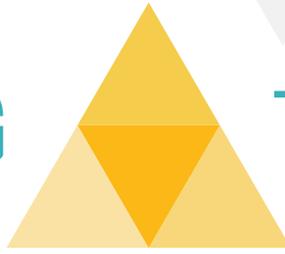


**WORKING**



**TOGETHER**

# REPORT AND RECOMMENDATIONS

OF THE ALBERTA WORKERS' COMPENSATION BOARD (WCB) REVIEW PANEL



JUNE 2017



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June 2017

Honourable Christina Gray  
Minister of Labour  
107 Legislature Building  
10800 – 97 Avenue  
Edmonton AB T5K 2B6

Dear Minister Gray:

In spring 2016, you asked our Panel to undertake a review of Alberta's workers' compensation system. It is my privilege to submit our report and recommendations.

Alberta's workers' compensation system is nearly a century old. Like almost everything in Alberta, much has changed during the past 100 years in respect of the world of work. For example:

- Today's workers can be expected to have multiple employers during their working lifetimes, sometimes concurrently.
- Pre-existing conditions and conditions of multifactorial nature are more likely to be encountered than in the past.
- The constant evolution of medical knowledge is likely to present us with new information about the relationships between certain occupations and certain injuries and illnesses.

All of these things, and others, will challenge workers' compensation systems in the years to come – not only in Alberta, but the rest of Canada as well.

Despite these many changes, one thing has continued: and that is the value Albertans place on the workers' compensation system.

Our Panel had the pleasure of speaking with and hearing from a wide range of Albertans, including injured workers and their families as well as individuals representing employers, workers, unions, industry associations, safety associations, health professionals and other stakeholders with key interests in the system. Overwhelmingly, these people told us that they want the system to be there for people when it is needed, and to be sustainable over the long-term.

At the same time, they told us that the system needs to re-focus and re-align on its central purpose: assisting workers who suffer workplace-related injuries and illnesses. As of right now, too many people feel that the system has 'lost its way' and drifted from that purpose. The result has been a steady erosion of trust in the system on the part of workers and employers alike.

If implemented, our Panel's recommendations will halt that erosion and put in place the fundamental underpinnings for a workers' compensation system that puts the health and well-being of injured workers at the centre of its decision-making. It will be a financially sustainable system that features greater transparency, communication and accountability. It will be a system that respects the unique relationships between workers and employers and engages collaboratively with both to help injured workers recover and return to their workplaces. And it will be a system that empowers its staff to use discretion, within the legislative and policy framework, and make decisions that 'do right' by workers and employers and employ creativity and common sense.

In short, Alberta's workers' compensation system will be positioned to meet the expectations of stakeholders in the twenty-first century, and will be there for people for many years to come.

Our Panel notes with interest that, since the commencement of our review, the Workers' Compensation Board (WCB) has undertaken several initiatives aimed at enhancing its processes. They have attributed these changes directly to feedback stakeholders provided to our Panel during our engagement process. We leave it to the Government of Alberta to evaluate the sufficiency of the WCB's recent initiatives in terms of their alignment with our Panel's recommendations.

As a final note, a number of acknowledgements are in order.

I wish to extend my appreciation to fellow Panel members John Carpenter and Pemme Cunliffe. Their expertise and insights were instrumental in this review, and I am privileged to have served with these remarkable individuals.

On behalf of our Panel, I also wish to express profound thanks to the staff of the WCB Review Secretariat, who supported us in our review. Our efforts would not have been possible without their hard work and dedication. We benefited as well from the excellent services of Community Development facilitators from Alberta Culture and Tourism, who helped us navigate many rich conversations with stakeholders. We also want to acknowledge the support received from the Department of Labour, including Occupational Health & Safety, Communications and Information Management and Information Technology.

Thanks also go to staff of the WCB, who provided our Panel with technical information. We appreciate how responsive they were to our questions and inquiries.

Finally, our Panel is immensely grateful to the many individuals and organizations who contributed their thoughts, perspectives and advice to this review. The wisdom and experiences they shared with us were vital in our deliberations. It is our hope that they see their hopes and ambitions for the system reflected in our recommendations.

Sincerely,

Mia Norrie  
Chair, WCB Review Panel



“ I like the fact that it (WCB) exists. There is a means for injured workers to receive some monies and resources while recovering.”

– *Interested Albertan*



# EXECUTIVE SUMMARY

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In March 2016, the Government of Alberta established our Panel to review Alberta's workers' compensation system including the Workers' Compensation Board – Alberta (the "WCB"); the Appeals Commission for Alberta Workers' Compensation (the "Appeals Commission"); and the Medical Panel Office.

In accordance with the Terms of Reference we were given (see Appendix A), the purpose of our Panel's review was "to strike the right balance between workers and employers to ensure fair compensation, meaningful rehabilitation for an injured worker, and a sustainable and affordable workers' compensation system."

## WHAT WE DID

Our review process was thorough. We commenced with a broad data gathering exercise, in which we marshalled as much information as we could about the current policies and processes of the system. This included detailed technical briefings to ensure that our Panel had a comprehensive foundation. In addition, we asked Albertans to provide their perspectives about the current system through written submissions and online questionnaires. We also held in-person meetings with groups of injured workers to hear about their experiences and to see firsthand how the system can directly impact the lives of Albertans and their families.

Based on what we learned and heard, we identified areas of the system that were especially complex, controversial or confusing and which required additional analysis. To help us with that analysis, we undertook a number of face-to-face engagement activities with individuals representing workers, employers, unions, industry associations, the health community, safety associations, and many others. Our engagement activities with these stakeholders included facilitated working sessions, an expert panel session on major trends in workers' compensation systems, and a symposium on issues related to data around workplace injuries and illnesses.

All of these efforts gave us rich input about the strengths of Alberta's current system and opportunities to improve the system for the future. Along with information from our own research efforts, which included an examination of other workers' compensation systems across Canada, our Panel used this input to inform our deliberations and recommendations.

## WHAT WE FOUND

Our full report provides greater details on specific aspects of Alberta's workers' compensation system, but overall, here is what we found.

First, it must be emphasized that Albertans place value on the workers' compensation system. The system covers nearly 1.9 million Albertans working at over 160,000 employers throughout the province. Its reach is vast, touching the lives of workers and business owners in the public, private and non-profit sectors. We heard loud and clear that Albertans want the system to be there for people when needed. Workers and employers continue to see the system as a preferable alternative to litigation, consistent with the historic compromise on which the system is premised.

It is also important to emphasize that the vast majority of claims are handled by the system well and are usually resolved within two weeks. Workers and employers alike express high satisfaction with these smoothly-handled claims.

However, not every claim is straightforward. Some present with significant complexities. For example, an injured worker's condition may be multifactorial in nature; they may have a pre-existing condition; or they may have worked for several different employers during their career. In cases where the nature or cause of a worker's condition is hard to discern, the system does not perform smoothly. Instead, injured workers, employers and health professionals can find themselves caught in a mix of disagreements, reviews and appeals. When this happens, the WCB can be overly efficient, and tends to manage the claim in aggressive accordance with strict rules, even when the resulting decisions fly in the face of common sense. This raises frustration among workers and employers alike and it contributes to a perception that the WCB has a "culture of denial".

Indeed, the biggest failing of the system right now is not the level of benefits it provides, but how its overall decision-making impacts the lives and livelihoods of workers and employers. Rather than decision-making that focuses on assisting people with their injuries, illnesses or concerns, the system's decision-making currently focuses on efficient management of claims. Too often, it seems, the latter is given attention at the expense of the former.

Workers and employers both gave up significant rights in the historic compromise that led to the creation of the workers' compensation system, and they want to be sure that they are getting what was promised in return. Many are not certain they are, and this has eroded trust amongst those with interests in the system: workers, employers, health professionals, and even staff working in the system. Interestingly, there is a sense among many workers that the system is 'in the pocket' of employers and, at the same time, a sense among many employers that the system is 'always on the side' of workers. The fact that everyone is equally unhappy does not mean that the system is doing a good job of serving everyone equally and impartially.

For the workers' compensation system to be effective in fulfilling its mandate over the long-term, trust in the system must be re-established. Those with interests in the system must be able to regard the entities in the system – especially the WCB – as impartial decision-makers. For that to be possible, the system needs to exhibit the fundamentals that are essential for trust in any relationship: transparency, honesty, openness, good communication, and fairness.

The majority of our Panel's recommendations focus on changes that will establish and strengthen those fundamentals in the system. With those in place, stakeholders will be able to have greater trust and confidence in the system, and will have a greater degree of dialogue, engagement and collaboration with decision-makers in the system. This will drive a much-needed culture change throughout the system and ensure that decisions made in the system – whether about benefits, claims eligibility, employer assessments or other matters – will be grounded in evidence, stakeholder input and adherence to the Meredith Principles.

## WHAT WE RECOMMEND

Stakeholders consistently told our Panel that Alberta's workers' compensation system needs to be aligned with its core purpose: providing compensation to workers who suffer workplace injuries or illnesses, and helping them recover and return to work.

We agree. While there will always be an administrative need for claims to be managed, the system does not exist to manage claims. It exists to provide assistance to injured workers.

**The better approach going forward is to put the health and well-being of injured workers at the centre of the workers' compensation system.** This should be the focus around which the system's policies, processes and decisions are made. And it should be the shared goal that all partners have in mind when they approach the system and towards which all the partners should work.

For the sake of brevity, we refer to this new focus in our report as a "worker-centered" system. However, this term is not intended to leave the impression that the shift in focus is only about workers. It is also about employers.

Employers are essential partners in the historic compromise that is the workers' compensation system. They value the importance of providing assistance to injured workers and ideally want to see those workers recover, return to the workplace, and

continue contributing their skills and ingenuity to help the organization pursue opportunities. Employers have a genuine and direct interest in benefitting from a cost-effective workers' compensation system that is open, transparent and provides fair and just coverage, just as workers do.

Our Panel's recommendations include several legislative, policy and structural changes that are designed to bring about a worker-centered system that features greater independence, transparency, stakeholder engagement and accountability. (A summary of our recommendations is provided in Appendix B.)

Among other changes, these include:

- **The establishment of a new Fair Practices Office**, independent of the WCB and accountable to the Minister of Labour, that serves an ombudsman-type function for Alberta's workers' compensation system. In addition to fielding, investigating and addressing concerns about administrative fairness in the system, the Fair Practices Office would conduct regular quality assurance audits of the system and issue public reports of its findings.
- **Increased assistance for workers and employers with reviews and appeals**, through an Office of the Appeals Advisor (OAA) that is relocated from the WCB to the Fair Practices Office. Under this arrangement, workers and employers will have access to the same suite of assistance services, and they will have greater confidence in the advice they are receiving is delivered impartially.
- **The use of a new roster system for independent medical examinations (IMEs)**, with responsibility for the roster residing with the Medical Panel Office, which is independent from the WCB. This will help parties have greater confidence in the impartiality and integrity of IMEs. It will also help reduce conflict and cost in the system by removing incentives to "doctor shop" for multiple IMEs.
- **Greater choice for injured workers in selecting health professionals**, in addition to the choice they already have in selecting their treating physicians. Rather than selecting from an established list of WCB-retained professionals, injured workers will have greater choice in physiotherapists, chiropractors and other types of professionals they engage for treatment.
- **The establishment of an obligation to return workers to work**, and a corollary obligation to cooperate on the part of workers. Through new policy, the WCB establishes protocols to ensure these obligations are observed as appropriate. The WCB will commit to assisting employers and workers in meeting these obligations. The result is a return-to-work approach that respects pre-existing relationships between workers and employers and the realistic re-engagement of workers with the labour force.
- **The use of case conference models throughout the system**, along with a system-wide commitment to seek early and collaborative resolution of any disputes that arise. Formal processes such as internal reviews, appeals, and medical panels are regarded as tools of last resort. Instead, decision-makers in the system engage in meaningful dialogue with employers, workers and appropriate parties to discuss challenges and come up with solutions.
- **The adjustments of certain benefits provided by the system**, with the specific aim of addressing areas where there is hardship, fatalities, permanent injuries of young workers, retirement benefits or people who are affected in dramatic ways by the current application of WCB policies. These adjustments are not expected to result in significant cost increases. To the extent these adjustments might influence a nominal increase to employer assessments, our Panel expects those affects to be balanced by cost reductions in other parts of the workers' compensation system as a result of our other recommendations.

- **Further study or review of particularly complex aspects of the system.** There are some areas of the system, such as the model for calculating employer assessments, which are complex in nature and have significant impacts for many stakeholders. Though our Panel had neither the time nor the expertise to provide specific recommendations in these areas, there is a compelling case for them to be studied further in consultation with stakeholders and appropriate experts.

Our recommendations do these things, and more, with a keen eye to maintaining the sustainability of the system – an imperative that was consistently emphasized by stakeholders. On this front, Alberta’s workers’ compensation system is doing well compared to many of its counterparts across the country. It is financially solvent, its Accident Fund (which pays the costs of claims) is fully funded, and financial decisions are informed by actuarial data and analysis rather than politics or conjecture.

Credit for this is due to the WCB Board of Directors, and the Board has demonstrated prowess when it comes to financial management. The Board’s prowess now needs to extend to encompass all of its other duties, including setting the overall tone of the WCB and bringing about the culture shift needed to achieve a worker-centered system.

Part of this will require a change in the WCB’s policy approach. Staff of the WCB expressed frustration to our Panel that the WCB’s current policy approach often ‘ties their hands’, forces them to make ‘all or nothing’ choices and discourages them from fashioning creative solutions that may better address the needs of all parties. To bring a worker-centered system to life, WCB policies will need to allow staff to use discretion, compromise and creative options, while recognizing that workers’ claims must still fit within the existing statutory framework.

Bringing about the necessary culture shift will also require a change in the WCB’s governance approach. To this end, our Panel recommends a number of governance changes including:

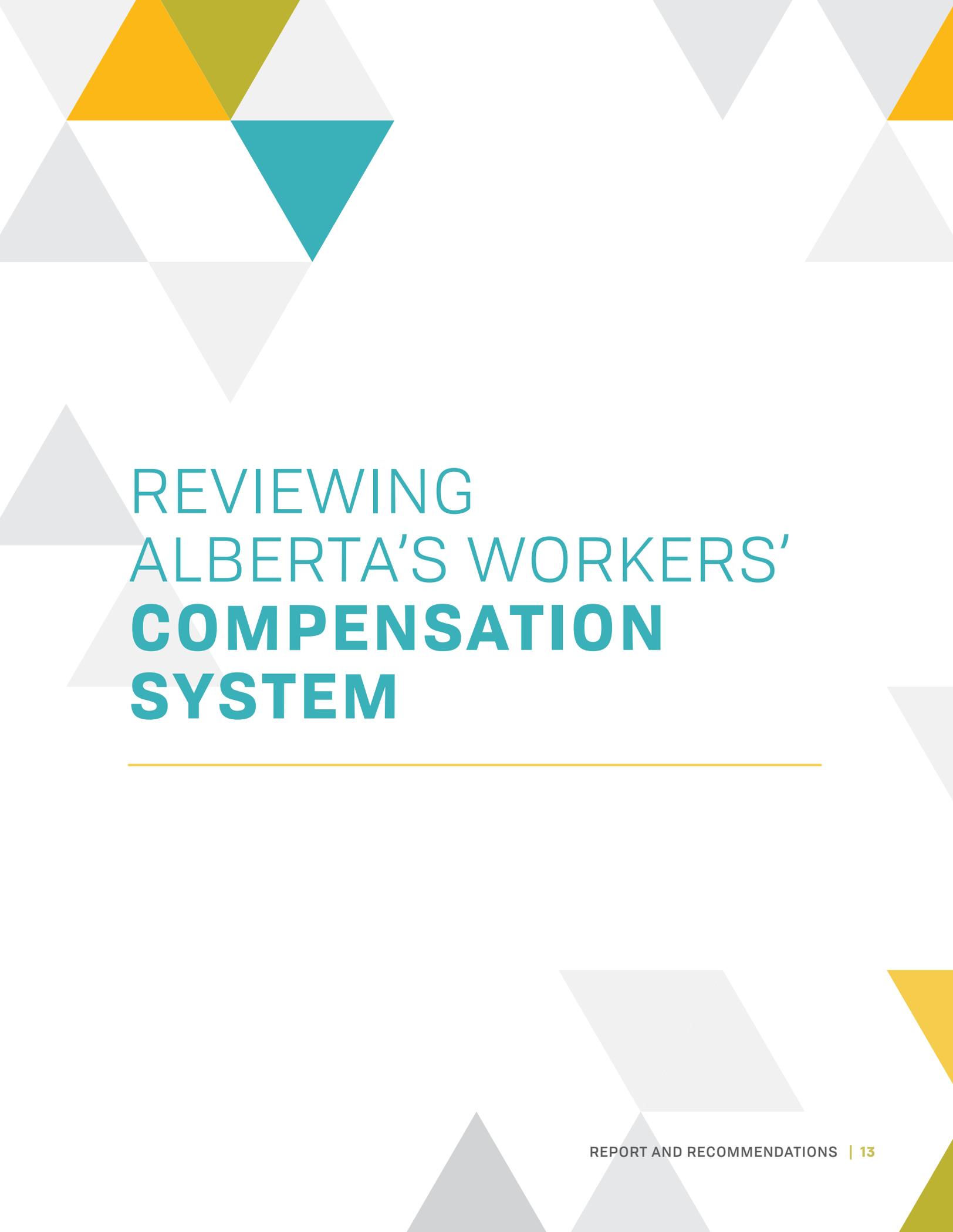
- The development of a comprehensive and robust Mandate and Roles document for the WCB Board of Directors, to ensure accountability of the Board to Albertans, through their elected government;
- The use of the Mandate and Roles document by government to articulate broad public policy guidance and performance measures for the Board;
- The reorganization of committees of the WCB Board of Directors, and the establishment of a duty on the part of each committee to undertake stakeholder engagement in the course of its work;
- The removal of the Chief Executive Officer as a member of the WCB Board of Directors;
- The establishment by the WCB Board of Directors of a Code of Rights and Conduct for the WCB organization that articulates the rights of workers and employers in their interaction with the WCB; and
- The creation of a new Policy and Practice Consultative Committee, with stakeholder representation, to provide input into the WCB Board of Directors’ policy development process.

The workers’ compensation system is the product of a special compromise between workers and employers – one that is nearly a century old in Alberta. It is not a system designed around an “us versus them” approach, but rather an approach of “we’re all in this together”. Workers, employers and the government continue to be partners in this historic compromise, and they remain essential partners for making the system work over the long-term.



“The three (board members) that uphold the ‘public interest’ typically represent employers’ interests although not ‘formally’. This creates an imbalance on the Board with worker’s interests under represented.”

– *Union*



# REVIEWING ALBERTA'S WORKERS' **COMPENSATION SYSTEM**

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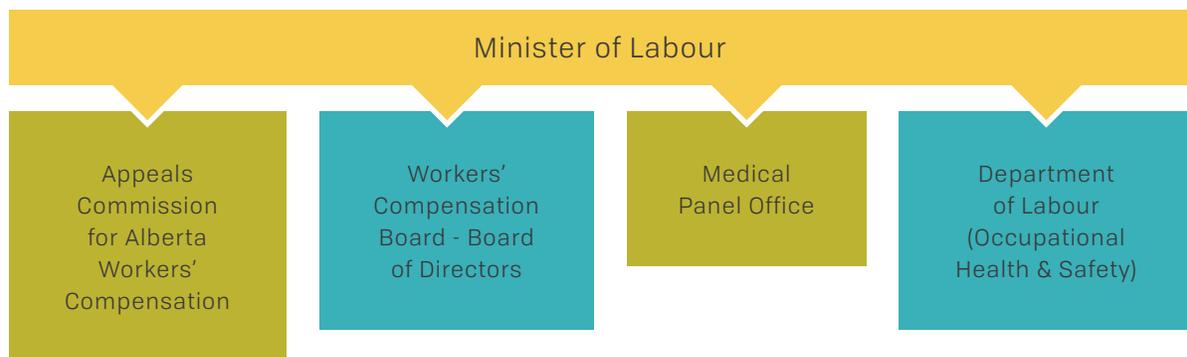
It's a system that Albertans and their family members will ideally never need to use, yet it plays a crucial role in our society and our economy.

Alberta's workers' compensation system covers nearly 1.9 million Albertans working at over 160,000 employers throughout the province. Its reach is vast, touching the lives of workers and business owners in the public, private and non-profit sectors. The decisions it generates have real and enduring impacts on not only the health of workers in Alberta, but also on their pocketbooks and their livelihoods.

No one goes to work intending to become injured or ill as a result of their employment but, sadly, it sometimes happens. When it happens, both the worker and the employer depend upon the system to work effectively and fulfill its intended purpose.

The last comprehensive review of the workers' compensation system was conducted more than 15 years ago. Alberta, its economy and its labour market have all changed a great deal during that time.

### CURRENT WORKERS' COMPENSATION SYSTEM



Recognizing this, the Government of Alberta initiated a review of Alberta's workers' compensation system as part of its overall review of provincial agencies, boards and commissions. Our Panel was established to conduct this review.

### OUR PURPOSE

In accordance with the Terms of Reference set out by the government, the purpose of our Panel's review was **"to strike the right balance between workers and employers to ensure fair compensation, meaningful rehabilitation for an injured worker, and a sustainable and affordable workers' compensation system."** A copy of the complete Terms of Reference is provided in Appendix A.

## OUR PROCESS

From the very beginning, our Panel understood the importance of undertaking stakeholder engagement as part of the review. Workers, employers, unions, safety and industry associations, and many other Albertans have interests in the workers' compensation system. We knew it was crucial to seek out the perspectives of many different individuals and stakeholders, and we designed our process accordingly.

After being established in March 2016, our Panel went about learning as much as we could about Alberta's workers' compensation system. Supported by staff in the WCB Review Secretariat, we gathered information about the current policies and processes of the system, to better understand how the many parts of the system work together. With this information, we published *Working Together: A Guide to the Review of the Workers' Compensation System*, which summarized key information on many topics and aspects of the system.

The *Guide* was published on our website<sup>1</sup>, along with several *Quick Reference* guides dedicated to specific topics. The website served as a key mechanism for providing information to Albertans about the workers' compensation system and about our review generally. A subscription feature was included in the website, which enabled Albertans to sign up for electronic updates from our Panel about the review process.

Our Panel also used the website to facilitate engagement activities, which commenced in late spring 2016. In June 2016, our Panel launched a series of nine web-based questionnaires that were tailored for different audiences including: injured workers, employers, unions, industry associations, safety associations, healthcare professionals, workers, interested Albertans, and employees of the workers' compensation system.

At the same time, we invited written submissions from Albertans and stakeholders, and published an online *Workbook* to support people in making submissions. The *Workbook* discussed several key topics in the workers' compensation system and asked questions of specific interest to our Panel.

To promote broad participation in our engagement activities, our Panel reached out to key stakeholders and asked them to spread the word about our engagement to their members, networks and contacts. Ultimately, we received a total of 1,759 responses to the online questionnaires, and nearly 500 written submissions and *Workbook* responses from stakeholders and interested Albertans.

Due to their injuries or illnesses, injured workers are not always in a position to make written submissions. In recognition of this, and to help ensure we put a "human face" on issues in the workers' compensation system, our Panel met with groups of injured workers in Edmonton, Calgary and Lethbridge in September 2016. At these meetings we had the privilege to listen to the perspectives of approximately 60 diverse individuals who graciously shared their experiences with Alberta's workers' compensation system. They helped us see firsthand how the system directly impacts the lives of Albertans and their families, and they offered insights about the system's strengths and opportunities for improvement.

The input we received from all of these sources helped set the stage for our further work. While the perspectives we read and heard were diverse, they enabled our Panel to identify areas of the system that were especially complex, controversial or confusing and which required additional study.

<sup>1</sup> Workers' Compensation Board (WCB) Review [www.alberta.ca/wcb-review.aspx](http://www.alberta.ca/wcb-review.aspx)

That study took place as part of a “Working Together” engagement session, held in Edmonton in November 2016. This session brought together approximately 100 individuals representing employers, unions, safety associations and other stakeholders to discuss Alberta’s workers’ compensation system in greater detail. Through facilitated small discussion groups, stakeholders considered a number of particularly tough issues, and worked together to offer possible ways of addressing these issues.

We also realized we needed some additional engagement activities to address four areas that, in our opinion, needed some additional discussion: occupational diseases, psychological injuries, presumptive coverage, and data.

In December 2016, our Panel hosted a “Trend Talk” in Calgary which was attended by approximately 70 individuals representing employers, unions, safety associations and other stakeholders. Attendees at this event had the opportunity to hear presentations by subject matter experts on the issues around presumptive coverage, including post-traumatic stress disorders, occupational diseases and bullying and harassment in the workplace. This event helped promote a shared understanding of the current state of the workers’ compensation system in regards to these issues.

In January 2017, a Data Symposium was held in Edmonton, which was attended by approximately 100 individuals representing various employers, unions, industry associations, safety associations, academics and the Government of Alberta. Participants in the symposium had the opportunity to discuss the collection and use of data around workplace injuries and illnesses. They provided many perspectives about the opportunities to improve the system in this regard.

In addition to all of these engagement efforts, our Panel also took time to obtain information and feedback with several individuals and organizations, including:

- Office of the Auditor General of Alberta;
- Office of Information and Privacy Commissioner of Alberta;
- Alberta Ombudsman;
- WCB Board of Directors;
- staff from the WCB, the Appeals Commission for Alberta Workers’ Compensation and the Medical Panel Office;
- Government of Alberta – the Ministry of Status of Women and the Ministry of Treasury Board and Finance (Public Agency Secretariat);
- Alberta Human Rights Commission;
- Alberta Federation of Labour;
- Industry Task Force Association;
- WCB Labour Coalition;
- Alberta Construction Safety Association;
- Alberta Agriculture Farm and Ranch Safety Coalition (AgCoalition);
- Canadian Association of Petroleum Producers;
- Alberta Medical Association;
- Alberta College & Association of Chiropractors;
- Alberta College of Occupational Therapists;
- College and Association of Registered Nurses of Alberta;

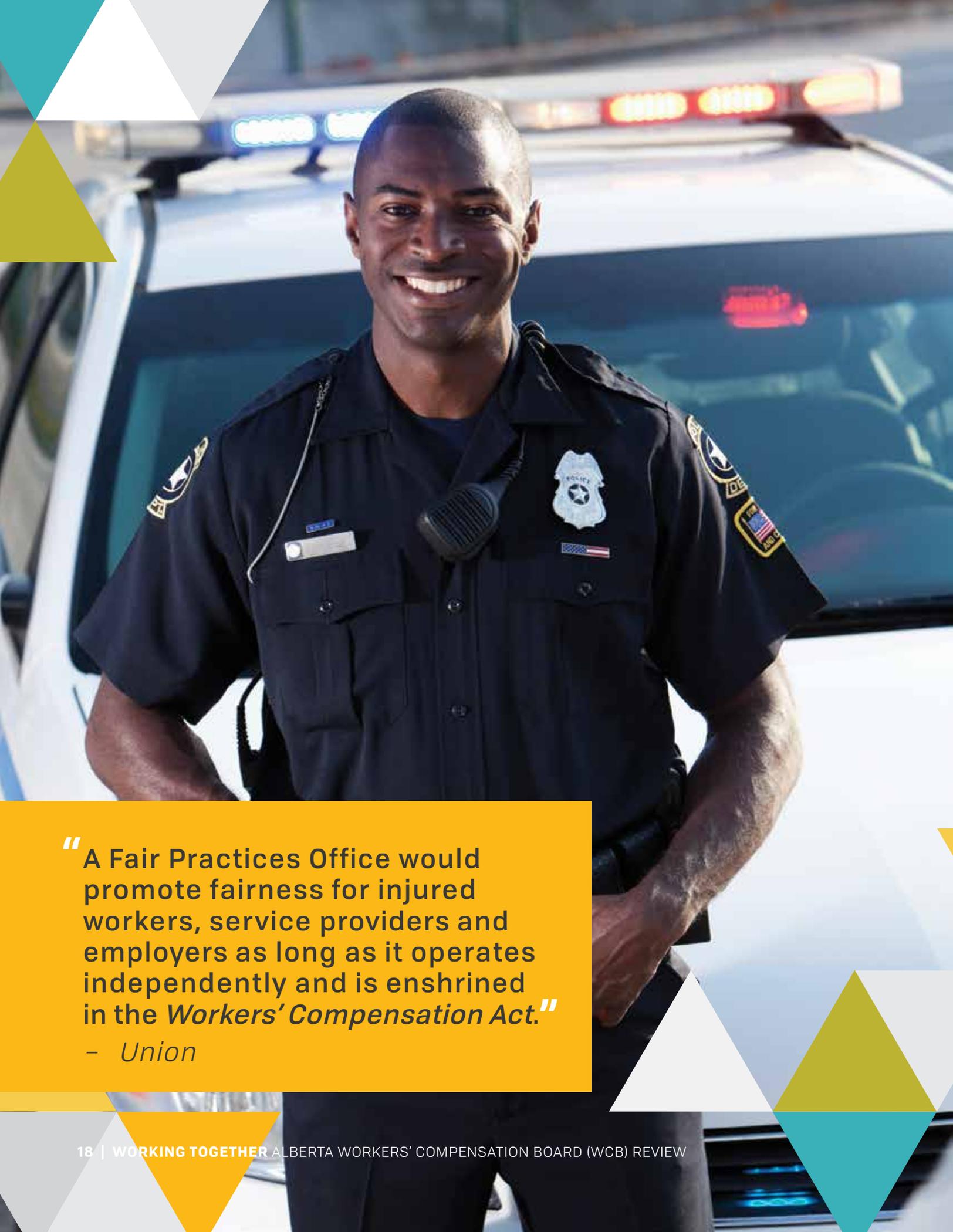
- Physiotherapy Alberta – College & Association;
- Psychologists’ Association of Alberta;
- Sebastien Anderson, lawyer, Labour Rights Law Office (British Columbia);
- Marion Endicott, lawyer (ret.) and worker advocate (Ontario);
- Paul Petrie, former Vice Chair, Workers’ Compensation Appeal Tribunal, British Columbia and author of the 2013 Manitoba Fair Compensation Review report;
- Andy Sims Q.C., lawyer, and mediator and arbitrator (Alberta);
- Alan D. Winter, lawyer and employer advocate (British Columbia) and author of 2002 Core Services Review of the Workers’ Compensation Board (British Columbia); and
- Richard Larouche, FCIA, FSA, an actuary familiar with workers’ compensation across Canada.

This enabled our Panel to gain further insight about specific aspects of the workers’ compensation system.

The input we gathered through these extensive engagement efforts were used to inform our deliberations and recommendations, as were our own research efforts. Our Panel undertook significant cross-jurisdictional analysis of the workers’ compensation systems in other provinces and territories. We examined the findings of major reviews that had been conducted of those systems, and how the applicable jurisdictions had adjusted their systems in the wake of those reviews. Our Panel also canvassed a variety of papers and reports written on topics around workers’ compensation, and considered a variety of perspectives and ideas advanced by various analysts and policy think tanks. While it is not an exhaustive list of the papers, studies and reports that we reviewed (which were considerable), we have provided in Appendix I a list of key references that we saw as foundational in our deliberations.

## KEY DATES/MILESTONES





**“A Fair Practices Office would promote fairness for injured workers, service providers and employers as long as it operates independently and is enshrined in the *Workers’ Compensation Act*.”**  
– *Union*



# POSITIONING THE SYSTEM **FOR THE FUTURE**

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## SOME STARTING POINTS

During the course of our engagement activities, our Panel encountered a fair amount of misinformation about the workers' compensation system. In many ways, this is understandable. The system has been in place for nearly one hundred years, and the ways in which it has been referenced and described over that time have evolved. Some would argue that the system has been around for so long that it's now taken for granted.

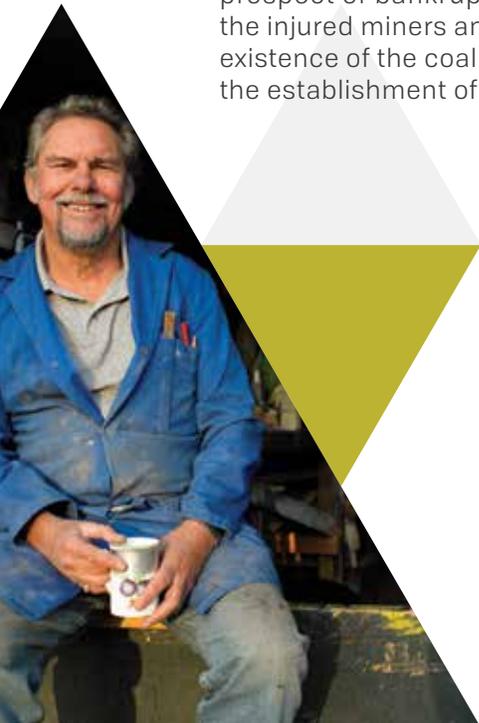
With that in mind, it is helpful to remind ourselves about the origins and purpose of Alberta's workers' compensation system.

## WHERE IT CAME FROM

Before the advent of workers' compensation, there were few options for workers beyond traditional litigation. Workers who suffered injuries or illnesses as a result of their employment had to sue their employers for damages. Many were not in a position to do this. Those who did were often unsuccessful, and they faced significant legal hurdles. If a worker was found partly responsible for their injury in any way, they could not recover any damages. In cases where a worker was successful in suing an employer, the costs of the lawsuit could put the employer out of business – and put its remaining employees out of work.

In 1910, the Government of Ontario commissioned Chief Justice William Meredith to produce a report on workers' compensation for that province. As a result of Justice Meredith's recommendations, Ontario developed its workers' compensation system. In the years that followed, other provinces and territories followed suit. Alberta's system was created by an Act of the Alberta Legislature in 1918.

It is worth mentioning that Alberta had its own impetus for establishing its workers' compensation system, rather than simply joining an inter-provincial bandwagon. In the wake of a coal mine disaster in the community of Bellevue in 1910, a successful lawsuit by a family against the mining company raised the spectre of similar lawsuits in the future – and the prospect of bankrupting coal companies in the process. With that disaster, its impact on the injured miners and their families, together with the resulting challenge to the continued existence of the coal industry, it became clear to provincial leaders – and to employers – that the establishment of a workers' compensation system was a prudent alternative to litigation.



## ANCHORED IN PRINCIPLES

Originally articulated by Justice Meredith, a set of principles known as the “Meredith Principles” underlies all workers’ compensation systems in Canada today:

- **No-fault compensation.** This means workers are paid benefits regardless of how the injury occurred. The worker and the employer waive the right to sue. There is no argument over responsibility or liability for an injury.
- **Security of benefits.** This means a fund is established to guarantee that money exists to pay benefits.
- **Collective liability.** This means that employers covered by the system share liability for workplace injury insurance. The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.
- **Independent administration.** This means the organizations that administer workers’ compensation insurance are separate from government.
- **Exclusive jurisdiction.** This means only workers’ compensation organizations can provide workers’ compensation insurance. All compensation claims are directed solely to the compensation board. The board is the decision-maker and final authority for all claims.

## A UNIQUE ORGANIZATION WITH A UNIQUE PURPOSE

The Meredith Principles make the workers’ compensation system a unique construct with a unique purpose. It is important to remember these principles, because they provide guidance on what the system is – and is not – intended to be.

### **The workers’ compensation system is not a private insurance scheme.**

During our work, our Panel heard many people refer to the system as ‘an insurance program paid for by employers’. While it is understandable how people have come to believe this, the reality is more complex.

Yes, the administration of the system is independent from government and, yes, the system includes a fund from which benefits are paid. But this is where the similarities to private insurance end. While the terms used in the system mimic those used in the insurance industry (e.g., “premiums”, “benefits”, and “claims”), there are many differences. For example:

- The purchase of insurance is typically voluntary. For most employers covered by the workers’ compensation system, participation is mandatory.
- One can typically choose from among many providers when purchasing an insurance product. By contrast, Alberta’s workers’ compensation system enjoys exclusive jurisdiction.
- Insurance companies can cancel your policy if you fail to pay your premiums. In the workers’ compensation system, a worker remains covered even if their employer is delinquent in paying premiums.
- Under many insurance policies, the insurance company can choose not to pay a claim if it determines you are at fault. Alberta’s workers’ compensation system uses a principle of “no fault”.
- Generally, one does not lose their right to sue when one purchases private insurance. In the workers’ compensation system, the right to sue is gone.

### **Similarly, the workers' compensation system is not a social assistance program.**

During our work, our Panel heard people refer to the system in ways akin to a government-funded assistance program such as income support. Again, while it is understandable how people might see the system this way, it is also incorrect.

Yes, the system provides compensation to people without a need to determine fault or liability, in a way similar to income support. And, yes, like many government-funded assistance programs, the system is enabled by legislation. But there are some key differences. For example:

- Government-funded assistance programs are funded by taxpayers-at-large. In the workers' compensation system, all of the benefits are paid out of assessments collected from employers who are covered by the system.
- Government-funded supports are paid out of the government's General Revenue Fund. The workers' compensation system has its own fund from which benefits are paid, and the administration of the system is independent of government.
- While there are eligibility requirements for certain government-funded supports, those supports are generally open to anyone. By contrast, only workers who are covered by the workers' compensation system have access to its benefits and those benefits cover only injuries and illnesses related to employment.
- One does not lose their right to sue when one accesses a government-funded support program. In the workers' compensation system, the right to sue is gone.

### **The workers' compensation system is the product of a special compromise between workers and employers that is designed to assist workers who suffer workplace injuries and illnesses.**

At the heart of the workers' compensation system is a "compensation bargain". The system provides compensation to workers who suffer injuries or illnesses as a result of work and pays for medical services to help them recover from those injuries and illnesses. Assessments levied on employers cover the costs of this compensation system. Under the bargain, both workers and employers forgo their rights to use litigation in respect of the worker's injuries and illnesses.

It is important to remember that both workers and employers have compromised. As such, the workers' compensation system is not designed around an "us versus them" approach, but rather an approach of "we're all in this together". The compromise was forged by governments of the day and has continued under legislation today, a century later. Workers, employers and the government continue to be partners in this historic compromise, and they remain essential partners for making the system work over the long-term.

## THE CURRENT LANDSCAPE

Based on everything we learned and heard, our Panel made a number of overall findings and observations about Alberta's workers' compensation system. These provide useful context for understanding how the system will be challenged to continue fulfilling its mandate.

- **Albertans value the workers' compensation system.** It was not within our Panel's scope to debate whether the workers' compensation system should continue to exist. However, it is worth noting that Albertans resoundingly value the system. Workers and employers alike said they want the system to be there for people when it's needed, and that they continue to see the system as a preferable alternative to litigation. Though they pointed out many opportunities for improving the system, they also emphasized the importance of retaining the current strengths of the system.
- **Public expectations are higher than ever.** Stakeholders and members of the public-at-large are increasingly sophisticated and increasingly active in seeking out and consuming information. They expect public bodies to be modern in structure, transparent in operations, and representative of their interests. To maintain public confidence, Alberta's workers' compensation system will need to keep pace with rapidly evolving expectations, and always be demonstrating good governance and excellent stewardship of assets.
- **The majority of claims are handled by the system well.** At the outset it is important to recognize that the vast majority of claims are resolved by the workers' compensation system within two weeks. As a sense of the scale, in 2016 there were 118,969 new claims reported to the WCB, with 80% of these (94,962) being short duration "medical aid only" claims. (More detailed claims statistics are provided in Appendix C.) Most claims go through the system smoothly, and in these cases workers and employers usually express high degrees of satisfaction with the system. However, the new world of work is such that not every claim is straightforward. Injured workers' conditions can be multifactorial. Workers may have several different employers during their working lifetime, sometimes concurrently. Pre-existing conditions may be more frequent and causation can be more difficult to determine. When a claim has complexities of these and other kinds, it can give rise to more disagreements, reviews and appeals in the system. When this happens the WCB can be overly efficient, and tends to manage the claim in aggressive accordance with strict rules. This raises frustration among workers and employers alike, and it is a tendency that no doubt contributes to a perception that the WCB has a "culture of denial".
- **Organizations everywhere are facing cost pressures.** As structural changes in Alberta's economy continue to play out, private sector employers face increasing competition in a world that is more globally connected than ever before. At the same time, governments have limited financial room, meaning that public sector employers are also facing fiscal challenges. Everyone in the province is under pressure to optimize their resources, and there is understandable wariness about changes to the workers' compensation system that might add further cost pressures. There are legitimate concerns among stakeholders that the costs of operating in Alberta are rising. That being said, workers' compensation can not be what is compromised in the name of competitiveness or cost-cutting. Furthermore, though Alberta's system features the lowest premiums in the country, it must be remembered that "lowest" does not automatically mean "better". If the system is not achieving its intended goals, then the money and resources devoted to the system are being squandered. What stakeholders told us they truly value is that the system be cost-effective. This needs to be the goal.

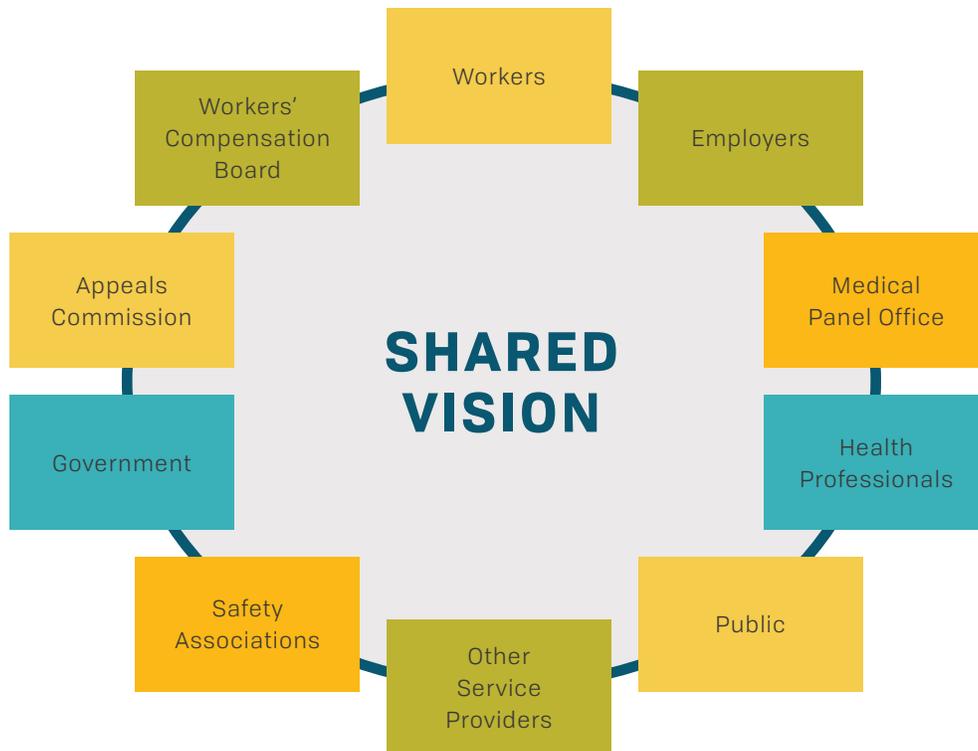
- **Health issues stand to grow in complexity.** The nature of the system is such that it deals with the health of individuals. Many people who are assisted by the system have relatively uncomplicated health matters that resolve relatively quickly, and this trend is likely to continue. However, those claims that involve complex health matters stand to become more complex in the future. Aging in the workplace, advances in health technologies and expanding medical knowledge will all contribute to this complexity, particularly in areas such as pre-existing conditions, occupational diseases, and mental health conditions. People place importance on the health recovery aspects of the system. Workers value their health, and employers value having healthy workers. As such, Alberta's workers' compensation system will need to excel at helping workers recover and re-engage in the workforce. This will require expertise and the right structures to get workers the right treatment by the right people at the right time.
- **The sustainability of the system must be maintained.** Our Panel heard very clearly that a major strength of the current system is its financial solvency and sustainability. Workers and employers alike place importance on the sustainability of the system. Everyone wants assurance that the system will be capable of providing appropriate assistance well into the future. Compared to many other provinces and territories, Alberta is in good shape on this front. The Accident Fund, from which benefits are paid, has no unfunded liability and is managed in an actuarially sound way. Regardless of how policies, processes or benefits in the system are adjusted, this sustainability must be maintained. Part of Alberta's success in this regard has been a commitment to the Meredith Principle of "independent administration".
- **There is a need to rebuild trust in the partnership.** Events across the globe suggest that people are more skeptical today about institutions. Consequently, they are more vigilant in holding decision makers to account and more attune to hints of bias and conflicts of interest. They want clarity about how decisions are made by decision-makers and transparency around those processes. Alberta's workers' compensation system is not immune from these trends. Workers and employers both gave up significant rights in the 'historic compromise' that led to the creation of the system, and they want to be sure that they are getting what was promised in return. Many are not certain they are, and this has eroded trust amongst those with interests in the system: workers, employers, health professionals, and even staff working in the system. Interestingly, there is a sense among many workers that the system is 'in the pocket' of employers and, at the same time, a sense among many employers that the system is 'always on the side' of workers. The fact that everyone is equally unhappy does not mean that the system is doing a good job of serving everyone equally and impartially. For the workers' compensation system to be effective in fulfilling its mandate over the long-term, trust in the system must be re-established. Those with interests in the system must be able to regard the system as an impartial and fair administrator.

Our final point above – the need for trust – is a crucial lynchpin for the whole system. The restoration of trust in the system depends on it exhibiting the fundamentals that are essential for trust in any relationship: transparency, honesty, openness, good communication, and fairness.

Trust is also fostered when everyone in a partnership feels that they are all working towards shared goals with a shared understanding. When individual members of the partnership appear to be pursuing their own interests and ignoring the shared understanding, distrust amongst the other partners can be sown quickly.

There are many partners in Alberta’s workers’ compensation system, including:

- Workers and employers are the most obvious;
- Another is the Workers’ Compensation Board-Alberta (the “WCB”), which is the agency intended to serve as the neutral third-party administrator of the system;
- The Appeals Commission and Medical Panel Office, which are other entities in the system, are also key partners;
- As are health professionals, safety associations and other service providers that interact with the system;
- The government; and
- The public.



Based on what our Panel heard from all of these partners, it is clear to our Panel that the partnership needs to be renewed and re-aligned around a shared vision.

## A VISION FOR THE FUTURE

### CHANGING THE FOCUS

Stakeholders consistently told our Panel that Alberta's workers' compensation system needs to be aligned with its core purpose: providing compensation to workers who suffer workplace injuries or illnesses, and helping them recover and return to work.

We agree.

It is understandable why people feel that the system is not fully living up to their expectations. Presently, the workers' compensation system seems to be focused around managing a claim. This has come to be the lens through which all of the major partners perceive the system and make decisions – whether about controlling costs, engaging in processes, disputing medical information, or determining what benefits to provide and how to provide them.

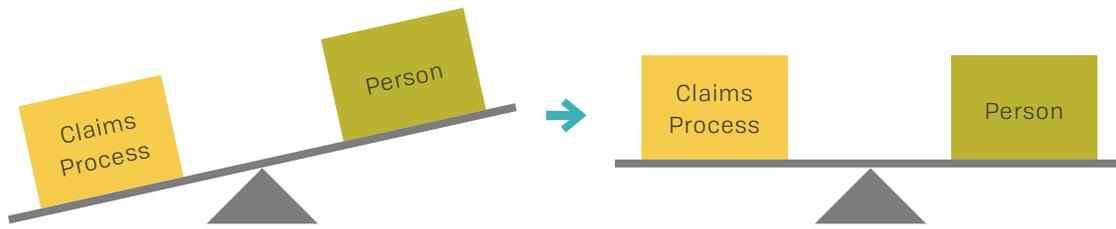
This includes staff within the workers' compensation system who, it must be emphasized, are not the cause of the problem. On the contrary, when responding to our Panel's questionnaire, staff of the WCB echoed the frustrations of other stakeholders that assisting injured workers has taken a backseat to managing claims. Many said that the strict construction and interpretation of policies have led to a rule-bound culture that values efficiency and cost control at the expense of collaboration, creative solution-making, and common sense.

With 'managing the claim' as the system's focus, it is very difficult for the system's partners to align around shared goals because they all approach the claim from different perspectives. The decisions they take revolve around getting the claim in, through, or out of the system in whatever way will best serve their diverse interests.

The present approach is frustrating everyone, and it is losing sight of the main purpose for which the system was originally established. From an administrative standpoint, there is obviously a need for claims to be managed in the system, but the system does not exist to manage claims. It exists to provide assistance to injured workers.

**The better approach going forward is to put the health and well-being of injured workers at the centre of the workers' compensation system.** This should be the focus around which the system's policies, processes and decisions are made. And it should be the shared goal that all partners have in mind when they approach the system and towards which all the partners should work.

## FROM A 'MANAGING THE CLAIM' SYSTEM FOCUS TO A WORKER-CENTERED SYSTEM FOCUS



### DESIGNING A WORKER-CENTERED SYSTEM

For the sake of brevity, we refer to this new focus in our report as a “worker-centered” system. However, this term is not intended to leave the impression that the shift in focus is only about workers.

Employers are an essential part of the historic compromise that is the workers’ compensation system, and for the most part they are positive and willing partners in the system. They indicated that they understand and value the importance of providing assistance to injured workers. Ideally, employers want to see those workers recover, return to the workplace, and continue contributing their skills and ingenuity to help the organization pursue opportunities and realize its mission.

Employers therefore have a genuine and direct interest in benefitting from a cost-effective workers’ compensation system that is open, transparent and provides fair and just coverage, just as workers do.

The challenge now is that the system is failing to satisfy those interests on several fronts. Workers and employers alike told our Panel that they want the system to do a better job of supporting the people it is intended to help in a way that respects the special relationships between workers and employers.

In fact, when asked by our Panel what characteristics they think are important for the system to have, workers and employers were remarkably consistent in their responses. Our Panel was moved by their strong agreement about the kind of workers’ compensation system they want Alberta to have. They articulated a vision of a renewed system that:

- Is focused on providing appropriate compensation to injured workers, and helping them recover and return to work if and when they are fit to do so.
- Is committed to providing open, transparent and effective service, to employers and workers who depend on the system.
- Is clear and upfront with employers and workers about what to expect and what is expected, while using active listening and respectful communication.

- Provides timely decisions, so that workers can receive timely treatment and employers can plan in a timely fashion.
- Incorporates education – for workers, employers, for the medical community and WCB staff – so that people understand how the system works and the roles that everyone plays.
- Works in a collaborative way with workers, employers and the medical community, and engages in dialogue to come up with plans and solutions.
- Empowers case managers and other decision makers to “do the right thing” within policy to help injured workers.
- Includes real quality assurance measures that take into account human dignity and avoid conflicts of interest.
- Uses processes and procedures that are efficient, but also fair and respectful.
- Incorporates some form of oversight, so that systemic problems and complaints are identified and addressed, and continuous improvement is encouraged.

Our Panel also asked people about the values they think should be lived by Alberta’s workers’ compensation system, through its policies, processes and decisions. Here again, workers, employers, other stakeholders and Albertans were very consistent in their responses. They identified the following values to our Panel:

- **Ethical** – The system should be ethical in its structure and its treatment of workers and employers, with no conflicts of interest.
- **Evidence-based** – Decisions made in the system should be rooted in data and evidence to the greatest extent possible.
- **Fair** – Procedures should be fair and the decisions made should be unbiased, consistent, and in line with policy and the Meredith Principles.
- **Transparent** – People should know and understand how the system works and why and how decisions were made.
- **Compassionate** – The system should be compassionate, and treat injured workers with respect and dignity.
- **Accountable** – The system should be accountable to employers and to workers, and also to the public.
- **Sustainable** – The system should be financially sustainable, while providing appropriate benefits and remaining cost-effective.

TRANSPARENT COMPASSIONATE  
 FAIR SUSTAINABLE ETHICAL  
 ACCOUNTABLE EVIDENCE-BASED

The vision and values described by Albertans reflect a desire for a sustainable workers' compensation system that is focused around the health and well-being of workers. Our Panel's recommendations are designed to enhance the system so that it meets those expectations and aspirations.

Most of our recommendations are made in seven main areas:

- Shifting the Service Culture
- Taking a Better Approach to Health
- Supporting Return to Work Realistically
- Providing Benefits with a Supportive Focus
- Keeping the System Sustainable
- Strengthening Reviews and Appeals
- Supporting Prevention of Injuries and Illnesses

It is important to note that while our recommendations often speak to a new culture that features greater flexibility, discretion and person-centered decision-making, we recognize that the system must still operate within the context of its legislative framework. While the system can shift to become one that is more worker-centered in providing assistance, its focus remains on providing that mandated assistance to injured workers who are eligible.





**“The use of in person multi-stakeholder consultation rather than online submissions is essential where the anticipated change is significant or comes with financial implications above a set threshold.”**

*– Industry association*



# SHIFTING THE **SERVICE CULTURE**

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**“This system is supposed to be there to support injured workers and often fails them. There are great successes too. I work with very dedicated, knowledgeable and caring people who truly want to do what is right for workers. Parts of the system are broken. I want to be proud of my employer. We are working with people not just liability on a claim.”**

*– Workers' compensation system staff*

The line of inquiry typically used in the system today is, “How can this claim be processed in conformity with the rules?” Under this approach, strictly constructed and interpreted policies and procedures determine what is to be done, irrespective of whether the worker, the employer or common sense insist that some other outcome would be more preferable or appropriate.

This approach is not working well for anyone – not workers, not employers, and not even front-line staff of the WCB. Through our Panel's engagement activities, staff of the WCB expressed frustration that the current approach often ‘ties their hands’ when making decisions. It was also said the WCB's current policy approach forces staff to make ‘all or nothing’ choices and discourages or prevents staff from fashioning creative solutions that may better address the needs of all parties.

Several people advocated for more discretion and flexibility within policies, and for an overall work culture that encourages them to ‘do the right thing’ for workers and employers in a given fact situation. These are some of the characteristics of the improved system our Panel envisions.

In the worker-centered system, the line of inquiry will be, “What should be done in order to get this worker the assistance they require until they are able to realistically re-engage with the workforce?” Under this approach, the unique circumstances of the worker drive the determination of what should be done, with the worker, the employer and the system decision-maker communicating openly and collaborating to achieve positive outcomes for everyone to the greatest extent possible.

It is a fundamental culture shift, in which the focus is not ‘managing the claim’, but ‘assisting the person’.

It will take time to bring about this culture shift. Decision makers and processes in the system will be challenged to examine situations through a fundamentally different lens. It is a shift that will need to be enabled and encouraged with the right legislative framework, appropriate policies, and supportive leadership.

The latter of these is of particular importance. Some of the issues addressed by our Panel are legislative in nature; others relate to WCB policies; and others are operational in nature. Addressing these issues and shifting the culture will thus require action on the part of the Government of Alberta (for legislative matters), the WCB Board of Directors (for policy matters) and senior management of the WCB (for operational matters).

To promote the shift, our Panel makes recommendations that will help bring about:

- A clearer relationship and accountability between the WCB Board of Directors and the Government of Alberta;
- A more visible WCB Board of Directors that provides good and effective governance;
- A policy development process that features greater involvement from stakeholders and a more rigorous commitment to policy reviews and evaluations;
- The appropriate use of performance measurement to encourage all parts of the system to focus on the health and well-being of workers, without the risk of conflicts of interest; and
- More transparency for stakeholders, helping to restore trust and confidence in a sustainable workers' compensation system.

## ENSHRINING THE PURPOSE OF THE SYSTEM

As we noted earlier in this report, there are a considerable number of views about what Alberta's workers' compensation system is and is not intended to be and do.

To help bring about a new service culture and make the shift to a worker-centered system, our Panel believes a good first step is to clarify the purpose of the workers' compensation system.

### **Recommendation 1:**

**Amend the *Workers' Compensation Act* to include a preamble which states the objects of the Act and, in so doing, articulates the purpose of the workers' compensation system.**

The *Workers' Compensation Act* is enabling legislation for the workers' compensation system. It sets out what must, may and must not be done. As enabling legislation, it is a source of authority for regulation, policies and decisions in the system. When people look at the Act they should always be able to see the purpose of the system explicitly enshrined within its first few lines.

While the inclusion of a preamble would not necessarily carry legal force, it would help all Albertans understand the kind of system that the *Workers' Compensation Act* is intended to establish. This preamble should reference:

- That the system is founded on the Meredith Principles;
- That its purpose is to provide appropriate compensation to workers who suffer workplace-related injuries and illnesses and support them as they recover;
- That the system is intended to be operated in a way that places a central focus on the health and well-being of workers;
- That a hallmark of the system is a commitment to work collaboratively with workers and employers; and
- That the system must remain sustainable and affordable so that it can be there for employers and workers in the long-term.

## ESTABLISHING A CODE OF RIGHTS FOR WORKERS AND EMPLOYERS

Shifting the service culture of the WCB requires a commitment across the organization to work differently. This will partly be driven by policy and process changes that we call for throughout this report. It can also be driven in part by a commitment that is developed, articulated, and embraced by the WCB Board of Directors, who play a role in setting the compass of the organization.

In the course of examining how other jurisdictions provide systems and programs for injury prevention, rehabilitation and compensation for workplace injuries, our Panel learned of New Zealand's *Injury Prevention, Rehabilitation and Compensation Notice 2002* (see Appendix D). This document serves as a code of conduct of sorts for that jurisdiction's universal coverage program. Among other things, it identifies in detail the rights of claimants and articulates the corresponding obligations that New Zealand's program has in recognizing and respecting those rights. We found this to be a compelling example of how a commitment to a particular way of operating can be meaningfully described to stakeholders and the public.

Presently, the WCB has a *Statement of Rights*, but it is not particularly compelling (see Appendix E). At less than one page in length, it comes across as a perfunctory motherhood statement rather than a deep-seated and genuine commitment to operating in ways that recognize and respect the rights of workers and employers. For example, the current Statement states that workers and employers have "the right to receive courteous and considerate treatment from all WCB staff", but provides no detail as to what the WCB is committed to do from an operational standpoint to help ensure that actually happens.

We believe that the creation of a robust, detailed and meaningful Code of Rights and Conduct would help drive the culture shift that our Panel envisions, and would help stakeholders have greater confidence in the system.

### Recommendation 2:

**Establish a Code of Rights and Conduct for the WCB organization that articulates the rights of workers and employers in their interaction with the organization and articulates in detail how the WCB commits to operate in recognition of these rights.**

This Code of Rights and Conduct needs to be developed by the WCB Board of Directors so as to signal from the very top how the WCB organization is expected to approach the delivery of its services in line with the shift to a worker-centered system.

## PROMOTING GOOD AND EFFECTIVE GOVERNANCE

Among the entities in the workers' compensation system, the WCB is one of the most significant in terms of setting the overall tone of the system's culture. It is the organization with which stakeholders have the most contact, and the one that makes the majority of decisions in the system which impact the lives and livelihoods of workers and employers. Shifting the WCB's organizational culture is essential for shifting the culture of the overall system. Making this shift begins at the top – with the WCB's Board of Directors, who govern the organization.

The effectiveness of any board depends upon its members understanding, honouring and fulfilling their roles.

The WCB is considered a “public agency” under the *Alberta Public Agencies Governance Act* (APAGA)<sup>2</sup>, and is subject to its provisions.

Under the provisions of APAGA, the WCB is required to have in place a code of conduct regarding its board members. This code must include provisions that:

- require board members to be impartial in carrying out their duties;
- prohibit board members from acting in self-interest; and
- require board members to disclose real or apparent conflicts of interest.

In fulfillment of this obligation, the WCB has a *Corporate Governance Policy Manual*<sup>3</sup> that outlines the role and expectations of its Board members. Among its provisions, the manual indicates that Board members are expected to:

- place the WCB's interests above their own personal interests;
- not use their position to assist or advocate for a specific employer, worker or stakeholder;
- act honestly in their representations;
- respect the decisions of the Board; and
- “exercise diligence in the execution of their duties and reasonably determine the validity of recommendations or actions of other Board members, corporate officers, management and external experts”.

This final point warrants particular discussion.

Our Panel heard many questions from stakeholders about the extent to which WCB Board members represent their interests. Many people said that certain WCB policies, processes and decisions leave the impression that Board members are either not thinking about worker and employer interests or have limited understanding about the operation of the system.

The legislated composition of the WCB board includes members who are “considered to be representative of the interests” of employers, workers and the public. However, it must be remembered that being “representative of the interests” of a group is not the same as being that group's “representative”. The members of the WCB Board of Directors are not intended to

<sup>2</sup> Alberta Queen's Printer [www.qp.alberta.ca/570.cfm?frm\\_isbn=9780779795161&search\\_by=link](http://www.qp.alberta.ca/570.cfm?frm_isbn=9780779795161&search_by=link)

<sup>3</sup> Workers' Compensation Board Alberta - [www.wcb.ab.ca/assets/pdfs/public/corp\\_gov.pdf](http://www.wcb.ab.ca/assets/pdfs/public/corp_gov.pdf)

function like elected officials, and we must take care not to attach the same obligations and expectations to them as we would a municipal councillor, Member of Parliament or Member of the Legislative Assembly.

That being said, there is clearly uncertainty among stakeholders about how well the Board is fulfilling its role. We heard many people express a belief that the Board is “too close to management” (or words to that effect). Their perception is that although well-intentioned, Board members tend to become “co-opted” by the WCB’s executive team and “rubber stamp” whatever senior management puts before them. People also feel that Board members are not accessible to stakeholders, which further feeds the perception.

It is difficult to find an objective, evidence-based foundation for this perception, but our Panel can understand how it could be formed. The minutes of WCB Board of Directors meetings, for example, are not particularly detailed. While this is not unusual for many private sector corporations, the WCB is not a private sector business. It is a public entity and, as such, stakeholders expect to be able to see how decisions are being reached. Instead, the WCB’s minutes leave a reader with the impression that little discussion or debate has been undertaken by the Board on key agenda items.

Without sufficient information about how the Board is reaching conclusions and making decisions, people are losing faith that sufficient regard is being given to workers’ interests, employers’ interests and the public interest. A lack of transparency in the WCB Board of Directors is contributing to an erosion of stakeholder trust in the Board’s ability to fulfill its role effectively.

Retaining trust is vital for the Board because it serves as a crucial bridge between the people of Alberta and the workers’ compensation system.

The workers’ compensation system is a creation of the Alberta Legislature. Through their government, Albertans have decided there is value in establishing and operating a workers’ compensation system that fulfills a particular purpose for workers and employers in the province. At the same time, one of the Meredith Principles that underpins the system is independent administration, which means the system must be operated at arm’s length from government. This creates a challenge: we must somehow ensure the system will be operated consistent with Albertans’ expectations, while keeping the system’s operation separate from the elected officials who, by their election, are intended to reflect the “will of the people” and give voice to their expectations.

The WCB Board of Directors is intended to “square this circle” by serving as a group of people who are appointed by the government, which represents Albertans’ interests, to ensure the system is run in line with those interests.

**“WCB governance is undermined because there is limited accessibility to the Board of Directors and there is no obligation for Directors to communicate with stakeholders. While meeting minutes are posted on the website they contain little meaningful information, limiting transparency.”**

*– Employer*

In the private sector context, a board of directors has a fiduciary duty to the organization. Its members are appointed by the owners of the organization (the shareholders) to guide and direct the organization with those shareholders' interests in mind, and they are accountable to the shareholders.

Similarly, the Board of Directors of the WCB has a fiduciary duty to the organization. Its members are appointed by the "owners" of the organization to guide and direct the organization with those owners' interests in mind, and they are accountable to those owners. In the workers' compensation context, the "owners" are the people of Alberta, acting through their elected government – in particular, the Minister of Labour.

The WCB is not a private corporation established under the *Business Corporations Act*. It is an organization established under the *Workers' Compensation Act* and is deemed a public agency under APAGA. Accordingly, the relationship between the WCB Board of Directors and the government is one of agency – with the Minister of Labour as the "principal" and the board as the "agent".

This means the members of the WCB Board of Directors are not there to serve the senior management of the WCB. They are there to speak, think and make decisions in accordance with the public policy expectations set out by the Minister of Labour on behalf of Albertans. Within the context of those expectations, the Board:

- hires a CEO to manage the WCB's operations;
- establishes strategic objectives for the CEO to achieve;
- sets policies that the CEO and WCB staff need to observe as they work to achieve the strategic objectives; and
- provides oversight to ensure the CEO is achieving those strategic objectives in their operation of the WCB organization.

For this to work the way it should, there needs to be a clear accountability relationship between the WCB Board of Directors and the Minister of Labour. Moreover, the WCB Board of Directors needs to be given direction as to the government's public policy expectations, so that the Board has a frame in which to discharge its duties.

## Recommendation 3:

**The Government of Alberta, through the Minister of Labour, should establish expectations for the WCB Board of Directors through a robust Mandate and Roles document.**

It is already legislatively established that the Minister of Labour appoints the WCB Board of Directors. It is also established under APAGA that the WCB must have a Mandate and Roles document that is jointly developed by the WCB and the Minister<sup>4</sup>.

Under section 3 of APAGA, the Mandate and Roles document must include descriptions on many matters including:

- the accountability relationships of the WCB, including its duty to account to the Minister;
- the WCB's and the Minister's mutual expectations in respect of communication, collaboration and consultation with each other;
- the committee structure of the WCB; and
- the WCB's planning and reporting requirements.

In accordance with section 6 of APAGA, the Minister of Labour is also expected to:

- participate with the WCB in setting its long-term objectives and short-term targets;
- advise the WCB on government policies that are applicable to the WCB or its activities or operations; and
- monitor whether the WCB is acting within its mandate and achieving the long-term objectives and short-term targets that have been set.

As provided under section 10 of APAGA, the Minister of Labour is also permitted to set policies that must be followed by the WCB in carrying out its powers and functions.

There is much provision in APAGA for the creation of a thorough Mandate and Roles document that conveys the Government of Alberta's expectations for the Board in respect of public policy and reporting to the Minister. It is the document that makes it clear that the WCB Board of Directors is accountable to the Minister of Labour (who is ultimately accountable to Albertans) and provides the 'frame' in which the WCB Board of Directors fulfills its functions.

Importantly, our Panel believes the Mandate and Roles document should contain an expectation that the WCB Board of Directors carries out its work in accordance with the Meredith Principles. The Mandate and Roles document should:

- set performance measures for the Board that help drive the culture shift our Panel is calling for in this report;
- provide for regular and meaningful reporting that is public; and
- provide that minutes of the WCB Board of Directors must be thorough and provide readers with a clear idea of how Board decisions were reached.

It is important to emphasize that the intent of this approach is not to encroach upon the Meredith Principle of "independent administration". The Mandate and Roles document should therefore provide broad public policy guidance, but should take care not to micromanage how the Board carries out its duties in reflecting that guidance, or how the WCB organization is operated.

<sup>4</sup> Government of Alberta Public Agencies [www.alberta.ca/AGS-directory/MR\\_34\\_ags-Workers-Compensation-Board-MRD.pdf](http://www.alberta.ca/AGS-directory/MR_34_ags-Workers-Compensation-Board-MRD.pdf)

Under APAGA, one of the matters that must be covered by a Mandate and Roles document is a public entity's committee structure. Our Panel believes there are opportunities to adjust the WCB's committee structure to enhance Board engagement and enhance transparency.

## Recommendation 4:

**In the WCB Mandate and Roles document, provide for a structure of three standing committees of the WCB Board of Directors. In the Terms of Reference for each committee, specify that the committee is to undertake consultation with stakeholders in its work.**

Presently, the WCB Board of Directors has five standing committees. Our Panel believes this number should be reduced to three. While we defer to the Minister of Labour and the WCB to jointly determine the appropriate committees, we propose that the three standing committees could be:

- Governance and Human Resources;
- Finance and Audit; and
- Policy Development.

Moving to a structure of three standing committees will enable equivalent Board representation, such that on each committee there is:

- One Board member that is representative of worker interests;
- One Board member that is representative of employer interests; and
- One Board member that is representative of public interests.

We also believe the Terms of Reference for each of the committees should specify the requirement that the committee must undertake consultation with stakeholders in the course of its work. This approach will allow for more stakeholder engagement and involvement in the Board's decision-making and more transparency in the Board's work.

One area where this would be beneficial, for example, is in the recruitment of Board members. Part of the reason stakeholders currently have doubts about WCB Board members is that the Board recruitment process lacks transparency.

Presently, the WCB recruits Board members with the help of an executive search firm (which the WCB retains through a competitive bidding process). When an opportunity to serve on the WCB Board of Directors is available, there is a province-wide call for applications. The opportunity is posted on the Government of Alberta's web-based recruitment portal<sup>5</sup>. The search firm undertakes screening and shortlisting of applicants, and the WCB Board Chair and Governance Committee develop a short list for the Minister of Labour to consider. The Minister of Labour then makes recommendations to the Lieutenant-Governor-in-Council about who should be appointed to the WCB Board of Directors. The Lieutenant-Governor-in-Council makes the final appointment decision.

Though the call for applications is public and the application process is open to anyone, the screening and shortlisting of applications is not particularly transparent.

<sup>5</sup> Government of Alberta Public Agencies [www.alberta.ca/public-agency-opportunities.cfm#](http://www.alberta.ca/public-agency-opportunities.cfm#)

With a mandated duty to engage stakeholders in its work, the Board committee responsible for Board recruitment would necessarily give stakeholders direct input into the recruitment process. For example, the committee could have stakeholders:

- provide input on the competencies required of Board members;
- supplement the public application process by submitting or nominating individuals for consideration;
- participate in the screening or interviewing of applicants; and
- offer advice on the perspectives they believe individuals should bring to the WCB Board if they are intended to be representative of worker or employer interests.

This would increase transparency in the Board recruitment process, thereby helping restore stakeholders' trust and confidence in the WCB Board of Directors overall.

Our Panel appreciates that the committees of the Board of the Directors may require assistance in developing and implementing modern engagement strategies in order to effectively fulfill the requirement to consult with stakeholders. For consultation to be timely, effective and efficient, the Board will need access to skilled resources and these should be provided.

## FOSTERING AN APPROPRIATE BOARD-MANAGEMENT RELATIONSHIP

Central to the role of a board member is the need to work independently from the senior management team of the organization.

The WCB Board of Directors must have a good working relationship with the CEO and the senior management team. It is often this team who is providing information to the Board, submitting recommendations to the Board, and asking for decisions or guidance from the Board. Open, respectful and professional dialogue is desirable and constructive.

However, to be effective, a Board member needs to think independently from management. This means:

- being inquisitive about issues and asking for information;
- testing the rationale or suggestions of senior management;
- critically thinking about the options, solutions or decision points that are presented by senior management for consideration;
- asking questions about the implications of certain decisions or actions;
- identifying when independent data is needed and facilitate gathering of that data;
- looking at an issue through the perspectives of workers, employers and the general public versus the perspective of senior management; and
- assessing a decision against the letter and spirit of the Meredith Principles.

To some extent, the appointment of an individual to the WCB Board of Directors involves a leap of faith. Although processes can be designed to ensure an individual has the necessary eligibility and competencies to serve, ultimately Albertans must have faith that the individual who is appointed will honour and discharge their role appropriately.

However, some structural changes can be made to promote and encourage an appropriate relationship between the Board and senior management.

One such change is clarifying the role of the Chief Executive Officer of the WCB in relation to the WCB Board of Directors. Currently the Act provides that the CEO is a non-voting member of the Board. Many stakeholders expressed confusion about the CEO's role on the Board, since the CEO is the sole employee of the board. The CEO's service on the Board is also not term-limited, unlike other board members.

Our Panel appreciates that there is ambiguity here, and we recognize that this ambiguity blurs the distinction between the Board and senior management.

## **Recommendation 5:**

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### **Amend the *Workers' Compensation Act* to remove the CEO from membership on the WCB Board of Directors.**

While this could be regarded as merely a technical change, our Panel believes it is an important one.

The *Workers' Compensation Act* currently provides that the "President" of the organization (i.e., the CEO) is a "non-voting" member of the WCB Board of Directors. It is hard to see what value this adds. The CEO can not vote on matters before the Board and our Panel understands that, currently, the CEO is excluded from the Board's in camera discussions.

We assume this provision is intended to ensure that the CEO is present at meetings of the WCB Board of Directors so that the Board has access to the person they have hired to manage the WCB operation. Having the CEO present makes sense, as the CEO can make meaningful contributions to the Board's discussions. However, the Board can ensure the CEO's attendance without the CEO being a Board member. The CEO particularly, as the Board's employee would be expected to attend Board meetings and provide information to the Board.

In our view, including the CEO on the Board accomplishes only one thing: it blurs the distinction between the Board and senior management.

Our Panel has stressed the importance of having clarity in roles and accountability as key elements for good and effective governance. In line with this, we believe the CEO should not be designated a member of the WCB Board of Directors, non-voting or otherwise.

We also believe there is an opportunity to support the Board in its duty to work and think independently from senior management. Presently, the Board is rather dependent on the CEO and senior management for resources and support.

## Recommendation 6:

**Establish a Secretariat within the WCB organization that is dedicated to supporting the WCB Board of Directors and can provide the Board with access to independent resources.**

As another means of clarifying the distinction between the Board and senior management, we believe that a Secretariat should be established within the WCB to support the Board. This would ensure resources are available for the Board to access when necessary to perform its functions effectively.

## BUILDING COMPETENCIES ON THE BOARD

As set out in the *Workers' Compensation Act*, all of the members of the WCB Board of Directors are appointed by the Lieutenant Governor-in-Council. The composition of the WCB Board consists of a Chair and:

- up to three members considered to be representative of the interests of employers;
- up to three members considered to be representative of the interests of workers; and
- up to three members considered to be representative of the interests of the general public.

The makeup of the WCB Board of Directors matters because it plays a key role in how the WCB organization operates. Among its roles, the Board:

- Hires the CEO and holds the CEO to account;
- Establishes the WCB's strategic direction and tasks the CEO with operating the organization in accordance with that direction;
- Approves the WCB's budget and reviews its financial results;
- Provides oversight of the WCB's management and operations; and
- Establishes the policies of the WCB, which guide decisions and processes that are made and undertaken by WCB staff.



One can easily see how the composition of the Board has a direct (albeit somewhat removed) impact on how service is provided to employers and workers. The Board's decisions influence the levels of benefits provided to injured workers; the costs assessed to employers; the kinds of health services that are covered; how decisions are made about workers returning to work; and whether an injured worker is eligible for benefits in the first place. It is thus important that the WCB Board of Directors is comprised of the right people.

It is important to note that the Government of Alberta has already undertaken work with respect to public agencies, boards and commissions, including adjustments to the way individuals are recruited to these entities. Recognizing this, our Panel examined the process by which WCB Board members are currently selected.

Section 13 of APAGA requires that the process used to recruit board members to the WCB must include an identification of any "skills, knowledge, experience or attributes required of the member before recruitment begins". The recruitment process must also "base the selection of a person for appointment as a member on assessment of the extent to which the person possesses the identified skills, knowledge, experience or attributes."

This is consistent with modern practices in board recruitment that take a competency-based approach. This approach helps ensure that a board has a complement of individuals who collectively have the skills, expertise and experiences necessary to govern the organization competently.

In the case of the WCB Board of Directors, the right complement of competencies needs to be achieved within the context of the representativeness that is mandated under the *Workers' Compensation Act*. The WCB can not be comprised of any ten individuals who are found to have the desirable competencies. Three of these individuals need to be selected from a smaller pool of 'people who are representative of worker interests' and three need to be selected from a smaller pool of 'people who are representative of employer interests'. Though it is not impossible to find people who can meet these criteria and have the desirable competencies, there may be times when this is harder to do. This creates the risk that the WCB Board of Directors may at times not have a complement of individuals with all of the desirable competencies.

This risk can and should be mitigated, so that stakeholders can have confidence that the WCB Board of Directors has some key skills among its members.

## Recommendation 7:

**The WCB Board of Directors, in consultation with the Minister of Labour and stakeholders, review the competency matrix that is applied when recruiting Board members.**

The WCB Board of Directors is legislatively required to have individuals around the table who bring public, employer and worker perspectives. This is important to retain and we do not think any adjustments are required in this regard. For the most part, the boards of the WCB's counterparts in other provinces and territories are similar.<sup>6</sup>

However, given the tremendous authority of the WCB Board of Directors and the implications that its decisions have, we believe that the competency matrix should reflect the desired competencies, which will help inform the recruitment of effective Board members. Decision-makers should select individuals with appropriate skills such that the overall complement on the Board will reflect the competencies matrix as closely as possible. These competencies should include experience and skills in areas such as: health, finance, human resources, communications and stakeholder engagement. In our view, the competencies matrix needs to serve as an overlay but not a substitute for the representative capacities of Board members as required under the *Workers' Compensation Act*.

## ADDING RIGOUR TO POLICY DEVELOPMENT

The WCB Board of Directors is responsible for establishing operational policies of the WCB. This includes creating new policies, and adjusting or eliminating existing policies.

Our Panel heard widespread concerns from stakeholders that the WCB's policy development process is not clear to them. People have questions about how the board determines when and if certain policies are required, and wonder whether and how the Board reviews WCB policies to evaluate their effectiveness.

It is fair to say that members of the WCB Board of Directors do not typically author the policies that they review and approve. The policy work of the Board is supported by staff in the WCB's Policy Development department. These individuals research and analyze policy issues, manage the WCB's policy consultation process and draft policies that are ultimately put before the Board for its approval.

The WCB maintains information on its website about the process it uses for policy development and consultation. According to this information, policy development often starts with the identification of an issue. Issues can be identified by stakeholders, WCB staff, or they might arise from judicial decisions or legislative changes. Once an issue is identified, analysis is then undertaken to determine whether the issue is already addressed by existing WCB policies or should be addressed through a new policy or policy change. If needed, the WCB Policy Development department works to develop the new policy or policy amendment.

<sup>6</sup> Most provinces require equal representation of worker and employer interests on their boards, while Alberta's legislation is permissive in this respect. In practice, however, Alberta's WCB Board of Directors typically has equal representation of both worker and employer interests.

As part of the policy development process, the WCB Board of Directors and its Policy Committee decide whether policy consultation is required and how that consultation should occur. This can include public consultation (in which stakeholders may participate), consultation with experts, or in-person meetings with stakeholders. Depending on the nature of the policy under development, the policy consultation can be undertaken in two stages. The first stage involves consultation on the “concept” for a policy, in which the concept is posted on the WCB website and public comments are accepted for 60 days. In the second stage, a draft policy is presented to the Board’s Policy Committee for its review and approval, after which the draft is posted on the WCB website for 60 days to “provide advance notice and seek stakeholder input”.

A policy is ultimately presented to the full Board of Directors for its review and approval.

While the WCB’s current policy development process provides for stakeholder consultation, it is at the option of the Board’s Policy Committee. The policy development process also lacks formality when it comes to the identification of issues that might warrant the creation or amendment of policies. Stakeholders feel the existing policy consultation process is too reactive in nature and not particularly transparent. People are asked to provide input on a policy concept or policy document after it has already been drafted by WCB staff, and there is little to no feedback on how their input is used.

The policies that are established by the WCB Board of Directors have direct implications for workers and employers. As such, there is a need for the policy development process to have greater rigour so that stakeholders can have greater confidence in the origin and construction of WCB policies.

**“What policy development? We have not been part of any development. A public review should be considered to give and provide both the workers and employer community the opportunity to make presentations and suggestions on the suggested changes and their effect on injured workers.”**

*– Union*

## **Recommendation 8:**

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**WCB Board establish a Policy and Practice Consultative Committee, comprised of representatives from the WCB and stakeholders, to provide input into the policy development process.**

Our Panel believes it would be helpful for the WCB’s policy development process to incorporate and make use of an advisory committee modeled after the Policy and Practice Consultative Committee that is used in British Columbia’s workers’ compensation system.

This committee would feature representation from both the WCB and stakeholders, including:

- representatives of worker interests;
- representatives of employer interests;
- members from WCB senior management; and
- members of the WCB Board of Directors.

The committee would be an advisory body, not a decision-making body. However, it would be leveraged to add value to the WCB's policy development process by:

- helping identify new, existing and emerging issues;
- providing stakeholder perspectives on those issues;
- sharing data and information that can help in developing policy responses to identified issues; and
- collaborating with WCB staff in the development of policy concept and draft policy documents.

For clarity, our Panel's intent is:

- that the Policy and Practice Consultative Committee would serve a purpose over and above the responsibilities tasked to Board committees (as we recommended earlier). This Consultative Committee should not be regarded as a substitute for the stakeholder consultation that we believe is necessary for Board committees to undertake individually.
- it should not act as a substitute for the decision-making authority of the WCB Board of Directors or its Policy Committee. The Board would continue to remain the decision-maker for WCB policies and would continue to play its oversight functions in respect of establishing those policies.

Our Panel also believes that the WCB's current policy development process has a significant gap when it comes to the review and evaluation of existing policies.

The WCB's website contains a *2017 Policy Development Plan*<sup>7</sup>, which speaks to the concepts of policy review and policy evaluation.

According to the plan, the WCB undertakes policy reviews "to clarify the precise nature and extent of an issue and to determine if a policy amendment may be required." Essentially, it is about recognizing that the complexion of issues can evolve over time and making sure that WCB policies are keeping pace with such evolution.

The WCB undertakes a policy evaluation that "focuses on major changes with significant impacts, and determines if the change to policy has performed as intended." A policy evaluation also "determines if the policy continues to be relevant and valid."

Contained in the 2017 Policy Development Plan is a table entitled "2017 Policy Updates". Though not explained explicitly, the table appears to be a list of policies that are expected to be the subject of policy reviews or evaluations. The table has three entries. The first entry is about anticipated policy development as a result of our Panel's report. Another entry is about cost-of-living adjustments, which according to the table are annually examined. The other entry is about allowable amounts for mileage and subsistence, which according to the table also must be examined annually.

There is clearly room for more rigour in this area.

<sup>7</sup> Workers' Compensation Board – Alberta  
[www.wcb.ab.ca/assets/pdfs/public/policy/2017\\_policy\\_plan.pdf](http://www.wcb.ab.ca/assets/pdfs/public/policy/2017_policy_plan.pdf)

## Recommendation 9:

### **WCB Board establish a calendar for regular policy reviews and policy evaluations of all pertinent WCB policies and practices.**

Our Panel feels that policy reviews and policy evaluations should not be undertaken only on an ad hoc basis, but also under a set calendar. Under this approach, existing WCB policies would come up for review or evaluation on a regular basis – such as every one, three or five years, depending on the nature of the policy. This would help the Board ensure that the WCB’s policies, for which they are responsible, are keeping up with the times and meeting their intended objectives. The new Policy and Practices Consultative Committee (that our Panel recommends above) would also feed into this process when it identifies opportunities for review or evaluations of existing policies.

While ensuring that reviews and evaluations are scheduled, the calendar should be a living document. The Board should feel free to undertake a review or evaluation before it is scheduled if there is a good reason to do so. (For example, if a compelling issue is identified by stakeholders or staff, or when opportunities for reviews or evaluations of existing policies are identified by the new Policy and Practices Consultative Committee that we have recommended above.) The calendar should also be populated with a review or evaluation when the operation of an existing policy is impacted by a decision of the Appeals Commission or a court. As the owner of WCB policies, the WCB Board of Directors deserves to be notified of every instance this occurs, so that Board members can determine the appropriate course of action for the policy.

## USING PERFORMANCE MEASUREMENT APPROPRIATELY

Among its functions, the WCB Board of Directors establishes corporate objectives and key deliverables. These are commonly called “performance measures”, and we heard a lot about these from stakeholders.

During the course of our engagement, a live issue was the WCB’s use of performance pay (or “bonuses”) for its executives and staff. A “pay at risk” program linked the pay of employees to specific performance measures established by the Board. In 2016, those specific measures were:

- “Positively impact injured workers by achieving a 90% decision fairness score on decisions delivered throughout the life of a claim.”
- “Positively impact injured workers by helping 90% of those cared for in 2016 achieve the fitness they need to make a safe return to work.”

Many stakeholders expressed a belief that the use of performance pay contributed to a “culture of denial” at the WCB. People argued that the bonus structure gave WCB executives and staff a personal financial stake in how claims are managed, creating a conflict of interest.

The WCB’s “pay-at-risk” program has since been discontinued. Our Panel is pleased with that development, as we fully intended to recommend its abolishment.

It is difficult to determine the extent to which the WCB's use of performance pay was actually influencing the ways claims were managed. To the critical eye, it certainly lies within the realm of possibility. Regardless, the perception that it could be happening was incredibly damaging to stakeholders' trust in the WCB. No form of the "pay-at-risk" program should ever return to the workers' compensation system.

## **Recommendation 10:**

### **Prohibit the use of performance pay, pay-at-risk, bonuses or other programs that tie the compensation of WCB employees to performance measures.**

The "pay-at-risk" program is now gone, and our Panel is firmly of the view that it should not return in any form. The WCB should not make use of any kind of performance pay, pay-at-risk, bonus pay, or other program that links the compensation of WCB employees to the achievement of performance measures or outcomes. To do so is to give rise to a perception, and perhaps even a reality, that WCB staff have a conflict of interest when they are undertaking their roles.

We note that the Government of Alberta has introduced a new compensation regulation under the *Reform of Agencies, Boards and Commissions Act*. Among other things, the regulation eliminates the use of executive bonuses in Government of Alberta agencies, boards and commissions. The regulation applies to the WCB and the Appeals Commission for Alberta Workers' Compensation.

Though linking compensation to performance measures is a practice that must be abandoned, this does not mean performance measurement should as well. Countless organizations in the public, private and non-profit sectors make use of performance measurement as a way of encouraging all the parts of an organization drive towards shared goals.

Our Panel believes that the use of performance measurement has a place in the WCB, but the way measures are determined ought to change.

## **Recommendation 11:**

### **Engage stakeholders to gather their input into the development of new performance measures for the WCB.**

To facilitate the shift from a focus on claims management to a focus on the health and well-being of workers, the workers' compensation system should have a revised set of performance measures. In this new world, the system will not be driving toward certain outcomes for claims, but certain outcomes for workers and employers.

In developing these revised performance measures, it makes sense for the WCB to engage with stakeholders to solicit their input on what the measures could look like. With greater input into these measures, stakeholders will be able to have greater "buy-in" to the outcomes that are used to drive the work of decision-makers in the system.

## ESTABLISHING A FAIR PRACTICES OFFICE

To help assure the quality of their workers' compensation systems, some provinces have established offices that provide ombudsman-type roles for the system. Ontario, for instance, makes use of a Fair Practices Commission, which address concerns from stakeholders about the fairness of services or treatment by Ontario's workers' compensation system. Saskatchewan, British Columbia and Manitoba have a Fair Practices Office or Fair Practices Advocate, which investigate service delivery complaints and attempt to resolve concerns.

In Alberta, workers and employers can currently raise concerns through different channels depending on the nature of their concern. The Alberta Ombudsman receives concerns about administrative fairness; the Office of the Information and Privacy Commissioner fields concerns about privacy and the use of personal information; and the Alberta Human Rights Commission receives complaints regarding discrimination. These three offices handle complaints that are related to various Government of Alberta ministries, agencies, boards and commissions.

Given the reach, importance and complexity of Alberta's workers' compensation system, our Panel believes it makes sense to establish an office that is dedicated to receiving and addressing concerns that arise from stakeholders regarding the system. By being dedicated to the system, this office could have the expertise necessary to help workers and employers navigate the system's numerous processes and intricacies.

In addition to providing stakeholders in the system with a dedicated avenue for raising concerns, a Fair Practices Office would also provide elected officials with a place to direct concerns and obtain information. Our Panel understands that issues about workers' compensation are among the concerns most frequently received by provincial elected officials.

Our Panel has consulted with and received support from the Alberta Ombudsman's Office on the concept of a Fair Practices Office.

**“There is merit in establishing a single window for stakeholders to raise concerns about service delivery and claims management. However, it is essential the scope of this new body does not cross into the jurisdiction of other agencies like the Appeals Commission, Alberta Human Rights Commission or Office of the Information and Privacy Commissioner.”**

*– Employer*



## Recommendation 12:

### **Establish a Fair Practices Office for Alberta’s workers’ compensation system which plays roles similar to fair practices offices in other provinces.**

We believe that a Fair Practices Office in Alberta’s workers’ compensation system should feature the following elements:

- The Fair Practices Office should report to the Minister of Labour so that it is independent from the other entities in the system (i.e., the WCB, the Appeals Commission, the Medical Panel Office and the Department of Labour.)
- The office should serve as an ombudsman-type function for the workers’ compensation system. It should field and address concerns related to administrative fairness; that is, concerns about the fairness of processes that were used to reach decisions, not the decisions themselves.
- The Fair Practice Office should derive its authority under the *Workers’ Compensation Act*. The Act should give the office authority to undertake investigations and should compel entities in the workers’ compensation system to cooperate with the office (e.g., through access to records, by providing information, etc.)
- The office would use the newly crafted code of rights and conduct as created by the Board of Directors as a tool in ensuring accountability and compliance within the system.
- The office should conduct quality assurance audits of the system on a regular basis, undertake data gathering about concerns, and identify trends in the system (including the Appeals Commission). The office should issue reports to the Minister of Labour about its work on a regular basis, and copy these reports to the WCB and the Appeals Commission.
- The office should also provide a navigation-type role for people who raise concerns, helping connect them to other public entities and public services that may be able to assist them. This will help ensure that a person is not left “high and dry” once the Fair Practices Office has exhausted its authority to address the person’s concern. For example, suppose a final decision is made by the system that a worker is not entitled to benefits and, after investigating, the Fair Practices Office determines that decision was made in a procedurally fair way. Recognizing the worker does not have WCB benefits but can not work because of their injury, the office should connect the worker with public supports that might be able to assist the worker.

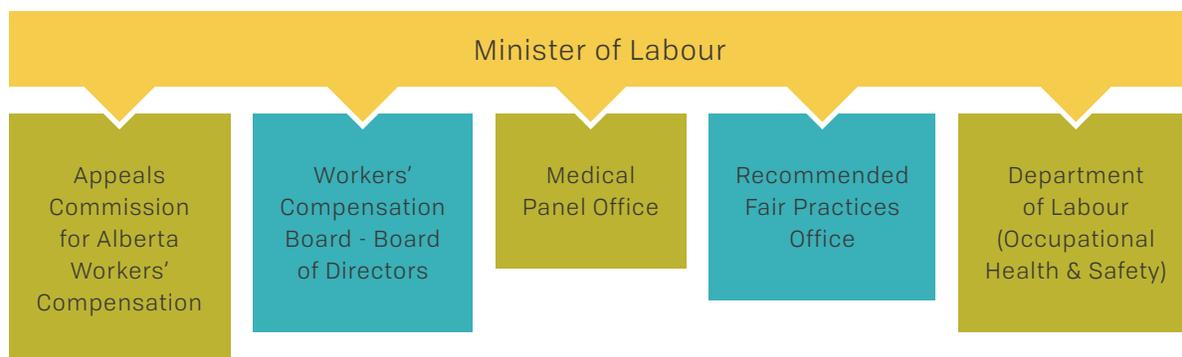
The Fair Practices Office is not intended to interfere with any rights of workers or employers to pursue other external avenues currently available to them, such as the Alberta Ombudsman, Office of the Information and Privacy Commissioner and the Alberta Human Rights Commission.

By providing an independent eye on the fairness of decision-making processes in the system, the Fair Practices Office will help restore trust in the system.

## STRUCTURING FAIR INTERACTION AMONG PARTNERS IN THE SYSTEM

As noted earlier in this report, Alberta's workers' compensation system consists of: the WCB; the Appeals Commission for Alberta Workers' Compensation; and the Medical Panel Office. The Appeals Commission and the Medical Panel Office are intended to provide functions that are independent from the WCB.

### PROPOSED WORKERS' COMPENSATION SYSTEM



A number of stakeholders raised concerns about the fact that these entities sometimes interact with each other. For example, in its Mandate and Roles document, the Appeals Commission identifies a requirement for regular meetings with the WCB. Some people worry that undermines the independence of the Appeals Commission.

Our Panel investigated this issue and determined that the interactions that occur between the WCB and the Appeals Commission are not about worker claims, but about system issues. Since they are components in an overall system, the WCB and Appeals Commission need to have processes that work well with each other for the entire system to run as efficiently as practicable. From time to time it makes sense for them to address process issues or administrative barriers that crop up.

The trouble with the current approach is that it is opaque and ad hoc. This does not lend itself to retaining the confidence of stakeholders, and the WCB and the Appeals Commission expose themselves the risk of being seen in collusion. For the Appeals Commission this is particularly problematic, as stakeholders need to have confidence that the Commission is reviewing WCB decisions independently and impartially.

Our Panel recognizes the need for all entities in the system, including the recommended Fair Practices Office and the Department of Labour (OHS), to interact from time to time to ensure the overall workers' compensation system runs efficiently. However, we believe more formality and transparency must be brought to these interactions.

## Recommendation 13:

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**Establish formal, scheduled meetings between the WCB, the Appeals Commission, the Fair Practices Office, the Medical Panel Office and the Department of Labour that feature published agendas and detailed meeting minutes.**

By establishing formality to their meetings, the entities in the system can mitigate the risk that they will be seen as colluding. Making information about their interactions publicly available will also help stakeholders have confidence that these interactions are appropriate. It will also better position stakeholders to hold the entities accountable for the commitments they make to resolve process issues and make the entire system more efficient and effective. The Fair Practices Office could take the lead in coordinating these meetings.

## MAINTAINING THE SYSTEM THROUGH REGULAR REVIEW

The last time Alberta's workers' compensation system was reviewed was 15 years ago. This is far too long, given how many Albertans are impacted by the system.

Our Panel asked stakeholders about the idea of legislating a regular review of the system. Stakeholders were very supportive of this idea. Workers, employers and other stakeholders all want to be sure that the system is keeping pace as the province grows and evolves. A mandated review is seen as an effective way to ensure this happens.

Some other jurisdictions have legislated regular reviews, such as Saskatchewan every 4 years, Newfoundland and Labrador every 5 years and Manitoba every 10 years.

## Recommendation 14:

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**Amend the *Workers' Compensation Act* to provide for a statutory review three years from now, and every five years thereafter.**

Our Panel believes that the next statutory review of Alberta's workers' compensation system should occur in three years. That review should focus on whether and how well our Panel's recommendations have been implemented in the system (to the extent they are approved by government). The review in three years could also choose to examine particular topics that remain challenging.

After that, our Panel believes reviews of the system should occur every five years. This seems to be a balanced period – long enough for there to be stability in the system for a period of time, but short enough that the system can keep pace with changing issues in the province.

One of the advantages of regularly reviewing the system is that it will be far less necessary to undertake a "comprehensive" review as our Panel has been mandated. Instead, since they happen more frequently, reviews will be able to have a more "maintenance"-like character to them.

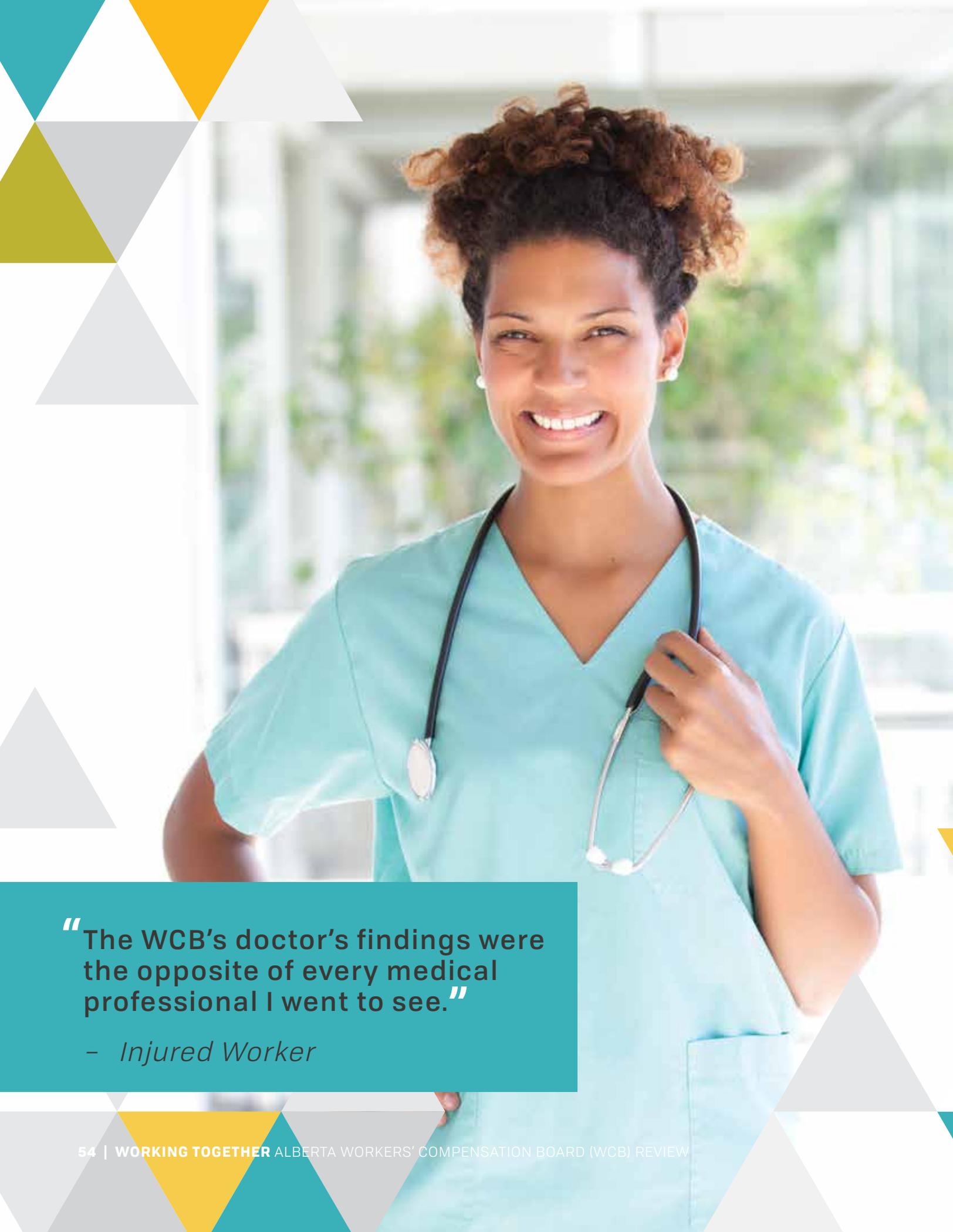
Our Panel believes that the legislated review provision should take an approach similar to that in Saskatchewan's legislation, wherein the composition of the review panel is specified. We suggest that a review panel should consist of at least three individuals, with equal representation of worker and employer interests. We also suggest the review panel undertake facilitated engagement opportunities with stakeholders, similar to the process our Panel undertook.

## ADDRESSING EXECUTIVE COMPENSATION

One aspect of our Panel's mandate was to address executive compensation in the workers' compensation system. Though we heard many strong views from workers and employers alike about executive compensation, we were advised that this aspect of our review was undertaken by the work of the government's review of agencies, boards and commissions.

Recently, the Government of Alberta took action respecting executive compensation in public agencies, boards and commissions, including the WCB. Our Panel was advised about the process that was used to arrive at the decisions that were made. While we have no position on the outcomes it yielded, our Panel is satisfied as to the appropriateness of the process.





**“The WCB’s doctor’s findings were the opposite of every medical professional I went to see.”**

*– Injured Worker*



# TAKING A BETTER **APPROACH TO HEALTH**

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The health and medical dimensions of the workers' compensation system have profound implications for people's lives – not only in terms of physical, emotional and mental health, but also in terms of their finances. Medical conclusions impact most of the decisions in the system. Even before any compensation is paid to an injured worker, there are medical determinations made about the worker's injury or illness and its relationship to worker's employment.

Since medical conclusions are so intertwined with decision-making in the system, medical disagreements can arise in various ways when an injured worker engages with the system. For example, disagreements in medical opinion can occur in regards to:

- The worker's diagnosis;
- Whether their injury or illness arises out of and in the course of employment;
- The benefits to which the worker is entitled;
- The appropriate treatment approach for the worker;
- Whether the worker is ready to return to work; and
- What duties the worker is capable of performing.

Medical disagreements are all too common in the system right now, and they are contributing a great deal of cost, lost time, and frustration to all of the partners in the system. The conditions that give rise to and exacerbate these medical disagreements originate from processes that are currently revolving around the worker's claim, rather than the worker.

Our Panel's recommendations in this area are aimed at supporting the shift towards a worker-centered system that:

- Reduces the number of medical disagreements that occur;
- Makes use of case conferencing to encourage the achievement of consensus on medical information;
- Fosters the confidence of system partners when it comes to medical-related decisions;
- Accommodates greater worker choice in securing health professionals; and
- Focuses on getting injured workers the treatment they require to recover and appropriately return to work.

## SUPPORTING CHOICE OF HEALTH PROFESSIONALS

Workers' compensation is excluded from the provisions of the *Canada Health Act*. As such, the WCB has the ability to obtain and pay for health services that would normally be covered by the province's publicly-funded Alberta Health Care Insurance Plan. Injured workers who are covered by the workers' compensation system can thus sometimes be diagnosed and treated faster than if these services were accessed through the publicly-funded health system. In theory, this supports injured workers in their recovery and enables them to return to the workforce faster than would otherwise occur if they faced wait times in the publicly-funded system. In practice, there are questions from some stakeholders about how the WCB has made use of the *Canada Health Act* exemption to establish something akin to a parallel, private health system. Though it is beyond the mandate of our Panel, we note there remains a live public policy question regarding the exemption of workers' compensation systems in Canada not just in Alberta.

The flip side to this arrangement is that injured workers are required to visit WCB-retained health professionals and WCB-retained health clinics for many services.

The exception is an injured worker's treating physician. At present, an injured worker can visit a treating physician of their own choosing (such as their family physician) if they prefer to do so.<sup>8</sup> However, if the worker's treating physician refers the worker to a health specialist (such as a chiropractor or physiotherapist), the worker is required to use a WCB-retained specialist.

Many stakeholders told our Panel that they would like to have greater freedom in selecting their health professionals. There were many reasons offered, such as:

- People want to be able to select a professional with whom they are comfortable, be that for style or cultural reasons;
- People may already have relationships with health professionals who know their medical histories and feel these professionals are best placed to treat them; and
- People are not confident that the WCB-retained health professional will put their health interests first.

The demand for greater choice is understandable. The demand is partly rooted in human nature; we all like having choice. The demand is also partly rooted in the erosion of trust in the system that has occurred.

The current approach used by the system for providing health treatment does not lend itself to trust and partnership. Too much control is in the hands of the WCB, and too little control is in the hands of the worker. To a cynic, the approach looks like a rather 'stacked deck'. As our Panel has noted earlier, the health aspects of the system are areas where people need to see and feel neutrality and impartiality. Workers can not have lingering questions about whether the treatment they are receiving is putting their health interests first.

Our Panel believes that change is needed in this area.

## **Recommendation 15:**

**Enable workers to choose their own health professionals, including their treating physicians, so long as those professionals meet a set of criteria established by the WCB.**

The approach our Panel recommends would significantly enhance workers' choice of health professionals while ensuring there is sensibility, quality, and cost-effectiveness around the health services that are delivered to injured workers. We recognize there needs to be balance in offering greater choice.

<sup>8</sup> The WCB also operates a system called the Occupational Injury Service, which can provide injured workers with speedy access to treating physicians at WCB-approved health clinics. Use of this option is voluntary if the employer has agreed to participate in the service.

Under this approach, injured workers would have the freedom to use the health professional or provider of their choice, so long as that professional or provider meets a set of criteria that are established by the WCB. Those criteria would be constructed so as to ensure that:

- The professional or provider has the necessary education, skills, accreditation and licensing in place;
- The professional or provider has a logical link to the worker's treatment plan;
- The professional or provider is prepared to accept the fees that the WCB is prepared to pay for their services, and agrees they can not charge the worker for any additional money; and
- Other protocols that make sense to ensure the professional or provider is delivering the services in a professional manner.

In addition to introducing greater choice for workers, this will infuse greater independence into the system. Workers will be able to have greater confidence that the health professionals they select will have their best interests at heart. At the same time, partners in the system will be able to have assurance that workers will receive care from qualified professionals in a cost-effective manner.

## CLARIFYING THE ROLE OF MEDICAL CONSULTANTS

A medical disagreement typically takes the form of a difference in opinion between the worker's treating physician (which might be their family physician) and that of the WCB. How the WCB comes to form a medical opinion is a source of consternation among stakeholders.

Decisions about a worker's claim are typically made by the WCB claims manager who is assigned to the claim. Most of these decisions – such as the eligibility of the claim, and whether the worker is ready to return to work – can involve medical questions. However, claims managers are not usually physicians and they do not typically have medical training. To support claims managers in their decision-making, the WCB makes use of medical consultants. These medical consultants are physicians retained by the WCB through year-to-year contracts.

**“WCB consistently refuses to accept the opinion of specialists who know the patient often taking the opinion of less qualified physicians. They frequently interfere with treatment.”**

*– Health Practitioner*

Through our engagement process, numerous stakeholders expressed concerns that WCB-retained medical consultants are going beyond their role and providing medical opinions to the WCB about workers' health conditions. This, they say, leads to the claims manager adopting a view that runs counter to the worker's treating physician. Some people say this is problematic for various reasons, including:

- The medical consultants do not ever examine workers firsthand; they instead rely on the examinations that have been performed and the documentation that has been provided by others.

- Since they are contracted by the WCB, the medical consultants may not be providing objective opinions.
- The medical consultants are not qualified to provide medical opinions.

In examining the WCB’s use of medical consultants our Panel found that it is not the medical consultants’ qualifications or opinions that are the problem, but a culture within the WCB to defer to them too readily.

Some clarification is helpful here. The WCB retains a complement of medical consultants who are all qualified and licensed to practice medicine in the Province of Alberta. Some serve the WCB full time, while others provide their services to the WCB on a part-time basis while also working in other clinical settings (such as hospitals or their own practices).

The WCB also employs “clinical consultants”, whose job title may be causing some confusion among stakeholders. The clinical consultants are nurses or foreign-trained doctors (who may or may not be licensed to practice medicine in Alberta) but they do not make decisions or provide opinions about claim files. (Their job is to prepare the medical packages that are sent to physicians who do make decisions.)

**“Differences in opinion are not uncommon in medicine. Challenging a difference of opinion through conversation by both parties or deferring the decision to a specialist are good ways to solve the issues.”**

*– Health Practitioner*

It is accurate to say that medical consultants do not examine workers firsthand. Rather, they are provided a dossier of material compiled by the WCB that includes pertinent medical information from the worker’s file. On the basis of that information, along with their experience and expertise, the consultant is asked to contribute medical advice about the worker’s claim.

The identified problem is that when a medical consultant’s view conflicts with the opinion of a worker’s treating physician, the medical consultant’s view seems to be readily adopted by claims personnel without much attempt to resolve the parting of views. This regrettably creates several unintended challenges. First, it sends a signal that the

WCB neither trusts nor respects the medical opinions provided by the workers’ treating physicians, who are actually seeing the worker. Second, it abrogates the ability and the responsibility of the case manager to be inquisitive, seek appropriate evidence and make decisions about the claim based on that evidence. Third, it creates the conditions for a clash of formal medical opinions, leading the relationship between the worker and the WCB to become unnecessarily adversarial. This, in turn, can result in the worker being pulled into numerous processes in a drawn-out effort to resolve the disagreement.

Our Panel sees the value of having the WCB retain medical consultants to support decision-making by case managers. However, the role of the medical consultant needs to be clarified and the culture surrounding their use should change.

## Recommendation 16:

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**Refocus the role of the medical consultant to better support a case conferencing approach. The Medical Panel Office should design and implement a quality assurance program to ensure the new case conferencing approach is achieving its desired outcomes.**

In our view, an appropriate role for a medical consultant is to provide claims managers with a medical perspective on the medical issues presented in a worker's claim. In this role, the medical consultant reviews the worker's file and offers advice that will help the claims manager identify and seek the information they require to make evidence-based decisions about the worker's claim.

When a medical consultant has a view that differs from the view of the worker's treating physician, the consultant should contact the treating physician to ask questions, offer a perspective and support a search for compelling medical evidence. The medical consultant performs a 'case conferencing' type of function, not a 'provide a second opinion' type of function. There are good reasons to do this. It would not only signal that the WCB has respect for the worker's treating physicians, but it would also provide an opportunity for the health professionals to fill each other's knowledge gaps. The worker's treating physician may know more about the worker and their medical history, but often the medical consultant will have more information about the worker's employment. All of these pieces of information are relevant to pull together.

Ideally, this informal case conference between the medical consultant and treating physician will help achieve a reconciliation of views. In the event that a parting of views remains, the appropriate course of action is for the claims manager to request an independent medical examination. The claims manager should not make a decision that causes the medical consultant's view to trump that of the treating physician.

This shift in the medical consultant role is in keeping with the shift to a worker-centered system. Instead of being used to justify how a claim is processed, the medical consultant's expertise is leveraged to support a more complete understanding about the worker's medical issues. The focus is placed on determining what medical treatment will best support the worker's health and well-being, and then making decisions about the claim on that basis.

Additionally, our Panel recognizes that it is appropriate for the medical consultants to report to a division separate from claims management. However, in order to facilitate a shift in the approach of the medical consultants and help demarcate that they are independent providers of advice, the Medical Panel Office should establish a quality assurance program to ensure appropriate services are provided by medical consultants.

## IMPROVING THE INDEPENDENT MEDICAL EXAMINATION PROCESS

When a disagreement occurs over a medical aspect of a worker's claim, the WCB will usually refer the worker for an independent medical examination (IME). The physicians who perform IMEs for the WCB are retained and paid by the WCB under fee-for-service contracts. When an IME is required, the WCB selects a physician from among these contracted providers who has expertise in the injury or illness presented by the worker. The worker effectively has no choice in this process. Although the worker can refuse to consent to the IME, they may lose their benefits if they do so.

Typically, the physician conducting the IME will be provided with any relevant reports from the worker's treating physicians. The IME physician reviews the history of the worker's injury or illness and examines the worker firsthand. Sometimes the examination will take place at the WCB's offices – an arrangement which, according to stakeholders, can be intimidating to workers and can undermine the perceived independence of the IME.

If a worker disagrees with the result of the IME, they will sometimes respond by obtaining their own independent examination from a physician of their own choosing at their own expense. (In some cases, a workers' union will cover the expense.)

We also heard that the WCB will sometimes seek multiple IMEs on the same matter. While there may be legitimate reasons for this (such as the original IME completely missing an area of examination), our Panel heard several stakeholders express a view that the WCB goes "doctor shopping".

The ultimate result is a battle between conflicting IMEs. Rather than achieving resolution of the medical disagreement, the current process can cause both sides of the disagreement to become further entrenched in their positions. This makes the relationship between the worker and the WCB adversarial, and adds cost and delay to the overall system.

Part of the challenge is that many workers (and unions) question the independence of physicians who are retained by the WCB to conduct IMEs. Our Panel heard many people express the opinion that because these physicians are solicited, negotiated and contracted by the WCB, they are likely to produce opinions that align with the WCB's viewpoint.

It is important to note that the College of Physicians and Surgeons of Alberta has in place both a *Standard of Practice* and *Advice to the Profession* which provide guidance to physicians regarding IMEs (also called "Non-Treating Medical Examinations"). These documents set out the minimum standards of professional behaviour and ethical conduct that are expected from physicians in respect of IMEs, and cover issues such as: disclosing conflicts of interest, informed consent, how an IME should be conducted, and documentation expectations.

Our Panel does not take issue with the professionalism or competence of medical professionals who are retained by the WCB. This is neither our role, nor are we qualified to do so. Questions about the ethics and competence of health professionals are the purview of their applicable regulatory bodies.

**"Members have the perception that IME's are done by doctors employed by WCB and therefore a bias against the worker in favour of the employer."**

– Union

However, our Panel is comfortable in saying that the current approach to IMEs is no longer working because trust in the system has been eroded. Regardless of whether WCB-retained professionals are biased or conflicted, the current approach feeds into the perception that they might be. This needs to be changed. Workers who are sent for IMEs can not and should not have lingering questions about whether their health interests were put first. And physicians who conduct IMEs should not be engaged in a manner that enables their professionalism to be so casually assailed.

To restore trust in this aspect of the workers' compensation system, there needs to be a greater level of neutrality and independence in how IMEs are conducted.

## **Recommendation 17:**

### **Use a roster approach, administered by the Medical Panel Office, to obtain independent medical examinations.**

Our Panel recommends that the approach to obtaining IMEs should be changed so that the WCB is no longer in a position to influence IME results. In particular:

- The WCB should no longer directly enter into fee-for-service agreements with physicians for IME services. Instead, the Medical Panel Office (which is independent from the WCB) will administer these arrangements on their behalf.
- In consultation with the College of Physicians and Surgeons of Alberta, the Medical Panel Office will establish a roster of physicians who are approved to conduct IMEs. The Medical Panel Office will be the administrator of the roster.
- When an IME is required, the worker will choose the IME physician from the roster. The WCB will no longer make the decision about which physician performs the IME.
- In the event that a party disagrees with the results of an IME, that party can access the Medical Panel Office process.
- In addition to the IME obtained under this process, a party can still choose to obtain their own independent medical examination at their own expense.

This approach will eliminate the apprehension of bias that currently exists in respect of WCB-retained physicians and IMEs. Since IME physicians will be recruited by the Medical Panel Office, rather than by the worker or the WCB, a higher degree of confidence will be able to be placed in their conclusions. This should help reduce the number of instances in which there are conflicting IMEs, as a party will be challenged to demonstrate why and how their personally-obtained IME should be preferred over the IME obtained through the roster process.

## IMPROVING ACCESS TO THE MEDICAL PANEL OFFICE

Our Panel heard that stakeholders are generally satisfied with the Medical Panel Office (MPO). The MPO is led by a Medical Panel Commissioner, who reports to the Minister of Labour. As such, the MPO is independent from the WCB.

The Medical Panel Commissioner oversees the establishment and conduct of medical panels. Medical panels are used by the workers' compensation system to provide an impartial, independent decision-making process to resolve disagreements in medical opinion that arise between workers and the WCB. The panels are comprised of physicians practising in the areas of medicine that are under review.

One issue raised by stakeholders is that the MPO's medical panel process is not accessible to workers. Presently, the medical panel process can only be initiated by the WCB or by the Appeals Commission. People say that an injured worker should also be able to initiate the process when there is a medical disagreement about their claim.

This request is imminently reasonable. In our view, there is little harm in enabling injured workers to also initiate the medical panel process. As the individuals whose medical conditions are in dispute, injured workers have an interest in how those disagreements are resolved. Arguably, they are the party most affected by the outcome. Giving them the right to initiate the medical panel process will bring more procedural fairness to the workers' compensation system.

### **Recommendation 18:**

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**Amend applicable legislation and policies to enable injured workers to initiate the MPO's medical panel process when there is disagreement in medical opinion about their claim.**

A worker should have the authority to initiate the medical panel process. However, to do so the worker should be required to demonstrate that there is a medical conflict to be resolved and that the conflict has an impact on their claim.

As the medical panel process becomes more accessible, there is a possibility that it will be used more often. There are concerns that the MPO already faces high demands for medical panel processes, and that timelines for medical panels are getting longer. It can also be difficult at times for the MPO to find the right number and type of professionals that are needed to form a medical panel.

In our view, the use of a full medical panel process should be a last resort. When a full medical panel needs to be convened, it should be because all attempts to resolve the medical disagreement have been exhausted. The recommendations made by our Panel earlier in this report will hopefully reduce the number of medical disagreements that arise and support earlier resolution of those that do. In theory, there should be fewer outstanding medical disagreements that reach the MPO.

We also believe that there is value in exploring ways to involve other types of health professionals (beyond physicians) in the medical panel process either as advisors or official members on a medical panel. Enabling the participation of professionals such as psychologists, physiotherapists, chiropractors and occupational therapists would give medical panels more access to specialized expertise when they are addressing medical conflicts in these areas.

The resolution of medical disagreements could be further facilitated by introducing an informal dispute resolution process within the MPO, as a required step before a medical panel is convened.

## Recommendation 19:

### **Establish an informal medical dispute resolution process within the MPO as a mandatory step before a full medical panel is convened.**

This process could take the form of a non-binding, without prejudice discussion aimed at reaching consensus on the disputed medical issues. Rather than being adversarial in structure, it could be approached more like a case conference. If resolution could not be achieved then a minimum the dispute resolution process would refine the questions that would be sent to a medical panel. The matter could proceed to a full medical panel process as it currently exists.

## ENHANCING AWARENESS OF MEDICAL PROFESSIONALS

**“There is definitely a need for more education (for physicians) surrounding issues of return to work, appropriate modified duties and navigating the WCB system. I think that should start at the residency level and continue throughout our practicing careers with CME.”**

*– Health Practitioner*

Our Panel frequently heard that some members of the medical community are reticent to engage with workers’ compensation matters. We also heard that some members of the medical community have had experiences with the workers’ compensation system which they have found difficult. Some stakeholders suggested that this stems from a perception that the WCB does not pay sufficient respect to the medical opinions of treating physicians. To the extent this may be the case, our Panel believes that our earlier recommendation regarding medical consultants will help address this issue.

One of the things our Panel found is that levels of awareness and understanding about Alberta’s workers’ compensation system have marked room for improvement generally. This applies to the medical community as much as anyone else. If physicians have greater familiarity with the system,

its purpose and how it works, they are less likely to be apprehensive about engaging with the system. Better understanding about the decision-making processes used by the system will also go a long way in reducing misunderstandings and fostering a higher level of trust.

The WCB indicated that it has made attempts at raising awareness among physicians, but there has not been sufficient uptake on these efforts to date. This suggests that these efforts need to be enhanced or approached differently. Our Panel has been advised by health professional colleges that virtually no attempt has been made by the WCB to engage other types of health professionals (aside from physicians). This is a gap that should be addressed.

## Recommendation 20:

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**WCB undertake initiatives to raise levels of knowledge and awareness in Alberta's medical community about the workers' compensation system, its purpose, its major components and its processes.**

Our Panel believes that all components of the system have roles to play in enhancing knowledge and awareness about their roles and processes. This includes the MPO, whose work directly involves the medical opinions made by health professionals and engages their professional interests.

The WCB has a major role to play in enhancing knowledge and awareness among members of the medical community. Done well, such efforts could also help build greater capacity in the medical community to diagnose and treat particular work-related injuries and illness, and support workers' re-engagement with the workforce.

While the WCB and MPO are better positioned to identify the specific initiatives that would be most effective, our Panel would envision a suite of different approaches being used. These might include, for example:

- Hosting conferences and symposiums;
- Developing web-based course modules that can be accessed by members of the medical community when their schedules permit;
- Attending meetings, events and gatherings of medical professionals; and
- Undertaking special programs to proactively engage medical students and medical residents in their formative education years.

In developing approaches, the workers' compensation system should leverage partnerships with medical educators, such as Alberta Health, the University of Alberta, the Alberta Medical Association and the College and Physicians and Surgeons of Alberta to enhance the obligation of physicians to seek continuing education on the workers' compensation system.

Similarly, our Panel would suggest that, wherever possible, the workers' compensation system should consult and collaborate with regulatory bodies and professional associations to identify initiatives that will be most useful and effective. Importantly, the system's outreach efforts in this area should extend beyond physicians and include all types of health professionals in Alberta. As the world increasingly embraces multi-disciplinary approaches to diagnosis and treatment, a greater range of health professionals should have good familiarity with the workers' compensation system.

## SUPPORTING WORKERS WITH AN APPROPRIATE AMOUNT OF TREATMENT

Many of the health services provided to injured workers are delivered through third party providers. Rehabilitation centres and physiotherapists are examples of these third party providers and are the types that were most often mentioned by stakeholders. These third party providers are contracted and paid by the WCB.

In covering health services for injured workers, the WCB faces a resource optimization challenge. On the one hand, there is a need and a desire to have the third party provide the necessary amount of services that the worker requires to recover and return to work. On the other hand, there is a risk that the profit or revenue interests of the third party will motivate them to provide the worker with more health services than the worker requires.

The WCB attempts to navigate the challenge through a payment arrangement that features an incentive pay system. Third party providers are paid three types of treatment incentives:

- one for early entrance of the worker to the treatment program (to encourage speedy access to treatment for the worker);
- one for a timely report; and
- one for generating a sustained result after the worker is discharged from the treatment program. (This is defined as the worker no longer requiring short-term benefits 30 days after program discharge.)

The total amount of pay received by the third party provider depends on how well they achieve the incentive targets.

In theory, this structure financially motivates third party providers to make the right decisions about how much treatment is provided to an injured worker. For example, if the third party provides too little treatment to the workers, then the worker will not realize a sustained result, and the provider will lose money.

While understandable in theory, it is arguable that this arrangement is not working in practice.

Our Panel heard many stories from stakeholders – including workers and employers – about injured workers returning to work without having had, in their view, a sufficient amount of treatment. A significant number of these stories independently referenced “six weeks of physiotherapy”. This appears to be a magic length of treatment at which injured workers are commonly told their WCB-covered physiotherapy is at an end, regardless of whether they or their employer feel they have sufficiently improved.

As it turns out, “six weeks” of physiotherapy is indeed tantamount to a maximum amount of physiotherapy treatment that is paid for under the WCB’s incentive pay approach. Our Panel learned this amount has been established by the WCB based on medical literature that indicates the majority of patients recover after six weeks of physiotherapy treatment. Under the third party provider incentive scheme, it is effectively used as a cookie-cutter rule by which claims can be efficiently processed. After six weeks, so goes the reasoning, an injured worker should not require any more physiotherapy and so they do not receive more. They are then considered ready to return to work.

While this no doubt aids in the expeditious processing of claims, our Panel feels it is also likely driving less-than-ideal decisions and conditions on the ground. Many stakeholders relayed experiences of feeling “rushed” or “pushed too hard” during their six weeks of physiotherapy. Some said that the aggressiveness of certain third party providers resulted in their injuries worsening. Viewed in light of the six-week rule used in the WCB’s incentive pay system, it is easy to see how third party physiotherapy providers can be motivated to be intensive with injured workers.

This approach needs to change. It is another example of how the workers’ compensation system is currently claim-focused rather than worker-focused.

In a worker-focused system, an injured worker should receive the amount of physiotherapy treatment they require to recover from their injury and return to work when they are medically ready to do so – whether that’s less than, more than, or exactly six weeks’ worth. In covering the worker’s treatment, the WCB’s focus should be on whether the worker is getting what they need to support their health and well-being – not whether disposition of the claim is happening within a certain amount of time in accordance with a rule.

Our Panel understands the resource optimization balance that the WCB needs to achieve. But we believe this can be achieved in a way that is more consistent with a worker-centered philosophy.

## **Recommendation 21:**

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**WCB adjust the approach to treatment coverage so that it reflects and responds to the unique and individualized needs of each worker.**

Rather than using strict rules to help ensure resources for treatment are optimized, our Panel believes the WCB should move to a treatment approach that recognizes and responds to the unique needs of each injured worker.

Under this approach, workers would be provided with the amount of treatment that supports their recovery and appropriate return to work, based on evidence-based benchmarks. To mitigate the risk that third party providers will provide too little or too much treatment, the WCB would check-in with the worker at certain milestones to verify they have indeed recovered. If they have not recovered, then additional treatment would be provided.

This could be described as a “trust but verify” approach, wherein the WCB actively undertakes oversight to ensure that the worker received what they needed. Importantly, this verification does not stop when the worker returns to work. Instead, it continues at appropriate intervals to ensure that the worker has recovered and maintained that recovery.

One advantage of this approach is that the WCB will be better positioned to support a worker even after they have returned to work. For example, there may be situations where a worker has returned to work and is capable of remaining there so long as they receive a few more treatments. Done well, the “trust but verify” system could generate better return-to-work outcomes.

A photograph of three chefs in a kitchen. On the left, a Black man in a white chef's coat smiles. In the center, a young man in a white chef's coat claps his hands and smiles. On the right, a woman in a white chef's coat is cooking at a stove, smiling. The background shows kitchen equipment and a stainless steel wall. A yellow text box is overlaid on the right side of the image.

“Members have commented that they feel the vocational training is not effective; they see it as a push by WCB to get their claims closed.”

– *Union*



SUPPORTING  
RETURN  
**TO WORK**  
**REALISTICALLY**

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Alberta's workers' compensation strives to return injured workers to the workplace. In this respect the system is not unique in Canada. The administrative bodies of workers' compensation systems in other provinces and territories also include goals to return injured workers to the workplace.

There is widespread agreement among stakeholders that this feature of Alberta's system should be maintained. However, there are concerns that the system is not working as well as it could on this front. The processes currently used by the WCB are frustrating employers and workers alike.

Our Panel's recommendations in this area are aimed at supporting the shift towards a worker-centered system that:

- Respects the existing relationship between a worker and employer and works to maintain this relationship;
- Assists employers in returning workers to their workplaces; and
- Provides workers with the assistance they require to realistically re-engage in the labour market.

## FORMALIZING AN OBLIGATION TO RETURN WORKERS TO WORK

Ideally, when a worker is ready to return to work, they can go back to their original employer. This might entail returning with modified duties based on the worker's abilities, which may be different than they were prior to the worker suffering their injury or illness.

Statistics from Alberta's workers' compensation system indicate that this happens for the majority of injured workers. For instance, 93.7% of workers whose claims were closed in 2016 returned to work with their date-of-accident employer.

**"...worker advocates report that some employers refuse to re-employ injured workers when they are ready to return to work. These workers may be able to pursue remedy through the human rights system, but this is a slow process and, in the interim, the WCB normally reduces or terminates their wage-loss benefits via deeming. One outcome of this situation can be that injured workers are left with little (or no) income and, thus, rely on family, friends and government income support..."**

*- Union*

While these numbers are encouraging, they do not tell the whole story. For example, it is an open question as to how long these workers were retained by their employers after they returned. These statistics also do not tell us how many workers were re-engaged at their employers in ways that meaningfully made use of their capacities, nor do they indicate whether the employer faced resource challenges in bringing the workers back to their workplaces. They also do not indicate for how long a worker remained at the workplace after returning.

In the course of our engagement activities, we heard many stories from employers and workers about the tensions and frustrations that sometimes lie behind the statistics. Among those noted most often:

- Workers who return to their date-of-accident employers can find themselves among the first to lose their jobs when a round of lay-offs happens;
- Some employers are too quick to say they can not bring a worker back to the workplace, and do not bother trying to find ways to do so;

- Workers who return with modified duties can find themselves doing menial and unfulfilling work when they could do much more if the employer was willing to be more creative or had the resources to provide more opportunities;
- Workers are sometimes returned to work that they are not capable of performing;
- Employers who bring workers back to the workplace can incur higher costs in doing so (such as extra staffing costs or investments to retrofit the workplace), yet often they are not provided sufficient or any assistance with these costs; and
- Some workers are uncooperative even when their employer is enabling their return, and this causes great strain in the workplace.

Hence, regardless of the statistics, the system is not always doing a good enough job in facilitating the return of workers to the workplace. Part of the situation stems from the fact that Alberta’s WCB has not explicitly been given responsibility to address concerns about return to work. Alberta’s *Workers’ Compensation Act* does not currently include a requirement for an employer to return an injured worker to the workplace.

During our engagement process, many stakeholders accurately observed that under the *Alberta Human Rights Act*, every employer in Alberta has a legal duty to accommodate a worker with a disability unless the accommodation imposes undue hardship on the employer. However, in practice neither workers nor employers have an efficient and effective means of raising concerns about failure to accommodate or undue hardship. Presently, these complaints must be filed with the Alberta Human Rights Commission, which even they acknowledge is not a timely process. In 2015-2016, the average length of time that the Commission took with a matter was 655 days.<sup>9</sup> This may as well be a lifetime for a worker who is no longer receiving benefits and requires a source of income, and it is not unreasonable to assume that some workers do not bother to file complaints given the time and costs involved.

When disputes arise around return to work, both workers and employers need and deserve a mechanism that is effective, timely, and clear. Our Panel believes that such a mechanism should be rooted in an express requirement in legislation regarding the obligation of employers to return workers to their workplaces.

### RETURN TO WORK OBLIGATIONS IN WORKERS’ COMPENSATION LEGISLATION

Jurisdiction	Obligation to Return to Work	Duty to Accommodate
British Columbia	None	None
Saskatchewan	✓	None
Manitoba	✓	✓
Ontario	✓	✓
Quebec	✓	None
Newfoundland and Labrador	✓	✓
Nova Scotia	✓	✓
New Brunswick	✓	None
Prince Edward Island	✓	✓
Yukon	✓	✓
Northwest Territories and Nunavut	None	None

Source: Jurisdictions’ legislation

<sup>9</sup> This is the length of time between when a complaint is filed with the Commission and when the matter is resolved.

## Recommendation 22:

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**Amend the *Workers' Compensation Act* to provide that employers have an "obligation to return to work" those workers who suffer injuries and illnesses in their workplaces.**

This concept is not a novel one. Several other Canadian jurisdictions incorporate a similar obligation in their workers' compensation legislation. The inclusion of this obligation in Alberta's *Workers' Compensation Act* would ideally be done in a way that empowers the WCB to enforce the obligation through its policies and processes. This would assist in streamlining the return to work process (compared to pursuing a case through the Human Rights Commission) and reducing the potential for the situation to become legalistic in nature.

It is recognized that smaller employers may not always have the ability to discharge this obligation. Other jurisdictions have recognized this in their approaches, and our Panel believes that Alberta should take a similar approach.

Our Panel's intention is to allow for concurrent jurisdiction to exist. For example, the obligation to return workers to work is not intended to supplant or derogate from the jurisdiction of the Human Rights Commission in respect of human rights claims, nor to limit workers' ability to access the Human Rights Commission, or other legal remedies that may be available where satisfaction of the return to work obligation leaves matters unresolved. The retention of concurrent jurisdiction, while promoting the resolution of the specific and express return to work obligation, will enable the worker and the Human Rights Commission the opportunity of review and potential remedy on such unresolved or untouched matters.

Consistent with this, our Panel also believes the WCB should establish a new policy that outlines a return to work approach that is rooted in collaboration while effective in ensuring compliance with the obligation to return to work. It should also address the fact that smaller employers often lack the human resource, disability management and occupational health and safety expertise that can be needed to facilitate the return of a worker to the workplace.

## Recommendation 23:

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**WCB implement a new policy that establishes a more collaborative approach which also enforces the obligation to return an injured worker to work.**

The new policy should incorporate the concept of an "obligation to return to work" on the part of employers and an "obligation to cooperate" on the part of workers.

Several other workers' compensation systems in Canada feature these concepts in their policy approaches around return to work. Many of them have policies that can be explored, mined and adapted to help craft a policy that makes sense for our province. Fashioning a "made in Alberta" approach is important because the complexion of Alberta's economy is truly unique in Canada.

Based on our review of the approaches used in other jurisdictions our understanding of the Alberta context, our Panel recommends that the new policy incorporates the following elements:

- The policy should apply to employers of a certain size, perhaps excluding smaller employers.
- To benefit from the policy and the WCB's enforcement of the "obligation to return to work", an injured worker must have been hired by the date-of-accident employer at least 90 days before the date of injury.
- The employer should have the obligation to return the worker to work until 24 months have passed since the date of accident.
- The 24-month period can be extended, upon a worker's application to the WCB, where the diagnosis, treatment or rehabilitation (e.g., training) has delayed a decision related to the worker's fitness to return to work. Where the evidence suggests that a return is not reasonably foreseeable, the WCB may determine that an employer's obligation to return a worker to work is ended.
- A worker who is determined fit to return to work must do so within a reasonable period of that determination.
- Employers, workers, unions and the WCB should all be expected to collaborate in the return to work process through: participating in the creation of return to work plans at an early stage; examining opportunities to meaningfully re-engage the worker in the workplace; and providing complete information to the WCB.
- Employers, workers and the WCB should maintain open and regular communication throughout the return to work process, so that any concerns or disagreements that arise can be identified and worked through quickly.
- The policy should indicate that the WCB has an obligation to support employers in returning workers to the workplace, and provide that the WCB will consider financial supports in certain circumstances.
- The policy should facilitate the provision of disability management assistance to smaller employers who do not have human resources departments.
- As a corollary to the employer's obligation to return a worker to work, the worker has a duty to co-operate with the return to work plan.
- An employer that fails to fulfill their obligation to return a worker to work should face administrative penalties that are established by the WCB pursuant to its authority under section 152.1 of the *Workers' Compensation Act*. These penalties should be appealable to the Appeals Commission.
- A worker who inappropriately fails to fulfill their duty to co-operate should undergo a consequential process in which they may be considered to have the job that was arranged through the return to work process. A decision about the worker being uncooperative should be appealable to the Appeals Commission.
- In the event that a dispute arises between a worker and an employer around return to work, a case conferencing approach should be used in which the WCB, employer and worker sit down to collaboratively discuss the dispute and develop possible solutions. This case conferencing should occur before either the employer or worker is found to be non-compliant in respect of their obligations.
- The employer's obligation to return the worker to work is fulfilled once the worker has been back at work for 12 continuous months. The fulfillment of this obligation does not detract from common law just cause, collective agreement or human rights protections.

- The employer's obligation to return the worker to work is fulfilled if the worker voluntarily quits their employment with the employer at any time.
- If an employer terminates the worker while the employer still has an obligation to return the worker to work, then it should be presumed that the termination was inappropriate and that the employer failed to live up to their obligation. However, this presumption should be rebuttable by the employer through a demonstration that the termination was not related to the worker's injury or illness.
- The policy should indicate that workers' rights under collective agreements are to be respected and recognized, and are not abrogated by the policy. This includes recognizing the role of the bargaining agent.

We believe that the establishment of a policy with these elements will greatly enhance the return to work process. It will place primacy on and respect the relationships that already exist between employers and workers, and will infuse the return to work process with a spirit of collaboration rather than conflict.

**"The recent approach of the WCB to pay TTD or other benefits where the employer has suspended or terminated an employee who is performing modified work for cause needs to be reviewed."**

*- Employer*

If the new policy incorporates the elements we identify above, it will help address a key concern among employers about their ability to terminate workers for cause.

Our Panel frequently heard that, under existing WCB policy, a worker on modified duties will be paid full benefits by the WCB if the employer terminates the worker for any reason – even if that reason has nothing to do with the worker's injury or illness. This has led to the creation of a 'moral hazard' of sorts, wherein workers on modified duties are said to effectively enjoy 'immunity' from workplace rules or policies.

This situation needs to be changed.

## Recommendation 24:

**Government amend the *Workers' Compensation Act* and the WCB amend its policies to clarify that WCB will review a worker's level of continued benefits in situations where an employer terminates a returning employee for egregious acts.**

Employers should have an obligation to re-employ and, as they presently do, have a duty to accommodate workers with disabilities. However, employers should not be expected to continue employing workers, even those on modified duties or under a return to work plan, whose egregious conduct has clearly made their continuing employment untenable.

Our Panel believes that if a worker under a return to work plan is terminated by an employer, there should be a rebuttable presumption that the employer failed to uphold their obligation to re-employ and their duty to accommodate. The employer should be able to rebut this presumption by demonstrating that the worker was terminated for egregious conduct.

The WCB, meanwhile, needs the authority to adjust a worker's benefits if they are terminated while on a return to work program. To the extent necessary, the *Workers' Compensation Act* should be amended to enable the WCB to look at all relevant facts, determine whether a worker was terminated for egregious conduct, and adjust the worker's benefits accordingly.

Our Panel further is of the view that if it is determined a worker has been terminated for egregious conduct, that worker should continue to receive the same level of benefits for up to four weeks from the termination date, before their benefits are adjusted. This will provide the WCB with sufficient time to conduct a meaningful examination of the worker's ongoing eligibility for benefits based on a fresh review of their potential earnings loss. The outcome of the review may give rise to an application from the employer for a remedy to offset against their experience.

## ASSESSING SUITABLE OCCUPATIONS

In the course of our engagement process, our Panel heard a great deal about the WCB's use of "deeming". The deeming process is typically used when the WCB considers a worker ready to return to work, but the worker does not have a job to which they can return. The process can also be used by the WCB when a worker refuses to return to work.

Under the deeming process, the WCB adjusts the worker's benefits by identifying a job that it believes the worker could be doing and the level of income which the worker could be earning from that job. The worker is deemed to be capable of earning that income and their benefits are reduced by that amount.

It is safe to say that almost no one is satisfied with the deeming process that is currently used by the WCB. Among the many concerns that our Panel heard, a number were consistently raised among workers and employers alike, notably:

- The occupation selected by the WCB in the deeming process bears little resemblance to the actual opportunities available in Alberta's labour market. It is charitable to describe these deemed occupations as "theoretical". Stakeholders routinely call them "fake jobs" or "phantom jobs".

- The deemed occupations seem arbitrary and are not connected to the skills, training, expertise or interests of the worker. We heard that many deemed occupations are menial or non-existent employment, and that these are used even for skilled tradespeople who have years of experience.
- In deeming the income level associated with the deemed occupation, the WCB factors in a projected wage progression, such that the income imputed to the worker rises over time. This gradually cannibalizes the worker's earnings loss benefits, which are not currently adjusted for wage progression beyond COLA. This outcome is inconsistent and results in an unfair approach within the deeming process in that it is not recognizing the same standard for wage progression in both situations. To our Panel, a consistent approach is needed throughout the system.
- Employers have sometimes been told by the WCB that a worker will not be allowed to return to their workplace, even though the employer is able to accommodate the worker, because the worker will not make enough money in the modified job.

It is important to note that most stakeholders did not take issue with the philosophy behind the deeming process. There is a general acceptance that there will always be a need for some kind of "deeming" process in the workers' compensation system. If a worker is truly medically capable of returning to work, goes the reasoning, then they no longer require full workers' compensation benefits and their benefits should be adjusted accordingly. As our Panel was reminded, the workers' compensation system is designed to compensate for lost wages due to injury or illness.

What is problematic to stakeholders, and to our Panel, is the process being used by the WCB to determine how a worker's benefits should be appropriately adjusted.

The current deeming process is emblematic of how the workers' compensation system has become focused around the management of claims instead of the health and well-being of workers. People have understandably adopted a perception that the WCB uses deeming to reduce the costs of claims and pays insufficient regard to the worker's re-engagement in the workforce. It is easy for an employer to reach this view when they are told that their worker can not return because their earnings will be too low, and it is easy for a worker to reach this view when they find themselves deemed to have unrealistic and unavailable positions earning impossible-to-achieve salaries. The incorporation of projected wage progression in deemed earnings is particularly cynical, as the WCB knows full well that a worker's benefit level remains generally static aside from a cost-of-living adjustment.

Over time, a growing percentage of claims have gone through the deeming process each year. We recognize this can be for many reasons, including changes in the economy. However, if this trend continues a greater number of workers stand to be impacted by deeming. This adds urgency to improving the process.

## NUMBER OF WAGE-LOSS CLAIMS: BASED ON ACTUAL EARNINGS VS. DEEMED EARNINGS

Year	Actual	%	Deemed	%	Total
2011	199	22.9%	670	77.1%	869
2012	192	24.5%	593	75.5%	785
2013	152	20.7%	584	79.3%	736
2014	158	21.0%	593	79.0%	751
2015	161	19.4%	670	80.6%	831
2016	209	21.8%	795	79.2%	1,004

Source: WCB

Notes:

- This table does not include claims where the wage-loss is based on \$0 post-accident earnings.
- Workers who are unable to work in any capacity due to a compensable disability or a combination of factors, including the compensable disability, are issued full wage-loss benefits at the same rate as total disability benefits. These clients are estimated as being able to earn zero post-injury wages. These clients are not included in this number.

As part of the shift to a worker-centered system, the deeming process needs to fundamentally change. It must be a process that puts a worker's re-engagement in the workforce first and foremost.

### Recommendation 25:

**WCB amend the deeming process so that it reflects the realities of Alberta's labour market and makes a worker's re-employment prospects the central focus.**

Importantly, the deeming process needs to draw on better information. Credible labour market data should be used in assessing suitable occupations for workers. As part of its work, the Government of Alberta's Department of Labour compiles substantial labour market information. Our Panel believes that the WCB should make use of this and other independent sources of labour market data. With this information, the WCB will be in a much better position to determine what employment opportunities actually exist in Alberta's labour market.

Equally important is the need to flip the process around so that the deeming of earnings is a by-product of the process, rather than a driver of the process. Right now, the deeming process appears to be premised on targeting a certain level of earnings for the worker and then identifying a job profile that achieves this level.

Instead, the deeming process should be premised on identifying an occupation that realistically exists in Alberta's labour market and for which the worker would be suited given an assessment of their training, experience and capabilities. Once a suitable occupation has been identified, the income that could *realistically* be earned from that occupation should be assessed and used to adjust the worker's benefits. This means eliminating theoretical job promotions and theoretical wage increases. Instead, the rationale used to consider wage progression in the establishment of a worker's benefits should be the same rationale used to consider wage progression in deeming a worker's potential earnings.

Our Panel also feels a review process should be built into the deeming process. Under this process, the WCB should provide written reasons to the worker about the proposed deeming. The worker should then be given a reasonable time to respond to these reasons. This period of time will enable the worker to reply to the proposed position and gather information such as suitability, qualifications, aptitudes, transferable skills and physical limitations. After receipt of the worker's information, the WCB can then make its official deeming decision, which the worker can then appeal if they choose to do so.

Changing the deeming process in these respects will help restore trust in the process. Workers and employers will be able to have greater confidence that the deeming process is informed by evidence and is fulfilling its philosophical intent in a fair and realistic way.

## PROVIDING MEANINGFUL VOCATIONAL TRAINING TO WORKERS

When a worker can not return to their date-of-accident position, or where there is a permanent disability requiring a work modification, the WCB may provide vocational rehabilitation services to the worker. The nature of vocational rehabilitation services varies widely from worker to worker. Sometimes it may only include assistance with resume writing. According to the WCB, these services are intended to help the worker achieve a state of employability.

Many stakeholders have a different perspective. As with the deeming process, stakeholders do not take issue with the philosophy behind vocational rehabilitation, but with the way it is being delivered. While there is recognition that providing training to workers can help them re-engage in the workforce, there is a view that vocational rehabilitation services currently fall short of this goal.

In many ways, vocational rehabilitation services and the deeming process are two sides of the same coin. Theoretically, the former is about helping better position a worker to re-engage in the workforce, and the latter is about determining how the worker's benefits should be adjusted to reflect the fact they are capable of earning income in the workforce. Unfortunately, many stakeholders have a perception that vocational rehabilitation services are now focused on supporting the WCB's deeming process instead of supporting the worker.

Several of the concerns our Panel heard about vocational rehabilitation echoed those we heard about deeming. In particular, stakeholders feel that the services provided by vocational rehabilitation are not linked to realistic prospects in Alberta's labour market. Stakeholders also feel the process does not respect relationships between workers and employers. Even when an employer is making it possible for a worker to return to work, the WCB will intervene and force the worker into vocational rehabilitation if it believes the worker's earnings at their date-of-accident employer will not be sufficiently high.

One challenge is that the WCB currently takes the view that a job is not suitable for a worker unless it will generate earnings equal to at least 75% of the worker's date-of-accident earnings.<sup>10</sup> If a potential employment opportunity will not meet this requirement, the WCB will often not approve the employment. The WCB will deliver vocational rehabilitation services to the worker which, in the WCB's opinion, will theoretically improve the worker's employability to a level that will meet the 75% target.

Helping a worker maximize their potential earnings in the workforce is a reasonable and noble goal. Most people in the workforce want to make as much money as they can in their chosen occupation with their chosen employer. But most people do not accomplish this by setting an arbitrary income target of 75% and figuring out what job might meet that criterion. Instead, they look at the labour market, evaluate their background and experience, consider their options, set realistic career goals, determine what additional training or development they require to achieve those goals, and then deliberately pursue that training or development. This is what meaningful vocational rehabilitation should look like.

**“Experience in this regard has been inconsistent. In many cases commencement of vocational services has been premature. It is imperative there be a discussion with the employer prior to implementation of vocational services, and the failure of the WCB to consistently follow this approach results in cases where vocational rehabilitation services are unnecessary or ineffective.”**

*– Employer*

## **Recommendation 26:**

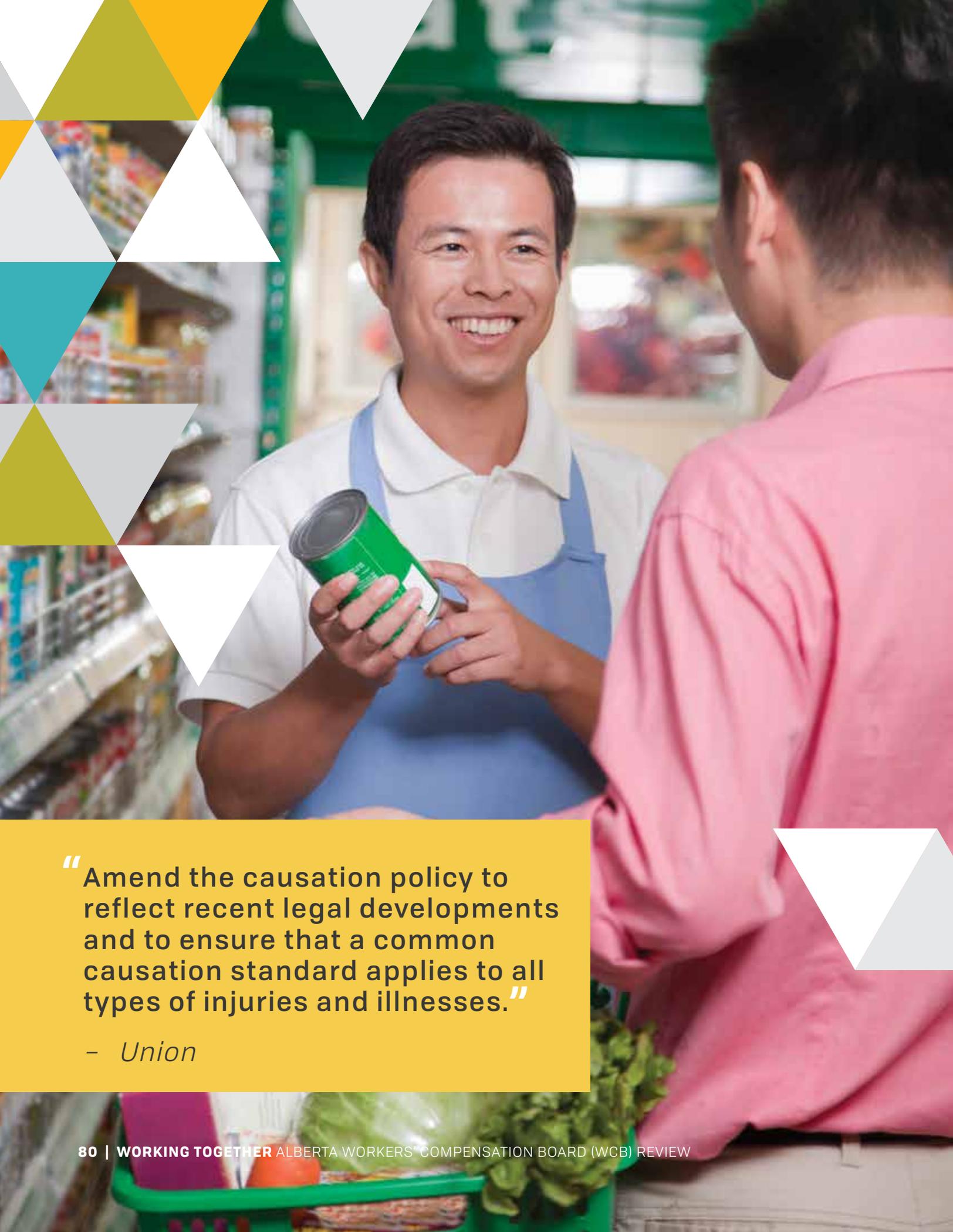
**WCB revamp vocational rehabilitation services so that it helps workers re-engage with the workforce with a realistic consideration of Alberta's labour market.**

In keeping with the shift to a worker-centered system, the WCB's approach to vocational rehabilitation should be focused on helping the worker re-engage with the workforce in a realistic way. The approach taken with a worker should be individualized for that worker. It should evaluate and consider what skills and experience the worker brings to the table, and consider the worker's perspectives about how they envision themselves re-engaging with the workforce. Importantly, the approach should also be informed by data about Alberta's labour market, so that the vocational rehabilitation services provided to a worker have a line of sight to employment opportunities that actually exist.

Our Panel also believes that decision-making around vocational rehabilitation should aim to keep the worker attached to their date-of-accident employment as much as possible. This is consistent with provincial law, which imposes a duty to accommodate on the part of employers. It is also consistent with the changes our Panel recommends in respect of establishing an obligation on the part of employers to return workers to work. Ideally, there should be reduced pressure on vocational rehabilitation services because the WCB will be doing all it can to enable workers to return to their date-of-accident employers.

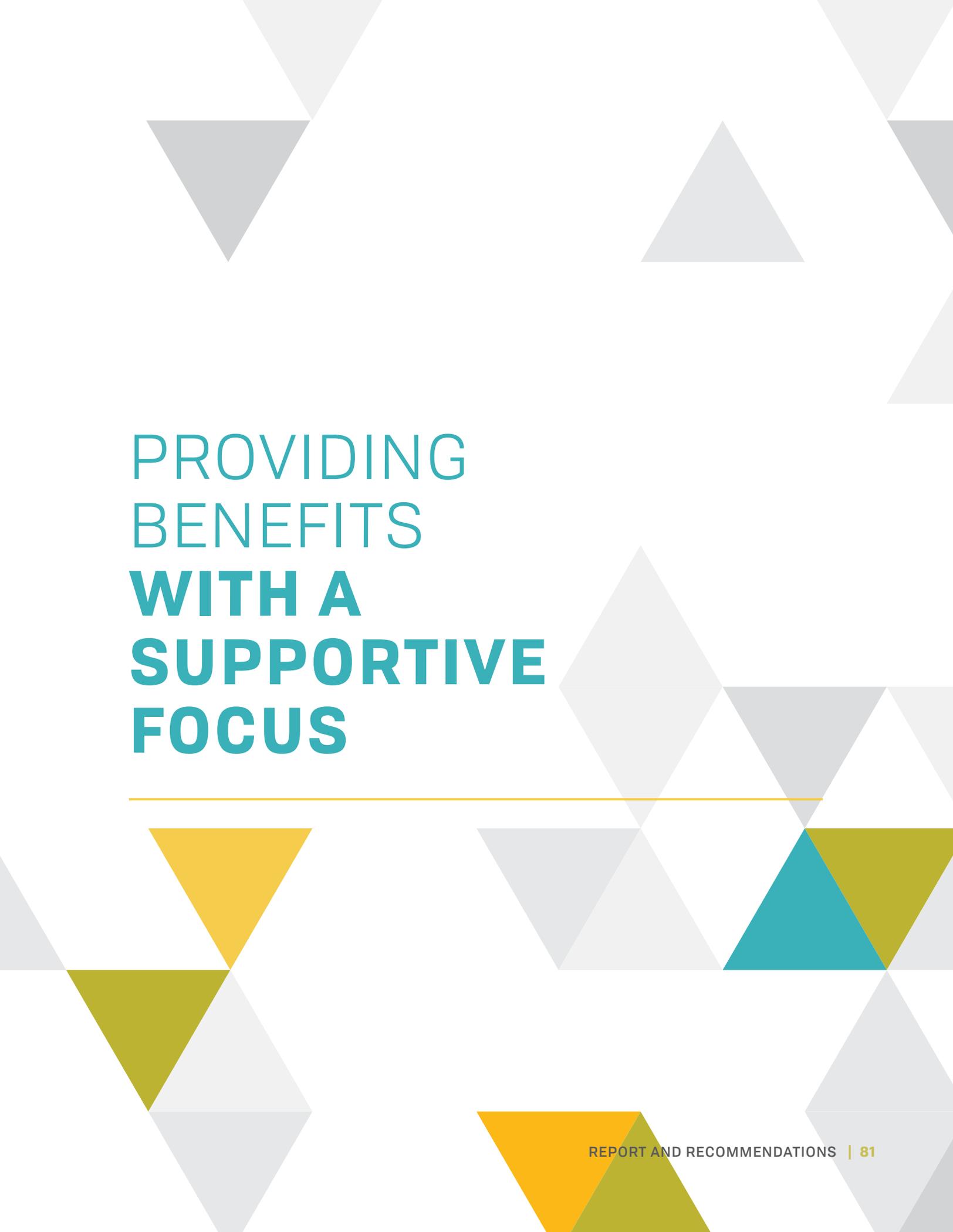
Finally, our Panel feels that more transparency and accountability is required in the area of vocational rehabilitation services. The WCB and its stakeholders need to be able to discern whether the approach and services delivered in this area are meaningfully assisting workers. This will help restore trust in the system.

<sup>10</sup> Up to the maximum insurable earnings established by the WCB.



**“Amend the causation policy to reflect recent legal developments and to ensure that a common causation standard applies to all types of injuries and illnesses.”**

*- Union*



PROVIDING  
BENEFITS  
**WITH A  
SUPPORTIVE  
FOCUS**

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A central function of the workers' compensation system is providing benefits to workers who suffer workplace-related injuries and illnesses.

Presently, the authority and guidance for paying compensation to injured workers is found in several places. Some aspects of benefits are expressly provided for in the *Workers' Compensation Act*, some are provided for in regulations under the Act, and some are outlined in WCB policies. Going forward, the government may wish to explore the rationale for distributing authority in this way. While our Panel understands that regulations and policies enable changes to be made more nimbly, those aspects of benefits that are foundational in nature might best be provided for in legislation.

When it comes to benefits, workers and employers alike have concerns with two central matters: how to determine if a person is eligible for benefits; and, if they are, what level of benefits is provided to them.

There are several areas in which Alberta is lagging other jurisdictions when it comes to the provision of benefits. Our Panel took particular interest in areas where there is hardship, fatalities, permanent injuries of young workers, retirement benefits or people who are affected in dramatic ways by the current application of WCB policies.

Our recommendations in this area are aimed at bringing about a workers' compensation system that:

- Applies a consistent approach in assessing the eligibility of claims;
- Features processes that help ensure the system keeps pace with evolving medical science;
- Provides benefits that meaningfully compensate injured workers and their families while remaining rational, affordable and sustainable to the system; and
- Mitigates the potential of the benefits system to result in hardship for injured workers or their families who find themselves in certain situations.

## ENSURING A CONSISTENT APPROACH TO ELIGIBILITY

The *Workers' Compensation Act* uses the term "accident" as a basis for many aspects of workers' compensation. The Act defines an accident to include: disablement (an injury), a disabling or potentially disabling condition caused by an occupational disease (an illness), a chance event that has a physical or natural cause, and even a willful and intentional act.

Presently, the Act provides that to be considered eligible for payment of benefits, an "accident" must meet two conditions:

- It must arise out of employment; and
- It must occur in the course of employment.

The WCB considers an accident to arise out of employment when it is caused by some employment hazard. An employment hazard is defined as an employment circumstance that presents a risk of injury. The hazard may be directly related to the industry or occupation (e.g., machinery, chemicals, worksite ergonomics), or may be incidental (e.g., weather conditions, third-party vehicles).

The WCB considers an accident to occur in the course of employment when it happens at a time and place consistent with the obligations and expectations of employment. Time and place are not strictly limited to the normal hours of work or the employer's premises. However, there must be a relationship between employment expectations and the time and place that the accident occurs.

For many claims, it is relatively straightforward to determine that the accident arose out of employment. For example, if a worker falls from a ladder while performing their duties at work and breaks their arm, it is clear the accident arose out of employment.

In some instances, however, it can be more challenging to determine that a worker's injury or illness arose out of employment. For example, a person may have a heart attack while at work, but that does not necessarily mean the heart attack arose out of employment.

To determine whether an accident arose out of employment, the WCB has indicated that they look at three key factors. These factors help the WCB determine causation of the worker's injury or illness:

- Medical diagnosis – What is the worker's diagnosis? Is it a recognized medical diagnosis? Is the diagnosis clearly established in the worker's particular case?
- Work factors – What are the conditions at the workplace? What are the worker's duties? What are the physical demands? What type and extent of exposures are there?
- Personal factors – Does the worker's medical condition predate the accident? Are there non work-related risk factors that may have caused the injury or illness?

In determining causation, the WCB typically uses a "but for" test. That is, would the worker's injury or illness have occurred "but for" the workplace exposures? The WCB has used this test in practice for a number of years and has recently incorporated the test within its policies. The workers' compensation systems of other provinces and territories use this test as well.

There may be several causes that meet the "but for" test that interact in combination to cause an injury or illness. Work does not have to be the only factor, or even the primary factor, for a worker's injury or illness to be compensable. It must, however, be a necessary factor. Put another way, if the worker's injury or illness would have occurred anyway, regardless of the work factor, then it is not eligible for benefits.

When adjudicating a claim using the "but for" test, the WCB weighs all of the evidence (including accepted medical knowledge) and determines if it is more likely than not that, but for the worker's employment, the injury or illness would not have occurred.

For certain types of injuries and illnesses, which may be either gradual onset or multifactorial it can be more difficult to determine causation. In these situations, when the application of the "but for" test has been inconclusive, the WCB has appropriately established policies that set out specific criteria that must be satisfied for the worker to be eligible for benefits.

Several stakeholders raised concerns to our Panel about this practice. Many argue that the use of specific criteria for certain types of conditions effectively establishes different standards for eligibility among workers.

For example, under WCB policy, a worker who suffers chronic onset stress must demonstrate that their work was the "predominant cause" of them suffering the condition. This is a higher threshold than that for a physical injury, in which case a worker need only demonstrate that there was "material contribution" from work.

Our Panel recognizes that the nature of certain conditions can make them more challenging to identify than physical injuries. We also recognize that it can be more challenging to determine causal links between certain conditions and employment than it typically is to determine causal links between physical injuries and employment. However, the use of special criteria for certain conditions, above and beyond the base “but for” test, effectively creates two classes of injured workers, with one of those classes facing a more uphill battle than the other to access benefits. While the different standards may be seen as discriminatory on their face it may be justified in some circumstances; however, our Panel notes that the use of predominant cause may establish too high a threshold.

This is an area that remains problematic for workers’ compensation systems across Canada. Many other provinces’ systems either do not compensate for conditions such as chronic onset stress, or use a threshold that is similar to Alberta’s. That being said, our Panel feels that Alberta has not landed on what the right threshold for these types of conditions ought to be, and the issue should be examined in greater detail.

## **Recommendation 27:**

### **WCB examine the use of predominant cause and its impact to ensure it does not create an unreasonable threshold for eligibility.**

The WCB has recognized that when there is a gradual onset of an injury, or an injury that is multifactorial in nature, it can be more difficult to determine if the illness or injury arose out of employment. However, in the opinion of our Panel, this difficulty does not on its own necessarily justify the higher threshold of “predominant cause” (versus the threshold of “material contribution”).

Our Panel believes that the WCB should examine its current use of the predominant cause threshold with a view to developing a better way of ensuring that an injury or illness was more likely than not caused by work.

## **ENSHRINING ‘BENEFIT OF THE DOUBT’ FOR WORKERS**

As noted earlier, WCB claims staff examine various factors when determining the eligibility of a worker’s claim. According to WCB policy, “If all the evidence for and against a decision on a claim is equally balanced, the *benefit of the doubt goes* to the injured worker.”

The benefit of the doubt is important for a number of reasons.

It must be remembered that the workers’ compensation system is intended to be inquisitorial in nature. An injured worker files a claim and the WCB inquires into the claim to determine if, on balance, the claim is eligible. The worker and the employer have equal responsibilities in respect of providing the information needed by the WCB to adjudicate the claim. The WCB also has its own investigative authority that it can use to obtain information needed to adjudicate the claim. Where the evidence is equally balanced as between eligibility and denial, the benefit of the doubt provides that the claim be considered eligible. Our Panel does not suggest that this happens often. However, when it does, it is important the benefit of the doubt is applied appropriately.

As has been recognized by courts, the presence of the benefit of the doubt provision also serves as an important signal that the processes of the workers' compensation system are outside and distinct from the tort regime. In contrast to workers' compensation, tort law is adversarial in nature. Were the principles of tort law to apply to workers' compensation, the worker would have the onus of establishing the eligibility of their claim and where the evidence was evenly balanced their claim would be denied.

Giving the injured worker the benefit of the doubt is a common practice in workers' compensation systems across Canada. In fact, many jurisdictions codify this practice in their workers' compensation legislation. We believe it is appropriate for Alberta to do so as well.

## **Recommendation 28:**

**Government amend the *Workers' Compensation Act* to provide that where the disputed possibilities are evenly balanced on an issue, the injured worker receives the benefit of the doubt.**

The 'benefit of the doubt' rule is currently binding on WCB claims staff, as it is contained in WCB policies. However, our Panel feels it is a very important and foundational rule, and that it is appropriate to build the rule into Alberta's workers' compensation legislation as an express provision. This would be in keeping with the approaches of many other jurisdictions in Canada.

Understanding and enshrining benefit of the doubt in the Act will help facilitate the culture shift that our Panel sees as necessary in the system's application of policies.



## RECOGNIZING OCCUPATIONAL DISEASES AND INJURIES

Workers' compensation legislation in Alberta contains a number of presumptions about occupational diseases and workers in certain occupations and industries.

One source of presumptions is contained in Schedule B of the Workers' Compensation Regulation.

The occupational disease presumption arises from the consensus among the scientific community that exposures to certain hazardous substances are credibly linked to known illnesses and diseases. Where industries are known to utilize or generate the hazardous conditions, workers employed in the industries who later contract or suffer the listed conditions are presumed to have acquired them from work.

Therefore, if a worker suffers an occupational disease, and was employed in an industry listed in Schedule B within the preceding 12 months, then the illness is presumed to have been caused by employment (unless the contrary is shown).

A source of concern among stakeholders is that Schedule B is "behind the times". Currently, Schedule B reflects the state of medical science as of January 1, 1982. Over the past 35 years, many people told us, much evidence has likely been gathered through studies and research about additional linkages between injuries and illnesses and certain occupations. Our Panel agrees.

### **Recommendation 29:**

**Amend the *Workers' Compensation Act* to require WCB to establish an Occupational Disease and Injury Advisory Committee to advise on potential changes to Schedule B of the Workers' Compensation Regulation.**

Any reasonable person can acknowledge that medical science has come a long way since January 1, 1982. However, Schedule B of the Workers' Compensation Regulation has the system effectively locked in the 1980s when it comes to occupational diseases. Schedule B needs to be updated to reflect the state of medical science in 2017, and our province should not wait another 35 years before updating Schedule B once again.

To help ensure that the system keeps pace with evolving medical science around occupational diseases and injuries, our Panel recommends the creation of an advisory committee that meets from time to time. We believe the committee should be comprised of representatives from OHS (Director of Medical Services), the WCB, Alberta Health and agencies such as Alberta Health Services, the medical community, academia, and industry.

The first mission of the advisory committee should be to review Schedule B for the purposes of advising how it might be updated to reflect the state of medical science today. The committee should mobilize evidence in support of its advice.

Going forward, the advisory committee should monitor trends, stay informed about occupational diseases and injuries and discuss related public policy issues. When the committee is of the view that sufficient medical evidence exists, the committee can advise the Minister on occupational diseases or injuries that it believes should be added (or deleted) from Schedule B. The committee can also provide the Minister with advice on related public policy issues that would lead to better integration and outcomes.

It has been observed that some of the best sources of information on occupational diseases may be through the health system which is currently not coordinated with occupational health and safety or WCB data leading to gaps in information and a lack of harmonization. A one portal reporting system should be considered in the future.

## TAKING NOTE OF EMPLOYMENT LINKAGES

In the course of our work, our Panel came to observe that there are injuries and illness that arguably have strong linkages to certain occupations but for which there might not yet be sufficient evidence to justify an occupational disease presumption. In the present system, a worker in one of these occupations who has one of these conditions can not take advantage of a legislated presumption, and so must demonstrate that their condition arose out of and in the course of employment.

What is frustrating is that claims involving these conditions and the associated occupations may be repeatedly seen by the WCB and the Appeals Commission. They are also repeatedly determined to be eligible claims. It is hard to estimate how many person-hours are consumed by the administration involved in determining the eligibility of these types of claims, but it is no doubt considerable.

Our Panel believes that a new mechanism should be established to deal with these types of claims.

### **Recommendation 30:**

**Government amend the *Workers' Compensation Act* to enable the Appeals Commission to take note of commonly-seen linkages between certain injuries or illnesses and certain types of employment.**

Our Panel feels that it makes sense to enable the Appeals Commission to “take note” of linkages between certain conditions and certain types of employment when rendering decisions about eligibility of claims. While the Appeals Commission is not bound by its own decisions, and while each decision must be decided on its own merits consistent with fairness and within policy, the Appeals Commission could under this authority give recognition to its own institutional memory.

This would give the Appeals Commission the ability to essentially say, “We see lots of eligible claims involving this condition in this type of employment, and so our starting point is that your claim involving this same condition in this same type of employment is likely to be eligible.” The Appeals Commission would be *permitted* to take note of a frequently observed injury-employment or illness-employment linkage and factor this in to its analysis of a claim’s eligibility, that is, its connection to work.

Where the Appeals Commission does so, such notation would be communicated to and considered by the WCB and reviewed. The WCB could choose to adopt a “wait and see” approach, in which case the Appeals Commission could continue to take its notation into consideration as a starting point in its adjudication of other claims. The notation reflected in the Appeals Commission’s institutional memory would not be binding and would not give rise to a statutory presumption, but would be a relevant consideration.

Upon review of an Appeals Commission notation, the WCB may alternatively choose to amend its policies to acknowledge in its adjudication of claims the relevance of the factors or circumstances of which the Appeals Commission has taken note. Such amendments of policy would, as the *Workers’ Compensation Act* provides, be binding on the Appeals Commission. Those policy changes would provide guidance without rising to the level of statutory presumptions.

## REFINING PRESUMPTIVE COVERAGE FOR POST-TRAUMATIC STRESS DISORDER

Over time the scope of presumptive diseases has gradually been expanded through amendments to the *Workers’ Compensation Act*.

In 2003, the Act was amended to include a specific presumption relating to firefighters and certain types of cancers.

In 2005, the Act was amended to include a similar presumption related to myocardial infarctions suffered by firefighters when occurring within 24 hours after attendance at an emergency response.

In 2012, the Act was amended to provide that if a first responder is diagnosed with post-traumatic stress disorder (PTSD) then it is presumed the PTSD arose out of and occurred in the course of the first responder’s employment in response to a traumatic event or series of traumatic events. First responders are defined as police officers appointed under provincial legislation, firefighters (both full and part-time), emergency medical technicians and peace officers who are authorized to use the title “Sheriff”.

The legislated presumptions outlined above generally stand unless “the contrary is proven”.

Several stakeholders suggested to our Panel that the scope of these legislated presumptions ought to be expanded to recognize that there are additional occupations that have linkages to certain conditions. For example, it was argued that there are several other types of workers who can suffer PTSD in the course of their work, such as nurses, social workers and corrections officers.

Other stakeholders cautioned that expanding the scope of legislated presumptions has cost implications and could raise the risk of the system being abused. It was said that the scope of legislated presumptions should only be changed on the basis of sound scientific evidence.

Further complicating this matter is that scientific evidence is not always a “slam dunk” when it comes to demonstrating that certain conditions are predominantly caused by certain types of occupations. At the “Trend Talks” engagement event, for example, stakeholders and our Panel heard that the most important predictor of PTSD is not trauma but genetics. Experiencing violence in early life is also among the most important predictors. Exposure to trauma is considered a secondary cause of PTSD, and even then it can depend on factors such as the person’s proximity to the trauma, the frequency of their exposure to trauma, whether they incur physical injury during the trauma, their level of social support and personality factors.

Legislating presumptions therefore involves a careful balance. On the one hand, it needs to be appreciated that certain conditions are multifactorial in nature and may be far more rooted in non-work factors than workplace-related factors. On the other hand, the reality is that ethics, human rights and privacy considerations make it impractical to screen for non-work factors, and so there is a risk that certain conditions might never be covered by the system if not for the existence of a legislated presumption.

At this time, our Panel does not recommend expanding Alberta’s legislated presumptions beyond those presently in place. However, we feel it is appropriate to revise the definition of “first responder.” Our Panel notes that several other jurisdictions in Canada currently define first responders more broadly than Alberta (see Appendix F).

### **Recommendation 31:**

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**Amend the definition of “first responder” in the *Workers’ Compensation Act* for the purposes of presumptive coverage for PTSD to include additional occupations.**

Our Panel recommends that the definition of “first responder” be amended to include:

- Correctional Officers; and
- Emergency Dispatchers.

The rationale for this amendment stems largely from the strong public safety interests in relation to first responders. Society depends upon the individuals in these occupations when incidents and emergencies occur, and the individuals in these occupations play vital roles in keeping communities safe and secure. As such there is a public interest in providing them with legislative presumptions in workers’ compensation systems so that they can be readily assisted and, when ready, return to the vital roles they play.

## ENHANCING BENEFITS TO BETTER SUPPORT INJURED WORKERS AND THEIR FAMILIES

Our Panel heard a range of perspectives from stakeholders about the sufficiency of financial benefits provided by the WCB. The diversity of these perspectives is not surprising given that the establishment of financial benefits involves a careful balance.

A key purpose of the system is to provide compensation to injured workers in lieu of the wages they have lost from being away from work due to a workplace-related injury or illness. To fulfill this purpose, the financial benefits provided by the system need to be meaningfully compensatory. That is, they have to serve as a decent (if not complete) substitute for the wages that the worker would otherwise be earning if not for the injury or illness they suffered.

At the same time, as many stakeholders pointed out, the system needs to be sustainable over the long-term. The financial benefits provided by the system therefore need to be established at a rational level so that employer assessments remain affordable.

Our Panel examined the suite of financial benefits that are currently provided by the WCB, with a view to making sure they are striking this careful balance. We identified a number of opportunities to adjust the suite of financial benefits so that they can better support injured workers and their families while remaining affordable to the system overall. There are several areas in which Alberta is lagging other jurisdictions when it comes to the provision of benefits. Our Panel took particular interest in areas where there is hardship, fatalities, permanent injuries of young workers, retirement benefits or people who are affected in dramatic ways by the current application of WCB policies.

Where our Panel has recommended adjustments to benefits, these have been submitted for actuarial review. The calculations and the impact on premiums has been attached as Appendix H.



We note that having the lowest premiums in the country has been identified by employers as extremely important. Some have gone further and suggested that no increases to benefits would be appropriate. While our Panel recognizes that it is important that any changes to benefits ensure the sustainability of the system, it was not our goal to maintain the 'lowest premiums' in our considerations. Where benefit increases were considered, and our Panel determined that it was appropriate to increase benefits in specific identified circumstances, it was important to ensure that the costs were not unreasonable and met the test of sustainability. However, we note that even after the implementation of the enclosed proposed benefit changes Alberta employers would still enjoy the lowest premiums in the country based on 2017 rates.

## **INCLUSION OF DEFINITION OF ECONOMIC LOSS PAYMENT AND NON-ECONOMIC LOSS PAYMENT IN LEGISLATION**

Since January 1995, the WCB has used a "dual wage loss" approach to benefits for injured workers. In this approach, two components make up the benefits: an economic loss payment (ELP) and a non-economic loss payment (NELP).

An economic loss ongoing payment is provided to workers with an earnings loss during their period of active employment considered to be up to age 65. Following age 65 there is a pension loss adjustment.

NELP is a one-time, lump-sum payment that is intended to reflect that the non-monetary losses caused by the worker's clinical impairment. It is determined on an assessed measure of impairment.

The WCB brought forward a request for ELP and NELP to be included in legislation as it has been in policy since 1995. This policy has been challenged in court and has been upheld as within the WCB's jurisdiction. It is also embedded in most other jurisdictions' legislation.

### **Recommendation 32:**

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#### **Incorporate the dual wage loss system in legislation, including the definition of impairment.**

Our Panel reviewed and determined that the term impairment was defined as part of legislation in other jurisdictions. Our Panel's recommendation on the incorporation of the dual wage loss in legislation contemplates that impairment will be defined consistently with other jurisdictions.

## MAXIMUM INSURABLE EARNINGS

Currently, if an injured worker misses time from work they receive monetary benefits based on their date-of-accident earnings. These payments are non-taxable.

Since the beginning of the workers' compensation system, the level of benefits provided have varied. Justice Meredith proposed that benefits be set at 55% of gross earnings, in later years the benefit levels were increased to 75% of gross wages. That level was adjusted to 90% of net earnings, a level that is now followed in most jurisdictions. The level of benefits received are also subject to a cap on the earnings that will be considered by the WCB. In all Canadian jurisdictions except Manitoba, the WCB sets a maximum level of earnings that will be considered when determining compensation for injured workers.

Our Panel found there was considerable confusion about how the maximum insurable earnings and net earnings operate. In 2016, injured workers eligible for temporary total disability (TTD) benefits received 90% of their net earnings, up to a maximum insurable earning of \$98,700 per year. In fact this means that an injured worker at the maximum insurable earnings level would only receive an annual benefit of \$63,906.93 in 2016.

Our Panel asked stakeholders to comment on the maximums currently in place for insurable earnings.

Some people argued that the current cap on maximum insurable earnings at \$98,700 per year should be maintained. This view was often premised on a belief that the level is helpful in motivating injured workers to recover and return to work. Others argued against the cap and pointed out that workers who earned in excess of the cap were facing an additional financial hardship in terms of lost earnings. This view was often premised on a belief that benefits should be set at a level so as to help "make the injured worker whole".

The Panel recognizes that this debate, centred on what share of the burden, if any, an injured worker might be responsible for in a no-fault system, has been ongoing since the inception of the WCB system. Meredith, in brokering the "historic compromise", proposed that workers would be compensated at a portion of full gross wages. He also proposed that there should be no temporal limitations, that is employers should bear the burden of payment of benefit for as long as the disability would last. As to maximum insurable earnings, each side claims support in different portions of the Meredith Report, the one pointing to his admonition that no worker should become a charge on the state due to injury, the other that all but the highest paid manager and superintendent should be covered.

Stakeholders also had views about the maximum cap of \$98,700 per year. Many people told our Panel that the maximum cap should be left alone. However, it was also pointed out to our Panel that many workers in Alberta's economy have annual wages that can dramatically exceed this maximum. If one of these workers is injured, the earnings cap can have a dramatic impact on their family, especially if they are the primary income earner of the family.

The current cap of \$98,700 is not static. The actual amount of the cap is adjusted over time so as to ensure the maximum insurable earnings level reflects the WCB Board's guidance that it covers 90% of workers. Our Panel is of the view that this is an appropriate level for maximum insurable earnings.

## Recommendation 33:

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**Maintain the maximum insurable earnings level as it is prescribed annually by the WCB Board of Directors.**

At the same time, however, our Panel recognizes that the current maximum insurable earnings level is such that 10% of workers have wages that exceed the level as currently defined. This can present a hardship to these workers and their families, because an injury or illness can cause the worker and their family to experience a dramatic reduction in their income relative to their normal wages.

To mitigate this hardship, we believe the WCB should establish a special graduated benefit, to be provided in addition to maximum insurable earnings, for injured workers whose earnings exceed the maximum insurable earnings level. This additional benefit would increase the worker's total WCB benefit for a period of time and help compensate for wage losses in excess of those covered by typical WCB benefits under the maximum insurable earnings cap. For a worker who is permanently disabled, the provision of a special graduated benefit over five years would allow time to adjust to the typical level of benefits that would be provided (at the maximum insurable earnings level.)

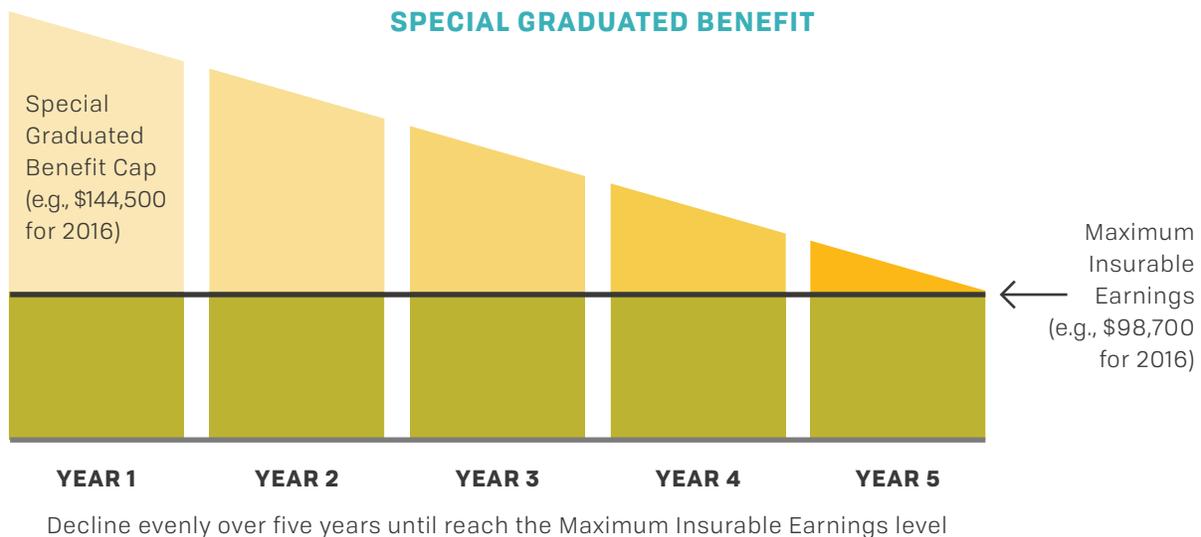
## Recommendation 34:

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**Establish a special graduated benefit for workers whose wages place them in excess of the maximum insurable earnings range.**

The special graduated benefit would be set at a level to enable coverage for approximately 99% of injured workers. An injured worker whose earnings exceed the maximum insurable earnings threshold would receive this special graduated benefit as follows:

- To calculate the injured worker's earnings above the current cap, the last five years of a worker's earnings would be considered. (That is, an average of the last five years of the amount in which the worker's earnings exceed the cap.)
- For example, based on 2016 numbers an earnings level of approximately \$145,000 would serve as the maximum for an injured worker's first year of the special graduated benefit. This maximum would decline evenly over five years to the maximum insurable earnings cap for typical benefits (currently \$98,700).
- Employers' assessments would continue to be based on the current maximum insurable earnings cap of \$98,700. This means the increase in costs from the adjusted cap would be shared across all employers. This recognizes that there are workers in all sectors of the economy that exceed the maximum insurable earnings.



## FATALITY BENEFIT AND NON-ECONOMIC LOSS PAYMENTS

A Non-Economic Loss Payment (NELP) is currently paid to an injured worker to compensate for the impact their injury has on their life outside the workplace. In 2016, the maximum NELP available was \$88,948.68.

A worker is not eligible for a NELP when there is an immediate fatality, which is defined as death within 30 calendar days of the date of accident. Stakeholders expressed concern about this rule. Some called the rule arbitrary and unfair. Others noted that it can lead families to make difficult moral decisions about a worker's medical care (such as keeping them on life support against the worker's expressed wishes.)

Our Panel agrees that the 30-day rule can lead to inconsistent treatment of spouses and family members who suffer the terrible tragedy of a worker's death. Rather than making a change to the NELP calculation and rules (which could create other unintended consequences), our Panel believes a new lump-sum payment should be introduced as a designated fatality amount.

## LUMP SUM FATALITY BENEFITS IN CANADIAN JURISDICTIONS

Jurisdiction	Lump Sum Payments
British Columbia	No lump sum
Saskatchewan	No lump sum
Manitoba	\$76,530
Ontario	A lump sum ranging from a minimum of \$39,307.99 to a maximum of \$117,924.03 depending on age
Quebec	\$103,796 to \$210,000 depending on the age of the surviving spouse and the gross annual income of the deceased worker
Newfoundland and Labrador	The greater of 26 weeks net earnings or \$15,000
Nova Scotia	Not less than \$15,000
New Brunswick	50% Provincial Aggregate Earnings = for example, \$10,153.75 for 2015 (Aggregate earnings 2015 = \$20,307.50)
Prince Edward Island	\$10,000
Yukon	No lump sum
Northwest Territories and Nunavut	30% of the yearly maximum insurable earnings (for example, 2015 maximum insurable earnings was \$86,000 X 30% = \$25,800)

Source: Association of Workers' Compensation Boards of Canada

Notes: The lump sum fatality benefit is independent of ongoing monthly benefits. Approaches vary among jurisdictions.

### Recommendation 35:

**Introduce a lump sum payment specifically in recognition of an injured worker's death in the amount of \$40,000.**

If an injured worker dies as a result of an accident, this amount would be paid to a spouse, if there is no spouse to the dependants. In the event there is no spouse or dependant, it would be paid to the estate.



## FATALITY BENEFIT - SPOUSE AND DEPENDANT BENEFITS

Presently, if an injured worker dies as a result of an accident that is eligible for benefits, the WCB pays compensation to the worker's dependants and assists with the payment of costs associated with the worker's death. The amount of compensation is based on the legislation in effect on the date of the worker's accident. In general, compensation for dependants includes a pension and, for a dependant spouse (or adult interdependent partner), may include appropriate vocational services. Depending on the circumstances and date of accident, a variety of benefits such as allowances and pensions may be paid to other individuals as well (e.g., a worker's dependent children and guardians).

NUMBER OF WORKPLACE RELATED FATALITIES					
Year	Total Number of Fatalities	Number of Occupational Disease Related Fatalities	Occupational Disease Related Fatalities as % of Total	Number of Motor Vehicle or Workplace Related Fatalities	Motor Vehicle or Workplace Related Fatalities as % of Total
2011	123	52	42.3%	71	57.7%
2012	145	58	40.0%	87	60.0%
2013	188	99	52.7%	89	47.3%
2014	169	81	47.9%	88	52.1%
2015	125	66	52.8%	59	47.2%
2016	144	77	53.5%	67	46.5%

Source: WCB

According to the WCB, the benefit structure for dependent spouses and dependent adult interdependent partners (AIPs) has three main purposes:

- provide financial support to the worker's dependent spouse or AIP and dependent children until the children are 18 years old;
- help the dependent spouse or AIP become gainfully employed by providing vocational services and financial support during the vocational training period; and
- provide ongoing financial support to dependent spouses or AIPs who are not capable of becoming gainfully employed.

To be a dependant, a child must have been wholly or partially dependent on the worker's earnings at the time of the worker's death. This includes, for example, a child who was not living with the worker but was legally entitled to support from the worker – even if the worker was not paying support at the time of death. Dependent children are considered to be dependent only until they reach the age of 18.

Stakeholders raised concerns that the benefit structure for surviving spouses is philosophically different than that for injured workers. Because the benefits for surviving spouses are based on the spouse's perceived need, spouses with equal losses can end up receiving unequal compensation.

Our Panel also heard concerns from stakeholders that the definition of a dependant child is too limited for today's world. People noted that it is not uncommon nowadays for workers' children to attend post-secondary education. In these cases, the children may still have been dependent on the worker.

## **Recommendation 36:**

### **Treat a surviving spouse more consistently under the fatality benefit regime, regardless of the spouse's circumstances.**

Our Panel believes the following adjustments are appropriate.

- The definition of a dependent child should be changed to provide that a child is considered a dependant until the age of 25 if enrolled in post-secondary education.
- Current fatality benefits for a spouse or AIP with dependent children should otherwise remain unchanged, with the spouse or AIP receiving the current full benefit until the last child is no longer a dependant.
- Currently, spouses without dependent children are treated differently depending upon their capacity to be gainfully employed. Instead, all spouses without dependent children should receive the current full benefit for a fixed period of five years. Similarly, a spouse who had dependent children but whose last child is no longer considered a dependant should receive the current full benefit for five years, starting at the point that the last child "aged out" of being considered a dependant.
- Following the five-year period referred to above, a spouse should be able to apply for consideration to continue benefits consistent with the current approach, which adjusts benefits based on the capacity of the spouse to be gainfully employed.
- The current approach to providing benefits for spouses in necessitous circumstances would continue.
- A spouse would be able to access vocational rehabilitation (to assist them in attaining gainful employment) either immediately or at the conclusion of the five-year period referenced above.
- In all cases, for spouses with no dependent children, benefits would be adjusted at the point that the spouse reaches age 65 or that the worker would have reached age 65, provided that at least 24 months of full benefits were received.
- For dependent children who are not living with the spouse, the rates listed in the Act should be increased from the current levels of \$269.72 to \$420.00 per month, a level that is reflective of other jurisdictions.

## INCREASES TO ECONOMIC LOSS PAYMENTS

The WCB can adjust an injured worker's benefits through cost-of-living adjustments that are calculated by the WCB using a specific formula. The WCB Board of Directors approves the adjustments, which are effective January 1 of each year.

The current policy is to provide a cost-of-living adjustment in an amount equivalent to Alberta's Consumer Price Index minus 0.5 percent.

In reality, injured workers who are receiving benefits experience changes in the cost of living just as other Albertans, as reflected by the Alberta Consumer Price Index. Given this, it is hard to understand why the cost-of-living adjustment for an injured worker's benefits should be one-half percent lower than the Alberta Consumer Price Index. In our view, the Alberta Consumer Price Index should be mirrored directly.

### **Recommendation 37:**

**Provide cost-of-living adjustments based on the actual Alberta's Consumer Price Index, without any reduction.**

Presently, the WCB does not make any adjustment to an injured worker's benefits to account for earnings increases that the injured worker may have received due to career progression.

Our Panel heard diverse views from stakeholders about the WCB's current practices in respect of benefit adjustments. Many stakeholders felt that the WCB should automatically adjust the benefits of injured workers to account for career progression, on the basis that many workers typically experience year-over-year increases in wages. Some people observed that for injured workers who fall under collective agreements, increases in wages would have virtually been a certainty and should be incorporated into the benefits they receive.

Other stakeholders took a different view, saying that it should not be assumed that an injured worker would have progressed in their career or received earnings increases. Some expressed a wariness of factoring career progression into benefits due to the cost implications it might have for the system and for employer assessments.

Needless to say, there was no consensus in this area. Our Panel recognizes that it is difficult to determine a standard that might be appropriate to use to consider the potential career progression of an injured worker. We make no recommendation on considering career progression at this time, except to note that if it is not considered in the establishment of earnings loss benefits then it should not be considered either when deeming an injured worker's potential income.

The special case of young workers, however, came to the attention of our Panel as an area where hardship can result from the WCB's current approach to benefits. Several stakeholders noted to our Panel that young workers are particularly disadvantaged by the current system as their benefits can be stuck at very low levels if they suffer a permanent disability and can not get back to gainful employment.

Young people often work in minimum wage jobs. They are also likely to be at the lowest point of their earnings potential during their lives. If seriously injured on that job such that their claim is long-term, a young person's benefits can be fixed at a point in their life that is nowhere near reflective of their earnings potential during their adult life.

Our Panel feels that given the unique level of potential hardship for young people on long-term claims, a change is required.

### **Recommendation 38:**

**Provide the ability to adjust the benefits of young workers to mitigate the hardship they might otherwise experience.**

Under our suggested change, the compensation rate would remain at 90% of net earnings at date-of-accident for the first 24 months of disability. For young workers with an impairment rating of at least 50%, after 24 months of temporary disability or at confirmation of permanent disability, if earlier, the long-term compensation rate would be the higher of:

- 90% of net earnings at date-of-accident, or
- 90% of net earnings based on the Alberta average weekly earnings for the previous year, as determined by Statistics Canada.

To qualify for the rate adjustment proposed, a worker would need to be younger than 25 years of age, or over 25 years of age where it can be shown that the person was enrolled in an academic or training program at the time of their injury.

Our Panel does not intend for this to adversely impact provisions covering learners and apprentices under section 67 of the *Workers' Compensation Act*.

## **BENEFITS PAST AGE 65**

To compensate for reduced retirement income caused by a worker's compensable loss of earning capacity, typically at age 65, the WCB completes an adjustment calculation similar to that of an employer-provided defined benefit pension plan. This approach has several challenges:

- The current five-year average that is used in the adjustment calculation considers only the most recent 5 years. This can disadvantage some injured workers who experienced their greatest earnings loss earlier in the life of the claim.
- If an injured worker's ELP ends before they reach 65 years of age, they do not receive compensation for the resulting loss of retirement income, even if they were receiving benefits and had reduced earnings for many years.
- There is a current requirement that an injured worker provide "sufficient and satisfactory evidence" that they would have continued to work past 65 years of age if not for their injury or illness. For workers who manage to meet this evidentiary requirement, it can be difficult to determine when they might have actually retired.

We believe that the gaps and challenges around this issue should be mitigated.

### **Recommendation 39:**

#### **Update the retirement provisions to better recognize the impact that a workplace injury has on an injured worker's retirement savings.**

To recognize the impact that a workplace injury has on workers' retirement savings, our Panel recommends updating the retirement provisions as follows:

- Where an injured worker recovers prior to 65 years of age, provide a one-time retirement adjustment that is paid immediately, equivalent to 2% of the annual ELP amount times the number of years that wage loss benefits were payable. The retirement adjustment should be made at 65 years of age, or 5 years following the date of accident, whichever is later.
- Calculation based on the average indexed disability benefit for the entire disability period, including periods of temporary disability, or calculation based on the average ELP amount 5 years prior to 65 years of age, or whichever is greater.

Our Panel recognizes the challenges facing workers who wish to establish they would have worked past age 65. However, we do not recommend a change at this time.

## CONTINUED ACCESS TO WORK HEALTH BENEFITS

When an injured worker is away from work while receiving WCB compensation, a consequence they can sometimes experience is the loss of their health benefits from work. That is, their participation in benefits programs that have been arranged between their employer and a private provider (such as dental benefits, extended health benefits, flex health spending accounts, pension, etc.) may be interrupted and as a result they lose access to these benefits programs. Although the workers' compensation system will cover health services for the injured worker that are connected to the injury or illness for which they are receiving compensation, the system will not cover non-injury-related health services that might be needed by the injured worker or their family. (For example, if the injured worker or one of their family members needs dental work.)

Our Panel noted that in other jurisdictions such as Ontario, that there is an obligation in legislation for employers to continue injured workers on employment benefits for the first year after a worker is injured.

This dynamic can impact the economic position of the worker, and can cause financial hardship for the worker's family. We believe that it is appropriate to address this issue.

### **Recommendation 40:**

**Amend the *Workers' Compensation Act* to establish a requirement that an injured worker continues to be covered under their existing health benefits programs.**

Our Panel takes a two-pronged approach to this recommendation, aimed at addressing this issue in different ways depending on the Government of Alberta's choices regarding our other recommendations.

As discussed earlier in this report, our Panel recommends the establishment of an "obligation to return to work" on the part of employers. If the government chooses to act on that recommendation then, consistent with the spirit of the obligation, our Panel recommends that employers should be required to continue an injured worker's coverage in respect of their health benefits from employment. Under the requirement, an injured worker's coverage would continue on the same terms and conditions that were in place on the date of accident. For instance, if an injured worker's coverage was subject to a cost-sharing arrangement, that arrangement would continue. If the injured worker did not have health benefits coverage, then they would not have it after the date of accident either.

Alternatively, in the event that our Panel's recommendation concerning the obligation to return to work is not implemented by the Government of Alberta, then our Panel recommends that an injured worker's health benefits from employment continue for a period of one year from the date of accident. Again, this continuation in coverage would be subject to the same terms and conditions that were in place on the date of accident.



“ I was sent to the WCB doctor and physio which were not close to where I resided when I had a physiotherapist 5 mins from home.”

- *Injured Worker*



KEEPING THE  
**SYSTEM**  
**SUSTAINABLE**

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Consistently, stakeholders told our Panel that Alberta’s workers’ compensation system must remain financially sustainable. People want to know that the system will be there for the long-term and will be able to provide appropriate benefits to workers who need to access the system.

Unlike those in some other jurisdictions, Alberta’s workers’ compensation system is financially solvent and its Accident Fund (which pays the costs of claims) is fully funded. This was not always the case. For a long period during the 1980s and 1990s, the Accident Fund had an unfunded liability due to low investment returns and insufficient payments collected from employers. In 1995, the *Workers’ Compensation Act* was amended to require that the Accident Fund be fully funded. While the fund has experienced ups and downs, it has remained fully funded ever since.

ANNUAL HISTORY OF THE PERCENTAGE OF FUNDED LIABILITY OF THE ALBERTA ACCIDENT FUND					
Year	Funded Position	Year	Funded Position	Year	Funded Position
1996	120.32	2003	114.06	2010	129.42
1997	122.10	2004	131.32	2011	128.27
1998	125.82	2005	132.37	2012	130.24
1999	119.25	2006	136.46	2013	134.26
2000	116.21	2007	132.95	2014	129.68
2001	111.88	2008	111.74	2015	134.34
2002	110.53	2009	128.38	2016	133.80
				<b>Average</b>	<b>125.40</b>

Source: WCB

Our Panel’s recommendations in this area are designed to maintain and build upon the system’s excellent fiscal foundation and help bring about a worker-centered system that:

- Strikes a balance in encouraging employer responsibility while honouring the Meredith Principle of collective liability;
- Features a fully-funded Accident Fund that is managed prudently, effectively and efficiently; and
- Manages funds responsibly for the benefit of workers and employers.

## STRIKING A BALANCE IN THE RATE-SETTING PROCESS

In the course of our engagement activities, our Panel heard many views from stakeholders about the premiums that employers pay to the WCB.

Many stakeholders noted that Alberta’s WCB premiums are low compared to those of other provinces and territories. Several employers cited this as a strength of the current system, with some arguing that WCB premiums should not be raised at all, even if that means limiting the benefits provided by the system. Several workers described Alberta’s low WCB premiums as a problem rather than a feature. Some suggested that Alberta’s premiums have been kept low through a “culture of denial” in the system, wherein workers have been unfairly or wrongly denied benefits to which they are entitled.

Stakeholders also had diverse views about the way premiums are calculated. While some employers expressed satisfaction with the WCB's current approach to rate-setting, others had concerns. In particular, smaller employers argued that several aspects of the rate-setting process, such as incentive programs and Industry Custom Pricing, place them at disadvantage and unfairly shoulder them with a disproportionate share of an industry's premium costs.

Our Panel also heard concerns about the ways in which the WCB's rate-setting process may be contributing to claims suppression in Alberta workplaces. Many people assert that because employers' rates are connected to their claim histories, employers have incentives to discourage injured workers from making claims to the WCB.

It is understandable that the subject of premiums evokes strong emotions. The money that is collected by the system represents the compensation and benefits that are available to workers and it represents the costs that employers will incur for the system's operation. How much money is required, and who contributes that money, has far-reaching implications for these two major partners of the system.

In listening to Albertans, and in doing our own homework, our Panel came to the realization that there is a fair amount of misinformation out there when it comes to WCB premiums in Alberta. It is helpful to clarify how things work right now.

Employer premiums are established each year. Employers are charged a certain dollar amount per \$100 of payroll. This is known as the "assessment rate". In 2017, Alberta had an estimated average assessment rate of \$1.02 per \$100 of payroll. This average rate is indeed the lowest in Canada, with other jurisdictions ranging from \$1.10 to \$2.65 per \$100 of payroll.<sup>11</sup> There are a variety of reasons for the wide disparity in average assessment rates between Alberta and the other provinces and territories. For example, jurisdictions use different fund policies, have different historical fund balances, cover different industries and use different models for setting employer assessment rates.

AVERAGE ASSESSMENT RATES PER \$100 PAYROLL								
	2010	2011	2012	2013	2014	2015*	2016*	2017*
Alberta	\$1.31	\$1.23	\$1.24	\$1.13	\$1.03	\$0.97	\$1.02	\$1.02
British Columbia	\$1.43	\$1.51	\$1.48	\$1.54	\$1.63	\$1.70	\$1.70	\$1.65
Saskatchewan	\$1.65	\$1.67	\$1.62	\$1.57	\$1.50	\$1.46	\$1.34	\$1.24
Manitoba	\$1.61	\$1.51	\$1.51	\$1.52	\$1.50	\$1.30	\$1.25	\$1.10
Ontario	\$2.27	\$2.35	\$2.40	\$2.46	\$2.46	\$2.46	\$2.46	\$2.43
Quebec	\$2.19	\$2.19	\$2.13	\$2.08	\$2.00	\$1.94	\$1.84	\$1.77
Newfoundland and Labrador	\$2.75	\$2.83	\$2.79	\$2.71	\$2.40	\$2.45	\$2.20	\$2.06
Nova Scotia	\$2.68	\$2.67	\$2.65	\$2.66	\$2.67	\$2.65	\$2.65	\$2.65
New Brunswick	\$2.12	\$2.02	\$1.70	\$1.44	\$1.21	\$1.11	\$1.11	\$1.48
Prince Edward Island	\$2.04	\$2.00	\$1.98	\$1.97	\$1.90	\$1.79	\$1.77	\$1.70
Yukon	\$2.95	\$2.88	\$2.36	\$2.07	\$2.18	\$1.90	\$1.85	\$1.87
Northwest Territories and Nunavut	\$1.65	\$1.76	\$1.73	\$1.90	\$1.99	\$2.00	\$2.00	\$2.00

Source: Association of Workers' Compensation Boards of Canada

Notes: \*All rates, except for the most recent years, are the actual average assessment rates (as available)

<sup>11</sup> Association of Workers' Compensation Boards of Canada. [www.awcbc.org/?page\\_id=566](http://www.awcbc.org/?page_id=566)

In Alberta, an employer's assessment rate is currently determined in the following way:

- The WCB assesses the overall financial picture of the workers' compensation system. Using actuarial reports and financial forecasts, the WCB determines what it will need to pay out. Significant parts of this analysis include:
  - The claims expected to be made to the WCB in the upcoming year;
  - The estimated current costs that will be associated with those expected claims; and, importantly,
  - The projected future costs that will be associated with those expected claims.

It is important to emphasize that the amount of money needed for the upcoming year is not the driver of the analysis. Instead, the driver of the analysis is the claims expected during the upcoming year. The WCB calculates all the money it will need now and in the future to pay the costs associated with those claims. This ensures that today's employers will fund the costs of today's claims, even if those costs reach many years into the future. Our Panel understands that of the money collected each year from employers, approximately 75% is intended to cover future claims costs.

- On the basis of the overall financial picture, and with a view to its Funding Policy, the WCB determines what overall amount of money it needs to collect from all employers covered by the WCB in Alberta.
- Based on the overall amount of premiums that need to be collected, the WCB determines premium rates for each **rate group**. In 2016, there were 109 base rate groups covering 345 industries. Rate groups can encompass various numbers of industries. The premium rates of each rate group are established based on their risk of a claim, based on the historical pattern of claims costs. Rate groups that historically generate more claims costs are assigned higher rates. This is sometimes called the "industry rate".
- Each employer within a rate group is then assigned their premium rate based on their record of claims costs. This is called the "experience rating". Based on how the employer stacks up to the average of their rate group (or "industry average"), the employer's rate is adjusted. Premium rates for large employers can be up to 40% higher or lower than the industry rate; premium rates for small employer can be set up to 5% higher or lower than the industry rate.

This design is intended to achieve several things. First, every employer pays something, thereby incorporating the 'collective' nature of the system. Second, assessments are distributed across industries so that industries responsible for higher claims costs are shouldering an appropriate share of the burden, thereby incorporating some fairness between industries. Third, each employer has their rate adjusted based on their claim history, thereby incorporating an element of individual accountability.

The steps above establish what could be called the "base" assessment rate for each employer. However, it is not the end of the WCB's rate-setting process. In addition to the foregoing steps, the WCB layers on other calculations to apply various special programs. There are three of these: the poor performance surcharge, the Partnerships in Injury Reduction (PIR) program, and Industry Custom Pricing (ICP).

- The poor performance surcharge is levied on top of an employer's experience rating, and can vary from 0% to 200%. It is levied on large employers who:
  - have a claims history performance that is 80% worse (or higher) than the average performance of the rate group to which they belong; and
  - have four or more experience rated claims for at least two consecutive experience periods.

In effect, the poor performance surcharge is a financial penalty given to employers who have consistently poor accident records.

- The PIR program is a voluntary program in which employers can register. Employers who participate in PIR can receive a discount on their industry rate of up to 20%. To earn a minimum discount, an employer must earn an Alberta Certificate of Recognition (COR). This requires that the employer implement a workplace health and safety management system that has been independently audited by an organization approved by the government. The employer can then earn additional discounts for reducing their claims costs year-over-year, and for keeping their claims costs lower than the average of their industry rate group.
- Industry Custom Pricing is an option that industries vote themselves into. The WCB works with representatives of an industry to customize a pricing model for that industry. This can take various forms, but often includes modifying the “experience rating” component of the rate-setting process so that employers’ individual claims records are weighted more heavily in the rate-setting calculation. Generally, employers who move to an ICP program must forgo the ability to access cost relief.

An industry must choose to move to an ICP program through a vote amongst employers within the applicable rate group. If a majority of the industry votes in favour (based on assessable payroll), then the ICP program is implemented for all employers in the rate group – including those who voted against the ICP program.

An employer’s assessment rate can be influenced by these special programs working in concert. For example, an employer might belong to a rate group that has an ICP program, and might hold a COR, but also have a claims record that makes them subject to a poor performance surcharge.

After factoring in any applicable special programs and their influences on the base assessment rate, the WCB arrives at the employer’s final assessment rate for the upcoming year.

Our Panel spent a considerable amount of time examining the current rate-setting process with a view to the perspectives provided by stakeholders. We also looked at other rate-setting approaches across the country and the experiences of other jurisdictions. We arrived at several observations that should give all Albertans pause.

- First, we should note that the WCB’s rate-setting process, including the special programs, is informed by actuarial studies. Several stakeholders expressed uncertainty about where the WCB “gets its numbers”. Our Panel is satisfied that the WCB is making use of financial reports and actuarial experts in determining the amount of money required for claims costs and in determining components of the rate-setting process (such as the risks of certain rate groups contributing certain shares of total claims costs). That being said, there is a lack of transparency in the rate-setting process. Too many people have questions about the way in which assessment rates are established. Though some information is available, it is not particularly accessible to the average layperson. Without being able to clearly discern how rates are being set, stakeholders have come to be suspicious that some kind of ‘funny business’ happens behind the scenes. There is an urgent need for openness and clarity, otherwise trust and confidence in the rate-setting process risk being further undermined.
- The rate-setting process results in inequity between large and smaller employers. Many small employers told our Panel that special programs work against them. For example, the PIR program is out of reach for some small employers because they do not have the fiscal capacity to implement the necessary systems in their workplaces or to afford

independent audits needed to earn or maintain a COR. We also heard complaints that small employers can be forced into ICP programs because the “majority” vote to create an ICP is based on insurable earnings. A small handful of large employers can decide the vote, even if they constitute a minority of the total number of employers in the industry. In a technical briefing to our Panel, the WCB indicated it is aware that the rate-setting model may not be as effective for small employers as it is for large employers, on the argument that large employers comprise a majority of the insurable earnings.

- In theory, the use of an “experience rating” component in rate setting provides an employer with a financial incentive to operate a healthy and safe workplace and engage in efforts to prevent worker injuries and illnesses. However, in literature regarding workers’ compensation systems, there is significant commentary that the use of “experience rating” components in rate-setting are falling well short of that intended objective.
- Similarly, while the WCB asserts that it encourages and recognizes success in employer efforts to prevent workplace injuries and illnesses, the facts do not necessarily bear this out. Both worker and employer stakeholders expressed doubts to our Panel about whether these special programs are actually fostering improvements in workplace health and safety. Some employers admitted to our Panel that to lower their assessment rate an employer does not necessarily need to have a safe workplace; they only need to be savvy in navigating the system, managing claims aggressively, and making use of special programs.
- Our Panel heard many comments about cost relief, and uncertainty as to the extent to which cost relief is still available to employers. Cost relief is a mechanism whereby, in certain circumstances, certain claims costs are removed from an employer’s claims record and instead attributed to the rate group to which the employer belongs. (For example, it might be used for costs related to a claim involving a worker with an occupational disease who has pre-existing conditions from their previous employment with several other companies in the same industry. Rather than assigning all of the claim costs to the worker’s current employer, it may be appropriate to use cost relief to assign those costs to the industry as a whole). Many employers who said they had lost cost relief, usually in connection with the move to an ICP program, expressed a desire to have it back. It is largely accepted that in today’s economy a typical worker will have multiple employers during their working lifetime, sometimes concurrently. In recognition of this, it may be advisable for cost relief to be widely accessible to deal with matters such as repetitive stress injuries, where the injury is not attributable to a single employer.
- In the rate-setting process, Alberta’s WCB makes use of 109 industry rate groups covering 345 industries. The number of industries in each rate group varies widely. Stakeholders expressed concern and confusion about how these rate groups and the industries within them are categorized. While it is recognized that they have different economic profiles, the systems in many other provinces and territories make use of far fewer rate groups. In Ontario, a recent report has recommended that the province move from 155 rate groups down to 20-25.<sup>12</sup> The use of fewer rate groups is intended to have the effect of smoothing out the risk across industries more broadly. It is unclear what impact differences in rate groups have in Alberta.
- Though it was admittedly anecdotal, stakeholders of various backgrounds provided consistent input as to the existence of claims suppression in some Alberta workplaces. The general argument is that since an employer’s claim history is directly connected to their assessment rate, every employer has a financial incentive to keep their claim history as “clean” as possible. Ideally, an employer achieves this by running a safe

<sup>12</sup> Pricing Fairness: A Deliverable Framework for Fairly Allocating WSIB Insurance Costs February 2014 Douglas Stanley.

workplace in which no workers suffer employment-related injuries or illnesses. However, an employer can also achieve a clean claim history by running a workplace with a culture that discourages or suppresses claims from injured workers.

Claims suppression is not a fiction. Studies in other provinces and territories have found that the use of experience rating components and financial incentives has contributed to incidents of claim suppression. They have discouraged some employers from reporting injuries and have inadvertently penalized those who do report injuries by putting them at an economic disadvantage relative to their peers. Our Panel is comfortable in saying that the problem exists in this province and is encouraged that the WCB has recently commenced a campaign to address aspects of claims suppression.

Some stakeholders argued that the “experience rating” component should be eliminated from the WCB’s rate-setting process in order to remove a possible incentive for claims suppression. We considered this proposal, and rejected it for the following reasons.

First, it must be noted that claims suppression can be influenced by a number of factors beyond the “experience rating”. It might also be influenced by the special programs used in the WCB rate-setting process, which have the effect of amplifying the link between an individual employer’s claims record and their assessment rate. Our Panel also heard that claims suppression can also be influenced by factors beyond the control of the WCB, such as private companies using data about “lost time claims” to evaluate subcontractors. (We discuss this more in our chapter on “Supporting Prevention of Injuries and Illnesses”.) Eliminating the experience rating would not on its own address the challenge of claims suppression.

Second, while stakeholders expressed concern that the experience rating component might contribute to claims suppression, they also emphasized the importance of supporting employers who invest in the necessary infrastructure, processes and culture to foster safe workplaces. Eliminating the experience rating would undermine this goal, as it would effectively ‘give bad actors a free ride’. An employer would be rational in asking why they should bother to invest money in safety if they will be treated no differently (from an assessment rate perspective) than a competitor in their rate group who does not.

Our Panel feels that the best approach is not to eliminate the “experience rating” component, but to use a rate-setting process that strikes an appropriate balance between collective responsibility and individual responsibility.

It is arguable that the appropriate balance between collective and individual responsibility is not being achieved by the current rate-setting process. As an interesting note, for example, the assessment rates for employers can range from \$0.13 per \$100 of payroll to \$5.75 per \$100 of payroll. This wide variance suggests that the current balance may very well tilt too far towards the ‘individual responsibility’ end of the spectrum.

Furthermore, the balance between collective and individual responsibility is not the only issue facing the rate-setting process. As we outline above, there are many questions and concerns swirling around the way in which the WCB calculates assessment rates. Due to the complexity of the process, the input from stakeholders and the potential impact of any changes to the process, our Panel is not well placed to make specific recommendations about the rate-setting process. We lack the time, resources and expertise to do more than indicate it is a serious matter that must be reviewed.

## Recommendation 41:

**WCB Board commission an independent study on the process that should be used by the WCB to establish employer rates fairly.**

Commissioning an independent study on the rate-setting process will enable the further analysis we think is required to identify changes in the process that will strike an appropriate balance between individual and collective responsibility. It will also have the benefit of bringing more transparency to the rate-setting process. This will help give stakeholders more confidence in the process and, hopefully, help improve understanding about how rates are set.

The independent study should:

- Examine the current rate-setting process;
- Inquire into a fair system for setting employer rates;
- Identify opportunities to strike a better balance between individual and collective responsibility when setting rates;
- Review the suitability of rate groups and suggest improvements to rate group classifications, including the simplification of rate groups where warranted; and
- Assess the extent to which the current process is actually incenting employers to operate healthier and safer workplaces and is actually bringing about reductions in workplace injuries and illnesses.

Ultimately, the results of the study and the actions taken on those results should help bring about a better rate-setting process.

Our Panel feels that rate-setting process should conform to a number of characteristics. While not endorsing it in its entirety, our Panel found favour with the principles articulated by the “Stanley Report” out of Ontario for guiding that province’s rate-setting system. Using those as a basis, our Panel identifies the following characteristics for an ideal rate-setting process in Alberta’s workers’ compensation system:

- **Transparent** – The process should feature open information so that stakeholders can have confidence the process is being undertaken with integrity.
- **Comprehensible** – The process should be understandable to stakeholders, especially employers who are funding the system.
- **Clear line of sight** – There should be a “line of sight” between the analytical components that are used in the process and the results of the process so that the rate that is calculated for an employer can be justified.
- **Provide certainty** – Employers should have a degree of stability and predictability in the rates that are generated by the process.
- **Sound analysis** – The process should be driven by financial and actuarial standards that are applied the same way every year.

## ENSURING THE ACCIDENT FUND IS MANAGED WELL

Under section 91 of the *Workers' Compensation Act*, the WCB "must ensure that there is sufficient money available in the Accident Fund for the payment of present compensation and future compensation as estimated by the Board's actuary".

Under the same section, the WCB is given permission to "maintain a reserve fund sufficient to meet costs arising from extraordinary events" that could "unfairly burden employers in the short term" or "prevent full funding of the Accident Fund".

The WCB observes this section of the Act by managing the Accident Fund in accordance with its Funding Policy. Our Panel heard a lot from stakeholders about the Accident Fund. As with the issue of employer rates, our Panel noted that there is misinformation among stakeholders about the Accident Fund and its management.

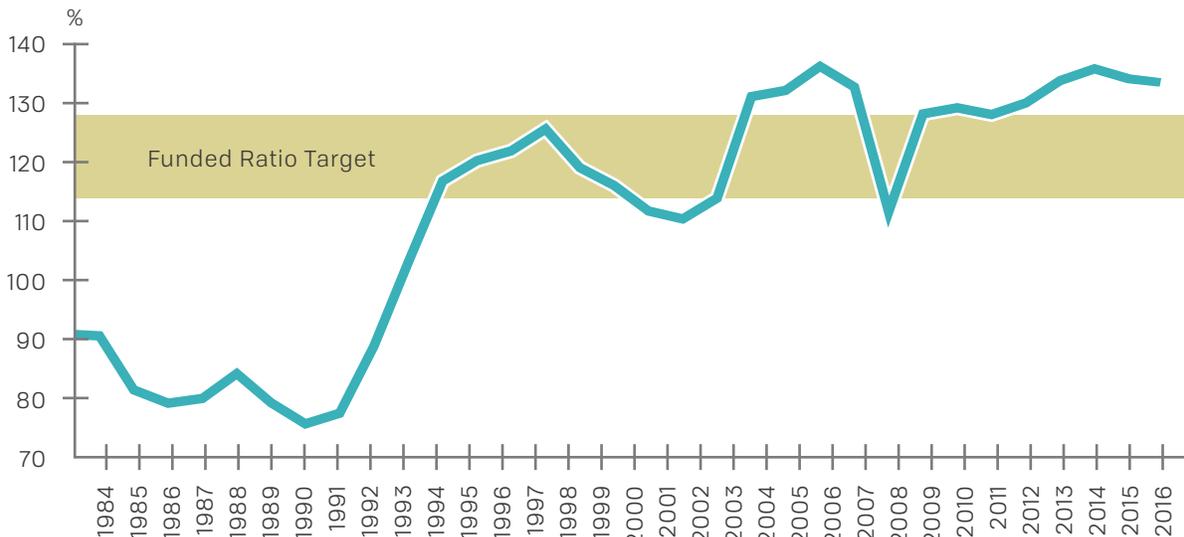
Again, it is helpful to provide clarity.

According to the WCB, the Funding Policy is intended to:

- Minimize the risk of the Accident Fund being unfunded, to help keep worker benefits secure;
- Minimize cost volatility, to help keep rates stable;
- Keep the funded position of the fund appropriate relative to financial needs; and
- Ensure that today's employers pay the current and future costs of today's claims.

To help achieve these goals, the Funding Policy has set a target range for the Accident Fund of between 114% and 128%, also known as the "green zone".<sup>13</sup> This target range was developed by the WCB in consultation with actuarial experts and the use of asset-liability modelling tools.

### WCB-ALBERTA HISTORICAL FUNDING POSITION



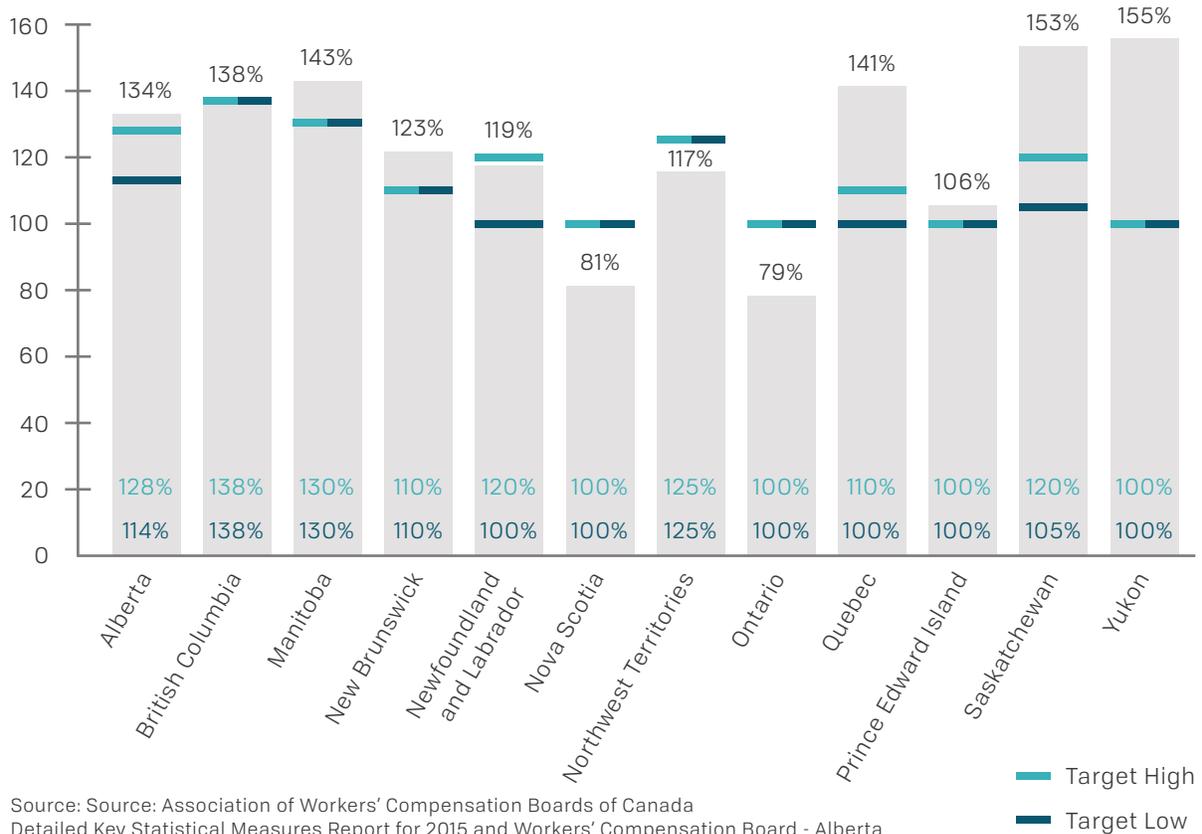
Source: WCB

<sup>13</sup> Calculated as total assets relative to total liabilities. The Accident Fund is considered fully funded when the total of all assets equals or exceeds 100 percent of total liabilities.

The establishment of the current target range is supported by statistical analysis. By setting the target range in this way, there is a sufficient buffer of money in the fund to withstand the impacts of normal investment and actuarial volatility.

The target range is also not unreasonable relative to the target ranges established for accident funds in other workers' compensation systems across Canada.

### WORKERS' COMPENSATION PERCENTAGE FUNDED (TOTAL ASSETS OVER TOTAL LIABILITIES) & TARGET FUNDING RANGE



In addition to the target range, the Funding Policy identifies actions that should be taken if and when the Accident Fund falls outside the "green zone". If the funded ratio falls below 114%, the WCB can decide to collect additional money from employers in order to bring the Accident Fund to required levels. This will be done in the form of a levy.

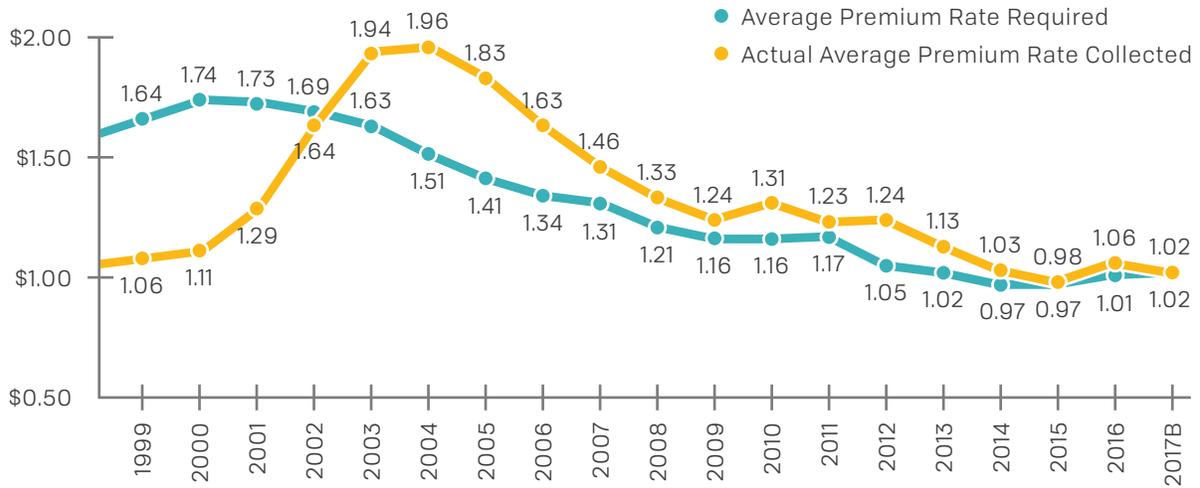
Conversely, if the funded ratio of the Accident Fund rises above 128%, the WCB can decide to distribute a portion of the excess to employers.

Our Panel heard several perspectives about the Accident Fund from stakeholders. One we heard most frequently was a belief that the target range is too conservative and ought to be narrowed. In support of this assertion, many stakeholders pointed to past instances of the Accident Fund exceeding the 128% threshold. This, they said, indicates that the current target range causes the WCB to collect more money from employers than necessary.

The problem with this argument is that it is premised on the belief that excesses in the Accident Fund come from over-charging employers. This is not the case.

In fact, statistics demonstrate that the WCB has become extremely adept at forecasting the assessments it requires from employers to pay for current and future claims costs. Over time, the difference between the amount it has collected from employers and the amount it has actually required for claims costs has been shrinking. In recent years, there has been virtually no difference. It can safely be argued that the WCB is collecting almost exactly what it needs to cover claims costs, and is certainly not over-charging employers.

### AVERAGE PREMIUM RATES REQUIRED VS. COLLECTED



Source: WCB

It must be remembered that at any given time the Accident Fund contains money intended for not only the present-day costs of claims, but also the **future costs** of claims. A lot of the money is not needed now, but it will be needed someday. This money is invested so that it does not lose value in real terms due to inflation, and so that the “time value of money” can be leveraged. The investment of this money is managed to achieve a target return, but sometimes the investment return can be better than expected. When this happens, the Accident Fund can exceed its target range.

Put another way, on those occasions when the Accident Fund exceeds the 128% threshold it is not because too much money has been collected from employers. It is because the WCB has been “too successful” at investing that money and has earned more interest on the money than they expected. This is a nice problem to have, albeit one that contributes to confusion among stakeholders.

Some people might argue that these “extra” interest monies could or should be used to offset the amount of money that is actuarially required from employers. The challenge with that idea is that better-than-expected investment returns can not be anticipated or guaranteed. Using windfall interest in this way would also cause employer premiums to lurch, undermining the stability and predictability that many employers told our Panel they would like to see in the rate-setting process.

Based on what we learned, our Panel feels comfortable with the ways in which the WCB is managing the Accident Fund. The approach being taken by the WCB is based on actuarial science and the WCB has undertaken due diligence in setting the target range for the fund.

## Recommendation 42:

### **WCB maintain the current target range of the Accident Fund.**

Our Panel has reviewed the establishment of the target range and we are satisfied that it has been set based on actuarial advice. On this basis, the current target range should not be changed.

Narrowing the range, as some stakeholders advocated, would subject the Accident Fund to volatility. This would not be good for workers, who depend upon this money for compensation. It would also not be good for employers, as it would undermine stability in rates and raise the risk of unexpected mid-year levies from the WCB.

While the fund has done well in recent years, it must be remembered that a market downturn can happen fast and it will almost certainly happen again in the future. One of the benefits of the current target range is that it provides a buffer against such events. In 2008, for instance, the Accident Fund fell below the 114% threshold. However, due to the insulating effects of the target range over time, the fund was able to return to the target range without the need to assess a levy on employers.

While the WCB's current approach to managing the Accident Fund is diligent and actuarially sound, there is a question as to whether the WCB should be managing the Accident Fund at all.

There are several considerations here. One is that the WCB's management of the Accident Fund may be duplicative when one considers the mandate, skills and efforts of the Alberta Investment Management Company (AIMCo). AIMCo was created by the Government of Alberta to manage funds on the government's behalf, including funds that are arm's-length from government such as pension funds.

Another key consideration is that managing an investment fund is not the core business of the WCB. The WCB is intended to be a neutral third-party administrator of the workers' compensation system. Its core mission is to provide compensation and other benefits to workers who suffer employment-related injuries and illnesses. Fairly or unfairly, several stakeholders have a perception that decision-making in the WCB is focused around the health of the Accident Fund rather than the health of workers. Operating an investment arm arguably feeds into this perception and detracts from the WCB's reputation as an organization dedicated to administering fair compensation to injured workers.

One must also consider that the WCB has demonstrated competence in this area. It has realized good results in managing the Accident Fund; in some cases, its investment results have been better than those of AIMCo. To some people, this is an argument in favour of maintaining the status quo. Other people say, that despite those returns, it is not known whether it is cost-effective for the WCB to manage the Accident Fund itself.

This is another case in which a lack of information is contributing to skepticism, speculation and suspicion among stakeholders. We believe that a benchmarking exercise should be undertaken in order to help inform a determination on the right course of action for managing the Accident Fund.

## Recommendation 43:

**WCB undertake a review using an independent resource on how the investment of the Accident Fund can best be managed in accordance with the Funding Policy that is established by the WCB.**

Our Panel is not best positioned to resolve the question of whether the WCB should manage the Accident Fund, but we feel this question needs to be addressed. We believe a meaningful review should be done to identify how management of the Accident Fund should be undertaken, while respecting the WCB's Funding Policy.

To inform that review, a study should be commissioned to evaluate the cost-effectiveness of the WCB's current approach to managing the Accident Fund. This study should examine:

- Is the WCB investment portfolio specialized or unique?
- Do the WCB's internal managers maximize the WCB's investment objectives effectively?
- How do rates of return by the WCB's internal managers compare to returns by external managers?
- Is internal management more cost effective than external management?
- What level of responsiveness would WCB management require from external investment managers?

The results of this study are one important input in deciding how the Accident Fund should best be managed. As our Panel notes above, there are other considerations as well, including the mandates and roles of existing public agencies and the expectations of the public.

Our Panel feels that, ultimately, the Accident Fund should be managed in a way that is prudent, and as effective and efficient as possible.

## USING SURPLUSES IN THE ACCIDENT FUND APPROPRIATELY

One of the current features of the WCB Funding Policy is that the Board can choose to distribute a portion of excess investment returns to employers if and when the Accident Fund exceeds its target range (i.e., over the 128% threshold). This has been done eight times over the past 12 years.

There is a controversy among stakeholders about this practice. There is also a degree of misinformation around this practice.

As we noted in the previous section, a "surplus" in the Accident Fund (i.e., when the fund exceeds the target range) does not arise from the WCB over-charging employers when rates are set. Rather, it arises from the WCB doing a better job than expected when investing the Accident Fund.

Accordingly, when a distribution of “surplus” is made to employers, this money is not a portion of the premiums that were collected from employers. (Those premiums stay in the Accident Fund.) Rather, the money is a fraction of the excess interest monies that the WCB realized through its successful investment of the Accident Fund.

To some people this is matter of semantics, but it is an important distinction because it engages the issue of who rightly can or should lay claim to these monies.

There is a view among some people that money in the Accident Fund “belongs to employers”. Since employers fund the system, they argue, the money in the fund belongs to them. If the money is not needed for compensation and benefits, then it should go back to those who paid it in the first place. It is understandable how people can adopt this view. The WCB’s approach of distributing a “surplus” to employers has arguably contributed to this view. However, this view is based on a misunderstanding of where the “surplus” comes from.

There is view among some other people that money in the Accident Fund belongs to the government or to the people of Alberta. It is understandable how one could adopt this impression since the WCB covers nearly 1.9 million Albertans. However, the money in the Accident Fund is not akin to the government’s General Revenue Fund. It is not a generally unrestricted pool of money that has been amassed from taxpayers-at-large. Rather, it is a pool of money that has been collected by the WCB, under its legislative authority, from a limited group of employers in the province for specific and dedicated purposes. Importantly, its collection and use are anchored in the Meredith Principle of “independent administration”.

So if the money does not belong to employers and does not belong to taxpayers, who does it belong to?

The most accurate description is that the Accident Fund contains monies **in trust for the benefit of workers and employers to support a sustainable workers’ compensation system.**

The underlying ownership of the money is in many ways irrelevant. What matters is that, once collected by the system, the money is entrusted to the system for workers’ compensation purposes. This should be made clear.

## **Recommendation 44:**

**Amend the *Workers’ Compensation Act* to make clear that money in the Accident Fund is in trust for the benefit of workers and employers to support a sustainable workers’ compensation system.**

Seen in this context, the current practice of distributing a “surplus” to employers is not appropriate. Under the current practice there is no way to ensure that the distributed money will be used for workers’ compensation purposes. It flows to employers with “no strings attached”. In our Panel’s view, this practice should end, and a more appropriate policy should be designed to address instances where the Accident Fund exceeds the target range established in the WCB Funding Policy. We believe this policy should be established and in place to deal with any “surpluses” that are realized from the 2017 assessment year.

## Recommendation 45:

**End the current practice of distributing “surplus” money from the Accident Fund to employers. Establish a new policy for the use of excess Accident Fund monies (i.e., when the Accident Fund exceeds its target range) which respects the unique purpose of these monies.**

Our Panel believes that the WCB is best positioned to design the new policy in consultation with workers, employers and other relevant stakeholders.

However, our Panel suggests that the following may be appropriate purposes for excess monies in the Accident Fund:

- Retained in the fund to further “inflation proof” the Accident Fund and further secure future compensation and benefits for injured workers;
- Conditional grants to support actions that improve workplace safety;
- Conditional grants to support research into enhancements of the system;
- Enhancement of data gathering to support better intelligence on workplace safety and to better inform injury and illness prevention efforts; and
- Facilitate some stability in employer rates by helping smooth out the step changes that may occur due to our Panel’s other recommendations.

We believe this policy should be established and in place to deal with any “surpluses” that are realized from the 2017 assessment year and onward.

It is expected that the Accident Fund will realize a “surplus” from the 2016 assessment year. Our Panel recommends those surplus funds be used to offset any increases to employer assessments that might be caused by the implementation of our Panel’s recommendations. This may help “step” employers into the new system without sudden or unnecessarily onerous shifts in their assessments.



**“The deeming process is cumbersome, and made even more so by employability profiles that are not consistent with postings I see in the real world.”**

*- Union*



# STRENGTHENING **REVIEWS AND APPEALS**

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Like the workers' compensation systems in many other provinces and territories, Alberta's system includes two main "levels" for appealing decisions of the WCB: an internal review process, and an external appeal process.

The internal review process is handled by the Dispute Resolution and Decision Review Body (DRDRB). The external appeal process is handled by the Appeals Commission for Alberta Workers' Compensation (the "Appeals Commission"). A person who wishes to challenge a decision of the WCB must take that matter through the DRDRB process before they can raise the matter to the Appeals Commission.

While they noted some areas where they would like to see changes, most stakeholders conveyed to our Panel that they are largely satisfied with the Appeals Commission and current performance measures seem appropriate. They were considerably less charitable about the DRDRB process. The former is regarded as well-run, independent and impartial. The latter is regarded with suspicion and sometimes outright dismissal as a "waste of time".

Our Panel sourced statistics about reviews and appeals in the workers' compensation system. These statistics told us that:<sup>14</sup>

**33%** of disputes about WCB decisions are "resolved" through WCB service personnel, without advancing to the internal DRDRB review process;

**44%** of disputes about WCB decisions are "resolved" through the DRDRB process, without being appealed to the Appeals Commission (for a total of 77% of disputes being "resolved" through an internal WCB process);

**82%** of disputes about WCB decisions are processed by the DRDRB within 55 days of the WCB receiving a Request for Review (which a person uses to formally raise a dispute);

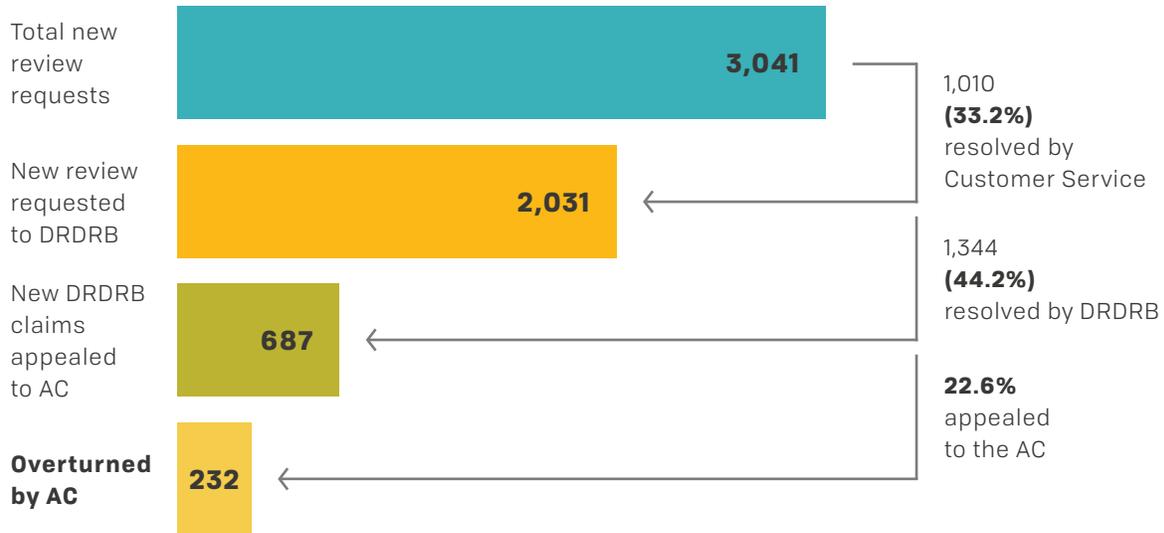
**60%** of decisions examined by the Appeals Commission are confirmed by the Commission;

**23%** of decisions examined by the Appeals Commission are reversed by the Commission; and

**17%** of decisions examined by the Appeals Commission are varied by the Commission (see Appendix G for more statistics on the Appeals Commission).

<sup>14</sup> WCB 2016 DRDRB Highlights Q4.; 2015-2016 Annual Report, Appeals Commission for Alberta Workers' Compensation.

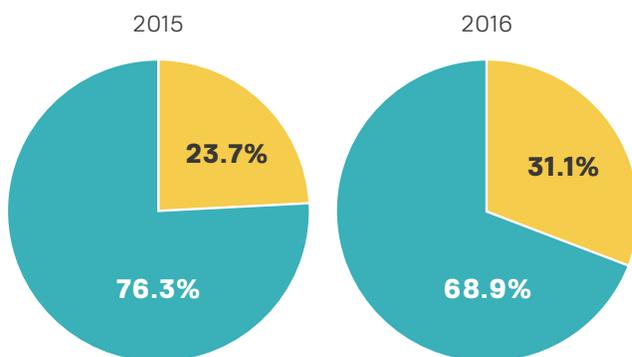
## CLAIM REVIEW REQUEST LIFE CYCLE, 2016



Note: A claim may have multiple issues under review.  
 The new review requests figure reflect the number of claims with one or more Request for Review forms received by WCB  
 Source: WCB

One narrative for these statistics is that the review and appeal processes in the system are operating well. However, our Panel is aware that statistics do not always tell the whole story. For instance, there may be several claims that feature decisions with which workers or employers have serious disputes, but which are abandoned by workers or employers out of frustration or lack of resources. These disputes are recorded by the WCB as being “resolved” insofar as they are no longer in the process, but it does not necessarily mean the process was smooth or satisfactory. While our Panel can not comment on the volume of disputes that have been abandoned or the reasons for such actions, it is clear that the term “resolved” is too broad.

## NEW ISSUES RESOLVED THROUGH DRDRB



● Upheld ● Resolved or entitlement outcome changed\*

\*Includes modified, overturned, changed with agreement, withdrawn, resolved by DRDRB, and returned to Customer Service for an entitlement change.

Source: WCB

These results reflect a variety of distinct outcomes, including cases where DRDRB changes the entitlement decision. In some cases, DRDRB is able to reach consensus with Customer Service to change the decision. In others, DRDRB will overturn the decision and offer a new entitlement decision. In every case, they are seeking a correct entitlement decision that is communicated clearly to the requestor.

## THE TOP 10 ISSUES FOR THE DRDRB FOR 2016

Acceptability of claim	15.5%	Issue is a decision on the eligibility of the claim. It confirms there is a worker, an employer and an accident that arose out of and occurred during employment. The decision triggers entitlement to ensuing benefits.
Temporary Total Disability (TTD)	13.8%	Issue is whether a worker is entitled to receive Temporary Total Disability wage loss benefits (TTD) as being completely and/or reasonably unable to work due to the work accident.
Additional Diagnosis Entitlement	13.4%	Issue is whether a new diagnosis (injury) surfacing after the initial medical reporting is related to the original accident, and any ensuing benefits.
Medical Aid Responsibility	7.8%	Issue is whether a worker is entitled to receive medical aid benefits, or the amount of medical aid benefits, as a result of the work accident.
Cost Relief	4.8%	Issue is whether an employer is able to have costs removed from their experience record for the claim. Most commonly this relates to the presence of a pre-existing condition. There are no impacts to the worker's benefits.  Costs that are relieved are used to determine the overall premium required from an industry; however, the relieved costs are not used for experience rating purposes to determine the share of the required premiums that each employer pays.
Economic Loss Payment Calculation	4.6%	Issue is the amount of an economic loss payment and how it is calculated (wage, time frame, earnings progression, etc.), not the entitlement to an ELP.
Non-economic Loss Payment Calculation	4.3%	Issue is how a non-economic loss payment is calculated (degree of permanent clinical impairment).
Rehabilitation Services	3.8%	Issue is whether a worker is entitled to certain rehabilitation services (physical, psychological, quality of life, etc.) related to the work accident.
Vocational Services	3.7%	Issue is whether a worker is entitled to receive vocational services or the amount of vocational rehabilitation services necessary in order to become employable following the work accident.
Temporary Partial Disability (TPD)	3.6%	Issue is whether a worker is entitled to receive a TPD or the amount of a TPD benefit as a result of the work accident.

Source: WCB

Our Panel also noted that 40% of the decisions advanced to the Appeals Commission are reversed or varied by the Commission. This number is compelling.

From the perspectives stakeholders shared with us, and from our own analysis, we have identified room for improvements in the review and appeal processes. Our Panel's recommendations in this area are aimed at supporting the shift towards a worker-centered system that:

- Focuses on earliest possible resolution of disputes;
- Features processes for internal review and appeal of WCB decisions, in which stakeholders can have confidence;
- Provides assistance to workers and employers that is seen as independent and trustworthy; and
- Makes use of case conferencing and other approaches to resolve disputes informally and collaboratively.

## IMPROVING THE INTERNAL REVIEW OF DECISIONS

Our Panel heard a lot of skepticism from stakeholders about the DRDRB process. Some of this is rooted in misinformation about the DRDRB; some of it is rooted in challenges with the process.

Many stakeholders shared a concern that, as a part of the WCB organization, the DRDRB has a lack of independence in reviewing WCB decisions. Some people went so far as to express a preference for the old Claimant Services Review Committee (CSRC), as they viewed that process as having greater separation (and thus greater independence) from claims management staff. Several stakeholders suggested that the DRDRB function as an independent body. The WCB indicated to our Panel that there is independence in the DRDRB, in that resolution specialists in the DRDRB have authority to make decisions and do not need to obtain approval from claims management staff when making those decisions.

It is important to note that the DRDRB process is not intended to serve as an external and fully independent level of appeal. It is intended to serve as an internal review process – a “second set of eyes” from others within the WCB organization. In addition to being similar to the approach taken in other provinces, this design has the advantage of timeliness. Since it is internal to the WCB, the DRDRB can easily access pertinent information about a claim decision and can easily speak with WCB personnel who were involved in the decision.

Our Panel believes it would be unwise to carve out the DRDRB as an independent body. Were the DRDRB an outside organization, various protocols would be needed in terms of accessing information from the WCB and speaking with WCB decision-makers about their rationale. It would become a less timely, more formal and more adversarial process. In these respects, it would emulate the undesirable characteristics of the CSRC, which the current DRDRB replaced. Maintaining the DRDRB as internal review process makes sense.

That being said, the DRDRB process has room for enhancement. Too many stakeholders – workers and employers alike – question the usefulness of the process.

Presently, a person with a direct interest in an adjudicative decision or an employer account decision can submit a Request for Review (RFR) of the decision. Before the matter goes to the DRDRB, the WCB attempts to address the person’s concern through normal service channels. The WCB staff member who is responsible for the claim and their supervisors will review the decision. They will also contact the person who submitted the RFR to discuss the decision, provide information and answer questions. If the matter is not disposed of, it will be sent to the DRDRB for internal review.

The DRDRB process is led by a resolution specialist. In examining the matter, the resolution specialist has discussions with WCB service staff, examines the file material and gathers information from various parties. A review hearing is also held; the person who submitted the RFR can choose to have this through an in-person discussion, by telephone, or by way of a documentary review. Our Panel heard that almost three-quarters of hearings are held by way of a documentary review. (There may be a variety of reasons why in-person hearings are not chosen by parties more often. For instance, some people believe that in-person hearings are not useful because they feel the entire DRDRB process is a “rubber stamp” of case manager decisions. Other people, meanwhile, may feel intimidated or uncomfortable with attending an in-person hearing.) After the hearing, the DRDRB resolution specialist issues a decision. This decision is binding on the WCB.

In our Panel’s view, the DRDRB is an improvement from the old CSRC. It is less formal and less adversarial. However, the current internal review process is another example of how the system is predominantly focused around ‘managing the claim’.

The central analysis right now appears to be, “Was the right decision made in accordance with the rules, based on the facts in this claim?” In a worker-focused system the more appropriate analysis would be, “Are we doing what we can within policy to help this person get the assistance they require in their situation?” This is an important difference. The former analysis focuses on making sure a decision conforms to a rigid set of rules; if it can’t be shoehorned within the rules then it’s out, and there is no exercise of discretion. The latter analysis focuses on what can be done within the ambit of WCB policy to resolve a person’s concern and get them the help they require. It is all about discretion and nuance and making use of options, while recognizing that a worker’s claim must still fit within the existing statutory framework.

In keeping with the desired shift to a worker-centered system, the internal review process needs to shift in its cultural approach. This goes for employer account decisions as much as adjudicative claim decisions.

Currently, while disputes are ongoing, workers may not be receiving assistance or health care services to support their return to work and recovery. Regardless of the ultimate outcome of the DRDRB, our Panel feels that health care services should continue until the dispute is resolved.

## Recommendation 46:

### **Shift the internal review process to a model based on case conferencing rather than a model based on claims management.**

The overall shift that needs to be made is one towards case conferencing rather than case management. Those involved at all steps of an internal review – from the staff who try to resolve a concern before the DRDRB, right through to the DRDRB itself – should be doing what they can to seek resolution.

In shifting to this model, the following should be done:

- DRDRB resolution specialists should be provided with training in mediation. This will provide them with additional skills they can draw upon to undertake case conferencing and seek resolution.
- In the case of a dispute raised by an injured worker that impacts benefits payable, where there is an interpretation of policy question attached, appropriate health benefits should be paid on behalf of the worker until the dispute is resolved. If it is ultimately determined the worker is not entitled to those benefits, the WCB should not seek return of overpayment from third party providers.
- Policies should be structured to allow for flexibility among service staff to use appropriate discretion while making decisions in accordance with WCB policies. Our Panel heard from WCB staff that there are occasions when creative solutions must be foregone because they feel their ‘hands are tied’ by the current construction of policies.
- Though a dispute with a particular decision is likely to be the catalyst for the process, the internal review process should take a holistic approach to the entire claim to the greatest extent possible. Ideally, the process considers the implications of a specific decision on the entire claim, and seeks to remedy any of those implications at the same time. This way a person is not coming back to the internal review process repeatedly to ‘patch holes’ or raise new disputes about other aspects of the claim that have been unexpectedly impacted when previous decisions have been addressed.

While shifting to a model that is based on case conferencing and aims for resolution, the internal review process should still produce a decision. The production of a formal decision is needed as a foundation for an appeal to the Appeals Commission, should one prove necessary.

Our Panel believes a case conferencing model will also help address challenges around the “one year” limitation period that currently exists for appeals. A claim can include many disputed matters and decisions. When these matters are each dealt with separately at the internal review stage, it can be difficult to determine when the ‘one-year clock’ starts. This can lead to confusion and missed timelines. If the DRDRB deals with a claim holistically, it will be much easier to identify when a person’s limitation period expires.

## IMPROVING EFFICIENCY IN THE APPEALS COMMISSION PROCESS

Stakeholders generally express satisfaction with the Appeals Commission process. However, one of the challenges they have with the process is that the Appeals Commission is restricted to matters on which decisions have been rendered by the DRDRB. A worker or employer can thus find themselves coming back to the Appeals Commission multiple times on a matter-by-matter basis, especially when their claim is complicated. This adds time and cost to the process.

It is our Panel's hope that our recommended changes to the WCB's internal review process will help mitigate this challenge. By using a case conferencing approach, the DRDRB can ideally render a decision that addresses multiple issues in a claim in an integrated and comprehensive fashion. With this kind of decision as the formal foundation for an appeal, the Appeals Commission will have the ability to look at a person's matter holistically.

Our Panel believes that in appropriate circumstances interim relief for workers and employers should be available while their matters are under appeal.

### **Recommendation 47:**

#### **WCB provide interim relief to workers and employers while their matters are under appeal.**

This is likely to require the creation of a new WCB policy. We would envision that under that policy:

- A person can apply to the manager or director responsible for the DRDRB for interim relief while their matter is under appeal from the DRDRB.
- The manager or director responsible for the DRDRB makes a ruling regarding interim relief.
- If the ruling on interim relief is not to the satisfaction of the person, the person can appeal the ruling on interim relief to the Appeals Commission, which can make a ruling on interim relief.

To the extent necessary, the *Workers' Compensation Act* should be amended to enable the Appeals Commission to grant interim relief in accordance with the process above.

Interim relief should conform to the following:

- Interim relief for a worker who has demonstrated they have an arguable case would involve paying some kind of stipend or temporary benefit while their matter is under appeal. Interim relief for an employer would involve some kind of cost relief while their matter is under appeal.
- Interim relief that is payable to workers is not charged to the employer's account or claim history, however it is charged industry-wide to the rate group of which the employer is a member.

- If the Appeals Commission rules against the appeal by the worker or employer, the interim relief that was provided is not sought after by the WCB as an overpayment.
- Nothing would prevent the WCB from seeking overpayment of the interim relief, in whole or in part, if it is determined there was misrepresentation or fraud on the part of the appellant.
- The manager or director responsible for the DRDRB or the Appeals Commission can grant interim relief with conditions, including the expediting of the appeal. It may withdraw the grant of interim relief should the conditions fail to be observed.

When claims are unfairly, inappropriately or arbitrarily denied, there can be dramatic impacts on workers and their families. Right now, a worker who can not work because of injury can be left without benefits during the length of time it takes to hear and determine their appeal. Faced with the prospect of paying interim relief that it typically will not be able to recover, the WCB will have a greater incentive to resolve issues quickly and comprehensively at the interim review stage. This will enable greater efficiency at the appeals stage.

## ENHANCING THE APPEALS COMMISSION'S PROCESSES

Based on what we heard from stakeholders and our own analysis, our Panel has identified a number of opportunities to enhance the Appeals Commission process.

### ROLE OF WCB AT APPEALS

Stakeholders expressed concern about the role of the WCB at Appeals Commission hearings. There is a perception that the WCB does not attend an appeal hearing as the neutral administrator of the workers' compensation system, but as an adversarial party that has an interest in defending its decision about a claim.

In some other provinces, such as Manitoba and Ontario, the neutral administrator (i.e., the counterpart to Alberta's WCB) has either limited attendance or no attendance at appeals hearings.

Our Panel determined that Alberta's WCB has a statutory right to appear before the Appeals Commission. The intent of this presence is for the WCB to provide information about the application of the *Workers' Compensation Act* and WCB policies. Using this information, the Appeals Commission makes its own determination about the matter that is the subject of the appeal. Presently, the Appeals Commission can at any time request the WCB attend an appeal hearing as the neutral administrator. This is an appropriate use of the Appeals Commission's discretion. It is when the WCB decides on its own to attend an appeal hearing that challenges can arise.

As the neutral, third-party administrator of the workers' compensation system, the WCB should not have a particular interest in the outcome of an appeal. Its role at an Appeals Commission hearing should be limited to presenting on law and policy, and where necessary, address aspects of the record that may be unclear. It should not be there to advocate for a particular interest.

Confusion about the WCB's role at appeals hearings has arguably undermined its reputation as a neutral administrator. It has also been seen as intimidating to workers. For the WCB to continue attending appeals hearings, changes or clarifications should be made to ensure its role is appropriate.

## Recommendation 48:

**Appeals Commission establish a process whereby the WCB must submit a notice of intention to attend a hearing of the Appeals Commission, which includes a description of its reasons for attending.**

Establishing a formal process for WCB attendance at hearings of the Appeals Commission would help the WCB observe its intended role at those hearings. In our Panel's view, this process should involve the following:

- When it wishes to attend a hearing of the Appeals Commission on a matter, the WCB should be required to submit to the Appeals Commission a notice of its intention to attend.
- In its notice, the WCB should describe the reasons for its attendance and identify the issues about which it intends to provide information.
- The Appeals Commission should use the notice as a guide to manage the WCB during a hearing and ensure that the WCB observes its intended role.

## ALTERNATIVE DISPUTE RESOLUTION

Throughout this report our Panel has made several references to the importance of infusing decision-making processes with case conferencing and other collaborative approaches aimed at reducing and resolving disputes. We see these approaches as integral in making the shift towards a worker-centered system.

The appeals process offers further opportunities to do this. Section 13.5 of the *Workers' Compensation Act* permits the Appeals Commission to conduct a consensual resolution process during the course of an appeal. The Appeals Commission advised our Panel that it has never used this provision. We believe that full use should be made of this legislative authority.



## Recommendation 49:

**The Appeals Commission encourage the use of an alternative dispute resolution mechanism as an option in the appeals process, making use of case conferencing and other approaches that help achieve early and effective resolution of matters under appeal.**

The use of alternative dispute resolution in the appeals process would help improve the efficiency of the appeals process. However, simply dropping a formalized mechanism into the existing process will not be sufficient. What is required is an attendant culture shift, wherein the Appeals Commission takes an active role in meeting with the WCB and the worker or employer to collaboratively explore options, work toward solutions, or identify and narrow the issues on appeal. As we have noted earlier in this report, this kind of approach requires a willingness to focus the conversation on achieving a solution rather than what must be done to make the claim conform to rigid rules.

There are likely many instances in which a worker or employer is forced to use the appeals process because the current system does not provide decision-makers with the flexibility or discretion needed to arrive at a compromise or creative solution. In a worker-centered system that gives discretion and flexibility to decision-makers, staff of the WCB and the Appeals Commission would be better empowered to sit down with the worker or employer, and work with the parties to reach a resolution that will meet the needs of all concerned. In that kind of system, formal appeal hearings would be turned to as a last resort. Our Panel believes this may be an area where a single adjudicator of the Appeals Commission could be used.

## DISSENTING DECISIONS AND ADJUDICATIVE CULTURE

Currently the Appeals Commission operates on a decision making model that relies on consensus and does not provide for dissenting decisions.

Some stakeholders have inquired about why the Appeals Commission does not make use of dissenting decisions when certain panel members disagree with others about what decision should be made. (A practice akin to those of Courts of Appeal or the Supreme Court of Canada.) As it stands now, an Appeals Commission hearing is not like that of a court of appeal proceeding. It is not an adversarial hearing in which two sides of a dispute are facing off over differing legal interpretations. Rather, it is a fact-finding exercise in which the Appeals Commission makes its own decision about a matter based on its own interpretation of workers' compensation law and policy. It is intended to be inquisitorial, not adversarial. Consistent with this philosophy, the Appeals Commission has determined their decision-making process is one of consensus.

Most administrative tribunals are thoughtful about the decision-making model (consensus versus dissenting) that they employ. The decision about what kind of decision-making model to use should be regularly revisited to ensure it remains appropriate.

Our Panel believes that the Appeals Commission should remain alive to this issue and ensure that it continues to reflect on the appropriate decision-making approach on a regular basis.

## Recommendation 50:

**The Appeals Commission should consider its decision-making process on a regular basis and reflect as appropriate in their reports.**

The Appeals Commission is an independent adjudicative body that is responsible for the application of wide-ranging policies within a coherent compensation system. As such, its style of adjudication and its processes must be the subject of continual self-examination. Our Panel feels this is best achieved by Appeals Commission members considering their decision-making model on a regular basis and advising stakeholders and the Minister about their considerations.

### RECONSIDERATION

One issue encountered by our Panel is the threshold used by the Appeals Commission for reconsidering a decision.

Section 13.1 of the *Workers' Compensation Act* allows for the reconsideration of a decision, but under current practice a person must have very good reasons for their reconsideration application to be successful. Those include:

- The presence of relevant evidence that was not available at the time of the appeal decision and which is likely to change the result of the original appeal decision; or
- A significant defect in the appeal process or the content of the decision.

Under the *Appeal Rules* of the Appeals Commission, a person may make an application for reconsideration only once. Consequently, a person only gets “one kick” at asking for reconsideration, and the bar is very high.

Since the courts give substantial deference to the Appeals Commission, in most cases a decision of the Appeals Commission is essentially final. This makes it important that workers and employers have reasonable access to the reconsideration process.

Balance is required here. Not every decision of the Appeals Commission can or should be eligible for reconsideration. When a final decision has been made reasonably and fairly, it should be final. However, the reconsideration application practice has evolved such that the threshold question of ‘whether there is a basis to reconsider’ appears to have melded with the question of ‘the merits of reconsidering the decision’. This is arguably causing the reconsideration application process to screen applications too aggressively. To achieve balance, our Panel feels a two-step reconsideration application process is appropriate.

## **Recommendation 51:**

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**The Appeals Commission take a two-stage approach to reconsideration applications that features an appropriate documentary review and a tribunal.**

Our suggestion is that the reconsideration application process should feature two stages:

- A documentary review that has a low threshold to pass; and then
- A tribunal that assesses the merits of reconsidering the decision.

The documentary review stage is not the appropriate place to make a substantive determination about an application's merit for reconsideration. Accordingly, this stage should merely ensure that an application for reconsideration is based on an arguable case. If it passes that relatively low threshold, then the application should proceed to a tribunal of two or more commissioners.

The tribunal is then the appropriate stage at which a substantive determination can be made about whether a decision should be reconsidered. It can hear arguments about why reconsideration is or is not appropriate, ask questions, and look into the matter in more detail.

Using this approach will help ensure that reconsideration applications are not prematurely or aggressively screened out, while ensuring reconsideration is used appropriately.



## SINGLE ADJUDICATOR PANELS

Under section 13.2 of the *Workers' Compensation Act*, the Chief Appeals Commissioner may authorize a panel of two or more appeals commissioners to act on behalf of the Appeals Commission.

A number of people have suggested that Alberta should accommodate the use of single adjudicator panels – that is, panels of only one appeals commissioner – for certain types of matters. Some other provinces allow for the use of single adjudicator panels.

Our Panel feels that single adjudicator panels should be accommodated in Alberta for certain matters.

### **Recommendation 52:**

**Amend the *Workers' Compensation Act* to allow the Chief Appeals Commissioner to authorize a panel of one appeal commissioner to act on behalf of the Appeals Commission for certain types of hearings.**

Our Panel feels that the following types of matters may be appropriate for single adjudicator panel hearings:

- Employer assessments;
- Applications for interim relief; and
- Undertaking the documentary review on a reconsideration application.

We make this recommendation subject to our recommendation about the reconsideration application process. While a single adjudicator panel would be appropriate for the “documentary review” stage of our recommended process, it would not be appropriate for a tribunal that is assessing the substantive merits of the reconsideration application.

## PRECEDENTS OF DECISIONS

Some people have suggested that decisions of the Appeals Commission should be precedent-setting. This, they say, would help bring about more consistency in Appeals Commission decisions and give workers and employers more insight when they are considering possible appeals of decisions.

Under principles of administrative law an administrative tribunal such as the Appeals Commission can not be bound by previous decisions. However, our Panel can appreciate the desire among stakeholders for greater certainty and consistency in the application of workers' compensation legislation and WCB policies.

While they are not precedent-setting, previous decisions of Appeals Commission can be useful references for stakeholders who want to understand how WCB policies have been applied in various situations. For this reason, we believe leading decisions of the Appeals Commission should be made more readily accessible.

## Recommendation 53:

### **Leading decisions of the Appeals Commission should be published on the Appeals Commission website, organized by topic.**

Currently, decisions of the Appeals Commission are published on the website of the Canadian Legal Information Institute (CanLII). However, many stakeholders may have trouble locating these decisions through the CanLII resource, especially if they do not have legal research training.

To make decisions more accessible, and thus more useful, to stakeholders, our Panel believes that a curated complement of leading Appeals Commission decisions should be published on the Appeals Commission website. To make it easy for stakeholders of all backgrounds to navigate, these decisions should be organized by topic.

## TERM LIMITS OF APPEALS COMMISSIONERS

As a “public agency” under APAGA, the Appeals Commission is subject to that Act’s provisions regarding term limits of members. Our Panel heard some concern that these term limits may make it difficult for the Appeals Commission to recruit and retain appeals commissioners.

As it stands now, APAGA provides that the terms of Appeals Commissioners must be fixed; that they must re-apply at the end of each term; and that they may not serve more than 12 consecutive years overall. One view is that a person with the necessary skill set will be reluctant to leave their permanent employment to serve as an Appeals Commissioner, since it arguably offers less job security.

**“It has always been our view that applying the APAGA term limit provision to appointees to the Appeals Commission for Alberta Workers’ Compensation has a serious negative impact on the ability of the Appeals Commission to fulfill its mandate and obligations to the workers and employers of Alberta.”**

– Employer

## Recommendation 54:

### **Consider exempting the Chair and Vice-Chairs of the Appeals Commission from the term limit provisions of the *Alberta Public Agencies Governance Act*.**

To be timely and effective, the Appeals Commission needs the right set of competencies among its commissioners, and there is value in having a degree of institutional memory preserved in the organization.

We encourage the government to explore options that can meet the needs of the Appeals Commission while honouring the intent of APAGA. One option might be to exempt certain core positions in the Appeals Commission, such as the Chair and Vice-Chairs, from the term limit provisions of APAGA.

## ENHANCING ACCESS TO ADVICE

Presently, workers who wish to engage the internal review or appeal processes can access the WCB's Office of the Appeals Advisor (OAA) for assistance. Generally, advisors in the OAA are former case managers who have training and certification in tribunal administrative justice and familiarity with the *Workers' Compensation Act* and WCB policies. Advisors can provide several services to workers, including:

- Offering information about the *Workers' Compensation Act* and WCB policies and how these might apply to the worker's claim;
- Helping a worker determine if they have grounds for internal review of a WCB decision, or grounds for an appeal to the Appeals Commission;
- Suggesting alternatives to filing an appeal; and
- Accompanying workers and representing them at Appeals Commission hearings.

Stakeholders told our Panel that they value workers having access to a service that can assist workers with reviews and appeals. However, many expressed anxiousness with the fact that the OAA is operated by WCB employees. Several people suggested this puts OAA staff in the difficult position of "serving two masters" – that is, helping advance the worker's interests about a decision while working for the organization that has made the decision and will also undertake the internal review process of the decision.

This is another instance in the current system where perception may be more important than reality. Our Panel can not point to substantial evidence that the OAA's ability to provide assistance to workers is compromised by their position within the WCB organizational chart. In fact, we heard from many workers who expressed satisfaction with the services they had received from the OAA.

However, given the importance of the OAA's mandate, the perception of independence in their work is vital. Workers who turn to the OAA are typically suffering from injuries and illnesses, and they may have reduced capacity to navigate the system's review and appeal processes on their own. Moreover, they may have little to no experience with administrative tribunals or the application of legislation or policy. When they seek the help of the OAA they are depending on its advisors to counsel them and, in some cases, advocate for their interests. They should not have lingering questions as to whether that assistance and advocacy was undermined by a conflict of interest.

Similarly, it is unfair to place the advisors of the OAA in a position where their hard work can be so easily subject to perceptions of bias or conflicts of interest.

Our Panel feels that to maintain the trust and confidence of the individuals they serve, the OAA should be made independent from the WCB.

## **Recommendation 55:**

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### **Have the Office of the Appeals Advisor report to the new Fair Practices Office.**

Worker advisory services similar to the OAA are available in the workers' compensation systems of most other provinces. Most of these services report to authorities that are separate from the workers' compensation boards.

Our Panel believes that this approach makes sense. Our view is that the OAA has a natural fit with the Fair Practices Office that we recommend be established and be accountable to the Minister of Labour. As part of the Fair Practices Office, the OAA could provide services independently of the WCB. It would also be ideally positioned to support the Fair Practices Office in identifying trends as they relate to people's experiences with the system's review and appeals processes.

Decisions within the OAA are not appealable, however, this is not a bar to a complaint to the Alberta Ombudsman.

Currently the OAA does not bring forward issues for judicial review. This is because the advisors are employees of the WCB and this is a conflict. This can result in a gap in representation, where a significant policy issue arises and may impact the WCB jurisprudence in the province.

By moving the OAA and giving independence in the Fair Practices Office, the conflict is removed and allows an opportunity to consider the representation at judicial review.

## **Recommendation 56:**

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### **Provide for representation at judicial review supported by the OAA.**

Our Panel contemplates that the advisors within the Fair Practices Office would be empowered to bring matters forward for judicial review/appeal or provide support for an application for judicial review/appeal based on substantive policy considerations.

In order to have a robust representation of parties, it should include support for representation at judicial review. It is not based on the outcome to the claimant, it is based on policy considerations only. Our Panel also recognizes the need for legal support for analysis to determine if judicial review is justified. This is intended to create a more robust system.

The decision not to proceed with a judicial review by the OAA, does not preclude the worker from proceeding to judicial review on its own. Our Panel recommends that this OAA decision is not appealable.

**“Definitely, employers should be provided with equal access to WCB funded representation as is afforded to the worker.... Not all employers have the discretionary funds to hire a representative to represent them through the appeal process and the Office of the Appeals Advisor, acting solely as an advocate for the worker, is inherently unfair.”**

*- Employer*

As the OAA is organizationally relocated, there is also an opportunity to expand the reach of its services. Many stakeholders told our Panel that employers would also benefit from the same suite of services that the OAA currently provides to workers.

Right now, employers can access the Employer Appeals Consulting Service (EACS), which is also embedded in the WCB and provided by WCB account managers. EACS plays a similar role as the OAA when it comes to providing information and helping an employer determine whether they should proceed with an internal review or appeal. However, unlike the OAA, EACS will not accompany or represent an employer at an appeal hearing.

The workers' compensation systems in several other provinces also provide employer advisory services, including British Columbia, New Brunswick, Newfoundland and Labrador, Ontario and Prince Edward Island.

Our Panel believes that it makes sense to enable employers to access the same suite of advisory services that are available to workers.

## **Recommendation 57:**

**Expand the scope of the OAA to include the provision of the same suite of advisory services to employers.**

The most logical approach is to expand the mandate of the OAA to serve employers as well as workers. The same arguments that favour independent delivery of these services to workers are equally valid as it concerns employers.

It is logical to assume that the system is likely to experience an uptick in appeals from employers as a result of this recommendation. However, the intent of the recommendation is not to make the system more adversarial, but to better support employers in utilizing the reviews and appeals processes for the types of matters in which they have direct interests.

For example, during the 2015-2016 fiscal year of the Appeals Commission, a total of 203 appeals issues were initiated by employers. Of these, the plurality related to issues concerning cost relief (74), while appeals concerning the acceptability of a claim (48) or temporary total disability (36) represented were not as frequently initiated. We would not expect this profile to change drastically in the wake of implementing this recommendation.

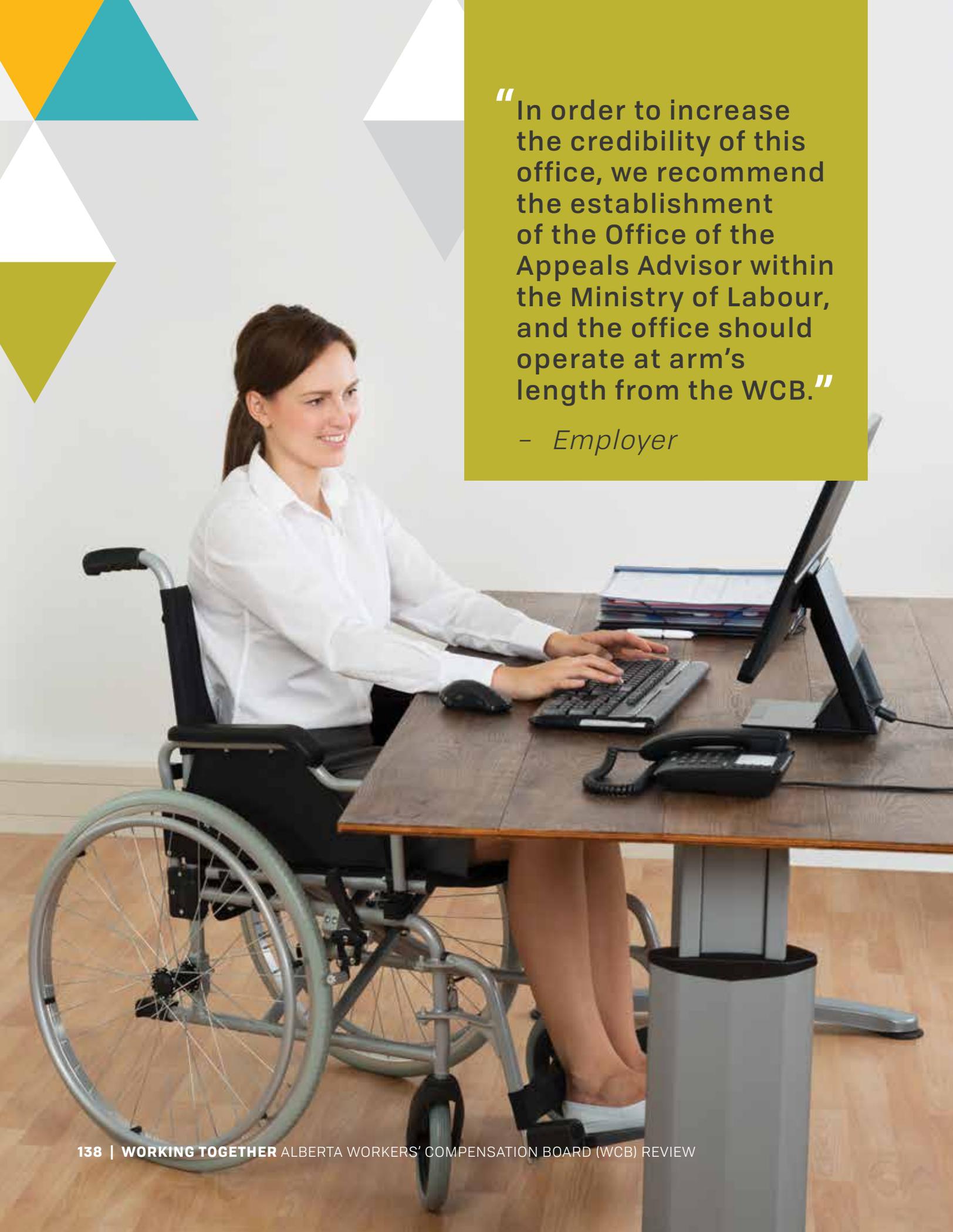
To ensure appropriate use of the OAA, we believe the Fair Practices Office should establish threshold criteria for accepting and providing help with a matter.

We also believe that the Appeals Commission should monitor changes in the frequency and type of appeals that are brought by employers after assistance with appeals is made available to them. In the event that there are marked undesirable changes resulting from this recommendation, our Panel would suggest the availability of this assistance to employers be reviewed in three years' time at the next review.

Our Panel is confident that our recommendations regarding the OAA, and the establishment of the Fair Practices Office, will have the effect of enhancing the quality of advocacy in the system, enhancing the reviews and appeals of decisions, increasing the review of WCB policies, and adding transparency to the system. This will add much-needed sunlight and breaths of fresh air to the system, and will push it to achieve better outcomes.

At the same time, we recognize these changes can only go so far with respect to legal representation for workers. We note that some other jurisdictions have undertaken the establishment of clinics aimed at providing legal aid assistance in the area of workers' compensation. Going forward, there may be a need to examine what can be done from the standpoint of providing legal aid for workers' compensation matters, recognizing that the demand for legal aid is significant and growing in many areas of law, particularly those areas where the liberty of individuals is at stake.





**“ In order to increase the credibility of this office, we recommend the establishment of the Office of the Appeals Advisor within the Ministry of Labour, and the office should operate at arm’s length from the WCB.”**

*- Employer*



# SUPPORTING PREVENTION **OF INJURIES AND ILLNESSES**

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Realistically, there will always be a need for Alberta's workers' compensation system. But in an ideal future, workers will rarely need to access the system because they will rarely suffer workplace-related injuries or illnesses.

Stakeholders told our Panel that more work needs to be done to prevent injuries and illnesses arising from employment. Moreover, they said that multiple parties have roles in prevention. No one questioned the government's role in regulating and encouraging safe workplaces, nor employers' roles in managing their workplaces not only in accordance with regulations, but also in proactive ways that embrace best practices. Workers and their representatives appropriately recognized their partnership in fostering workplace safety, in following safe practices, rules and protocols, and in calling attention to concerns where safety issues arise in their workplaces. Indeed, all citizens have their own roles to play in fostering health and safety at work and at home.

When it came to Alberta's workers' compensation system, stakeholders had more of a struggle. In speaking with Albertans and analyzing the current system, our Panel determined that there is a lack of clarity about the role of the WCB relative to the role of Occupational Health and Safety (OHS). This role confusion has impacts on many entities and activities, including safety associations, the gathering and use of data from WCB claims, and even the ability of employers to secure contracts.

The workers' compensation system can not and should not be simply divorced from injury and illness prevention. Its significant influence over employers and its extensive reach across the public, private and non-profit sectors makes the system an important partner in encouraging safer workplaces. The challenge is for the system to do this in a way that is complementary to the efforts of others without creating duplication, unintended consequences or confusion among stakeholders.

Our Panel's recommendations in this area are aimed at bringing about a workers' compensation system that:

- Works in collaboration with Occupational Health and Safety, employers, workers and worker representatives in efforts to promote safe workplaces and prevent workplace-related injuries and illnesses;
- Has a role that is distinct and complementary to that of Occupational Health and Safety, and which is clear to stakeholders; and
- Leverages its expertise, knowledge, data gathering and other assets to help inform and support prevention efforts.

## BRINGING APPROPRIATE OVERSIGHT TO SAFETY ASSOCIATIONS

One area where the WCB currently plays a role is administering grants of annual operating funding to seven Alberta safety associations:

- Alberta Construction Safety Association;
- Alberta Hospitality Safety Association;
- Continuing Care Safety Association;
- Alberta Municipal Health & Safety Association;
- Manufacturers Health & Safety Association;
- Alberta Motor Transport Association; and
- Enform.

These grants are funded through a levy that is added to the WCB assessments of employers in the represented industries. The decision to fund a safety association is made by employers in the applicable industry. The majority of the employers (as measured by insurable earnings) must vote in favour of a funded association; when this happens, all employers in the industry are bound to pay the WCB-collected levy. After submission and approval of a business plan, the funds are collected by the WCB and distributed to the safety association in quarterly installments. These funds collectively are not insignificant and have been up to 40% of the budget distributed to Occupational Health and Safety, which is also fully funded through a WCB levy.

According to the WCB, the funding provided to safety associations is intended for promoting education in accident prevention to employers. Among the activities that safety associations might undertake are:

- assisting industry members with the development and implementation of health and safety programs;
- producing publications for industry including catalogues, posters and videos;
- coordinating audit services (including auditor training) to help employers assess their programs; and
- developing and delivering health and safety training for industry members.

Under the *Workers' Compensation Act*, and under WCB policy pursuant to the Act, the WCB has oversight responsibilities for industry safety associations for which it collects levies. The WCB is expected to review and satisfy itself of several matters before providing a safety association with grant installments, including that the industry safety association is representative of worker and employer interests, that the performance of the safety association is influencing injury reduction, and the coordination of the safety associations' efforts with other associations so as to optimize resources.

These associations are typically structured as nonprofit entities with boards of directors, and so are theoretically accountable to their members through those boards. However, an employer in an industry represented by one of these safety associations is required to pay the levy (and thus help fund the association), even if that employer is uncertain about the value proposition of the association or has uncertainties about how the money is being spent. Indeed, our Panel heard concerns from many stakeholders, including some employers, about the accountability of safety associations.

In comparison, there are other safety associations in Alberta that are not funded through a WCB-collected levy, but rather are funded directly by their members. Membership in these associations is voluntary and not always restricted to a particular industry. Employers who are members of these associations have more flexibility. If they are uncertain about the value of the association or the way it is being operated, they can theoretically cancel their membership and stop contributing funds to the association.

This leads to a logical conclusion. If employers of safety associations funded through a WCB-collected levy are essentially 'forced to pay', there needs to be some effective oversight in regards to how those funds are spent. Despite the fact that oversight expectations are set down for the WCB in legislation and policy, it appears that a number of these expectations are not being met.

Right now, the WCB's oversight of safety associations is virtually limited to financial oversight. We heard that grant installments are generally provided to safety associations upon their submission of business plans or grant installments.

In keeping with the expectations set down in legislation and policy, our Panel would expect that the release of a grant installment would be predicated not only on a financial statement (which identifies how money has already been spent), but also on:

- a business plan (which identifies how the association intends to spend funds);
- adherence to requirements in WCB policy (such as the requirement to have a worker representative on the board of the association, or the requirement for an association to cooperate with other associations in safety programming); and
- performance metrics (which identify how the expenditure of funds has translated into improved health and safety outcomes among its members).

Some have suggested that the WCB is not well placed to evaluate safety associations in this manner because its mandate and strength is administering compensation, and not the promotion of workplace health and safety. This may very well be a reason why the WCB has not taken a more active role in efforts to improve workplace safety and prevent workplace injuries and illnesses.

As it happens, there is an organization whose mandate and strength is focused on promoting healthy and safe workplaces. That is the Occupational Health and Safety (OHS) branch of the Government of Alberta's Department of Labour.

In fact, OHS already plays a role in assessing the efficacy of safety associations in respect of the Alberta Certificate of Recognition (COR) program. An employer can receive a COR by developing health and safety programs that meet provincial standards. The COR program is delivered by safety associations who have earned the designation of "Certifying Partner" from OHS, which grants this designation based on its assessment of the safety association.

There is thus a natural relationship between the work of OHS and the mandate of safety associations. We believe OHS is well positioned to provide the oversight required of safety associations that are funded through WCB-collected levies, including oversight to ensure better coordination and alignment of programming undertaken by safety associations.

## Recommendation 58:

**Safety associations funded through WCB-collected levies should receive their grant installments from WCB only after satisfying oversight requirements established and delivered by OHS.**

Our Panel would see the mechanism working as follows:

- An industry can continue to use the existing WCB process (i.e., the vote process) to establish a WCB-collected levy from employers in the industry represented by the safety association.
- The WCB will continue to collect levies from employers for the purposes of funding the safety association.
- OHS will establish requirements, such as performance metrics, that provide oversight that the money collected from employers to fund the safety association is being used to encourage and achieve improvements in workplace health and safety among employers in the industry.
- To receive its grant installment, the safety association will need to comply with the OHS requirements.
- If and when the safety association has met the OHS oversight requirements, OHS will notify the WCB and authorize release of the safety association's grant installment.

This approach would enable safety associations to raise their funding through the existing WCB collection mechanism, which our Panel heard is important, while ensuring there is appropriate accountability for the expenditure of those funds.

It would also have the benefit of better clarifying the roles of the WCB and OHS in respect of workplace injury and illness prevention. While they both have roles they can play collaboratively, the WCB is responsible for compensation while OHS is responsible for the promotion of workplace health and safety.

To be clear, our recommendation above is not intended to alter or derogate from the relationship between OHS and safety associations in respect of the COR.

Our Panel wishes to note that we heard several comments from stakeholders about the COR and the part it plays in the WCB's Partnerships in Injury Reduction (PIR) program. There are many questions about the incentives that employers receive from the WCB in respect of PIR and COR and whether these incentives have logical relationships to the actual level of health and safety in employer workplaces. We also heard concerns that the Alberta COR may unintentionally contribute to claims suppression in workplaces.

We anticipate that PIR and COR would be examined in more detail as part of any future occupational health and safety system review. Our Panel therefore makes no recommendations in respect of PIR and COR at this time, but we feel it is important to bring attention to the uncertainty stakeholders have about these matters.

## ENHANCING DATA COLLECTION

Early in our work, we heard a number of recurring concerns related to data about workplace injuries and illnesses. As part of its operations, the WCB collects data from employers about workplace injuries and illnesses, resulting in the largest repository of data of this kind in Alberta. Though they recognized and emphasized the importance and potential usefulness of this data, stakeholders expressed concerns to our Panel about the limitations of this data and how it's being used. To investigate these issues, our Panel worked with representatives of OHS to host a data symposium at the end of January, in which we explored data-related issues with stakeholders.

Some stakeholders had questions as to whether this issue fell within our mandate. To this we say two things. First, our Panel's mandate was broadly construed. Second, if the workers' compensation system is to effectively fulfill its mandate in the future it needs to base its decisions on good data and evidence. The system can have very well-thought-out processes, but if the data informing those processes is wanting then the results of those processes will be wanting as well. It therefore makes good and logical sense to explore issues regarding data.

Participants at the data symposium identified several strengths in the current approach to data collection. For example, the data that WCB requests from employers is seen as generally easy to collect. It is protected and stored securely, which gives stakeholders confidence. The data is easily accessible online for approved organizations, and the online repository is reportedly easy for users to navigate and mine for data and trends.

At the same time, stakeholders said they have significant challenges with how data collected by the WCB is being used – particularly when it is being used for purposes that bear no relationship to those for which it was originally collected.

One of the biggest areas of concern is data about “lost time” claims. When a claim is submitted, the WCB makes a determination as to whether the claim is a “medical-aid only” claim or a “lost time” claim. A “lost time” claim is one in which the worker's injury or illness resulted in them being away from work for a certain period of time. There are limitations to data about lost time claims. One significant limitation is that the data is collected within the context of the WCB's “no fault” approach to compensation. It thus does not provide any details as to whether the worker's injury or illness arose from unsafe workplace conditions, from a failure to follow safety practices, or from some other cause. Further, the data does not provide details about the nature or severity of the worker's injury or illness, which could assist in analyzing safety performance. To the WCB these limitations are seen as inconsequential because lost time claims are recorded by the WCB as a basis on which to record the cost of worker injuries and illnesses.

To employers, however, the limitations of WCB lost time claims data are very consequential because some private sector organizations are using the data as a metric for evaluating the safety of subcontractors. Our Panel heard, for example, that prime contractors in construction will typically look at WCB lost time claims data when tendering work to subcontractors. An employer with lost time claims can effectively be shut out of securing contractual work opportunities, placing the viability of their business at risk. According to some stakeholders, this dynamic is contributing to claims suppression in some workplaces. In such workplaces, an injured worker can be discouraged from submitting a WCB claim not only by the employer (who wishes to keep their record clean) but also by fellow employees, who are concerned they will lose their jobs if the company can not successfully bid on work.

This is a compelling example of how employers and workers can be dramatically impacted by the use of data for purposes other than those for which it was collected. The reality is that WCB lost time claim data is a poor indicator of an employer's commitment to injury and illness prevention or the actual level of health and safety in their workplace. And it is not collected by the WCB to be an indicator of these things. However, private sector firms are using lost time claims data as such an indicator, and this is causing frustration for both employers and workers.

Stakeholders told our Panel that this issue needs to be addressed as part of broader improvements to collection and use of data about workplace injuries and illnesses. They also noted other areas that could be improved. For example:

- Data results are not always timely, and this can undermine their usefulness. To be useful for informing injury and illness prevention in workplaces, data has to be relatively recent in nature.
- Different provinces and territories use different definitions, classifications and coding methodologies for data in their systems. This makes it difficult for organizations to assess the performance of industries and employers in Alberta relative to those in other provinces and territories. Being able to clearly see how Alberta workplaces "stack up" would be informative.
- Even within Alberta, different definitions and classifications are used by organizations that collect various types of data around worker injuries and illnesses. This makes it more challenging for our province to undertake prevention efforts.

Stakeholders told us what they would like to see an improved data collection approach look like. They described an approach with the following characteristics:

- Data collection should be aligned and harmonized among the WCB, OHS and other organizations in Alberta that might have data which is informative for preventing workplace injury and illness. Over the longer term, definitions, methodologies and coding structures should be harmonized across provinces and territories.
- Data should be used for the purposes for which it was intended. If a different use for the data is contemplated, this should be discussed with stakeholders that have interests in the system.
- An improved system should strive to identify and adapt the best practices that are used by jurisdictions across Canada and around the world.
- There needs to be trust amongst those who are providing information (i.e., employers and workers), the WCB and OHS. People need to have trust that data will be used appropriately and fairly, consistent with what has been committed. The roles and expectations on all sides should be clear.

The complex issues around the collection and use of data will not be addressed overnight, and certainly not by our Panel. However, we believe that work needs to continue on this matter, with the WCB, OHS and stakeholders working in collaboration to develop solutions.

## **Recommendation 59:**

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**OHS and WCB jointly establish a working group featuring representation from employers, workers, the WCB and OHS, to examine issues and make improvements to the collection and use of data related to workplace injuries and illnesses.**

Among its efforts, the working group should develop and implement solutions related to:

- The use of data for purposes other than those for which it was collected;
- The harmonization of data among the WCB, OHS, other entities, and other public agencies, boards and commissions in Alberta;
- The timeliness of data that is gathered; and
- Addressing privacy implications that might attend the gathering of data regarding workplace injuries and illnesses and the sharing of that data among the WCB, OHS and other entities.

Importantly, although stakeholders wish to see improvements to the collection and use of data, they do not wish for data collection to become onerous. Our Panel heard several people caution against the creation of multiple reporting avenues to multiple parties. If possible, they said, the WCB's existing data gathering mechanism should be used.

This could mean that in the future the WCB will collect information on behalf of others (such as OHS) that is over and above the information it currently collects related to compensation. This may require granting additional authority to the WCB under the *Workers' Compensation Act*.

## **Recommendation 60:**

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**Amend the *Workers' Compensation Act* as required to give the WCB authority to collect information relevant to the prevention of workplace injuries and illnesses and to disclose such information to OHS.**

Some of this information is likely to include personal information about workers and employers. Care will need to be taken to ensure the WCB complies with all applicable privacy legislation.

## EXPLORING A UNIFIED ORGANIZATION

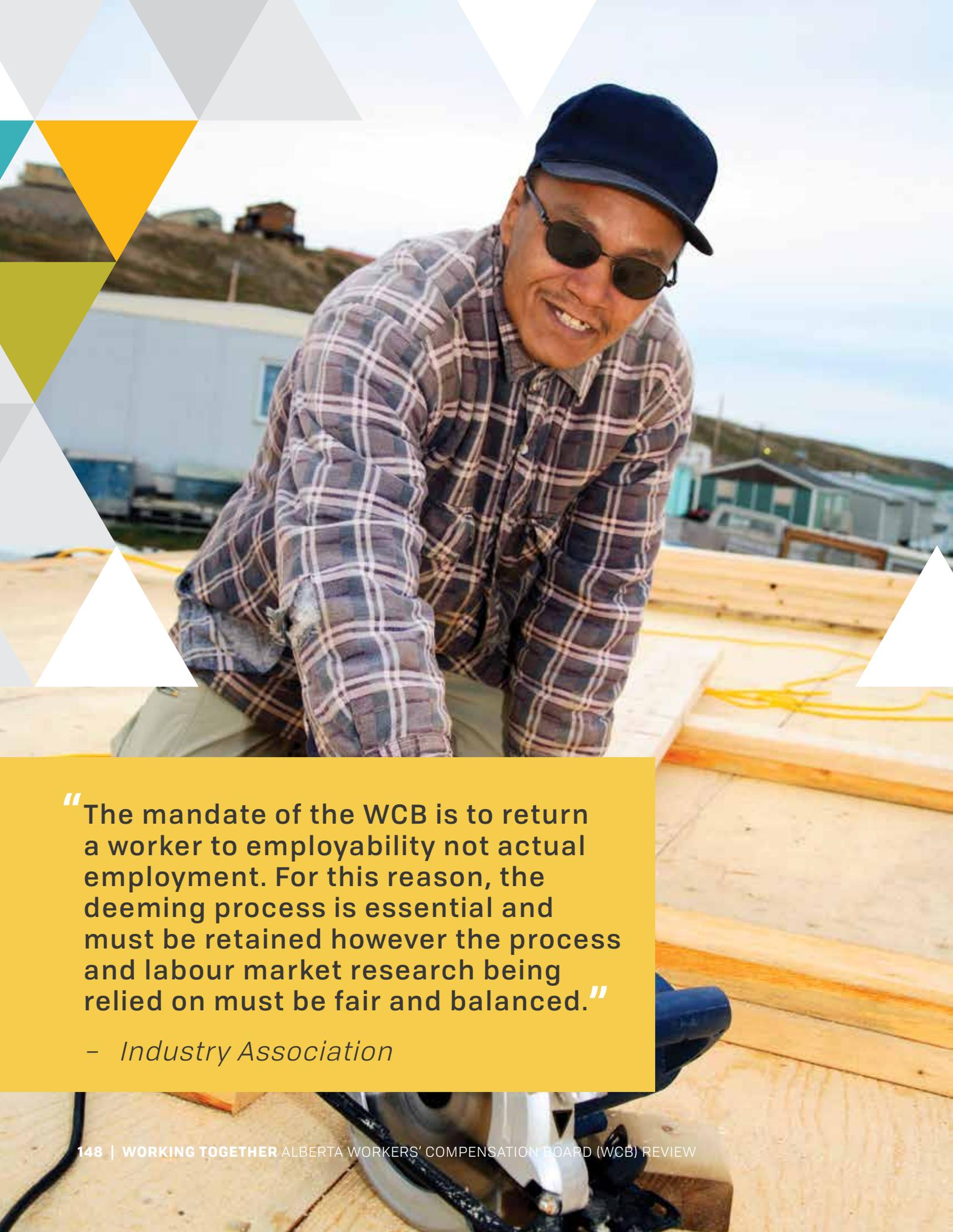
Another issue that came to the attention of our Panel was the idea of creating a unified organization in Alberta to deliver both workers' compensation and occupational health and safety. Five other jurisdictions in Canada use this approach, including British Columbia, New Brunswick, Prince Edward Island, Yukon and Quebec.

Stakeholders had mixed views about the idea of a unified organization. Some people feel that creating a unified organization would only exacerbate the role confusion that currently exists between the WCB and OHS in respect of injury and illness prevention. Other people noted that the WCB and OHS perform different functions and that employers and workers have unique relationships with both organizations; combining the two, they feared, might inadvertently impair or complicate these relationships. Still others liked the idea of a unified organization, suggesting it would bring about more integrated efforts to reduce workplace injuries and illnesses.

Our Panel believes that the WCB and OHS are partners, along with employers and workers, in preventing workplace injuries and illnesses. Now and in the future there is a need for the WCB and OHS to coordinate and collaborate on this front. At the same time, they each have separate roles in that partnership and these roles need to be clear to stakeholders. Merely combining the two organizations would not necessarily bring about better outcomes.

Our Panel is not prepared to make a recommendation on a unified organization at this time. The Government of Alberta may have an interest in examining this matter as part of a review of occupational health and safety.





**“The mandate of the WCB is to return a worker to employability not actual employment. For this reason, the deeming process is essential and must be retained however the process and labour market research being relied on must be fair and balanced.”**

*- Industry Association*



# OTHER MATTERS

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## PRIVACY AND CONFIDENTIALITY

When our Panel commenced its review, one of the topics that we flagged for exploration was privacy and confidentiality in the system. Both the *Guide* and the *Workbook* that we published spoke to issues around privacy and confidentiality, such as the transmission of records and information amongst entities in the system (e.g., the WCB, the Appeals Commission, the Medical Panel Office) when a disagreement is being reviewed or a matter is being appealed.

Stakeholders acknowledged the importance of the system respecting people's privacy rights and treating personal information with sensitivity and appropriate safeguards. However, our Panel heard little in the way of concerns about the performance of the system in this regard.

As part of our work, our Panel heard from the Office of the Information and Privacy Commissioner of Alberta. They advised that, in their view, the workers' compensation is doing a good job when it comes to privacy and confidentiality of information. Our Panel was pleased to hear these comments and encourages the entities in the workers' compensation system to continue their positive efforts in this regard.

## COMMUNICATION WITH THE SYSTEM

By contrast, stakeholders provided mixed reviews about many aspects of the system's performance when it comes to communicating with workers, employers, health professionals, and the general public. We heard many calls for the system to improve its communications practices so that it is more open, more transparent, more forthcoming, clearer, and easier to access.

Our Panel echoes these calls for improvement. We noted several ways where the system's ability to communicate could and should improve.

The WCB's communications with injured workers are prime examples. It is obvious that letters sent by the WCB to injured workers are fashioned on templates. Our Panel saw examples containing disjointed phrases and other tell-tale signs of information being plugged into blank spaces on a pre-written form. Some of the letters our Panel reviewed also demonstrated a lack of professionalism and on occasion a disrespectful approach that one should not expect from an individual – especially a decision-maker – when they are communicating with a person who has suffered a tragic accident or illness. There is something to be said for approaching a matter with sensitivity and grace when dealing with an injured worker, in a way akin to the bedside manner one would hope for from a professional in a health setting.

Other aspects of the WCB's communications are also problematic. Our Panel heard from stakeholders that it is difficult to connect with WCB staff by telephone. The WCB website is seen as opaque and confusing. Board policies are hard to interpret and sometimes unclear.

The WCB is also not particularly upfront about the benefits to which an injured worker is entitled. Rather than being given information proactively about what they can expect from the system or the different types of assistance that are available, an injured worker must work to research this information on their own. Given the difficulties described above, it is not surprising that many stakeholders take a suspicious view that the WCB makes information deliberately tough to find and understand things.

In keeping with the worker-centered system our Panel envisions, the WCB's communications approaches need to shift. Confusion should give way to clarity. Directness should be balanced with respect for an injured worker's dignity. Obfuscation should be abandoned in favour of openness about what is available, what is possible, and where a worker or employer can turn for assistance. The WCB's communications are important manifestations of its reputation, brand and culture. Getting the tone, tenor and content of these communications right will go a long way in helping restore trust and confidence in Alberta's workers' compensation system.

## OPTIONAL PERSONAL COVERAGE FOR DIRECTORS

In today's workplace, the position of "director" can encompass an appointee to a large multi-million dollar corporation or a small incorporated operation where the director may at times resemble, if not actually be, a worker. The increasing attention being paid to the fiduciary responsibility of directors raises issues of liability that have not arisen in the past.

Optional personal coverage is available through the WCB for business owners, partnerships, and directors of a corporation and members of a society, board, authority, commission or foundation. Currently, it is available up to the maximum earnings covered by WCB (\$98,700 in 2017).

In addition to benefits, by purchasing coverage, directors are also protected from civil action resulting from workers' compensation related injuries while they are acting in the capacity for which they have coverage. This is just like others covered by workers' compensation. However, not all directors choose to have WCB coverage.

Other jurisdictions have different models. Some have blanket mandatory coverage, some have mandatory coverage if the director is on the payroll and others have optional coverage. The immunity from civil action also varies.

Our Panel suggests this issue and the current variation of models needs further study, and could be a topic for the next review.

## COVERAGE BY THE WCB

In the course of our engagement activities, our Panel heard from various stakeholders, groups or associations of workers about their desire to be included in or excluded from coverage by Alberta's workers' compensation system.

We noted that there is a level of interest in this matter and that there does not currently seem to be a formal process by which workers or worker organizations can apply for coverage. We also note that the scope of those covered by the WCB has not been reviewed in quite some time. Given the issues and the interest expressed by stakeholders, our Panel asked the government for clarification. Ultimately, it was confirmed that our Panel's mandate did not include an examination of which employers or workers ought to be covered by the system.

Going forward, the Government of Alberta may wish to explore the establishment of a process by which workers or organizations can apply to be covered by the system or relieved of the requirement to be covered by the system. If such a process is established, our Panel would expect that it would feature sufficient and meaningful stakeholder consultation.



**“The process and practices related to labour market research should be reviewed and consideration given to how this research will be done going forward. This is a critical area and ensuring that best in class practices are being followed, including the skills and expertise of the individuals doing this important work.”**

*– Industry Association*

# CONCLUSION

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Nearly one hundred years ago, the Alberta government of the day set down an historic compromise among employers and workers, giving birth to Alberta's workers' compensation system. We heard from Albertans that they continue to value the system.

Our recommendations, if implemented, will help ensure the system is positioned to provide fair compensation and meaningful rehabilitation for injured workers, while remaining sustainable and affordable. In so doing, they will honour the historic compromise and bring about renewed trust and confidence in the partnership that is essential for the system's success.

Looking ahead, the world of work will undoubtedly change in ways that we cannot predict. As they always have, workers and employers in Alberta will undoubtedly adapt to those changes with an intrepid spirit. They should be able to do so confident in the knowledge that the workers' compensation system is there to assist them should workplace-related injuries or illnesses occur.

Workers, employers, other stakeholders and the public are all key partners in the workers' compensation system. They all have interests in helping ensure the system is effectively fulfilling its purpose over the long-term and they have signaled a willingness, and a desire, to engage with decision-makers in the system to influence the system's future direction. Our Panel is optimistic that with such ongoing and productive dialogue in place, Alberta's workers' compensation system will continuously improve, keep pace with changing times, and meet the needs of workers and employers for many decades to come.



**“ Alberta’s presumptive status list is narrower than in other jurisdictions. This may be due to an absence of a clear regular and transparent process for review of schedule B. An independent three person panel of OHS physicians should be struck to review Schedule B on a yearly or biennial basis.”**

*- Union*



# APPENDICES

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## APPENDIX A – TERMS OF REFERENCE

### TERMS OF REFERENCE WORKERS' COMPENSATION BOARD REVIEW

As a part of the review of Alberta's agencies, boards and commissions, the Alberta government is conducting a review of the Alberta Workers' Compensation Board. The purpose of the review is to strike the right balance between workers and employers to ensure fair compensation, meaningful rehabilitation for an injured worker, and a sustainable and affordable workers' compensation system.

The terms of reference for the review are outlined below. This approach to the review has been discussed with the major organizations and individuals with an interest in this process and its outcomes.

#### Terms of Reference for a Review of the Workers' Compensation Board

**1. Governance:** Are the structures and processes used to direct or govern the affairs of the WCB effective for setting the organization's direction and overseeing the organization's management so that the organization effectively fulfills its mandate?

The scope of the review will include:

- Board size, composition, appointments, executive compensation and legislative compliance;
- Transparency, accessibility and communications;
- The Board's relationships with the Appeals Tribunal and the organizations charged with the prevention of workplace injuries and fatalities;
- The design, collection and dissemination of harmonized data on prevention measures, injuries and fatalities, return to work programs, and claims/compensation outcomes; and
- Jurisdictional review comparison that examines entitlement rates, comparability rates, and the correlation between rates of fatality in a jurisdiction compared to the number of claims in a jurisdiction.

**2. Appellate Structure and Effectiveness:** The entire appellate structure and mechanisms will be reviewed to include the internal WCB appeals system prior to cases being referred to the Appeals Commission itself. Moreover, the governance and structure of the Office of the Appeals Advisor will be reviewed and recommendations will be provided to ensure this office is appropriately situated.

**3. Principles of Compensation:** Recommendations will be made as to whether the current principles of compensation address all longstanding, current and emerging workplace injuries such as mental health and repetitive strain injuries in an effective and comprehensive manner. Do the principles of compensation result in fair compensation and meaningful rehabilitation? Does the current funding model (including employer premiums, rebates, Certificates of Recognition refunds and incentives) promote fair compensation and meaningful rehabilitation for injured workers?

**4. Policies, including implementation:** Recommendations are to be made with respect to WCB policies and the way those policies are developed and implemented. Recommendations should reflect a balanced and effective workers' compensation system that ensures fairness, confidentiality and privacy, objectivity, transparency, ease of access, sensitivity and timeliness. A clear recommendation should also be made on adequacy of the policies and the way they are developed.

**Some additional considerations should be included as follows:**

- Privacy and confidentiality for claimants.
- Reduction in the complexity and invasiveness of WCB processes.
- Claimants access to representation, including legal representation (legal aid).
- Transparency of processes and decision making at the WCB and Appeals levels.
- Workers' human rights, including the duty to accommodate and the protection of workers with mental health or cognitive or emotional illnesses.
- Reasonableness of timelines at the appeals level.
- Timeliness of services.
- Performance Measures for WCB and the Appeals Commission.
- Recommendation on any alleged allegations such as "claims suppression".

## APPENDIX B – SUMMARY OF RECOMMENDATIONS

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
<b>SHIFTING THE SERVICE CULTURE</b>			
<p><b>Recommendation 1:</b> Amend the <i>Workers' Compensation Act</i> to include a preamble which states the objects of the Act and, in so doing, articulates the purpose of the workers' compensation system.</p>	✓		
<p><b>Recommendation 2:</b> Establish a Code of Rights and Conduct for the WCB organization that articulates the rights of workers and employers in their interaction with the organization and articulates in detail how the WCB commits to operate in recognition of these rights.</p>		✓	
<p><b>Recommendation 3:</b> The Government of Alberta, through the Minister of Labour, should establish expectations for the WCB Board of Directors through a robust Mandate and Roles document.</p>		✓	
<p><b>Recommendation 4:</b> In the WCB Mandate and Roles document, provide for a structure of three standing committees of the WCB Board of Directors. In the Terms of Reference for each committee, specify that the committee is to undertake consultation with stakeholders in its work.</p>		✓	
<p><b>Recommendation 5:</b> Amend the <i>Workers' Compensation Act</i> to remove the CEO from membership on the WCB Board of Directors.</p>	✓		
<p><b>Recommendation 6:</b> Establish a Secretariat within the WCB organization that is dedicated to supporting the WCB Board of Directors and can provide the Board with access to independent resources.</p>			✓
<p><b>Recommendation 7:</b> The WCB Board of Directors, in consultation with the Minister of Labour and stakeholders, review the competency matrix that is applied when recruiting Board members.</p>		✓	
<p><b>Recommendation 8:</b> WCB Board establish a Policy and Practice Consultative Committee, comprised of representatives from the WCB and stakeholders, to provide input into the policy development process.</p>		✓	

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
<b>Recommendation 9:</b> WCB Board establish a calendar for regular policy reviews and policy evaluations of all pertinent WCB policies and practices.		✓	
<b>Recommendation 10:</b> Prohibit the use of performance pay, pay-at-risk, bonuses or other programs that tie the compensation of WCB employees to performance measures.		✓	
<b>Recommendation 11:</b> Engage stakeholders to gather their input into the development of new performance measures for the WCB.		✓	
<b>Recommendation 12:</b> Establish a Fair Practices Office for Alberta's workers' compensation system which plays roles similar to fair practices offices in other provinces.	✓		
<b>Recommendation 13:</b> Establish formal, scheduled meetings between the WCB, the Appeals Commission, the Fair Practices Office, the Medical Panel Office and the Department of Labour that feature published agendas and detailed meeting minutes.			✓
<b>Recommendation 14:</b> Amend the <i>Workers' Compensation Act</i> to provide for a statutory review three years from now, and every five years thereafter.	✓		
<b>TAKING A BETTER APPROACH TO HEALTH</b>			
<b>Recommendation 15:</b> Enable workers to choose their own health professionals, including their treating physicians, so long as those professionals meet a set of criteria established by the WCB.		✓	
<b>Recommendation 16:</b> Refocus the role of the medical consultant to better support a case conferencing approach. The Medical Panel Office should design and implement a quality assurance program to ensure the new case conferencing approach is achieving its desired outcomes.			✓
<b>Recommendation 17:</b> Use a roster approach, administered by the Medical Panel Office, to obtain independent medical examinations.		✓	

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
<p><b>Recommendation 18:</b> Amend applicable legislation and policies to enable injured workers to initiate the MPO’s medical panel process when there is disagreement in medical opinion about their claim.</p>	✓		
<p><b>Recommendation 19:</b> Establish an informal medical dispute resolution process within the MPO as a mandatory step before a full medical panel is convened.</p>	✓		
<p><b>Recommendation 20:</b> WCB undertake initiatives to raise levels of knowledge and awareness in Alberta’s medical community about the workers’ compensation system, its purpose, its major components and its processes.</p>			✓
<p><b>Recommendation 21:</b> WCB adjust the approach to treatment coverage so that it reflects and responds to the unique and individualized needs of each worker.</p>		✓	
<b>SUPPORTING RETURN TO WORK REALISTICALLY</b>			
<p><b>Recommendation 22:</b> Amend the <i>Workers’ Compensation Act</i> to provide that employers have an “obligation to return to work” those workers who suffer injuries and illnesses in their workplaces.</p>	✓		
<p><b>Recommendation 23:</b> WCB implement a new policy that establishes a more collaborative approach which also enforces the obligation to return an injured worker to work.</p>		✓	
<p><b>Recommendation 24:</b> Government amend the <i>Workers’ Compensation Act</i> and the WCB amend its policies to clarify that WCB will review a worker’s level of continued benefits in situations where an employer terminates a returning employee for egregious acts.</p>	✓		
<p><b>Recommendation 25:</b> WCB amend the deeming process so that it reflects the realities of Alberta’s labour market and makes a worker’s re-employment prospects the central focus.</p>		✓	
<p><b>Recommendation 26:</b> WCB revamp vocational rehabilitation services so that it helps workers re-engage with the workforce with a realistic consideration of Alberta’s labour market.</p>		✓	

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
<b>PROVIDING BENEFITS WITH A SUPPORTIVE FOCUS</b>			
<b>Recommendation 27:</b> WCB examine the use of predominant cause and its impact to ensure it does not create an unreasonable threshold for eligibility.		✓	
<b>Recommendation 28:</b> Government amend the <i>Workers' Compensation Act</i> to provide that where the disputed possibilities are evenly balanced on an issue, the injured worker receives the benefit of the doubt.	✓		
<b>Recommendation 29:</b> Amend the <i>Workers' Compensation Act</i> to require WCB to establish an Occupational Disease and Injury Advisory Committee to advise on potential changes to Schedule B of the <i>Workers' Compensation Regulation</i> .	✓		
<b>Recommendation 30:</b> Government amend the <i>Workers' Compensation Act</i> to enable the Appeals Commission to take note of commonly-seen linkages between certain injuries or illnesses and certain types of employment.	✓		
<b>Recommendation 31:</b> Amend the definition of "first responder" in the <i>Workers' Compensation Act</i> for the purposes of presumptive coverage for PTSD to include additional occupations.	✓		
<b>Recommendation 32:</b> Incorporate the dual wage loss system in legislation, including the definition of impairment.	✓		
<b>Recommendation 33:</b> Maintain the maximum insurable earnings level as it is prescribed annually by the WCB Board of Directors.			✓
<b>Recommendation 34:</b> Establish a special graduated benefit for workers whose wages place them in excess of the maximum insurable earnings range.	✓		
<b>Recommendation 35:</b> Introduce a lump sum payment specifically in recognition of an injured worker's death in the amount of \$40,000.	✓		
<b>Recommendation 36:</b> Treat a surviving spouse more consistently under the fatality benefit regime, regardless of the spouse's circumstances.	✓		

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
<b>Recommendation 37:</b> Provide cost-of-living adjustments based on the actual Alberta's Consumer Price Index, without any reduction.	✓		
<b>Recommendation 38:</b> Provide the ability to adjust the benefits of young workers to mitigate the hardship they might otherwise experience.	✓		
<b>Recommendation 39:</b> Update the retirement provisions to better recognize the impact that a workplace injury has on an injured worker's retirement savings.	✓		
<b>Recommendation 40:</b> Amend the <i>Workers' Compensation Act</i> to establish a requirement that an injured worker continues to be covered under their existing health benefits programs.	✓		
<b>KEEPING THE SYSTEM SUSTAINABLE</b>			
<b>Recommendation 41:</b> WCB Board commission an independent study on the process that should be used by the WCB to establish employer rates fairly.			✓
<b>Recommendation 42:</b> WCB maintain the current target range of the Accident Fund.			✓
<b>Recommendation 43:</b> WCB undertake a review using an independent resource on how the investment of the Accident Fund can best be managed in accordance with the Funding Policy that is established by the WCB.			✓
<b>Recommendation 44:</b> Amend the <i>Workers' Compensation Act</i> to make clear that money in the Accident Fund is in trust for the benefit of workers and employers to support a sustainable workers' compensation system.	✓		
<b>Recommendation 45:</b> End the current practice of distributing "surplus" money from the Accident Fund to employers. Establish a new policy for the use of excess Accident Fund monies (i.e., when the Accident Fund exceeds its target range) which respects the unique purpose of these monies.		✓	

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
<b>STRENGTHENING REVIEWS AND APPEALS</b>			
<b>Recommendation 46:</b> Shift the internal review process to a model based on case conferencing rather than a model based on claims management.			✓
<b>Recommendation 47:</b> WCB provide interim relief to workers and employers while their matters are under appeal.	✓		
<b>Recommendation 48:</b> Appeals Commission establish a process whereby the WCB must submit a notice of intention to attend a hearing of the Appeals Commission, which includes a description of its reasons for attending.			✓
<b>Recommendation 49:</b> The Appeals Commission encourage the use of an alternative dispute resolution mechanism as an option in the appeals process, making use of case conferencing and other approaches that help achieve early and effective resolution of matters under appeal.			✓
<b>Recommendation 50:</b> The Appeals Commission should consider its decision-making process on a regular basis and reflect as appropriate in their reports.			✓
<b>Recommendation 51:</b> The Appeals Commission take a two-stage approach to reconsideration applications that features an appropriate documentary review and a tribunal.	✓		
<b>Recommendation 52:</b> Amend the <i>Workers' Compensation Act</i> to allow the Chief Appeals Commissioner to authorize a panel of one appeal commissioner to act on behalf of the Appeals Commission for certain types of hearings.	✓		
<b>Recommendation 53:</b> Leading decisions of the Appeals Commission should be published on the Appeals Commission website, organized by topic.			✓

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
<b>Recommendation 54:</b> Consider exempting the Chair and Vice-Chairs of the Appeals Commission from the term limit provisions of the <i>Alberta Public Agencies Governance Act</i> .		✓	
<b>Recommendation 55:</b> Have the Office of the Appeals Advisor report to the new Fair Practices Office.	✓		
<b>Recommendation 56:</b> Provide for representation at judicial review supported by the OAA.	✓		
<b>Recommendation 57:</b> Expand the scope of the OAA to include the provision of the same suite of advisory services to employers.		✓	
<b>SUPPORTING PREVENTION OF INJURIES AND ILLNESSES</b>			
<b>Recommendation 58:</b> Safety associations funded through WCB-collected levies should receive their grant installments from WCB only after satisfying oversight requirements established and delivered by OHS.		✓	
<b>Recommendation 59:</b> OHS and WCB jointly establish a working group featuring representation from employers, workers, the WCB and OHS, to examine issues and make improvements to the collection and use of data related to workplace injuries and illnesses.			✓
<b>Recommendation 60:</b> Amend the <i>Workers' Compensation Act</i> as required to give the WCB authority to collect information relevant to the prevention of workplace injuries and illnesses and to disclose such information to OHS.	✓		
Total	27	19	14

## APPENDIX C – WCB CLAIM STATISTICS

CLAIMS VOLUME						
Year	Active Claims as of January <sup>1</sup>	Lost Time Claims	Medical Aid Only Claims	Total New Claims Reported	Recurrent Claims	Total Claims Administered
2011	25,860	27,072	117,381	144,453	22,917	193,230
2012	27,879	27,339	121,227	148,566	22,798	199,243
2013	28,910	27,707	121,574	149,281	15,866	194,057
2014	28,619	28,133	121,568	149,701	15,788	194,108
2015	28,586	26,029	107,408	133,437	18,899	180,922
2016	28,733	24,007	94,962	118,969	16,016	163,718

Source: WCB

Notes

1. Recurrent claims are previously inactive claims that required further adjudication or case management. Claims may reopen for a number of reasons, such as payment for medical aid or requests for further compensation benefits.

INELIGIBLE CLAIMS						
	2011	2012	2013	2014	2015	2016
<b>Lost-Time Claims</b>						
Insufficient information available to process claim	264	282	241	200	133	161
Not covered under <i>Workers' Compensation Act</i>	126	120	149	219	246	224
Injury or illness not arising out of/in course of employment	2,006	2,165	2,369	2,218	2,009	1,802
<b>Medical-Aid-Only Claims</b>						
Insufficient information available to process claim	4,670	5,115	5,127	4,183	3,827	3,876
Not covered under <i>Workers' Compensation Act</i>	2,036	2,357	2,398	2,687	2,756	2,447
Injury or illness not arising out of/in course of employment	3,614	4,953	5,187	4,823	4,948	4,532
<b>Total Ineligible Claims</b>	<b>12,716</b>	<b>14,992</b>	<b>15,471</b>	<b>14,330</b>	<b>13,919</b>	<b>13,042</b>

Source: WCB

# APPENDIX D – NEW ZEALAND INJURY PREVENTION, REHABILITATION, AND COMPENSATION (CODE OF ACCIDENT COMPENSATION CORPORATION CLAIMANTS’ RIGHTS)

2002/390

## **Injury Prevention, Rehabilitation, and Compensation (Code of ACC Claimants’ Rights) Notice 2002**

Pursuant to section 44 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, the Minister for ACC gives the following notice.

### **Contents**

1	Title	<b>Schedule</b>
2	Code of ACC Claimants’ Rights approved	<b>Code of ACC Claimants’ Rights</b>

---

### **Notice**

- 1 Title**  
This notice is the Injury Prevention, Rehabilitation, and Compensation (Code of ACC Claimants’ Rights) Notice 2002.
  - 2 Code of ACC Claimants’ Rights approved**  
The Code of ACC Claimants’ Rights set out in the Schedule is approved.
-







**Injury Prevention, Rehabilitation, and  
Compensation (Code of ACC Claimants'  
Rights) Notice 2002**

2002/390

Schedule

<p><i>Right 4</i></p>	<p>(b) We will be respectful of, and responsive to, all cultures, values, and beliefs.</p> <p>You have the right to a support person or persons.</p> <p>(a) We will welcome you and your support person(s) provided that the safety of all involved can be assured.</p>
<p><i>Right 5</i></p>	<p>You have the right to effective communication.</p> <p>(a) We will communicate with you openly, honestly, and effectively.</p> <p>(b) We will respond to your questions and requests in a timely manner.</p> <p>(c) We will provide you with an interpreter when necessary and reasonably practicable.</p> <p>(d) We will provide information in a form which you can access, and in a timely manner.</p>
<p><i>Right 6</i></p>	<p>You have the right to be fully informed.</p> <p>(a) We will provide information on how to make a claim for cover and entitlements.</p> <p>(b) We will keep you fully informed.</p> <p>(c) We will provide you with full and correct information about your claim, entitlements, obligations, and responsibilities.</p> <p>(d) We will inform you if your entitlements change.</p> <p>(e) We will give you information about how we provide services, and how to access them.</p> <p>(f) We will discuss expected time frames with you.</p> <p>(g) We will inform you of your review and appeal rights under the Act.</p>
<p><i>Right 7</i></p>	<p>You have the right to have your privacy respected.</p> <p>(a) We will respect your privacy.</p> <p>(b) We will comply with all relevant legislation relating to privacy.</p> <p>(c) We will give you access to your information, in accordance with legislation.</p>
<p><i>Right 8</i></p>	<p>You have the right to complain.</p> <p>(a) We will work with you to address problems and concerns.</p>

	<ul style="list-style-type: none"> <li>(b) We will inform you about options available for resolving problems and concerns.</li> <li>(c) We will inform you about the complaints process, and the normal time frames for dealing with complaints.</li> </ul>
<p><b>Part 3: Addressing problems and concerns; and lodging and dealing with complaints</b></p> <p><i>3.1: Overview</i></p> <p><i>3.2: Procedure for addressing and resolving problems and concerns</i></p> <p><i>3.3: Procedure for lodging a complaint</i></p>	<p>This Code sets out a framework for addressing and resolving problems and concerns at the local level, and then a process to be followed for complaints, in the event that any problem or concern cannot be resolved at the local level.</p> <p>A claimant can either—</p> <ul style="list-style-type: none"> <li>(a) raise a problem or concern at the local level, which will be addressed and resolved at the local level without a decision being made; or</li> <li>(b) lodge a complaint with the complaints service at any time, regardless of whether a problem or concern has been raised at the local level, and in that case a decision will be issued.</li> </ul> <p>A claimant can raise a problem or concern about ACC’s compliance with this Code. The problem or concern should be raised at the local level with the person the claimant is dealing with at ACC, or that person’s manager.</p> <p>ACC will work with the claimant to address and resolve problems and concerns, and to find a way forward. At this point, ACC will advise the claimant of—</p> <ul style="list-style-type: none"> <li>(a) what steps have been taken in relation to the claimant’s problem or concern; and</li> <li>(b) the procedure for lodging a complaint if the claimant is not satisfied with the resolution.</li> </ul> <p>The claimant can decide whether to lodge a complaint.</p> <p>A complaint concerning this Code should be lodged with the complaints service. The complaints service is part of ACC, and will deal with, and make decisions on, these complaints. The complaints service will act in a fair and impartial manner, taking the evidence, and the claimant’s and ACC’s views into consideration.</p> <p>A complaint can be lodged with the complaints service at any time, regardless of whether the claimant previously raised a problem or concern</p>



<p><b>Part 4: Remedies available under this Code</b></p>	<p>Upon a finding that there has been a breach of this Code, the complaints service may, where appropriate, direct ACC to—</p> <ul style="list-style-type: none"> <li>(a) provide a written or oral apology;</li> <li>(b) forward a written explanation of the situation;</li> <li>(c) meet with the claimant to consider the claimant’s views and achieve resolution, accompanied by the claimant’s support person(s) where requested;</li> <li>(d) forward information to the claimant, in an appropriate form, which explains— <ul style="list-style-type: none"> <li>– the claim and related entitlements</li> <li>– review and appeal rights</li> <li>– any appropriate legislation, services, and the expected time frames;</li> </ul> </li> <li>(e) provide the claimant with access to the claimant’s file;</li> <li>(f) facilitate communication by ensuring a response is given to questions and requests;</li> <li>(g) provide interpretation services.</li> </ul> <p>In addition, the complaints service may, where appropriate, recommend other remedial actions as required.</p>
<p><b>Part 5: Addressing situations</b></p>	<p>In addition to the remedies in Part 4, ACC will address the wider implications of breaches that arise by—</p> <ul style="list-style-type: none"> <li>(a) analysing and monitoring issues arising from the complaints process; and</li> <li>(b) identifying concerns with operational policies and processes; and</li> <li>(c) subsequently undertaking and remedying concerns associated with operational policies and processes as appropriate; and</li> <li>(d) informing the claimant that the situation has been addressed.</li> </ul>
<p><b>Part 6: Claimant’s right of review</b></p>	<p>If a claimant disagrees with any decision made by ACC under this Code about a complaint, the claimant can apply for a review of that decision. ACC will provide information about the review process to the claimant. The review process is set</p>

**Injury Prevention, Rehabilitation, and  
Compensation (Code of ACC Claimants'  
Rights) Notice 2002**

2002/390

Schedule

	<p>out in sections 133 to 148 of the Act. The Act includes, among other things,—</p> <ul style="list-style-type: none"> <li>(a) the manner in which an application must be made; and</li> <li>(b) the manner in which ACC must deal with the application; and</li> <li>(c) ACC’s duty to secure an independent reviewer; and</li> <li>(d) the role of the reviewer; and</li> <li>(e) the reviewer’s duty to act independently; and</li> <li>(f) conduct of the review hearing; and</li> <li>(g) decisions the reviewer can make.</li> </ul>
<p><b>Part 7: An appeal cannot be lodged to the District Court</b></p>	<p>Under the appeal provisions in the Act, there is no right to appeal a review decision made under this Code because section 149(3) of the Act provides that:</p> <p align="center"><i>However, neither a claimant nor the Corporation may appeal to the District Court against a review decision on a decision by the Corporation under the Code on a complaint by the claimant.</i></p> <p>Any rights of review and appeal, in relation to cover and entitlements, continue under the Act.</p>
<p><b>Part 8: Status of Code</b></p>	<p>Section 46 of the Act provides that this Code is a regulation for the purposes of the Regulations (Disallowance) Act 1989. Under section 44 of the Act, this Code must be presented to the House of Representatives.</p>

Dated at Wellington this 4th day of December 2002.

Ruth Dyson,  
Minister for ACC.

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**Explanatory note**

*This note is not part of the notice, but is intended to indicate its general effect.*

This notice, which is given by the Minister for ACC, approves the Code of ACC Claimants' Rights. The Code comes into force on 1 February 2003.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 5 December 2002.  
This notice is administered by the Accident Compensation Corporation.

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# APPENDIX E – STATEMENT OF RIGHTS - WORKERS' COMPENSATION BOARD – ALBERTA

## STATEMENT OF RIGHTS

The Workers' Compensation Board-Alberta is committed to upholding the rights of workers and employers under the Workers' Compensation Act (*WCA*), and to helping workers and employers exercise these rights.

### RIGHTS OF WORKERS AND EMPLOYERS:

<i>Fairness and impartiality</i>	You have the right to fair and impartial determination on any issue arising from the <i>WCA</i> .
<i>Review of a decision</i>	You have the right to a review of any previous WCB decision.
<i>Appealing a decision</i>	You have the right to appeal any adjudicative or assessment decision directly affecting your interests, within 12 months from the date of the decision (see G-2, <i>The Review and Appeal Process</i> ).
<i>Presumption of honesty</i>	You have the right to be presumed honest unless shown to be otherwise.
<i>Courtesy and consideration</i>	You have the right to receive courteous and considerate treatment from all WCB staff.
<i>Access to information</i>	You have the right to examine all relevant documents when a decision directly affects your interests (see Policy 01-02, <i>Access and Privacy</i> ).
<i>Privacy and Confidentiality</i>	You have the right to privacy and confidentiality. Information given to WCB will be used only for the purposes allowed by the <i>WCA</i> , and the <i>Freedom of Information and Protection of Privacy Act</i> (see Policy 01-02, <i>Access and Privacy</i> ).

### Previous versions

- [Statement of Rights - May 2006](#)
- [Statement of Rights - January 2006](#)
- [Statement of Rights - February 1997](#)

## APPENDIX F – POST-TRAUMATIC STRESS DISORDER COVERAGE

From the Healthy Minds, Safety Communities: Supporting our Public Safety Officers Through A National Strategy for Operational Stress Injuries – Report of the Standing Committee on Public Safety and National Security – House of Commons – Robert Oliphant, Chair October 2016

### APPENDIX C

The table below summarizes the types of mental health claims recognized by jurisdiction as well as PTSD presumption clauses by jurisdiction (in force and proposed). Please note that there is entitlement for PTSD across provincial jurisdictions as an ‘acute reaction to a traumatic event’ or a ‘cumulative reaction to a series of traumatic events’.

Province	Acute reaction to a traumatic event	Cumulative reaction to traumatic events	Gradual onset/ chronic stress	PTSD Presumption Clauses	Responder Definition
<b>BC</b>	Yes	Yes	Yes	Bill-M203 introduced February 23, 2016.  The provincial government is reviewing the bill and awaiting recommendations from a WorkSafeBC Steering Committee established in December 2015.	First responders <ul style="list-style-type: none"> <li>• Police officers</li> <li>• Emergency Medical Assistants</li> <li>• firefighters</li> <li>• sheriffs</li> <li>• corrections officers</li> <li>• 9-1-1 communications officers</li> </ul>
<b>AB</b>	Yes	Yes	Yes	In force since December 2012.	First emergency responders: <ul style="list-style-type: none"> <li>• Police officers</li> <li>• emergency medical technicians</li> <li>• firefighters</li> <li>• peace officers</li> </ul>
<b>SK</b>	Yes	Yes	Yes	No	n/a

Province	Acute reaction to a traumatic event	Cumulative reaction to traumatic events	Gradual onset/ chronic stress	PTSD Presumption Clauses	Province
<b>MB</b>	Yes	Yes	No	In force since January 2016.	All occupations
<b>ON</b>	Yes	Yes	No	Bill-163 passed in April 2016. Changes come into force upon Royal Assent.	First responders and other workers: <ul style="list-style-type: none"> <li>• police officers</li> <li>• full-time firefighters</li> <li>• part-time firefighters</li> <li>• volunteer firefighters</li> <li>• fire investigators</li> <li>• members of an emergency response team</li> <li>• paramedics</li> <li>• emergency medical attendants</li> <li>• ambulance service managers</li> <li>• workers in a correctional institution</li> <li>• workers in a place of secure custody or place of secure temporary detention</li> <li>• workers involved in dispatch</li> </ul>
<b>QC</b>	Yes	No	Yes	No	n/a

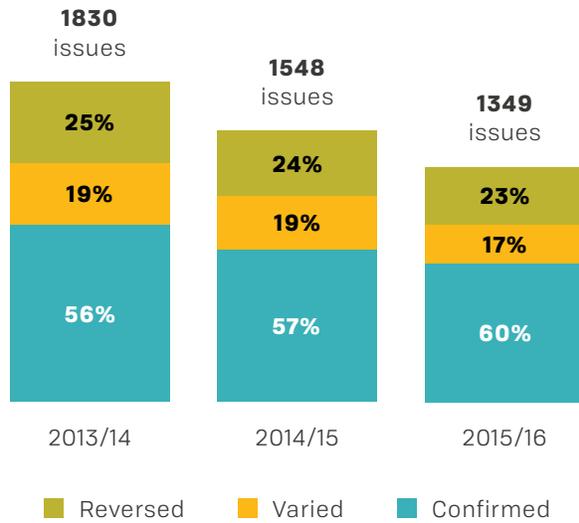
Province	Acute reaction to a traumatic event	Cumulative reaction to traumatic events	Gradual onset/ chronic stress	PTSD Presumption Clauses	Province
<b>NB</b>	Yes	No	No	Bill-39 introduced April, 1 2016. Second reading took place April 6, 2016.	Emergency response workers <ul style="list-style-type: none"> <li>• police officers</li> <li>• firefighters</li> <li>• paramedics</li> </ul>
<b>NS</b>	Yes	Yes	No	Bill-11 introduced (first and second readings) in October 2014.  The government is monitoring other jurisdictions, conducting research and expected to make an announcement later in 2016.	Emergency responders: <ul style="list-style-type: none"> <li>• police officers</li> <li>• child and family services agents</li> <li>• medical practitioners</li> <li>• correctional services employees</li> <li>• firefighters</li> <li>• dispatchers</li> <li>• registered nurses</li> <li>• registered pre-hospital first responders</li> <li>• social workers</li> </ul>
<b>PE</b>	Yes	Yes	No	No	n/a
<b>NL</b>	Yes	No	No	No	n/a

Source: Table prepared from information in the written response provided to the Committee on 20 April 2016 by the RCMP entitled *Royal Canadian Mounted Police Responses to Questions Posed/Issues Raised at SECU, April 12th and April 14th, 2016 Re: Bill C-7: Coverage under the Government Employees Compensation Act.*

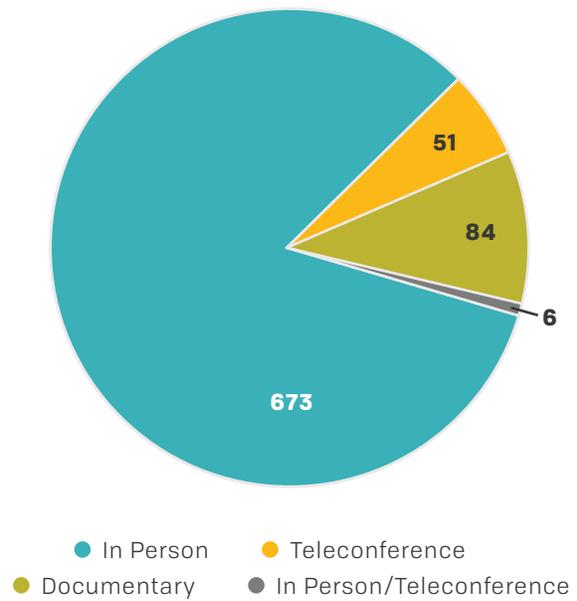
# APPENDIX G – APPEALS COMMISSION FOR ALBERTA WORKERS’ COMPENSATION STATISTICS

## SELECTED APPEALS COMMISSION STATISTICS FROM THE 2015-16 ANNUAL REPORT

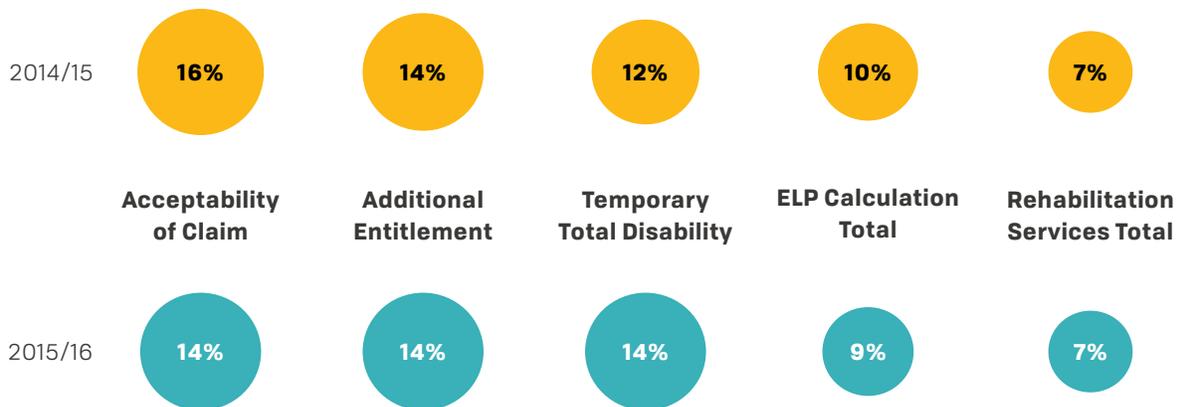
### FINALIZED ISSUES OF APPEAL



### HEARING FORMAT



### TOP FIVE ISSUES OF APPEAL



## APPENDIX H – ACTUARY OVERVIEW



**Eckler Ltd.**  
3107, des Hôtels avenue, suite 240  
Quebec City, Quebec G1W 4W5  
Canada

www.eckler.ca

Telephone: (418) 780-1366  
Email: rlarouche@eckler.ca

March 23, 2017

Mrs. Mia Norrie, Chair  
**WCB Review Panel**  
Alberta Labour  
c/o 11<sup>th</sup> Floor, Commerce Place  
10155 - 102 Street  
Edmonton, Alberta  
T5J 4L4

Madam:

**Re: Financial impact of potential changes to benefits provided by the Workers' Compensation Board**

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As requested, I have estimated the financial impact of potential changes to benefits provided by the Workers' Compensation Board - Alberta (WCB). These potential benefit changes have been identified by the WCB Review Panel (Panel) and are summarized in the present letter.

I am currently the Board's appointed independent actuary, responsible for planning and carrying out the actuarial valuation of the benefit liabilities of the WCB, and I have been involved in the valuation of WCB's benefit liabilities since 2003. In addition, I was part of Eckler's team that conducted a review of the funding and investment policies in 2007 and 2008 using asset liability modeling techniques, which led to the adoption of various changes to these policies. In recent years, I have also been involved in the review and validation of the funding policy design and have prepared asset liability projections in some occasions, including in 2016; an asset liability study provides input on the projected evolution of the financial situation of the WCB.

The Panel has engaged me directly to support them in their review, with the permission of the WCB.

### Basis for estimation of the financial impact

Any change in benefits provided by the WCB to injured workers' or their beneficiaries could have an impact on the financial situation of the WCB through a change in their liabilities and/or on the annual premiums charged to employers to cover the cost of work-related accidents and occupational diseases that will occur in the future.

#### ***Benefit liabilities***

The impact on the benefit liabilities of the WCB has been determined using the same basis as for the actuarial valuation as at December 31, 2016. The benefit liabilities represent the actuarial present value of future payments for short term disability, vocational rehabilitation, long term disability, survivor and health care benefits with respect to claims which occurred in the past, and for occupational disease claims expected to arise in the future because of past workplace exposures in respect of occupational diseases with a long latency period that are recognized by the WCB. The benefit liabilities provide for future claim administration costs, but do not include a provision for benefits and payments that are on a self-insured basis.

Details of the data, actuarial assumptions and valuation methods used for the valuation are set out in my actuarial report as at December 31, 2016.

#### ***Employer premiums***

The impact on the employer premiums has been determined using the same basis as for the determination of the WCB 2017 premium rates. It has been measured in total for all employers, in comparison to the average premium rate established at \$1.02 per \$100 of insurable earnings for 2017.

Employer premium rate setting is based on the principle of full funding, which means the premiums collected on an annual basis cover all current and future costs related to claims occurring in the year for which the rates have been set. In other words, today's employers pay the full cost of today's claims; this represents the full funded cost of claims.

### Potential benefit changes

The potential benefit changes for which you have asked me to estimate the impact are the following:

- Maximum Insurable Earnings (MIE)
- Lump sum payment following a work-related death
- Survivor benefits
- Compensation for young workers
- Indexation of benefits
- Retirement provisions

A short description of my understanding of these potential changes is presented below:

#### **1. Maximum Insurable Earnings (MIE)**

The WCB has a maximum on earnings that is applicable to both benefit and premium calculations. The maximum insurable earnings (MIE or cap) is determined so that 90% of injured workers would be fully compensated by the MIE if injured; the 2017 level is \$98,700.

Based on the actual data from 2016 injuries, the MIE so that 99% of injured workers would be fully compensated would be \$144,500. Assuming wage growth of 3%, the 2017 level would be \$148,800, an increase of 51% compared to the current level of \$98,700.

#### ***Potential change:***

*For workers who earn above the current cap, compensation benefits would be based on a revised cap of approximately \$145,000 in the first year of a worker's injury, declining to the current cap evenly over 5 years.*

*For benefit purposes, the earnings above the current cap would be calculated in considering the last 5 years of earnings; employers' premiums would continue to be determined using the current cap.*

#### **2. Lump sum payment following a work-related death**

Fatality benefits include:

- Financial assistance with the costs associated with the worker's death (funeral expenses, lump sum for immediate costs, transportation of the body).
- Survivor benefits if there are dependents, such as pension benefits to the dependent spouse, partner or children to replace the loss of income of the worker, as well as vocational services for the spouse.

There is currently no lump sum payment. While a non-economic loss payment (NELP) is paid to a worker who has a permanent impairment, in recognition of its impact on the worker's life outside the workplace, this disability benefit is not paid following an immediate fatality (within 30 calendar days of the work-related injury).

**Potential change:**

*A lump sum payment of \$40,000 would be paid following a work-related death in the future.*

**3. Survivor benefits**

The survivor benefit provisions for accidents or diseases after 1981 are currently as follows:

- Dependent spouse with dependent children (under 18): pension equivalent to the amount the worker would have received if permanently totally disabled payable to the spouse until the youngest child reaches 18.
- Dependent spouse with no dependent children (either at the time of the worker's death or when the youngest child reaches 18): benefits based on the spouse's vocational capacity, as follows:
  - If already gainfully employed (defined as earning 75% or more of the deceased worker's date-of-accident earnings, adjusted by applicable cost of living adjustments): five-year reducing term pension, equivalent to three years' full pension.
  - If not gainfully employed but considered capable of becoming gainfully employed, vocational services for up to 60 months, with full pension; on becoming gainfully employed, if refusing vocational services or after 60 months, whichever comes first, the WCB pays the five-year reducing term pension.
  - If not considered capable of achieving gainful employment: pension payable until the last occurring event of the date the worker would have reached his or her probable retirement date, the date the dependent spouse reaches age 65, or after 24 months of the initial pension; the pension is then adjusted to reflect the loss in retirement income that would reasonably have been provided by the worker, if not for the accident, and is payable for the remainder of the dependent spouse's lifetime.
- Dependent children (considered dependent until age 18):
  - If living with the dependent spouse, the pension is paid to the spouse.
  - If dependent children but no dependent spouse: the full pension is divided equally between the dependent children and paid to the guardian of each child's estate. As each child reaches age 18, each of the remaining dependent children's portions increase accordingly. When all children have reached age 18, the five-year term pension is divided equally amongst all the children who were dependent at the time of the worker's death.
- Other dependents: benefits payable only when the worker had no dependent spouse or child.

**Potential change:**

*The benefit structure would be as follows:*

- *Dependent spouse with dependent children (under 18, or age 25 if in post-secondary education): pension equivalent to the amount the worker would have received if permanently totally disabled payable to the spouse until the youngest child reaches 18, or age 25 if in post-secondary education.*
- *Dependent spouse with no dependent children (either at the time of the worker's death or when the youngest child reaches 18, or age 25 if in post-secondary education):*
  - *Full benefits payable for 5 years or age 65 if earlier, with a minimum of 24 months; at age 65, a pension is payable to reflect the loss in retirement income that would reasonably have been provided by the worker, if not for the accident, for the balance of the 5-year period if applicable.*

- *Following the 5-year period, the spouse can apply for consideration to continue benefits because he/she is not gainfully employed or considered capable of achieving gainful employment. The pension could be payable until the last occurring event of the date the worker would have reached his or her probable retirement date, the date the dependent spouse reaches age 65, or after 24 months of the initial pension; the pension is then adjusted to reflect the loss in retirement income that would reasonably have been provided by the worker, if not for the accident, and is payable for the remainder of the dependent spouse's lifetime.*

*The spouse would be able to access vocational rehabilitation to assist in attaining gainful employment.*

- *If no spouse, dependent children share the spousal amount.*
- *For dependent children (not living with the spouse), the benefit amounts would increase from the current level to \$420 per month for dependent children (up to age 18, or age 25 if in post-secondary education).*

#### 4. Compensation for young workers

Disability benefits are payable to workers who become disabled because of a work-related injury. Compensation for temporary disability (total or partial) is payable for as long as the disability lasts, or until long term disability benefits are awarded. The compensation amounts represent 90% of the worker's net earnings, with gross earnings limited to the MIE. Since 1995, a worker who suffers a permanent disability receives a non-economic loss payment (NELP), based on the measurable clinical impairment, and an economic loss payment (ELP), based on the degree of impairment of earning capacity.

Compensation is based on earnings at the time of the accident. Young workers generally have low earnings as they tend to work only part-time or during school vacations. Using actual earnings represents appropriately the income loss for temporary or short-term disability. But young workers with the most severe injuries are affected negatively, because their long term or lifetime benefits are limited by the nature of the employment they performed when injured.

##### **Potential change:**

*The compensation rate would remain at 90% of net earnings in date-of-accident for the first 24 months of disability. For young workers with an impairment rating at least 50%, after 24 months of temporary disability or at confirmation of permanent disability, if earlier, the long-term compensation rate would be the higher of:*

- *90% of net earnings in date-of-accident, or*
- *90% of net earnings based on the Alberta average weekly earnings for the previous year, as determined by Statistics Canada.*

*To qualify for the rate adjustment proposed, a worker must be younger than age 25, or over age 25 when it can be shown that the person was enrolled in an academic or training program at the time of the injury.*

#### 5. Indexation of benefits

Benefits subject annually to Cost-of-Living Adjustments (COLA) include:

- Short term disability benefits, including temporary total or partial disability benefits, and temporary economic loss (TEL) payments;

- Long term disability benefits for accidents occurring before 1995, including disability pensions payable for life, earning loss supplements and special needs allowances;
- Long term disability benefits for accidents occurring after 1994, including non-economic loss payments (NELP) and economic loss payments (ELP);
- Survivor benefits.

By policy, COLA is determined as the change in Alberta Consumer Price Index for the 12 months ending September 30 of the year immediately prior to the adjustment, minus 0.50%.

**Potential change:**

*The benefits would be indexed in the future with inflation, as measured by the rate of increase in the Consumer Price Index (CPI) in Alberta.*

**6. Retirement provisions**

A worker who suffers a permanent loss of earning capacity following a work-related injury since 1995 receives an economic loss payment (ELP), based on the degree of impairment of earning capacity. The ELP amount is reviewed regularly until the worker reaches his/her expected retirement age. If an ELP is still active at the worker's retirement age, a retirement adjustment is done to determine the worker's post-retirement ELP rate.

At retirement age, ELP benefits are adjusted according to the following formula to estimate the impact of the disability on the worker's retirement income:

$2\% \text{ of Average annual compensation} \times \text{Number of years of compensable earnings loss [to a maximum of 35 years]}$
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The Average annual compensation is based on ELP benefits for the five-year period before retirement age. Periods of temporary disability are included when calculating the number of years of compensable earnings loss.

The only exceptions are workers with 100% permanent clinical impairment and workers presumed to be 100% permanently disabled under section 43 (2) of the Act; in these cases, the WCB does not deduct any post-accident earnings, nor does it adjust the ELP at age 65.

**Potential change:**

*The retirement provisions would be updated as follows:*

- *On recovery prior to age 65, provision of a one-time retirement adjustment paid immediately, equivalent to 2% of the annual ELP amount, times the number of years wage loss benefits were payable.*
- *Retirement adjustment made at age 65, or 5 years following the date of accident, whichever is later.*
- *Calculation based on the average indexed disability benefit for the entire disability period, including periods of temporary disability, or calculation based on the average ELP amount 5 years prior to 65.*

Summary of cost implications

The potential changes to benefits would have an impact on:

- The premiums paid annually by employers, to cover the additional cost of the benefit changes for work-related accidents that will occur or occupational diseases that will be diagnosed in the future, expressed also as an increase in the average premium rate per \$100 of insurable payroll.
- The liabilities of the WCB to cover the additional cost of the changes to benefits payable in the future for accidents or diseases that have already occurred, or occupational diseases with a long latency period that are recognized by the WCB and expected to arise in the future because of past exposures.

The following table summarizes the results of the additional cost for these potential benefit changes:

Potential benefit changes	Annual premiums		Liabilities
	In \$M	Rate per \$100	In \$M
1. Maximum Insurable Earnings (MIE)	17.0	0.016	
2. Lump sum payment following a work-related death	6.2	0.006	61
3. Survivor benefits	9.7	0.009	81
4. Compensation for young workers	8.1	0.008	127
5. Indexation of benefits	13.3	0.013	198
6. Retirement provisions	6.0	0.006	90
<i>Impact of combining the changes</i>	<i>1.8</i>	<i>0.002</i>	<i>18</i>
<b>Total</b>	<b>62.1</b>	<b>0.060</b>	<b>575</b>

The financial impact of each potential change has been estimated separately. However, the combination of some changes has a compounding effect, which is presented as the element “*Impact of combining the changes*”.

I will be pleased to provide additional information upon request.

Yours sincerely,



Richard Larouche, FCIA, FSA  
Principal

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## WORKERS' COMPENSATION BOARD REVIEW

### The members of the Secretariat were:

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Sandra Kraatz

Donna Chilton

Cathy Claughton

Randy Corbett

Marjorie Hibbert

Rene Sanders





Alberta 