

Most Advanced Compensation Act in the World

Workers of British Columbia
get sixteen additional advantages
over those given by
Ontario Workmen's Compensation
Act, said previously to
be the finest of its kind.



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A WELL THOUGHT OUT MEASURE

Seldom has a more carefully prepared bit of legislation been placed on the statute books of any country than the **Workmen's Compensation Act of British Columbia**, whose chief features are explained in this brief pamphlet. A Royal Commission, after an exhaustive investigation of labour conditions in this Province, recommended that an advanced act was required. In pursuance of the commission's report, a strong bill was brought into the legislature in 1915 by the Attorney-General. Rather than inaugurate a system which might prove faulty, however, the Government determined to let the bill stand for a year, and a committee, consisting of Messrs. A. V. Pineo, J. H. McVety (labour representative), and David Robertson (employers' representative), was sent out to study the working out of the seven or eight most advanced acts in force. On their unanimous report the present act was drawn and, with but one or two minor amendments, was carried through the legislature at the recent session. Parker Williams, one of the opposition leaders, stated on the floor of the House that it was a good act, drafted by parties who were thoroughly familiar with labour conditions in British Columbia. With this admission from a bitter opponent of the Government, what more need be said?

WORKERS, ATTENTION!

Labor runs less hazard from accident in British Columbia than in any other province or state on this continent.—Your wives, children, mothers **AND ALL DEPENDANTS** are protected from poverty by Bowser Government's up-to-the-minute system of state insurance.

When the Ontario Legislature passed the Compensation Act drafted by Sir William Meredith, it was considered the best piece of legislation of the kind on the continent, both from the standpoint of number of industries covered and its provisions generally.

The British Columbia Government, however, has in its act just passed made at least **sixteen distinct improvements that are of benefit to the workmen**, quite disregarding the numerous changes that will enable the employer more easily to comply with the law. The British Columbia Act is the most up-to-date in the world. It has several original new features, and no other single act embodies all of the advanced features of this one.

RESCUE WORKERS COVERED

For the first time in the history of compensation legislation, workers engaged in rescue work in the coal mining industry are covered, the Government conceding that even though the men engaged in this hazardous work are not, in many cases, regularly employed by the company on whose property the accident occurs, frequently coming from other properties to assist, they are engaged in saving both lives and property, and should therefore be protected during the time they are engaged in that work at the expense of the industry benefited.

"GAS COMMITTEES" INCLUDED

Practically the same line of reasoning applied to the case of men elected by their fellow miners, or appointed by the chief mine inspector under the provisions of the Coal Mines Regulation Act, on "gas committees," for the purpose of inspecting the workings of mines to ascertain if there is sufficient gas to make their operation dangerous. Holding that they were a protection to the property, and at the same time reduce the number of accidents, the Government included such work even though the wages of the committeemen were paid by the miners instead of by the owners of the mines.

WORKERS IN SMALL PLANTS INCLUDED

Under the Ontario Act the Board is given power to exclude small employers and their workmen where the number employed does not exceed four or six. It was held here that as an accident in which a number of people were badly injured would bankrupt the small employer if he had to bear the burden alone, the workers would not receive any compensation. As a result, all workmen in industries that are included under the act are covered, regardless of the number employed in any shop or factory.

SHORT WAITING PERIOD

The majority of acts require workmen to be disabled for one or two weeks before any compensation is paid, this practice resulting in 40 to 70 per cent. of the injured workmen not receiving any compensation whatever, as they are completely recovered before the waiting period expires. The British Columbia Act pays after a period of three days.

UNABLE TO ASSIGN COMPENSATION

In Ontario the Board is permitted to allow workers to assign their compensation, and because there is no medical aid provisions in the act of that Province, the workers are required to assign their compensation to the hospitals before they are admitted. This has been remedied here by taking away from the Board the power to permit assignments or attachments of any kind.

COMPENSATION PROVISIONS BETTER

Where children receiving compensation are invalids, their payments do not cease at the age of sixteen years, but continue until

they recover their health or die. Widows are paid a flat rate of \$20 in both Ontario and British Columbia, but the Ontario Act contains a provision that where \$20 amounts to more than 55 per cent. of the wages received by the husband, the compensation is reduced correspondingly. This section is omitted from the British Columbia Act. A minimum of \$5 per week is fixed in this Province for the protection of women and apprentices, and the compensation cannot be less than this amount unless the wages are less. Then the full wages are paid. **Compensation is also paid in this Province where the worker has suffered facial disfigurement.**

BOARD UNABLE TO COMMUTE CLAIMS

It has been alleged, in some states, that Compensation Boards have induced injured workmen to settle their claims for lump sum payments, and that these settlements have been to the disadvantage of the workmen. Under the British Columbia Act the Board is unable to commute **without the consent of the workmen**, except where the reduction of earning capacity is less than ten per cent.

UNLIMITED MEDICAL AID

Neither Ontario, Nova Scotia, nor Washington Acts make any provision for medical aid for the workmen, although the absence of this provision is conceded in all three places to be a serious omission. California, Ohio and New York have limited medical aid provided entirely at the expense of the employer, but the first and last of these States have a waiting period of two weeks, during which the injured workmen receive nothing but the medical aid. Here, by agreement between the employers and the employees, **injured workmen are to receive unlimited medical aid**, transportation, hospital service, crutches and artificial limbs, with a waiting period of only three days, but will contribute one cent for each working day to the medical fund. Any deficiency in the fund will be made up by assessing the employers. Arrangements at present in operation that are satisfactory to the workmen and secure the approval of the Board, will be allowed to continue, and the workmen who are enrolled in any existing scheme will not require to contribute the one cent per day.

INDIVIDUALITY LIABILITY ABOLISHED

In this Province **all employers are placed on exactly the same footing**; all pay their assessments to the Board, and the workmen

receive their compensation direct from that body, instead of, as in Ontario, allowing the railways to pay their injured workmen without the payment going through the hands of the Board, this practice causing strong suspicion that workmen were being required to accept less than they were entitled to under the law.

FORM OF NOTICE SIMPLIFIED

A lot of "red tape" in connection with the notice the injured workmen are required to give has been done away with, this being made possible through the inclusion of the medical aid features.

BOARD ENFORCES SAFETY RULES

The Board is granted power to develop an efficient accident prevention department along the lines of the system which has been found to give the best results in the State of Wisconsin. Rules for the prevention of accidents by the improvement of working conditions, and education of employees in personal caution, will be formulated by the Board with the assistance of advisory committees, **composed jointly of representatives of the employers and workmen** in the different industries. In Ontario no provision is made for giving the workers representation on the advisory committees.

NON-RESIDENT ALIEN DEPENDENTS

In Ontario and Nova Scotia no compensation is paid to dependents unless they are residents, except where the country in which the dependents are resident would pay compensation to a dependent residing in Ontario or Nova Scotia. This, it is contended by representatives of the workmen, gives the employers the benefit of the lower rate of wages paid to foreigners and also reduces the expenses of compensation, because the dependents are mostly non-resident. Particularly is this true in British Columbia, where such a large number of Chinese are employed, who are required to pay a head tax of \$500 for themselves, and each of their families that come to the Province.

Despite the objections of the employers, who contended that compensation should not be paid in such cases, or that if any payment was made it should be on the basis of the relative purchasing power in British Columbia and the country in which the dependent resides, the Government decided that all workmen should be treated alike, and that **no advantage would accrue to the employer**

of foreign labour over other employers who had given a preference to Canadians. The objection that money is being sent out of the country can best be met by the employers themselves realizing that the fewer Asiatics employed, the smaller the amount of money that will go to dependents in China, Japan and India.

SUPERSEDES ALL OTHER REMEDIES

The Workmen's Compensation Act of 1916 is a new law about accidents to workmen, which comes into force, as far as the workmen are concerned, on January 1, 1917. Common law and statute rights of workmen against their employers are taken away, and the Employers' Liability and Workmen's Compensation Acts are repealed, so that from January 1st, 1917, the sole remedy of the workmen is under the new act. **Lawyers, courts and insurance companies disappear** at the same time, and injured workmen only require to apply to the Compensation Board for their compensation.

WHO ARE COVERED BY THE NEW ACT

Under the old act, railways, factories, mines, quarries, engineering works, and buildings which exceed 40 feet in height and are being constructed or repaired by means of a scaffolding or being demolished or on which machinery driven by mechanical power is used for construction, repair or demolition, are the only industries covered. Contrast that with **the new act, which covers practically every line of work**, with the exception of clerks, outworkers, farm labour and hotel employees. Section 4 reads in part:

"This part shall apply to employers and workmen in or about the industries of lumbering, mining, quarrying, excavation, well-drilling, fishing, manufacturing, printing, construction, building, engineering, transportation; operation of railways or tramways; operation of telegraph or telephone systems; operation of lumber, wood, or coal yards; operation of steam heating plants, power plants, electric light or electric power plants or systems, gas works, water works or sewers; operation of municipal police forces or municipal fire departments; operation of theatre stages or kinematographs; operation of power laundries, stock yards, packing houses, refrigerating or cold storage plants, docks, wharves, warehouses, freight and passenger elevators, grain elevators, boats, ships, tugs, ferries or dredges; navigation, stevedoring, teaming, horse shoeing, scavenging, street cleaning, painting, decorating, dyeing and cleaning; and in and about any occupation incidental to or immediately connected with any of the industries enumerated in this section."

EMPLOYERS' DEFENCES REMOVED

With the workmen's remedies went the employers' defences of contributory negligence, assumption of risk and negligence of fellow servants, and the new act contemplates industry paying for all accidents except those "attributable solely to the serious and wilful misconduct of the workman," but payment is provided for in those cases if the accident results in serious injury or death. In addition, the **industrial diseases**—anthrax, lead poisoning, mercury poisoning, phosphorous poisoning, arsenic poisoning and ankylostomiasis or diseases common to mining—are provided for.

ONUS OF PROOF ON EMPLOYER

It lies upon the employer to prove that the injury was due solely to the serious and wilful misconduct of the workman. He must, therefore, show serious and wilful misconduct, and that the accident was due solely to these causes to prevent the workman from receiving compensation. The English Act contains the same provision, except that Sir William Meredith inserted the word "solely" in the Ontario Act, copied into the British Columbia Act, for, as Sir William put it, **the further protection of the workmen.**

Many interesting decisions have been handed down by the courts of Great Britain on the interpretations to be placed on this clause, and in many cases the final decision has rested with the House of Lords. In the first place, the misconduct must be serious, and this means not merely that the consequences are serious, but that the misconduct itself is serious. Secondly, the misconduct must be wilful, and Lord Justice Bramwell says: "Wilful misconduct means misconduct to which the will is a party, something opposed to accident or negligence." Lord Loreburn says the word "wilful . . . imports that the misconduct was deliberate, **not merely a thoughtless act on the spur of the moment.**" Having established the serious and wilful misconduct of the workman, the employer must then show that the injury was attributable solely to it—that the accident would not have happened without it, and was the result of it.

PRESUMPTION WITH THE WORKMEN

"Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment."

While the presumption in this section is in favour of the workman, it must not be presumed that the workmen are entitled to compensation if they persist in dangerous practices in spite of the instruction of the employer; if they attempt to perform other work than that to which they have been assigned, except in cases of emergency; or if they are injured through "larking" or "horse-play." On the other hand, the **workmen are entitled to recover for accidents arising from "acts of God or the forces of nature,"** if the injury occurs in the course of employment or arise out of the employment.

"SHOULD BE CONSTRUED IN POPULAR SENSE"

As has been explained in previous articles, the compensation cases in England are passed upon by a county court judge sitting as an arbitrator, and the decisions of the arbitrators have been appealed through the various courts to the Privy Council; in fact, the procedure is the same as that followed under the old act of this Province. The following are extracts from judgments handed down by the higher courts, and they are an indication, despite the many close decisions necessary in many cases, coming before them, of the line of reasoning arbitrators and judges of the lower courts are expected to follow:

LIST OF DECISIONS

"It ought to be remembered that the Workmen's Compensation Acts are expressed not in technical but in popular language, and **ought to be construed not in a technical but a popular sense.**"—Lord Justice Romer.

"This court would be slow to adopt an interpretation of the Act which would introduce exceptions that have not been made by the Legislature."—Lord Justice Matthews.

"The first thing, I think, one has to do is to apply one's mind to what is the substantive intention and meaning of this statute."—Earl of Halsbury, Lord Chancellor.

"We have been told by the House of Lords to give the terms used in the Workmen's Compensation Act their practical, popular meaning, and not to put a technical construction on them."—Collins, Master of the Rolls.

ENTIRE CHANGE OF SYSTEM

Having in mind that the courts and lawyers have been entirely eliminated insofar as the administration of the new British Col-

umbia Act is concerned, it may suggest itself that the interpretations and opinions of the English courts are of little value, but it is because of the changed system that reference has been made to these points. The act here is to be administered by a Board of three commissioners, who will, in addition to the actual administration, be entrusted with the judicial functions formerly exercised by the various courts through which an appeal reaches the Privy Council, and **from the decision of the Board there is no appeal to any court, either on the law or the facts.**

PAYMENTS UNDER OLD ACT

In case of death, under the old act, the dependents received a sum equal to three years' earnings, but not more than \$1,500; medical attendance and burial expenses not exceeding \$100, if deceased left no dependents; in cases of disability, after the second week, the workman received 50 per cent. of average weekly earnings, such weekly payments not to exceed \$10 per week, and the total payments not to exceed the amount of \$1,500. A lump sum might be substituted for the weekly payments after six months, at the request of the employer, the amount to be settled in default of agreement by arbitration. **Any decision under this old act was subject to appeal through the courts to the Privy Council.**

PROVISIONS OF NEW ACT

To give the fullest information regarding the compensation as under the new Act, when and to whom payable, sections 15 to 20 are reproduced in full:

"15. (1) Where death results from the injury, the necessary expenses of the burial of the workman, not exceeding the sum of \$75, shall be paid in addition to all other compensation payable under this section.

"(2) Where death results from the injury, compensation shall be paid to the dependents of the deceased workman as follows:

"(a) Where the dependent is a widow or an invalid widower without any dependent children, a monthly payment of \$20 during the life of such surviving spouse.

"(b) Where the dependents are a widow or an invalid widower and one or more children, a monthly payment of \$20, with an additional monthly payment of \$5 for each child under the age of 16 years, and for each invalid child over that age, not exceeding in the whole \$40.

"(c) Where the dependents are children without any widow or invalid widower, a monthly payment of \$10 to each child under the age of 16 years, and to each invalid child over that age, not exceeding in the whole \$40; and

"(d) Where there is no widow, invalid widower, child under the age of 16 years, or invalid child over that age as a dependent, but the workman leaves other dependents, **a sum reasonable and proportionate to the pecuniary loss to such dependents** occasioned by the death, to be determined by the Board, but not exceeding \$20 per month to a parent or parents, and not exceeding in the whole \$30 per month.

"(e) In any case within the provisions of clause (a) or (c), if the workman leaves **a parent or parents who are dependents**, the Board may in its discretion award to the parent or parents a sum to be determined by the Board, but not exceeding \$20 per month, and not exceeding with the compensation otherwise payable under this subsection \$40 per month.

"(3) Where there are both total and partial dependents, the compensation may be allotted partly to the total and partly to the partial dependents.

"(4) The payments provided under clause (d) of subsection (2) shall continue only so long as, in the opinion of the Board, it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependents.

"(5) Payments in respect of a child under the age of 16 years shall cease when the child attains the age of 16 years or dies, provided that in case the child at the time of attaining the age of 16 years is an invalid the payments shall continue until the child ceases to be an invalid. Payments in respect of an invalid child over the age of 16 years shall cease when the child ceases to be an invalid or dies.

"(6) Where a payment to any one of a number of dependents ceases, the Board may in its discretion re-adjust the payments to the remaining dependents so that **the remaining dependents shall thereafter be entitled to receive the same compensation as though they had been the only dependents at the time of the death of the workman.**

"16. (1) If a dependent widow marries, the monthly payments to her shall cease, but she shall be entitled in lieu of them to a sum equal to the monthly payments for two years.

"(2) Subsection (1) shall not apply to payments to a widow in respect of a child.

"17. (1) Where permanent total disability results from the injury, the compensation shall be periodical payment to the injured workman equal in amount to 55 per cent. of his average earnings, and shall be payable during the lifetime of the workman.

"(2) The compensation awarded under this section shall **not be less than an amount equal to \$5 per week**, unless the workman's average earnings are less than \$5 per week, in which case he shall receive compensation in an amount equal to his average earnings.

"18. (1) Where permanent partial disability results from the injury, the compensation shall be periodical payment to the injured workman equal in amount to 55 per cent. of the difference between the average earnings of the workman before the accident and the average amount he is earning or is able to earn in some suitable employment or business after the accident, and the compensation shall be payable during the lifetime of the workman.

"(2) Notwithstanding the provisions of subsection (1), where in the circumstances the amount which the workman was able to earn before the accident has not been substantially diminished, the Board may, in case the workman is seriously and permanently disfigured about the face or head, recognize an impairment of earning capacity and may allow a lump sum in compensation.

"19. (1) Where temporary total disability results from the injury, the compensation shall be the same as that prescribed by section 17, but shall be payable only so long as the disability lasts.

"(2) The compensation awarded under this section shall not be less than the amount equal to \$5 per week, unless the workman's average earnings are less than \$5 per week, in which case he shall receive compensation in an amount equal to his average earnings.

"20. Where temporary partial disability results from the injury, the compensation shall be the same as that prescribed by subsection (1) of section 18, but shall be payable only so long as the disability lasts."

PAYMENTS FOR UNLIMITED PERIOD

A comparison between the old and the new Acts will show that the percentage of wages paid is higher; that there is a premium payment to widows of \$20 per month for life, and a further payment in respect of children under 16 years of age; that there is payment of disabled workmen for life instead of fixing a

maximum of three years' wages of \$1,500; that wages are computed on a maximum of \$2,000, the highest rate in the world, Ontario being the only Province to equal it; that there is a minimum payment of \$5 per week to cover women workers and apprentices, who will receive a higher percentage if their wages are less than \$9 per week.

PROVISIONS GENEROUS

The provisions of the British Columbia Act, in the case of non-resident alien dependents, are much more liberal than the majority of Acts. Many States cut the compensation in half; others base it on the relative purchasing power; a few pay only to dependents who are resident in a country which has a reciprocal arrangement, that is to say, countries that would pay dependents residing in British Columbia if the workman was injured in the foreign country. Others do not pay compensation to non-resident dependents at all. In British Columbia, all that is necessary is to prove dependency.

HOW ARE EARNINGS COMPUTED?

With a knowledge of the industries covered, the methods by which compensation can be secured and to whom payable, and that for disabled workmen the payment is to be 55 per cent. of the "average earnings," the thought that comes to the minds of many workmen is, "How are the average earnings to be computed?"

A DIFFICULT QUESTION

To lay down any hard and fast rule by which administering Boards are to compute "average earnings," has always resulted in dissatisfaction. Sometimes the workman receives more than he should and other times, through a temporary lowering of the grade of employment, or depression in the industry, the workman is paid for long terms on the basis of his earnings at the time of the accident, the Boards, where such rules are in effect, being unable to take into consideration the abnormal conditions prevailing at the time the workman is injured. The cases where workmen are working temporarily for lower wages than usual being much more frequent than those where they are receiving above the regular scale, rules that take away the discretionary power from the Boards are usually against the workmen.

EACH CASE ON ITS MERITS

Feeling that the best interests of all concerned would be served by allowing each case to be decided on its own merits, and yet appreciating that a great deal of power would have to be given the administering Board to make this arrangement possible, the Government decided that the only way this could be accomplished was to **give the Board wide powers in arriving at an equitable calculation of the "average earnings" of injured workmen.** This is done in section 22, which reads as follows:

"(1) The average earnings and earning capacity of a workman shall be determined with reference to the average earnings and earning capacity at the time of the accident, and may be calculated upon the daily, weekly, or monthly wages or other regular remuneration which the workman was receiving at the time of the accident, or upon the average yearly earnings of the workman for one or more years prior to the accident, **or upon the probable yearly earnings of the capacity of the workman at the time of the accident as may appear to the Board best to represent the actual loss of earnings suffered by the workman by reason of the injury,** but not so as in any case to exceed the rate of two thousand dollars per year.

"(2) Where the workman was at the date of the accident under 21 years of age, and it is established to the satisfaction of the Board that under normal conditions his wages would probably increase, the fact shall be considered in arriving at his average earnings or earning capacity."

MEANING OF "EARNINGS"

As the English Act uses the term "earnings" and "average earnings," we cannot do better than consider the definitions that have been placed upon these terms by the courts.

"The earnings of a workman may be said to be whatever he receives from his employer in return for his services. They include not only actual cash, but also money's worth, such as the value of the use of a uniform"—"or of board and lodging," "or a cottage." But it will not include matters the value of which are not capable of being estimated in money, such as the "value of tuition." **"Tips may be taken into account in estimating earnings if the employment is of such a nature that the habitual giving of tips is open and notorious, and recognized by the employer; in other words, when the circumstances are such that there is an implied understanding that the employee may retain such tips in addition to wages. The**

wages earned at the date of the accident cannot be the sole test. Such a test would operate most unfairly, some times for and some times against the workman. There are many employments in which work is more plentiful and wages are higher at some seasons of the year than in other seasons."—Cozens-Hardy, Master of the Rolls.

WIDER SCOPE IN BRITISH COLUMBIA

It will be observed, however, that the section in the British Columbia Act requires the Board to take into consideration **not only the "average earnings," but the "earning capacity,"** so that the amount actually earned by the workman is not the sole guide, as in England, in finding the amount upon which the compensation allowance of 55 per cent. is based. For instance, assume a bricklayer, or any other worker in a seasonable occupation, should be temporarily totally disabled on the first day of the working season. Assume, further, that he has worked but little or not at all for some months previous, or that he has worked continuously during the off season as a labourer. In this case his average earnings would be much less than his earning capacity, because the wages of the bricklayer are double that of an ordinary labourer. If the man should be disabled during the whole bricklaying season, then his earning capacity has been destroyed by the accident, and his compensation should be based on the wages paid to bricklayers during the season in which he was disabled. The same principle should apply in all occupations where the work is seasonable.