immediately notifying us when certain workplace incidents occur, such as when a worker is seriously injured or killed on the job, a building collapses, or there is a major release of a hazardous substance.

To notify us of an incident, contact the Prevention Information Line.

An employer's requirement to notify us of serious injuries or incidents is different from reporting injuries related to claims. If there is an injury on the job, the injured worker's employer still must complete and submit an Employer's Report of Injury of Occupational Disease (form 7), but this does not satisfy an employer's need to immediately report certain incidents. For more information about this reporting requirement, see section 172 of the Workers Compensation Act.

Incidents requiring immediate notification

Employers are responsible for immediately notifying us, using the Prevention Information Line, if any of the following incidents have happened in the workplace:

• A worker is seriously injured or killed on the job.
• There is a major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system, or excavation.
• There is a major release of a hazardous substance.
• There is a diving incident as defined by OHS Regulation 24.34.
• There is a dangerous incident involving a fire or explosion that had potential for causing serious injury to a worker.
• There is a blasting incident that results in personal injury or injuries.

Serious injuries are those that are life-threatening or could cause permanent injury. Serious injuries include traumatic injuries such as major fractures, amputations, and serious burns. Serious injuries also include incidents such as exposure to chemicals and heat and cold stress, as these could result in life-threatening conditions or cause permanent impairment.

When any of these incidents happen in the workplace, employers are also required to **conduct an investigation** into the incident.

For more details about what is considered a serious injury, see **Guideline G-D10-172-1**.

**When there is an incident**

Before immediately notifying us about a serious workplace incident, employers must first:

• Address any workplace conditions that could be hazardous to other workers
• Ensure any injured worker(s) receive prompt first aid and medical treatment

Once the workplace has been secured and any injured workers have been attended to, contact us using our Prevention Information Line.

Unless instructed otherwise by one of our officers, be sure the scene of the incident is not disturbed except to:

• Attend to someone who has been injured or killed
• Prevent further injuries
• Protect property that is in danger because of the incident

Immediate notification ensures quick response

When we are notified, our officers will:

• Inspect the workplace to make sure other workers are protected before any work on the jobsite continues
• Ensure any post-incident response or activity is performed safely
• Offer connections to available counselling services, where and as appropriate
• Provide referrals to our Claims team
• Determine whether an incident investigation is appropriate

Employers who don't immediately notify WorkSafeBC when serious incidents occur may be subject to enforcement, such as an administrative penalty.”


Also see Section 54(3) of the *Workers Compensation Act* and 94.10 and 94.11 of RSCM II Policy;


➢ The WCB Form 6 (Worker) must be filed, as applicable by Union, family, or advocate;

➢ The WCB Form 7 (Employer) to be filed out by employer;


➢ Workers may need to fill out the online Exposure Registry form (Form 41M1) on the WorkSafeBC website;


➢ The WCB may provide trauma counselling to coworkers if and as applicable. The WorkSafeBC Critical Incident Response ("CIR") Program is an early intervention initiative that provides critical incident intervention to workers and employers who have experienced a traumatic event;


➢ The CUPE National Workplace Fatality Reporting Form needs to be filled out by National Representative and sent to the CUPE National Health & Safety Representative at the BC Regional Office;

➢ Troy Winters, CUPE National Office must be notified by the CUPE National Health and Safety Representative and / or National Representative;

➢ The JHSC must conduct the required investigation. A Preliminary Investigation by the employer must occur immediately (and at most within 48 hours of the incident). Employer incident investigations must be carried out with the participation of employer and worker representatives;

➢ The employer should conduct a Risk Assessment;


➢ The employer must produce a report of any interim corrective actions;

➢ A Full Investigation by the employer must occur within 30 days of the incident;

➢ The employer must produce a report of any final corrective actions and provide a copy of the Full Investigation report to the JHSC; and

➢ There should be regular and ongoing JHSC meetings, with minutes confirming discussion of the issue, actions taken, time lines for follow-up, training, etc.

D. WCB Claims / Compensation Action Plan:

Many of the steps in this section may overlap with Section III above. The CUPE Workplace Fatality Action Plan Table of Key Points, Actions and Procedures BC Region contains some of the initial steps that may be required.

Here are some key areas to address:

➢ Form 6 to be filled out and submitted;

➢ Form 7 to be filled out and submitted by the employer within 72 hours;

➢ Exposure Registry Form 41M1, if applicable;

➢ RSCM II and Workers Compensation Act death benefits information;

➢ Review the applicable WCB law, OHS Regulations, Policy, Guidelines and Practice Directives. Section 17 of the Act deals with this. Review the definition of "spouse" and "dependant" in the definition section at the beginning of the Act as well. The most relevant provisions start with...
Section 17(9) of the Act. The relevant Board policy is in Chapter 8 of the RSCM II. If the matter does fall within the scope of the Act, then wrongful death benefits are not in the picture. Transportation of the deceased and funeral costs, however, are payable to the extent set out in section 17;

See: http://www.bclaws.ca/Recon/document/ID/freeside/96492_00

➢ Applicable WCB Policy. RSCM II Policy Nos. 52, 53, 54, 93.23 and 94; and

➢ Adjudication of fatal claims is in the hands of a very small number of adjudicators at the WCB.

See Appendix A below for potentially relevant language on deaths in the workplace. This is sample language and the current Policy and Practice Directives should be checked at https://www.worksafebc.com/en/law-policy.

E. Other Issues

There are other considerations. Some of these include:

I. Police / RCMP

➢ Are the police or RCMP involved

➢ How

➢ By whom

➢ How is this coordinated
➢ When

➢ Has CUPE Legal been contacted

II. Media

➢ A media plan should be created and coordinated

➢ Who is involved

➢ How is it coordinated

➢ How are confidentiality and privacy concerns addressed

➢ Application of FOIPPA and PIPA

III. Notification of Relatives

➢ Is notification of the relatives occurring

➢ Who is notifying the relatives

➢ When

➢ How

➢ Follow-up

➢ How are confidentiality and privacy concerns addressed

IV. Collective Agreement Entitlements

➢ What Collective Agreement entitlements apply

➢ Is EAP / EFAP assistance being provided

➢ What Death Benefits or Extended Health Benefits apply
➢ How are these being coordinated

V. Liaising with the CUPE BC Division and the BC Regional Office

➢ Has there been notification of the CUPE BC Division and CUPE National

➢ Has the Regional Director been notified

➢ Has the CUPE Sector Coordinator been notified

➢ What follow-up is required

➢ By whom

➢ When

➢ Is there a statement by CUPE BC and by CUPE National

VI. Assisting other CUPE Members with Critical Incident Stress, etc.

➢ See the numerous related materials on the CUPE BC OHS Committee website and the CUPE National Health and Safety website. There are templates and power points which address processes and procedures, the filing of paperwork, self-care, RTW, etc.;

➢ See the WorkSafeBC Fact Sheet on questions about mental disorders and how to file a claim on the CUPE BC OHS Committee website; and

➢ See the CUPE “Critical Incidents and Critical Incidents Stress” fact sheet available at the CUPE National Health and Safety website.
Appendix A

Appendix A addresses survivor and death benefits, in part. It does not address other aspects of the WCB Claims process, specific diagnoses, accessing benefits by injured workers, etc.

The following information is subject to frequent change and is merely for illustration purposes only. Always check the most recent legislation and Policy at https://www.worksafebc.com/en/law-policy.

Workers Compensation Act

Compensation in fatal cases

17 (1) In this section

"child" means

(a) a child under the age of 19 years, including a child of the deceased worker yet unborn;

(b) an invalid child of any age; and

(c) a child under the age of 25 years who is regularly attending an academic, technical or vocational place of education,

and "children" has a similar meaning;

"federal benefits" means the benefits paid for a dependant under the Canada Pension Plan as a result of a worker's death, other than the death benefit payable to the estate of a worker under section 57 of that Act.

(2) Where compensation is payable as the result of the death of a worker or as the result of injury resulting in the death,

(a) in addition to any other compensation payable under this section, an amount in respect of funeral and related expenses, as determined in accordance with the policies of the board of directors, must be paid out of the accident fund,
(b) the employer of the worker must bear the cost of transporting the body to the nearest business premises where funeral services are provided, and

(c) if burial does not take place there, the costs of any additional transportation, up to a maximum determined in accordance with the policies of the board of directors, may be paid out of the accident fund.

(2.1) No action for an amount larger than that established by subsection (2) lies in respect of the funeral, burial or cremation of the worker or cemetery charges in connection with it.

(3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:

(a) where the dependants are a surviving spouse and 2 or more children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those dependants, would equal the total of

(i) the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum set out in paragraph (g); and

(ii) $328.29 per month for each child beyond 2 in number; [Note: See Note on page 1 of the Act concerning dollar amount.]

(b) where the dependants are a surviving spouse and one child, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those dependants, would equal 85% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum set out in paragraph (g);
(c) where the dependant is a surviving spouse who, at the date of death of the worker, is 50 years of age or over, or is an invalid spouse, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for that dependant, would equal 60% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, but the monthly payments must not be less than $1,060.84; [Note: See Note on page 1 of the Act concerning dollar amount.]

(d) where the dependant, at the date of death of the worker, is a surviving spouse who is not an invalid and is under the age of 50 years, and there are no dependent children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for that dependant, would equal the product of

(i) the percentage determined by subtracting 1% from 60% for each year that the age of that dependant, at the date of death of the worker, is under the age of 50 years, and

(ii) the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability,

but the percentage determined under subparagraph (i) must not be less than 30% and the monthly payments must not be less than $1,060.84; [Note: See Note on page 1 of the Act concerning dollar amount.]

(e) [Repealed 2003-65-17.]

(f) where there is no surviving spouse eligible for monthly payments under this section, and

(i) the dependant is a child, a monthly payment of a sum that, when combined with 50% of the
federal benefits to or for that child, would equal 40% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability;

(ii) the dependants are 2 children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those children, would equal 50% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; or

(iii) the dependants are 3 or more children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those children, would equal the total of

(A) 60% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and

(B) $328.29 per month for each child beyond 3 in number, [Note: See Note on page 1 of the Act concerning dollar amount.]

subject, in all cases, to the minimum set out in paragraph (g);

(g) the minimum allowances payable under paragraphs (a), (b) and (f) must be the allowances that would be payable if the allowances were calculated under those paragraphs in respect of a deceased worker with average earnings of $35 367.14 per annum; [Note: See Note on page 1 of the Act concerning dollar amount.]
(h) where there is

(i) no dependent spouse or child entitled to compensation under this section, but a worker leaves other dependants, a sum reasonable and proportionate to the pecuniary loss suffered by those dependants by reason of the death, to be determined by the Board, but not exceeding in the whole $581.02 per month for life or a lesser period as determined by the Board; or [Note: See Note on page 1 of the Act concerning dollar amount.]

(ii) a dependent spouse, or a dependent child or children, entitled to compensation under this section, but not a spouse and child or children, and, in addition, the worker leaves a dependent parent or parents, then, in addition to the compensation payable to the spouse or children, a sum, reasonable and proportionate to the pecuniary loss suffered by the dependent parent or parents by the death, to be determined by the Board, but not exceeding $581.02 per month for life or a lesser period as determined by the Board; [Note: See Note on page 1 of the Act concerning dollar amount.]

(i) where

(i) no compensation is payable under the foregoing provisions of this subsection; or

(ii) the compensation is payable only to a spouse, a child or children or a parent or parents, but the worker leaves a spouse, child or parent who, though not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker, payments, at the discretion of the Board, to that spouse, child or children, parent or parents, but not
to more than one of those categories, not exceeding $581.02 per month for life or a lesser period determined by the Board; and [Note: See Note on page 1 of the Act concerning dollar amount.]

(j) where the worker leaves no dependent surviving spouse, or the surviving spouse subsequently dies, and the Board considers it desirable to continue the existing household, and when a suitable person acts as a foster parent in keeping up the household and taking care of and maintaining the children entitled to compensation, in a manner satisfactory to the Board, the same allowance is payable to the foster parent and children as would have been payable to a surviving spouse and children, and must continue as long as those conditions continue.

(4) Where an invalid spouse ceases to be an invalid, or a surviving spouse with dependent children no longer has dependent children or there is a reduction in the number of dependent children, the surviving spouse or children is then entitled to the same category of benefits as would have been payable if the death of the worker had occurred on the date the invalid spouse ceases to be an invalid or the surviving spouse no longer has dependent children, or the number of dependent children is reduced, as the case may be.

(5) Where there is a surviving spouse and a child or children, and the surviving spouse subsequently dies, the allowances to the children must, if they are in other respects eligible, continue and be calculated in the same manner as if the worker had died leaving no dependent spouse.

(6) Where at the date of death a spouse is not an invalid, but is suffering from a disability that results in a substantial impairment of earning capacity, the Board may, having regard to the degree of disability or the extent of impairment of earning capacity, pay the spouse a proportion of the compensation that would have been payable if the spouse had been an invalid.
(7) Where 2 workers are spouses and both are contributing to the support of a common household, each is deemed to be a dependant of the other.

(8) Where parents contribute to the support of a common household at which their children also reside, the children are deemed to be dependants of the parent whose death is compensable under this Part.

(9) Where compensation is payable as the result of the death of a worker, or of injury resulting in death, and where at the date of death the worker and dependent spouse were living separate and apart, and

(a) there was in force at the date of death a court order or separation agreement providing periodic payments for support of the dependent spouse, or children living with that spouse, no compensation under subsection (3) is payable to the spouse or children living with the spouse; but monthly payments must be made in respect of that spouse and those children equal to the periodic payments due under the order or agreement; or

(b) there was no court order or separation agreement in force at the date of death providing periodic payments for support of the dependent spouse, or children living with that spouse, and

(i) the worker and dependent spouse were living separate and apart for a period of less than 3 months preceding the date of death of the worker, compensation is payable as provided in subsection (3); or

(ii) the worker and dependent spouse were separated with the intention of living separate and apart for a period of 3 months or longer preceding the death of the worker, monthly payments must be made up to the level of support which the Board believes the spouse and those children
would have been likely to receive from the worker if the death had not occurred.

(10) Compensation payable under subsection (9) must never exceed the compensation that would have been payable under subsection (3) if there had been no separation.

(11) Compensation under this section is payable to a surviving spouse described in paragraph (b) of the definition of "spouse" only if a worker was living with and contributing to the support and maintenance of the spouse immediately preceding the worker's death.

(12) If

(a) a worker has left both

(i) a dependent surviving spouse described in paragraph (a) of the definition of "spouse" from whom, at the date of death, the worker was living separate and apart, and

(ii) a surviving spouse described in paragraph (b) of the definition of "spouse", with whom the worker was living, and to whose support and maintenance the worker was contributing, immediately preceding the worker's death, and

(b) there is a difference in

(i) the amount of compensation payable to the spouse referred to in paragraph (a) (i) of this subsection by reason of the separation, and

(ii) the amount of compensation that would have been payable to that person if that person and the worker had not been living separate and apart,

the Board may pay compensation, up to the amount of the difference, to the spouse referred to in paragraph (a) (ii) of this subsection.
(13) In addition to any other compensation provided, a dependent surviving spouse, common law spouse or foster parent in Canada to whom compensation is payable is entitled to a lump sum of $2,526.30. [Note: See Note on page 1 of the Act concerning dollar amount.]

(14) Where in any situation there is a need to apportion allowances payable to dependants among those dependants, the formula for apportionment must be at the discretion of the Board; but, unless the Board has grounds for a different apportionment, the apportionment must be:

(a) where there is a dependent spouse and one child, 2/3 to the dependent spouse and 1/3 to the child;

(b) where there is a dependent spouse and more than one child, 1/2 to the dependent spouse and 1/2 among the children in equal shares; and

(c) where there are children but no dependent spouse, among the children in equal shares.

(15) Where personal injury to, disablement of or death of a worker occurs in the course of the worker's employment as a direct result of enemy warlike action or counteraction taken against it and provision has been made for compensation in respect of it for the worker or the worker's dependants by the government of Canada, the worker or the dependants are entitled to compensation under this Part only when the compensation provided by the government of Canada is less than that provided by this Act, and then only to the extent of the difference.

(16) If a dependant is entitled to receive compensation

(a) as a result of the death of a worker, and

(b) as a result of the subsequent death of another worker,

the total compensation payable for the dependant as a result of those deaths is an amount that the Board considers appropriate.
(16.1) The compensation payable for a dependant under subsection (16) must not

(a) be less than the highest of the amounts that would otherwise be payable in respect of the death of any of the workers, and

(b) be more than 90% of the average net earnings of a worker whose wage rate is the maximum wage rate established under section 33 (6) and (7) for the year in which the last death referred to in subsection (16) (b) occurred.

(16.2) For the purposes of subsection (16.1), "average net earnings" means the average net earnings calculated in accordance with section 33.8.

(17) Where a situation arises that is not expressly covered by this section, or where some special additional facts are present that would, in the Board's opinion, make the strict application of this section inappropriate, the Board must make rules and give decisions it considers fair, using this section as a guideline.

Addition to payments

18 (1) Where, on July 1, 1974,

(a) compensation is being paid to dependants in respect of deaths occurring prior to that date;

(b) those dependants are not receiving or entitled to receive benefits under the Canada Pension Plan; and

(c) the dependant is a widow who is 50 years of age or over, or is an invalid spouse, or the dependants are children, or a widow and children,

there must be added to the monthly payments the sum of $439.58 for each such dependent spouse and $136.44 for each dependent child. [Note: See Note on page 1 of the Act concerning dollar amounts.]
(2) Where dependants would qualify for the increases in subsection (1) but for the fact that they are receiving or entitled to receive benefits under the Canada Pension Plan, and where the amount of benefits under the Canada Pension Plan is less than the amounts set out in subsection (1), the monthly payments payable to those dependants under this Part must be increased by the amount by which the benefits under the Canada Pension Plan are less.

### Surviving spouse of a deceased worker

19 (1) In this subsection and subsections (2) and (2.1)

"former subsection" means the section 19 (1) that came into force on April 17, 1985 or the section 19 (4) repealed in 1994;

"interest" means interest calculated at a rate and in a manner set by the Board for the purposes of this section;

"monthly payments" mean monthly payments under this Act to a widow, widower, former common law wife or former common law husband of a deceased worker;

"person" does not include a widow or former common law wife of a deceased worker if the widow or former common law wife remarried or entered into a new common law relationship before April 17, 1985.

(2) A person whose monthly payments were discontinued by application of a former subsection is entitled to

(a) monthly payments beginning on the later of

(i) the expiry of the 2 year period for which payment was made under the former subsection, or

(ii) the repeal of the former subsection,

(b) the amount, if any, by which, during the period from April 17, 1985 to the beginning of monthly payments under paragraph (a), the total amount of compensation described by section 17 that the person would have
received if the former subsection had not been in force exceeds the sum paid to the person under the former subsection, and

(c) interest on any amount payable under paragraph (b).

(2.1) In calculating monthly payments for the purposes of subsection (2), adjustments are deemed to have been made under section 25, as it read immediately before being amended by the Workers Compensation Amendment Act, 2002, for the months the former subsection was in force.

(3) [Repealed 1985-68-122.]

(4) [Repealed 1994-24-7.]

Period for making payments under sections 17 to 19

19.1 The Board must make periodic payments under section 17, 18 or 19 for the life of the person to whom the payment is to be made, unless a shorter period applies under section 17, 18 or 19, as the case may be.

Proof of existence of dependants

20 The Board may from time to time require the proof of the existence and condition of dependants in receipt of compensation payments that is deemed necessary by the Board, and pending the receipt of that proof may withhold further payments.