

1994

CHAPTER 34

An Act to amend *The Automobile Accident Insurance Act*

(Assented to June 2, 1994)

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

Short title

1 This Act may be cited as *The Automobile Accident Insurance Amendment Act, 1994*.

R.S.S. 1978, c.A-35 amended

2 *The Automobile Accident Insurance Act* is amended in the manner set forth in this Act.

Section 2 amended

3 **Clause 2(m) is amended by adding “, other than in Part VIII,” before “means”.**

New section 11.1

4 **Section 11.1 is repealed and the following substituted:**

Deduction of moneys owing

“11.1 The insurer may deduct from any benefit, indemnity or insurance moneys payable to a person any of the following amounts that the person owes to the insurer:

- (a) the amount of any unpaid premium;
- (b) the amount of any surcharge;
- (c) any other amount arising out of the administration of this Act”.

Section 17 amended

5 **Clause 17(a) is repealed and the following substituted:**

“(a) under Parts II, IV and VIII”.

Section 18 amended

6 **Subsection 18(2) is amended by striking out “Where a vehicle belongs, for the purposes of this Act, to a class in which the serial numbers of owners' certificates are prefixed by the letter C or the letter D” and substituting “Where a vehicle is registered pursuant to *The Vehicle Administration Act* in class C or D”.**

Section 20 amended

7 **Section 20 is amended:**

(a) **by renumbering it as subsection 20(1);**

(b) **in subsection (1) by striking out “This” and substituting “Subject to subsection (2), this”; and**

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

“(2) This Part does not apply to bodily injuries caused by an automobile within the meaning of Part VIII arising out of any accident that occurs on or after the day Part VIII comes into force”.

Section 25 amended

8 **The following subsections are added after subsection 25(1):**

“(1.1) Where a person is receiving or becomes entitled to receive an indemnity pursuant to subsection (1) on or after the day Part VIII comes into force, the insurer shall adjust the indemnity

after the day Part VIII comes into force in accordance with section 189.

“(1.2) The insurer shall undertake the adjustment mentioned in subsection (1.1) on the anniversary of the accident respecting which the indemnity is payable”.

Section 42 amended

9 Section 42 is amended:

(a) in clause (1)(b) by adding “in the case of accidents that occurred before July 1, 1994,” before “for loss or damage”; and

(b) by adding the following subsections after subsection (2):

“(2.1) The insurer's liability pursuant to subsection (1) for loss or damage arising out of an accident is limited to the amount calculated pursuant to subsection (2.2) if:

(a) the accident occurs on or after the day Part VIII comes into force; and

(b) the loss or damage results:

(i) from bodily injury to or the death of one or more persons and from damage to property; or

(ii) from bodily injury to or the death of one or more persons or from damage to property.

“(2.2) The limit on the insurer's liability pursuant to subsection (2.1) is the positive amount, if any, calculated in accordance with the following formula:

$$L = \$200,000 - (A + P)$$

where:

L is the insurer's liability for loss or damage pursuant to subsection (1);

A is the amount by which the insurer's liability is reduced pursuant to section 79; and

P is the amount of any payment made or to be made pursuant to Part VIII for injury or death to a person claiming against the insured, that person's dependants and to all others claiming through, on behalf of or respecting that person or that person's dependants or, if any of those persons have failed to make a claim pursuant to Part VIII or have had their benefits pursuant to Part VIII terminated, the maximum amount that the insurer would have paid to the persons who failed to make the claim or who have had their benefits terminated”.

Section 48 amended

10 Section 48 is amended by striking out “of registration” in statutory condition 3(2).

New section 50

11 Section 50 is repealed and the following substituted:

Insurance proof of financial responsibility

“**50**(1) For the purpose of availing to persons insured pursuant to this Part financial responsibility of the kind and in the form required under the applicable laws of any other province, state or territory, the insurer may execute and file with the appropriate public authorities in that other province, state or territory all or any of the following:

(a) a power of attorney authorizing acceptance of service of notice or process for itself or for its insured in any action or proceeding arising out of a motor vehicle accident in that other province, state or territory;

(b) an undertaking to appear in any action or proceeding mentioned in clause (a);

(c) an agreement to submit to the jurisdiction of the courts in the other province, state or territory and not to set up any defence in any action or proceeding mentioned in clause (a) that would not be available to an insurer under a motor vehicle liability policy issued in that province, state or territory.

(2) The insurer may do any act or thing that, in the opinion of the insurer, is necessary or incidental to give effect to a power of attorney, undertaking or agreement mentioned in subsection (1).

(3) On demand of the insurer, an insured is liable to pay to or to reimburse the insurer any amount that the insurer has paid by reason of this section that the insurer would not otherwise be liable to pay.

(4) In an action in another province, state or territory against the insurer, or against a person insured pursuant to section 42, arising out of a motor vehicle accident in that province, state or territory, the insurer shall appear and shall not, with respect to bodily injury liability insurance and property damage liability insurance or coverage pursuant to a plan of automobile insurance, set up a defence to a claim under an owner's certificate, including a defence as to the limit or limits of liability or the limits of amounts payable pursuant to a plan of automobile insurance, that might not be set up if the claim were under a contract evidenced by a motor vehicle liability policy or a contract containing a plan of automobile insurance issued in that province, state or territory.

(5) Notwithstanding section 40, this section applies to insurance pursuant to Part II and this Part and to benefits pursuant to Part VIII”.

Section 72 amended

12 Section 72 is amended by striking out “and every surgeon” and substituting “and every surgeon, chiropractor, physiotherapist, psychologist, massage therapist or dentist treating or”.

Section 77.1 amended

13 Section 77.1 is amended by striking out “doubtful or disputed”.

Section 79 amended

14 Subsection 79(4) is amended:

- (a) by adding “or benefits” after “indemnity”;
- (b) by striking out “Part II” and substituting “Part II or VIII”; and
- (c) by striking out “that Part” and substituting “those Parts”.

Section 81 amended

15 Section 81 is amended by adding the following clauses after clause (v):

- “(v.1) respecting the application of Part IX of the *Insurance Companies Act* (Canada) to section 92 of this Act;
- “(v.2) respecting any investment authorized pursuant to subclause 92(1)(a)(i)”.

New section 92

16 Section 92 is repealed and the following substituted:

Investments

“92(1) Subject to subsection (2) and the regulations, the insurer:

- (a) may invest moneys of the fund that are not presently required for the purposes of the fund:
 - (i) in investments authorized for Crown corporations pursuant to *The Crown Corporations Act, 1993*; or
 - (ii) in investments authorized pursuant to Part IX of the *Insurance Companies Act* (Canada); and
 - (b) may dispose of any investments on any terms and in any manner that it considers expedient.
- (2) Notwithstanding subsection (1), the insurer may hold and deal with any investment that it made on or before March 1, 1994.
- (3) For the purposes of managing, investing or disposing of all or any part of the assets of the fund, the insurer may:
- (a) enter into any agreement it considers necessary;
 - (b) engage the services of or retain any technical, professional or other advisers, specialists or consultants it considers necessary; or
 - (c) do any other thing it considers necessary.
- (4) The costs incurred pursuant to subsection (3) and other expenses related to managing, investing or disposing of all or any part of the assets of the fund are a charge on and payable out of the fund”.

Section 98 amended

17 Section 98 is amended:

(a) by renumbering it as subsection 98(1); and

(b) by adding the following subsections after subsection (1):

“(2) Notwithstanding subsection (1), investments of the fund may be held in the name of a person other than the insurer where the investment:

(a) is held through a trust or custodial agreement; or

(b) is part of a pool of investments belonging to more than one person.

“(3) Subsection (2) applies to all investments described in that subsection whether they were made before, on or after March 1, 1994”.

New Part VIII

18 The following Part is added after section 99:

“PART VIII

Personal Injury Benefits

“DIVISION 1

Interpretation

Interpretation of Part

“**100(1)** In this Part:

(a) “**accident**” means any event in which bodily injury is caused by an automobile;

(b) “**automobile**” means:

(i) any vehicle propelled by any power other than muscular force and adapted for transportation on highways, but not on rails;

(ii) a snowmobile as defined in *The Snowmobile Act*;

(c) “**benefits**” means any benefits payable pursuant to this Part;

(d) “**bodily injury**” means any physical or mental injury, including any acquired brain injury, permanent physical or mental impairment or death;

(e) “**bodily injury caused by an automobile**” means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but does not include a bodily injury mentioned in subsection 101(2);

(f) “**child of a victim**” includes a person to whom, at the time of an accident, the victim stands in the place of a parent;

(g) “**claimant**” means a person who applies for a benefit pursuant to this Part;

(h) “**current studies**” means studies that are part of a program of studies offered by an educational institution at the secondary level or post-secondary level to which, at the time of an accident, a student has been admitted;

(i) “**dependant**”, with respect to a victim, means:

(i) the victim's spouse, including a spouse who is living separate and apart from the victim;

(ii) a former spouse of a victim who is entitled by law to receive support from the victim;

(iii) a child of a victim who, at the time of the accident, was dependent on the victim for food, clothing and other means that:

(A) at the time of the victim's death, are available to the child claiming to be dependent on the victim; and

(B) are reasonably necessary to the maintenance of life and to the continuation of the degree of health then enjoyed by the child claiming to be dependent on the victim;

(j) “**educational institution**” means a prescribed educational institution or a member of a prescribed class of educational institutions;

(k) “**elementary level**” means kindergarten, the Elementary Level and grades 6 to 8 of the

Middle Level as those levels are determined pursuant to *The Education Act*;

- (l) **“employment”** means any remunerative occupation;
 - (m) **“full-time earner”** means a victim who, at the time of an accident, holds a regular employment on a full-time basis, but does not include a student or a youth;
 - (n) **“income replacement benefit”** means an income replacement benefit payable pursuant to Division 4;
 - (o) **“industrial average wage”** means the industrial average wage mentioned in subsections (2) to (4);
 - (p) **“load”** means any property carried in or on an automobile;
 - (q) **“non-earner”** means a victim who, at the time of an accident, is not employed and who is able to work, but does not include a student or a youth;
 - (r) **“part-time earner”** means a victim who, at the time of an accident, holds regular employment on a part-time basis, but does not include a student or a youth;
 - (s) **“prescribed”** means prescribed by regulations made pursuant to this Part;
 - (t) **“secondary level”** means grade 9 of the Middle Level and grades 10, 11 and 12 of the Secondary Level as those levels are determined pursuant to *The Education Act*;
 - (u) **“spouse”** means:
 - (i) the wife or husband of a victim; or
 - (ii) a person with whom, at the time of an accident, a victim cohabits or has cohabited as a spouse:
 - (A) continuously for a period of not less than two years; or
 - (B) continuously for a period of not less than one year, if they are the parents of a child;
 - (v) **“student”** means a victim who, at the time of an accident, is at least 16 years of age and who attends a secondary or post-secondary educational institution on a full-time basis;
 - (w) **“temporary earner”** means a victim who, at the time of an accident, holds regular employment on a temporary basis, but does not include a student or a youth;
 - (x) **“victim”** means a person who suffers bodily injury caused by an automobile in an accident;
 - (y) **“youth”** means a victim who, at the time of an accident, is under 16 years of age and who attends an educational institution on a full-time basis.
- (2) Subject to subsections (3) and (4), in this Part, the industrial average wage is the industrial aggregate average weekly earnings for all employees in Saskatchewan as published monthly by Statistics Canada.
- (3) Where no figure for the industrial aggregate average weekly earnings for all employees in Saskatchewan is published by Statistics Canada for a month, the insurer shall determine a figure for that month in accordance with the regulations.
- (4) Where, after the day this Part comes into force, Statistics Canada uses a new method to determine the industrial aggregate average weekly earnings for all employees for Saskatchewan for a particular month and the new method results in a change of more than 1% when compared with the former method, the insurer shall determine a figure in accordance with the regulations.
- (5) For the purposes of this Part, a student is considered to be attending an educational institution at the secondary level or post-secondary level on a full-time basis from the day the student is admitted by the educational institution as a full-time student in a program of that level until the day the student:
- (a) completes, abandons or is expelled from his or her current studies; or
 - (b) no longer meets the requirements of the educational institution.
- (6) For the purposes of this Part, a youth is considered to be attending an educational institution on a full-time basis from the day the youth is admitted by the educational institution as a full-time student in a program of that level until the day the youth:
- (a) completes, abandons or is expelled from his or her studies; or
 - (b) no longer meets the requirements of the educational institution.

**“DIVISION 2
Application of Part and Personal Injury Benefits**

Application of Part

“101(1) This Part applies to bodily injuries caused by an automobile arising out of an accident that occurs on or after the day this Part comes into force.

(2) Notwithstanding subsection (1), this Part does not apply to bodily injuries caused by an automobile, if the bodily injuries:

- (a) are caused while the automobile is not in motion;
- (b) are caused:
 - (i) by, or by the use of, a device that can be operated independently and that is mounted on or attached to the automobile;
 - (ii) by a self-propelled agricultural implement, within the meaning of *The Highway Traffic Act*;
 - (iii) by a wheelchair, as defined in *The Highway Traffic Act*;
 - (iv) by a special mobile machine, as defined in *The Highway Traffic Act*;
 - (v) by an all terrain vehicle, as defined in *The All Terrain Vehicles Act*; or
 - (vi) by any other prescribed vehicle;

unless an automobile in motion is involved in the accident;

- (c) are caused by the autonomous act of an animal that is part of the automobile's load;
- (d) are caused by an action performed by the victim in connection with the maintenance, repair, alteration or improvement of the automobile;
- (e) are caused while putting a load on or taking a load off the automobile; or
- (f) are caused as the result of an automobile contest, show or race on a track or other location temporarily or permanently closed to all other automobile traffic, whether or not the automobile that caused the bodily injury is participating in the race, contest or show.

Actions respecting bodily injuries prohibited

“102 Notwithstanding any other Part of this Act or any other Act or law, but subject to the other provisions of this Part:

- (a) no person has a right of action respecting, arising out of or stemming from bodily injuries caused by an automobile arising out of an accident that occurs on or after the day this Part comes into force;
- (b) no action or proceeding lies or may be instituted in any court respecting, arising out of or stemming from bodily injuries caused by an automobile arising out of an accident that occurs on or after the day this Part comes into force; and
- (c) the right to benefits stands in lieu of all rights of action to which a person is or may be entitled to respecting, arising out of or stemming from bodily injuries caused by an automobile arising out of an accident that occurs on or after the day this Part comes into force.

Tort actions for economic loss

“103(1) In this section, **“economic loss”** means the following losses resulting from bodily injuries caused by an automobile arising out of an accident:

- (a) in the case of a victim who is entitled to an income replacement benefit, any actual income loss suffered by the victim in excess of the maximum yearly insurable earnings calculated pursuant to section 138;
- (b) in the case of a victim who dies as a result of an accident, any actual income loss suffered by the victim's dependants in excess of the benefits provided pursuant to Division 5;
- (c) in the case of a victim who is entitled to any benefit pursuant to Division 7, any actual and reasonable loss suffered by the victim in excess of the benefits to which the victim is entitled;
- (d) in the case of a victim who is a worker within the meaning of *The Workers' Compensation Act, 1979* and:
 - (i) who is entitled to compensation for loss of earnings pursuant to section 68 of *The*

- Workers' Compensation Act, 1979*, any actual income loss suffered by the victim in excess of the maximum yearly insurable earnings provided pursuant to sections 38 and 38.1 of that Act;
- (ii) who dies as a result of an accident, any actual and reasonable loss suffered by the victim's dependants in excess of the benefits provided pursuant to sections 82, 83, 85, 87, 88 and 89 of *The Workers' Compensation Act, 1979*;
- (iii) who is entitled to medical aid pursuant to *The Workers' Compensation Act, 1979*, any actual and reasonable loss suffered by the victim in excess of the benefits provided pursuant to sections 106, 108 and 113 of that Act.
- (2) Notwithstanding section 102 but subject to section 44 of *The Workers' Compensation Act, 1979*, a victim or dependant may bring an action for damages in the Court of Queen's Bench to recover any of the victim's or dependant's economic losses.
- (3) The following rules apply in an action pursuant to this section:
- (a) economic losses must be proven on a balance of probabilities;
 - (b) the rules of negligence, set off and apportionment of liability apply;
 - (c) in determining economic loss pursuant to clause (1)(a) or subclause (1)(d)(i), the Court of Queen's Bench:
 - (i) shall calculate any award based on the victim's actual income loss after deducting any applicable taxes pursuant to *The Income Tax Act* and the *Income Tax Act* (Canada), any premiums pursuant to the *Unemployment Insurance Act* (Canada) and any contributions pursuant to the *Canada Pension Plan*; and
 - (ii) shall not award any amount for income losses for the first seven days after the accident;
 - (d) subject to clause (e), in determining a victim's or dependant's economic loss, the Court of Queen's Bench shall deduct from any award all amounts the victim or dependant has received or is entitled to receive from any government or agency of government, from any public or private insurance scheme or from any other scheme that lessens the economic loss;
 - (e) in determining economic loss pursuant to clause (1)(b) or subclause (1)(d)(ii), the Court of Queen's Bench shall not deduct from any award any amounts the victim's dependants have received or are entitled to receive from a contract of life insurance, as defined in *The Saskatchewan Insurance Act*;
 - (f) notwithstanding *The Pre-judgment Interest Act* or any other Act or law, the Court of Queen's Bench shall not award any interest on that part of a judgment that represents a victim's or dependant's economic loss for the period commencing on the day the economic loss is suffered and ending on the day of the judgment.
- (4) The deductions mentioned in subclause (3)(c)(i) are to be calculated using the victim's total income at the time of the accident and not the portion of income representing the actual income loss.
- (5) Notwithstanding any other Act or law, any government or agency of government, any public or private insurer or any other person who is required or liable to pay an amount mentioned in clause (3)(d) has no right of subrogation to recover that amount.
- (6) In an action pursuant to this section, on the application of any party, the Court of Queen's Bench may, in accordance with the regulations, direct that any compensation payable respecting all or any claimed categories of damages be provided for in the form of a structured compensation order.
- (7) The Court of Queen's Bench may make a direction pursuant to subsection (6) at any stage in the proceedings.

Personal injury benefits

“104 Subject to this Part, the insurer shall pay benefits to a victim regardless of who is responsible for the accident.

No benefits for wilful accident

“105(1) No benefits are payable:

- (a) to a victim or a dependant of a victim if the victim wilfully caused the accident; or

(b) to a dependant of a victim if the dependant wilfully caused the accident.

(2) A victim or dependant of a victim who disagrees with a decision of the insurer pursuant to subsection (1) may appeal that decision to the Court of Queen's Bench within 180 days of receiving the insurer's written decision.

Benefits for Saskatchewan residents

“106(1) Subject to this Part, a victim who is resident in Saskatchewan at the time of the accident, and any dependant of the victim, are entitled to benefits if the accident occurs in Canada or the United States of America.

(2) Where an automobile registered in Saskatchewan is involved in an accident in Saskatchewan, the owner, the driver and any passenger in the automobile are deemed to be resident in Saskatchewan.

Benefits for non-residents

“107(1) Subject to this Part, a victim of an accident that occurs in Saskatchewan who is not resident in Saskatchewan, and any dependants of the victim, are entitled to benefits:

(a) in accordance with any agreement between the insurer and a government or an agency of the government of the place of residence of the victim; or

(b) if no agreement exists, to the extent that the insurer determines that the victim is not responsible for the accident.

(2) A victim or dependant who disagrees with a decision of the insurer pursuant to clause (1)(b) may appeal that decision to the Court of Queen's Bench within 180 days of receiving the insurer's written decision.

Accidents outside Saskatchewan

“108(1) Subject to the insurer's right of subrogation pursuant to this section, a victim or dependant who is entitled to any benefits respecting an accident that occurred outside Saskatchewan may exercise any right or remedy that he or she has pursuant to the law of the place where the accident occurred for compensation in excess of the benefits he or she is entitled to.

(2) Where a victim or dependant is entitled to benefits respecting an accident that occurred outside Saskatchewan, the insurer is subrogated to that victim's or dependant's rights and is entitled to recover the amount of those benefits from:

(a) any person who is not resident in Saskatchewan and who is responsible for the accident pursuant to the law of the place where the accident occurred; or

(b) any other person who is liable to pay compensation for bodily injuries caused by a person described in clause (a).

Subrogation re accidents in Saskatchewan involving non-residents

“109(1) Where a victim or dependant is entitled to benefits respecting an accident that occurred in Saskatchewan, the insurer has the right to recover the amount of the benefits from:

(a) any person who is not resident in Saskatchewan and who is responsible for the accident, to the extent that he or she is responsible for the accident; and

(b) any other person who is liable to pay compensation for bodily injury caused by the person described in clause (a).

(2) An action pursuant to this section is to be commenced within two years after the day on which the insurer makes the first benefit payment to the victim or dependant.

“DIVISION 3 Rehabilitation

Rehabilitation

“110(1) In this section, **“rehabilitation”** includes any or all of the following measures, programs and treatments that the insurer considers necessary or advisable to contribute to the rehabilitation

of a victim, to lessen the victim's disability caused by an accident and to facilitate the victim's recovery from the accident:

- (a) physical and acquired brain injury programs and treatment;
 - (b) occupational and vocational training and programs;
 - (c) alterations to a victim's residence;
 - (d) modification or purchase of a vehicle for a victim;
 - (e) purchase of special equipment for a victim;
 - (f) any additional measure, program or treatment prescribed in the regulations.
- (2) Subject to the regulations, the insurer may take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury and to facilitate the victim's recovery from an accident.
- (3) The total maximum amount of benefits payable to a victim pursuant to this Division and Division 7 is \$500,000 for each accident in which the victim suffers bodily injuries arising out of an accident.

“DIVISION 4 Income Replacement Benefits

Income replacement benefits

“111 Subject to this Part, an income replacement benefit is payable to the following victims:

- (a) full-time earners;
- (b) temporary earners;
- (c) part-time earners;
- (d) non-earners;
- (e) students;
- (f) youths.

FULL-TIME EARNERS

Full-time earners

“112(1) A full-time earner is entitled to an income replacement benefit if, as a result of an accident, the full-time earner:

- (a) is unable to continue the full-time employment he or she held at the time of the accident;
- (b) is unable to continue any other employment that he or she held at the time of the accident in addition to the full-time employment mentioned in clause (a); or
- (c) is deprived of a benefit pursuant to the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada), or any other prescribed benefit, to which he or she was entitled at the time of the accident.

(2) The insurer shall calculate the income replacement benefit pursuant to clauses (1)(a) and (b) on the basis of:

- (a) the gross yearly employment income the full-time earner earned from his or her employment, if the full-time earner holds employment in the employ of another at the time of the accident;
- (b) the greater of:
 - (i) the gross yearly employment income determined in accordance with the regulations for an employment of the same class as his or her employment; and
 - (ii) the gross yearly employment income the full-time earner earned from his or her employment;

if the full-time earner is self-employed at the time of the accident;

- (c) the gross yearly employment income earned from all employment that the full-time earner is unable to continue because of the accident, if the full-time earner holds more than one employment at the time of the accident.

(3) The insurer shall calculate the income replacement benefit pursuant to clause (1)(c) on the basis

of the benefit that would have been payable to the full-time earner.

More remunerative employment

“113(1) Subject to subsection (2) and to the regulations, where the insurer is satisfied that a full-time earner who is entitled to an income replacement benefit would have held a more remunerative employment at the time of the accident but for special circumstances, the insurer shall calculate the full-time earner's income replacement benefit on the basis of the gross yearly employment income for that more remunerative employment.

(2) The employment mentioned in subsection (1) must be regular full-time employment that is compatible with the education, training, work experience and physical and intellectual abilities of the full-time earner immediately before the accident.

TEMPORARY AND PART-TIME EARNERS

Temporary and part-time earners - first 180 days

“114(1) For the first 180 days after an accident, a temporary earner or part-time earner is entitled to an income replacement benefit if, as a result of the accident, the temporary earner or part-time earner:

- (a) is unable to continue the employment held at the time of the accident or to hold an employment that he or she would have held during the 180-day period if the accident had not occurred; or
- (b) is deprived of a benefit pursuant to the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada), or any other prescribed benefit, to which he or she was entitled at the time of the accident.

(2) The insurer shall calculate the income replacement benefit pursuant to clause (1)(a) on the basis of:

- (a) the gross yearly employment income the temporary or part-time earner earned from his or her employment, if the temporary or part-time earner holds employment in the employ of another at the time of the accident;
- (b) the greater of:
 - (i) the gross yearly employment income determined in accordance with the regulations for an employment of the same class as his or her employment; and
 - (ii) the gross yearly employment income the temporary or part-time earner earned from his or her employment;

if the temporary or part-time earner is self-employed at the time of the accident;

- (c) the gross yearly employment income earned from all employment that the temporary or part-time earner is unable to continue because of the accident, if the temporary or part-time earner holds more than one employment at the time of the accident.

(3) The insurer shall calculate the income replacement benefit pursuant to clause (1)(b) on the basis of the benefit that would have been payable to the temporary or part-time earner.

Temporary and part-time earners - after 180 days

“115(1) Subject to subsection (5), if on the 181st and subsequent days following an accident a temporary earner or part-time earner is unable to hold the employment he or she held at the time of the accident, the temporary or part-time earner is entitled to an income replacement benefit calculated pursuant to this section.

(2) For the purposes of calculating an income replacement benefit pursuant to this section, the insurer shall determine an employment for the temporary or part-time earner pursuant to section 131.

(3) Subject to subsection (4), the insurer shall calculate the income replacement benefit on the basis of the gross yearly employment income that the insurer determines the temporary or part-time earner could have earned from the employment mentioned in subsection (2), considering the following factors:

- (a) whether the temporary or part-time earner would have held the employment on a full-

time or part-time basis;

(b) the work experience and earnings of the temporary or part-time earner in the five years before the accident; and

(c) any prescribed factors.

(4) An income replacement benefit pursuant to this section is not to be less than the income replacement benefit the temporary or part-time earner received pursuant to section 114.

(5) If a part-time earner elects to obtain a weekly benefit for the care of others pursuant to section 159, the part-time earner is not entitled to an income replacement benefit pursuant to this section.

NON-EARNER

Non-earners - first 180 days

“116(1) For the first 180 days after an accident, a non-earner is entitled to an income replacement benefit if, as a result of the accident, the non-earner:

(a) is unable to hold an employment that he or she would have held during the 180-day period if the accident had not occurred; or

(b) is deprived of a benefit pursuant to the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada), or any other prescribed benefit, to which he or she was entitled at the time of the accident.

(2) If a non-earner is entitled to an income replacement benefit pursuant to either clause (1)(a) or (b), the non-earner is entitled to the greater income replacement benefit.

(3) Subject to the regulations, the insurer shall calculate the income replacement benefit pursuant to clause (1)(a) on the basis of the gross yearly employment income the non-earner would have earned from his or her employment.

(4) The insurer shall calculate the income replacement benefit pursuant to clause (1)(b) on the basis of the benefit that would have been payable to the non-earner.

Non-earners - after 180 days

“117(1) Subject to subsection (5), if on the 181st and subsequent days following an accident a non-earner is unable to hold the employment he or she could have held at the time of the accident, the non-earner is entitled to an income replacement benefit calculated pursuant to this section.

(2) For the purposes of calculating an income replacement benefit pursuant to this section, the insurer shall determine an employment for the non-earner pursuant to section 131.

(3) Subject to subsection (4), the insurer shall calculate the income replacement benefit on the basis of the gross yearly employment income that the insurer determines the non-earner could have earned from the employment mentioned in subsection (2), considering the following factors:

(a) whether the non-earner would have held the employment on a full-time or part-time basis;

(b) the work experience and earnings of the non-earner in the five years before the accident; and

(c) any prescribed factors.

(4) An income replacement benefit pursuant to this section is not to be less than the income replacement benefit the non-earner received pursuant to section 116.

(5) If a non-earner is entitled to a weekly benefit for the care of others pursuant to section 159, the non-earner is not entitled to an income replacement benefit pursuant to this section.

STUDENTS

Interpretation of sections 118 to 128 and 133

“118 In this section, sections 119 to 128 and section 133, **“school year”**, with respect to the elementary level and secondary level, means the period commencing on July 1 of one year and ending on June 30 of the following year.

Student - loss of studies benefit

“119(1) A student who is unable because of an accident to begin or to continue his or her current studies is entitled to a loss of studies benefit for the period commencing on the day that the student is unable to begin or to continue his or her current studies and ending on the day that is scheduled, at the time of the accident, for the completion of the current studies.

(2) The amount of a loss of studies benefit pursuant to this section is:

- (a) if the student is admitted to studies at the secondary level at the time of the accident, \$3,250 for each semester not completed at the secondary level, to a maximum of \$6,500 per school year;
- (b) if the student is admitted to studies at the post-secondary level at the time of the accident, \$6,500 for each semester not completed at the post-secondary level, to a maximum of \$13,000 per year.

Student - income replacement benefit

“120(1) A student is entitled to an income replacement benefit if, as a result of an accident, the student:

- (a) is unable to hold an employment that the student holds or would have held if the accident had not occurred; or
- (b) is deprived of a benefit pursuant to the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada), or any other prescribed benefit, to which he or she was entitled at the time of the accident.

(2) The insurer shall calculate the income replacement benefit pursuant to clause (1)(a) on the basis of:

- (a) the gross yearly employment income the student earned or would have earned from his or her employment, if the student holds or would have held employment in the employ of another at the time of the accident;
- (b) the greater of:
 - (i) the gross yearly employment income determined in accordance with the regulations for an employment of the same class as the employment the student held or would have held; and
 - (ii) the gross yearly employment income the student earned or would have earned from his or her employment;

if the student is or would have been self-employed at the time of the accident;

- (c) the gross yearly employment income earned or that would have been earned from all employment that the student is unable to hold because of the accident, if the student holds or would have held more than one employment at the time of the accident.

(3) The insurer shall calculate the income replacement benefit pursuant to clause (1)(b) on the basis of the benefit that would have been payable to the student.

Student - income replacement benefit if unable to begin or resume studies

“121(1) If a student is unable because of an accident to begin or to continue his or her studies or to hold employment after the day scheduled at the time of the accident for completion of his or her current studies, the student is entitled to an income replacement benefit for as long as he or she is unable to hold employment because of the accident.

(2) The insurer shall calculate an income replacement benefit pursuant to subsection (1) on the basis of a gross yearly employment income equal to a yearly average computed on the basis of the industrial average wage for each of the 12 months preceding the July 1 following the end of the school year, in the case of a secondary student, or year, in the case of a post-secondary student, scheduled at the time of the accident for completion of the student's current studies.

Student - able to study but unable to hold employment

“122(1) A student who resumes his or her current studies but who is unable to hold any employment after completing his or her current studies is entitled to a loss of studies benefit and an income

replacement benefit calculated pursuant to this section if, as a result of an accident:

- (a) the student's current studies end before the day that was scheduled for their completion at the time of the accident; and
 - (b) the student is unable to hold any employment after completion of the student's current studies.
- (2) The loss of studies benefit mentioned in subsection (1) is payable on the day the student's current studies end and is payable for each semester at the secondary level or post-secondary level not completed by the student.
- (3) The amount of a loss of studies benefit mentioned in subsection (1) is:
- (a) if the student is admitted to studies at the secondary level at the time of the accident, \$3,250 for each semester not completed at the secondary level, to a maximum of \$6,500 per school year;
 - (b) if the student is admitted to studies at the post-secondary level at the time of the accident, \$6,500 for each semester not completed at the post-secondary level, to a maximum of \$13,000 per year.
- (4) The income replacement benefit mentioned in subsection (1) is payable after the day scheduled for the completion of the student's current studies at the time of the accident and for as long as the student is unable to hold employment.
- (5) The insurer shall calculate the income replacement benefit mentioned in subsection (1) on the basis of a gross yearly employment income equal to a yearly average computed on the basis of the industrial average wage for each of the 12 months preceding the July 1 that follows the end of the school year, in the case of a secondary student, or year, in the case of a post-secondary student, scheduled at the time of the accident for completion of the student's current studies.

Student entitled to greatest income replacement benefit

"123 A student is entitled to the greatest income replacement benefit of those calculated pursuant to section 120, 121 or 122.

YOUTHS

Youth - loss of studies benefit

"124(1) A youth who is unable because of an accident to begin or continue his or her studies at an educational institution is entitled to a loss of studies benefit for the period commencing on the day that he or she is unable to begin or to continue his or her studies and ending on the day that the youth reaches 16 years of age.

(2) The amount of a loss of studies benefit pursuant to this section is:

- (a) \$3,500 for each school year not completed at the elementary level;
- (b) \$3,250 for each semester not completed at the secondary level, to a maximum of \$6,500 per school year.

Youth - income replacement benefit

"125(1) A youth is entitled to an income replacement benefit if, as a result of an accident, the youth:

- (a) is unable to hold an employment that the youth holds or would have held if the accident had not occurred; or
 - (b) is deprived of a benefit pursuant to the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada), or any other prescribed benefit, to which he or she was entitled at the time of the accident.
- (2) The insurer shall calculate the income replacement benefit pursuant to clause (1)(a) on the basis of:
- (a) the gross yearly employment income the youth earned or would have earned from his or her employment, if the youth holds or would have held employment in the employ of another at the time of the accident;
 - (b) the greater of:

- (i) the gross yearly employment income determined in accordance with the regulations for an employment of the same class as the employment the youth held or would have held; and
 - (ii) the gross yearly employment income the youth earned or would have earned from his or her employment;
 - if the youth is or would have been self-employed at the time of the accident;
 - (c) the gross yearly employment income earned or that would have been earned from all employment that the youth is unable to hold because of the accident, if the youth holds or would have held more than one employment at the time of the accident.
- (3) The insurer shall calculate the income replacement benefit pursuant to clause (1)(b) on the basis of the benefit that would have been payable to the youth.

Youth - income replacement benefit if unable to begin or resume studies

- “126(1)** If a youth is unable because of an accident to begin or to continue his or her studies at an educational institution or to hold employment after the day the youth reaches 16 years of age, the youth is entitled to an income replacement benefit for as long as he or she is unable to hold employment because of the accident.
- (2) The insurer shall calculate an income replacement benefit pursuant to subsection (1) on the basis of a gross yearly employment income equal to a yearly average computed on the basis of the industrial average wage for each of the 12 months preceding the July 1 that follows the end of the school year in which the youth reaches 16 years of age.

Youth - able to study but unable to hold employment

- “127(1)** A youth who resumes his or her studies at an educational institution but who is unable to hold any employment after completing his or her studies is entitled to a loss of studies benefit and an income replacement benefit calculated pursuant to this section if, as a result of an accident:
- (a) the youth's studies end before the day that was scheduled for their completion at the time of the accident; and
 - (b) the youth is unable to hold any employment after reaching 16 years of age.
- (2) The loss of studies benefit mentioned in subsection (1) is payable on the day the youth's studies end and is payable for each school year at the elementary level or semester at the secondary level not completed by the student.
- (3) The amount of a loss of studies benefit mentioned in subsection (1) is:
- (a) \$3,500 for each school year not completed at the elementary level;
 - (b) \$3,250 for each semester not completed at the secondary level, to a maximum of \$6,500 per school year.
- (4) The income replacement benefit mentioned in subsection (1) is payable after the youth reaches 16 years of age.
- (5) The insurer shall calculate the income replacement benefit mentioned in subsection (1) on the basis of a gross yearly employment income equal to a yearly average computed on the basis of the industrial average wage for each of the 12 months preceding the July 1 that follows the end of the school year in which the youth reaches 16 years of age.

Youth entitled to greatest income replacement benefit

- “128** A youth is entitled to the greatest income replacement benefit of those calculated pursuant to section 125, 126 or 127.

TERMINATION OF INCOME REPLACEMENT BENEFITS

Termination of income replacement benefit

- “129(1)** Notwithstanding any other provision of this Division, a victim ceases to be entitled to an income replacement benefit when any of the following occurs:
- (a) the victim is able to hold the employment that he or she held at the time of the accident;

- (b) the victim is able to hold the more remunerative employment mentioned in section 113;
 - (c) the victim is able to hold an employment determined for the victim pursuant to section 131;
 - (d) one year has expired from the day the victim is able to hold an employment determined for the victim pursuant to section 132 or 133;
 - (e) the victim holds an employment from which the gross yearly employment income is equal to or greater than the gross yearly employment income on which victim's income replacement benefit is calculated;
 - (f) a 180-day period mentioned in section 114 or 116 has expired;
 - (g) the victim dies.
- (2) Notwithstanding clause (1)(d), if a victim falls within the circumstances described in subsection 139(1), the victim's income replacement benefit is to be reduced pursuant to section 139 and is not to be terminated pursuant to subsection (1).
- (3) Notwithstanding clauses (1)(a) to (c), a full-time earner or a part-time earner who lost his or her employment because of the accident is entitled to continue to receive his or her income replacement benefit commencing on the day he or she regains the ability to hold the employment and ending on the expiration of:
- (a) 30 days, if the entitlement to the income replacement benefit lasted for at least 90 days and not more than 180 days;
 - (b) 90 days, if the entitlement to the income replacement benefit lasted for more than 180 days and not more than one year;
 - (c) 180 days, if the entitlement to the income replacement benefit lasted for more than one year and not more than two years;
 - (d) one year, if the entitlement to the income replacement benefit lasted for more than two years.

No income replacement benefit if regularly incapable of working

“130 Notwithstanding any other provision of this Division, a victim who, before an accident, is regularly incapable of holding employment for any reason except age is not entitled to an income replacement benefit.

DETERMINATION OF EMPLOYMENT

Determination of employment - for 181st day after accident

“131(1) Where the insurer is required pursuant to this Division to determine an employment for a victim from the 181st day after an accident, the insurer shall consider:

- (a) the education, training, work experience and physical and intellectual abilities of the victim immediately before the accident; and
 - (b) any other prescribed factors.
- (2) An employment determined by the insurer must be an employment that the victim could have held:
- (a) on a regular and full-time basis immediately before the accident; or
 - (b) if it would not have been possible for the victim to hold employment on a regular and full-time basis, on a part-time basis immediately before the accident.

Determination of employment after second anniversary of accident

“132 Following the second anniversary date of an accident, the insurer may determine an employment for a victim of the accident who is able to work but who is unable because of the accident to hold the employment mentioned in section 112 or 113 or determined pursuant to section 131.

Determination of employment for student or youth

“133 The insurer may determine an employment for a student or youth at any time from the

scheduled day of the end of the student's current studies or the youth's studies if the student or youth:

- (a) is able to work; and
- (b) is not able because of an accident to hold an employment from which the gross yearly employment income is equal to or greater than the gross yearly employment income that would have applied to the victim pursuant to section 121, 122, 126 or 127 if the victim had been unable to hold employment because of the accident.

Factors applicable to determinations pursuant to sections 132 and 133

“134 In determining an employment pursuant to section 132 or 133, the insurer shall consider the following factors:

- (a) the education, training, work experience and physical and intellectual abilities of the victim at the time of the determination;
- (b) any knowledge or skill acquired by the victim in a rehabilitation program approved pursuant to this Part;
- (c) whether the employment is available in the region of Saskatchewan in which the victim resides;
- (d) the employment that the victim is able to hold:
 - (i) on a regular and full-time basis; or
 - (ii) if it would not be possible for the victim to hold employment on a regular and full-time basis, on a part-time basis;
- (e) any other prescribed factors.

CALCULATION OF INCOME REPLACEMENT BENEFIT

Interpretation of sections 135 to 138

“135 In this section and in sections 136 to 138:

- (a) **“gross yearly employment income”**, with respect to a victim, means the gross yearly employment income of the victim's employment that the insurer is required to use or that the insurer determines pursuant to this Division;
- (b) **“maximum yearly insurable earnings”** means the maximum yearly insurable earnings calculated pursuant to section 138;
- (c) **“net income”** means net income calculated pursuant to section 137.

Amount of income replacement benefit

“136(1) Subject to the other provisions of this Division, the amount of an income replacement benefit that a victim is entitled to pursuant to this Division is equal to 90% of the victim's net income, calculated on a yearly basis.

(2) Subject to sections 139 and 140, the income replacement benefit of a full-time earner or of a victim for whom the insurer determines an employment pursuant to section 131, 132 or 133 is to be not less than the amount of an income replacement benefit calculated on the basis of a gross yearly employment income determined on the basis of:

- (a) the minimum wage established pursuant to *The Labour Standards Act*; and
- (b) except in the case of a part-time employment, the number of hours of work per week set out in subsection 6(1) of *The Labour Standards Act*.

(3) Notwithstanding any other provision of this Division, no claimant is entitled to an income replacement benefit for the first seven days from the date of the accident.

(4) Subsection (3) does not apply to an income replacement benefit payable pursuant to section 143.

Calculation of net income

“137(1) A victim's net income is equal to the amount calculated in accordance with the following formula:

$$NI = GYEI - D$$

where:

NI is the victim's net income;

GYEI is the lesser of the victim's gross yearly employment income and the maximum yearly insurable earnings; and

D is an amount calculated by the insurer in accordance with this section and the regulations for income tax pursuant to *The Income Tax Act* and the *Income Tax Act* (Canada), premiums pursuant to the *Unemployment Insurance Act* (Canada) and contributions pursuant to the *Canada Pension Plan*.

(2) For the purposes of calculating D pursuant to subsection (1):

(a) the insurer shall use the Acts mentioned in subsection (1) as they exist on December 31 of the year before the year for which the insurer is making the calculation; and

(b) the insurer shall take into account the number of dependants of the victim at the time of the calculation.

(3) For the purpose of determining net income pursuant to this section, the gross yearly employment income of a victim includes any benefits pursuant to the *Unemployment Insurance Act* (Canada) or the *National Training Act* (Canada), or any other prescribed benefit, to which the victim would have been entitled at the time of the accident.

Maximum yearly insurable earnings

“138(1) The amount of the maximum yearly insurable earnings for 1995 is \$50,000.

(2) The amount of the maximum yearly insurable earnings for 1996 and each year after 1996 is the amount calculated in accordance with the following formula:

$$\text{MYIE} = \$50,000 \times \frac{\text{IAWY}}{\text{IAW95}}$$

where:

MYIE is the maximum yearly insurable earnings for the year;

IAWY is the average of the average industrial average wage for the 12 months before July 1 of the year before the year for which the maximum yearly insurable earnings are being calculated; and

IAW95 is the average of the industrial average wage for the 12 months before July 1, 1994.

(3) For the purposes of this section, the insurer shall use the most recent data available from Statistics Canada on October 1 of the year before the year for which the maximum yearly insurable earnings are being calculated.

INCOME REPLACEMENT BENEFITS FOR REDUCED INCOME

Reduction where income from determined employment is less than income previously computed by insurer

“139(1) Subject to the other provisions of this Division, the insurer shall reduce a victim's income replacement benefit pursuant to subsection (2) if:

(a) the victim is able to hold an employment determined for the victim pursuant to section 132 or 133; and

(b) because of bodily injuries caused by an automobile arising out of an accident, the victim earns a gross yearly employment income from the employment that is less than the gross yearly employment income used by the insurer to compute the income replacement benefit that the victim was receiving before the employment was determined pursuant to section 132 or 133.

(2) The insurer shall reduce the victim's income replacement benefit pursuant to subsection (1) by an amount calculated in accordance with the following formula:

$$\text{RIRB} = \text{FIRB} - \text{NI}$$

where:

RIRB is the reduced income replacement benefit;

FIRB is the former income replacement benefit the victim was receiving at the time the employment was determined pursuant to section 132 or 133; and

NI is the net income that the victim earns or could earn from the employment determined pursuant to section 132 or 133.

Reduction where victim earns reduced income

“140(1) Subject to subsection (3), the insurer shall reduce a victim's income replacement benefit pursuant to subsection (2) where the victim earns a gross yearly employment income that is less than the gross yearly employment income used by the insurer to compute the victim's income replacement benefit.

(2) The insurer shall reduce the victim's income replacement benefit by an amount calculated in accordance with the following formula:

$$\text{RIRB} = \text{IRB} - (75\% \times \text{NIE})$$

where:

RIRB is the reduced income replacement benefit;

IRB is the income replacement benefit before the reduction; and

NIE is the net income the victim earns from the employment.

(3) This section does not apply to a victim whose income replacement benefit is reduced pursuant to section 139.

REPLACEMENT WORKER

Replacement worker

“141(1) Notwithstanding any other provision of this Division but subject to the regulations, a victim who is entitled to an income replacement benefit pursuant to this Division and who, at the time of the accident, is self-employed may elect to receive a benefit to hire a replacement worker.

(2) A victim who makes an election pursuant to subsection (1) may not revoke that election.

(3) Subject to subsection (4), the amount of a benefit pursuant to this section is the amount required to hire a replacement worker to do the labour of the victim during the period that the victim would be entitled to an income replacement benefit if the victim had elected to receive an income replacement benefit.

(4) The maximum amount of a benefit pursuant to this section is \$550 per week.

RELAPSE

Income replacement benefit after relapse

“142(1) A victim who suffers a relapse of a bodily injury is entitled to an income replacement benefit as though the victim had been entitled to the income replacement benefit from the day of the accident to the day of the relapse, if the victim suffers the relapse within two years after:

(a) the end of the last period for which the victim received an income replacement benefit, other than an income replacement benefit pursuant to section 139 or 140; or

(b) the day of the accident, if the victim was not entitled to an income replacement benefit before the relapse.

(2) The victim is entitled to an income replacement benefit pursuant to subsection (1) from the day of the relapse.

(3) The insurer shall calculate the income replacement benefit pursuant to subsection (1) on the basis of the greater of:

(a) the gross yearly employment income used by the insurer immediately before the end of the period mentioned in clause (1)(a); and

(b) the gross yearly employment income of the victim at the time of the relapse.

Relapse after more than two years

“143 A victim is entitled to an income replacement benefit calculated by the insurer on the basis that the relapse is a second accident if the relapse occurs more than two years after:

(a) the end of the last period for which the victim received an income replacement benefit,

other than an income replacement benefit pursuant to section 139 or 140; or
 (b) the day of the accident, if the victim was not entitled to an income replacement benefit before the relapse.

Victim entitled to greater benefit

“144 If a victim is receiving an income replacement benefit pursuant to this Division, other than pursuant to subsection 129(2) or section 139 or 140, and becomes entitled to an income replacement benefit respecting a relapse or second accident pursuant to section 142 or 143, the victim is entitled to whichever income replacement benefit is the greater.

“DIVISION 5 Death Benefits

Interpretation of Division

“145 In this Division:

- (a) **“deceased victim”** means a victim who dies as a result of an accident;
- (b) **“surviving spouse”** means a surviving spouse of a deceased victim and includes a former spouse of a deceased victim who, at the time of the accident, was entitled by law to receive spousal support from the victim.

Death benefits - surviving spouse

“146(1) Subject to subsections (3) to (5), a surviving spouse is entitled to a death benefit calculated in accordance with the following formula:

$$DB = (50\% \times IRB)$$

where:

DB is the death benefit payable; and

IRB is the weekly income replacement benefit that the deceased victim would have been entitled to arising out of the accident if the victim had survived the accident.

- (2) The death benefit payable pursuant to subsection (1) is payable until the date that the surviving spouse dies.
- (3) The minimum death benefit payment that a surviving spouse is entitled to receive pursuant to subsection (1) is \$45,000.
- (4) For the purposes of subsection (3), the insurer shall capitalize, in accordance with the regulations, the surviving spouse's death benefit pursuant to subsection (1).
- (5) Where, at the time of the accident, there are children who were dependent on the surviving spouse and who were dependants of the victim, the surviving spouse is entitled to an additional benefit in the amount calculated in accordance with the following formula:

$$B = (5\% \times IRB) \times DC$$

where:

B is the benefit payable;

IRB is the weekly income replacement benefit that the deceased victim would have been entitled to arising out of the accident if the victim had survived the accident; and

DC is the number of the victim's dependent children.

- (6) The benefit mentioned in subsection (5) respecting a dependent child is payable until that dependent child reaches 21 years of age.

Death benefit - surviving dependent children

“147(1) Where both of a dependent child's parents die in an accident, the dependent child is entitled to the death benefit mentioned in subsection 146(1) for each parent as if the dependent child were a surviving spouse of each parent.

- (2) Where a deceased victim is the sole parent of a dependent child, the dependent child is entitled to the death benefit mentioned in subsection 146(1) as if the dependant child were the surviving spouse of the deceased victim.

(3) Where, at the time of an accident, a deceased victim did not leave a surviving spouse and there is a child who was a dependent of the victim, the dependant child is entitled to the death benefit mentioned in subsection 146(1) as if the dependent child were a surviving spouse of the deceased victim.

(4) The death benefit mentioned in subsection (1), (2) or (3) is payable only until the dependent child reaches 21 years of age.

(5) In a case where subsection (1), (2) or (3) applies and where there is more than one dependent child, the following rules apply:

- (a) each dependent child is entitled to an equal share of the death benefit pursuant to this subsection as long as that dependent child remains under 21 years of age;
- (b) the dependent children are entitled to the death benefit mentioned in subsection 147(1) on the basis of the youngest dependent child being considered as the surviving spouse;
- (c) the death benefit mentioned in clause (b) is payable until the youngest dependent child reaches 21 years of age;
- (d) the dependent children are entitled to the benefit mentioned in subsection 146(5) calculated on the number of dependent children, but not including the youngest dependent child;
- (e) the benefit mentioned in clause (d) is payable until the second youngest dependent child reaches 21 years of age.

Capitalization of death benefits

“148(1) A surviving spouse who is entitled to a benefit pursuant to section 146 or a dependent child who is entitled to a benefit pursuant to section 147 may elect to have the benefit capitalized and paid out as a lump sum.

(2) An election pursuant to subsection (1) must be made within five years of the date of the accident and is not revocable.

(3) The insurer shall undertake the capitalization in the prescribed manner.

Lump sum death benefit - parents

“149 If, on the day a deceased victim dies, the victim has no dependants, the deceased victim's estate is entitled to a lump sum benefit of \$10,000.

Lump sum funeral benefit

“150 The deceased victim's estate is entitled to a lump sum benefit of \$5,000 for the deceased victim's funeral.

Payment of lump sum death benefit in periodic instalments to dependant

“151 On the application of a dependant entitled to a lump sum death benefit pursuant to this Division, the insurer may pay the benefit over a period, not exceeding 20 years, in periodic instalments corresponding to a proportion of the value of the lump sum death benefit.

Educational benefit for dependent spouse

“152(1) Subject to the regulations, the insurer may pay an educational benefit to a surviving spouse who, at the time of an accident, was dependent on the deceased victim.

(2) An educational benefit mentioned in subsection (1) is to be used for the education of the surviving spouse.

(3) The maximum amount of an educational benefit pursuant to this section is \$30,000.

“DIVISION 6

Permanent Impairment Benefit

Interpretation of Division

“153 In this Division, **“permanent impairment”** includes a permanent anatomical or physiological deficit, a permanent disfigurement, a permanent acquired brain injury or any other permanent

impairment prescribed in the regulations.

Lump sum benefit - permanent impairment

“154 Subject to this Division and the regulations, a victim who suffers a permanent impairment because of an accident is entitled to a lump sum benefit for the permanent impairment.

Benefit not payable if victim dies

“155(1) Subject to subsection (2), a lump sum benefit for a permanent impairment is not payable if the victim dies of a cause related to an accident.

(2) If the victim dies of a cause unrelated to an accident and, on the day of his or her death, the victim is suffering a permanent impairment arising out of the accident, the insurer shall:

- (a) estimate the amount of the lump sum benefit that it would have awarded to the victim respecting the permanent impairment if the victim had not died; and
- (b) pay that lump sum benefit to the victim's estate.

Evaluation of permanent impairment

“156(1) The insurer shall evaluate a victim's permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

(2) If a victim's permanent impairment is not listed on the prescribed schedule of permanent impairments, the insurer shall determine a percentage for the permanent impairment using the prescribed schedule as a guide.

Calculation of lump sum benefit

“157(1) Subject to subsection (2), the insurer shall calculate the lump sum benefit for a permanent impairment payable pursuant to this Division in accordance with the following formula:

$$\text{LSBPI} = \$125,000 \times P$$

where:

LSBPI is the lump sum benefit for the permanent impairment; and

P is the percentage determined pursuant to section 156.

(2) The minimum amount of a lump sum benefit for a permanent impairment pursuant to this Division is \$500 and the maximum amount is \$125,000.

“DIVISION 7

Benefits for Expenses

Benefits for personal assistance expenses

“158(1) Subject to the regulations, if a victim is unable because of an accident to care for himself or herself or to perform the essential activities of everyday life without assistance, the insurer may pay a benefit to reimburse the victim for expenses related to personal home assistance.

(2) The maximum amount of a benefit pursuant to this section is \$550 per week.

Weekly benefit for care of others

“159(1) Subject to subsection (5), a non-earner is entitled to a weekly benefit pursuant to this section if the non-earner's main occupation at the time of an accident was taking care, without remuneration, of persons who:

- (a) are under 16 years of age; or
- (b) are regularly unable to hold any employment.

(2) A part-time earner may elect to receive a weekly benefit pursuant to this section if the part-time earner's main occupation at the time of an accident was taking care, without remuneration, of persons who:

- (a) are under 16 years of age; or
- (b) are regularly unable to hold any employment.

(3) The insurer shall pay the weekly benefit pursuant to this section in the amount of:

- (a) \$300, if one person described in subsection (1) is cared for;
 - (b) \$325, if two persons described in subsection (1) are cared for;
 - (c) \$350, if three persons described in subsection (1) are cared for;
 - (d) \$400, if four or more persons described in subsection (1) are cared for.
- (4) A part-time earner or non-earner is entitled to receive the weekly benefit pursuant to this section as long as the part-time earner or non-earner is unable to care for the persons described in subsection (1).
- (5) A non-earner is not entitled to receive a weekly benefit pursuant to this section if the non-earner is entitled to an income replacement benefit pursuant to clause 116(1)(a).
- (6) The insurer shall adjust or terminate, in accordance with the regulations, the weekly benefit pursuant to this section at the end of the week in which:
- (a) the number of persons described in subsection (1) changes; or
 - (b) the part-time earner or non-earner is able to resume the care of the persons described in subsection (1).

Part-time earner or non-earner - election of benefits

- “160(1)** At any time after the 180th day following an accident, a part-time earner or non-earner who is receiving a weekly benefit pursuant to section 159 may elect to:
- (a) continue to receive the weekly benefit; or
 - (b) receive an income replacement benefit pursuant to section 115, in the case of the part-time earner, or section 117, in the case of the non-earner.
- (2) Before the 181st day following an accident, the insurer shall provide the part-time earner or non-earner with information to assist the earner to make the election.

Weekly benefits - other victims

- “161(1)** Subject to subsection (5), a victim described in subsection (2) is entitled to a weekly benefit pursuant to this section if the victim becomes unable because of an accident to care for persons who:
- (a) are under 16 years of age; or
 - (b) are regularly unable to hold any employment.
- (2) For the purposes of subsection (1) a victim must be:
- (a) a full-time earner;
 - (b) a temporary earner;
 - (c) a part-time earner holding more than one regular part-time employment for a total of not less than 28 hours per week;
 - (d) a student;
 - (e) a part-time earner or non-earner who elects pursuant to section 160 to receive an income replacement benefit.
- (3) The insurer shall pay the weekly benefit pursuant to this section in the amount of:
- (a) \$75, if one person described in subsection (1) is cared for;
 - (b) \$100, if two persons described in subsection (1) are cared for;
 - (c) \$125, if three persons described in subsection (1) are cared for;
 - (d) \$150, if four or more persons described in subsection (1) are cared for.
- (4) A victim is entitled to receive the weekly benefit pursuant to this section as long as the victim is unable to care for the persons described in subsection (1).
- (5) A victim is entitled to receive a weekly benefit pursuant to this section only if the victim's spouse is unable to care for the persons described in subsection (1) because of the spouse's:
- (a) illness;
 - (b) disability;
 - (c) work; or
 - (d) studies outside the spousal residence.

Benefit - family enterprise

- “162(1)** A victim is entitled to a benefit pursuant to this section if the victim:

- (a) at the time of an accident was working without remuneration in a family enterprise; and
 - (b) is unable because of the accident to perform his or her regular duties in the family enterprise.
- (2) The victim is entitled to the benefit pursuant to this section during the first 180 days following the accident for the purpose of having the victim's regular duties performed during those 180 days.
- (3) The insurer shall determine the amount of the benefit pursuant to this section having regard to the prescribed factors.
- (4) The maximum amount of the benefit pursuant to this section is \$550 per week.

Benefits - other expenses

- “163**(1) Subject to the regulations, a victim is entitled to a benefit to reimburse the victim for paying for any of the following items:
- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
 - (b) the purchase of prostheses or orthopaedic devices;
 - (c) cleaning, repairing or replacing clothing that the victim was wearing at the time of the accident and that was damaged;
 - (d) any other prescribed expenses.
- (2) The amount of a benefit pursuant to this section is the amount of the expense that the victim is not entitled to be reimbursed for pursuant to any other Act.
- (3) A person who pays an expense mentioned in subsection (1) on behalf of a victim is entitled to a benefit to reimburse the person for paying the expense.

Benefits - accompanying victim

- “164** Subject to the regulations, a person who accompanies a victim because of a victim's physical or mental condition or age so that the victim can receive medical or paramedical care is entitled to a benefit in an amount to reimburse that person for that person's transportation, lodging and other expenses.

“DIVISION 8 Claims

Interpretation of Division

- “165** In this Division and in section 185, **“practitioner”** means:
- (a) a physician or surgeon;
 - (b) a dentist;
 - (c) a physical therapist;
 - (d) an optometrist;
 - (e) a psychologist;
 - (f) a chiropractor;
 - (g) a massage therapist;
 - (h) any prescribed practitioner.

Application

- “166** A claimant shall make an application for a benefit in accordance with the regulations.

Time limitation for claims

- “167**(1) Subject to subsections (2) to (5), a claimant shall make an application for a benefit:
- (a) within two years from the date of the accident on which the claim is based; or
 - (b) within two years from the date on which an observation of symptoms of a bodily injury is first made by a practitioner if those symptoms are not apparent immediately after the accident but are observed by the practitioner within two years from the date of the accident.
- (2) A claimant shall make an application for a benefit based on the death of a victim within two

years from the date of the victim's death.

(3) If a claimant is a minor on the date of an accident on which the claim is based, the claimant shall make an application for a benefit within two years from the date that the claimant reached 18 years of age.

(4) The time limitation set out in this section is postponed for a claimant who is by reason of mental disorder not competent to manage his or her estate until the claimant:

(a) becomes competent to manage his or her estate; or

(b) is represented by a personal guardian or property guardian appointed pursuant to *The Public Trustee Act* or *The Dependent Adults Act* who is aware of a claim and has the legal capacity to make the claim on behalf of the claimant.

(5) The insurer may waive a time limitation set out in this section if it is satisfied that the claimant had a reasonable excuse for failing to make an application within the time limit.

Information from claimants and recipients

“168(1) Every claimant and every person who receives a benefit shall provide any information, and any authorization necessary to obtain information, that is requested by the insurer for the purposes of this Part.

(2) Subject to the regulations, the insurer shall promptly release to a claimant, at the claimant's request, all of the insurer's information respecting the claimant or his or her claim that the claimant may reasonably require for the purposes of this Part.

Proof of salary

“169 Within six days after receiving a written request from the insurer, an employer or former employer shall provide the insurer with proof of the earnings of the victim while employed by the employer or former employer.

Examination by practitioner

“170(1) If requested by the insurer, a victim shall undergo an examination by a practitioner chosen by the victim.

(2) If required by the insurer, a victim shall undergo an examination by a practitioner chosen by the insurer.

(3) The insurer shall bear the expense of any examination made pursuant to this section.

(4) A practitioner shall conduct an examination pursuant to this section in accordance with the regulations.

Transportation and lodging expenses for examination

“171(1) A victim who undergoes an examination pursuant to section 170 is entitled to a benefit to reimburse his or her transportation, lodging and other expenses incurred in connection with the examination.

(2) A person who accompanies a victim because of a victim's physical or mental condition or age so that the victim can attend an examination is entitled to a benefit in an amount to reimburse that person for that person's transportation, lodging and other expenses.

(3) The insurer shall calculate the amount of a benefit pursuant to this section in accordance with the regulations.

Report of examination

“172(1) A practitioner who examines a victim at the request of the insurer pursuant to section 170 shall make a report to the insurer on the condition of the victim and on any other related matter requested by the insurer.

(2) Where the insurer obtains a report respecting an examination conducted pursuant to section 170, the insurer, at the request of the victim who underwent the examination, shall provide a copy of the report to any practitioner designated by the person.

Report of accident

“173 Within six days of receiving a written request from the insurer, a practitioner who or hospital that is consulted by a victim or treats a victim after an accident shall provide the insurer with a report respecting:

- (a) the consultation or the treatment; and
- (b) any finding or recommendation relating to the consultation or treatment.

Reimbursement for costs of report

“174 Subject to the regulations, a person is entitled to a benefit to reimburse the person for his or her expenses in obtaining a report from a practitioner if:

- (a) the person applied for a review or made an appeal pursuant to Division 11 and filed the report in support of the review or appeal; and
- (b) the review or appeal mentioned in clause (a) is allowed.

Claimant to advise of changes

“175 Every claimant and every person receiving a benefit shall notify the insurer without delay of any changes that affect or that might affect his or her right to claim or receive a benefit or the amount of a benefit that he or she is claiming or receiving.

Insurer to advise and assist claimants

“176 The insurer shall advise and assist claimants and shall endeavour to ensure that claimants are informed of and receive the benefits to which they are entitled.

**“DIVISION 9
Payment of Benefits**

Payment of income replacement benefits

“177(1) Subject to subsections (2) to (4), the insurer shall pay an income replacement benefit to the person entitled to it once every 14 days.

(2) The insurer may pay an income replacement benefit to the person entitled to it in a single payment equivalent to the capital value of the income replacement benefit if:

- (a) the amount paid or to be paid every 14 days is less than \$100; or
- (b) the person entitled to it has not been resident in Saskatchewan for at least one year.

(3) Notwithstanding any other provision of this Part, no person is entitled to an income replacement benefit for any period that the person is serving a sentence of imprisonment.

(4) If a person mentioned in subsection (3) is acquitted of the offence for which the imprisonment was served, the insurer shall remit to the person the amount of the income replacement benefit that would have been paid to him or her if he or she had not been imprisoned, together with interest, from the day the income replacement benefit was suspended until the day of payment.

Payment of weekly benefit for care of others

“178 The insurer shall pay the weekly benefit for the care of others pursuant to section 159 or 161 to the person entitled to it once every 14 days.

Payment of loss of studies benefits

“179 The insurer shall pay a loss of studies benefit payable pursuant to section 119, 122, 124 or 127 to the victim entitled to it at the end of the semester or school year, as the case may be, that the victim did not complete.

Payment in advance of decision respecting entitlement

“180(1) After receiving an application for a benefit but before making a decision respecting the claimant's entitlement, the insurer may pay a benefit that the claimant is or might be entitled to if the insurer is satisfied that the application is well founded.

(2) Notwithstanding Division 12, the insurer is not entitled to recover any benefits paid pursuant to subsection (1) unless the benefits were obtained by fraud.

Payment of benefits to reimburse expenses

“181 The insurer shall pay a benefit related to reimbursing expenses pursuant to Division 3 or 7 in one or more instalments of equal or approximately equal value to:

- (a) the person entitled to the benefit; or
- (b) the person to whom the amount of expenses is due.

Payment to estate

“182 If a benefit is payable to a person but not paid on the day the person dies, the insurer shall pay the benefit to the person's estate.

Payment to guardians

“183 If a person who is entitled to a benefit has a property guardian appointed pursuant to *The Dependent Adults Act* or *The Public Trustee Act* who is authorized to receive the payment, the insurer shall pay the benefit to the property guardian.

Benefits, other than income replacement benefits, not subject to seizure or assignment

“184(1) Subject to *The Enforcement of Maintenance Orders Act* and to the regulations, benefits, other than income replacement benefits, are exempt from garnishment, seizure, attachment, execution and any other process or claim.

(2) A person who is entitled to any benefits, other than income replacement benefits, may not assign the benefits to another person, and any purported assignment is null and void.

Refusal, reduction, suspension or termination of benefits

“185 The insurer may refuse to pay a benefit to a person or may reduce the amount of a benefit or suspend or terminate the benefit, where the person:

- (a) knowingly provides false or inaccurate information to the insurer;
- (b) refuses or neglects to produce information reasonably required by the insurer for the purposes of this Part or to provide an authorization reasonably required by the insurer to obtain the information;
- (c) without valid reason, refuses to return to his or her former employment, leaves an employment that he or she could continue to hold, or refuses a new employment;
- (d) without valid reason, neglects or refuses to undergo an examination by a practitioner, or interferes with an examination by a practitioner, requested or required by the insurer;
- (e) without valid reason, refuses, does not follow or is not available for treatment recommended by a practitioner and the insurer;
- (f) without valid reason, prevents or delays recovery by his or her activities;
- (g) without valid reason, does not follow or participate in a rehabilitation program made available by the insurer; or
- (h) prevents or obstructs the insurer from exercising any of its rights of recovery or subrogation pursuant to this Part.

“DIVISION 10

Indexation of Benefits

No Division 6 benefits if victim at fault

“186(1) Notwithstanding any other provision of this Part, a victim is not entitled to any lump sum benefits for permanent impairment pursuant to Division 6 to which the victim would otherwise be entitled if:

- (a) the victim is more than 50% responsible for an accident; and
- (b) the victim:

- (i) at the time of the accident:
 - (A) was the driver or had the care and control of an automobile involved in the accident; and
 - (B) was under the influence of alcohol or drugs to such an extent that the victim was incapable for the time being of having proper control of the automobile;
 - (ii) was convicted, with respect to the accident, of an offence pursuant to one of the following provisions of the *Criminal Code*:
 - (A) section 220;
 - (B) section 221;
 - (C) section 236;
 - (D) clause 249(1)(a), subsection 249(3) or subsection 249(4); or
 - (E) subsection 252(1); or
 - (iii) was convicted, with respect to the accident, of an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in subclause (ii).
- (2) For the purposes of subclause (1)(b)(i), a victim is conclusively deemed to be under the influence of alcohol or drugs to the extent that the victim was incapable for the time being of having proper control of an automobile involved in an accident if the victim is convicted, with respect to the accident, of an offence:
- (a) pursuant to section 253, subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (b) pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in clause (a).
- (3) The insurer shall determine whether a victim mentioned in subsection (1) was more than 50% responsible for the accident.
- (4) A victim who disagrees with a determination of the insurer pursuant to subsection (3) may appeal the determination to the Court of Queen's Bench within 180 days after receiving written notice of the insurer's determination.
- (5) For the purposes of this section, a certificate purporting to be signed by a judge of the convicting court or other officer having custody of the records of the convicting court certifying that a person has been convicted of an offence mentioned in subsection (1) or (2) is admissible in evidence as proof, in the absence of evidence to the contrary, of the conviction of that person without proof of the handwriting or position of the person purporting to have signed the certificate.

Interpretation of Division

- “187(1)** In this Division, **“consumer price index”** means the consumer price index mentioned in subsections (2) to (4).
- (2) Subject to subsections (3) and (4), in this Division, the consumer price index is the “all-items” Consumer Price Index for Saskatchewan as published monthly by Statistics Canada.
- (3) Where no figure for the “all-items” Consumer Price Index for Saskatchewan is published by Statistics Canada for a month, the insurer shall determine a figure for that month in accordance with the regulations.
- (4) Where, after the day this Part comes into force, Statistics Canada uses a new method to determine the “all-items” Consumer Price Index for Saskatchewan for a particular month and the new method results in a change of more than 1% when compared with the former method, the insurer shall determine a figure in accordance with the regulations.

Timing of required adjustments

- “188(1)** On the anniversary of an accident, the insurer shall adjust the amount of the gross yearly employment income for the purposes of recalculating a victim's net income pursuant to section 132, 133 or 137.
- (2) On each anniversary of the date on which an employment was determined pursuant to section 131, the insurer shall adjust that gross yearly employment income for that employment.

(3) On January 1 of each year, the insurer shall adjust any amounts set out in this Part, other than the maximum yearly insurable earnings set out in section 138.

(4) The amounts as adjusted pursuant to subsection (3) are applicable in calculating the amount of any benefit.

Calculation of adjustment

“189(1) Subject to section 190, an amount to be adjusted pursuant to this division is to be adjusted in accordance with the following formula:

$$AM = A \times \frac{CPICY}{CPIPY}$$

where:

AM is the amount as adjusted;

A is the amount to be adjusted;

CPICY is the consumer price index for the year in which the adjustment is being made; and

CPIPY is the consumer price index for the previous year.

(2) For the purposes of this section, the consumer price index for a year is the average of the consumer price indices for each of the 12 months preceding October 1 of the previous year.

(3) If the average of the monthly consumer price indices for a year includes more than one decimal, only the first digit is to be retained, and it is to be increased by one unit if the second digit is greater than four.

(4) If the ratio between the consumer price index for the current year and the consumer price index for the previous year includes more than three decimals, only the first three digits are to be retained, and the third digit is to be increased by one unit if the fourth digit is greater than four.

(5) After adjusting pursuant to this section, the insurer shall round the resulting amount to the nearest dollar.

Cap on adjustments

“190(1) Subject to subsection (2), where the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1, the ratio is deemed to be 1.06:1.

(2) When authorized by the regulations, the insurer may use the ratio calculated pursuant to section 189 even though the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1.

“DIVISION 11

Insurer's Decisions and Appeals

Insurer's decisions final

“191 Notwithstanding any other Act or law, any decision made or action taken by the insurer pursuant to this Part is final and conclusive and may be reviewed by a court only in accordance with this Division.

Insurer to give written reasons

“192(1) The insurer shall give a claimant a written decision respecting the claimant's claim for a benefit.

(2) At the time the insurer sends a claimant a written decision, it shall give the claimant:

(a) written reasons for the decision; and

(b) written notice of the claimant's right to ask for a review and appeal of the insurer's decision pursuant to this Division.

Reconsideration before review or appeal

“193(1) The insurer at any time may reconsider its decision with respect to a claim for a benefit if it is satisfied that new information is available respecting the claim.

- (2) At any time before a claimant applies for a review of or appeals a decision, the insurer may reconsider the decision if:
- (a) in the opinion of the insurer, a substantive or procedural error was made respecting the decision; or
 - (b) the decision contains a written error, an error in calculating or a clerical error.

Application for review

- “194(1)** Within 60 days after receiving notice of a decision pursuant to this Part, a claimant may apply in writing to the insurer for a review of the decision.
- (2) The insurer may waive the time limitation mentioned in subsection (1) if it is satisfied that the claimant has a reasonable excuse for not making the application within that time limitation.

Review

- “195(1)** On a review of its decision, the insurer may set aside, confirm or vary its decision.
- (2) The insurer shall provide a claimant who applied for a review with written reasons for its decision and a written notice of the claimant's right to appeal the insurer's decision pursuant to this Part.

Mediation

- “196(1)** Within 30 days of receiving the insurer's decision pursuant to section 194, a claimant may notify the insurer in writing of the claimant's request to mediate the claimant's claim for benefits.
- (2) A claimant who requests mediation shall pay the insurer a prescribed fee.
- (3) In the claimant's request for mediation, the claimant shall state the issues respecting the claim that are to be the subject of the mediation.
- (4) The claimant and the insurer shall agree on the appointment of a mediator within 15 days of the insurer receiving a written request for mediation.
- (5) If the claimant and the insurer are unable to agree on a mediator within the period mentioned in subsection (4), either the claimant or the insurer may apply to the Court of Queen's Bench to appoint a mediator.
- (6) A mediator appointed pursuant to this section shall endeavour to assist the parties to settle the issues that are the subject of the mediation.
- (7) Subject to this section, a mediation pursuant to this section is to be conducted in accordance with the prescribed procedures.
- (8) The insurer shall bear the costs of the mediation.
- (9) Evidence arising from anything said, evidence of anything said or evidence of an admission or communication made in the course of mediation pursuant to this section is not admissible in any appeal pursuant to this Part, except with the consent of the mediator, the claimant and the insurer.

Application for appeal

- “197** A claimant may appeal the insurer's decision on review to the Court of Queen's Bench:
- (a) subject to clause (b), within 90 days after receiving the insurer's written reasons pursuant to section 195; or
 - (b) if a claimant has requested mediation pursuant to section 196, within 90 days of the termination of mediation.

Appeal

- “198(1)** On an appeal, the Court of Queen's Bench shall adopt the insurer's findings of fact unless the claimant puts them in issue.
- (2) If a claimant puts the insurer's findings of fact in issue, the Court of Queen's Bench may hold a hearing to determine the facts.
- (3) On an appeal, the Court of Queen's Bench may:
- (a) set aside, confirm or vary the insurer's decision; or
 - (b) make any decision that the insurer is authorized to make pursuant to this Part.

(4) If the Court of Queen's Bench determines that the insurer should have been paying the claimant benefits other than those which the insurer has been paying, the Court may award interest on the value of the benefits not paid, from the date when those benefits should have been paid until the date of the Court's decision.

(5) Subject to the regulations, the insurer shall reimburse a claimant who is successful on an appeal pursuant to this section or section 199 for the claimant's costs on a solicitor and client basis.

Appeal to the Court of Appeal

“199(1) The insurer or the claimant may appeal a decision of the Court of Queen's Bench to the Court of Appeal only on a question of law or jurisdiction.

(2) An appeal pursuant to this section must be made within 30 days after the date of the decision of the Court of Queen's Bench or within any further time that a judge of the Court of Appeal may allow.

Appeal does not stay decision

“200 An application for review or appeal pursuant to this Division respecting a benefit does not stay or affect the validity of the insurer's decision respecting the payment of a benefit.

“DIVISION 12 Recovery of Benefits

Overpayment

“201(1) The following payments are overpayments pursuant to this Part:

- (a) a benefit payment, other than a benefit payment pursuant to section 180 or a benefit payment mentioned in section 204, to which a person is not entitled;
- (b) a benefit payment made to a person who prevents or obstructs the insurer from exercising any of its rights of subrogation pursuant to this Part.

(2) A person who has received an overpayment pursuant to this Part shall repay the amount of the overpayment to the insurer.

(3) An overpayment pursuant to this Part is a debt due to the insurer, and the insurer may recover an overpayment:

- (a) by deducting the amount of the overpayment from any other payments that the insurer owes to that person; or
- (b) by any other means allowed by law.

Time limits for recovery

“202 The insurer may commence an action to recover an overpayment:

- (a) within two years after the date that the amount of the overpayment was paid to a person;
- (b) where the amount of the overpayment was paid as a result of fraud, within two years after the day the fraud is first known or discovered by the insurer;
- (c) where the person to whom the benefits were paid has prevented or obstructed the insurer from exercising its rights of subrogation, within two years from the date that the insurer knows about or first discovers an act of that person relating to the prevention or obstruction.

Cancellation of overpayment

“203 The insurer may cancel all or any part of an overpayment where the insurer considers that it is not recoverable.

Certain amounts not overpayments

“204 The following amounts are not overpayments for the purposes of this Division:

- (a) any benefits paid by the insurer before a decision of the Court of Queen's Bench or the Court of Appeal to cancel the benefit or reduce the amount of the benefit, unless the benefits were obtained by fraud;
- (b) any benefits paid by the insurer before a decision of the insurer to cancel the benefit or

reduce the amount of the benefit, unless the benefits were obtained by fraud.

“DIVISION 13

Compensation pursuant to other Acts and Plans

Private insurance claims not affected

“205 This Part does not limit or affect the rights of any person who claims or receives a benefit to claim compensation under a private insurance scheme.

Compensation pursuant to *The Workers' Compensation Act, 1979* or other Act

“206(1) Notwithstanding any other provision of this Part, no benefits are payable to a person as a result of an accident if that person is entitled, with respect to that accident, to compensation pursuant to *The Workers' Compensation Act, 1979* or any other Act that relates to the compensation of persons who are victims of an industrial accident.

(2) Where a person is receiving a benefit and because of another bodily injury becomes entitled to compensation pursuant to *The Workers' Compensation Act, 1979* or is receiving compensation pursuant to *The Workers' Compensation Act, 1979* and, because of another bodily injury, the person becomes entitled to a benefit:

(a) the insurer and the Workers' Compensation Board shall:

- (i) make a joint decision distinguishing between the bodily injury attributable to the accident with respect to which a benefit is payable and the bodily injury for which a wage loss benefit is payable pursuant to *The Workers' Compensation Act, 1979*; and
- (ii) pay compensation in proportion to the attribution of the person's bodily injuries; and

(b) the insurer or the Workers' Compensation Board, as the case may be, shall continue to pay the benefit or the compensation until the joint decision is made.

(3) The insurer may make an agreement with the Workers' Compensation Board respecting the procedure to be followed for handling claims by a person mentioned in subsection (2) and the Workers' Compensation Board has the power to make that agreement.

Disability payments to reduce income replacement benefit

“207 If, as a result of an accident, a victim is entitled to an income replacement benefit and a disability benefit pursuant to the *Canada Pension Plan* or any similar program in a jurisdiction outside Saskatchewan, the insurer shall reduce the income replacement benefit by the amount of the disability benefit payable to the victim.

Subrogation for compensation pursuant to other Acts

“208 Subject to section 103, if a person receives compensation pursuant to *The Workers' Compensation Act, 1979*, *The Saskatchewan Hospitalization Act* or *The Saskatchewan Medical Care Insurance Act* respecting a bodily injury caused by an automobile, the body authorizing the compensation pursuant to that Act:

(a) is subrogated to the person's rights; and

(b) has the same remedies as the insurer to recover the compensation from any person who is not resident in Saskatchewan and is responsible for the accident, or who is liable to pay compensation for bodily injury caused by the non-resident.

“DIVISION 14

General

Substantial compliance with forms and notices

“209 Substantial compliance with requirements respecting the content of forms, notices or other documents is sufficient unless the insurer is of the opinion that it would result in unfairness to any person.

Ex gratia payments

“210 Where the insurer considers that the payment of a person's claim is in the interest of the insurer and the better administration of this Part, the insurer may authorize an *ex gratia* payment to be made to that person.

Immunity

“211 No action lies or shall be instituted against the insurer or any director, officer, employee or agent of the insurer, where that person is acting pursuant to the authority of this Part or the regulations, for any loss or damage suffered by any person by reason of anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done, by any one or more of them pursuant to or in the exercise or supposed exercise of any power conferred by this Part or the regulations or in the carrying out or supposed carrying out of any duty imposed by this Part or the regulations.

Non-compellability

“212(1) A director, officer, employee or agent of the insurer is not compellable to give evidence or to produce any documents or other things in a court or in a proceeding of a judicial nature concerning any information that comes to the knowledge of that director, officer, employee or agent in the exercise of the powers, performance of the duties or carrying out of the functions of the insurer pursuant to this Part.

(2) This section does not apply to an appeal made pursuant to Division 11.

Agreements

“213 The insurer may enter into agreements with any department or agency of the Government of Saskatchewan, any government in Canada or the United States of America or any agency of that government, or any other person respecting any matter or thing that the insurer considers necessary or appropriate to advance the purposes of this Part.

Offence and penalty

“214 Every person who contravenes any provision of this Part or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000.

Computation of interest rates

“215 Where interest is payable pursuant to this Part or the regulations, the interest is to be computed in accordance with the regulations.

Service

“216 Where a claim, notice or other document is required to be given or served pursuant to this Part or the regulations, the claim, notice or document is to be given or served in the prescribed manner.

Regulations

“217(1) The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or phrase used in this Part but not defined in this Part;
- (b) respecting the form and content of applications made pursuant to this Part;
- (c) prescribing educational institutions or classes of educational institutions for the purposes of this Part;
- (d) prescribing the manner in which the insurer may determine the industrial average wage or the consumer price index;
- (e) respecting structured compensation orders pursuant to section 103;
- (f) respecting rehabilitation benefits payable pursuant to Division 3;
- (g) prescribing other benefits that the insurer shall consider when calculating an income

replacement benefit;

(h) respecting the procedure applicable to, and the proof required for, claims for compensation;

(i) respecting the circumstances in which an employment is considered to be full-time employment or part-time or temporary employment;

(j) respecting gross yearly employment incomes, including determining gross yearly employment incomes for workers in the employ of another and self-employed workers, establishing classes of employment, and determining the amount of gross yearly employment incomes on a weekly or yearly basis;

(k) respecting gross yearly employment incomes for the purpose of section 112, 113, 114, 115, 116, 120 or 125;

(l) respecting standards and procedures for determining an employment for victims pursuant to sections 131 and 134, including establishing classes of employment, determining gross yearly employment incomes on a yearly or weekly basis for each class of employment based on work experience, and establishing the manner of reducing the gross incomes for victims holding part-time employment;

(m) respecting the calculating of the net income of a victim, including the amount of the income tax, premium and contribution mentioned in section 137;

(n) prescribing the terms governing the payment of a replacement worker benefit pursuant to section 141;

(o) respecting the manner of capitalization pursuant to subsection 146(4) or 148(3);

(p) respecting the payment of education benefits pursuant to section 152;

(q) respecting the establishment of a schedule of permanent impairments;

(r) for Divisions 3 and 7, respecting the reimbursement of expenses, including the expenses that are eligible for reimbursement, the terms and conditions under which the insurer may reimburse expenses and the maximum amounts that may be reimbursed, and respecting the circumstances in which the insurer may replace reimbursement of expenses pursuant to section 158 with the payment of a periodic allowance;

(s) respecting the adjustment or termination of benefits pursuant to section 159 and expenses reimbursed pursuant to section 163, including the circumstances in which the benefits may be adjusted or terminated and the amounts of adjusted benefits;

(t) respecting benefits payable pursuant to section 164;

(u) respecting examinations pursuant to Division 8, including the content of reports based on examinations;

(v) respecting allowances and the reimbursement of expenses mentioned in section 171, including the circumstances in which the allowances may be paid and the expenses may be reimbursed;

(w) respecting the reimbursement of the cost of reports pursuant to section 174, including the maximum amount that may be reimbursed;

(x) for the purposes of section 190, authorizing the use of ratios calculated pursuant to section 189;

(y) respecting mediation pursuant to section 196, including prescribing procedures pursuant to which mediation shall be conducted;

(z) prescribing fees payable by a claimant who requests mediation pursuant to section 196;

(aa) respecting the transmission of facsimiles of documents by telephone to and from the insurer;

(bb) respecting the manner in which a person's debt to the insurer may be deducted from compensation payable to the person by the insurer;

(cc) respecting the computation of interest pursuant to this Part;

(dd) respecting the manner in which a claim, notice or other document is to be served or given;

(ee) prescribing any other matter or thing that this Part requires to be prescribed in the regulations;

(ff) respecting any other matter that the Lieutenant Governor in Council considers conducive to attain the purposes of this Part.

(2) The regulations made pursuant to clause (1)(q) may adopt by reference any specifications, standards or codes recognized by the insurer, either as of a fixed date, or as amended from time to time.

(3) A regulation made pursuant to clause (1)(g) may be made retroactive to a day not earlier than the day that this Part came into force.

Part to prevail

“218 This Part and the regulations prevail if there is any conflict or inconsistency between:

- (a) this Part and the regulations; and
- (b) any other Act or regulations.

Rights on subrogation

“219 Where the insurer or another body is given a right of subrogation pursuant to this Part by reason of paying or becoming liable to pay a benefit or compensation, the insurer or other body is deemed to be an assignee and is subrogated to all rights of recovery of the person to whom or with respect to whom or for whose benefit the benefit or compensation was paid or is payable and may:

- (a) bring an action in its or his or her own name to recover the amount of the benefit or compensation paid or payable; or
- (b) join with the person to whom or with respect to whom or for whose benefit the benefit or compensation was paid or is payable to bring an action in the name of that person for the recovery of damages resulting from the injury or death of a victim.

Review committee

“220(1) The Lieutenant Governor in Council shall appoint a review committee, consisting of at least five members.

(2) The first review committee is to be appointed within five years of the day that this Part comes into force.

(3) Review committees appointed after the first review committee are to be appointed within five years from the date that the Lieutenant Governor in Council received the report of the previous review committee.

(4) The Lieutenant Governor in Council shall:

- (a) appoint the members of the review committee and shall designate one of those members to be chairperson of the committee and another member to be acting chairperson; and
- (b) specify the number of members that constitutes a quorum.

(5) The review committee shall review and report to the Lieutenant Governor in Council on all matters concerning this Part, the regulations made pursuant to this Part and the administration of this Part and the regulations made pursuant to this Part.

(6) The minister shall provide any technical, clerical and other assistance that the review committee may require.

(7) The chairperson of the review committee, or in the chairperson's absence the acting chairperson, has the powers of a commissioner pursuant to *The Public Inquiries Act* and the review committee may receive and accept any evidence and information under oath or by affidavit or otherwise that it may consider proper”.

Coming into force

19(1) Subject to subsection (2), this Act, or all or any provision of Part VIII of *The Automobile Accident Insurance Act* being enacted by this Act, comes into force on proclamation.

(2) Sections 4 to 6, clause 9(a), and sections 10 to 13 and 15 to 17 of this Act come into force on July 1, 1994.