

WORKERS' COMPENSATION ACT REVIEW

Public Consultation

Yukon Inn, Whitehorse, Yukon
March 10, 2006

Governance and Assessment Issues

PANEL:	Patrick Rouble	Chair
	Ivan Dechkoff	Member
	Michael Travill	Member
PRESENT:	Douglas Rody	Yukon Federation of Labour
	Alan Byrom	Injured Workers' Alliance
	Robbie King	Injured Workers' Alliance
	Deborah McNevin	Public Service Commission
	Derek Holmes	Public Service Commission, Health and Safety
	Mark Hill	YWCHSB
	Laurie Butterworth	Yukon Employees' Union
	Don Buyck	Na Cho Nyak Dun
	Beverley Blanchard	Na Cho Nyak Dun
	Rick Karp	Whitehorse Chamber of Commerce
	Ed Sager	Whitehorse Chamber of Commerce
	Barry Enders	Entrepreneur
	Steve Cardiff	New Democratic Party

(The meeting was called to order at 9:10 a.m.)

Mr. Rouble: Good morning, folks. It looks like it's about time to begin. We've given folks a few extra minutes to get here on Yukon time.

My name is Patrick Rouble; I'm the Chair for the *Workers' Compensation Act* Review. With me are Mr. Ivan Dechkoff and Mr. Mike Travill, the other two members on the Panel.

In addition to my role as the Chair of this Act Review Panel, I am also the MLA for the beautiful Southern Lakes, and the Deputy Speaker of the Yukon Legislative Assembly.

Mr. Dechkoff, in addition to his professional career, has been a past Board member of Yukon Workers' Compensation Health and Safety Board; and is the past Employer consultant.

Mr. Mike Travill, in addition to his professional career, has served in many senior positions in labour organizations, and is currently the Workers' Advocate. During Mr. Travill's participation in the Act Review Panel, he takes a leave from his normal employment situation.

This Panel has been tasked with identifying issues and concerns with the current Act, and making recommendations to the minister responsible on how to amend the legislation in order to best serve the needs of all stakeholders. We are empowered to consult with stakeholders, review existing information, review other jurisdictions' legislation, contract additional information, and really do whatever it takes for us to find good information for which we will base our decisions and our recommendations for legislative changes to the minister.

We are committed to following a process that is inclusive, open and fair, that will ultimately result in recommendations that will ensure the *Workers' Compensation Act* meets the needs of all stakeholders to the greatest extent possible.

Additionally, I should add that we are all personally committed and, as part of the Panel, the Panel is committed to the principles behind Workers' Compensation.

In the current legislation, section 105 of the Act called for the minister to initiate a review no later than January 1st, 2003. Following the General Election of November, 2002, this Panel was appointed in December, 2002.

The Panel identified a process to be used to conduct the review and we are following that process. It began with the identification of issues, including issues mandated by the Act to review, issues brought forward by the Auditor General of Canada, and issues brought forward by the Review Panel. We then put out a call for issues, to stakeholders and other interested parties, which generated many more. We then turned around, took this whole list back out to the stakeholders and other interested parties, and asked for comments on the issues brought forward.

The minister then directed us to consider all of the issues brought forward. And in our final report, we will comment on all of the 88 issues.

We then conducted an examination of these issues and prepared an options paper for addressing these issues raised. The Panel is now seeking your feedback and comments on these options. We would like to hear whether or not you feel an issue should be addressed through legislative change; whether or not you agree with one of the options presented; or if you prefer that other options be considered. The Panel will consider these comments, in addition to additional research that they will conduct, and additional analysis that will be done, in order to prepare the Panel's recommendation to the minister on how to amend the legislation.

In order to receive comments, the Panel has created a schedule of public forums to provide an opportunity for people to voice their comments. We've heard, through several folks, that they wanted an opportunity, in a public forum, to verbally express their comments. The

Panel will also receive written submissions by mail, fax or e-mail

The Panel recognizes that people and organizations have varying levels of interest in participating in an act review, varying levels of time available to participate, and that there are other factors that can influence participation in a review such as this. We are committed to accommodating the many diverse and sometimes conflicting needs, in order to ensure that people have an opportunity to make meaningful comments to the Panel.

Upon the release of the consultation schedule, we heard that some needs were not being met satisfactorily. These needs included the ability to participate in a public meeting outside of regular business hours, and the flexibility not to stay for a whole meeting in order to make a comment. We also received comments that the meeting schedule was too time consuming; conversely, we also heard that there was not enough time scheduled to address all of the issues. We also received comments from some members of the Stakeholder Advisory Group that they would like to see changes made to address their needs.

To address these concerns, we would first like to remind participants that they have the ability to make written submissions to the Panel, or may leave their comments on the Panel's voice mail. But we do propose to change the format of the meetings, to address some of the valid concerns.

First, we will be adding an evening meeting, to allow for comments from those who are unable to attend during the weekday.

Secondly, we will use an open mike forum for the first half of the scheduled meetings, to allow individuals to come forward and make their comments. This will allow people to leave. Also, individuals will not have to wait until a particular issue is brought forward before they speak to the issue that is important to them.

The proceedings of these meetings will be recorded, as you can see by the presence of Mr. Doug Ayers, and a transcription of the comments made will be available on our website. This will allow people to access the comments made without being present for the entire time.

Members of the Stakeholder Advisory Group have also expressed concerns. The Stakeholder Advisory Groups are organizations and associations recognized by the Yukon Workers' Compensation Health and Safety Board. They represent large groups of workers, employers and others involved with Workers' Compensation.

Earlier this week, they contacted and met with the minister responsible for the Workers' Compensation Health and Safety Board, and myself, and requested that the Panel consider some other options on the consultation process. They have requested that the Panel meet with them to hear their comments.

To that end, the Panel will meet with the Stakeholder Advisory Groups during the second half of the scheduled meeting, from 1:00 to 5:00 p.m. In keeping with the Panel's philosophy of being open, inclusive and fair, these meetings will also be open to the public.

The specific details of these meetings will be discussed at 1:00 o'clock this afternoon.

The Panel trusts that you will find these changes beneficial, and that these meetings, both the open mike format and the Stakeholder Advisory Group, with day and evening meetings, the Whitehorse and community meetings, and the opportunities for written, faxed, e-mailed or voice mail messages, will provide Yukoners with opportunities to provide constructive comments.

The Panel will then consider these comments, and we will continue to analyze and examine the issue put forward. The Panel will then prepare recommendations for the minister on how the Panel feels the *Yukon Workers' Compensation Act* should be amended in order to best serve the needs of all Yukoners.

I would like to remind everyone that this meeting is being recorded, and that a transcript of the proceedings will be available on the website.

As we start to turn this meeting over to you, to hear your comments, I would like to remind people that the Panel is mandated to review the legislation, to review the *Workers' Compensation Act*, and we cannot address an individual claim or situation. We can only make recommendations on how the legislation should be changed. If possible, I would ask participants to link their comments to the issues identified, and to comment on them.

I think everyone has seen the sign-in sheet that we have at the front... if you haven't signed in, I'd ask that you do so, so we have a record of who was in attendance, and so that we have a way of contacting you in the future.

When people make their comments, if you could please introduce yourself for the record, and indicate if you're representing a group. We do have a podium if you'd feel comfortable using that, but I think, with the small group here, we could probably voice your comments from the floor.

Who would like to comment first?

Mr. Rody: Just a couple of questions. Will all the meetings be this format? Second, you say you will receive or do additional research; will we get to see the results of that research? Third question, you say the Panel will prepare recommendations to the minister; will we get to see those recommendations?

Mr. Rouble: The format for the meetings with the Stakeholder Advisory Groups will be different. We will have a different structure to the room, as was requested at the meeting that they held with the minister and myself earlier this week. We'll set up a rectangular table so that we can more easily participate.

But for a public meeting such as this, it was felt that this was the most appropriate forum to use, to give people an opportunity to come forward and express their concerns. If others make comments that they find this format intimidating, and have other

suggestions, then we will look at changing it for subsequent meetings.

Information that the Panel does... some of the discussions that the Panel has... well, they're done *in camera*, as a Panel just having a discussion. We have worked with an additional outside consultant, and the fruits of his efforts are encompassed in the latest document, the *Options for Legislative Changes to Yukon's Workers' Compensation Act* document. If the Panel does, indeed, address additional consultants to write additional reports, I would expect those would be made public.

In answer to your last question, yes, indeed, the recommendations of this Panel will go out to the public as well as the minister.

Mr. Rody: Thank you.

Mr. Byrom: Based on the latest communication, my understanding is that this part of the meeting is actually to deal with concerns about the process; about the consultation process?

Mr. Rouble: No, the purpose of this meeting is to seek input on any of the issues brought forward to date, and the options for addressing them.

Mr. Byrom: Okay, then. It seems I read an e-mail from the president, saying that, because of the concerns about time limits, they were going to get into concerns about the actual process. But, anyway... that's all right, I can frame a question anyway.

Some people aren't very knowledgeable on what is "consultation". So, for example, somebody just told me, yesterday, that, without research, it's not a consultation. So the research is in the discussion paper.

So, the question I have, because I haven't completely read it, on the issue of wage loss benefits calculations, you know, the 75% gross, 80% net, is there research on the outcomes; the impact? In other words, do you have research that says an injured worker, who has worked for two months, seasonal, permanently disabled, can't go back to his job, 80% net is the calculation he's going to get... what's that going to be, what is 75% gross going to be, what is annual averaging going to be, so that people will have an informed decision on the impacts, as to what the best option is for the injured worker? Do we have that research?

Mr. Rouble: You've raised a very good point, and important issue, and an issue that the Panel has spent a lot of time considering and debating and discussing, and that is; how do we have people participate effectively on an issue as complicated and as complex as Workers' Compensation; and how can we receive positive, constructive input from folks, on all of these issues?

The Panel certainly does not expect every person in the Yukon Territory to become an expert on every facet of Workers' Compensation. That's impossible. Which is the whole point of creating a Panel that, indeed, would work with the experts to analyze all of these issues, and to make decisions on those issues.

Additionally, the Board has also worked with different stakeholder groups to provide different organizations, that represent either employers or workers... the Board has presented those organizations with some monies to conduct some research in areas of particular interest to them.

Can we make everyone in Yukon Territory an expert on this? No, of course we can't. Nor would everyone want to become an expert on this.

The purpose of this consultation is to get your take, your thoughts, on the issues presented, to hear the principles with which you would like us to consider these different options, to identify those issues that are particular concerns to you, and how you would like to see the Act be amended in order to come up with your intended outcome.

If your position is that you would like to see the workers receive greater compensation, we'd like to hear that. If you have a particular take on one or two of the other ways of calculating that, we'd like to hear that, too. If you have a philosophy as to how the rate should be calculated, we'd like to hear that.

But, as for doing the math calculations... yes, the Panel does have access to experts to do those calculations, or would do it ourselves, or would look to additional research that already exists on the topic.

Mr. Travill: One other thing, like, the specific example that you raised is an issue that is going to be coming forward in the benefit portion. So we'll be discussing the benefits in a separate meeting, later on, at one of the other meetings. I'm not exactly sure what the timing of that meeting is. But if you read the research that's in there, it will lay out that, here are some of the concerns if you use 75% of gross; here are some of the concerns if you use 80% of net.

And the problem we also have, there is a lot of variety in what else those have. So, while, in the document, we didn't do the math, for instance, for a calculation of 80% of net, based on an assumption of what the taxation levels are in this jurisdiction, we provide that as that's one of the formats that the other jurisdictions use. And so we say here's this, here's what they do in other areas, here's the different options.

We've laid out that our conclusion, in having reviewed all of those in this particular one, is that it's almost the same. But, if you do have specific questions, once you read the background research... say we make an assumption that the current system is less beneficial to a low income earner, versus the net system, because of the taxation ratios. But, if you want a specific number, like, if you want us to run a worker earning 30,000, what numbers would he earn in a set format, or if we use, say, the Alberta model, where they assume taxation rates, and we plug that in, you could do that. But if you want numbers, specific numbers worked out, just look at the background research that's there, and then see if you need to ask us to run that, and, if you give us a bit of notice, we can do that.

Mr. Rouble: One of the challenges that the Panel has faced, is that there was the identification of 88 issues. We received direction from the minister to pursue an examination

of all 88 issues. And we will provide a comment and recommendations on all 88.

The challenge, though, is in, how do we facilitate input from folks on 88 issues all at once? And it was felt that the best way to do that would be to break it down into different segments or areas of interest. The topic for today is the governance issues, and assessment issues. We do have an additional public meeting scheduled to discuss specifically those benefit issues.

Again, one of the challenges of the Panel is, how do we get input, and how do we create a structure to provide a format to allow for some kind of organized review of this? So, I appreciate your comments on this. We will be getting into more of a discussion, we'll be hearing more comments on benefit issues, at one of our subsequent meetings.

Mr. Byrom: The e-mail that we got was the governance issues would be discussed this afternoon; and in the morning, they were going to

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address concerns that were raised, in the meeting on Tuesday, by stakeholders who were complaining that there wasn't enough time to consult with their membership on so many issues.

So, that's not the way it is now? We're discussing governance this morning?

Mr. Rouble: I'm sorry, sir, I was not privy to the e-mail that you've received.

Mr. Byrom: It was from the president, in relation to the minister and the chair. Did anybody else get that?

Mr. Karp: No. We were under the impression that this morning was going to be public discussion on governance, and this afternoon the stakeholders, in an open forum, were going to discuss –

Unknown Speaker: Format.

Mr. Karp: And governance. That was our understanding. And we're just here, today, to listen to the public input this morning.

Mr. Rouble: I take it, it was a process concern that you have?

Mr. Byrom: Well, they were raised on Tuesday. You know, it was in the newspaper.

Mr. Rouble: And I did announce some of the changes to the process, in the introduction, that

I hope will address those concerns; including the addition of an evening meeting, and also the additional reminder that folks may make submissions up until June 15th, outlining their comments. So we do have additional time for those groups to meet with their specific constituents in order to formulate their comments.

Mr. Travill: Alan, I'm just wondering what the concern is. Is it that you didn't have enough time to review the document that we sent out? Or is it that we're not providing an ability for you guys to come and give, in a shortened period of time, the perspective on these issues? I'm just not quite understanding what the process issue is that you're looking at.

Mr. Byrom: Well, the concerns were raised, on Tuesday, about the process of consultation, what consultation is, and how much time was involved. So I came here this morning with the understanding that we would be voicing

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some of those elements of concern.

So, in some areas, I have a concern about language; the content of the discussion papers. And one of those concerns is, is that business of the research on the outcomes, the consequences. Because there seems to be a general orientation or bias that there is something wrong with 75% gross, immediately before, for all workers in the Yukon. But there doesn't seem to be informed research commentary that advises why it's the best option.

So we have a situation where the legislation guarantees 75% of gross for everybody, then we have a policy that annually averaged, so workers ended up on \$10 a day, so 75% of gross ended up as 10% gross, so the outcome is poverty.

The people who made the policy weren't concerned about workers not getting enough; they were only concerned about too much. So their concern about too much, led to not enough. The reason why they were not concerned about "not enough", because they thought, well, it's the right thing to do, because it's relative to your earnings. But, in fact, it appears that it could be the wrong thing to do, because it broke the law.

So one of the problems is that, in the review process, in the discussion orientations, there is a possibility that the mismanagement element, the bias that there's something wrong with this legislation, it's poorly written, it's bad, sort of affects the review process, itself. So it could appear as though the lack of time for consultation would serve the interests of ultra-conservative elements that want to give the injured worker less, based on a bias, based on an opinion, that hasn't been intellectually thought out, with adequate research that reveals why, although it might be a little bit too much, there is no evidence, really, to support that workers are getting overpaid, because it doesn't reveal the content of the deeming and things like that.

So that was a kind of concern that I was interested in raising, you know what I mean?

Mr. Travill: Well, I think I understand. But I don't see that so much as a process issue, as a

specific issue with that section of the Act, which, when we get to the benefits, we'll discuss. It's a huge, complex, issue.

As I say, that discussion on the benefit portion is several weeks away. What I'd like to invite you to do is review the research that is in this document, that points out things like that, and then it also points out minimum compensation, which it is designed to prevent against those sorts of things – like, it throws in a whole lot of things...

Mr. Byrom:

Yes.

Mr. Travill:

... look at the research, and what the document

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specifically says on that issue, and then it would be fair to say to us, like write us an e-mail and say, "Look, can you run the scenario on a worker that is earning \$20 an hour and gets hurt in the first week?", or something like that, under 75% of gross or 80% of net.

Because the difficulty we had, when we were doing the research, we could have a million different scenarios. And each scenario would come back with a different number. So, what we did was, we tried to talk general high level terms, saying that, you know, here is what the intent of that section is, and here are things to consider, minimum compensation, maximum compensation, annual earnings, seasonal worker... you know, all of those sorts of things, and fed them in. And trying to get input and discussion about where people sat, based on that.

So I think, if you look at what we've written on the particular issues, it leads you to look at those other areas. But if you want specific calculations on specific sets of circumstances, then e-mail us and we can get that to you.

I'm sorry, I'm over-speaking bounds... but I think we can do that. I think that that would be something we could take it through.

Does that help you at all, Alan?

Mr. Byrom: Well, it adds. But maybe Robbie could explain the e-mail that we got about this, what this meeting was supposed to be about. A little bit more comment there, because there's not much else being commented upon.

Remember we got the e-mail, you know, where we were concerned about the consultation process on Tuesday? So everybody got concerned, and then we got that e-mail, saying the first part of this morning would deal with... what?

Mr. King: Yeah, from Pauli Gabb. That came in yesterday, and she said the afternoon, at 1:00 o'clock, would be used for discussion on the governance issues.

Mr. Byrom: And what would we do this morning?

Mr. King: We'd just talk about – I can't recall her actual words, what it said, but it wasn't to do with governance issues, it was to discuss, I think, how it's running or something. Process and whatnot.

Mr. Travill: We're unsure what the Board is doing. I mean, the Board doesn't speak for the Panel. So I'm not sure what the Board is doing, telling people what we're going to do. But, I mean, Patrick explained what we saw as the

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process, and what we saw as the time, so I'm at a loss to think what direction the Board was going.

Mr. Rouble: The topic for today is to hear the public's input on governance issues. As I've commented earlier, in recognition of some of the concerns raised earlier this week, the Panel will meet with the Stakeholder Advisory Groups this afternoon and, indeed, have a further discussion with them as to how the process should work, and look at governance issues.

The purpose of the meeting this morning is to hear individual's, or public's, or even groups', for that matter, thoughts or concerns on the governance issues.

Are there any governance issues, Mr. Rody?

Mr. Rody: Patrick, maybe you should mention, for Robbie's benefit, what you said earlier, about the process about evening meetings.

Mr. Rouble: Sure. To recap the introduction that I started the meeting off with this morning, we did hear some of the concerns that were raised – I'll recap some of the comments I made earlier.

Upon the release of the consultation schedule, we heard some needs were not being met satisfactorily. These needs included the ability to participate in a public meeting outside of regular business hours; and the flexibility not to stay for the whole meeting in order to make a comment. We received comments that the meeting schedule was too time consuming, and we received comments that there was not enough time scheduled to address all of the issues. We also received comments from some members of the Stakeholder Advisory Group that they would like to see a change to meet their needs.

To address these concerns, we would first like to remind participants that they have the ability to make written submissions to the Panel, or may leave their comments on the Panel's voice mail. But we do propose to change the format of the meetings to address some of the valid concerns. First, we will be adding an evening meeting, to allow for comments from those who are unavailable during the day.

Secondly, we will use an open mike format for the first half of the scheduled meetings, to allow individuals to come forward and make their comments. This will allow people to leave. Also, individuals will not have to wait until a particular issue is brought forward before they speak to the issue that is important to them.

The proceedings of these meetings will be recorded and a transcription of the comments made available on the website. This will allow people access to the comments made, without being present for the entire time.

Members of the Stakeholder Advisory Group also expressed their concerns, and we will be meeting with the Stakeholder Advisory Group in the second half of our meetings, from 1:00 p.m. to 5:00 p.m. And, later this afternoon, we will discuss the specifics on how those meetings will be run.

These were the concerns that were raised with us, and we've tried to change our format, and added a meeting, in order to address them. If there are other concerns, it's best if we hear them directly, so that we're able to address them. We did hear a comment earlier, I'm not sure if it was identified specifically as a concern, about the layout of this room, and whether some folks find the format intimidating I'm not sure, but we are willing to make reasonable changes to accommodate requests, in order to receive additional quality input.

Mr. King: Well, thanks for repeating that, taking time to give me that information. I appreciate that.

I guess I just have one comment to make, and that's that the Panel must realize that you keep on harping, or talking about, June 15th for a deadline for submissions... well, we've made our submissions. Now we would like to discuss our submissions. So, to submit a position, or submit what we think, and not being able to discuss it, is two different things.

So, sure, we can make more submissions by June 15th, but how do we discuss them in an open forum? So I think this Panel's got considerations that this June 15th deadline for submissions... that's fine, but when's the deadline for discussion, then?

Mr. Rouble: Well, Mr. King, if there are comments that you'd like the Panel to hear, regarding governance issues, the floor is yours right now, if you would like to make those comments. Additionally, as a member of the Stakeholder Advisory Group, the Injured Workers Alliance is invited to participate in the meetings this afternoon as well.

Mr. King: Somehow, you've lost the point; and that is that, you know, submissions can be made till June 15th. Is that right?

Mr. Rouble: That's correct.

Mr. King: Okay. So, if I leave after today, and we have a submission to make after we sort of

review what's going on, we make a submission, when can that be heard under discussion?

Mr. Rouble: Well, we have the schedule for the public meetings. Additionally, an evening meeting will be scheduled. I would expect we will

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look at the week before the community meetings, but we just want to fine tune that specific date to insure that it doesn't conflict with other meetings. So that will be another opportunity to bring forward your comments. Or you may participate in the Stakeholder Advisory Group meetings, which will be held in the second half of our scheduled meetings.

We're trying to provide as many opportunities, for as many folks to provide comments, in a manner that best suits their situation. If people choose to e-mail the Panel with their comments, we would love to hear those; if they choose to voice them in a public forum, we'd love to hear those; if they choose to write them down and prepare a submission, that's fine. It's whatever works best for you.

Mr. King: Sure. If Joe Blow, down the street, makes a submission, how do we hear about that, as a Stakeholder Group? You'll hear about it; you'll read it. But how are we supposed to comment on it?

Mr. Rouble: The comments heard during these meetings are being transcribed and will be available on the website. Additional submissions made to the Panel will also be included in our final document.

The purpose of receiving comments from the various stakeholder organizations, the various organizations interested in this, and individuals, is so that the Panel can draw its conclusions, so that the Panel can make its recommendations. And, based on the input received from others, in addition to the additional research that the Panel will do, the Panel will then draw its conclusions and make its recommendations to the minister.

Mr. King: All right.

Mr. Rouble: The purpose of the Panel is so that three people could sit down and have the hour long discussions on all of these issues, and not so that everyone in the territory will be expected to be, or would have to become, an expert on Workers' Compensation to make a comment. The responsibility for making recommendations to the minister lies with the Panel.

Mr. Byrom: On the issue of the governance, there's a few things that I'd like to understand. Because I think it would be important to know what, in the governance, turns into a problem, so that we can find a solution.

In other words, we hear that the chairman of the Board is neutral. But he's not neutral. The

Chairman of the Independent Appeal Tribunal is not neutral. So the hierarchical structure of the organization, in terms of governance, is vulnerable to corruption; to political influence; to people not actually doing what they're supposed to do. They're not impartial. They're not doing things that are responsible. They're not neutral.

And, when that begins to happen, so that abuse begins to happen, nobody can do anything about it because they've got absolute power. They're a law unto themselves.

So, if I could understand those relationships... this is where we need the research consultation bit, and discussion. Understanding those relationships between the Board, the president and the minister, and what happens when that fails. Like it did for the last 10 years. They're a law unto themselves, and nobody applies the law, because of whatever reason. Partisan politics.

So, understanding the governance is important to understanding how to address the problem; how to find a solution to the problem.

So the issue of voting... is the Independent Appeal Chair – should he be a member of the Board? Well, you know, it would be okay if it was Heather MacFadgen, who's, you know, an integral, honest, lawyer. But if it's the current Chair, we'd have to say "No way." You know what I mean?

So the problem of governance is also a problem of hierarchical structures, of what happens when it goes wrong. How did they get this absolute power? They can just walk over people, and stakeholders and nobody can touch them. Not even the minister can act upon it, or he doesn't act upon it, so it gets out of control.

In other words, over the last 10 years, they began to do things to the legislation, and it was, like, where's the impartiality? Where's the objectivity? Where's the neutrality? It's like they were imposing their values and opinions on the legislation, instead of managing it effectively.

That's what I meant about the problem of the inheritance of the last 10 years of management influencing the process and the content of the papers, it could be viewed as a governance issue.

Mr. Rouble: Can I ask a clarification in your interest of – is the selection of these chairs that's the issue; is it the performance that's an issue; or is it the accountability --

Mr. Byrom: I'll give you an example. You know, I don't want to upset anybody, I don't want to be offensive, but, for instance, it was in the paper, Mr. Tuton says the Independent Appeal Tribunal is recognizing too many legitimate claims. You know, that is not a neutral statement. That statement says legitimate claims should be accepted on a percentage basis and not on law. So, of course, the Tribunal Chair says, you know, that is ridiculous. So that is a biased statement, it's not a neutral statement.

So, what happened was, the chairperson, who was the lawyer, was replaced by the minister. So the Board Chair could have influenced the minister, and they chose an Independent

Appeal Chair, now colludes with the Board to agree on policy that doesn't comply with legislation.

So, for example, what happened, a recent decision, it made it look as though the Independent Appeal Tribunal made a decision in favour of the CL-35 policy on the sole basis that it appeared the policy upheld the principle of protecting the solvency of the Fund. Which means they're saying that the legislation threatens the solvency of the Fund; and we're using legislation to fight the legislation. Like, they took it to the ultimate contradiction.

They couldn't actually find a law on which that policy was based, so they played this word game between point of time/period of time. Then they came up with this business of it protects the solvency of the Fund. Which was suggesting that 75% gross to the worker is a threat to the solvency of the Fund.

And that's what all that started with, within the administration, in '93, with somebody inside there thinking, Hey, this legislation is too good. And they started fooling around, and the consequences were poverty.

So that's what I mean is, what happens when the governance goes wrong, and they lack that impartiality? How do we find a solution to that kind of a problem?

Mr. Rouble: Could you provide some recommendations or comments, then, as to how we can improve the governance structure through legislation?

Mr. Byrom: Yes, this is why, you know, I'd have to do the research to understand the relationships, and then bring it into a consultation, so that other stakeholders get the picture. So that we can get an informed decision on how to deal with the problem of governance.

Mr. Rouble: This has been identified as an issue, as to how our Board members are appointed, and the issue of the Chair. And it's an issue that we have had on the table, now, since the inception of the Act Review. And we're all aware of the time it has taken, since the creation of the original document and where we are now, and it was expected that, by having this much time, individuals, who have interest in this, would have an opportunity to look at the Act further and to review our comments further.

Mr. Byrom: Just one little question, unless somebody's got something to say. The issue of governance... is that part of the public interest issue;

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having members on the board that have public interest?

Mr. Travill: That is one of the issues in the governance. If you look through the document, we've gone through the separate issues, and all the issues that you've brought up have led to questions that are in here. You know, How do you select who to be on the Board? How

do you select who to be on the Tribunal? You know, does the Chair vote, does the Chair not vote? All of those things are contained in here and, like I say, the concerns are all already in here.

Mr. Byrom: For example, we've already read, or heard, an opinion about public interest. It's been submitted, I presume, from Labour. So, the idea is that we have an opportunity to consult about that kind of thing; you know, to have this exchange.

So, one of my points was that, when I read, they gave qualifications for the public interest candidate, and it was, like, educated in financial issues, educated in medical science issues. And I started to look at that, and I started to think that this looks more like interest of the WCB. And then I thought, well, what's wrong with that? Maybe what's good for the WCB could be good for the public as well.

So, they're also political appointments. So there's no guarantee of, whatever qualifications they have, that they're going to be impartial, or that they're going to do their public interest.

So I would like, you know, to know how it works in other jurisdictions. Like, what is the positive asset?

Mr. Travill: If you look at Issue #1 in the book, page 13, we talk about composition of the Board. And we go into that. You know, that it's a "'historic compromise' between the workers and the employers...", we go into "However, the addition of public interest ..." have been made in some of the other Boards, you know, in such areas as financial, occupational medicine, health, safety, money management, insurance... those sorts of things.

And then, when you look at our options, that start at page 14, and then follow over on 15, number 2 of the options says – you might be wanting to comment or recommend, based on what I've heard you say here, would be option number 2, you know, "Amend the legislation to allow the addition of 2 public interest members to the Board."

So, I mean, the difficulty is that we have done the research, we have provided it to you, and we have provided it to you for, what we've taken criticism over, a length of time. So it is there, the background work is there, and what we were hoping to get is comments such as that, that you or your group is in favour of public interest, or opposed to public

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interest, for this reason or that reason, based on the research that we've provided, or based on research that you have, or based on just your own personal beliefs and what you see the system as being.

So the information, the research and the background stuff is all in this document. It has been out for – well, we've taken heat over it, for the length of time that it's been out. So we're just

wondering, I mean, have you had a chance to –

Mr. Byrom: Yeah, okay, so I'm going to give you my thought right now, my opinion. I think that we should have public interest on there, for this reason: that the public interest candidates could be screened by non-partisan stakeholders like Yukon Communities Association. Because negative legislation can have negative impacts on the whole community... create poverty.

Secondly, the second largest stakeholder group in Yukon are First Nations. That means they not only pay the premiums, they have to pay the welfare when those premiums aren't good enough. So they're getting it from both ends.

So I think it might be an advantage for First Nations to be able to approach somebody who's involved in public interest, to say, "What's going on here is not in our interest. It's not in the public interest. It's not in the interests of our community that we have to pay from both sides and both ends."

And that goes for everybody, in the sense that, why should Social Services pick up the tab for the employers? Because we've been lumped with bad legislation as a direct result of the failure of the consultation process for people to be fully informed of the consequences.

So that is my opinion of why a public interest might be good. Because I haven't seen anything other, that would suggest it's not good, other than it would interfere with the power and control of worker/employer reps, that, over the last 10 years, have used this compensation system as a battleground for partisan political positions, and not really looked after the interests of workers or employers effectively.

So that's my consultation, today, on that one.

Mr. Rouble: Thank you.

Mr. Travill: One of the other things you also mentioned is one of the other areas that we are looking at in the governance, as well, is you mentioned about a screening process. One of the other areas we deal with in the governance is the appointment to these positions. Currently, the legislation says the minister will appoint after consultation with groups representing workers and groups

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representing employers. You mentioned the Association of Communities. Is that an area you also wanted to address?

Mr. Byrom: Well, there was a representative from the Yukon Community Association in the meeting on Tuesday, and he expressed a concern that the amount of information that was here, in order for him to participate and make informed decisions, he would have to go back

and consult with his membership. And that process could take way longer than your time constraints on how much time we've got to consult.

Mr. Travill: But, Alan, this document's been out over six months.

Mr. Byrom: Yes, I know. So that's why I introduced the Community Association idea of the screening for public interest. Because, in that consultation on Tuesday, we simply had Mr. Rody stand up and say, "We're not having this public interest." They didn't even want it on the floor as an option to discuss. They wanted it removed. Because they were talking about where could we get consensus, on what options to discuss, so we can cut down the time problem. So we were concerned that we weren't going to get a chance to even consult about public interest.

Mr. Travill: The people to be consulted with are us.

Mr. Byrom: You guys, right.

Mr. Travill: And we are here today to do that. We don't know what went on, on Tuesday. None of the three of us were at meetings, other than here. So this is your opportunity –

Mr. Byrom: So, that's fine, yes, I've made my point, that's good enough. That's what I'm here to do.

Mr. Travill: We've heard your position and your comments, and we'll hear them, we'll put the information on the web, and then we'll also consider it and discuss it and come up with a decision.

Mr. Byrom: Okay, thanks.

Mr. Buyck: My name's Don Buyck, I'm from Mayo. I work for the First Nation, Na Cho Nyak Dun. Just on that question of the public interest member, can you give me an example of what profession or business or – like, what is a public interest member?

Mr. Rouble: One of the options put forward is that, on the inclusion of the board, there would be people not tasked with representing employers or representing workers, but looking after the general interest of all Yukoners.

A question to you, then, is, do you think there should be specific criteria, and selection criteria, for that individual?

Mr. Buyck: Well, my own thought on that is, I think the First Nation, all the First Nations, we should have our own representation, in some way, shape or form, rather than have somebody

from the public sector represent us.

And right off the bat, I'd just like to state why I'm here. When I found out that no First Nation board counsel for a Yukon First Nation had submitted anything to this document, and that it has been out there for six months, that tells me, clearly, one thing: A, that either they've got their own *Workers' Compensation Act*, in their system, set up (and I know the answer to that is "not"); or, B, they don't care enough about workers and about staying on top of documents such as this, that are going to have an impact upon them.

Regarding the representation on the Board, given the fact, as this gentleman mentioned, we're the second largest employer in the Yukon... I have approximately 40 people working in Mayo, in my First Nation, and they're not all native, we have nonnative people working with us. I think, in terms of history, we were under the *Indian Act* up till about 1995. Employees under the *Indian Act* can't take their employer or the federal government to task through the *Canadian Human Rights Act* right now, and we're in the same boat with the *Workers' Compensation Act*. There's nobody really representing the First Nation workers.

And I know, through hard experience going through the Workers' Compensation process, dealing with an injured worker, somebody who turned 65, the day he turned 65 his benefits were cut off and he was basically c'est l'vie; see you later. And no follow-up. So I know that, for an older worker, it's tough to deal with WCB. And for somebody like myself, who didn't know this system and had to find it out the hard way, it's definitely not easy.

So I think we need to have somebody on that Board. I don't know if the Umbrella Final Agreement covers that, where the government has to have adequate representation. But, to my way of thinking, nonetheless, we are the second largest employer and we should have proper representation on that Board. But not only on the Board; the Appeal Panel, and any other entity struck up out of that.

One of the things that we really need to deal with, with the First Nation employer, is, they have to be brought up to speed with their responsibilities. I mean, I was totally

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blown away when I found out that not one First Nation or CYFN had responded. And that tells me, quite clearly, they don't care enough for the workers.

Coming to the workers' representation, I understand that you have some person working on the Board that's supposed to be working with the First Nations people, or First Nations government, but I'm not clear on that. But, definitely, you need to. When I take a look at the 11 First Nations who signed off, and who this Act applies to, there are a lot of workers who are not being adequately, properly, represented. So that needs to change. And I'll just stop there for now.

Mr. Rouble: If I could comment on that... we have invited participation from Yukon First

Nations in this process. At the beginning of the process, we recognized the responsibility to consult with other orders of government on this, and, right from the beginning, correspondence was sent to the Grand Chief of CYFN and all Yukon First Nations, inviting their comments on how they would like to be involved in this Act Review, both as an order of government, or as an employer. Unfortunately, we did not receive a response.

All communication materials that we've provided since then, that have been sent out, have also been sent out to Yukon First Nations.

Mr. Buyck: I can appreciate that. I'm not saying that you haven't done your job by doing what you're doing. I'm just saying that it should really get your attention, if 11 First Nations and CYFN don't respond, what does that mean for the worker? That should catch your attention, if nothing else.

Mr. Travill: Well, and it is difficult, the First Nation situation, because they're an employer, and they're representing workers, and, dealing with WCB, things are divided into the two groups, workers and employers. And one of the worker representatives on the Board of Directors for the Workers' Compensation is of First Nations ancestry, but she was appointed to the Board as a representative of workers. And that's the difficulty that First Nations are in, sometimes, because sometimes they're doing both; they're representing their workers, but they're also the employer. So it becomes a difficult situation.

Mr. Buyck: Especially for the worker, yes.

Mr. Travill: But there isn't any formal mechanism of recognition to the First Nations, or a unique status to them, much the same as there isn't a formal recognition of the territorial government as an employer; they're just one of the group of employers, and participate in that group as the group of employers.

Mr. Buyck: So, if no employers respond, and you have a

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worker – and that's what I am, I'm a worker, and I'm the workers' advocate in my office, so I don't get treated all that well because I remind them of their obligation and their responsibility.

But what I'd like to know by the end of June, before this is all completed, is what role is there for a worker to become involved with the system, so they understand it, both for the worker and for the employer, so you're not getting the gears from the employer. That has got to happen soon.

And I'd just like to clarify on the Land Claim agreement. You're sure that it doesn't provide that the Board has to have proper or adequate representation?

Mr. Travill: No, the Board doesn't.

Mr. Rouble: I should make a comment that neither of us are representatives of the Board, either the Board of Directors or the organization. One of the comments that we have heard from folks is that some of the issues that have been identified are policy-type issues; that there's already provision in the Act to deal with this. So it could be that there might be a way that the Board could currently respond to your needs and concerns.

So, I wouldn't put the whole onus on the Review Panel to address this; there could be an opportunity to speak directly to either the Chair of the Board of Directors, or the President of the organization, to look at ways of addressing the needs that you've expressed.

I'll leave this area for now. I'll look at that later

Mr. Buyck: on, for sure.

Mr. Rouble: We can look at how to change the legislation in order to respond to needs. The organization, itself, can also look at ways of changing its policies and practices, to respond to the needs and concerns identified by the Act Review.

There's always a danger, in an Act Review, when you open the door to a topic, that many of the issues that come up are not strictly constrained to the specific legislation, but to the broader operations, policies and practices of an organization. But our task is to make recommendations for changes to the legislation. It isn't to make recommendations for policy changes. There are other mechanisms out there for that. But our role is to provide the minister with recommendations on how to change the legislation in order to address the needs expressed.

We've reached 10 after 10:00; would people appreciate a break to either have a cup of

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coffee or use the facilities? Why don't we take a 10-minute recess, then.

(Proceedings adjourned at 10:10 a.m.)
(Proceedings reconvened at 10:35 a.m.)

Mr. Rouble: Before we continue, I'd just like to clarify that the last document that the Panel provided, the *Options for Legislative Changes to Yukon Workers' Compensation Act*, has been out for about a month now, and not for six months. It's some of the earlier documentation that has been out for quite a bit longer than that.

Mr. Travill: Sorry about that.

Mr. Rouble: I think we just ended on a good note, with some good discussion on some different governance issues, and positions raised. Is there anyone else that would like to make a comment on governance or, specifically, on some of the options identified in our

paper?

Mr. Enders: Mr. Chair, Board Panel, today I want to speak about harmonizing Workers' Compensation with B.C. Issue #15, dealing with administrative costs under governance issues, raises the opportunity of harmonizing the Yukon Workers' Compensation system with that of adjacent jurisdictions, like British Columbia, as a possible way to save on Workers' Compensation costs and, more specifically, an option to.... And I'm going to go through some advantages, some disadvantages and, at the end, if there's merit, hopefully you'll have a look at it.

If you're going to harmonize with B.C., you need to evaluate the opportunities of amending the legislation to harmonize with adjacent jurisdictions (and it could be Nunavut, or Northwest Territories, Alberta or B.C.), with a view to contracting the adjacent Board to provide all of the services. This, in itself, could save 60 to 70 cents per \$100 assessable payroll, and also ensure highly qualified personnel are available. This may mean giving up local control of legislation and policy which have unique provisions applicable to the Yukon. Local employment would also be affected.

The advantages of such a contracting arrangement include: saving of administrative costs, given the economies of scale that are possible; more specialization; risk pooling, with the possibility of more rate groups, with the associated advantages of more rate groups; expanding the pool of qualified personnel, especially if the contracting is to a larger jurisdiction such as B.C. or Alberta; possibly reducing claims and other costs, since the Yukon is generally an outlier in the provision of high benefits and other costly items, and harmonization would likely move the Yukon closer to the average. In that vein, it likely would be a move in the direction of restoring balance.

Disadvantages of such a contracting arrangement include: reducing local control and service delivery (although presumably the contractual arrangement could be stopped if this turned out to be severely problematic; possible reduced local employment (although this depends upon the availability of alternative employment and the extent of local labour shortages); negative image if it gives the appearance of simply reducing benefits to workers, depending upon the jurisdiction.

Each of these topics will be expanded upon in turn, and a recommendation made at the end of this report.

I'm going to open it up for a bit of a dialogue, and then we'll go from there.

“Advantages of Such a Contracting Arrangement – Savings of Administrative Costs “

In operating a system like Workers' Compensation, there can be substantial fixed costs associated with different components of the system. Elements of fixed costs, for example, can be associated with such factors as: accident fund investment decisions; purchasing of computer systems architecture and platforms; equipment and other infrastructure costs; administering human resource, payroll and legal systems; adjudication expertise; medical

expertise; and review procedures.

In a small system like that of the Yukon, these are amortized over a smaller number of cases. In the extreme, if there was one employee, in a Workers' Compensation system handling one case, elements of such fixed costs would have to be incurred. In larger systems, this can be amortized over a larger number of cases, so that economies of scale can be obtained. Contracting to a larger system can thereby facilitate achieving such economies of scale and, hence, save on administrative costs.

As indicated, the earlier report, "Review of Administration Cost" (November 1998), commissioned by the YWCHSB, concluded: "Due to the impact of economies of scale, the Board's administration costs represent a higher proportion of the Board's overall operations than for larger Boards. Although service levels and other legislated obligations are similar in the Yukon to most other jurisdictions, the infrastructure costs associated with the delivery of those services has to be spread over a much smaller base."

Based on the Association of Workers' Compensation Boards of Canada data for 2003, administrative costs, as a percentage of total costs, were about 33% in the Yukon, compared to 29% in the Northwest Territories/Nunavut (with about two times the claims volume), and 20 to 23% in other large jurisdictions.

In other words, administrative costs, as a percentage of total costs, were slightly over 50% higher in the Yukon, compared to most other large jurisdictions in Canada. As

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indicated in the above quote from the review document, contracting the services to adjacent jurisdictions could save 60 to 70 cents per \$100 assessable payroll. If this is correct, this is a very substantial saving, and would come at a time when assessments will otherwise increase dramatically, since the subsidy period is largely over.

This potential to save on administrative costs, through economies of scale, has led the four Maritime provinces to explore collaborative options to pool activities and reduce overhead costs.

There are other options for reducing administrative costs, and especially the fixed costs associated with opening a new claim, and these also merit consideration independent of decisions with respect to harmonizing with other jurisdictions. For example, waiting periods (example, three days) before compensation is paid, can deter small claims and, hence, the fixed costs associated with such claims.

This is akin to deductibles in other insurance systems, with such deductibles also deterring small claims and the associated fixed costs. In addition, the introduction of waiting periods have resulted in reduction of claims filed with the system by 20%, saving the system not only the payments otherwise incurred in such claims, but also the fixed

costs associated with administering small claims.

Substantial administrative costs are also associated with reopening of previously filed claims, and subsequent appeals. As indicated, this can account for more than half of the total administrative costs. To contain costs, some jurisdictions have introduced new legislation designed to reduce the number of appeals and reopening of old claims, by placing time limits on appeals, and allowing reopening only if there is substantial new evidence.

Such other ways of saving on administrative costs can be complementary to any cost saving associated with harmonizing with other jurisdictions. That is, the alternatives can be complements, and need not be substituted for harmonization. Whether they would apply or not depends on whether or not they prevail in the jurisdiction to which the Yukon would subcontract.

These other procedures to save on administrative costs give rise to other associated concerns. For example, the waiting periods can lead to not reporting or dealing with small claims, which can then become larger claims if, for example, infections or complications arise. As well, workers can be bearing the cost of lost wages during the waiting period. Reducing appeals and reopening of old claims can mean that some legitimate claims are denied, and compensation is not forthcoming.

The saving of administrative costs, through achieving economies of scale through harmonizing with other jurisdictions, is a saving of “real resource costs” to the system,

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while these alternatives largely involve a saving of “transfer costs”, in that workers are not receiving benefits during the waiting period, or if they cannot appeal or reopen a claim.

In that vein, the saving of administrative costs is an appealing proposition.

“More Specialization”

Related to the economies of scale argument, harmonizing with other jurisdictions can enable more specialization and expertise to be brought to bear on adjudicating claims. This can be especially important, given the trend towards more complicated cases involving diseases, syndromes, stress and other difficult-to-diagnose claims, compared to the physical injuries that were more prominent earlier. The more complicated cases require more expertise to determine the legitimacy of a claim and whether the injury or disease is predominantly a result of work.

Obviously, larger jurisdictions can develop more expertise and specialization in such areas, especially because they will be dealing with more cases of each of the difficult-to-diagnose claims. In effect, they can have economies of scale in dealing with such cases, and this can facilitate their being properly handled in a cost-effective fashion.

An analogy would be with respect to various different hospitals and medical services that can be provided in a large urban area, compared to the limited expertise that would be available for dealing with more complicated cases in a small, remote, community.

“Risk Pooling and the Possibility of More Rate Groups”

Harmonizing with a large jurisdiction also enables more risk pooling, which, in turn, opens the opportunity to have more rate groups. Workers’ Compensation, as with any insurance system, involves risk pooling. Obviously, the greater the number of employers involved, the greater the ability to pool and diversify the risk. In the extreme, a series of unexpected disasters, to even a small number of employers in the Yukon, could substantially affect the liabilities of the system and, hence, subsequent rate assessments. If these were pooled over a larger number of employers, say in British Columbia, such unusual events would not have an effect on the system, given its size.

One reason for the small number of rate groups that exist in the Yukon (15, compared to an average of over 200 in other jurisdictions) is that risk pooling requires a certain number of employers in each of the rate groups; otherwise, the risk is not pooled and diversified. For example, if the Yukon had the over 600 rates that exist in British Columbia, most rate groups would have no employers, or only a few employers (given the approximately 2,400 employers in the Yukon).

In such circumstances, risk would not be pooled. A single severe accident could dramatically affect the liabilities of a rate group and, hence, the subsequent assessment. The insurance principle would not be in place.

However, if the Yukon were to harmonize with British Columbia, then Yukon employers could be in those larger number of rate groups, with risk pooling still applying, and the insurance principle in place. Being in one of the larger number of rate groups also has the advantage that the assessment rate for employers better reflects their expected accident experience, since they are in with more employers in terms of their expected experience.

In contrast, in the current situation in the Yukon, with only approximately 15 rate groups, more cross-subsidization is occurring, since employers will differ substantially in their expected accident experience within their rate group. In the extreme, if there was only one rate group, there would obviously be extreme cross-subsidization.

“Larger Pool of Qualified Personnel”

Being part of a larger jurisdiction also provides a larger pool of qualified personnel. As discussed previously, this can be especially important, given the trend towards more complicated cases involving diseases, syndromes, stress and other difficult-to-diagnose claims, compared to the physical injuries that were more prominent earlier. The more complicated cases require more expertise to determine the legitimacy of the claim, and whether the injury or disease is predominantly a result of work. As well, quasi-legal expertise is increasingly necessary to deal with adjudication and appeals. Expertise in vocational

rehabilitation, accident prevention and return-to-work issues, as well as claims management, is increasingly emphasized.

Obviously, having a larger pool from which to draw qualified persons will help in this regard. As discussed previously, it will also enable increased specialization and expertise – an important aspect, given the increased complexity of the system.

“Possible Reduction of Claims Costs and Other Costs”

Harmonizing with other jurisdictions may also reduce claims costs and other costs. As documented in other reports, the Yukon is generally the outlier in terms of the provision of high benefits and other costly items. Harmonizing would likely move the Yukon closer to the average. For this reason, it likely would be a move in the direction of restoring balance.

In that vein, the objects of contracting with British Columbia, as opposed to Alberta, are probably better, in part because contracting with Alberta may appear to be a “thinly disguised” move to reduce benefits by contracting with a conservative jurisdiction that

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has an image of little interest in workers’ rights. Furthermore, British Columbia just went through a thorough review of its system, and has modernized it accordingly.

“Disadvantages of Such a Contracting Arrangement – Reduced Local Control and Service Delivery”

Contracting to another jurisdiction can obviously reduce local control, and this may not be acceptable, politically, to the Yukon. There may be a concern that the Yukon would simply be regarded as a remote outpost, outside and off the radar screen of the central administration of a province like British Columbia. As such, the concern may be that the Yukon may not be serviced properly.

This concern may be allayed somewhat by the fact that British Columbia already has numerous other remote locations it serves. The concentration of approximately 80% of the Yukon population in a single location, of Whitehorse, also reduces that remoteness. The Yukon also has other successful experiences with harmonizing with larger jurisdictions. It has adopted the British Columbia curriculum in its school system. As well, such contracting arrangements do not have to be in perpetuity. The Yukon can set conditions for ending the arrangement if not satisfactory, although this may entail new start-up costs if the former system has to be restored. It may also be the case that the Yukon could negotiate certain conditions as part of a subcontracting, although this may be difficult, given that the benefits are already likely to be in one direction – towards the Yukon.

“Possible Reduction of Local Employment”

Any subcontracting arrangement has employment implications, and this applies to any harmonization of Yukon Workers' Compensation with that of a larger jurisdiction. This can imply possible reduced local employment. The extent to which that is an issue depends on a number of factors.

For example, it may be less of a concern if there already are labour shortages in the Yukon, or impending labour shortages associated with upcoming retirements from the large baby-boom population, the leading edge of which is now at the age of 60. The same applies if any redundant personnel, from reorganizing Workers' Compensation, are relocated to positions that are in shortage elsewhere in the government, in which case the restructuring is beneficial to these other units and to service delivery.

Downsizing, if it occurs, often can be done through attrition and reduced new hirings, or through voluntary early buyouts. It can also be done in a phased fashion, or timed to minimize disruption.

"Negative Optics" As indicated previously, any harmonization or contracting with other jurisdictions may be regarded as a "thinly disguised" move to reduce benefits (at the expense of workers), and not to save on administrative costs. This could be the case, especially if the contracting was with Alberta (and I've already said that once), since it can have an image of being a conservative jurisdiction with little regard for workers' rights. As well, Alberta may not be regarded as a "typical jurisdiction", given the expansion and resource boom that is occurring in that province. For such reasons, contracting with British Columbia likely makes more sense. It is also a very large jurisdiction, so the economies of scale can be obtained. Furthermore, British Columbia just went through (and I'm saying this again) a thorough review of its system, and has modernized it accordingly.

"Conclusions"

The potential benefit from harmonizing and contracting with other jurisdictions appears sufficient to merit further investigation in this area. As such, it would appear sensible to endorse an option to "evaluate the opportunity of amending the legislation to harmonize with an adjacent jurisdiction", as stated above. The key aspect of that option is simply to recommend "evaluating the opportunity"; it does not endorse making the move without such an evaluation

One key aspect of the evaluation would be to simulate the hypothetical assessment rate structure that the Yukon would experience if their rate groups were merged with the over 600 rate groups that prevail in British Columbia. Currently, the assessment costs in the Yukon would appear to increase, because the Yukon has the lowest assessment rate, due to the past overpayments that are now subsidizing current rates.

However, that artificially low structure is not sustainable, and predictions are that the Yukon rate structure will be the highest in Canada within three years, if the system is to be fully

funded. In such circumstances, having the British Columbia rate structure apply would save costs to the Yukon system, although that may also depend on the amount that British Columbia would charge for administering the Yukon system.

Further, “evaluating the opportunity” in this area seems merited. Measures to achieve cost savings will be crucial in the near future, as assessment rates will likely escalate, both because past artificial subsidy of those rates has ended, and costs (including administrative costs) continue to increase substantially. Without such cost containment measures, Yukon employers risk jeopardizing their competitive position, and communities risk losing business investment and the jobs associated with that investment.

Mr. Chair, that concludes my presentation. Thank you for your time.

Mr. Rouble: Thank you very much for your presentation. Is there anyone else that wishes to make a comment?

Mr. Byrom: I’d just like to make three comments on Mr. Enders’ proposal.

The adoption of the B.C. schools’ curriculum in Yukon has not resulted in any children committing suicide; but injured workers in B.C. have committed suicide.

The President of the WCB, an experienced administrator, has already expressed the opinion that collaboration/harmonizing with other jurisdictions is not a good idea for the Yukon.

And number three was, when I was in attendance at a large meeting of British Columbia executives, talking to stakeholders and the employers, the most highly qualified British Columbia Board executive had a degree in theology. And that is a comment on their expertise and qualifications; a degree in theology.

That is the end of my comments.

Mr. Enders: Thank you.

Mr. Rody: Can I ask you one question?

Mr. Enders: Shoot.

Mr. Rody: Have you contacted either jurisdiction to see if they were receptive to a subcontract?

Mr. Enders: No, this is just my thoughts. That’s up to the

board; if they want to take it in that direction, that’s up to them. It’s just thoughts; that’s what this is for.

Mr. Rouble: Thank you. And, folks, in order to have some balance, if you could direct the comments to the Chair, please.

Mr. Rody: Okay, I needed to ask the question before he left. My comment is, I cannot think of anything more asinine than proceeding with a huge investigation as to the merits of this, without contacting either jurisdiction to see if they would be receptive to such an arrangement.

Mr. Rouble: Thank you. Mr. King?

Mr. King: Well, it seems like his proposal is like a cat chasing his tail. You want to talk about investigating this – talk about administrative costs, and the high costs of this. It costs, who knows how much money, to implement this kind of a suggestion with British Columbia. Like, that just doesn't make sense to me. It's going to cost a whole bunch of money just to set this thing up.

Also, in the discussion comments here, the discussion paper, says here, under the issue, number 75, "Administration costs", increasing complexity of the system will have an impact on increasing costs without necessarily improving services. So I think, by going ahead with what's proposed will make the system that much more complex.

Another comment is that, if you have another jurisdiction looking after ours, our claims and whatnot, the injured worker won't have the face time with his adjudicator, and they'll just be on the phone or e-mail or whatever, and that's not fair to the worker. And what about the employer? He needs that guy back. You know, "Hey, that's my main man", you know, "what's going on here?" "I'll get on the phone, and I'll phone down to B.C." And they'll get the same answer as that worker gets, "Well, we'll get back to you."

So, also, there's about as many employees, here in the Yukon, as there's probably people in Burnaby, B.C. I mean, our Act was created for people in the Yukon. Our Act was based on seasonal employment. Because that's what we have up here. We don't have a lot of manufacturing and processing up here.

So I think the Board would lose touch with reality as to what's going on in the Yukon, if you were to combine with another jurisdiction.

Also, where else, in the rest of Canada, are other jurisdictions combined? Is this the first one? Why are we doing this? Why would we make that suggestion? Trying to step out of what's accepted, now, in the rest of Canada, might create some sort of a new alliance with another Workers' Compensation in another province.

That's my submission.

Mr. Rouble: Thank you. I'd just like to remind all the folks here that we are here as an open forum to hear various thoughts and different comments, and the Panel recognizes that there will be differing views on the different subjects, but we would appreciate that all the comments were accepted as constructive comments, and that we keep it at a fairly high

level, and not to make personal comments at folks. We appreciate all the comments, and we'll give them all consideration.

We appreciate, too, hearing the issues that you think these different concepts should be measured against. If the issue of priority, then, is that we need to reduce claims

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cost, but we also need to insure that we have, as Mr. King just mentioned, face time with local contacts, there might be ways that we could accommodate both. But we want to hear what's important to you.

Any further comments?

Mr. Buyck: Just a question on the process. Are we going through this from page 1, all the way through to the end, is that the idea, today?

Mr. Rouble: No. There was a bit of clarification about that at the beginning of the meeting today. We have received comments, that going through things, one by one, is not a preferred way to do business. It was felt that some people wanted a public forum, where they could come in and present an issue, and then not have to stay for the whole meeting.

So we created this open mike format, now, for the first half of today's meeting, to allow people to come forward and present their concerns and positions.

The second half of the meeting, this afternoon, will be spent with the Panel listening and working with the Stakeholder Advisory Group. Stakeholder Advisory Groups are large organizations and associations that represent large numbers of workers and employers. The meeting will also be open to the public. But they have asked, through the minister's office and to me directly, for an opportunity for those major stakeholder groups, the stakeholder group organizations, to present and communicate with the Panel directly.

So, the short answer is, we would like to keep this morning for open discussion on governance issues, and then this afternoon we will work through governance issues with the Stakeholder Advisory Committee organizations.

Any other comments?

Mr. Buyck: I'm not sure if it ties into what you're just explaining, but one thing I've noticed in the papers, and I see these little cards that we get in the post office, you know, about safety, prevention, and all of that stuff, to think about it... currently, at my First Nation government, we don't have a worker or somebody that understands the Act and knows how to make it work properly, both for the employer and employee. One of the biggest problems is prevention. And, in terms of prevention, setting up proper training processes, that needs to be looked at. How does the First Nation government, or an individual, interested in advocating for workers,

how do you get that training, so that it becomes relevant on the ground, rather than just seeing it on a piece of paper and stuff like that?

Mr. Rouble: Interesting position... and right now, today, folks, I don't want to comment, or have the Panel comment too much, on the issues. We're here with open ears, to hear your comments.

But, on that particular issue, I think it relates an awful lot to the Occupational Health and Safety Regulations, in which case I would expect that if you contacted the Board directly, that they would be able to address your concerns in that area.

Or are you thinking that that should be mandated in the legislation? If so, would that be appropriate to the *Workers' Compensation Act*, or the *Occupational Health and Safety Act*?

Mr. Buyck: We have until June 15th to table comments, right?

Mr. Rouble: Yes.

Mr. Byrom: I think that's a good comment. On the issue of

administrative costs, what is the value of inundating the Yukon with these flyers, and half the people who are getting them don't even have a job? And another large segment of the population are in jobs where the chances of getting injured are zero. So, if you want to advertise, it could be a focus on the high risk industries. But the idea of spending that kind of money, that doesn't have a practical application on the ground, with training, like our friend is saying, is an issue of administrative costs. You know, what are they spending their money on; and what's its value? And it's an issue.

We were thinking of an alternate flyer: "Claim mismanagement is preventable. Think about it." They could have a big poster saying, "Listen, if you get injured on the ground, you might have to face WCB and that could be extremely painful. So you think about that one." So there's the issue of employers, themselves, being able to advertise on the job.

So that issue was brought into discussion on Tuesday. They had a list of what to talk about last Tuesday, at the WCB, and advertising was on there as part of that. One of the issues we had with that meeting was, you know, what's this got to do with the legislation? But it was up there as an issue... cost of advertising.

Mr. Travill: One of the issues we're attempting to address in the Act Review is the question of whether the WCB should administer the Occupational Health and Safety, which is undertaking those sorts of things; or what sort of involvement they should have with regard to prevention. So the underlying question there is, should the employers, through assessments, pay for the administrative cost of promoting occupational health and safety, or promoting accident prevention?

If you're looking to comment on that sort of thing, that's how it fits into our legislative review. Either we allow the Board to do it or we don't, but then, how they do it is the subject of policy and things like that. But when we're looking at the Act Review, should we be looking at doing that with the assessment rates; does that fit in with what we're looking at in the WCB Act Review?

Mr. Byrom: So the First Nations, as employers, could be something that they need to analyze, to look at, to present an option. It's an employer related –

Mr. Travill: Well, it's everybody's issue. Workers' Compensation is about everybody, employers and workers.

Mr. Buyck: I think, in all fairness, just to qualify that, most people that have been using WCB's system have used it extensively, ever since it was created. The First Nations, just within the past 10 years, through its self-government agreement, have been able to – well, in the 10 years that I've been around, I have yet to see a First Nation being proactive in getting the services that they should be getting from WCB. And the big reason for that, is that they haven't dealt with this system. They don't have a person that sits on the Board, that represents them at that level, at the employer level, and they definitely don't have anything in place for their workers.

Mr. Rouble: Are there additional comments?

Mr. King: Yes, just as a general comment here, regarding this, all the issues in governance and assessment issues, I was just looking through the options here, not necessarily the options but the whole write-up on each section here, and I somewhat take offense to the fact that all the different jurisdictions across Canada were referred to, and even so far as Australia. I mean, this is the Yukon. And I think that this Panel should really take a look at what they're dealing with, and that is that you're dealing with a few thousand people up here... not Ontario.

I don't think Ontario, in their discussion paper, would say, Well, in the Yukon, they do it this way. I think it would just get laughed off the paper.

So a general comment is that I take offense to all of the other provinces being used for examples, when we don't even come close to the populations of any of those... plus our injuries are a bit different, too – can be – because of the type of industry we have up here. I don't know if trapping is included or whatever, but, there's different things up here that people get hurt at.

Mr. Rouble: I appreciate your comment, sir. One of the comments we received, initially, was that people wanted to look at other options; of how

can we do this differently; how do others do this differently; are there other ways that work better; or are there other ways that work that have other results? So we included other jurisdictional examples in order to illustrate that.

I certainly appreciate, though, your raising the unique character of the Yukon. Are there specific attributes about the Yukon that you'd like us to consider? You mentioned the small population, the nature of the injuries and seasonal employment.

Mr. King: I don't know if there are many different types of employment that people are involved in, but the types and numbers of people in certain types of employment.

Is our system not working? I don't think you can say that. I think our system is working; it just needs a tune-up every few years. So, if you want to consider looking at other jurisdictions and bringing in what they've got... well, why? I mean, people are getting back to work. There are less injuries. This is in statistics you have. There are less injuries than there were years ago. People are getting back to work more often.

You can't say our system is not working, and needs radical changes like they have in Ontario.

Mr. Buyck: Just to add to that, not that I disagree with what he's saying... it does make sense, though, to look at those jurisdictions that are in the same boat as Yukon; the small provinces, the ones that are facing the same situation as us. That makes sense to me.

Mr. King: Another comment here, is that Tony Armstrong, when he was in power years ago, kept saying this is the best funded Board, we're doing the best, and things like this. Compared to Ontario or B.C., or whatnot, those guys are all in the red, so why...? We're in the black here. It makes sense to me to maintain the status quo somewhat, with just minor tune-ups.

As far as other jurisdictions go, also, Yukon is the smallest jurisdiction in Canada, there's nothing really close to us. And that's why our legislation was designed around the industry we have up here, which is seasonal, and for a small number of people.

Mr. Rouble: Are there other comments people wish to raise? Is there any objection to adjourning early? No? We have consensus on adjourning early?

We'll reconvene at 1:00 o'clock, where the Panel will be meeting with the Stakeholder Advisory Groups. This meeting will also be open to the public.

We stand adjourned.

(The meeting adjourned at 11:20 a.m.)