

Right of Action & Subrogation

Historically, workers gave up the right to sue their employer for a work injury in exchange for compensation benefits. The following tables provide information on: rights of action; actions against 3rd parties; subrogation; motor vehicle accidents; and actions against contractors/subcontractors.

See '[About Workers' Compensation](#)' for further information on the history of workers' compensation.

Go directly to:

- [Right of action](#): These tables describe whether a right of action (i.e. ability to take legal action) exists.
- [Action against 3rd party](#): These tables describe when an action may be possible against a 3rd party (for example, if a 3rd party is the cause of a worker's injury, an action against that 3rd party may exist, for example, because of negligence, assault or product liability).
- [Subrogation](#): These tables describe how subrogation works in each jurisdiction. Subrogation is when the Workers' Compensation Board/Commission (WCB) assumes the legal rights of someone else (usually an injured worker). For example, the WCB steps into the shoes of an injured worker to take legal action against someone who caused the workers' injury.
- [Motor vehicle](#): These tables describe what happens when a worker is injured due to a motor vehicle accident.
- [Action against contractor/subcontractor](#): These tables deal specifically with actions available against contractors and/or subcontractors.

Source: Association of Workers' Compensation Boards of Canada – 2013

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Right of Action

The following tables describe whether a right of action (i.e. ability to take legal action) exists.

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Newfoundland and Labrador

The following table describes whether a right of action (i.e. ability to take legal action) exists in Newfoundland and Labrador.

Newfoundland and Labrador	Right of Action
Right of Action:	Section 44 of the Act prevents a worker or his or her dependents from suing another worker or an employer covered under the Act. Even though another worker or an employer may have been responsible for the injury, a worker or dependent has no choice other than to claim compensation. Where another worker or an employer has caused an injury, it must be clearly established that they were in the course of their employment (and, therefore, covered under the Act) at the time of injury. The restrictions on rights of action in Section 44 do not apply where a worker is injured or killed in a motor vehicle accident or while being transported in a vehicle or craft for which public liability insurance is required to be carried. This is provided for in Section 44.1 of the Act. Where a right of action exists following a work injury.
Section of Act:	Workplace Health, Safety and Compensation Act (sections 44, 44.1, 45, 46)
Policy:	WHSCC - Policies and procedures : EN-08 Third Party Actions
Related Links:	WHSCC Brochure - Third party actions - Your right to sue

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Prince Edward Island

The following table describes whether a right of action (i.e. ability to take legal action) exists in Prince Edward Island.

Please note, PEI's information was last updated in 2012. 2013 information was unavailable at time of publishing.

Prince Edward Island	Right of Action
Right of Action:	A worker or the worker's dependants cannot bring an action against the worker's employer or another worker acting in the course of employment for the same employer. An action also cannot be brought against any other employer or a worker of that employer except when the accident happens to the worker as the result of the use, by the worker or any other person, of a motor vehicle as defined in the <i>Highway Traffic Act</i> that is required to be registered under that Act. A right of action exists against any other third party.
Section of Act:	Workers Compensation Act (sections 11 – 13)
Policy:	POL-87 Third Party Actions
Related Links:	N/A

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Nova Scotia

The following table describes whether a right of action (i.e. ability to take legal action) exists in Nova Scotia.

Nova Scotia	Right of Action
Right of Action:	<ul style="list-style-type: none">• A worker has no right of action against an employer or another worker in an industry under the Act for an injury that occurs while in the course of employment• The Appeals Tribunal has exclusive jurisdiction to decide all disputes about rights of action and related issues
Section of Act:	Workers' Compensation Act (sections 28 & 29)
Policy:	N/A
Related Links:	N/A

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New Brunswick

The following table describes whether a right of action (i.e. ability to take legal action) exists in New Brunswick.

New Brunswick	Right of Action
Right of Action:	There are two situations where there is a right of action: <ul style="list-style-type: none">• When an accident involves a motor vehicle; and• When a worker covered under the <i>WC Act</i>, has a workplace accident involving a third party.
Section of Act:	Workers' Compensation Act (sections 10, 11, 12)
Policy:	Policy No. 46-220 Third Party Actions
Related Links:	N/A

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Quebec

The following table describes whether a right of action (i.e. ability to take legal action) exists in Quebec.

Quebec	Right of Action
Right of Action:	A worker injured at work cannot bring a civil action against his employer because of his injury. A beneficiary cannot bring a civil action because of his injury against an employer subject to this Act other than the employer of the injured worker and only: <ol style="list-style-type: none">1. if that employer has committed an offence under the Criminal Code (Revised Statutes of Canada (1985), chapter C-46) or a criminal act under this code;2. to recover the balance of the loss suffered on the benefit;3. if that employer is responsible for an occupational injury covered by Section 31; or4. if that employer is held personally liable for the payment of the benefits.
Section of Act:	Act Respecting Industrial Accidents and Occupational Diseases (sections 438-445)
Policy:	N/A
Related Links:	N/A

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Ontario

The following table describes whether a right of action (i.e. ability to take legal action) exists in Ontario.

Ontario	Right of Action
Right of Action:	<p>The Act provides no fault loss of earnings benefits for injuries arising out of and in the course of employment in lieu of all rights of action that a worker or survivor may have against the worker's employer. In most cases any right of action is taken away by the Act. However, there are circumstances where a worker or survivor may have a right of action against a third party. Workers have a right to sue if their injury or disease results from the negligence of a third party, i.e., someone other than the worker or the employer, and that person is not covered under Schedule 1.</p> <p>Where a worker is entitled to claim benefits and is also entitled to commence an action, the worker must elect to either claim benefits or to commence an action.</p> <p>When all parties involved in the accident were in the course of their employment, the worker has no right of action against any Schedule 1 employer, director, executive officer or worker.</p> <p>When all parties involved in the accident were in the course of their employment, a Schedule 2 worker has no right of action against the worker's own Schedule 2 employer, executive officers, directors or workers of the same Schedule 2 employer.</p> <p>If the worker signs an election form and receives benefits from the WSIB, there is no statutory right to withdraw the claim and proceed with a right of action.</p> <p>If a worker of a Schedule 1 or Schedule 2 employer signs an election form to receive benefits as a result of a motor vehicle accident that occurred after October 31, 1996, the WSIB and the Schedule 2 employer have no right to bring an action on behalf of the worker.</p>
Section of Act:	<u>Workplace Safety and Insurance Act</u> (sections 26-31)
Policy:	<ul style="list-style-type: none">• <u>Policy 15-01-05, Third Party Rights of Action</u>• <u>Policy 15-01-06, Third Party Motor Vehicle Accident Claim Costs</u>• <u>Policy 14-05-01, Transfer of Costs</u>• <u>Policy 14-05-02, Removal of Costs</u>
Related Links:	N/A

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Manitoba

The following table describes whether a right of action (i.e. ability to take legal action) exists in Manitoba.

Manitoba	Right of Action
Right of Action:	<p>Immunity from lawsuit only applies to workers and employers covered by workers compensation. On occasion, a covered worker may be injured under circumstances that entitle him or her to sue a person other than a covered worker or employer, Someone other than a worker or employer is called a "third party". In third-party cases, the injured worker or his or her dependants may elect to claim workers compensation or take an action against the third party.</p> <p>For work performed outside Manitoba, the WCB extends benefit coverage to workers in certain cases. However, the law where the accident happens generally governs the employer's immunity or liability.</p> <p>Employers and workers are subject to the laws in the jurisdiction where an accident happens.</p> <p>Workers injured outside Manitoba may also be entitled to compensation under the workers compensation system in the place where the accident occurred. Workers are required to choose in which jurisdiction they want to file a claim.</p>
Section of Act:	<u>Workers Compensation Act</u> (sections 9, 9.1, 10, 12, 13, 60.8(1)(b), 68(4), 112)
Policy:	<ul style="list-style-type: none">• <u>Policy 22.10, Elective Rights</u>• <u>Policy 31.05.10, Cost Relief/Cost Transfers</u>• <u>Policy 31.10.40, Recoveries From Third Parties</u>
Related Links:	N/A

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Saskatchewan

The following table describes whether a right of action (i.e. ability to take legal action) exists in Saskatchewan.

Saskatchewan	Right of Action
Right of Action:	Right to bring action against a person other than an employer or a worker acting in the course of employment; no right of action for employer or worker against an employer or worker with respect to an injury sustained in the course of employment.
Section of Act: ¹	Workers' Compensation Act, 1979 (sections 39-44, 166-168)
Policy:	Policy & Legislation : POL 01/2013, 04/2007
Related Links:	N/A

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Alberta

The following table describes whether a right of action (i.e. ability to take legal action) exists in Alberta.

Alberta	Right of Action
Right of Action:	Right of Action exists where a worker, or their dependants are entitled to compensation under the Act for a work related injury and the accident giving rise to the injury was caused by the fault or negligence of a party who is not a participant in the workers' compensation system in Alberta.
Section of Act:	Workers' Compensation Act (sections 21 and 23)
Policy:	Policy G-3 – Third Party Actions
Related Links:	N/A

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¹ As of January 2014, The Workers' Compensation Act, 2013 comes into effect in Saskatchewan. Accordingly, the policy and statutory references shown are subject to change.

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British Columbia

The following table describes whether a right of action (i.e. ability to take legal action) exists in British Columbia.

British Columbia	Right of Action
Right of Action:	<p>An injured worker or a dependant of an injured worker has no right of action against the employer of the worker or against any employer within the scope of the Act, or against any worker in respect of any personal injury, disablement, or death arising out of and in the course of the employment.</p> <p>An action may not be maintained or brought against the Board or a director, an officer, or an employee of the Board in respect of any act, omission or decision that was within the jurisdiction of the Board or that the Board, director, officer or employee believed was within the jurisdiction of the Board.</p>
Section of Act:	Workers Compensation Act (sections 10, 96, 113)
Policy:	Policy Item #111.10 Injury Caused by Worker or Employer
Related Links:	N/A

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Yukon

The following table describes whether a right of action (i.e. ability to take legal action) exists in Yukon.

Yukon	Right of Action
Right of Action:	<p>A worker cannot take action against an employer or another worker.</p> <p>Section 50 of the Act addresses the fact that the Act stands in all rights of causes and action, where there is a work-related injury arising out of the employment. Section 51 speaks to the fact that where there is a cause of action in respect of a work-related injury, the board is deemed to be an assignee of the cause of action and the board is vested with all the rights to any cause of action.</p>
Section of Act:	Workers' Compensation Act (sections 50, 51)
Policy:	N/A
Related Links:	N/A

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Northwest Territories and Nunavut

The following table describes whether a right of action (i.e. ability to take legal action) exists in Northwest Territories and Nunavut.

Northwest Territories and Nunavut	Right of Action
Right of Action:	<p>No action may be brought, by or on behalf of an eligible claimant, against a worker or an employer in respect of a personal injury, disease or death suffered by another worker arising out of and during the course of employment.</p> <p>Exceptions to this include actions against:</p> <ul style="list-style-type: none">• a worker who was not acting in the course of his or her employment;• an employer who was not acting in the course of its business; or• a worker or the employer operating a motor vehicle that causes a injury, death or disease and is covered by liability insurance.
Section of Act:	Workers' Compensation Act (section 62)
Policy:	Policy 00.06, Third Party Actions
Related Links:	N/A

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Action Against 3rd Party

The following tables describe when an action may be possible against a 3rd party.

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Newfoundland and Labrador

The following table describes when an action may be possible against a 3rd party in Newfoundland and Labrador.

Newfoundland and Labrador	Action Against 3rd Party
Action Against 3rd Party:	Section 45 of the Act states that a worker or dependent may claim compensation or may bring an action. Among other things, this section provides guidelines which direct a worker or dependent to elect one option or the other within 3 months of the injury. Under Section 45, the Commission will consider whether an employer or worker from another jurisdiction can be sued. For example, a right of action may exist against a manufacturer or designer of an injury-causing product if that product was imported to the province. In any case, a worker or dependents must elect to claim compensation or pursue an action.
Section of Act:	Workplace Health, Safety and Compensation Act (sections 44, 44.1, 45, 46)
Policy:	WHSCC - Policies and procedures : EN-08 Third Party Actions
Related Links:	WHSCC Brochure - Third party actions - Your right to sue

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Prince Edward Island

The following table describes when an action may be possible against a 3rd party in Prince Edward Island.

Please note, PEI's information was last updated in 2012. 2013 information was unavailable at time of publishing.

Prince Edward Island	Action Against 3rd Party
Action Against 3rd Party:	Where a right of action exists, the worker or the worker's dependants may elect to claim compensation or to bring the action.
Section of Act:	Workers Compensation Act (section 11)
Policy:	POL-87 Third Party Actions
Related Links:	N/A

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Nova Scotia

The following table describes when an action may be possible against a 3rd party in Nova Scotia.

Nova Scotia	Action Against 3rd Party
Action Against 3rd Party:	A worker can elect to claim compensation or pursue an action against the third party, in circumstances where tort action is possible.
Section of Act:	Workers' Compensation Act (section 30)
Policy:	N/A
Related Links:	N/A

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New Brunswick

The following table describes when an action may be possible against a 3rd party in New Brunswick.

New Brunswick	Action Against 3rd Party
Action Against 3rd Party:	When there is evidence of third party involvement in a workplace accident WorkSafeNB has the injured worker fill a form of election indicating if they wish to sue the third party or claim compensation from WorkSafeNB.
Section of Act:	Workers' Compensation Act (sections 10, 11, 12)
Policy:	Policy No. 46-220 Third Party Actions
Related Links:	N/A

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Quebec

The following table describes when an action may be possible against a 3rd party in Quebec.

Quebec	Action Against 3rd Party
Action Against 3rd Party:	A beneficiary cannot bring a civil action because of his work injury against an employee or a representative of an employer subject to this Act for an offence committed in the course of his work, unless it is a health professional responsible for an occupational injury under Section 31.
Section of Act:	Act Respecting Industrial Accidents and Occupational Diseases (section 442)
Policy:	N/A
Related Links:	N/A

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Ontario

The following table describes when an action may be possible against a 3rd party in Ontario.

Ontario	Action Against 3rd Party
Action Against 3rd Party:	The Act provides benefits for injuries arising out of and in the course of employment in lieu of all rights of action that a worker or survivor may have against the worker's employer. In most cases any right of action is taken away by the Act. However, there are circumstances where a worker or survivor may have a right of action against a third party. Workers have a right to sue if their injury or disease results from the negligence of a third party, i.e., someone other than the worker or the employer, and that person is not covered under Schedule 1.
Section of Act:	Workplace Safety and Insurance Act (sections 26-31)
Policy:	Policy 15-01-05, Third Party Rights of Action
Related Links:	N/A

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Manitoba

The following table describes when an action may be possible against a 3rd party in Manitoba.

Manitoba	Action Against 3rd Party
Action Against 3rd Party:	<p>A worker or his or her dependants can claim either compensation with the WCB or sue the third party for damages. If the worker elects compensation, the right of action vests in the WCB. The WCB may pursue legal action on behalf of the worker, his or her dependants and the WCB. In third-party cases, the WCB seeks full common-law damages. WCB benefits are payable to the worker or dependants whether or not the third-party action is successful.</p> <p>If a third-party action is successful, the Act requires the WCB accident fund to be reimbursed for amounts advanced, including legal expenses and compensation payments. The WCB then pays the excess, if any, to the worker or his or her dependants. If no excess is recovered, the worker or dependants are still entitled to the full amount of workers compensation benefits.</p>
Section of Act:	Workers Compensation Act (sections 9, 9.1, 10, 12, 13, 60.8(1)(b), 68(4), 112)
Policy:	Policy 31.10.40, Recoveries From Third Parties
Related Links:	N/D

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Saskatchewan

The following table describes when an action may be possible against a 3rd party in Saskatchewan.

Saskatchewan	Action Against 3rd Party
Action Against 3rd Party:	The worker can claim and bring an action where that person is other than an employer or worker acting in the course of employment with respect to an injury sustained by a worker in the course of his employment.
Section of Act: ²	Workers' Compensation Act (section 39)
Policy:	Policy & Legislation : POL 01/2013, 04/2007
Related Links:	N/A

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Alberta

The following table describes when an action may be possible against a 3rd party in Alberta.

Alberta	Action Against 3rd Party
Action Against 3rd Party:	Where there is an action possible against a third party, it is pursued by the WCB through tort law, either using internal WCB counsel or by outside counsel retained by the WCB. Actions are generally filed in the Courts of Alberta; however the WCB also pursues cases in other jurisdictions where appropriate. Actions usually arise out of motor vehicle accidents, however a variety of causes of action are pursued including negligence, assault and products liability.
Section of Act:	Workers' Compensation Act (sections 22 and 22.1)
Policy:	Policy G-3 – Third Party Actions
Related Links:	N/A

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2 As of January 2014, The Workers' Compensation Act, 2013 comes into effect in Saskatchewan. Accordingly, the policy and statutory references shown are subject to change.

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British Columbia

The following table describes when an action may be possible against a 3rd party in British Columbia.

British Columbia	Action Against 3rd Party
Action Against 3rd Party:	Where the cause of injury, disablement or death of a worker is such that an action lies against some person, other than an employer or worker within the scope of the Act, the worker or dependant may claim compensation or may bring an action. If the worker or dependant elects to claim compensation, he or she must do so within 3 months of the occurrence of the injury or any longer period that the Board allows.
Section of Act:	Workers Compensation Act (section 10)
Policy:	Policy Item #111.20 Injury Not Caused by Worker or Employer
Related Links:	N/A

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Yukon

The following table describes when an action may be possible against a 3rd party in Yukon.

Yukon	Action Against 3rd Party
Action Against 3rd Party:	If the board becomes an assignee in a cause of action, they can take action against any person with the board's consent.
Section of Act:	Workers' Compensation Act (section 51(2))
Policy:	N/A
Related Links:	N/A

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Northwest Territories and Nunavut

The following table describes when an action may be possible against a 3rd party in Northwest Territories and Nunavut.

Northwest Territories and Nunavut	Action Against 3rd Party
Action Against 3rd Party:	When a worker is injured or dies as a result of the negligence of an individual who is not entitled to protection (immunity) under the <i>Act(s)</i> , the WSCC may pursue a civil action to recover damages incurred as a result of the injury or death of a worker.
Section of Act:	Workers' Compensation Act (section 64)
Policy:	Policy 00.06, Third Party Actions
Related Links:	N/A

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Subrogation

The following tables describe how subrogation works in each jurisdiction. Subrogation is when the Workers' Compensation Board/Commission (WCB) assumes the legal rights of someone else (usually an injured worker). For example, the WCB steps into the shoes of an injured worker to take legal action against someone who caused the workers' injury.

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Newfoundland and Labrador

The following table describes how subrogation works in Newfoundland and Labrador.

Newfoundland and Labrador	Subrogation
Subrogation:	When a worker or dependent elects to claim compensation the Commission is subrogated to the court action. The Commission will sue if, pursuant to Section 45(9) of the Act, its legal department determines there is a worthwhile cause of action against a third party.
Section of Act:	Workplace Health, Safety and Compensation Act (sections 44, 44.1, 45, 46)
Policy:	WHSCC - Policies and procedures : EN-08 Third Party Actions
Related Links:	WHSCC Brochure - Third party actions - Your right to sue

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Prince Edward Island

The following table describes how subrogation works in Prince Edward Island.

Please note, PEI's information was last updated in 2012. 2013 information was unavailable at time of publishing.

Prince Edward Island	Subrogation
Subrogation:	If a worker or dependants have claimed compensation, the Board is subrogated to the position of the worker or dependant as against the person against whom the action may be brought. The Board is not obligated to sue for or to require payment of damages caused by the accident and the Board has full power to compromise the cause of action or release its claim if, in its discretion, it thinks it inadvisable to bring action for the damages.
Section of Act:	Workers Compensation Act (section 11)
Policy:	POL-87 Third Party Actions
Related Links:	N/A

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Nova Scotia

The following table describes how subrogation works in Nova Scotia.

Nova Scotia	Subrogation
Subrogation:	<ul style="list-style-type: none">• A worker must have WCB consent to pursue legal action• WCB may either consent to the worker pursuing legal action or may itself bring an action in the name of the worker• WCB may bring an action in the name of the worker, a personal representative or a dependant or by the WCB in its own name• A worker must obtain the consent of the WCB prior to settling a claim to which the WCB is subrogated• 180 day limit to elect to claim compensation• If there is no election, approval of the claims vests any right of action with the WCB• Where an action is taken, the WCB is subrogated to the rights of the party taking the action• The worker who has elected to claim compensation cannot take an action without consent of the WCB• WCB may take action in the worker's name• WCB can join with a worker in an action or take action on its own• WCB may maintain an action in its own name, or in the name of the worker• If the recovery is more than the expenditures and compensation payable by the Board, the worker received the difference, unless consent was not obtained from the WCB• Where the balance of money recovered in a subrogated claim exceeds legal costs, the cost of the accident and certain other costs, the remainder shall be paid over to the worker or his/her personal representative• No further compensation is payable and any already paid is a first lien against any recovery• Where the surplus is paid to the worker, it will be deducted from any future additional compensation entitlement from the same injury• All payment or settlements arising from an action must be consented to by the WCB• Any payment or settlement made without the consent of the Board is of no force and effect• If the settlement is low, and the WCB has consented to it, the worker can still receive benefits• Written approval of the WCB is required if the settlement is for less than the compensation paid• Where the WCB is subrogated, it may effect a settlement at any time and release the action on payment of the settlement• Legal costs are, or may be, paid by the WCB and then deducted from the settlement recovery as an expenditure payable• WCB deducts an administration fee to partially recover the expenditures payable by the Board• Healthcare providers cannot take an action for recovery from the WCB or the worker of the cost or excess over what was paid the provider• The amounts paid for health care by the health insurance commission are to be considered part of the WCB subrogation and the costs of any third party claim

Source: Association of Workers' Compensation Boards of Canada – 2013

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Nova Scotia	Subrogation
Section of Act:	Workers' Compensation Act (sections 30, 31 & 105(2))
Policy:	N/A
Related Links:	N/A

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[New Brunswick](#)

The following table describes how subrogation works in New Brunswick.

New Brunswick	Subrogation
Subrogation:	<p>If WorkSafeNB sues the third party upon judgement or settlement WorkSafeNB:</p> <ul style="list-style-type: none"> • Retains a portion of the money to cover the costs of the claim, legal costs, and administrative charges; • Provides the injured worker with the excess amount; and • Provides the employer with cost relief.
Section of Act:	Workers' Compensation Act (sections 10, 11, 12)
Policy:	Policy No. 46-220 Third Party Actions
Related Links:	N/A

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Source: Association of Workers' Compensation Boards of Canada – 2013

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Quebec

The following table describes how subrogation works in Quebec.

Quebec	Subrogation
Subrogation:	A beneficiary's claim to the Commission fully subrogates the latter for the beneficiary's rights against those responsible for the occupational injury up to the amount of the benefits paid and the capital representing benefits to be paid.
Section of Act:	Act Respecting Industrial Accidents and Occupational Diseases (section 446)
Policy:	N/A
Related Links:	N/A

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Ontario

The following table describes how subrogation works in Ontario.

Ontario	Subrogation
Subrogation:	<p>If the worker or survivor elects to claim benefits under the insurance plan and if the worker is employed by a Schedule 1 employer or the deceased worker was so employed, the Board is subrogated to the rights of the worker or survivor in respect of the action. The Board is solely entitled to determine whether or not to commence, continue or abandon the action and whether to settle it and on what terms.</p> <p>If the worker or survivor elects to claim benefits under the insurance plan and if the worker is employed by a Schedule 2 employer or the deceased worker was so employed, the employer is subrogated to the rights of the worker or survivor in respect of the action. The employer is solely entitled to determine whether or not to commence, continue or abandon the action, and whether to settle it and on what terms.</p>
Section of Act:	Workplace Safety and Insurance Act (section 30)
Policy:	Policy 15-01-05, Third Party Rights of Action
Related Links:	N/A

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Source: Association of Workers' Compensation Boards of Canada – 2013

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Manitoba

The following table describes how subrogation works in Manitoba.

Manitoba	Subrogation
Subrogation:	<p>In third-party cases, the injured worker or his or her dependants may elect to claim workers compensation benefits or take an action against the third party. If the worker or his or her dependants elects compensation benefits, the right of action vests in the WCB. The WCB may pursue legal action on behalf of the worker, his or her dependants and the WCB.</p> <p>Where workers are injured outside of Manitoba in circumstances where they or their dependants have a right to sue in another jurisdiction and a right to claim compensation under the Manitoba Act, the worker or dependant must assign his or her right of action to the Manitoba WCB before WCB benefits are payable.</p>
Section of Act:	Workers Compensation Act (section 9, 9.1)
Policy:	N/A
Related Links:	N/A

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Saskatchewan

The following table describes how subrogation works in Saskatchewan.

Saskatchewan	Subrogation
Subrogation:	Entitlement brings the worker under the <i>Act</i> and the WCB is subrogated to any right of action open to the worker. WCB may bring an action in the name of the worker, a personal representative or a dependant or by the WCB in its own name. A worker must obtain the consent of the WCB prior to settling a claim to which the WCB is subrogated.
Section of Act: ³	Workers' Compensation Act, 1979 (section 40)
Policy:	Policy & Legislation : POL 01/2013, 04/2007
Related Links:	N/A

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3 As of January 2014, The Workers' Compensation Act, 2013 comes into effect in Saskatchewan. Accordingly, the policy and statutory references shown are subject to change.

Source: Association of Workers' Compensation Boards of Canada – 2013

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Alberta

The following table describes how subrogation works in Alberta.

Alberta	Subrogation
Subrogation:	Where a Right of Action exists under a compensable claim, ownership of that right of action vests in the WCB. The injured worker is entitled to select the lawyer who will advance the action and will be consulted before any settlement is made. So long as the worker cooperates in the advancement of the action, he or she is entitled to receive 25% of the recovery obtained, after payment of any costs awarded against the plaintiff and any disbursements incurred in the litigation. In addition, the worker will receive any amount remaining after payment of legal fees and recovery of the costs of compensation incurred by the WCB.
Section of Act:	Workers' Compensation Act (section 22)
Policy:	Policy G-3 – Third Party Actions
Related Links:	N/A

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British Columbia

The following table describes how subrogation works in British Columbia.

British Columbia	Subrogation
Subrogation:	<p>If the worker or dependant applies to the Board claiming compensation under the Act, neither the making of the application nor the payment of compensation under it restricts or impairs any right of action against the party liable, but as to every such claim the Board is subrogated to the rights of the worker or dependant and may maintain an action in the name of the worker or dependant or in the name of the Board. If more is recovered and collected than the amount of the compensation to which the worker or dependant would be entitled under the Act, the amount of the excess, less costs and administration charge, must be paid to the worker or dependant. The Board has exclusive jurisdiction to determine whether to maintain an action or compromise the right of action, and its decision is final and conclusive.</p> <p>If after trial, or after settlement out of court with the written approval of the Board, less is recovered and collected than the amount of the compensation to which the worker or dependant would be entitled under the Act, the worker or dependant is entitled to compensation under the Act to the extent of the amount of the difference.</p> <p>Costs may, notwithstanding that a salaried employee of the Board acts as its solicitor or counsel, be awarded to and collected by the Board in an action taken by the Board under this section.</p>
Section of Act:	<u>Workers Compensation Act</u> (section 10)
Policy:	<ul style="list-style-type: none">• <u>Item #111.22 Form of Election</u>• <u>Item #111.23 Election Not to Claim Compensation</u>• <u>Item #111.25 Pursuing of Subrogated Actions by the Board</u>
Related Links:	N/A

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Yukon

The following table describes how subrogation works in Yukon.

Yukon	Subrogation
Subrogation:	See section 51. If a worker suffers a work-related injury and the worker, the worker's legal personal representative or the dependents of a deceased worker have a cause of action in respect of the work-related injury, the board is deemed to be an assignee of the cause of action and the board is vested with all the rights to any cause of action arising out of the work-related injury.
Section of Act:	Workers' Compensation Act (section 51)
Policy:	GN-06, Subrogated Claims
Related Links:	N/A

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Northwest Territories and Nunavut

The following table describes how subrogation works in Northwest Territories and Nunavut.

Northwest Territories and Nunavut	Subrogation
Subrogation:	Any cause of action that an eligible claimant may have against any other person in respect of a personal injury, disease or death suffered by a worker, arising out of and during the course of his or her employment, vests in the Commission. The Commission shall conduct a cause of action vested in it in good faith for the benefit of all eligible claimants.
Section of Act:	Workers' Compensation Act (section 64)
Policy:	N/A
Related Links:	N/A

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Source: Association of Workers' Compensation Boards of Canada – 2013

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Motor Vehicle

The following tables describe what happens when a worker is injured due to a motor vehicle accident.

Click on the link below to go directly to:

- [Newfoundland and Labrador](#)
- [Prince Edward Island](#)
- [Nova Scotia](#)
- [New Brunswick](#)
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- [Alberta](#)
- [British Columbia](#)
- [Yukon](#)
- [Northwest Territories and Nunavut](#)

Newfoundland and Labrador

The following table describes what happens when a worker is injured due to a motor vehicle accident in Newfoundland and Labrador.

Newfoundland and Labrador	Motor Vehicle
Motor Vehicle:	Where Court Action Is Allowed - Injury Involving Motor Vehicle or Other Modes of Transportation: The restrictions on rights of action in Section 44 do not apply where a worker is injured or killed in a motor vehicle accident or while being transported in a vehicle or craft for which public liability insurance is required to be carried. This is provided for in Section 44.1 of the Act.
Section of Act:	Workplace Health, Safety and Compensation Act (sections 44, 44.1, 45, 46)
Policy:	WHSCC - Policies and procedures : EN-08 Third Party Actions
Related Links:	WHSCC Brochure - Third party actions - Your right to sue

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Prince Edward Island

The following table describes what happens when a worker is injured due to a motor vehicle accident in Prince Edward Island.

Please note, PEI's information was last updated in 2012. 2013 information was unavailable at time of publishing.

Prince Edward Island	Motor Vehicle
Motor Vehicle:	The worker or the worker's dependants have no right of action against any other employer or a worker of that employer except when the accident happens to the worker as the result of the use, by the worker or any other person, of a motor vehicle as defined in the <i>Highway Traffic Act</i> that is required to be registered under that Act.
Section of Act:	Workers Compensation Act (section 12)
Policy:	POL-87 Third Party Actions
Related Links:	N/A

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Nova Scotia

The following table describes what happens when a worker is injured due to a motor vehicle accident in Nova Scotia.

Nova Scotia	Motor Vehicle
Motor Vehicle:	The Act has a special provision where a right of action may exist if a motor vehicle is involved in the accident.
Section of Act:	Workers' Compensation Act (section 28)
Policy:	N/A
Related Links:	N/A

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Source: Association of Workers' Compensation Boards of Canada – 2013

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New Brunswick

The following table describes what happens when a worker is injured due to a motor vehicle accident in New Brunswick.

New Brunswick	Motor Vehicle
Motor Vehicle:	Under the <i>WC Act</i> , workers can sue an employer (except their own) or a worker (except a worker employed by the injured worker's employer) when injured in a workplace accident: <ul style="list-style-type: none">• Involving a motor vehicle; or• Involving the transportation of a worker by a mode of transportation requiring liability insurance (for example, bus, taxi, or airplane).
Section of Act:	Workers' Compensation Act (sections 10, 11, 12)
Policy:	Policy No. 46-220 Third Party Actions
Related Links:	N/A

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Quebec

The following table describes what happens when a worker is injured due to a motor vehicle accident in Quebec.

Quebec	Motor Vehicle
Motor Vehicle:	A person to whom the Commission pays an income replacement indemnity and who claims such an indemnity under the Automobile Insurance Act (chapter A-25) is not entitled to draw those two indemnities during the same period. If a person covered by Section 448 claims an income replacement indemnity under the Automobile Insurance Act (chapter A-25), the Commission and the Société de l'assurance automobile du Québec must jointly make a decision that distinguishes the harm attributable to each event and determine accordingly the right to the benefits to be paid under each of the applicable Acts.
Section of Act:	Act Respecting Industrial Accidents and Occupational Diseases (sections 448, 449, 450)
Policy:	N/A
Related Links:	N/A

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Ontario

The following table describes what happens when a worker is injured due to a motor vehicle accident in Ontario.

Ontario	Motor Vehicle
Motor Vehicle:	<p>If a worker of a Schedule 1 or Schedule 2 employer signs an election form to receive benefits as a result of a motor vehicle accident that occurred after October 31, 1996, the WSIB and the Schedule 2 employer have no right to bring an action on behalf of the worker. If a worker proceeds with an action, the worker may be required to provide an assignment of benefits from the WSIB to their automobile insurer.</p> <p>Under the <i>Insurance Act</i>, if a worker is injured in a motor vehicle accident, and it is unclear whether WSIB benefits or automobile accident benefits are payable, the worker is entitled to claim benefits from the automobile insurance provider pending a decision by the WSIB.</p>
Section of Act:	Workplace Safety and Insurance Act (section 28(4))
Policy:	<ul style="list-style-type: none">• Policy 15-01-05, Third Party Rights of Action;• Policy 15-01-06, Third Party Motor Vehicle Accident Claim Costs• Policy 18-01-06, Redirected Benefit Payments
Related Links:	N/A

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Manitoba

The following table describes what happens when a worker is injured due to a motor vehicle accident in Manitoba.

Manitoba	Motor Vehicle
Motor Vehicle:	<p>If the work-related injury involves a motor vehicle accident in or out of Manitoba, the worker may elect between workers compensation benefits and personal injury benefits from Manitoba Public Insurance. With the introduction of the Personal Injury Protection Plan (PIPP) coverage (“no-fault”) in March 1994, there is no action where a motor vehicle is involved. The only exception is for out-of-province drivers. This action belongs to the WCB, not the worker.</p>
Section of Act:	The Manitoba Public Insurance Corporation Act (section 195)
Policy:	N/A
Related Links:	N/A

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Saskatchewan

The following table describes what happens when a worker is injured due to a motor vehicle accident in Saskatchewan.

Saskatchewan	Motor Vehicle
Motor Vehicle:	Saskatchewan is a no fault jurisdiction with a right of subrogation against non-resident drivers.
Section of Act: ⁴	Automobile Accident Insurance Act (section 204)
Policy:	N/A
Related Links:	N/A

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Alberta

The following table describes what happens when a worker is injured due to a motor vehicle accident in Alberta.

Alberta	Motor Vehicle
Motor Vehicle:	Not Applicable
Section of Act:	N/A
Policy:	N/A
Related Links:	N/A

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4 As of January 2014, *The Workers' Compensation Act, 2013* comes into effect in Saskatchewan. Accordingly, the policy and statutory references shown are subject to change.

Source: Association of Workers' Compensation Boards of Canada – 2013

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British Columbia

The following table describes what happens when a worker is injured due to a motor vehicle accident in British Columbia.

British Columbia	Motor Vehicle
Motor Vehicle:	Where the cause of injury, disablement or death of a worker is such that an action lies against some person, other than an employer or worker within the scope of the Act, the worker or dependant may claim compensation or may bring an action. If the worker or dependant elects to claim compensation, he or she must do so within 3 months of the occurrence of the injury or any longer period that the Board allows.
Section of Act:	<ul style="list-style-type: none">• Workers Compensation Act (section 10)• Motor Vehicle Act (section 86)
Policy:	Policy Item #111.20 Injury Not Caused by Worker or Employer
Related Links:	N/A

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Yukon

The following table describes what happens when a worker is injured due to a motor vehicle accident in Yukon.

Yukon	Motor Vehicle
Motor Vehicle:	Worker's right to take action against another worker or employer exists only when the crash is the result of use or operation of a vehicle.
Section of Act:	Workers' Compensation Act (section 50(4))
Policy:	N/A
Related Links:	N/A

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Northwest Territories and Nunavut

The following table describes what happens when a worker is injured due to a motor vehicle accident in Northwest Territories and Nunavut.

Northwest Territories and Nunavut	Motor Vehicle
Motor Vehicle:	An action may be brought against an employer who is not the employers of the injured worker, or another worker in the employ of such other employer, if the injury as attributable to a vehicle or other mode of transportation that is covered by liability insurance.
Section of Act:	<u>Workers' Compensation Act</u>
Policy:	<u>Policy 00.06, Third Party Actions</u>
Related Links:	N/A

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Action against contractor/subcontractor

The following tables deal specifically with actions available against contractors and/or subcontractors.

Click on the link below to go directly to:

- [Newfoundland and Labrador](#)
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Newfoundland and Labrador

The following table outlines actions available against contractors and/or subcontractors in Newfoundland and Labrador.

Newfoundland and Labrador	Action against contractor/subcontractor
Action against contractor/subcontractor:	There is no provision, dealing with the right of action of a worker not under the Act, against the employer or a person contracting with a contractor or subcontractor.
Section of Act:	N/A
Policy:	N/A
Related Links:	WHSCC Brochure - Third party actions - Your right to sue

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Prince Edward Island

The following table outlines actions available against contractors and/or subcontractors in Prince Edward Island.

Please note, PEI's information was last updated in 2012. 2013 information was unavailable at time of publishing.

Prince Edward Island	Action against contractor/subcontractor
Action against contractor/subcontractor:	Provision dealing with a right of action of a worker employed in an industry to which Part I of the Act does not apply.
Section of Act:	Workers Compensation Act (section 88)
Policy:	N/A
Related Links:	N/A

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Nova Scotia

The following table outlines actions available against contractors and/or subcontractors in Nova Scotia.

Nova Scotia	Action against contractor/subcontractor
Action against contractor/subcontractor:	No specific reference to contractor/subcontractor. There is a provision, dealing with the right of action for contribution or indemnity against any employer or worker where there is a barrier to suite in place. An employer or worker against whom the suite is brought is only liable for the portion caused by their own negligence.
Section of Act:	Workers' Compensation Act (section 3)
Policy:	N/A
Related Links:	N/A

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New Brunswick

The following table outlines actions available against contractors and/or subcontractors in New Brunswick.

New Brunswick	Action against contractor/subcontractor
Action against contractor/subcontractor:	There are no special provisions regarding contractors/subcontractors.
Section of Act:	N/A
Policy:	N/A
Related Links:	N/A

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Quebec

The following table outlines actions available against contractors and/or subcontractors in Quebec.

Quebec	Action against contractor/subcontractor
Action against contractor/subcontractor:	N/A
Section of Act:	N/A
Policy:	N/A
Related Links:	N/A

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Ontario

The following table outlines actions available against contractors and/or subcontractors in Ontario.

Ontario	Action against contractor/subcontractor
Action against contractor/subcontractor:	<p>In cases where the worker is employed in an industry that is not in Schedule 1 or 2 and in the case of certain types of workers in Schedule 1 and 2 industries (see section 113), a worker may bring an action for damages against the person for whom work is being done under a contract and against the contractor and subcontractor, if any, for an injury that occurs in any of the following circumstances:</p> <ol style="list-style-type: none">1. The injury occurs by reason of a defect in the condition or arrangement of any ways, works, machinery, plant, building or premises. The person for whom the work is being done owns or supplies the ways, works, machinery, plant, building or premises;2. The injury occurs as a result of the negligence of the person for whom all or part of the work is being done; or3. The injury occurs as a result of the negligence of a person in the service of the person for whom all or part of the work is being done, and the person who was negligent was acting within the scope of his or her employment.
Section of Act:	<u>Workplace Safety and Insurance Act</u> (section 115)
Policy:	N/A
Related Links:	N/A

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Manitoba

The following table outlines actions available against contractors and/or subcontractors in Manitoba.

Manitoba	Action against contractor/subcontractor
Action against contractor/subcontractor:	<p>Sections 111 to 113 of the Act apply to the industries, employers or workers who are not covered under Part 1 of the Act. These industries, employers or workers are listed in Manitoba Regulation 196/2005R.</p> <p>A worker or his or her dependants has a right of civil action against an employer who is not covered under the Act. The common law defences of contributory negligence, assumption of risk, and the fellow servant rule no longer apply.</p> <p>Contributory negligence of the worker is considered when damages are assessed.</p>
Section of Act:	<ul style="list-style-type: none">• Workers Compensation Act (sections 110 – 113)• MR 196/2005R, Excluded Industries, Employers and Workers Regulation
Policy:	N/A
Related Links:	N/A

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Saskatchewan

The following table outlines actions available against contractors and/or subcontractors in Saskatchewan.

Saskatchewan	Action against contractor/subcontractor
Action against contractor/subcontractor:	No reference
Section of Act: ⁵	N/A
Policy:	N/A
Related Links:	N/A

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5 As of January 2014, The Workers' Compensation Act, 2013 comes into effect in Saskatchewan. Accordingly, the policy and statutory references shown are subject to change.

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Alberta

The following table outlines actions available against contractors and/or subcontractors in Alberta.

Alberta	Action against contractor/subcontractor
Action against contractor/subcontractor:	Not Applicable
Section of Act:	N/A
Policy:	N/A
Related Links:	N/A

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Source: Association of Workers' Compensation Boards of Canada – 2013

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British Columbia

The following table outlines actions available against contractors and/or subcontractors in British Columbia.

British Columbia	Action against contractor/subcontractor
Action against contractor/subcontractor:	<p>Provision dealing with the right of action of a worker not under the Act, against the employer or a person contracting with a contractor or subcontractor.</p> <p>Where the execution of any work is being carried into effect under a contract, and the person for whom the work is done owns or supplies ways, works, machinery, plant, buildings or premises, and by reason of a defect in the condition or arrangement of them personal injury is caused to a worker employed by the contractor or by a subcontractor, and the defect arose from the negligence of the person for whom the work or any part of it is done, or of some person in his or her service and acting within the scope of his or her employment, the person for whom the work or that part of the work is done is liable to the action as if the worker had been employed by him or her, and for that purpose is deemed to be the employer of the worker within the meaning of this Part; but the contractor or subcontractor is liable to the action as if this subsection had not been enacted, but not so that double damages are recoverable for the same injury.</p> <p>A worker is deemed not to have undertaken the risks due to the negligence of his or her fellow workers, and contributory negligence on the part of a worker is not a bar to recovery by the worker or by any person entitled to damages under the <i>Family Compensation Act</i> in an action for the recovery of damages for an injury sustained by or causing the death of the worker while in the service of his or her employer for which the employer would otherwise have been liable.</p> <p>Contributory negligence on the part of the worker must be taken into account in assessing the damages in an action.</p>
Section of Act:	Workers Compensation Act (sections 102-105)
Policy:	N/A
Related Links:	N/A

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Yukon

The following table outlines actions available against contractors and/or subcontractors in Yukon.

Yukon	Action against contractor/subcontractor
Action against contractor/subcontractor:	If a worker suffers a work-related injury and the conduct of an employer who is not the worker's employer, or of a worker of an employer who is not the worker's employer, causes or contributes to the work-related injury, neither the worker who suffers the work-related injury, nor their personal representative, dependent, or employer, has any cause of action against that other worker or other employer.
Section of Act:	Workers' Compensation Act (sections 50, 51)
Policy:	N/A
Related Links:	N/A

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Northwest Territories and Nunavut

The following table outlines actions available against contractors and/or subcontractors in Northwest Territories and Nunavut.

Northwest Territories and Nunavut	Action against contractor/subcontractor
Action against contractor/subcontractor:	No reference in the Act to rights of action against a contractor or subcontractor.
Section of Act:	N/A
Policy:	N/A
Related Links:	N/A

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