

CHAPTER 8

COMPENSATION ON THE DEATH OF A WORKER

#52.00 INTRODUCTION

Compensation is payable as the result of a death where “. . . death arising out of and in the course of the employment is caused to a worker . . .” (1) or death is caused by an occupational disease which is due to the nature of any employment in which the worker was employed. (2) The compensation is payable to surviving dependants of the deceased or in some cases to non-dependent relatives having a reasonable expectation of pecuniary benefit from the continuation of the life of the deceased.

The compensation is normally based on the worker’s average earnings prior to the death. However, adjustments are made to payments and to the dollar amounts in the *Act* according to changes in the Consumer Price Index. Where a worker in receipt of a pension dies as a result of the pensionable disability and dependant’s benefits are payable, no Consumer Price Index adjustment is computed in the six-month period following the date of death. The meaning of “average earnings” is discussed in Chapter 9. Consumer Price Index adjustments are dealt with in Chapter 7.

#53.00 FUNERAL AND OTHER DEATH EXPENSES

Where compensation is payable as the result of the death of a worker or as the result of injury resulting in the death, an amount in respect of funeral and related expenses is paid in addition to any other compensation payable. The amount payable is set out below.

The employer of the worker is required to bear the cost of transporting the body to the nearest business premises where funeral services are provided, and if burial does not take place there any additional transportation may, up to the sum set out below, be paid by the Board.

	Funeral And Related Expenses	Transportation of Body
July 1, 2000 - December 31, 2000	\$6,611.76	\$1,044.60
January 1, 2001 - June 30, 2001	\$6,741.17	\$1,065.05
July 1, 2001 - December 31, 2001	\$6,847.05	\$1,081.78
January 1, 2002 - June 30, 2002	\$6,870.58	\$1,085.50

If required, earlier figures may be obtained by contacting the Board.

No action for an amount larger than that established by the above provisions lies in respect of the funeral, burial, or cremation of the worker or cemetery charges in connection with it. (3)

#53.10 Person to Whom Expenses are Paid

Payment is made to whoever appears to be the most eligible having regard to who has incurred the cost of funeral and other expenses, or who has undertaken to meet those payments. For example, if an employer, a union, or a distant relative has, perhaps by arrangement with the widow or widower, paid the undertaker before the claim has been adjudicated at the Board, the person who paid the bill may be reimbursed by paying the monies referred to in #53.00. If that person has paid a lesser sum than the figures there mentioned, there should be a reimbursement to the extent of the payment, and the balance paid to the widow or widower, or whoever else appears to be the most eligible person.

However, once the Board has paid out the monies referred to in #53.00, there can be no question thereafter of the Board considering claims by any other person for funeral expenses. For example, if an employer, a union, or a relative has paid the undertaker, but has not presented any claim to the Board until after the monies have been paid out to the widow or widower, such a person cannot subsequently be reimbursed directly by the Board by a deduction out of compensation benefits. If the other person wishes to be reimbursed out of compensation benefits, that person must make the request to the widow, widower or other person receiving those benefits.

#54.00 MEANING OF "DEPENDANT"

The term "dependant" is defined in Section 1 of the Act to mean ". . . a member of the family of a worker who was wholly or partly dependent on the worker's earnings at the time of the worker's death, or who but for the incapacity due to the accident would have been so dependent, . . ."

The members of a worker's family means ". . . wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother and half-sister and a person who stood in loco parentis to the worker or to whom the worker stood in loco parentis, whether related to the worker by consanguinity or not;". (4) A former husband or wife cannot be a member of the worker's family and therefore cannot be the worker's dependant.

Dependency does not exist simply because the claimant had the legal status of husband, wife, child, parent, etc. There must be evidence that, at the time of the

worker's death, the claimant was actually dependent on the deceased's earnings. Normally, this means that there must be evidence of sufficient actual support having been provided by the deceased to the claimant. This is so even though the deceased was, at the time of death, subject to a court order to maintain the claimant and the claimant was in need of support. Except in respect of the provision discussed in #61.00, a reasonable expectation of pecuniary benefit from the continuation of the life of the deceased is not itself sufficient to constitute dependency.

The above principles also apply where the claimant is a child. In the case of a child who was unborn at the date of the worker's death, once paternity is established, the fact that the deceased worker would have been under an obligation to support the child is evidence to warrant an inference that that person would have supported the child, and should be accepted as proof of dependency unless it is controverted by evidence to the contrary. If it is found that the deceased worker was supporting the mother at the time of death, that is also evidence from which an inference may be drawn that that person would have supported the child.

Dependency is determined at the date of death. Changes of circumstances after the death, for instance, the marriage of a child, do not affect the status of a person as a dependant.

#54.10 Presumptions of Dependency

For deaths occurring on or after July 1, 1974, Section 17(7) of the Act provides that "Where 2 workers are married to each other and both are contributing to the support of a common household, each is deemed to be a dependant of the other." Section 17(8) provides that "Where 2 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." The latter provision applies to children of the two parents, not to children of a former marriage of either parent living with them, but the two parents need not be married to each other.

An argument was made in one claim that Section 17(7) applied because, though the claimant and her husband had been living in separate residences at the date of his death, the claimant was contributing to the support of a common household, namely the household where her husband and children resided. Her contribution included visits to the premises, assistance with housework and financial contributions. This argument was not accepted.

It was concluded that there was no common household. For a common household to exist it is not necessary that there be a constant 24-hour-a-day presence by both parties in the house. There are obviously many reasons why

one party to a marriage would leave the house for different periods which would not affect the existence of the common household. However, this only applies when the absences are consistent with the normal continuation of the marriage. The common household will come to an end when there is some kind of separation of the parties which brings into question the continued existence of the marriage, for example, if one party deserts the other or, because of difficulties in the marital relationship, a separation agreement or court order comes into being. Nor could it be concluded that a prospect of reconciliation would make a difference. This might indicate a possibility of the common household again coming into existence at a future time, but did not alter the fact that there was no such household currently in existence.

#55.00 WIDOWS AND WIDOWERS DEATH ON OR AFTER JULY 1, 1974

Widows or widowers who were not dependent on the earnings of the deceased at the time of death are not entitled to compensation under the provisions set out below. They may, however, be entitled under the provisions set out in #61.00.

#55.10 Lump Sum Payment to Dependent Widows or Widowers

In addition to any other compensation provided, a dependent widow or widower in Canada to whom compensation is payable is entitled to a lump sum equal to the amount set out below. (5)

July 1, 2000	—	December 31, 2000	\$1,952.80
January 1, 2001	—	June 30, 2001	1,991.02
July 1, 2001	—	December 31, 2001	2,022.29
January 1, 2002	—	June 30, 2002	2,029.24

If required, earlier figures may be obtained by contacting the Board. Payment of this amount is made as soon as the claim is accepted.

#55.20 Dependent Spouse with Dependent Children

#55.21 Widow or Widower with Two or More Children

Where the dependants are a widow or widower and two or more children, a monthly payment is made of such sum as, when combined with Federal benefits payable to or for those dependants, equals the total of:

- (a) the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, (6) subject to the minimum set out in #55.26, and
- (b) the amount set out below per month for each child beyond two in number. (7)

July 1, 2000	—	December 31, 2000	\$253.77
January 1, 2001	—	June 30, 2001	258.74
July 1, 2001	—	December 31, 2001	262.80
January 1, 2002	—	June 30, 2002	263.70

If required, earlier figures may be obtained by contacting the Board.

For example, consider the case of a worker whose death occurred on January 1, 1986, and whose average earnings were \$40,000 per annum. He leaves a dependent widow and three dependent children, who were entitled to Federal benefits.

A.	Federal benefits		
	C.P.P. pension for widow	=	273.35
	C.P.P. pension for children (3 x 91.06)	=	<u>273.18</u>
			546.53
	Total Federal benefits	=	546.53
B.	Monthly permanent total disability pension rate at date of death	75% x <u>40,000</u>	= 2,500.00
		12	
C.	Additional child allowance under Section 17	=	<u>170.92</u>
D.	Total monthly benefits (B plus C)	=	2,670.92
	Total benefit entitlement (W.C.B. and C.P.P.)	=	2,670.92
E.	Total W.C.B. benefits (D less A)	=	2,124.39

#55.22 A Widow or Widower with One Child

Where the dependants are a widow or widower and one child, a monthly payment is made of such sum as, when combined with Federal benefits payable to or for those dependants, equals 85% of the monthly rate of compensation 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 #55.26. (8)

In regard to the example given in #55.21, assume the deceased left only one dependent child.

A.	Federal benefits		
	C.P.P. pension for widow	=	273.35
	C.P.P. pension for child	=	<u>91.06</u>
			364.41
	Total Federal benefits	=	364.41
B.	Monthly permanent total disability pension rate at date of death	$75\% \times \frac{40,000}{12}$	= 2,500.00
C.	85% of permanent total disability pension rate (total monthly benefits)	$85\% \times 2,500.00$	= 2,125.00
	Total benefit entitlement (W.C.B. and C.P.P.)	=	2,125.00
D.	Total W.C.B. benefits (C less A)	=	1,760.59

#55.23 *A Meaning of "Invalid"*

"Invalid" is defined in Section 1 of the Act to mean ". . . physically or mentally incapable of earning". This excludes a person who is disabled, but capable of earning. However, it is provided in Section 17(6) that "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." A temporary invalidism or disability is not covered by these provisions.

#55.24 *Meaning of "Federal Benefits"*

"Federal benefits" means the benefits payable under the Canada Pension Plan and to which any dependants are entitled as a result of the death, together with any benefits to which the dependent spouse is or becomes entitled under the Canada Pension Plan as a result of having retired or reached retirement age. (9)

#55.25 *Meaning of "Child" or "Children"*

This is discussed in #59.10.

#55.26 *A Minimum Amount of Average Earnings*

The minimum allowances payable under #55.21-#55.22 are such allowances as would be payable if the allowances were calculated in respect of a deceased worker with average earnings equal to the amount set out below. (10)

July 1, 2000	—	December 31, 2000	\$27,338.14
January 1, 2001	—	June 30, 2001	27,873.23
July 1, 2001	—	December 31, 2001	28,311.03
January 1, 2002	—	June 30, 2002	28,408.32

If required, earlier figures may be obtained by contacting the Board.

The minimum average earnings applicable to deaths occurring on or after January 1, 1986, and before July 1, 1986, is \$18,411.71. If the average earnings of the worker referred to in the example in #55.21 were only \$15,000.00 the monthly amount payable to his widow and three children would be as follows:

A.	Total Federal benefits (as in #55.21)	=	546.53
B.	Monthly permanent total disability pension rate at date of death	$75\% \times \frac{18,411.71}{12}$	= 1,150.73
C.	Additional child allowance under Section 17	=	<u>170.92</u>
D.	Total monthly benefits (B plus C)	=	1,321.65
	Total benefit entitlement (W.C.B. and C.P.P.)	=	1,321.65
E.	Total W.C.B. benefits (D less A)	=	775.12

#55.30 **Dependent Spouse with No Children**

#55.31 *Widow or Widower 50 Years of Age or Over or Invalid*

Where the dependant is a widow or widower 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 Federal benefits payable to or for that dependant, equals 60% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, but such monthly payments shall not be less than the minimum set out below. (11)

July 1, 2000	—	December 31, 2000	\$820.02
January 1, 2001	—	June 30, 2001	836.07
July 1, 2001	—	December 31, 2001	849.20
January 1, 2002	—	June 30, 2002	852.12

If required, earlier figures may be obtained by contacting the Board.

For the definition of “invalid”, see #55.23.

The minimum monthly payment is the actual minimum paid by the Board. It is not a minimum total benefits which incorporates Federal benefits. In the case of deaths occurring prior to June 26, 1975, the minimum set out above does not apply. However, the minimum average earnings referred to in #55.26 is applicable. (12)

The computation formula is the same as was described in #55.22, however, 60%, rather than 85%, of the deceased’s projected permanent total disability pension is taken. “Federal benefits” has the meaning set out in #55.24.

#55.32 *Non-Invalid Widow or Widower under 40 Years*

Where the dependant at the date of the worker’s death is a widow or widower who is not an invalid and is under the age of 40 years, and there are no dependent children, a capital sum equal to the amount set out below is payable. Of this, a first installment is payable immediately. The balance is payable at a time the Board determines; but the payment cannot, except at the request of the dependant, be delayed beyond six months after the date of death of the worker. (13) The amount of the first installment and the balance is also set out below.

			First Installment	Balance	Total Amount
July 1, 2000	—	December 31, 2000	\$3,905.51	\$35,148.88	\$39,054.39
January 1, 2001	—	June 30, 2001	3,981.95	35,836.89	39,818.80
July 1, 2001	—	December 31, 2001	4,044.49	36,399.74	40,444.23
January 1, 2002	—	June 30, 2002	4,058.39	36,524.82	40,583.21

If required, earlier figures may be obtained by contacting the Board.

In exercising its discretion when to pay the balance, the Board does not seek to regulate the use of the money. But it does try to ensure that the surviving spouse has a good opportunity to make rational choices about its use.

The letter of decision accepting the claim will provide for the immediate payment of the first installment. Ordinarily, payment of the balance will be processed one month after this letter. That should normally provide a reasonable period for the spouse to consider how the money should be used before it arrives. But the

Rehabilitation Consultant may consider whether it should be sent earlier or later and make a recommendation on this to the Adjudicator. In no case must payment in full be delayed more than six months after the date of death.

#55.33 Non-Invalid Widow or Widower between 40 and 49 Years

Where the dependant is a widow or widower who is not an invalid and who, at the date of death of the worker, has reached the age of 40 years but not the age of 50 years, and there are no dependent children, a monthly sum calculated under Schedule C of the Act is paid. (14)

Schedule C provides for a monthly payment of the minimum amount set out in #55.31 plus the following proportion of the difference between that amount and the monthly payment that would be payable using the general formula set out in #55.31.

Schedule C

Age of Widow or Widower at Date of Death of Worker	Proportion of Difference
40	1/11
41	2/11
42	3/11
43	4/11
44	5/11
45	6/11
46	7/11
47	8/11
48	9/11
49	10/11

Consider the example of a worker who dies on January 1, 1986, leaving a dependent widow or widower aged 45 years and no children. The worker's average earnings are \$40,000 per annum and the wife or husband is entitled to Federal benefits.

A. Federal benefits

C.P.P. pension for widow or widower = 273.35

B. Monthly permanent total disability pension rate at date of death $75\% \times \frac{40,000}{12} = 2,500.00$

C.	60% of permanent total disability rate (Total monthly benefits under #55.31)	$60\% \times 2,500.00 =$	1,500.00
	Maximum benefit entitlement (W.C.B. and C.P.P.) =		1,500.00
D.	Maximum monthly payment under #55.31 (C less A) =		1,226.65
E.	Minimum monthly payment set out in #55.31 =		552.28
F.	Difference between D and E (1,226.65 less 552.28) =		674.37
G.	Plus Schedule C = 6/11ths of F (6/11 x 674.37) =		<u>367.86</u>
H.	Total W.C.B. benefits (E plus G) =		920.14

The minimum amount set out in #55.31 is regarded as a floor-level for pension benefits. Where the "proportion" referred to in the second column of Schedule C is a positive figure it will be added, and where it is a negative figure it will be ignored.

#55.40 Spouse Separated from Deceased Worker

Where, at the date of death, the claimant and the deceased worker were divorced, the claimant is not eligible for compensation as the deceased's widow or widower. A divorce does not, however, affect the claim of any children of the marriage.

Section 17(9) contains special provisions which apply where, though still married, the worker and dependent spouse were at the date of death living separate and apart. Section 17(9)(a) provides that, where there was in force a court-order or separation agreement providing periodic payments for support of the dependent spouse, or children living with that spouse, compensation is paid as follows:

- “(i) where the payments under the order or agreement were being substantially met by the worker, monthly payments must be made in respect of that spouse and children equal to the periodic payments due under the order or agreement; or

- (ii) where the payments under the order or agreement were not being substantially met by the worker, monthly payments must be made up to the level of support that the board believes the spouse and those children would have been likely to receive from the worker if the death had not occurred."

Section 17(9)(b) provides that, where 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 if they had not been separated; 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."

In circumstances where the spouses were living separately for a period of three months or longer preceding the death of the worker, and 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, the following guidelines are provided to assist in the interpretation of Section 17(9)(b)(ii):

1. Intention to Live Separate and Apart Absent

If it is concluded that the spouses, although living separately, did not have the "intention" of living separate and apart, Section 17(9)(b)(ii) does not apply. In these circumstances, the dependants' entitlement would be determined under the other provisions of Section 17.

2. Intention to Live Separate and Apart Present

If it is concluded that the spouses were living separately, with the "intention" of living separate and apart, Section 17(9)(b)(ii) is applicable. The benefits payable in these circumstances would be based on the level of support, which the Board believes the dependent

spouse and children would have been likely to receive from the worker, if the death had not occurred.

3. Determination of Intention to Live Separate and Apart

Whether the worker and dependent spouse were separated with the “intention” of living separate and apart requires an examination of all the circumstances to determine whether the geographical separation is consistent with the normal continuation of the marriage, or whether these circumstances bring into question the continued existence of the marriage. The presence or absence of this mental element concerning the status of the relationship should be assessed both on an objective and subjective basis, rather than being solely based on the subjective views of the spouses.

The question is whether, on the basis of all the evidence, the spouses either treated the marriage as being at an end or, alternatively, whether it may be concluded on an objective or “de facto” basis that the marriage had no continuing existence.

It would be sufficient to support a conclusion that the spouses were living separate and apart if one spouse (not necessarily both) treated the marriage as being at an end. Also, it could be concluded on an objective basis that the spouses were living separate and apart, notwithstanding the subjective belief of both spouses that the marriage was continuing. This might be the case if the separation was for an indefinite period and there was no reasonable prospect of their being reunited in the foreseeable future. It might be considered that they had at least reconciled themselves to this situation, notwithstanding the subjective continuance of the marriage relationship. On the other hand, if the spouses viewed themselves as continuing in their marriage and intended to reunite, and it was considered that this would occur in the reasonably foreseeable future, then it might be concluded that they were not living separate and apart.

It would not normally be considered that the spouses were living separate and apart in circumstances where a period of temporary separation was necessitated by the worker’s employment.

To be eligible to claim under Section 17(9), a spouse must first be found by the Board to have been an actual dependant of the deceased as discussed in #54.00. It is not sufficient that the claimant, though not actually dependent, had a reasonable expectation of pecuniary benefit from the continuation of the life of the deceased.

In no case can the compensation payable under Section 17(9) exceed the amount that would have been payable if there had been no separation. (15)

The full amount of the lump sum provided for in #55.10 is payable to a dependent widow or widower whose entitlement is governed by Section 17(9).

EFFECTIVE DATE: January 1, 1984

APPLICATION: Applies to claims adjudicated on or after January 1, 1984.

#55.50 Recalculation of Benefits on Change of Circumstances

Where an invalid spouse ceases to be an invalid, or a widow or widower with dependent children no longer has dependent children, or there is a reduction in the number of dependent children, the spouse, widow, widower or children shall then be 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 widow or widower no longer has dependent children, or the number of dependent children is reduced, as the case may be. (16)

In applying this provision, it will in most cases be necessary to determine the amount of compensation which would have been payable to the deceased worker for permanent total disability. That amount is calculated by reference to the date of injury or the date of disablement from occupational disease and not by reference to the date of death (unless it is the same) or to the date of the change of circumstances. However, Consumer Price Index adjustments to the resulting figure will be made.

Where the change which leads to the recalculation is a change in a child's school attendance or a child's birthday, the Board uses the exact date when the change occurs as the date of commencement of the new benefits. For example where a child who is no longer attending school has an 18th birthday on December 15, the old pension remains in effect until December 14 and the new pension will become effective December 15.

Widows or widowers are advised at the outset of the claim of the various provisions which may result in a change in the benefits payable to them. They are also advised one year in advance of a potential change in their pension resulting from an age change in a dependent child.

#55.60 Termination of Benefits

Except as outlined in #55.61, monthly payments to a widow, widower, common law wife or common law husband continue as long as they live.

#55.61 Remarriage of Widow or Widower or Establishment of Common-Law Relationship Prior to April 17, 1985

If a remarriage of a widow or widower occurred prior to April 17, 1985 or a common law relationship was established prior to April 17, 1985, the former Section 19(1) provided that "Where a widow, widower, common law wife or common law husband of a deceased worker marries, or without marrying, lives with a man or woman in the relationship of a man and wife, the monthly payments attributable to that person as a widow, widower, common law wife or common law husband shall cease, but that person shall be entitled in lieu of them to a sum equal to the monthly payments attributable to that person as widow, widower or common law wife or common law husband for 2 years; but that person shall not receive less in total compensation than ..." the total of:

- (a) the funeral and death expenses referred to in #53.00;
- (b) the capital sum referred to in #53.32; and
- (c) the lump sum referred to in #55.10.

To calculate the remarriage allowance, the Board took the rate of monthly payment attributable to the widow, widower or common-law wife or common law husband as at the date of remarriage, and paid 24 times that amount. The sums referred to in #53.00, #55.32 and #55.10 were the dollar amounts applicable at the date of death.

Notwithstanding the application of the former Section 19(1), payments attributable to children as dependent children continued. (17) In attributing the monthly allowances to a widow or widower or to children, the apportionment provision in #63.10 applied.

#55.62 Interest Payment Arising from the Application of Section 19(2)

Where interest is payable as a result of the application of Section 19(2) it is calculated at the rates and in the manner set out in #50.00.

#56.00 WIDOWS AND WIDOWERS DEATH PRIOR TO JULY 1, 1974

#56.10 Lump Sum Payable to Dependent Widows

In addition to any other compensation provided, a dependent widow or foster-mother in Canada to whom compensation is payable is entitled to a lump sum of five hundred dollars. (18)

#56.20 Dependent Widows and Invalid Widowers with Dependent Children

Where the dependants are a widow or an invalid widower and one or more children, a monthly payment of one hundred and seventy-five dollars and fifty-two cents is made, together with

- (a) an additional monthly payment of fifty-seven dollars and fourteen cents for each child under the age of 16 years and for each invalid child of any age for whom no payment is made under paragraph (b) or (c); and
- (b) an additional monthly payment of sixty-four dollars and twenty-nine cents for each child while regularly attending an academic, technical or vocational school at any time between the child's 16th and 18th birthdays; and
- (c) an additional monthly payment of seventy-one dollars and forty-two cents for each child while regularly attending an academic, technical, or vocational school at any time between the child's 18th and 21st birthdays. (19)

The dollar amounts set out above apply in respect of deaths occurring on or after January 1, 1974. Different amounts applied to prior periods. "Invalid child" is defined in #59.13.

#56.30 Dependent Widows and Invalid Widowers with No Dependent Children

Where the dependant is a widow or an invalid widower without any dependent children, a monthly payment of one hundred and seventy-five dollars and fifty-two cents is made during the life of the surviving spouse. (20) Different dollar amounts applied in respect of deaths occurring prior to January 1, 1974.

#56.40 Widow or Widower Separated from Deceased

There are no special rules for widows or widowers living separate from the deceased in the case of deaths occurring prior to July 1, 1974.

Spouses who are not residing in Canada at the date of death are discussed in #62.00.

#56.50 Additional Payments

Section 18(1) of the *Act* provides that “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 sums set out below for each such dependent spouse and each dependent child. These dollar amounts are subject to Consumer Price Index adjustments.

	Spouse	Child
January 1, 2007 — December 31, 2007	\$396.65	\$123.11
January 1, 2008 — December 31, 2008	\$406.11	\$126.05

If required, earlier figures may be obtained by contacting the Board.

Where dependants would qualify for the increases set out in Section 18(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 Section 18(1), the monthly payments payable to those dependants are increased by the amount by which the benefits under the Canada Pension Plan are less. (21)

The phrase “benefits under the Canada Pension Plan” in Section 18(1)(b) means benefits payable under the Canada Pension Plan and to which the dependants or any of them are entitled as a result of the death, together with any benefits to which the widow is entitled as a result of having retired or reached retirement age. But it does not include any disability benefit payable to a dependant.

#56.60 Termination of Benefits

#56.61 *Remarriage*

If a dependent widow or common-law wife of the deceased married before July 1, 1974, the monthly payments to her ceased, but she was entitled in lieu of them to a sum equal to the monthly payments for two years, but not to exceed

\$2,500. (22) This provision did not apply to payments to a widow or common law wife in respect of a child. (23)

For remarriages on or after July 1, 1974, the \$2,500 limitation did not apply. (24)

The provisions in #56.61 are superseded by the application of the current Section 19 where the remarriage occurred on or after April 17, 1985 .

#56.63 Cessation of Childrens Benefits

Except as otherwise provided, 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. (25)

#56.64 Widower Ceases to be Invalid

Where compensation is payable to an invalid widower, if the widower ceases to be an invalid widower, the Board may cease paying compensation to him. (26)

#56.65 Readjustment of Payments

Where a payment to any one of a number of dependants ceases, the Board may in its discretion readjust the payments to the remaining dependants so that the remaining dependants are thereafter entitled to receive the same compensation as though they had been the only dependants at the time of the death of the worker. (27)

#57.00 COMMON-LAW WIVES OR COMMON-LAW HUSBANDS

The phrase "common-law wife" or "common-law husband" is used in regard to situations in which two people of opposite sex are living together in a regular and established way, enjoying sexual relations and a common household. There is no question of the relationship being a legally valid marriage, and no reason therefore why legal capacity to solemnize a valid marriage should be a qualification for this position. A woman or a man is not excluded from being a common-law wife or common-law husband of one person simply because she or he is legally married to another.

#57.10 No Surviving Dependent Widow or Widower

Where a worker has lived with and contributed to the support and maintenance of a common-law wife or common-law husband, and:

- (a) where the worker and the common-law wife or common-law husband have no children, for a period of three years; or
- (b) where the worker and the common-law wife or common-law husband have children, for a period of one year

immediately preceding the worker's death, and where the worker does not leave a dependent widow or widower, the Board may pay the compensation to which a dependent widow or widower would have been entitled to the common-law wife or common-law husband. (28)

The phrase "have children" in paragraph (b) means that the children must be born of the relationship between the worker and the common-law wife or common-law husband. The fact that children have been brought into the relationship from a previous relationship is not sufficient. On the other hand, such children may have claims in their own right as children of the deceased, even if brought into the relationship by the common-law wife or common-law husband. (29)

For example, a person living with a worker at the time of death, but being maintained by her or his legal spouse, would be denied compensation. This would not be because the person is excluded from the definition of "common-law wife" or "common-law husband", but because the person was not being maintained by the deceased worker.

#57.20 Surviving Dependent Widow or Widower

Where

- (a) a worker has lived with and contributed to the support and maintenance of a common-law wife or common-law husband for the period set out in #57.10;
- (b) the worker also left surviving a dependent widow or widower from whom, at the date of death, the worker was living separate and apart; and
- (c) there is a difference in the amount of compensation payable to the widow or widower by reason of the separation and 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 to the common-law wife or common-law husband up to the amount of the difference. (30)

The common-law wife's or common-law husband's pension, once set, remains fixed and does not fluctuate in accordance with changes in the surviving widow's or widower's pension. An example of this would be when any child of the deceased, living with the widow or widower, reaches the age of 18 years and ceases to attend school.

#57.30 Lump Sum Payment

Common-law wives or common-law husbands in Canada to whom compensation is payable in respect of a death occurring on or after July 1, 1974 are entitled to the lump sum payment referred to in #55.10.

#57.40 Termination of Benefits

Where the common-law wife or common-law husband of a deceased worker remarries, the policy set out in #55.60 and #55.61 applies.

#57.50 Death Prior to July 1, 1974

In the case of deaths prior to July 1, 1974, no compensation is paid to the common-law wife if there is a surviving dependent widow. Compensation is payable where there is no such widow but the qualifying periods, during which the deceased must have contributed to the support and maintenance of the common-law wife, are six years where there are no children and two years in any other case. (31)

#58.00 FOSTER PARENTS

Where the worker leaves no dependent widow or widower, or the widow or widower 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 shall be payable to the foster parent and children as would have been payable to a widow or widower and children, and shall continue as long as the conditions continue. (32)

A foster parent means a person who assumes responsibility for the care and maintenance of a dependent child or children. For the purposes of Section 17(3)(j) of the Act, a foster parent may include a natural parent who did not have physical custody of the child or children at the time of the workplace fatality.

The allowance includes the lump sum payable to widows or widowers referred to in #55.10.

Similar rules apply in regard to deaths occurring prior to July 1, 1974, although the wording of the Act is slightly different. (33)

#59.00 CHILDREN

Children who were not dependent on the earnings of the deceased in the manner set out in #54.00 are not entitled under the provisions set out below. They may, however, be entitled under the provisions set out in #61.00.

#59.10 Meaning of "Child" or "Children"

By virtue of Section 1, a "child" means a son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, or half-sister of the deceased worker. It also means a child otherwise unrelated to the worker to whom the worker stood in "loco parentis".

To be eligible, a child within one of the above categories must also satisfy one of the three following requirements. The child must be

- (a) a child under the age of 18 years, including a child of the deceased worker yet unborn;
- (b) an invalid child of any age; or
- (c) a child under the age of 21 years who is regularly attending an academic, technical or vocational place of education. (34)

#59.11 *In Loco Parentis*

It is not possible to specify in advance when a deceased worker will be considered to have been in "loco parentis" to a child. The decision will, in each case, depend on the particular circumstances of the claim. Generally, the evidence will have to show that the deceased acted as, and assumed the responsibility of, a parent of the child. Normally, the deceased worker will have been living with and maintaining the child, but it may be possible to establish an in "loco parentis" relationship even where they were not living in the same household.

The evidence must show that the in "loco parentis" relationship continued to exist right up to the date of death. It is not sufficient simply to establish that such a relationship existed at some past time. There is no presumption under the *Workers Compensation Act* that, once an in "loco parentis" situation is found to have existed, it must be deemed to have continued to exist unless and until there is evidence to the contrary.

#59.12 Unborn Children

Benefits payable in respect of an unborn child of a deceased worker commence from the date of death of the worker, and not from the date of the child's birth. If the child is stillborn, the provision set out in #55.50 applies as from the date of birth.

Under the Canada Pension Plan a widow who is pregnant at the date of the worker's death receives a pension for the child from the first day of the month in which it is born. The amount of workers' compensation benefits will be adjusted when the child is born according to the Canada Pension Plan benefits then being received.

#59.13 Invalid Children

"Invalid child" includes a ". . . child who, though not an invalid at the date of death of the worker, becomes an invalid before otherwise ceasing to be entitled to compensation." "Invalid" means ". . . physically or mentally incapable of earning." (35)

#59.14 Regularly Attending an Academic, Technical or Vocational Place of Education

This item refers to a child over the age of 18 and under the age of 21.

There is no requirement that the attendance at the place of education must be full time or at a certain time of day. Students who attend school during the daytime are free to work at night, so that there can be no objection to a child working in the daytime and attending school at night. However, this is subject to the nature of the course being taken. If, for example, all that is being done by the child is attending a single course, one night per week, which may lead to a degree in 10 years or so, it might be difficult to conclude that he or she was "regularly attending" a place of education.

Correspondence courses taken at home are not sufficient. The only possible exception might be where the period of home study is temporary and the child intends to return shortly to a place of education.

Apprenticeships do not qualify since they involve practical work in a work place as opposed to attending a place of education.

Prior to July 25, 1977, the Board's practice was to suspend the portion of a pension over the summer months which was attributable to a child over 18 until it was confirmed that the child did actually return to school. Following that date, the procedure is that, when a child reaches age 18, the widow or widower and/or

the child will be contacted with regard to plans for continuing education. If the child plans to continue his or her education, the child will be advised that pension benefits will be paid until age 21, including summer months, as long as the child pursues his or her education. In the absence of fraud or misrepresentation, no overpayment will be declared if the child, in fact, does not return to school.

Temporary absences from school will not cause a discontinuation of benefits as long as the Board is satisfied that there is a clear intention to eventually return to the educational program.

#59.20 Amount of Compensation

#59.21 Surviving Widow, Widower, Common-Law Wife or Common-Law Husband

Where there is a surviving spouse or common-law wife or common-law husband eligible for periodic benefits, the children's benefits are calculated in conjunction with those of the spouse or common-law wife or common-law husband under #55.00 and #57.00. This is so whether the children live with the spouse or common-law wife or common-law husband or not. Where they live apart, the apportionment provisions described in #63.10 may be applied to the pension.

Where the surviving spouse or common-law wife or common-law husband are eligible to receive a lump sum benefit, and there are also dependent children who live apart, the lump sum will be paid as described in #55.32 and the children's benefits will be paid periodically and will be calculated as per #59.22.

Even if there is no surviving spouse or common-law wife or common-law husband eligible for benefits, a pension calculated under #55.00 may be payable to a foster-parent under the provision described in #58.00.

Where there is a widow or widower and a child or children, and the widow or widower subsequently dies, the allowances to the children shall, if the children are in other respects eligible, continue and shall be calculated in like manner as if the worker had died leaving no dependent spouse. (36) The rules described in #59.22 will apply to determine the children's entitlement.

#59.22 No Surviving Spouse or Common-Law Wife/Husband

Where there is no surviving spouse or common-law wife or common-law husband eligible for monthly payments under this section, and

- (a) the dependant is a child, a monthly payment is made of a sum that, when combined with 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;

- (b) the dependants are two children, a monthly payment is made of a sum that, when combined with 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
- (c) the dependants are three or more children, a monthly payment is made of a sum that, when combined with Federal benefits payable to or for those children, would equal the total of
 - (i) 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
 - (ii) the amount set out in #55.21 per month for each child beyond three in number. (37)

The computation formula is similar to the one used for computing widows' or widowers' pensions described in #55.21-#55.22. Only the percentages taken of the projected permanent total disability pension are different. "Federal benefits" has the meaning set out in #55.24 and the minimum average earnings referred to in #55.26 is applicable.

#59.30 Death Prior to July 1, 1974

Where there was a surviving widow or invalid widower, one pension was paid for that person and the children in accordance with the rules set out in #56.20.

Where the dependants are children, there being no dependent widow or dependent invalid widower

- (a) a monthly payment of sixty-four dollars and twenty-nine cents is made to each child under the age of sixteen years and to each invalid child of any age for whom no payment is made under paragraph (b); and
- (b) a monthly payment of seventy-eight dollars and fifty-six cents is made to each child while regularly attending an academic, technical, or vocational school between the child's 16th and 21st birthdays. (38)

The above dollar amounts apply to deaths occurring on or after January 1, 1974. Different amounts apply in respect of prior periods.

The meaning of “invalid child” is as set out in #59.13. The provision set out in #56.63 dealing with the cessation of children’s benefits also applies here.

#60.00 OTHER RELATIVES

Where there is no dependent spouse or child entitled to compensation, but a worker leaves other dependants, payment is made of 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 the maximum set out below per month. (39)

July 1, 2000	—	December 31, 2000	\$449.12
January 1, 2001	—	June 30, 2001	457.91
July 1, 2001	—	December 31, 2001	465.10
January 1, 2002	—	June 30, 2002	466.70

If required, earlier figures may be obtained by contacting the Board.

Except in the case of parents, no compensation is payable to other relatives who were not dependants of the deceased worker in accordance with the principles set out in #54.00.

#60.10 Dependent Parents

Where there is a dependent spouse, or a dependent child or children, entitled to compensation, 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, payment is made of 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 the maximum set out in #60.00 per month. (40)

The provision in #60.00 also applies to dependent parents.

Parents who were not dependent on the earnings of the deceased in the manner set out in #54.00 are not entitled under the above provisions. They may, however, be entitled under the provisions set out in #61.00.

#60.20 Death Prior to July 1, 1974

The rules set out in #60.00-60.10 also apply to deaths occurring prior to July 1, 1974, although the wording of the Act is slightly different. (41)

Payments in this case continue only so long as, in the opinion of the Board, it might reasonably have been expected had the worker lived he would have continued to contribute to the support of the dependants. (42)

#61.00 PERSONS NOT DEPENDENT ON THE EARNINGS OF THE DECEASED

Where

- (a) no compensation is payable to a dependant of the deceased, or
- (b) 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 upon the worker's earnings at the time of death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker, payments, at the discretion of the Board, are made to that spouse, child or children, parent or parents, but not to more than one of those categories, not exceeding the maximum set out in #60.00 per month for life or a lesser period determined by the Board. (43)

An application for compensation from a spouse, child, parent, or other person on the grounds that he or she is a dependant of the deceased worker will automatically be considered under the above provision if it is concluded that the person was not a dependant.

In the case of deaths prior to July 1, 1974, total payments under this provision cannot exceed in the aggregate one thousand five hundred dollars. (44) This limit does not apply where it is exceeded because of Consumer Price Index adjustments.

#62.00 NON-RESIDENT DEPENDANTS

In the case of a death occurring prior to July 1, 1974, where the dependants are residing outside of Canada and entitled to compensation, the Board may award the dependants such lesser sum as in the opinion of the Board would at the date of death maintain them in a like degree of comfort as dependants of the same class residing in Canada. Should such a dependant subsequently become resident in Canada, the Board may revise the award so as to provide the same amount as provided for a dependant resident in Canada at the time of the death of the worker and to continue it for the period of such residence. (45)

Where the non-resident dependant is a child at school, payments are adjusted on the child's 16th and 18th birthdays.

No such provisions apply to deaths occurring on or after July 1, 1974. However, the provisions discussed in #55.40 can apply.

#62.10 Return of Dependant from Abroad

Where a dependant resident abroad at the time of death subsequently becomes resident in Canada, the Board will decide according to the circumstances of the individual case whether the allowance will be raised. For example, where it appears that the move to Canada was caused in some way by the death, the Board will be more likely to raise the rate than in a case where the move to Canada occurred some years later, was purely coincidental, and in no way resulted from the death.

#62.20 Consumer Price Index

Prior to July 1, 1974, the practice of the Board was that adjustments pursuant to the Consumer Price Index of Canada were not applied to the benefits of dependants resident abroad, but the rates payable to such residents were reviewed annually to "maintain them in a like degree of comfort, etc." This practice has been discontinued. Commencing on July 1, 1974, Consumer Price Index adjustments are applied to benefits of non-resident dependants in the normal way. (46)

#63.00 MISCELLANEOUS PROVISIONS

#63.10 Apportionment

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

- (a) where there is a dependent spouse and one child, two-thirds to the dependent spouse and one-third to the child;
- (b) where there is a dependent spouse and more than one child, one-half to the dependent spouse and one-half among the children in equal shares; and
- (c) where there are children but no dependent spouse, among the children in equal shares. (47)

In a claim considered by the Board, a worker was fatally injured in circumstances that made the death compensable under the Act. He had been married twice

and survived by a widow, by a child of the first marriage, and by a child of the second marriage. Both children were dependent children of the deceased worker. The child of the first marriage was living with her mother, and at the time of the death, was being supported by the deceased worker at the rate of \$75.00 per month. The Board had to determine the apportionment of the benefits payable under #55.21 as between the widow and the child of the second marriage on the one hand, and the child of the first marriage on the other hand.

The application of the formula set out in Section 17(14) would have resulted in periodical payments to the child of the first marriage considerably in excess of the level of support being provided by the deceased worker. An alternative formula was to pay on behalf of the child of the first marriage the difference between the total workers' compensation benefits that would be payable in respect of a widow and two children and the total workers' compensation benefits that would be payable in respect of a widow and one child. Applying that formula in this case, it would work out at \$76.17 per month in respect of the child of the first marriage. These circumstances were grounds for a different apportionment from that which would otherwise be applicable under Section 17(14). The alternative formula was applied.

Section 17(14) is applicable to deaths occurring on or after July 1, 1974.

#63.20 Enemy Warlike Action

Where personal injury to, disablement of, or death of a worker occurs in the course of 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 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. (48)

#63.30 Death of Two Workers

A dependant who, when receiving or entitled to receive compensation as the result of the death of a worker, becomes entitled to receive compensation as the result of the death of another worker, will receive in the whole the compensation that the Board may, in its discretion, determine; but in no case will the compensation be less than the higher of the amounts payable in respect of the death of either worker, or more than 75% of the maximum amount of average earnings. (49)

#63.40 Special or Novel Cases

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

This provision is applicable to deaths occurring on or after July 1, 1974.

#63.50 Proof of Existence of Dependants

The application for compensation submitted by a dependant should be accompanied by marriage and/or birth certificates or other evidence establishing the applicant's relationship to the deceased.

Section 20 provides that "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."

Each year, the Board mails out, to dependants receiving pensions, declaration forms and school attendance forms. Failure to complete and return these forms may result in the suspension of payments.

#63.60 Commencement of Pensions

Pensions awarded to a dependent or non-dependent relative of a deceased worker commence on the day following the date of death.

#63.70 Death of Commercial Fisher After January 1, 1975

Section 4(3) of the Act provides that "Where the death of a commercial fisherman resident in British Columbia arises out of and in the course of his occupation in the Province or waters off the Province after January 1, 1975, and the death is not otherwise compensable . . . , the board may treat the death in the same manner as if the commercial fisherman were a worker employed by the Crown in right of the Province."

NOTES

- (1) S.5(1); See Chapter 3
- (2) S.6(1); See Chapter 4
- (3) S.17(2)
- (4) S.1
- (5) S.17(13)
- (6) See #37.00
- (7) S.17(3)(a)
- (8) S.17(3)(b)
- (9) S.17(1)
- (10) S.17(3)(g)
- (11) S.17(3)(c)
- (12) S.17(3)(c), prior to amendment by S.2, *Workers Compensation Amendment Act, 1975*
- (13) S.17(3)(d)
- (14) S.17(3)(e)
- (15) S.17(10)
- (16) S.17(4)
- (17) S.19(2)
- (18) S.17(2)(i), prior to repeal by S.14, *Workmen's Compensation Amendment Act, 1974* (hereafter referred to as W.C.A., 1974)
- (19) S.17(2)(b), prior to repeal by S.14, W.C.A., 1974
- (20) S.17(2)(a), prior to repeal by S.14, W.C.A., 1974
- (21) S.18(2)
- (22) S.20(1), prior to repeal by S.16, W.C.A., 1974
- (23) S.20(2), prior to repeal by S.16, W.C.A., 1974
- (24) S.19(4)
- (25) S.17(5), prior to repeal by S.14, W.C.A., 1974
- (26) S.17(2)(j), prior to repeal by S.14, W.C.A., 1974
- (27) S.17(6), prior to repeal by S.14, W.C.A., 1974
- (28) S.17(11)
- (29) See #59.11
- (30) S.17(12)
- (31) S.17(2)(h), prior to repeal by S.14, W.C.A., 1974
- (32) S.17(3)(j)
- (33) S.17(2)(g), prior to repeal by S.14, W.C.A., 1974
- (34) S.17(1)
- (35) S.1
- (36) S.17(5)
- (37) S.17(3)(f)
- (38) S.17(2)(c), prior to repeal by S.14, W.C.A., 1974
- (39) S.17(3)(h)(i)
- (40) S.17(3)(h)(ii)
- (41) S.17(2)(d)(i)-(ii), prior to repeal by S.14, W.C.A., 1974

- (42) S.17(4), prior to repeal by S.14, W.C.A., 1974
- (43) S.17(3)(i)
- (44) S.17(2)(e), prior to repeal by S.14, W.C.A., 1974
- (45) S.17(2)(f), prior to repeal by S.14, W.C.A., 1974
- (46) See #51.12
- (47) S.17(14)
- (48) S.17(15)
- (49) S.17(16)