A SUBMISSION OF THE

EMPLOYERS' COORDINATING GROUP

TO THE

THE WCB CORE REVIEW

The Employers' Coordinating Group

is a coalition of the
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Employers' Forum to the WCB

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OVERVIEW

Members of the employer community represented by the Employers' Coordinating Group (ECG)[1] believe today's workers' compensation system in our province has become too complicated and is therefore unable to function effectively. Many believe the system has strayed too far from its founding purpose, a wage replacement vehicle in a no-fault insurance scheme. The recommendations contained in this report are bound by a common purpose, the construction of a compensation model that will deliver on a mandate of timely, effective and affordable service to workers and employers alike.

Experiments with stakeholder-involved governance models have failed on many levels, resulting in confusion, inconsistency and dissatisfaction among those affected most, not the least of which is the WCB itself. There is equal disappointment in government-directed models, which have resulted in an abundance of caution where decisive leadership has been required.

The challenge of crafting a governance model that can effectively balance the issues of service to stakeholders, administrative prudence and the public interest must be met. A model that provides guidance, oversight and a clear mandate to competent management personnel is essential. The openness and transparency required of a public body is best located at the administrative, not the governance level.

The multi-level appeal system, which was designed to provide assurance of properly considered decisions, has instead become a revolving door for reopenings and reconsiderations. It has inadvertently operated as an impediment to one of the basic principles of rehabilitation (early return to work) by failing to provide closure. Its existence has also de-emphasized the importance of initial decisions by (in the minds of many) reducing the adjudication process to a mere "first step" in the WCB claim cycle.

A simpler, more effective process for dealing with claims and appeals is required. It must be founded on a consistent and thorough initial adjudication process that, through quality decisions, limits appeals. It must also provide closure and curtail the seemingly endless opportunity for systemic dependence which currently characterizes our compensation system.

This report is structured to, as much as possible, respond directly to the questions raised in the Terms of Reference for Mr. Alan Winter's Core Review of the GOVERNANCE, APPELLATE STRUCTURE, MAJOR LAW, POLICY AND REGULATION REVIEW of the British Columbia Workers' Compensation Board.

[1] See Appendix A for membership list

1. BOARD GOVERNANCE

a. Does the current governance structure provide the required stewardship to the workers' compensation system? If not, how can effective governance be assured?

The Governance model put in place in 1991 and removed in 1995 failed because its members were unable to subordinate their roles as stakeholder representatives to their roles as governors of the Workers' Compensation Board (WCB). The subsequent Panel of Administrators directly involved government in the operation of the Board. Prior to the appointment of the current Chair, three of her predecessors have been Deputy Ministers and the fourth an Assistant Deputy Minister. To the detriment of the WCB, neither model attended to the superintending of the Board as a first priority and primary responsibility.

The Royal Commission on Workers' Compensation, in their Final Report asserts that,

> "… the success of any governance system is in large part defined by the commitment of the people within the system to a common vision and purpose. With good will and an overall sense of shared purpose, virtually any governance framework can be made to work."[2]

We agree. It is our belief that opportunities for the WCB governance model to succeed are inversely proportional to the number of members of the governance team that have a representative interest or function vested with any of the Board's stakeholder groups. While experience in any of the areas of endeavor in which the Board is engaged may be useful, it is not requisite. The selection of members of the governance team should be based on individual attributes and an ability to work together.

b. What are the components of effective governance in the context of the workers' compensation system in terms of:

- ***Composition of the Board***

The Board should be comprised of six Directors, the Chair and the President/ CEO of the WCB who will be an *ex officio* non-voting member.

[2] For the Common Good – Royal Commission on Workers' Compensation in British Columbia, Final Report (Chapter 3, page 5).

- ***Criteria for selecting Board members***

  Board members should be selected on the basis of their demonstrated …"good judgement, sound business acumen, financial skills and experience …"[3]. They should be informed of their role and diligent in the fulfillment of same. They should understand the policies, objectives and mandate of the WCB and be able to make approval decisions on matters of high level policy and corporate direction. They should also be able to make value judgements on the manner in which the WCB is delivering on its mandate and recommend remedial action as required.

- ***Selection process for Board members***

  Board members should be selected from the community at large using established recruitment techniques.

- ***Terms of appointments***

  The words of the Royal Commission are instructive in this area. They state,

  > "A continually changing membership means that there is little time for members to coalesce into a team or establish a group identity and there is no institutional memory."[4]

  and,

  > "The term of office must allow members the opportunity to become conversant in their responsibilities and effective in their duties, and at the same time it should not be so onerous that it imposes an unrealistic burden on personal careers."[5]

  The Royal Commission recommended term lengths based on an eight-member Board of Directors. Respecting the principles of that recommendation, it is recommended appointments to the governing body of the Workers' Compensation Board,

  a) be for a term of not more than three years;

  b) be restricted to two terms totaling six years; and that

  c) no more than three appointments shall expire in any one year.

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[3] Op. cit footnote 2 (Chapter 3, page 13)
[4] Ibid (Chapter 3, page 40)
[5] Ibid (Chapter 3, page 41)

- ***Role of the Chair***

  The role of the Chair will be the same as that of the Chair of a corporate board of directors. This includes responsibility for calling meetings, approving agendas, and overseeing administrative functions associated with the duties of the Board. The Chair must be vigilant to assure that size of meeting agendas and preparation required for meetings be consistent with the part-time nature of the governance body.

  The Chair must be particularly resistant to any involvement in the day-to-day operations of the WCB. It will be the Chair's role to assure that WCB administration is able to carry out their duties unfettered by unwarranted interference in routine operational matters. It is expected that the Chair's duties would consume no more than one to two days per month.

  The Chair will also be responsible for evaluating the performance of the President and CEO.

- ***Time commitment for Board members, including the Chair***

  It is critical that the governing body of the WCB operates on a part-time basis. Meetings should be held on a quarterly basis as a minimum, and at the call of the Chair. It should be remembered the role of the governing body is an oversight role. The Board is the steward of the WCB, not the administrative head. Its duties should be confined to the setting of strategic direction and setting high-level policy.

- ***Mechanisms for ensuring Board cohesiveness***

  Given the non-partisan, unaffiliated makeup of the governing body, it is not anticipated the cohesiveness will require any special attention. Rather it will be built through timely distribution of materials, relevant meeting agendas, and periodic "retreats" and strategy sessions.

- ***The role of stakeholders in relation to the Board***

  Stakeholders will have no direct role in relation to the Board. As with any corporate board, matters may be brought to the attention of the governing body in an informal manner, but no contact mechanism is required.

  It will therefore be important for WCB senior administration to create a process and/or structure that will enable stakeholder input into policy development and implementation in addition to regulatory review.

- ***Role of stakeholders in the policy and regulation development process***

  Stakeholder involvement, where appropriate will occur through a process developed by senior WCB administration.

- ***Direct reports to the Panel of Administrators***

  Unless requested specifically by the governing body, it will receive no direct reports.

Duties and Revocation

The Royal Commission also considered the question of if, and under what circumstances, an appointment to the governing body of the WCB should be revoked.

> "…the government should be able to revoke an individual appointment for cause, including a breach of trust associated with the individual's duties. These duties should be stated in legislation, providing a clear understanding of the role and responsibilities of all governors, including:
>
> - the duty to act in good faith;
> - the duty to act in the best interests of the workers' compensation system; and
> - the duty of confidentiality"

The circumstances for revoking appointments and the duties of members of the governing body as set out above, are recommended.

c. Is the WCB providing fair and timely services to workers and employers in terms of decision-making about workers' compensation and rehabilitation, occupational health and safety in the workplace, and employer classification and premium rates?

It is assumed that these questions will be dealt with in the Service Delivery Review of the Workers' Compensation Board being completed by Mr. Allan Hunt. (Please see attached report to Mr. Hunt on these issues – Appendix B)

2. APPELLATE STRUCTURE AND RELATED TOPICS

a. Should the workers' compensation appeal system be changed? If so, what system should be put in place to ensure the fair, expeditious, efficient and effective resolution of appeals?

The Royal Commission examined these questions in depth and recommended that

> "56. the *Workers' Compensation Act* be amended to establish a final appeal to an appeal tribunal external to and independent from the Workers' Compensation Board."[6]

The Commission offered the following concerning recommendation 56.

> "The commission has heard that it often takes workers two appeals to understand the process and, most importantly, to identify and articulate the issues they need to address in their appeals; only one level of appeal could lessen the chances of an appeal being accepted. However, while the current number of appeal levels may increase a worker's chances of an appeal being accepted, this treadmill has a significant affect on the Board (its relationship with the public and staff morale), workers and employers, as well as the people of British Columbia (see *Volume One, The Challenge of Research*). This generates backlogs, frustration and, too often, financial ruin.
>
> The commission is of the view that fewer appeal levels could reduce jurisdictional disputes, enhance the speed and consistency of decision-making, and eliminate administrative duplication. That in itself would justify changing the current system. However, the commission cannot ignore the problems it has identified in the quality of initial claims decisions, to "get it right" the first time, cannot be separated from the need to reduce backlogs and delays in the appeals system. Any other solution will ultimately end in denying justice in the name of administrative efficiency."[7]

There are additional reasons to make changes to the current appellate system. Employers are subject to a different standard than workers in the appeal process. The decision to consider worker appeals on Claims matters, is based on the merits of the evidence on file. Employer appeals are considered only in the face of proof of an error of fact, law, or contravention of policy.

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[6] Op. cit footnote 2 (Chapter 9, page 26)
[7] Ibid (Chapter 9, page 27)

Reform of the appellate system must not focus exclusively on the internal and external appellate bodies. Difficulties can frequently be traced to the first level of decision-making. Many believe the volume of appeals is a direct consequence of inadequacies at the adjudication level and it is there that resources should be concentrated. Improved training, retraining and supervision of Adjudicators must be included as part of the solution.

b. What are the components of an effective appeal structure in terms of:

- ***The number of levels of appeal***

  There should be one level of external appeal, as recommended by the Royal Commission on Workers' Compensation in British Columbia.

- ***The jurisdiction of appeal body(ies)***

  The appellate body should have jurisdiction over all decisions made by the Workers' Compensation Board. It should however, be limited to ruling on the application of WCB policy and not be permitted to substitute its own judgement. It should also be able to refer policy matters back to the WCB for consideration. It should also have authority to reconsider its own decisions. This reconsideration should be limited to blatant errors of fact, law or published policy. The appellant must clearly state the grounds for appeal in order to have that appeal considered.

- ***The reporting relationship of appeal body(ies)***

  In the area of administrative and budgetary matters, the appellate body should report and be accountable to the Minister of Labour. This includes the filing of an annual report with the Minister of Labour detailing, among other things, the Tribunal's execution against Objectives and Key Performance Indicators.

- ***The relationship of appeal body(ies) to the Panel of Administrators***

  The appellate body should, for information purposes, share its annual report to the Minister of Labour with the governing body of the WCB. It should also cooperate fully with the governing body on any matters of mutual concern.

- ***The appropriate degree of independence***

  The Royal Commission, in its consideration of the matter, stated as follows.

  > "… the decisions of the independent tribunal must be final and conclusive and not open to question or review in any court on any grounds, other than those permitted by common law."[8]

  This recommendation is supported.

- ***Whether Board policy should be binding on appeal body(ies)***

  As stated earlier, Board policy should be binding on the appellate body. In cases where the appellate body believes Board policy to be unlawful, the appellate body should so inform the President and CEO.

- ***The role of medical advisors in the appeal process, and specifically the role of the medical review panel process***

  Medical advisors should be available to WCB adjudicators and managers throughout the adjudication/rehabilitation process. Medical advice through a procedure similar to that currently employed by the medical review panel process.

- ***Mechanisms to reduce appeal volumes and to prevent/address the development of backlogs***

  As stated earlier, quality improvements to the initial adjudication process are essential to limiting the number of appeals. A management review process functioning as a first appeal, providing WCB managers are not part of the bargaining unit, will also help reduce the number of appeals to the appellate body.

  A recent internal review of adjudicator decisions revealed that 25% were incorrect. This is attributed to the elimination of an adjudicator training program three or four years ago. The restoration of adjudicator training and introduction of a retraining program will lead to better initial decisions and therefore fewer appeals.

  In addition, (and perhaps most importantly), the finality of an appeal to the appellate body will prevent reconsideration of claims that have already been decided.

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[8] Op. cit footnote 2 (Chapter 9, page 36)

- ***The role and structure of internal review processes***

  It is recommended that internal reviews be conducted by regional managers (provided the managers are not in the bargaining unit). The review, which can be initiated by a worker or employer or on the initiative of the manager will serve as a level of first appeal. The grounds for the review should be the same as those required by the external appellate body.

- ***The role of alternate dispute resolution in the system***

  There is no role contemplated for an alternate dispute resolution (ADR) process at this time. The ADR process is new to the WCB context and many are neither familiar nor comfortable with it. Consequently, there are objections to this process as it is seen as another layer of process in a system that must be streamlined.

- ***Mechanisms to enhance consistency and predictability of decision-making within the system***

  It is recommended that area managers routinely conduct examinations of adjudication decisions in order to ensure consistency in the application and interpretation of WCB policy. It is further recommended that the Internal Audit Department, reporting directly to the President and CEO, conduct random reviews of decisions on a regular basis, monitoring for accuracy, diligence, consistency and correct interpretation of Board policy.

  The external appellate body should include a quality control function reporting directly to the Chair of the organization. An appropriate number of decisions should be routinely reviewed on the basis of consistent and correct application/interpretation of WCB policy, logic, plain language, clarity, timeliness and any other aspect deemed appropriate. Decisions may also be reconsidered at the discretion of the Chair, or by the Chair on request based on an error in law, or of fact, or of published policy of the WCB.

- ***Standards for performance measurement and accountability for appeal bodies***

  The external appellate body will be accountable directly to the Minister of Labour. In order to provide a set of standards against which performance can be measured it will be necessary to first establish those standards in a manner that is open and consistent with similar appellate bodies in Canada. The Royal Commission, in recommendation 65 has provided an appropriate template for accountability.

"the Appeal Tribunal be held accountable through:

a) the development and adoption of objectives and Key Performance Indicators;

b) the filing of an annual report with the Minister of Labour detailing, among other things, the Tribunal's objectives and Key Performance Indicators and an evaluation of its strategies for achieving the objectives; and

c) a public review of the tribunal's proposed rules, guidelines or procedures, before they are approved by the cabinet."

- ***The organizational structure of any new appeal body(ies)***

The Royal Commission in recommendation 67 proposed an appropriate organizational structure for the appellate body. This recommendation is supported with the exception of a change as noted in item a) iii) below.

"the *Workers' Compensation Act* be amended such that:

a) the Appeal Tribunal consist of:

i) a chair;
ii) one or more non-representational vice-chairs; and
iii) other members ~~the Lieutenant Governor in Council considers necessary, 2/3 of whom must be selected in equal numbers from persons having backgrounds associated with employer interests and persons having backgrounds associated with worker interests~~ as appointed by the Chair of the Tribunal, based on qualifications and experience; and

b) the chair of the Appeal Tribunal be appointed by the Lieutenant Governor in Council for a renewable term of five years;

c) tribunal members be appointed by the Lieutenant Governor in Council for renewable terms of four years;"

- ***The role of any representational members***

Representational members are not contemplated in the proposed structure.

c. Should there be a power of reconsideration and, if so, should there be constraints placed on this power (i.e. similar to that provided under the Labour Relations Code)?

There should be a power of reconsideration where:

- previously unknown information that is substantial and material to the decision is discovered; and
- the information did not exist at the time of the decision or could not reasonably have been known at the time of the decision.

Reconsiderations should be available to workers and employers alike. Only one reconsideration of a decision should be allowed.

d. With respect to compensation claims, if there is new evidence that is of a substantial and material nature, should it be considered by the first level of Board adjudication before it may be considered by an appeal body?

Yes, if the appeal process has not begun at the external appellate level.

e. If a new appeal process is recommended, how should transitional issues be addressed? What is a reasonable time frame within which to operationalize a new appellate structure and process?

Transition to a new appeal process, particularly in light of the size of the claims backlog, will be a challenging process. It is recommended that a competent person, with a legal background and knowledge of such matters should be charged with the responsibility of crafting an appropriate transition plan.

The following proposal should be considered in the formulation of the plan:

- The backlog claims which have yet to be examined, should be passed on to the new appellate body and be subject to the rules of that body.
- Resources should be hired on an “as needed” basis, paid on a per claim basis and given tight timelines to eliminate the backlog within the new appellate body.
- The current appeal system should be retained for a specified period to work exclusively on completing backlog cases that are in process at the time of the establishment of the new appellate body.
- The rules of the current structure will apply to those claims, including access to further appellate bodies where appropriate.

- Once these claims have had the opportunity to exercise their full right of appeal under the current system, the new rules for appeal will apply.

- The new appellate body should also process current and future appeals.

f. Should estates of deceased workers have standing on appeal?

An estate should be granted status when the death of a claimant occurs during the course of the adjudication/appeal process. In such a circumstance, whatever part of the full appeal process that remains should be available to the estate.

3. MAJOR LAW AND POLICY REVIEW

SCOPE AND COVERAGE

Should the Act continue to provide "universal coverage" or should the scope of the coverage revert to the "exclusionary coverage" provided prior to the enactment of Bill 63 in 1994, or some other variation?

Employers included in WCB coverage as a result of Bill 63 should be given the option to opt out of that coverage.

POLICY ISSUES

PENSIONS:

a. How should workers who are left with a permanent residual disability as a result of an occupational injury or disease be compensated?

The Board's "Functional" method of assessing pensions bases the impairment of earning capacity on the nature and degree of injury. It compensates for presumed loss of earning capacity such as reduced prospects of promotion, reduced future capacity to compete in the labour market, and restrictions on future employment.

The method is simple from an administrative viewpoint but overcompensates some workers and under compensates others for life even though there is no loss of earnings due to the injury.

Disability Rating Schedules can be used to provide some consistency in application, but estimating future earning potential is very subjective and inaccurate.

Critics of the ratings system also state there is a lack of empirical evidence regarding the correlation between the degree of physical impairment and the extent of lost earnings.

Many workers who prefer to commute their functional awards for personal and business reasons are critical of the Board for refusing to commute them to lump sum payments. The Board is considered too paternalistic in the administration of commutations.

The pension system should be designed primarily for replacement of loss of earnings, but it should also compensate injured workers for disabilities that do not affect the earnings such as:

- permanent loss of certain body parts
- permanent loss of specific bodily functions
- permanent disfigurement of a person both visible and hidden.

Psychological conditions should be excluded from this area of the pension system.

The entire pension system is extremely complicated and warrants a special study to rationalize it in conjunction with Loss of Earnings and the Functional Awards.

It is therefore recommended that a “Special Study Committee” be appointed with members from the WCB, worker and employer communities to bring in recommendations for change.

It is also recommended that this Committee deal with both Functional and Loss of Earnings Pension issues.

b. Should the current pension system be retained, or should the approach currently used in other provinces be adopted? Specifically, should the Act provide for two separate types of pension awards: a lump sum for the non-monetary effects of a permanent impairment, and a pension to age 65 if there is an actual loss of earnings?

The *Act* provides for 2 separate types of pensions. These are a “Lump Sum for Non Monetary Effects of Impairment” (Functional), and a “Loss of Earnings” (LOE), a method to determine the estimated loss of earnings for the worker–the difference between what the worker had earned and what the worker is considered capable of earning. They are commonly referred to as the “Dual Award” system of pensions.

In 1973 the WCB issued Reporter Decision #8 which established the dual system of awards for injuries involving the spinal column. It was intended to be used on a very limited basis.

In 1979 the WCB extended the policy to cover all compensation conditions but it described the use of loss of earnings pensions as suited for "exceptional" cases. This has been extended in a major way by the Board's adjudicative system.

The worker receives the calculation that gives him the greatest amount and this pension system is open to abuse and overuse. The Board now calculates the amounts in an automatic fashion and ignores the principles involved in the policy decisions of 1973 and 1979. In fact, there is no approved policy for the practice being followed by Disability Awards.

There is considerable difficulty for Adjudicators in determining what the future earnings capability of an injured worker will be. The subjective considerations make the system complex to administer and very contentious to both workers and employers. This gives rise to error.

Significant awards are being granted purely on the premise that language skills and education are a bar to gainful employment of some workers. Small firms are unable to provide an alternate position for the worker to fill. It is arguable that the pension system is acting as a form of unemployment insurance.

Employers see the LOE method as a disincentive for workers to actively participate in "Return to Work" programs due to the potential impact it may have on the amount of his future pension.

The majority of other Canadian Jurisdictions have a two stage pension system:

- lump sum for non-monetary effects of permanent disability mainly based on the AMA Guides
- pension to age 65 for an actual LOE.

LOE pension reserves have been increasing rapidly in recent years. Some examples of the effect of the Board's application of the dual system shows an increase of between 60% and 104% which occurred in a 5 year period. It continues to grow.

It is therefore recommended, in order to make it clear as to the purpose of LOE's, Section 23(1) of the Act should be changed by removing the word "estimated" and inserting the word "actual." The WCB must do a better job at determining the actual loss of earnings. In addition:

1. Pensions for claims should be restricted to where there is objective, medical evidence of measurable disability.

2. When an LOE is paid, there must be an ongoing review every two years to determine whether the worker's financial status is accurately reflected in the LOE.

3. When there is reason to believe that the worker's financial situation has altered, the LOE review should take place at that time, without waiting for the regular, two-year review.

4. Loss of earnings awards should be related solely to the measurable effects of the injury, not to areas that are not relative or the worker can mitigate, such as:
    - the workers age
    - the worker's education level
    - the worker's language skills
    - the worker's location and requirement to relocate
    - the worker's inclination to return to work
    - the worker's willingness to retrain.

5. There should be no LOE unless there is a measurable permanent impairment.

6. LOE pensions should stop at age 65 and be replaced with an annuity.

Capitalized Value of Pension Awards

(millions of dollars)

1990	1996	1997	1998	1999	2000
188,885	303,483	305,137	304,659	301,120	385,297

- Selecting the highest value of a pension under the dual system shows a similar pattern of major cost increase:

Age	Function %	LOE %	Additional Reserve
45	0%	38%	$340,236
51	2%	48%	$167,606
61	3%	56%	$338,216
61	3%	52%	$232,373
55	5%	58%	$489,828
50	8%	75%	$748,843
55	11%	75%	$644,450
45	2%	75%	$752,537
51	3%	75%	$465,487
52	10%	75%	$823,199

c. If such a system is adopted, what type of benefits should be paid after age 65?

Under the *Act*, awards under the functional method are payable for life. Under Board policy LOE pensions are continued to age 65 then converted to a functional award. There are 3 conditions where an LOE is continued past age 65:

- If the worker can demonstrate that they would have worked beyond age 65 except for the injury.
- If the worker is injured prior to age 50, the pension under the dual system is payable for life.
- LOE pensions for an injury between the ages of 51 and 64 are changed at age 65 to a functional award plus a proportion of the difference between the two methods. This is known as the $1/15^{th}$ method.
- $14/15^{th}$ of the loss of earnings award at age 51
- $1/15^{th}$ of the loss of earnings pension at age 64.

Most of the other Canadian jurisdictions convert the LOE pension to an annuity at age 65. A similar system is proposed for British Columbia.

It is recommended that:

1. A sum of 5% of what was awarded prior to age 65 be set aside and converted to an annuity to be paid for the balance of the worker's life.
2. CPP and OAS be integrated into the annuity.
3. No pension can provide the worker with more than 100% of earnings.

d. How should employability be assessed for the purposes of a loss of earnings pension? To what extent should non-compensable factors be considered when assessing employability?

"Deeming" is the method used by the Board to make a judgement of what a worker is "able to earn" in calculating his LOE pension and deciding on what Rehab benefits to give him pending return to work. This is extremely subjective and difficult to assess. It is very contentious from the viewpoint of both workers and employers and contributes in large measure to numerous appeals. Other jurisdictions also apply a "deeming" factor in their systems.

Vocational Rehabilitation (VR) benefits are paid during the course of returning the worker to suitable employment and in many cases continue long after the worker is fit to return to work but unable to do so because of conditions not related to the injury. This is a major cause of a skyrocketing trend in the cost of rehabilitation benefits.

It is therefore recommended that:

1. Pensions should be based on employability not employment.

2. LOE assessment should not consider the following factors in applying vocational rehabilitation and pension benefits:

    - the workers age
    - the worker's education level
    - the worker's language skills
    - the worker's location and requirement to relocate
    - the worker's inclination to return to work
    - the worker's willingness to retrain.

VOCATIONAL REHABILITATION:

a. Should the objective of vocational rehabilitation be employment or employability?

Vocational Rehabilitation is intended to assist in returning disabled workers to gainful employment. Since the ability to perform work is requisite to finding a job, employability is the primary objective. The WCB should then assist the worker's return to the workforce respecting to following hierarchy:

- Return the worker to the same job with the same employer.
- Return the worker to a comparable job with the same employer.
- Return the worker to other comparable jobs in the same industry or other industries.
- Employ the worker in any industry using existing, transferable skills.
- Develop new occupational skills for job change.

b. To what extent should the WCB provide vocational rehabilitation to injured workers? What, if any should be the limits to the WCB's discretion in this regard?

The Act under Section 16(1) and Board policy provide for VR intervention in cases of both temporary and permanent disability.

Employers have a concern that the Board appears to have certain administrative problems, which seem to delay the implementation of VR, and continue it longer than required:

- It should normally be considered as soon as the worker is considered no longer “totally” disabled or as soon as a period of temporary disability exceeds 8 weeks.

- It should be discontinued when the Board considers the worker’s condition plateaued and fit for work, or, if the worker withdraws from the program.

There is a major problem for small employers to accommodate the loss of the injured worker or his return to employment:

- Replacement workers must be hired to continue in business.

- Alternative jobs are not economically feasible.

c. Should there be a statutorily mandated duty upon employers to accommodate injured workers? If so, should the nature of the duty vary depending upon the size of the employer and/or industry?

There is currently no requirement in the Act or Board Policy for either mandatory re-employment or duty to accommodate. However, current policy enables the Board to provide assistance to alter work sites or modify jobs to facilitate re-employment. Most employers readily cooperate in those situations.

Mandatory re-employment would prove impossible for most small and medium sized employers. They form the largest group of employers in the province and often lack the workplace flexibility to accommodate even minor changes required to properly accommodate a disabled worker.

Jurisdictions that do have mandatory re-employment include Prince Edward Island, New Brunswick, and Quebec but the obligation for the employer expires after one year from date of injury in the case of employers with fewer than 20 workers. The latter two have a two-year provision for those employers with over 20 workers. Nova Scotia and Ontario also have an obligation to re-employ but do exempt employers with less than 20 workers.

This is a subject that must be carefully considered. On the surface in may appear that a size exemption for small employers will remove the only impediment to a successful resolution. The matter is not that clear.

Some employers who employ 20 or more workers do not have sufficient control over the workplace environment to install the modifications to accommodate a disabled worker. Construction sites and logging operations come immediately to mind, but there are examples in the manufacturing sector as well. Modifications to workstations used by shift workers may be rendered unusable by all but the worker requiring accommodation.

Exemption by size fails to take into consideration profitability and margins. The economic circumstances in which most forest companies find themselves these days are hardly conducive to capital investments in workplace modifications for any but cost-reduction reasons.

Clearly this hasn't always been and won't continue to be the case, but that is just the point. Today's workplace is nearly impossible to characterize in a broad sense and in this area is particularly ill suited to the heavy hand of legislation. A more collaborative, "best practices", "if you can work something out do so" approach should be fostered by the WCB.

Perhaps the first stop on the Vocational Rehabilitation journey should be the accident employer. A collaborative approach has a much greater chance for success that anything forced through regulation.

d. Should there be a statutory duty placed on workers to take all reasonable steps to mitigate any losses and return to work?

There should not be a statutorily mandated duty on workers to mitigate losses and return to work. It should however be emphasized that workers and employers have a responsibility to work cooperatively in vocational rehabilitation programs.

BENEFITS:

a. What changes, if any, should be made to the method of calculating a worker's average earnings for the purposes of Section 33 of the Act?

Section 33 of the *Act* should be changed to establish average earnings as the worker's earnings for the year previous to the injury. It should be required that the earnings claimed be supported by the forms sent to Revenue Canada for reporting income.

The WCB should also ensure that staff understand average earnings calculations must be based on statutory requirements. Section 33 of the *Act* provides that compensation should be based on the amount which "best represents the actual loss of earnings". This does not mean "best earnings".

b. When, if at all, should benefits from other government agencies, employment-related benefits, and private insurance plans be stacked and when, if at all, should these benefits be integrated with workers' compensation benefits?

Workers' compensation benefits should be integrated with disability benefits from the Canada Pension Plan. Since it could be argued that the worker pays for 30% of the benefits, the full amount should not be offset against WCB benefits. The worker should retain the right to 30% of the CPP disability benefit, while WCB payments are reduced by 70% of the CPP disability benefit.

The CPP disability benefits, added to WCB benefits, amount to an increase of 31% over the worker's net take home pay.

Consider this example:

Single worker	Earning $40,000 per year Off 12 months on WCB Receives 75% of $40,000, tax free	$ 30,000.00

CPP benefits have a waiting period of 4 months. After this wait, the worker received $935.12 per month from CPP.

Injured worker	Receives in the first 12 months, 8 months of CPP	$ 7,480.96
	Receives from the WCB for 12 month period	30,000.00
	Total dollars on WCB and CPP	$37,480.96
Difference equals 25% more than would be earned at work		$ 7,377.96

It is therefore recommended that legislation be drafted to prohibit the stacking of WCB benefits on Canada Pension Plan benefits. It is further recommended that pension benefits be integrated with 70% of any CPP disability pensions but not with private disability insurance.

Benefits received from private insurance plans should not be integrated with WCB benefits.

c. Should the compensation rate be changed to a rate based on percentage of net earnings?

Yes. It is recommended that the rate be changed to 80% of net earnings.

d. Should the way in which benefit payments are indexed be changed?

The WCB currently adjusts all periodic payments of workers' compensation twice a year according to the Canadian Consumer Price Index. British Columbia is the only Province with semi-annual adjustments to periodic payments. While there is

support for some adjustment of periodic payments, it is widely believed that the British Columbia system is overgenerous.

Alberta, Manitoba, New Brunswick, Newfoundland, Ontario, Prince Edward Island, Quebec, Saskatchewan and the Yukon all adjust on a once-a-year basis.

Ontario uses a formula, which results in a much lower adjustment (CPI x 0.5 - 1%). In other words, if the CPI was 4%, the WCB adjustment would be 4% x 0.5 -1%, which equals 1%.

The North West Territories does ad hoc adjustments. Nova Scotia did not provide indexing until January 1, 2000.

It is therefore recommended that the Ontario formula for calculating CPI (CPI x 0.5 – 1%) be adopted and that all periodic payments be adjusted on first day of the month following the second anniversary of the accident and annually after that.

e. With due regard to the experience of other Canadian jurisdictions, should there be a waiting period for eligibility for workers' compensation during which the employer is obliged to maintain the worker on payroll? If so, should the employer be reimbursed by the system when the claim is accepted?

Legislation should be changed to add a waiting period for benefits. This would act as an insurance deductible clause. New Brunswick has a waiting period of three days and Nova Scotia has a waiting period of two days.

The estimated impact upon the number of Short Term Disability (STD) claims in BC, based upon the 1996 WCB claims, would be as follows:

STD Claims	**Number**	**% of Total**
1 day only claims	7,710	10.7%
2 day only claims	6,410	8.9%
3 day only claims	5,510	7.4%
1, 2 or 3 days (and not more than 3 days)		27.0%

The worker may be disadvantaged during the waiting period with no earnings while the WCB are considering the acceptance of the claim. The employer can keep worker on the payroll as a bridging measure.

It is therefore recommended that legislation be changed to include a two or three day waiting period before benefits start.

OCCUPATIONAL DISEASES:

a. Should the WCB continue to cover occupational diseases for compensation purposes, and if so how should they be addressed?

Unlike injuries, which often result from a single definable incident, disease causation often involves elements that are occupational, non-occupational, or both. Another challenge to establishing causation occurs when the symptoms of a disease do not manifest themselves for an extended period of time. A scheme which apportions entitlement between work and non-work related causes of a disease should be considered. This would reduce the impact of diseases on the system and reflect that employers, who are funding the system, are responsible only for injuries and disease to the extent that they are work-caused.

It is therefore recommended that the Workers' Compensation Act be amended to require proof that an occupational disease claim is work related and as such, is compensable. Presumptions such as those contained in Section 6(3) and Schedule B of the *Act* should be removed. In addition, statutory provision should be made to apportion the entitlement between work and non-work related causes of a disease in order that employer's costs be restricted to their causative significance.

b. How should the conditions of chronic stress and chronic pain be dealt with under the Act?

CHRONIC STRESS:

Unlike some jurisdictions, the BC *Act* does not specifically cover "stress". Personal injury or death arising out of and in the course of employment is covered in Section 5, and occupational disease is covered in Section 6 where it is due to the nature of a workers' employment. The *Act* does not distinguish between injury caused by trauma and injury caused by gradual onset.

Commissioner's decisions, Appeal Board decisions, and Policy statements have established some rules for stress claims although many are conflicting and unclear. Recently, the Appeal Division and certain Review Board panels developed a "three-fold test" for accepting stress cases as follows:

- Did the workplace circumstances or events involve unusual stimuli?
- Were the workplace circumstances or events reasonably capable of causing psychological injury?
- If so, were the workplace circumstances or events of causative significance with respect to the worker's psychological injury for which compensation is sought?

This test has led to the acceptance of some claims where the cause of injury was a labour relations issue or interpersonal dispute, which historically would have been denied. It has also created much confusion in the adjudicative staff.

Excluding chronic stress claims from coverage under the compensation system may lead to those claims being actionable in tort.

A state of physical and emotional exhaustion is currently not recognized by the Board as an industrial disease.

Most provinces have amended their legislation to exclude stress except as an acute reaction to a traumatic event.

It is extremely difficult to evaluate any claim for stress that is not related to a work place event for the following reasons:

- The time which may have passed between the "cause" and the "effect" and the number of intervening events make it difficult to attribute a mental condition to a particular set of circumstances.
- There is a great deal of subjectivity within the notion of "stress”.
- There is a lack of clinically established criteria and the standards for diagnosis of "stress."
- Stress is multifactoral, interactive and dynamic and therefor difficult to categorize.
- Individuals respond differently to stress.
- There are difficulties to establishing what is "normal or abnormal "with respect to stress reaction.
- There is an unknown relationship between stress and disability.
- Pre-existing and concurrent factors are difficult to separate.
- The importance of individual "motivation to cope" in stress cases is not clearly understood.
- Stress assessments are unreliable due to a lack of clinical standards.
- There is a potential for misinterpretation of clinical data by the legal system and for harm to the clients.
- There is a poorly understood, interactive relationship between job dissatisfaction and stress in the work place.

It is therefore recommended that the *Act* be changed to specify that stress claims are only compensable when the stress is an acute reaction to a traumatic workplace event.

CHRONIC PAIN:

Chronic pain is that which persists beyond the usual recovery time of a comparable injury. The Board has arbitrarily established six months from the date of injury as a benchmark.

The *Act* contains no specific provisions for chronic pain or subjective complaints. Conversely, there is no authority in the *Act* to exclude such coverage.

In 1991 the Board established a task force to study the problem of chronic pain syndrome which resulted in a Pain Glossary to help clarify the diagnostic criteria and diagnosis within the Board and externally.

The Board now considers a worker's complaints of pain and provides benefits and functional pensions which in its policy is referred to as subjective complaints of pain.

Due to the subjective nature of pain, the lack of conclusive evidence regarding causation, its existence in the absence of objective functional impairment make adjudication extremely difficult.

Chronic pain claims resulting from injuries lead to, not only extensions of wage loss, but also pension awards for both functional losses and loss of earnings.

The Board has estimated that approximately 60% of all functional awards include an increase of between 0.5% and 2.0% for subjective complaints of pain. For the year 2000, there were 3,996 pensions awarded with an average functional award of approximately 7% and an average reserve cost of $33,264.

Many jurisdictions do not have a written policy on chronic pain. However several, including Ontario, Alberta, Newfoundland and Quebec, consider chronic pain compensable and may provide permanent disability awards to workers suffering from chronic pain.

In Ontario, the Workplace Safety and Insurance Board (WSIB) assesses workers with chronic pain disability for both a non-economic loss benefit and a loss of earnings benefit. Chronic pain disability is described as "the condition of a person whose chronic pain has resulted in marked life disruption."

The Royal Commission recommended that compensation for any non-economic loss, which would include pain and suffering, be paid under the *Act* as a lump sum, rather than as a permanent disability pension.

A modification of the Royal Commission model is suggested. Under this option:

- The Board should develop an impairment rating for chronic pain (e.g. between 0–5%) for a Non-Economic Loss benefit and award a lump sum.

- Limit by legislation the provision of the actual loss of earnings pension for chronic pain where there is no measurable physical or psychological impairment.

In a recent study by the Nova Scotia Board, the author noted that chronic pain can develop without any evident cause, or may develop with stress, injury, or specific illness.

Recent studies emphasize that workers with chronic pain should be strongly urged to return to work immediately if no objective signs are found and that pain alone is not enough reason to delay a return to work.

It is therefore recommended that the *Act* be amended to exclude chronic pain syndrome in the absence of objective medical evidence.

FATALITIES/SURVIVOR BENEFITS:

Do the current provisions of the Act ensure appropriate entitlement and adequate benefits for survivors following the death of a worker? What, if any, changes should be made to the Act in this regard?

The last attempt by the WCB to update the benefits package for widows and survivors ended in a political deadlock between worker and employer representatives and no resolution, therefore no change to benefit levels. As a result, fatality benefits have lagged considerably behind today's costs, particularly in the areas of funerals and education costs and expenses.

It is recommended that an annual adjustment to fatality benefits, based on an appropriate formula, be enshrined in legislation so it occurs automatically.

4. OCCUPATIONAL HEALTH AND SAFETY AND REGULATORY REVIEW

ORGANIZATON AND FUNCTION

The occupational safety regulatory and administrative functions should remain under the administration of the Prevention Division of the WCB. Improved managerial oversight should be restored.

The inspection section should be split into 2 distinct units under one head:

- Consultation and Education providing assistance and guidance to employers to improve safety in the workplace without writing orders.
- Compliance for inspections and issuance of closures and orders.

In addition:

1. The appointment of Inspectors should be industry specific for best results. Hire staff solely on the basis of merit and experience.

a. Identify any overlap or duplication of regulations that can be immediately repealed without negative consequence for occupational health and safety.

This is not a simple matter. Changes to regulations should be recommended by the WCB following clear direction from government as to the form and function required and after consultation with industry and workers.

There are an number of regulations currently in the hands of the Policy Bureau, which have been identified as unnecessary. These should be rescinded immediately.

b. Do the occupational health and safety requirements administered by the WCB provide an appropriate balance of performance and prescriptive powers?

The Regulations should be largely “performance based” to be effective. An appropriate balance should then be established by a “Standing Committee on Regulation Review”(see below).

The Board should continue to provide “Manuals of Safe Practice” and have the Educational Unit focus on small employers for improving health and safety in the workplace.

c. Provide a plan for the effective review and reduction of health and safety regulations consistent with ensuring an appropriate balance between performance and prescriptive regulations without jeopardizing the health and safety of workers.

1. A "Standing Committee on Regulation Review" with subcommittees as required, should be established for the purpose of bringing the regulations up to date on an on-going schedule.

2. Both workers and employers would serve on the committee, but employers would be in the majority, based on their knowledge and accountability for safety. OH&S officials from the Board would participate in an advisory and facilitation role.

3. The Committee should include Employer representatives from small, medium and large business.

4. The Committee should include worker representatives from unorganized and organized workers to reflect the ratio of these workers in BC Workers from the unorganized sector could be selected from experienced safety and health committees in the workplace. Workers from the organized sector could be selected by the Trade Unions.

5. The WCB should facilitate the process but they should act only as technical advisors, not as advocates for a position.

6. The Regulations should be developed on a rational basis, not follow the labour negotiations model.

7. A cost benefit/effectiveness analysis should be required for new or changed Regulations.

d. How should the specific needs of large and small employers be addressed in the development and application of occupational health and safety regulations?

A select committee of employers should be established to conduct a study of the special issues of small, medium, and large employers, and make recommendations for change.

e. To what extent can these needs be addressed though technological solutions and/or amendments to the Occupational Health and Safety Regulation?

With the widespread use of the Internet that has occurred, the search for particulars and information on regulations could be greatly enhanced and simplified.

It must be recognized that many small employers do not have, and will not have for some time, the equipment and ability to access the Internet. The Board has advanced considerably in conducting business over the Internet, to the exclusion of former systems and many small employers are now out of touch with the Board.
It is therefore recommended that the availability of the *Act*, *Regulations* and general information should be reviewed at an early stage by the new Standing Committee on Regulation Review with a view to giving special consideration to programs for small employers.

Alternate systems should be provided to those who are not current on the newest technology. An alternate paper system for these stakeholders is still required.

f. Identify and address issues relating to occupational health and safety arising out of the Royal Commission Reports and the subsequent enactment of Bill 14.

The Royal Commission made the following recommendations:

- The *Regulations* should identify the parties to whom they assign responsibility, clearly articulate what the parties are to do, be written in clear and appropriate plain language, and be readily accessible to affected persons.

- On the issue of performance/prescriptive requirements, the Royal Commission could not state conclusively when one type of regulation should be used instead of another. It concluded that the decision must be made case by case after a meaningful assessment of the circumstances.

- The Board should not adopt other provincial or federal legislation by reference.

- The Board should implement a regulatory development and evaluation model based on policy development.

- Bill 14, prohibits an employer or union from taking or threatening discriminatory action against a worker for exercising any right or carrying out any duty in accordance with Part 3 of the *Act*, the Regulations or an applicable order.

The Royal Commission was not specific enough in this area to warrant special action on their recommendations. However, the issues identified have been addressed in this Report.

It is recommended that Bill 14 should be streamlined and improved selectively but not rescinded.

5. ROLE CLARIFICATION/DEFINITION

a. Should the authority to amend Schedule B of the Act and to establish regulations of general application with respect to occupational diseases continue to reside with the WCB?

Section 6(3) of the *Act* provides:

> "If the worker at or immediately before the date of the disablement was employed in a process or industry mentioned in the second column of Schedule B, and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved."

The significance of Schedule B is the presumption of establishing work causation of listed diseases.

The original purpose of Schedule B was to avoid the repeated effort of producing and analyzing medical and other evidence of work-relatedness for a disease where research has caused the Board to conclude that such disease is specific to a particular process, agent or condition of employment.

Once included in Schedule B, it is presumed in individual cases that fit the disease and process/industry description, that the cause was work-related. A claim covered by Schedule B can be accepted even though no specific evidence of work relationship is produced. The scope of the Schedule has greatly enlarged over the years.

While at one time, Board adjudicators may have spent considerable time researching the work relationship of conditions to resulting diseases, the electronic availability of such information today surely negates that argument.

Workers' compensation claims are based on them being work related, and employers, who are paying the full costs of the system, believe claims should only be paid when that relationship is established. Presumptions, particularly those based on bureaucratic convenience, tend to be social engineering.

Under the current statutory framework for workers' compensation, the decision on compensability of a disease is "all or nothing". If the employment played a significant causative role, even if it was not the only or even predominant causal factor, all of the disease is compensable. This is a grossly unfair financial burden on the employer community.

Additionally, the provision in Sec 6(1) that " …. the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved." places the employer again in the position of having to show cause why the claim should not be accepted.

Unlike injuries, which often result from a single definable incident, disease causation often involves elements that are occupational, non-occupational, or both. Another challenge to establishing causation is where a disease is caused by factors acting over an extended period of time. One possible solution would involve adopting a scheme of apportioning entitlement between work and non-work related causes of a disease. This would reduce the impact of diseases on the system and would reflect that employers, who are funding the system, are responsible only for injuries and disease to the extent that they are work-caused.

It is therefore recommended that the *Workers' Compensation Act* be amended to require proof that an occupational disease claim is work related and as such, is compensable. Presumptions such as those contained in Section 6(3) and Schedule B of the *Act* should be deleted.

Internal policy directives should establish guidelines for the adjudication of claims. In addition, statutory provision should be made to apportion the entitlement between work and non-work related causes of a disease in order that employer's costs be restricted to their causative significance.

b. What role should the Office of the Workers' and Employers' Advisers play in the workers' compensation system generally, and the review and appeal process in particular?

The advisory services were originally part of the Board and were moved under direct ministry control at about the same time as the independent Review Board was created.

The advisory services initially performed an essential service for both workers and employers as claims files were classified and confidential and appellants had no direct access to claim file information to assist in their presentations on appeal.

In 1981, the courts ruled that workers and employers should have access to files under appeal, and the advisory services became pure advocates available without charge.

While many unions and employer associations offer advisory services to members, there are many non-union workers and small employers who utilize the free services of the Workers' and Employers' Advisers. It should be noted that there are not many public administrations that offer any such independent advisory services.

In the past few years, the advisory services have on occasion participated in training sessions for union and employer representatives, assisted advocacy groups in presentations to the Royal Commission, prepared opinions on general WCB matters, and spoken publicly on WCB matters for their respective constituents. This would seem to be an inappropriate use of the Board's resources.

It should be particularly noted that if the WCB was to adopt a service oriented business model, focusing on effective claims and assessment administration, the necessity for much of the services offered should be reduced. A change in the appeal system as outlined earlier in this report should also alleviate a portion of the workload.

It is not possible to provide service to workers and employers for all of their needs in the compensation field. This should not be considered. Organized labour and large employers do have qualified experts to perform as advocates for compensation matters, and this should continue.

There is no argument that both offices provide an exceptional service to those that they do service.

The resources expended should be spread equitably between workers and employers. The employer is involved in all claims appeals as well as those for Assessments and Prevention so the imbalance is significant.

It is therefore recommended that the role of Workers' and Employers' Advisers be to continue to service all workers and employers. They should provide:

1. Advice and representation on claims, prevention and assessment matters only, and not lobby on behalf of stakeholders to the government;

2. Education of all stakeholders in compensation matters would be a primary service that would be key in their mandate.

In addition,

3. The Employers' Adviser office should be provided the same resources as the Workers' Adviser office as the demand actually exceeds what is required by the Workers' Adviser for the workers.

And,

4. The Employers' Adviser office should be expanded to include representation on matters concerning defunct employers.

5. Both offices should be provided sufficient resources to fulfill their mandate as they have been severely restricted in the past by the government's departmental restraint.

6. Reporting relationship should be to the same Ministry of Labour.

c. What role, if any, should the government play in the establishment, review and updating of occupational health and safety regulations? What is the appropriate role for the WCB?

The establishment of a Standing Committee on Regulation Review as recommended above should minimize the need for Government's direct involvement in matters of Health & Safety.

It is preferable that Government does not have an active role due to the fact that it politicizes the process, and this is not good for either workers or employers.

It is therefore recommended that there be a direct supervisory role for the Ministry of Labour that the WCB reports through.

There should be no direct Government involvement in the review and updating of regulations other than the promulgation of the regulations through Order-In-Council.

OTHER KEY ISSUES

RETROACTIVE BENEFITS:

The government of the day, through the legislature, determines what benefits will be paid for workers' compensation, and the employers of the day pay the cost for these benefits.

It is not appropriate for current employers to pay the costs for government when it decides to retroactively increase past benefits.

In recent years the government added about $500 million to the cost of present employers. The matter concerned benefits to widows which were retroactively increased.

It is therefore recommended that:

1. Changes to benefit levels should only apply from the point the change is made. There should be no retroactivity.

2. If retroactivity is applied, it should come from General Revenue.

USE OF ALTERNATE HEALTH CARE:

Injured workers must wait for many health care services, especially for visits to specialists, surgical procedures and hospital stays. This is a major factor in the increasing trend of "Claims Duration".

The result is that workers do not receive the medical care which would improve their chance for the best possible recovery and speed their return to normal life, including work. Lengthy waits for procedures such as a MRI and Cat Scan leaves injured workers and their families in limbo – not knowing what may be wrong or how long it will take to recover.

People who live outside of BC can come to private health centres in BC and pay for treatment. They do not wait in a cue and they receive the care they require. Conversely, people who live in BC can go to the U.S. and pay for private treatment. They do not wait in line and they promptly receive the care they need.

The employer pays the full cost of all wage loss benefits while this lengthy wait goes on. The worker may be affected by the long delay and may not recover fully or may not return to work. In this case, the worker becomes a permanent recipient of WCB benefits, all of which is paid for by the employer.

The solution is for the WCB to use private health care, including private hospitals. A systematic approach to treatment would be developed, with workers receiving the most appropriate medical treatment as soon as they require it. There would be minimal waits for specialists, diagnostics and hospital beds.

For a workers' compensation system which is struggling to control costs while offering optimum service, the use of private health care is the natural solution. This is not an ideological issue – it is a common sense solution to a long-term problem.

A side benefit of this new health care structure would be that public health care would have fewer workers as patients, thereby reducing the backlog for non-WCB cases.

This recommendation with respect to medical care is already being done with physical rehabilitation, which is often handled through private clinics.

It is therefore recommended that:

1. The use of an Alternate Health System to serve injured workers be examined.

USE OF DOCTORS IN THE COMPENSATION SYSTEM:

WCB doctors have the occupational experience to look for risk factors concerning the worker's injury and offer advice on how to avoid re-injury. They have a better knowledge of worksites in general because of their daily involvement with worksite issues.

It is therefore recommended that:

1. The WCB should continue to employ its own doctors. These doctors should review claim files, examine workers as necessary and report their findings.

2. The WCB should recruit a mixture of experienced and newly graduated doctors for 3 to 5 year terms with special emphasis on hiring those with occupational medicine and musculoskeletal training.

DOUBLE PAYMENT:

The WCB pays wage loss benefits for Statutory Holidays when the employer is already doing this. This is double payment.

The issue arises in a number of collective agreements where provision is made for the employer to pay the worker for statutory holidays on a contractual basis.

It is therefore recommend that the *Act* be amended so that the WCB does not pay wage loss for Statutory Holidays when the employer is already paying the worker for the holiday.

WORKER AND EMPLOYER ADVOCATES:

The Legal Profession has taken steps to prevent advocates who are not lawyers from servicing workers and employers in the compensation system. Legal challenges are being launched by the Law Society.

The monopolization of the compensation system by lawyers will add millions of dollars to the costs as has been experienced in the California system. It will also turn it into a litigious system which is contrary to the original intention of the *Act*, and result in further delays in the system.

There are a number of lay personnel who have considerable experience and knowledge of the compensation system and are able to act in an advocacy role for workers and employers. It is not appropriate that they be restricted from servicing the needs of workers and employers.

Both unions and the private sector do an effective job of acting as advocates now.

It is therefore recommended that the *Act* be amended to permit lay persons to service the needs of workers and employers.

THE POLICY BUREAU:

It is recommended that the Policy Bureau be disbanded and that each of the WCB Divisions be responsible for the development and maintenance of policy matters within their own sphere of operations. It is understood that the process for policy development/modification must include input from affected stakeholders. It must also include, where appropriate, a cost/benefit analysis.

The responsibility for consistency in the form, substance and effect of policy should rest with the Director of Corporate Planning and Development. To that end, the Director should meet on an "as needed" basis with divisional policy drafters. That group should examine all policy work that has extra divisional implications and prepare recommendations for approval by the Senior Executive Committee.

CONTRACTOR LIABILITY:

Part 1, Division 3, Section 51 of the *Act* states, in part:

> " Where work within the scope of this Part is undertaken for a person by a contractor, both the contractor and the person for whom the work is

undertaken are liable for the amount of any assessment in respect of it, and the assessment may be levied on and collected from either of them …"

The effect of this section is to hold persons and companies liable for debts for which they have neither knowledge nor control, a situation that is foreign to normal business practices and standards.

Companies are familiar with the practice and intent of confirming a contractor's status with the WCB Assessment Division and most are diligent in doing so. However, being held responsible for the debt of a contractor which develops during the execution of a contract, is seen as unreasonable and unfair.
It is not clear why the WCB should enjoy such special status when no other corporation can behave in this manner. There is an argument, which asserts that this authority has rendered the WCB less diligent and persistent than they should be in their pursuit of debtors who are contractors.

The WCB may argue that this authority is necessary in order to minimize collection expenses and avoid visiting the cost of non-payment on innocent and uninvolved employers. However, visiting that same cost on an unempowered and frequently uninformed employer is a greater injustice, if only in terms of the financial impact. In a "business normal" insurance scheme, the cost of bad debts are borne by all participants and the WCB system should be no different.

In addition, the WCB has ample authority to collect moneys owed. Perhaps the removal of Section 51 will provide them with the will to use it.

It is recommended that Section 51 be rescinded in its entirety.

APPENDIX A

BUSINESS COUNCIL OF BRITISH COLUMBIA

CORPORATE

AT&T Canada
A & W Food Services of Canada Inc.
Ainsworth Lumber Co. Ltd.
Air Canada
Alcan Aluminum
AMEC Inc.
Aon Reed Stenhouse Inc.
Bank of Montreal
Bank of Nova Scotia
Bell Nexxia
Blake, Cassels & Graydon LLP
Boliden Westmin (Canada) Ltd.
Bombardier Transportation
Borden Ladner Gervais
BC Gas Inc.
British Columbia Automobile Association
CIBC World Markets
Caldwell Partners International
Calpine Canada
Canada Safeway Ltd.
Canadian Imperial Bank of Commerce
Canadian National Railway Company
Canadian Pacific Railway Company
Canfor Corporation
Central Heat Distribution Ltd.
Chevron Canada Limited
Coca Cola Company ltd.
Concord Pacific Group
Construction Aggregates Ltd.
Credit Union Central of BC
Dairyworld Foods
Davis & Company
Deloitte & Touche
Dow Chemical Canada Inc.
Ebco Metal Finishing Ltd.
Electronic Arts (Canada), Inc.
Equitas Real Estate Advisors
Ernst & Young
Fairmont Hotels & Resorts – BC Region
Farris, Vaughan, Wills & Murphy
Fasken Martineau DuMoulin LLP
Finning International Inc.
Fluor Corporation
Fording Coal Limited
Four Seasons Hotels & Resorts
Great Canadian Railtour Company Ltd.
Harris & Company
Homestake Canada Inc.
HSBC Bank Canada
Hyatt Regency Vancouver
IBM Canada Ltd.
Ian Martin Limited
Imperial Oil Limited
Industrial-Alliance Pacific Life Insurance Company
Intrawest Corporation
Inwest Investments Ltd.
IPSCO Inc.
KPMG
Kelly Douglas/Westfair Foods Ltd.
Korn/Ferry International
Labatt Breweries of BC
Lafarge Canada Inc.
Lawson, Lundell, Lawson & McIntosh
Ledcor Industries Ltd.
Lignum Ltd.
H.Y. Louie Co. Ltd.
McCarthy Tetrault
MacDonald Dettwiler & Associates
MDS Metro Clinical Laboratories
Marsh Canada Limited
William M. Mercer Limited
Methanex Corporation
Metropolitan Hotel, Vancouver
Mitsubishi Canada Limited
Molson Breweries
Nesbitt Burns Inc.
Nexen Chemicals
Ocean Construction Supplies Ltd.
Ogilvy Renault

CORPORATE MEMBERS (CONTINUED)

Orca Bay Sports & Entertainment
PMC-Sierra, Inc.
Pacific Northern Gas Ltd.
Petro-Canada
Pfizer Canada
Placer Dome North America Limited
Placer Dome Inc.
Polygon Homes Ltd.
Port Townsend Paper Corporation
PricewaterhouseCoopers
RBC Dominion Securities Inc.
Raymond James Ltd.
Rogers AT&T
Rogers Sugar Ltd.
Royal Bank
Sandwell Engineering Inc.
Seaspan International Ltd.
Sextant Entertainment Group Inc.
Shato Holdings Ltd.
Shaw Cablesystems G.P.
Shoppers Drug Mart
Sierra Systems Consultants Inc.
Stothert Group Inc.
TD Financial Group
Teck Cominco Ltd
Telus Inc.
Tilbury Cement
Tokyo Canada Corporation
Tolko Industries Ltd.
TransCanada Pipelines Limited
Trans Mountain Pipe Line Company Ltd.
Tree Island Industries Ltd.
Vancouver International Airport Authority
Vancouver Port Authority
Weldwood of Canada Limited
West Fraser Timber Co. Ltd.
Westcoast Energy Inc.
Westin Bayshore Resort & Marina
Westin Resort & Spa, Whistler
Westshore Terminals Ltd.
Weyerhaeuser Company Limited
Xerox Canada Ltd.

GOVERNMENT AFFILIATE

Crown Corporations

BC Hydro & Power Authority
BCR Group of Companies
Insurance Corporation of BC
PavCo-BC Pavilion Corporation
Public Service Employee Relations Commission
Public Sector Employers' Council
Translink

Educational Institutions

Royal Roads University
School District #39 (Vancouver)
Simon Fraser University
Technical University of British Columbia
The University of British Columbia
The University of North British Columbia
The University of Victoria

ASSOCIATE

Advanced Education Council of BC
BC Chamber of Commerce
BC Construction Association
BC Human Resources Management Association
BC Maritime Employers Association
BC Medical Association
BC Public School Employers' Association
BC Road Builders & Heavy Construction Association
BC School Trustees Association
BC Seafood Alliance
BC Technology Industries Association
Canadian Association of Petroleum Producers
Canadian Chemical Producers Association
Canadian Manufacturers & Exporters
Canadian Petroleum Products Institute
Council of Forest Industries
Forest Industrial Relations Ltd.

ASSOCIATE MEMBERS (CONTINUED)

Greater Vancouver Regional District – Labour Relations Department
Greater Victoria Labour Relations Association
Healthcare Benefit Trust
Health Employers Association of BC
Independent Contractors & Businesses Association
Interior Forest Labour Relations Association
Mining Association of BC
Post Secondary Employers' Association
Pulp and Paper Employee Relations Forum
Real Estate Board of Greater Vancouver
Michael Smith Foundation for Health Research
The Vancouver Board of Trade
Urban Development Institute
Western Employers' Labour Relations Association

COALITION OF B.C. BUSINESSES

A.J. Forysth & Co. Ltd.
Alliance of Manufacturers & Exporters
BC & Yukon Hotels' Association
BC Automobile Dealers Association
BC Chamber of Commerce
BC Restaurant and Foodservices Association
BC Technology Industries Association
BC Trucking Association
Building Owners & Managers Association
Building Supply Dealers Association
Canadian Federation of Independent Business
Canadian Home Builders' Association
Canadian Restaurant and Foodservices Association
Canadian Retail Hardware Association
Council of Tourism Associations of BC
Greenhouse & Nursery Trades
Independent Contractors and Business Association
Insurance Brokers Association of BC
Recreation Vehicle Dealers Association of BC
Retail BC
Retail Council of Canada
Steel Service Centre Institute
Vancouver Board of Trade
Western Silvicultural Contractors' Association

EMPLOYERS' FORUM TO THE WCB

BC Chamber of Commerce
BC Construction Association
BC Public School Employers' Association
BC Road Builders & Heavy Construction Association
BC Shake and Shingle Association
BC Trucking Association
Business Council of BC
Canada Post Corporation
Canadian Association of Petroleum Producers
Canadian Federation of Independent Business
Canadian Manufacturers & Exporters
Canadian Plastics Industry Association

Central Interior Logging Association
City of Vancouver
Coalition of BC Businesses
Community Social Services Employers' Association of BC
Compensation Advisory Services
Construction Labour Relations Association of BC
Council of Construction Associations
Council of Forest Industries
Fasken Martineau & DuMoulin LLP
Gleneil Holdings Ltd. / H-F Partners
Greater Vancouver Regional District
Health Employers' Association of BC
Helicopter Association of Canada
Mining Association of BC
Petroleum Services Association of Canada
Public Service Employee Relations Commission
Retail Council of Canada
Rogers Sugar Ltd.
Slocan Group
Tree Island Industries Ltd.
Truck Loggers' Association
Union of BC Municipalities
Vancouver International Airport Authority
Western Tire Manufacturers' Association
William M. Mercer Limited

APPENDIX B

26 OCTOBER 2001

EMPLOYERS' FORUM
Response to
Terms of Reference for Allan Hunt Review of:

WCB SERVICE DELIVERY

QUALITY

a) Is the WCB providing fair and timely services to workers and employers in terms of decision-making about workers' compensation and rehabilitation, occupational health and safety in the workplace, and employer classification and premium rates?

× NO. There is widespread dissatisfaction with service delivery in all of the areas cited. While some of the criticism may result from a misunderstanding of mandate, goals and objectives on behalf of the public, there is substance to the concerns as this Board has failed to meet even its own performance criteria.

b) Does the WCB communicate with its clients and stakeholders in a timely, responsive, and accurate manner? Is the response provided by the WCB appropriate given the nature of the question, problem or concern?

× NO. There is an unacceptable level of inconsistency in this area. In general, communications with employers lack the requisite detail, clarity and (in many cases) logic required. Communications with workers tend to be overly technical tending to reference policy or legislation rather than offering a plain language explanation for a decision.

c) Is plain language used in all decisions, documents and communications? Are sufficient opportunities for face-to-face meetings and interaction provided?

× NO. See above re: plain language. Face-to-face or even direct telephone communication is the exception, not the rule.

d) Do workers, employers and the public have sufficient information and awareness about the WCB to access its services efficiently and appropriately?

× NO. The WCB remains a mystery to many. This is particularly true of small employers and/or owners who are uniformed about WCB policy changes that impose obligations and duties on them. The WCB does not relate well to small business.

e) Are processes for resolving complaints and disputes timely, fair, and effective? Are workers and employers adequately advised of their review and appeal rights?

× NO/YES. "Timely" and "Fair" are not words frequently used in a discussion of the performance of the WCB. "Effective" may apply, but only if viewed from the Board's perspective.

f) Does the WCB provide adequate training to staff in terms of client interaction and client service?

× ?? This is a question only the WCB can answer. From a distance, it is impossible to determine whether the absence of adequate training poor performance despite adequate training, or a poor corporate culture, or poor morale or any number of other reasons accounts for the problems and the WCB.

EFFICIENCY

a) Are current organizational and service delivery models the most efficient available, and in keeping with best practices? Will current service initiatives improve service delivery and meet the future needs of stakeholders? If not, what changes should be made to increase the level of efficiency while maintaining high levels of quality service?

b) Does the current system provide an appropriate focus on delivery of core services? Can organizational complexity be reduced to deliver these core services in a more efficient manner?

× One of the contributors to WCB inefficiency is the instability, which results from a seemingly continuous need for improvement through change. The improvements are rarely given the opportunity to remain in place long enough to prove their worth before being replaced by something better. The resultant instability leads to inefficiency. This is generally true for all service delivery areas of the WCB.

The following are specific recommendations for improving efficiency in each of the Board's major divisions.

Prevention -

✓ The Prevention Division should focus on two primary functions, enforcement of the regulations and assistance (consultation) with/on injury prevention. It is recommended that these two functions be separated and assigned to two distinct organizational structures that both report to the Vice President, but do not interact below that level.

Enforcement	-	These activities should focus on high-risk workplaces with poor compliance and prevention records – not workplaces with established programs and good records.
	-	There is also a need to improve consistency in enforcement practices.
	-	All orders should be appealable to the Regional Manager (a non-bargaining unit position) and then to the Appellate body.
Consultation	-	Initially, the ratio of consultation staff to enforcement staff should be 50/50, working toward 80/20 (this is results-dependent).
	-	Consultation efforts should focus on education, training and assistance with prevention program development and implementation.
Assessments	-	Technology issues must be resolved, there is currently no intercommunication between 6 different computer programs/systems.
	-	Registration must be improved in terms of both time and complexity; a dedicated registration group may be required.
	-	Electronic registration should be available on a 24/7 basis
	-	One-person companies should be allowed to register.
	-	It is essential that trained staff, familiar with the new system be retained.
Compensation Services	-	Quality control function should be added to the list of Manager's (non-union) duties – in addition, Internal Audit should do spot checks for adjudication quality and consistency
	-	There should be a renewed emphasis on training, supervision and performance management.
	-	Emphasis should be placed on investigation prior to rendering a decision.
	-	Claims should remain in the hands of the same decision-maker from inception to resolution.
	-	Doctors should be re-introduced and nurses removed.
	-	All decisions must be in plain language with clearly explained reasoning.
	-	The Call Centres should be re-evaluated – they may add value, but currently are slow and poorly managed.
Vocational Rehabilitation	-	The focus should be on employability.
	-	Cost control needs to be a priority.
	-	Vocational rehabilitation staff should be trained in early return to work techniques (with the accident employer).

- Re-training should be limited.
- Spending authority should not rest with the vocational rehab consultant.

ACCOUNTABILITY

a) Are current service performance measures and reporting mechanisms appropriate and effective?

× Tough one to call … the mechanisms may be appropriate and simply being poorly utilized or there may be inadequate mechanisms.

b) Are appropriate mechanisms in place to ensure service standards and key performance indicators are tracked and met? Are appropriate benchmarks established and tracked?

× As above.

c) If not, what changes should be made to ensure the ongoing accountability of the WCB for fair, responsive, and timely delivery of service to workers, employers and the public?

See Efficiency

GENERAL ISSUES

- Duplication of management functions between the 3 divisions must be eliminated (both Assessments and Prevention have specialty help for industry sectors, but they don't talk to each other).

- The CBA must be changed to permit the management of the WCB to run the place in an appropriate and responsible manner.

- The Policy Bureau should be removed and that responsibility given to a management committee.

- Remove the Research Secretariat.