

**WORKERS' COMPENSATION ACT REVIEW  
Public Consultation**

**Fireside Room North, Yukon Inn, Whitehorse, Yukon  
April 7, 2006**

**Appeals Process, Legal and Policy Issues**

<b>PANEL:</b>	Patrick Rouble	Chair
	Ivan Dechkoff	Member
	Michael Travill	Member
<b>PRESENT:</b>	Douglas Rody	Yukon Federation of Labour
	Robbie King	Injured Workers' Alliance
	Derek Holmes	Public Service Commission, Health & Safety
	Don Buyck	Na Cho Nyak Dun
	Rick Karp	Whitehorse Chamber of Commerce
	Joe Radwanski	Injured Workers' Alliance
	Mark Hill	YWCHSB

(The meeting was called to order at 9:15 a.m.)

**Mr. Rouble:** If we could come to order, please. I'd like to welcome everyone to another meeting of the *Workers' Compensation Act* Review Panel, wherein we will discuss options for legislative changes to the *Yukon Workers' Compensation Act*. Today's topic for discussion is the "Appeals Process, Legal and Policy Issues". We'll start with Issues 1 through 24.

As we've commented in the past, we recognize that Workers' Compensation is a very integrated system, and one issue typically affects at least one or two or ten other areas. But, in order to provide some structure for reviewing this, again, we did break it down into different sections, based on different issues. We recognize that there is an inter-relatedness of the issues and that, when you do comment on one issue, it might affect another issue. We have broken these down into the issues that were identified for us, and we'll go through them in order to give some structure to the meeting and to the process.

My name is Patrick Rouble; I'm the Chair of the Act Review Panel. I'm joined with Mike Travill and Ivan Dechkoff.

I think I will dispense with the typical introduction, you've all heard it before and it's available on the transcription on the website as well. I think if you do check the website now, you'll notice that the last meetings' comments are transcribed and are available on the website. And, again, a reminder that the comments made today will be transcribed and will be made publicly available.

So, without any further ado, it was recommended that the forum for these meetings, in the morning, be open mike. Again, in the afternoon, the Stakeholder Advisory Groups will meet, and that meeting will be open to the public. But the forum for this morning is an open mike format, to allow people to bring forward their concerns, thoughts, opinions, on the appeals process, legal and policy issues.

There are a couple of issues that relate to the Workers' Advocate position and to the Employers' Consultant position. As you can imagine, there might be a bit of a perceived conflict of interest with the other panel members. I should add that they do take leave of absence, from their regular positions, to attend these meetings, and have done so in the past, but, when we do get into those issues, just in order to facilitate discussion, they will excuse themselves from the meeting today, to encourage a free exchange of debates and opinions.

So, would anyone like to bring forward any thoughts, concerns or comments on the issues identified under "Appeals Process, Legal and Policy Issues", and the options that have been presented? Mr. King.

**Mr. King:** This is an open mike... is it only narrowed to the issues for today?

**Mr. Rouble:** That's correct, sir. In order to facilitate the discussion, and allow people to focus on some of the issues, rather than discuss everything all at once, we've broken the meetings down into these four different categories. The topic for today is the "Appeals Process, Legal and Policy Issues", issues 1 through 24.

**Mr. King:** But if it's an open mike, is that open to discuss what's been discussed in the past two meetings?

**Mr. Rouble:** Well, sir, it was commented on, when we released the consultation schedule, that many folks did not want to sit through an entire, starting with issue 1, followed by issue 2, followed by issue 3, format; and wanted an ability to come in and comment on the issues specifically.

The focus for today is on Issues 1 through 24. If there are additional comments that you'd like to make on the issues we've already identified and had discussions about, I would encourage you to provide those comments in writing to the Panel. Again, the deadline for written comments is June 15<sup>th</sup>. They may be made in writing, via e-mail, or left on the voice mail message box that the Panel has set up.

**Mr. King:** Takes a lot of time out of my day to sit down and write all this kind of stuff and submit this to you. Since this is an open mike, I think I should be allowed to make my comments now, regarding what

we've talked about in the past meetings, you know, for the record. I have some comments about some of the discussions we've already been through.

**Mr. Buyck:** Just on that point, you were mentioning that the minutes of the last two meetings will be put on the website?

**Mr. Rouble:** That's correct.

**Mr. Buyck:** I've had a heck of a time trying to track those minutes down because I'm not sure what I'm doing. Am I doing something wrong or –

**Mr. Rouble:** Have you been able to find the Workers' Compensation Act Review website?

**Mr. Buyck:** Yes. We're having trouble out in Mayo, there, with our computers, everything keeps crashing down on us. So, could we get those minutes in writing? How else can we get it?

**Mr. Rouble:** If you'd like a hard copy, I can provide a hard copy of it for you.

**Mr. Buyck:** Sure, that would be appreciated.

I have the same concern as Mr. King. This is more complicated than I can deal with myself, so I have decided to go and find a lawyer to help us to prepare written submissions to the review.

But the one question I do have is, I have a paper here from YTG, and it's about the duty to accommodate. And I know we've already dealt with that but, to me, it's a legal issue. So, I was just wondering... the duty to accommodate... where do we stand with that? I mean, did you ever get that submission from them?

**Mr. Rouble:** Sir, are you referring to "Return to work and employer's obligation to re-employ", in that regard?

**Mr. Buyck:** Yes.

**Mr. Rouble:** That would be Issue #20, which is one of the issues under discussion for today.

**Mr. Travill:** It's page 106, if people were looking in the package.

**Mr. Buyck:** The reason I brought it up is that, in dealing with WCB, with the injured workers, and going through his process of

getting back to work, the First Nation government, even though we have a personnel policy that states people who are injured on the job, and are going through the process with WCB, that they're not to be fired, laid off, or any of that stuff. Yet my own employer is not set up to deal with injured workers returning back to work. They don't have somebody that's trained to deal with the injured worker from the moment he's hurt till the time he goes back to work. So it puts the injured worker at a big disadvantage, when your own employer doesn't have provisions to deal with the injured worker.

Somehow, a message needs to be sent to the First Nations employers, or governments that employ workers, that they do have this obligation, and that they should take the proper steps to put something into place, so the injured worker has someone to work with other than the Workers' Advocate office. So that point needs to be made.

From my point of view, all of the people that work for my government, they work mostly not for the job, but because they're dedicated to the organization and what we're trying to do. But, unfortunately, our employer is not up to snuff with that. So that needs to be looked at, that whole area.

I guess I'll have to ask the lawyer, provided the Council allows me to get a lawyer, to discuss this in more detail, and put something in writing to you about it.

**Mr. Rouble:** Do any of the options, that have been identified, address your concerns? Does anyone else wish to make any comments on any of the issues?

**Mr. Radwanski:** Issue #6, "Administration's standing at hearings...." This has been an issue that the administration has been pushing for a long time. I would ask that the Panel look at other jurisdictions where the Board does have standing; and look at the increase in administration costs from the confrontational process that is going to ensue from allowing it standing. And keep in mind that the administration is there to administer; they are not an interested party.

**Mr. Rouble:** Mr. Radwanski, are you familiar with any jurisdictions where the Board does have standing?

**Mr. Radwanski:** Nova Scotia.

**Mr. Rouble:** Nova Scotia does?

**Mr. Radwanski:** Yes.

**Mr. Rouble:** Thank you. The Chair recognizes that, in the last couple meetings, some folks had reserved their comments for the

Stakeholder Advisory Group later in the afternoon. It is our intention to hold a public open mike format, now, for people to bring forward their issues not in a specific order, as was requested.

We could be done quite quickly if there aren't any other issues that people wish to bring forward. Mr. King.

**Mr. King:** Mr. Chairman, your release, I think, talked about structure of the meetings, and it says, in the morning, open mike; in the afternoon, it will be stakeholders groups, whatever. It just says "open mike". It doesn't say open mike to discuss these issues that are in the agenda for that day. Just says "open mike". I interpret that as being an open mike to discuss anything or any issues. Because it doesn't specifically say open mike to discuss the issue on the agenda for that day.

**Mr. Rouble:** I apologize if you found the release confusing, but I think it has been quite clearly identified, in the advertisements done, that there was a topic for discussion for each day. As you can appreciate, this is a very large Act, we have 88 issues, and, in order to facilitate some discussion on this, we've been forced to put things into different categories and, indeed, break it down into the issues. That allows people to prepare to address the issues identified at the meeting.

We're trying to accommodate folks as best we can, but we do need to have some structure in order to lay out expectations so that people can contribute to the discussion. I have identified other options for you to provide your comments.

**Mr. King:** If I may, Mr. Chairman, your ad just says "open mike", that's all. Does not say open mike to discuss these issues. So we took that as being open mike to discuss anything with regard to the past. I don't see a lot of people with hands up, waiting to jump up and talk about the issues for today's schedule. So, can we have this time?

**Mr. Rouble:** Well, if folks wish to conclude the meeting, today, on the issues identified, once we conclude the agenda, then, Mr. King, I'll give you an opportunity to put forward your additional comments.

We're doing this to try to encourage comments as much as possible. We've tried to be as flexible as we can. I will ask folks, though, to recognize that the Panel needs to have some structure in order to facilitate going through this. So this won't be something that we will do in future meetings.

So, I'll make it very clear that our intention is to discuss the issues identified. We will also hold a public evening meeting that will allow for people to address all the issues, or all the different concerns that they might have. Maybe that would be a more appropriate venue for you to do it, if you don't wish to put your comments in

writing. But at the next meeting, we will focus in on the issues identified. The focus of the meeting today is to discuss the issues that have been identified so far.

**Mr. Buyck:** For example, the Special Report of the Auditor General of Canada – I took this off the Internet before I went down to Workers' Compensation, an overview provided by yourself. On page 5, it gives a list of the issues identified by the Auditor General. There are eight of them. All of them kind of impact on workers.

The first issue is the need to address governance. I think, when I came to the first meeting, that was my first issue I brought up, about representation on the Board. And I asked questions about how do you get Native representation on not just the Board, but the panels and all that.

I still don't have a clear idea of how to go about doing that. I know that Mr. Dechkoff had mentioned that there was a way, through the Act, to look at that, but I haven't had a chance to catch up to him to figure that one out yet. So, I guess, at what point in time do we do that; to address that issue of governance?

**Mr. Rouble:** Well, the issues of governance were discussed in the first meeting. If people have additional comments that they wish to make on the issues that have previously been discussed, by all means, the Panel is more than eager to read your submissions on those issues.

**Mr. Buyck:** If, in the end, I don't get this lawyer, and I don't meet that deadline, but I verbally requested this information, somebody's going to – I mean, it's going to be on record, right?

**Mr. Rouble:** Well, we've heard your comments, sir; they've been reported and recorded. Our duty is to inform the minister of recommendations on changing the legislation. We recognize that there are other issues that come up in a meeting like this, that are more of a Board nature, or an administrative nature; we've tried to facilitate that communication with the Board or with administration directly, in areas where they have the responsibility.

Our focus is on making recommendations to the minister on how to change the legislation. We will try to address your concerns as best we can.

**Mr. Buyck:** Well, just on that point, then, on the Board, itself, they have the authority to regulate health and safety standards in the workplace... the only time that I've ever seen the Board, or their people, come to Mayo was when I actually had to browbeat them into putting together the service team that was responsible for my area, and to bring them up to Mayo, and try to show them what we, as workers, have to deal with. It was a quick trip

in for them, they introduced themselves, said this is who I am and this is what I do.

So I asked the question, Well, how come there's nobody doing anything here? Like, in terms of making sure that the employer has health and safety standards in the workplace.

The only thing I got out of WCB was their posters and a big book. If you're not trained to deal with that book, and process, it's pretty doggoned difficult, I can tell you that.

I've learned about WCB by assisting an injured worker, and it's not until you actually work with somebody that's injured, and taken them through the process, that you begin to discover all these problems with WCB. And not to beat a dead horse, but I really believe that WCB's not paying enough attention to Native workers. And if that's the relationship as it is right now, and you've got all these other 88 issues, that's more issues that I, as a worker, and our workers, have to deal with.

The only reason I'm here today is because I've forced these guys to, basically, get on board with this review, and it's proven pretty tough.

So, just on that point, about the Board's responsibility, I don't see that happening. At least in my area, anyhow. So it seems to me that somebody's not doing their job somewhere within the organization. And I'm not trying to be critical of any one individual; I'm saying that the mentality is that. For the longest time, our First Nation has been paying money into the process, but not getting any real results out of that.

**Mr. Rouble:**

Mr. Hill?

**Mr. Hill:**

Mr. Chair, I wonder if I could just make a point of clarification. The Occupational Health and Safety Act, as we know, is a separate Act, and not what is being reviewed. It may be worth noting, in light of the comments, that the First Nations governance is under federal jurisdiction for occupational health and safety; and that Yukon Workers' Compensation Health and Safety Board has no jurisdiction on the occupational health and safety side for First Nations governance.

**Mr. Rouble:**

Thank you.

**Mr. Buyck:**

That's fair; I realize that. But those guys are in Vancouver; they don't do us much good up here. We're Yukoners, and I think Workers' Compensation should recognize that fact, and take some steps with Labour Canada to work out something for us. Our relationship with WCB is a fragmented relationship. We have to go to the federal Labour Standards to get

anything put in place for health and safety standards in the workplace; but yet we're paying big money to the WCB for all the other services that we should be getting from WCB, and that's not happening. So I think WCB needs to look at that.

**Mr. Rouble:** Are there any other thoughts or comments on the first 24 issues under "Appeals Process, Legal and Policy Issues"? Would folks appreciate a coffee break now? Why don't we take a 10-minute coffee break.

(Meeting adjourned at 9:45 a.m.)

(Meeting reconvened at 9:55 a.m.)

**Mr. Rouble:** Okay, folks, if we could reconvene... is there anyone who would like to make comments regarding "Appeals Process, Legal and Policy Issues", 1 through 24?

**Mr. King:** I'd like to comment on Issue #1, "Process to lodge administrative complaints." As it is right now, there isn't really a process in place. First of all, who do you lodge a complaint to? There isn't anyone. Who do you lodge it to... the president? Who knows?

There isn't a complaints officer, someone with that sort of designation. It wouldn't be a full-time job; it would just be a part of their job description. They've got enough staff over there, now, I'm sure they could find someone to do it half time.

Also, when you start having a process where it's an internal investigation, it's just like the old scenario of the police investigating the police. That was the same reasoning that we used when we requested an exterior appeal body, which was the Tribunal, and that eventually got accepted. Because, in the past, it was the Board ruling on their own policies they created; and then sitting in on the decision-making, and actually making the decision.

So, if it's all internal, I can see a bit of a problem there. A person has to be someone independent. My point is, there isn't anyone there to lodge a complaint to.

**Mr. Rouble:** Is there one of the options identified that you'd like to support; or is there another option you'd like to bring forward?

**Mr. King:** Well, I guess maybe number 4, perhaps, would be the closest. But, also, there's the issue of time; the amount of time it takes. There has to be some sort of a window on completing the investigation. You know, a deadline, just like there is hearing officers. Because you can't just



drag this thing on forever. So there's got to be an investigation, there's got to be a start and an end, and there's got to be a closed window.

**Mr. Rouble:** Option #2 included a timeframe for resolution, as the option. Would you want to see something like that incorporated into Option #4?

**Mr. King:** That probably could be worked out. So, if you have 1700 complaints per year, actually, that would pretty much be like a full-time job. Yeah, I can see that.

**Mr. Rouble:** I think, in the document, it was indicated that, in British Columbia, they process about 1700 complaints a year.

**Mr. King:** Oh, sorry. Does it say the number of complaints they have here?

**Mr. Rouble:** The expected volume would be one or two a month.

**Mr. King:** I find that pretty bizarre.

**Mr. Buyck:** Just to follow up on his point, you mentioned, at the bottom of the page, the B.C. Complaints Commissioner... we don't have that equivalent here, right?

**Mr. Rouble:** No.

**Mr. Buyck:** If we could get that information on that process, the process that this person follows, the B.C. Complaints Commissioner....

**Mr. King:** Just to summarize, there needs to be something put in place to lodge complaints.

**Mr. Travill:** Just for my clarification, Robbie, would it be best at the staff level, or at the board of directors level?

**Mr. King:** Because, now you're getting the board of directors involved in administration... no, their job is to govern, not administer the Act.

**Mr. Travill:** Okay.

**Mr. King:** Although it would be nice to have some involvement with them. I can't answer that right now, off the top of my head.

**Mr. Rody:** I have one question with regard to Issue 24. That is an issue that was raised by the Review Panel, brought forward by the Review Panel, and I'm curious... I'd like to hear more from you folks about it. Because, when I first read this, I looked through the entire Act, I couldn't find the phrase "initial treatment site". So my first reaction was, why define something that's not in the Act?

So, I wonder if you folks could elaborate on what the issue is.

**Mr. Rouble:** Mr. Dechkoff, do you care to comment on it?

**Mr. Dechkoff:** The "initial treatment site" is basically an issue from an employer perspective, and is an issue as to when and how, specifically, the injured worker is dealt with. In other words, an example was given that you have an outfitter; and an outfitter has some employees and people going out into the middle of the woods on horses, and one of the workers gets kicked by a horse. Consequently, the employer felt that the worker was severely injured, to a point that he felt it was better to have a doctor flown by helicopter direct to the injured worker, to deal with the issues; as compared to what the Board would like to see as taken out to hospital.

The issue then became one of, where is the initial treatment site? According to the Act and policies, the initial treatment site was where medical aid was given, as far as the employer was concerned. Which meant that, if a doctor was brought to the injured worker, to insure they were taken care of, that would be the initial treatment site; and, therefore, the employer was no longer responsible, from a cost perspective, to have that injured worker flown back on the same helicopter. In other words, they paid half the cost of the helicopter, and that was very expensive, as compared to putting the injured worker on some other form of transportation to get them to some medical aid outside.

So the issue became one of cost.

**Mr. Rody:** So, that would make me wonder, then, what other employers think about – Essentially, all other employers are then bearing the cost of that outfitters expense of transporting the worker.

**Mr. Dechkoff:** Within that category.

**Mr. Rody:** Well, no, if that's an administrative cost, then –

**Mr. Dechkoff:** No, the cost would be designated directly to the rate group, because it's a cost of the rate group. So it's a sharing

of high cost expenses. No different, for example, than the cost of a death is not taken directly to the cost of the individual employer, it's shared among the group because of the high cost of that.

**Mr. Buyck:** Just on that Issue #24, it says: "Section 15 of the Yukon Occupational Health and Safety Regulation provides the following authority to the first-aid attendant required by the Act." In the case of my First Nations government, or anybody I guess, if they don't have a first-aid attendant, what happens? That's a problem that we have. If they know that the employer doesn't even have a first-aid person in place, do they have an obligation to tell that employer, "Per the Act, you have to do this"?

**Mr. Rouble:** Sorry, this isn't a place where the Panel can actually provide an answer to that. We are tasked with reviewing the *Workers' Compensation Act*, and making suggestions on that. The questions of interpreting OH&S, and the different responsibilities, as we've discussed earlier, from a federal interpretation of the occupational health and safety responsibilities, the territorial responsibilities... these types of questions, unfortunately, we can't answer them right now, and they might be better addressed to those that are responsible for their administration.

**Mr. Travill:** The difficulties come based on the 45(1), which is there, and the fact that it appears that there is some concern or some disagreement about how to administer 45(1); and has the transportation for the worker been provided to the hospital, medical practitioner or the worker's home. In the case Ivan explained, the doctor came to that spot; so the medical practitioner was attending the person at that spot. Well, who, then, bears the cost of taking the injured worker from that spot, back to the Whitehorse General Hospital? Is that a cost borne by the Board; or is it a cost borne by the individual employer?

So, it's a difficult situation, interpreting what that particular piece of legislation says, and so that's where they were hoping to have people turn their minds to. Again, it's the interplay with the policies, as well.

**Mr. Dechkoff:** It should also be mentioned that it mentions, there, the hospital; and that also, according to policy, relates to a nurse, nurse's outpost, for example in Ross River or Faro. The responsibility of the employer, according to the policy, is that they only have to take the injured worker to one of those outposts, not necessarily to the Whitehorse Hospital. There's a lot of question regarding that.

**Mr. Rody:** Well, I understand the concern about cost. I guess what I am questioning is the wisdom of introducing a definition to address the issue of cost. If that's an issue, tackle that head on. Introducing a

new definition, on something that's not found in the Act, doesn't make sense, really.

**Mr. Rouble:** Are there any further questions or comments? Mr. Karp.

**Mr. Karp:** Back to 24... 45(1), if there's an injured worker that has to go to the hospital by an ambulance, that cost is borne by the employer, not the system; correct? So, here, with the definition of "initial treatment", I think what you're proposing is that – and I have a question: if we've got a shortage of doctors, if someone's way out in the bush, how do you get a doctor to that site? So, let's say there is a doctor in Whitehorse, and we're dealing with someone in the Mayo/Faro area, that the mines are back in operation or something like that... who pays the cost for the cost of the helicopter taking the doctor from Whitehorse to that site? Is that the cost of the employer only?

**Mr. Dechkoff:** Yes.

**Mr. Karp:** So you're not saying that would go to the rate group; you're saying, once the doctor is there, then that becomes the initial site.

**Mr. Dechkoff:** Correct.

**Mr. Karp:** So you're seeking clarification on "initial site" in special circumstances.

**Mr. Travill:** Yes. And that's exactly it. The concern is, what criteria or what direction are the people on the ground using to make the decision at that time, so that the person is getting the best care possible?

**Mr. Rody:** My point, though, is, address that issue specifically. Because, if you introduce a new concept, this "initial treatment site", then that applies to every situation. "Initial treatment site" could then be the jobsite in Whitehorse, and the cost of the ambulance service, from there to the hospital, is borne by the rate group. Is that what the rate group wants? Is that what we want?

As I understand it, it's a problem only where transportation costs to a remote site are excessive. Is it an issue in Whitehorse; or Watson Lake; or Dawson City?

Address the specific issue, and whether it's something through policy. But to introduce something that's going to then apply to every situation, when every situation is not the problem, doesn't make sense.

**Mr. Karp:** To follow that up, what is the rate group of that outfitter? Is someone else, in town, in that rate group? So, let's say, if I have a shop in town and I, for some reason, because we've got so few rate groups, fall into that rate group, then, all of a sudden, my costs could skyrocket because of one incident. So we've got to be careful with the clarity of this definition.

**Mr. Rouble:** Any other comments on the issues identified? Are we ready to conclude the meeting, then?

**Mr. Buyck:** In terms of process, do we have one more public meeting after this; or the 17<sup>th</sup> or something like that?

**Mr. Rouble:** In two weeks, we'll have another meeting similar to this, where, in the morning, we'll be doing the same open mike format for Issues 25 through 48; and then, in the afternoon, we'll be meeting with the Stakeholder Advisory Group, again to go and address Issues 25 to 48.

There will be an evening public meeting, where that will be an open mike format on all of the issues that have been brought forward. As well, there will be public meetings in three different Yukon communities. And then we will have the deadline for written submissions on June 15<sup>th</sup>.

Mr. King?

**Mr. King:** For the evening meeting, what time is it?

**Mr. Rouble:** The date still has to be confirmed with the other Panel members. A bit of a challenge coordinating schedules right now. We will publicize that. I would expect it would be a 7:30 to 10:00 type meeting... unless there's other comments that you'd like to see that time changed.

**Mr. King:** I will make a comment... 7:00 till 10:00, or 6:30 till 10:00... that's fine by me.

**Mr. Rouble:** If there are no further comments on the issues identified for discussion today, we'll conclude the meeting. I understand that Mr. King would like to put forward some additional comments to the Panel, on preceding issues. We will transcribe those and put those on the website.

In order to alleviate any kind of confusion that there might have been, we'll make this exception for this meeting. In the next meeting that we'll hold, we'll stick to the format of Issues 25 through 48.

**Mr. Karp:** Reconvene at 1:00 o'clock?

**Mr. Rouble:** Yes, we'll reconvene at 1:00 o'clock, with the Stakeholder Advisory Group. It will also be open to the public. Oh, Mr. Buyck....

**Mr. Buyck:** The Stakeholder Advisory Group, is that made up of all the employers, or what is the makeup of that advisory group?

**Mr. Rouble:** The Stakeholder Advisory Group is created by the board of directors. It includes representation from workers and from employers.

Okay, we'll conclude this meeting. The meeting is adjourned... except we'll now go into a special session to allow Mr. King, or anyone else, to come forward. It has been requested for a five minute break before we reconvene this special meeting.

(The meeting adjourned at 10:20 a.m.)