

**WORKERS' COMPENSATION ACT REVIEW
Public Consultation**

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

Additional Comments on Previous Issues

PANEL:	Patrick Rouble	Chair
	Ivan Dechkoff	Member
	Michael Travill	Member
PRESENT:	Douglas Rody	Yukon Federation of Labour
	Robbie King	Injured Workers' Alliance
	Mark Hill	YWCHSB

(The meeting was called to order at 10:30 a.m.)

Mr. Rouble: If we could come to order, please. In order to clarify a misunderstanding about the intent of today's meeting, which was to look at some issues specifically, and in order to address a concern of one of the people coming forward at the meeting today, we're going to reconvene now to allow this person to address some of the issues that we've previously discussed. I'd just like to say that this will be a special meeting, and our future meetings will stick to the format of the issues identified for those meetings, and allow folks to make additional comments, again, in writing, by e-mail, by fax or by a message left in the voice mail box. The deadline for those comments will be June 15th.

So, Mr. King, if there are comments that you'd like to make, on issues that we've previously discussed, the floor is yours.

Mr. King: Mr. Chairman, there are a few here, comments I have. One has to do with annuities. Policy FN-06 deals with annuities, in the Act. Under section (b), "Purchase of Annuities", this policy directs that the worker, at age 65, when they're entitled to their annuity that's accumulated, "The worker shall deal directly with their investment company regarding the type of annuity they wish to purchase." So, basically, the worker doesn't get the money; it's under the direction of an investment company.

So, going back to our submission, where we requested that the worker be allowed to invest his annuity as he so pleases, it would be with the understanding that there's a set of guidelines that deals with how the person uses that annuity once it's allowed to him. So there would be a set of guidelines that the person would have to follow, to have access to his annuity before he's 65. And, basically, those guidelines state that it has to be done this, this and this way.

One of them would be through an investment firm. So, basically, it's not the worker's discretion that he goes out and joins the Bridgette Bardot seal fund; basically, it's put into a pension plan.

That was the intent of our submission, is that the worker be allowed to direct the pension plan that it goes into, and there be guidelines setting out the criteria that the investment has to meet. Like, say it cannot be taken out until 65, right in the guidelines. Now, I don't see what's so hard about that.

Now, that was the intent of our submission there, in that portion of it. So, when they have discretion of it, it's not just take it out and buy a motorhome. You can't touch it till 65, and that would be in the guidelines.

Another one is commuting of benefits payments, Issue #6, at page 57. The very first sentence here says, "The... Workers Compensation Act does not provide for commutation of benefits." Now, this whole process that we're going through is the WCB Act Review. Now, the Act does not have provision for commutation of benefits; neither does the previous Act; neither does the previous Act to that, which would be the 1992 Act; or the 2000 Act, I think it is; or the 2002 RSY Amended Act. They don't have provision for commutation of benefits.

So, number one, I don't know how come it's in this Act Review, because it's not in the Act. It says, "However, Board policy CL-53... does provide that for claims prior to 1992, a worker can apply for a lump sum payment of the periodic... benefits...." Well, policy CL-53 doesn't allow them to apply; that would be the Act that allowed them to apply. Policy CL-53 sets out the guidelines as to what has to take place for the person to qualify for a payment.

Now, just to make it clear here, in the Act, commutation of pension payments, otherwise called benefits... that's section 55. And section 55 says the Board may commute the weekly payments to such periodic payments, and thereafter the payment of compensation shall be made on that commuted basis. So, if the worker wanted his payments commuted to, say, once a year, or once every six months, it talks about commuting to such periodic payments. Not a lump sum. So, I just want to make it clear that there's a difference between –

Mr. Travill: Which year legislation is that? '86?

Mr. King: Section 55. And it's called "Commutation of Compensation Benefits." And that's different from section 32, which is called "Lump Sum Payment." So I think there's a bit of confusion arising from this "commuting of benefit payments", and "lump sum payment." It's unclear as to the meaning of this.

This commuting of benefit payments talks about changing it from a weekly, to a different plan, like monthly or every six months or once a year or something. It

says here, "... may commute the weekly payments to such periodic payments..." "... to such periodic payments..." So they're talking about "payments"; not one "payment", but "payments." So that's the commutation of benefits. This is not even in the Act, so why is it being reviewed?

I want to clarify, on commuting benefit payments and lump sum payments, there's two different sections of that '86 Act. And the '78 Act, and the Act previous to that, also had a lump sum payout provision, so it's not just the one Act that had it.

That lump sum payment provision was in Acts for years, and then, all of a sudden, when people said, "Hey, look, I'm entitled to a lump sum payment, I'm going to take it", all of a sudden the hackles get up, by the Board, saying "Hey, lookit, whoa, what's going on here?" Hey, that was in the Act for 12, 15 years, 10 years. It was already there. So, it just seems like that's the way this Board operates, that, when a person attempts to say, "Hey, lookit, I'm entitled to this by the Act", the Board says, "Oh, jeez, perhaps we better revisit this."

And, as for the lump sum payment provision, policy CL-53, there's a lot of time spent in reference to the policy. This is with regards to lump sum payments and advances. Advances is section 30 of that '86 Act. Lump sum payment is section 32. There's a lot of time and effort put into writing this here. Then it went to Supreme Court, and a lot of time and money spent there. Now, this Act Review is saying, Well, let's scrap this policy here, basically; let's just not allow commutation of benefits, or lump sum payments. This is one of the options.

Option number 3: "Amend the legislation to eliminate the ability to commute benefits." This Act Review is taking the word "commute" to mean "lump sum payment"; whereas the Act, the commutation of benefits, talks about converting it from weekly to monthly or another kind of a time period. So there's not very good clarification on that.

So, anyways, there's a lot of money put into this, it went to court... how much did that cost? You know, three lawyers, the whole bit... and then the Board saying, Well, let's just scrap this, and let's just not.... One of the options is just to not make any more payments. And that seemed to be the general consensus around the table, that that's the way to go. Well, it just seems odd to me that you spend all that kind of money developing a policy, and not even using it, and just saying, Okay, we're just going to take away the ability to make a lump sum payment, without even using the policy they created.

Mr. Dechkoff: Just going forward, looking at the options that are available, are you supporting that it should be included in the Act, that you can do that? Like, looking forward to the future?

Mr. King: Mr. Dechkoff, no, I'm not. What I'm saying is that it was a benefit that was allowed in previous Acts, and I don't think it should be taken away. As far as putting it into the new Act, commutation of benefits, there's just that one provision you talk about, for small amounts, that other jurisdictions have... maybe that could be looked at. But as for a lump sum payment, I can bend on that one, and say that the Act just remain the way it is, as it has been since 1993, January 1st; you know, there's no provision for it.

Does that answer your question?

Mr. Dechkoff: So you're saying, continue on exactly the same as it has been since 1993?

Mr. King: Yes. It's not in the Act.

Mr. Dechkoff: Well, that was the question; that it was excluded in the '93 Act, and the question is, should it be included back in? And you're saying, no, it shouldn't.

Mr. King: No. I agree with that. Is that one of the options; to bring it back into here?

Mr. Dechkoff: Yes.

Mr. King: Okay, well, it's just not in the legislation here. I think the status quo is fine. But, you've also got to regard the rights of – I mean, Mr. Travill, I think, has a number of applicants looking for a lump sum payout, from the '86 Act. Like I say here, this policy was developed, and how much money was spent, and it was never used, really. That's kind of crazy. That's a lot of money to spend, to take somebody to Supreme Court, and not even use that.

So, my point is that people, that had applications, you know, basically just remain the status quo.

Mr. Rouble: Thank you. Mr. King, were there other points you wish to raise?

Mr. King: I don't have any data in front of me, but it's about the wage rate. I don't know what it was called in the Act here, but in determining the wage rate. It talks about how they do it in Manitoba, and what they do in Manitoba and other places there.

Mr. Dechkoff: Page 79?

Mr. King: Yes, there it is. Thank you very much. I don't think a lot of people around the table actually understood how it's being calculated; how the average rate, in the Yukon, is divided into the 2003 rate, to come up with a number. There's a bit of a calculation there, it's pretty simple. And I think our submission would be that it would just go with that average earnings of the Yukon worker, rather than this 2003 rate. I don't find a need for going back to a rate that's years old, and using that in a calculation where you're trying to calculate a present rate.

I don't have the data with me, but you can get that from the Stats, on the second floor or third floor of the Lynn Building. They have the average earnings of the Yukon workers there, it's actually used by Stats Canada, and it's basically month by month, and we can just use that for the maximum wage rate.

There is that Manitoba alternative, but I think it's too early to actually even recommend that, until we see how it works over there. I think it's just arrived there in just the last little while.

So, that's basically my submissions.

Mr. Rouble: Thank you. Is there anyone else who would like to make additional comments? Okay, hearing none, we will conclude then.

Mr. King: Thank you, Mr. Chair.

(Meeting adjourned at 10:50 a.m.)