

**WORKERS' COMPENSATION ACT REVIEW  
Stakeholder Advisory Group/Public Consultation**

**Willow Room, Yukon Inn, Whitehorse, Yukon  
March 24, 2006**

**Benefits Issues**

<b>PANEL:</b>	Patrick Rouble	Chair
	Ivan Dechkoff	Member
	Michael Travill	Member
<b>PRESENT:</b>	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 & Safety
	Sandy Babcock	Yukon Chamber of Commerce
	Rick Karp	Whitehorse Chamber of Commerce
	Ed Sager	Whitehorse Chamber of Commerce
	Valerie Royle	YWCHSB
	Mark Hill	YWCHSB
	Linda Profeit	YWCHSB
	Laurie Butterworth	YEU
<b>OTHER:</b>	Joyce C. Bachli	<b>MEGA</b> Reporting Ltd.

(The meeting was called to order at 1:02 p.m.)

**Chair Patrick Rouble:** Okay, folks, if we can come to order, please. I would like to welcome you to this next meeting of the *Workers' Compensation Act* review panel. Again my name is Patrick Rouble, and I'm joined by Mike Travill and Ivan Dechkoff, the other two members of the panel.

The topic for today's discussion is the benefits issues, issues 1 through 21. Earlier today, this morning, we held another public forum, where we had an opportunity for other folks, stakeholders and other folks with an interest in this system, to put forward their comments on it. Now we would like to hear from you folks, the Stakeholders Advisory Groups, your thoughts and comments on these issues.

Again, we will be transcribing the comments made during the meeting today, and they will be posted on the Web. The comments from the first meeting have been transcribed and are available on our Website now.

Are there any opening comments that anyone would like to make?

(No audible response)

**Chair Patrick Rouble:** Okay, we'll continue on with the same format that we used in the first meeting, then, whereby I identify the issue, and then, we take turns or however it works out for someone or everyone to comment on the issue.

We'll start then with benefit issue number 1, age limitation of claimants.

I should add, too, since we are transcribing things, for the first couple of go-arounds, if you could mention your name so we can record that. So, let's start then with issue number 1, the age limitation of claimants.

**Douglas Rody:** I gather there has been at least one jurisdiction that has changed the retirement age; and given the standard today of people working well past their retirement age, there may be further jurisdictions that change it. And what we would suggest is rather than the legislation, as it's written, to make reference to some sort of standard age of retirement so that if the age of retirement does change, we don't have to open up the Act.

**Ivan Dechkoff:** So, Doug, are you saying reference it to some other –

**Douglas Rody:** Well, reference it to either what the Yukon or the Federal Government would establish as an age of retirement for CPP benefits or something similar rather than specify an age; because then, if age of retirement does change – and apparently, Ontario at least has changed it, and there may be a move down the road for other jurisdictions to change it, and one of those might be Yukon – then, rather than having to open up the Act ... Because that might happen in the next couple of years. We don't know.

**Rick Karp:** We agree with that. With the new trends, with people actually retiring from one profession early and going into another and another; with three professions, the likelihood of someone working past 65 is much greater right now. So, we agree with the Federation of Labour on this one.

**Chair Patrick Rouble:** Any other comments on the issue?

**Sandy Babcock:** Yukon Chamber agrees with that, as well.

**Valerie Royle:** As does the Board.

**Chair Patrick Rouble:** Are there any other comments on issue number 1?

(No audible response)

**Chair Patrick Rouble:** Hearing none, we'll move on to issue number 2, how government consents to or accepts responsibility for volunteers.

**Douglas Rody:** How this got into an Act review is beyond me. If people have a problem with how the government accepts responsibility for volunteers, we would suggest they talk to the government about that.

**Rick Karp:** Agreed.

**Sandy Babcock:** Agreed.

**Valerie Royle:** Agreed.

**Chair Patrick Rouble:** Other comments?

(No audible response)

**Chair Patrick Rouble:** Hearing none, we'll continue on to issue number 3, termination of benefits.

**Douglas Rody:** This issue was raised by the Workers' Compensation Board, and we've had some discussions with them. We appreciate their concerns. We have a lot of concerns of our own about termination, and we just haven't had time to talk about the issues and concerns that we have in the last couple of weeks. So, what we would suggest is that this be held in abeyance for a period of time until we can maybe explore options with the Workers' Compensation Board about what can accommodate our concerns and what the board wishes to achieve.

**Sandy Babcock:** Yukon Chamber appreciates the concerns from Labour. However, we would like to see "termination" in the wording at this point in time; but some new information has come to light that we're willing to reconsider and discuss with the board. So, while this is the direction that we would like to be going in, at this point in time, that is not our formal position.

**Chair Patrick Rouble:** Well, we have the June 15 deadline for written submissions.

**Sandy Babcock:** Yes.

**Chair Patrick Rouble:** And do you folks anticipate that you'll –

**Douglas Rody:** I think so.

**Chair Patrick Rouble:** – formalize your opinions by then?

**Rob King:** Yes, for the Record, the Whitehorse Chamber agrees with the Yukon Chamber of Commerce on this issue.

**Chair Patrick Rouble:** From the panel's point of view, the more information we can get the sooner, the better for us. I know we've set June 15<sup>th</sup> as the deadline for written submissions – because we have to have a deadline some place – but the panel, in reviewing these issues will be doing work between now and then, and we would appreciate any information that you can provide to us. So, please don't look at June 15<sup>th</sup> as the day to submit comments but the last day to submit comments; and we would appreciate hearing things as soon as possible.

**Douglas Rody:** Yes, well, we want to discuss it further in the next couple of weeks. It's partially tied in to return to work issues, and we may very well have some proposals for return to work to be put into the legislation.

**Chair Patrick Rouble:** Okay, thank you. Any other comments on issue number #3?

**Alan Byrom:** Just briefly: So, the issue of return to work as a non-cooperative situation with a worker, it would be in respect to he's trying to protect his own health. So, the issue of termination/non-cooperation, if the injured worker is non-cooperative because he thinks his health is at risk, is that a factor or what?

**Michael Travill:** This issue is essentially addressing the termination of benefits, not a suspension. So, it's not just wages; it's all compensation.

**Alan Byrom:** So, if a workers didn't cooperate because he thought his health was at risk, they wouldn't actually terminate it; they'd suspend it until they resolved it?

**Douglas Rody:** Yes.

**Rick Karp:** Our understanding of this is if there was a worker who is on benefits and is refusing to participate in his or her recovery by not going to physiotherapy, by not going to Edmonton, Calgary or Vancouver for rehabilitation or something like that, that they're uncooperative. Right now the suspension is as far as WCB can go, and we're saying with some of the cases that we have heard about, termination should be an option here. So, that's where it's coming from.

**Alan Byrom:** Just a precautionary note: Sometimes injuries

can become chronic because they've cooperated with the attempt to be rehabilitated or go back to work. It's just a point here. Do you know what I mean? Do you understand that? The doctor says, "Take these pills and go back to work," and then, the situation becomes chronic.

So, if the worker said, "No, I'm not going back to work because my arm is no good yet."

They might say, "Well, we're terminating your benefits." But he's actually trying to protect himself from going from an injury to something chronic that's going to last for the rest of his life. That's a mitigating circumstance. So, I think if there's a termination or suspension, there has to be mitigating circumstances that need to be looked into.

**Chair Patrick Rouble:** Thank you. Any other comments?

**Rob King:** Yes, I believe that termination should be the last resort to go to. You've got to go through the whole case, and perhaps suspension is more suitable at the time. To do a termination just because it's in the Act, I think that's pretty rash, and that's probably detrimental to the objects of the Act. So, I think termination should be as a last resort.

**Chair Patrick Rouble:** Are there any other comments that people would like to make on issue number 3?

(No audible response)

**Chair Patrick Rouble:** We can move on, then, to issue number 4, the benefits during the appeal period.

**Douglas Rody:** Labour brought this forward, and essentially, on reflection, we don't see the need for changes in the legislation. However, as was expressed this morning, there are some issues with regard to the length of time appeals are dealt with; and it's something that we would ask the board to look at in policy, but we don't see a need for a change in the legislation on this issue.

**Chair Patrick Rouble:** Other comments?

**Rick Karp:** We agree with that, the Whitehorse Chamber.

**Sandy Babcock:** As does the Yukon Chamber

**Rob King:** Okay, what I heard this morning is: this appeal process period, for a time period, seems to be lengthening in time to get a result from the body, whether it's the hearing officer – well, for starters, the hearing

officer; and what's to say that the board might just decide to increase that period of time for the hearing officer to make a decision. I think this is a pretty touchy issue, and it can destroy a person in the long run if their appeal is going on and on; because once they appeal to the hearing officer and they're not satisfied, they feel, and the workers' advocate perhaps isn't working on this case. He feels the worker has a just cause for appeal. Then it goes to the tribunal. They take their time. It goes to the board, and they can review it and send it back to the tribunal, it can be two years before he gets the decision in the end. So, I think this is a pretty – I don't know what to call it, but it's an issue of concern for sure; because you've got a person off benefits for two years. Then the final decision is, "Yes, this person should be on benefits."

Well, by that time, he's lost his house, his car, his wife has left him and whatever else. I think that's pretty harsh just because the system has taken everything away from him. So, that has to be looked at with some sort of compromise or something.

**Douglas Rody:** I should clarify, when I say we're not seeking a change to the legislation, we're not seeking a change to the legislation that would continue benefits during the appeal period, but right now there are items in the legislation – for example, I believe when the board stays a decision of the appeal tribunal, there is no time limit on that ability to stay that decision, whereas there are other time limits in the legislation. I guess maybe Valerie can elaborate on it. There may be a need for some change that allows the board to set more flexibility on those time limits through a board order; but to have something written in the legislation may be difficult.

**Valerie Royle:** The board certainly recognizes those concerns, because long appeal periods are not beneficial to anybody, for the worker or for the employer or for the board, for the system. It doesn't work out well; but too short time frames are difficult, as well. Personally, having come from the Canadian jurisdiction with the shortest timeframes, there were problems in trying to prepare for appeals and having enough time to get ready and actually for a worker to consider whether "I want to appeal or not" or to understand a decision; because sometimes they're very complicated, as you know. So, too short a time frames versus too long a time frames, there has to be something that is workable for everybody; and the concern the board has is by entrenching those timeframes all over in legislation, you lose the flexibility – if there's a problem – saying, "Well, this four-month timeframe or this 30-day timeframe doesn't work out," then you're back to the legislation, whereas if it was by board order, it would have the authority of a regulation done in consultation with stakeholders, then it would give flexibility to look at all those timeframes, including how long the board can take to stay a decision and so on.

**Ivan Dechkoff:** Just out of curiosity, you mentioned “in consultation with stakeholders”. Do you consult with stakeholders on every change in board order?

**Valerie Royle:** In the past we haven’t, but what we had suggested last week is that there be a broader requirement in the legislation for the board to consult with stakeholders versus a specific two-week timeframe to be able to do policy consultation. So, the board is very, very willing to work with stakeholders on all their issues. We can’t say “every board order”, because some of them are administrative with respect to internal processes and so on; but anything that affects claims or compensation, affects assessments or prevention, then the board is certainly prepared to consult with stakeholders on all those issues.

**Alan Byrom:** So, appeals are about the rejection of claims, right?

**Michael Travill:** No, not necessarily.

**Alan Byrom:** Not necessarily, so what are you appealing?

**Michael Travill:** It could be acceptance of the claim as an employer.

**Valerie Royle:** The employer could –

**Alan Byrom:** Oh, the employer is doing that, okay. Well, speaking from the workers’ perspective, if you’re appealing, let’s say, a rejected claim; and you’re not getting payments during that appeal, the rejection is also a part of claim mismanagement. I mean, if it’s a legitimate claim and it has not been looked at on its real merits and it’s rejected, then part of the management pattern is delayed. So, when delay becomes part of a mismanagement pattern, the worker ends up going down the appeal process for a couple of years or whatever, I’m saying it’s an issue of claim management. Effective, timely claim management is really the issue. So, if there is a penalty, if you do have to pay the worker, there’s a chance that you’re going to do that claim in a more effective and timely manner. So, I’m saying what you have to look at in the appeal issue is whether the delay is part of mismanagement; and you have to recognize that it is used; because even before your claim is rejected, it could have been delayed. While they’re waiting for an employer’s report, are they just waiting for the medical consultant’s report. So, they’re playing the delay process even before you initiate an appeal. Even before they say “no”, you’ve already been delayed for three months.

**Chair Patrick Rouble:** Okay, thank you. Any further comments on issue number 4?

**Rob King:** Yes, I have one here. It talks here in Option 4, it says:

“ ... since a perverse incentive to appeal is created even if a successful appeal is unlikely. Complexity would be added to the system.”

Well, this could be seen on both sides of the equation here, because the board could say, “Well, we’ll just deny it and let this guy appeal our decision.” So, in a sense, that’s just abusing their powers. I think that it can work on both sides of the equation, where the worker says, “Well, I’m going to appeal this so I can get benefits during this appeal period” if that ever goes through.

If it doesn’t go through, the board can say, “Well, we’re just going to deny this and let him appeal it and let him go through the system for two years.”

That’s all I have to say to that.

**Sandy Babcock:** The Yukon Chamber would just like to maintain that we do not think this should be in legislation. If timelines were instituted that were unreasonable or too long – and that’s a concern expressed by everybody is that nobody should have to wait forever for an appeal to be dealt with – that there is no opportunity to review, in a timely manner, whether the timelines are reasonable or not. So, if they’re entrenched in a policy, as opposed to legislation, the flexibility to improve them is there much sooner than another Act review.

**Chair Patrick Rouble:** Can we move on to issue number 5, limitation periods?

**Rick Karp:** Whitehorse Chamber says “no change to the legislation” on this.

**Douglas Rody:** We would agree with that. Option number 2 is actually less beneficial than what’s in the Act right now. The board already has the ability to accept a late application.

**Chair Patrick Rouble:** Further comments on issue number 5.

**Sandy Babcock:** Again, this issue can be dealt with through policy, and there is a strong policy working group that includes the stakeholders to ensure that the policy meets their needs, as well as the board’s.

**Chair Patrick Rouble:** Issue number 6, commuting benefit payments.



**Douglas Rody:** We understand that there is the ability under previous legislation to commute benefits. We don't think there should be any change to the current legislation. We don't believe commuting benefits is to anyone's advantage. The Meredith principles were there to guarantee injured workers compensation for the duration. We don't think it's to the advantage of the system to have workers have the ability to commute those payments to one lump sum.

**Rick Karp:** Whitehorse Chamber agrees with that.

**Ivan Dechkoff:** Doug, just as a clarity issue: You mentioned that the board has the ability already to commute, and then –

**Douglas Rody:** No, under previous legislation, and people who are covered by that legislation have that ability to request commuting of their benefits to a lump sum. It was taken out of the legislation for a good reason; and we agree with that reason, and the current legislation should not change.

**Alan Byrom:** Yes, I would just like to comment that some injured workers decided for themselves that they wanted a lump sum, and then, became very successful businessmen. So, for anybody to suggest across the board that it's not in the interests of the worker, the worker himself could dispute that. There is somebody in the Yukon who has a very successful business who is internationally known, and he got his payout from Ontario; and he actually spent \$100,000 on tools. So, he's very successful. That's just a point that I want to make that there are circumstances in which, as I was saying earlier in the day, about the age of the person, how much time left on the claim and whether it would be really to a worker's advantage.

**Chair Patrick Rouble:** Additionally, sir – I don't want to put words in your mouth now – but you did comment earlier today that it might be beneficial for small payments; and the panel members are aware of your comments made earlier today. They have been transcribed, and they will be part of the Record. When we went through all these items earlier today, we were paying significant attention to the comments that were given, and we do have a record of the comments that you've made.

**Alan Byrom:** Good!

**Rob King:** There is an issue of mixing this up – this commuting benefit payments – with lump sum payment. Lump sum payment is Section 32 of the Act. Commutation of benefits is another section of the Act – that's the older Act, the '86 Act. So, commuting of benefit payments is not lump sum payout, all right, that's two different things. Commuting of benefit payments is for whatever. Unfortunately I don't have the Act with me, the '86 Act, but

commuting of benefit payments, that's different from a lump sum payout. Lump sum payout is a payout of your claim.

**Douglas Rody:** Yes, with regard to starting a business, we don't believe that the purpose of Workers' Compensation is to provide funds for starting a business. It's to provide compensation for injured workers.

**Rick Karp:** Here, here!

**Chair Patrick Rouble:** Issue number 7.

**Rob King:** I have a question. Mr. Travill, do you have a copy of the '86 Act here?

**Michael Travill:** No, not the '86 Act.

**Rob King:** Because commuting of benefit payments is not even in the present Act.

**Michael Travill:** That's correct. This was a question: Do we want to put into the new Act, the Act that we're discussing today, do we want to go back and put the sort of process or ability to get those lump sums. You're talking about the lump sums in the current Act, and people use it just with the partial impairment awards; but the question is: Do people want to go back to see the commuting of all the benefits put into this new Act?

**Rob King:** Well, as you know, there are two different sections with regards to ... There is commutation of the benefits, and there's one with regards to lump sum payout; and they're different. They are not the same. If a person is requesting a lump sum payout, they aren't requesting a commuting of their benefit payments, these five people or something, okay? That has got to be made clear here, what exactly is commuting of benefit payments? Is it a lump sum payout?

**Michael Travill:** It's gathering up all the money that the board would owe you into the future and providing it as one payment.

**Rob King:** Why do we have a lump sum payout section, then?

**Michael Travill:** The lump sum payout section that remains in the Act –

**Rob King:** In the old Act.

**Michael Travill:** And in the old Act is with regard to the permanent partial impairment award, which is different, because that's an annuity payment. So, it's different than your compensation benefits.

**Rob King:** Well, hang on a second here, the lump sum payout, Section 32, allows for commutation of your benefits.

**Michael Travill:** Of your annuity.

**Valerie Royle:** That's the old Act.

**Rob King:** Well, I can't argue that, because I don't have the Act in front of me. Yes, Section 32 of the '86 Act we're talking about. It's not a commutation of benefits. It's a lump sum payout.

**Douglas Rody:** Of all your benefits.

**Rob King:** Yes.

**Douglas Rody:** That's commutation of benefits.

**Rob King:** Well, why do they have two sections in the Act, then? They mean two different things. Commutation is for – and you talk about it here. It says "Well, maybe it's to the advantage of the board to pay out someone with less than 10 percent," if you've got a 10 percent disability or impairment; give him – commute those benefit payments.

**Michael Travill:** Again, it's talking about the old system, the pension system, versus the dual wage loss system that we have now. When you talk about 10 percent – it's difficult to go between the two pieces of legislation – but that would equate to your wage loss benefits under the current system. So, under the pension system, when they determined you were 10 percent, that is you had a 10 percent earnings impairment for the rest of your life, and they could commute that to one lump sum payment to pay you out, or you could apply in writing if it was over 10 percent.

After '86, we changed to a dual wage loss system. So, we had a wage loss portion, and we had a permanent impairment section, as well; and at that point, when they switched the Acts, the permanent impairment was still able to be offered as a lump sum payment, but there was no longer the ability to take your wage loss and pay it out or commute it into a single payment.

So, that's where it went from looking like there was only one section to now looking like there were two sections and some missing. So, what we were doing was "Do people want the wage loss portion to be able to be paid out as a lump sum?"

**Rob King:** Well, paragraph 7:

“Commutation of small amounts makes good sense for both the board and the worker.”

So, you people, when you wrote this up, you obviously felt this was a good idea, and you even give your reasons here why. So, perhaps this issue could be looked at in a little more depth than what we’re doing here today.

**Chair Patrick Rouble:** Are there additional comments?

**Sandy Babcock:** Yukon Chamber would strongly oppose commuting of benefits. We have concerns that it could compromise the financial viability of the organization, it would impact future investments, because it would be an unknown, how much would be withdrawn in commuting payments. That’s a very big concern of ours.

**Rick Karp:** And we agree with that statement, as well.

**Valerie Royle:** The board agrees with no change in the legislation.

**Chair Patrick Rouble:** Should we move on to issue number 7, awards for pain and suffering.

**Douglas Rody:** This was also brought forward by Labour, and we’re okay with no change to the legislation. We understand that the AMA Guidelines, in fact, do have sections that refer to pain and suffering and some injuries, and we believe it’s encompassed in there.

**Chair Patrick Rouble:** Other comments?

**Rick Karp:** Whitehorse Chamber agrees with that wholeheartedly.

**Sandy Babcock:** The Yukon Chamber supports no change.

**Valerie Royle:** As does the board.

**Alan Byrom:** I support a change for injured workers, changes under special circumstances.

**Chair Patrick Rouble:** Any other further comments?

(No audible response)

**Chair Patrick Rouble:** Issue number 8, maximum non-economic loss awards.

**Douglas Rody:** This was also an issue brought up by Labour; and at the time; we were looking at the original amount, we did not have comparisons with the rest of the country. We're satisfied with the situation as it is, and we're okay with not changing the legislation.

**Chair Patrick Rouble:** Other comments?

**Sandy Babcock:** Yukon Chamber supports no change.

**Rick Karp:** The Whitehorse Chamber of Commerce also supports no change.

**Valerie Royle:** As does the board.

**Chair Patrick Rouble:** Also in this issue was the concept of indexing the non-economic loss award; comments?

**Douglas Rody:** Well, the indexing formula that's in there, most of the benefits are tied to average aggregate wage; and while it could be beneficial to tie some parts of the legislation to the CPI, I think it just opens up a can of worms. There is a formula now for increasing the maximum wage. It's not exactly perfect, but it does refer to the aggregate average, and we're satisfied with that staying with the non-economic loss award.

**Chair Patrick Rouble:** Other comments?

**Rick Karp:** The Whitehorse Chamber agrees with that, no change to the legislation.

**Sandy Babcock:** The same with the Yukon Chamber.

**Valerie Royle:** And the same with the board.

**Chair Patrick Rouble:** Any other comments?

(No audible response)

**Chair Patrick Rouble:** Issue number 9, compensation for loss of personal property, the amount. This is related to issue number 10, which relates to the trigger. Any comments on 9?

**Douglas Rody:** Initially we felt that this should be changed, because right now, \$200 is just not enough. That doesn't cover much. However, we're persuaded by the argument that putting something in legislation makes it relatively inflexible. You have to open the Act again to change it. We have been assured that the board is going to look at this and, through policy, increase this substantially, and we're satisfied with that.

**Sandy Babcock:** Yes, the Yukon Chamber also recognized that the existing amounts identified were inadequate in today's real world, and we're comfortable with the board working with the stakeholders to develop a reasonable policy to address that issue.

**Valerie Royle:** And the board of directors agrees with that and has committed to doing that as soon as possible; and hopefully, perhaps before June, we'll be able to have an updated version of that done.

**Ivan Dechkoff:** Just for clarity, that would be a board order, versus a policy, in accordance with the Act?

**Valerie Royle:** Yes, well, whatever the Act requires, the board will do.

**Rick Karp:** And the Whitehorse Chamber of Commerce agrees with that.

**Alan Byrom:** I'm sure, Mr. Chairman, that the policy itself will impose limits. Two hundred dollars is a limit. So, I don't see why the legislation shouldn't be amended. I think we should amend it to specify a limit and a formula, because we'll let the legislators determine what the limitations are, as opposed to the board.

**Chair Patrick Rouble:** Moving on to issue number 10, compensation for loss of personal property, the triggers.

**Douglas Rody:** We think the legislation should be changed. The way it is now, you have to have suffered a disability in order to be compensated. So, something heavy falls on your foot; you're not injured but it crushes the steel toe and you have to get new boots. If you're not injured, you don't get compensated for your new boots. We think that the legislation should be changed to remove the reference to "a disability" and reference a "workplace accident".

**Sandy Babcock:** The Yukon Chamber agrees with that. It acknowledges the fact that it could have been personal property that was damaged and that actually negated an injury; and currently, it does not recognize that.

**Rick Karp:** And we agree with that, as well.

**Valerie Royle:** The board agrees with option 2 that was provided by the panel, with the word “incident” being removed so that it be “workplace accident”. That would allow us to cover off the circumstances that have been described.

**Rick Karp:** Mr. Chair, if we could just go back to issue 9 for a minute, the policy does not –

**Chair Patrick Rouble:** Can we conclude issue number 10, and then, we’ll go back to it?

**Rick Karp:** Oh, I thought we were.

**Ivan Dechkoff:** I have a question.

**Chair Patrick Rouble:** Are there any other comments?

**Ivan Dechkoff:** I just have one clarity point. When you mentioned remove the word “incident” versus “accident”, if it was prevention of an accident, it is an incident; and therefore, it had no time loss, but the way wording number 2 is, it’s contrary to what Doug and –

**Douglas Rody:** Well, if I sat on my glasses in the lunchroom, that would be an incident, wouldn’t it?

**Valerie Royle:** Right.

**Douglas Rody:** That’s not what we’re suggesting.

**Ivan Dechkoff:** So, you’re suggesting that it was an actual accident?

**Valerie Royle:** Yes.

**Douglas Rody:** Yes, an accident, if I get hit, a two-by-four hits me and breaks my glasses, that’s an accident. I might not have been injured, because I was wearing safety glasses. I’ve got prescription safety glasses. That’s an accident. It may have prevented an injury, but it’s an accident; and \$200 isn’t going to cover prescription glasses.

**Alan Byrom:** I would just like to comment that when we do have “accident” and “incident”, we’re not proposing a polarity, one or the other. In other words, the incident and the accident have to go together. So, it’s not a

question of an incident without an accident or an accident without an incident. It's an incident with an accident.

**Valerie Royle:** Yes.

**Alan Byrom:** It's that combination that is what we should look at and not one or the other.

**Valerie Royle:** Yes.

**Alan Byrom:** So, that's why it's there with a slash like that accident/incident.

**Ivan Dechkoff:** What I'm hearing, then, is that the issue here is time loss. It doesn't necessarily –

**Valerie Royle:** It does not have to be a time loss, and that's been the restrictor.

**Chair Patrick Rouble:** Anything else on issue number 10?

(No audible response)

**Chair Patrick Rouble:** Mr. Karp, you wanted to go back to issue number 9?

**Rick Karp:** If we could go back to 9 for a minute, I think – if I read this correctly – it's in the legislation that for loss of personal property, the amount part is policy; it's not in legislation. So, the \$200 is not in legislation. Therefore, it's by board order.

**Ivan Dechkoff:** It's by board order, right.

**Rick Karp:** So, it's in line with what we're proposing. I was understanding you were saying that it should be in legislation, the \$200, which would make a big difference.

**Alan Byrom:** I'm saying it should be in the legislation, because the board will impose a limit; and legislators tend to be more generous on boards when they impose limits on how much compensation a person is going to get. It then becomes more limited by the policy.

**Laurie Butterworth:** Policy, to me, is easier to change. If it's out of date four years from now, it's changeable. If it's in the legislation, four years from now, it's unchangeable until the next Act review.



**Rick Karp:** That's right, and with the current willingness of the board to consult with stakeholders, I think that the vested interests of the employee will be taken into consideration more than perhaps you feel from the past.

**Alan Byrom:** I have been in consultations before where all reasonable, rationale items were totally ignored. Okay, it's just a point. You don't have to convince me. The legislators will decide, I'm sure.

**Chair Patrick Rouble:** Okay, moving on to issue number 11, pay on day of injury.

**Douglas Rody:** We think the legislation should be changed to indicate clearly that the employer is responsible for full wages on the day of injury, whatever that shift was, whether it's four, six, eight-hour, whatever their regular shift was, that the employer is responsible for wages on day of injury; and that the board's responsibility for wage loss begins the day following injury.

**Rick Karp:** The Whitehorse Chamber agrees with that.

**Sandy Babcock:** The Yukon Chamber agrees. We are of the view that that is currently the practice today and is working well.

**Valerie Royle:** The board agrees.

**Douglas Rody:** There is good reason for that, because right now, if an employer doesn't compensate an employee, the board has to; and what happens is if there is an accident, they go to the hospital and they're back at work at the end of the day, and then, it turns out they do an x-ray, there's nothing wrong, they're fine and they show up for work the next day, that shows up on the books of the WCB as a time loss injury, and it really wasn't. The time loss was because of going to the hospital, not because of the injury directly. What we're proposing, I think, would result in more accurate data on time loss injuries.

**Sandy Babcock:** As well as controlling the cost of administration on short-time incidents.

**Chair Patrick Rouble:** Any other comments on issue 11?

(No audible response)

**Chair Patrick Rouble:** Issue 12, claims costs.

**Rick Karp:** Mr. Chair, if you could just explain the overlap between issue 12 and issue 13 or what the difference is between the two before we comment.

(No audible response)

**Rick Karp:** While we're doing that, I'll just make a brief comment: The concern that we have is that there is a considerable rise in the cost of the system. Employers have seen last year a 28 percent increase in rates, and there are more increases this year and the next few years. These costs are of considerable concern to the business community, and with this dramatic rise in costs, there are a few elements in this review that could help mediate those rising costs. This is occurring in spite of the fact that injuries themselves are down, and there is concern about the length of time that it takes to get workers back into the workplace. It's documented – I've got pages of documentation that show that this is occurring in part because of the features of the Workers' Compensation system; and if the features aren't changed in some part, then we're going to be in a system that is in serious financial difficulty. Although it doesn't seem so today, a few years down the road, we're going to be in considerable difficulty. Either that or the business community is going to be paying rates so astronomically high it is going to be an unfair burden to them.

Fairness was something that was mentioned this morning, and I think the integrity of this Act implies fairness to both the employer and the employee.

Now, the difference between 12 and 13?

**Chair Patrick Rouble:** Well, as I'm sure we can all appreciate, there is a challenge in looking at one particular issue in Workers' Compensation in isolation of all other issues. The broad topic of claims costs was identified by the Auditor General as an area of concern, and we have identified the major cost drivers in claims costs. It is a challenge to then say, "Is there anything that could be changed in the legislation that would have an effect on these factors?"

We would like to hear from you folks, too, do you think there are changes to the legislation that can affect claims costs, or is much of it driven by policy, practice and board's decisions?

**Douglas Rody:** With regard to 12, the Auditor General did raise it; but the Auditor General, in her report, did not suggest any legislative change. Our position is that there should be no legislative change.

Claims costs are rising. I don't think it is correct, though, Rick to say that injuries are down. Injuries are not down. Over the last 10-to-15 years, injuries have been relatively constant. The injury rates annually in the Yukon are somewhere around – they've dipped under a thousand; more likely they're over a

thousand, pushing 11 or 1200 injuries per year. What that means, in a jurisdiction with approximately 14,000 – I believe Stats Canada shows us at a workforce of 14,000 – is that every 10 years, we are injuring our entire workforce. That's the problem; not the level of benefits.

If you reduced benefits, as one of the options in number 13 suggests, it's my understanding that savings, the savings in one year, would be roughly equivalent to a single, long-term injury. We think the effort should be put into preventing those injuries and getting people back to work. The average length of a claim in 1992 in the Yukon was, I believe 35 days. The average length of a claim in 2002 was close to 100 days. That's the driver of the increase in claims costs, the duration; and rather than putting effort into changing the benefit level – I think that's misdirected – I think the effort should be put into prevention and return to work.

**Sandy Babcock:** The Yukon Chamber agrees with the words that Doug said, the biggest savings are in prevention and return to work; but I would like to make a suggestion: That the panel consider eliminating item number 12 from this discussion – because it's repetitive with item number 13 – so that we can stay focused, as opposed to a wish list of “what could we do with the system?” There are other areas further in the consultation process that do address that.

Then I would like to suggest – if the Chair agrees – that we could move on to number 13, because there doesn't seem to be any resolution to number 12.

**Chair Patrick Rouble:** Yes, I think we were waiting for another comment.

**Alan Byrom:** Yes, I agree with the Chamber of Commerce on that; but I just wanted to comment that the Auditor General, in talking about claims costs, she did raise the issue of the quality control over claims management as a serious issue, a significant issue. So, it is a management problem, not a legislative problem, and it's relating to claims management. So, the way to reduce claims costs is by dealing with claims in a timely and effective manner.

**Chair Patrick Rouble:** I'm hearing a desire to move forward to issue number 13.

**Sandy Babcock:** On the issue of calculation of wage loss benefits, Yukon Chamber does acknowledge that there are probably other avenues that will further reduce the claims; and our intention is not to look at the claims costs as a whole at this point in time. However, we would like to see a change to the calculation of claims to 80 percent of net pay, as opposed to 75 percent of gross; and the reason we would like to see that change is so we are in

uniform with the rest of the country, and when we look at trends across the country, we can start comparing apples and apples, as opposed to apples and oranges.

**Rick Karp:** And the Whitehorse Chamber agrees with that.

**Douglas Rody:** We're not in favour of change. As I said, that change would save – relatively speaking – a very small amount of money, and it would basically be a change that you're saving money on the benefits that go to injured workers. One thing in the discussion of this issue that is in this book – page 67, third-from-the-bottom paragraph – it says:

“It has been calculated that dependent on tax rates, CPP and EI deductions a 75% of gross earnings approach provides the majority of injured workers with greater than 100% of net pay and as such provides more than full replacement of economic loss for most workers.”

My first reaction is I would want to know it has been calculated by whom and where are the calculations; because I note the paragraph below that essentially contradicts what has just been written:

“ ... higher income injured workers receive the most generous benefits in Canada [in the Yukon, and] ... lower income ... workers ... receive less.”

So, are the majority of workers better off, or aren't they better off? The very last sentence:

“If a jurisdiction wishes to reduce overall cost, the decision is a move to an 80% or 85 % of net pay calculation.”

So, the thrust is to save more money, and the question is: Is there a greater saving if the majority of workers are not better off than the rest of the country? How did they determine, in the Yukon, whether or not the majority of workers are better off? Because as I say, the paragraph right below that seems to contradict that statement.

**Alan Byrom:** We agree with Labour on that 100 percent, but what I would like to say as a comment is the Yukon legislation is based on difference. It's not based on sameness, because we're not the same. To make it the same doesn't mean it's equal; different demographics, six-month winter, different size of workforce; and as it has been stated, the problem isn't the legislation in terms of the management and the solvency of the fund. So, I don't see why we should reduce it to be the same if it really means a considerable impoverishment, which it would be a greater impoverishment than down south

because of the nature of the seasonal work industry in the Yukon. In other words, 80 percent could be good for P.E.I., good for Newfoundland and good for Ontario but seriously bad for the Yukon. That's why it's different.

**Rick Karp:** Mr. Chair, a couple of comments: This morning and this afternoon, it was mentioned that Ontario has raised their retirement age to 67 – the only province in the country – and that because everyone else is probably going to go along with that, that perhaps we should not put a mandatory retirement or change, enshrining the 65 or the 67 in legislation. That's only one province. Every other province in this country is at 80 percent of net or thereabouts, and there are more pros for going to that.

If we are at an effective earnings replacement rate of close to 95 or 100 percent, there are several negative effects to the system. There is no monetary incentive to return to work. There is a greater incentive to make Workers' Compensation claims and longer-duration claims. Having the higher rate of the benefit at 75 percent of gross, it tends to add to – as I was mentioning, and correct me if I'm wrong, Val – we're over 120 days' duration?

**Valerie Royle:** We're over, yes.

**Rick Karp:** We're over 120 days' duration, and I argue that this is part of – obviously not the full reason – but part of the reason for that. A greater probability of being out of the labour force and not returning to work; and it's been mentioned to me several times in the last several months that when someone is out of work for a year or a year-and-a-half that they tend to get into a problem in returning to work. The longer someone is out, the more difficult it is to return to work, and we're getting close to not even 100 percent of gross but 95 or 100 percent of gross, that it's a problem getting back to work; a greater incentive to make false claims because of the higher benefits, longer run persistence of negative effects, since even those who return to work often return to the disability roles, having recurrent spells on and off disability.

Individuals shifting – and this is an interesting point – from other income-support systems, like Unemployment Insurance or the Canada Pension Plan Disability Program if Workers' Compensation becomes more generous. And these points are backed up by no less than 20 references, and we can provide you with those references.

Now, on the other side, when we have the 80 percent of net, moving to such a system of net pay would thereby have numerous positive consequences that would reduce the negative consequences I have just mentioned. It would put the Yukon system, which is the only one still based on gross pay, in line with the other jurisdictions in the country, all of whom use net pay – as well as spreading throughout the rest of the world – everyone is moving to net pay, and we're quite an outlier in that respect. Putting the Yukon system in line with other

jurisdictions and countries, none of which provide full income replacement, and making the system more progressive, since using net pay is more advantageous to lower income persons, who face lower tax rates. I could go on, but those are just a few points I wanted to mention and get on the Record.

**Chair Patrick Rouble:** Mr. Byrom.

**Alan Byrom:** Thank you very much, I would like to comment. When a worker is on this fabulous benefit and the doctor says, "It's time for you to go back to work,"

And he says, "No, the benefits are too good," that's the end of the benefits. The benefits don't determine the duration that you are absent from work. It's up to the doctor. The doctor tells you when you're going back, the doctors, the medical consultant. If you don't want to go back, that's the end of your benefits. That's that point.

As far as the globalization issue goes and as far as all the research goes, really, really, I don't know about any of that to tell you the truth; but I do have something here by Justice McLean of the Court of Queen's Bench of Alberta, which I would like to read, which is shorter than the reading that Mr. Karp gave you.

"The board is a statutory body – "

**Chair Patrick Rouble:** Order, please. One of the guiding principles that we have to work with around this table is that we are all putting forward our own personal feelings, our own reasonable feelings; and we need to have respect for others around here. We need to be respectful of each other and not take pot-shots or anything. Please refrain from making personal comments.

**Alan Byrom:** Thanks, Mr. Chairman, I agree with you on that one. I wasn't taking a pot-shot. It's a serious issue, because we've experienced its impacts; and the comment really that I was going to make by Judge McLean of Alberta, it was a significant comment.

But I've got a shorter one. It's from a Conservative MLA in Alberta. It's just a few lines. It's relevant. He says:

"While it is true that the WCB is essentially autonomous, we must remember that it was this legislature which granted them that power in 1995, and we cannot simply wash our hands of the responsibility of having handed over a flawed system."

He's not just talking about Alberta. What I'm saying is when we get this issue of around-the-world WCBs, we're talking about around-the-world flawed

systems. We have a flawed system. We have to realize and deal with that. These other systems aren't better than ours. They're all flawed. End of comment.

**Douglas Rody:** It shouldn't be any surprise that obviously Labour and the business community are going to disagree on this issue, but just to deal with some of the things that Rick said: It's not correct to say that virtually all jurisdictions across the country have moved to 80 percent of net. Depending on the jurisdiction, the range is from 75-to-90 percent of net.

He also said that 75 percent of gross is a greater invitation to make false claims. It should be made clear that there is not a single documented case in the country of anyone intentionally injuring themselves to collect compensation; and if someone is making a claim based on false information, that's up to the administration of the Workers' Compensation Board to investigate and deal with.

With regard to the change being a monetary incentive to return to work, there is a case in the country where it just didn't show that. In Newfoundland it didn't work that way. That's not what happened. The duration of the claim is the major cost driver; and once we deal with that, I think that will have a significant influence on costs.

**Chair Patrick Rouble:** Anyone else wish to address this issue?

**Douglas Rody:** One other thing: Rick has made reference to several pages of data, et cetera; and I wouldn't mind reading a copy of his submission.

**Rick Karp:** Sure.

**Rob King:** One thing this doesn't take into account, one important factor, is that the calculation ultimately includes the use of CL-35, which is annual averaging of your wages; it includes deeming. So, a person gets deemed to be able to pump gas or something, whatever. So, their final number is quite a bit less than 75 percent of their gross. So, if a person was making 40,000 a year, they're entitled to \$30,000 as their benefits. Then they get annual averaging put on top of that. Then they get deemed to be doing something. So, basically, their actual benefits might be based on 75 percent of \$15,000. So, the way it's presented here is that these people are just living high off the hog. It's not based on 75 percent of your gross.

**Valerie Royle:** This is a very interesting issue for the board obviously, because claims costs is a huge issue; and it's unfortunate that we're kind of discussing only one piece of it here, which is the benefit rate, because there are so many other things, as Mr. King has indicated: There is deeming, there is how it's calculated, which is coming up later. There is return to work.

There are prevention issues. So, to look at one piece of it in and of itself as a solution to claims costs is really probably not the best way to approach it.

The board feels that claims costs are an issue but does not feel that the benefit rate is the issue. We believe, number one, prevention: That we have not been able to reduce the number of Yukoners injured on the job, which is obviously our key approach to the system; and two is return to work and claim duration. While the numbers have not been finalized for 2005, claims duration continues to go up. So, it certainly is an issue. And the return-to-work piece, which unfortunately is in another section, really starts to address some of those things. So, having said that, the board of directors recommends no change in the benefit rate, but certainly other changes in the system with respect to case management, with respect to return to work and prevention to address this issue. We do realize it's an issue for employers and that if we don't do something, the Yukon employers will be paying the highest rates in the country in the not-too-far-distant future. It obviously is an issue, because that's not helpful for anybody. Employers paying high assessment rates can't hire the same number of people. They can't do the new economic development. So, it obviously is an issue for everybody, but the board of directors does not feel that the benefit rate is the solution to this particular issue.

**Rob King:** One other part I didn't really expand on is that the direction the board is currently taking is a return-to-work program, get the person back to work. So, the earlier this is done, early intervention of the injury gets that person off his benefits and gets him back to some sort of normal routine. So, reducing the amount to 80 percent of net or something, I don't think this is really a real huge ... I think more as the president said, the more focus we put on getting the person back to work and getting him off the benefits, the sooner that's done, this will be a minor issue.

**Douglas Rody:** Just one last comment: With regard to assessment rates and costs, Labour is also concerned about increasing assessment rates. It's not something we would like to see. On a very personal note, every dollar that my employer pays in assessments is a dollar that I can't get in wages!

**Rick Karp:** A very good clarification. I'm not sure if we're actually on Record, but the Whitehorse Chamber of Commerce does support the move to 80 percent of net.

**Chair Patrick Rouble:** Can we move on to issue 14, average weekly earnings.

**Douglas Rody:** We are suggesting no change to the legislation. For the longest time, I have maintained that nothing in the Act precludes the board from including EI in a person's long-term wage loss



calculation. I understand that's something that the board may consider, but the board would have to take another look at the CL-35 policy, which I gather the people on the policy working group aren't really keen to do right away; but it's something down the road. We're comfortable with no change to the legislation.

**Rick Karp:** Whitehorse Chamber agrees with that.

**Sandy Babcock:** Yukon Chamber supports no change.

**Valerie Royle:** As does the board.

**Chair Patrick Rouble:** No other comments?

(No audible response)

**Chair Patrick Rouble:** Issue 15, earnings.

**Rick Karp:** The Whitehorse Chamber thinks there should be no change to the legislation. This is discussed in policy.

**Sandy Babcock:** The Yukon Chamber supports that.

**Douglas Rody:** We would agree with that.

**Valerie Royle:** As does the board.

**Chair Patrick Rouble:** Any other comments?

(No audible response)

**Chair Patrick Rouble:** Hearing none, we'll move on to issue 16.

**Douglas Rody:** We believe that this issue is addressed in the new bulk rehab policy. All we need to do is get it implemented.

**Valerie Royle:** The board is actively working on that. We're getting it done.

**Douglas Rody:** So, we're suggesting no change to the legislation.

**Sandy Babcock:** Yukon Chamber supports that.

**Rick Karp:** As does the Whitehorse Chamber.

**Chair Patrick Rouble:** Any other comments?

**Alan Byrom:** Just one, Mr. Chairman: It looks like page 16 has already changed the legislation.

**Chair Patrick Rouble:** I'm sorry, could you repeat the comment.

**Alan Byrom:** Yes, it looks like page 16 has already changed the legislation.

**Valerie Royle:** Issue 16?

**Chair Patrick Rouble:** Is it issue 16 or page 16?

**Alan Byrom:** Issue 16, the issue on page 16 says, as I said earlier, about the business of calculating being related to 36 instead of 117 and method and manner of making the payment and how 37 is confusing and how the policy is in step with other jurisdictions; but obviously not with ours. So, there are subtle changes in the language here, the language of the legislation. So, I was just making a semi-humorous comment that the legislative language is altered on this page. The word "calculate" is not found in Section 36 or Section 36(2); and what I was saying earlier is that language is an indication on this page of how the board developed their policy. It's not based on the correct authority in the Act.

**Michael Travill:** We had those comments from you this morning. Those were the same comments that you made this morning. So, we have those.

**Alan Byrom:** Yes, exactly.

(The meeting adjourned at 2:20 p.m.)

(The meeting resumed at 2:35 p.m.)

**Chair Patrick Rouble:** Okay, folks, if we could reconvene, please. Let's move on to issue 17, different minimum compensation levels.

**Rob King:** Wasn't there just something brought out, not a board order but something, –

**Valerie Royle:** Yes.

**Rob King:** – saying that you actually set it at \$16,000 or something?

**Valerie Royle:** 17-something, I can't remember the exact figure, yes.

**Rob King:** So, it's done then? Does that take care of this whole issue?

**Michael Travill:** That's a board order; that's not in the legislation. The question is: Do we want to do anything in the legislation?

**Rob King:** Thank you.

**Valerie Royle:** Respectfully, is that issue 18? Issue 18 is the actual level, which the board just set through board order, right? Issue 17, based on options, the issue seemed to be – and correct me if I'm wrong – that for workers designated as "workers" by the Yukon Government, there is a different minimum. They get half the maximum or their actual. So, this issue is: Actually should they be the same as everybody else, Is that correct?

**Ivan Dechkoff:** That's correct.

**Douglas Rody:** We're suggesting no change to the legislation, that if there is an issue with how the YTG deals with volunteers, that that's something that the board and YTG should deal with through their arrangements with how the YTG accepts the responsibility for those volunteers.

**Ivan Dechkoff:** But Doug, isn't that already in the Act? That's entrenched in the Act at this point in time. So, the question is: Do we change what's entrenched in the Act?

**Douglas Rody:** Where is it entrenched in the Act about how YTG deals with volunteers?

**Valerie Royle:** Section 5.(3).

**Douglas Rody:** Yes, but it doesn't talk about money, does it?

**Valerie Royle:** It talks about the minimum compensation rate being half the maximum for volunteers.

**Michael Travill:**

“5.(3) If a person who is designated as a worker employed by the Government of the Yukon under subsections (1) or (2) suffers a work-related disability while acting in that capacity, the worker's average weekly earnings shall be the greater of either

their average weekly earnings or one-half of the maximum wage rate ...”

**Douglas Rody:** Where are you reading from?

**Michael Travill:** 5.(3).

**Valerie Royle:** Section 105 deals with the money for that.

**Douglas Rody:** So, I’m still not following what the problem is here. One-half the maximum wage, that’s a long way from the minimum wage.

**Michael Travill:** There are three levels of minimum compensation. If you have optional coverage, the minimum compensation is set at 14,000. If you are a volunteer for the Territorial Government and recognized as such, your minimum compensation is half the maximum. You either get your regular rate or half the maximum. And then, if you’re a regular worker, you get 100 percent if you’re under 60,000 or ...

**Douglas Rody:** Okay, my understanding is there is a good reason for that distinction, because where the YTG designates a volunteer as an employee and that person is injured – because there has been no assessments on earnings, right – YTG picks up the full cost of that claim, plus an admin fee. So, that’s why it may be different. And how that admin fee is collected and what it is is something for, I would say, the board to work out with YTG.

**Valerie Royle:** And that admin fee – this is my fault – is in legislation, the 15 percent; and that is something that the board needs to work with YTG to see what the percentage should be, but we haven’t had any discussions to date on that issue.

**Douglas Rody:** So, that admin fee of 15 percent is in the legislation?

**Ivan Dechkoff:** Yes, it’s 105.

**Douglas Rody:** And that’s something I would suggest if, at some point down the road the board thinks that admin fee is not sufficient, then there should be an ability to change that.

**Sandy Babcock:** So, that would require a change in the legislation, remove the dollar amount or the percentage.

**Douglas Rody:** And have it dealt with in policy or board order?

**Valerie Royle:** Or agreement or something.

**Douglas Rody:** Sorry?

**Sandy Babcock:** The Yukon Chamber would like it stated that that section of the Act will have to be amended to comply with the intent of what we're putting forward; and the reason we would support that is because we do not feel that another employer or group of employers should have to subsidize a rate given to government, that it should be fair and equal payment for all employers in the system.

**Valerie Royle:** The board agrees with that.

**Rick Karp:** As does the Chamber.

**Chair Patrick Rouble:** Moving on to issue 18, minimum compensation levels.

**Douglas Rody:** To some extent – and to a great extent, I think – the policy that was just circulated at stakeholder meetings has taken care of this. There has been a suggestion, however, that the legislation be amended to remove “based on full-time employment” – that's Section 40 – so that there is no reference to full-time employment. Whether it's half-time employment or full-time employment, it's a minimum compensation.

**Sandy Babcock:** The Yukon Chamber supports that.

**Rick Karp:** The Whitehorse Chamber supports that, as well.

**Valerie Royle:** As does the board.

**Chair Patrick Rouble:** Other comments?

**Valerie Royle:** Just for the information of the panel and for others here who may not be aware, the reference that Mr. Rody was making with respect to the change, the new board order changes the minimum compensation level to be one-quarter of the maximum; and since the maximum is indexed every year, this now gets moved along with that. It's currently – I can't remember the exact amount – it's around 17,500. So, it will move with the maximum, and we'll never have a stale minimum as we've had in the past.

**Chair Patrick Rouble:** Any further discussion?

(No audible response)

**Chair Patrick Rouble:** Issue 19, annuities.

**Douglas Rody:** We understand, as indicated in your information, that by policy, the board states that if an injured worker dies, all monies set aside are paid out to dependents as a lump sum; but that's not in the legislation, and we think that should go in the legislation. However, we're not in agreement with all of option 2. We don't think it should go to the worker's estate. If a worker dies without dependents, that estate could very well specify in that person's will that that estate goes to Bridget Bardot's Save the Seal's Fund. That's not what Workers' Compensation is for. We would suggest that the legislation should specify "To the worker's spouse and dependents."

**Sandy Babcock:** The Yukon Chamber supports that recommendation.

**Rob King:** Yukon Injured Workers Alliance made a submission on this issue, and the exact wording is:

"The injured workers' annuity should be controlled by the worker, and if the person requests to withdraw his annuity, he should be allowed to do so at any time."

Now, the paragraph second-from-the bottom in here adds in that the Injured Workers Alliance said that "be able to use that money in whatever manner they choose." Well, we didn't say that. That isn't what we submitted. I want to make that clear, that's not part of our submission. That was part of the panel's adding on.

**Chair Patrick Rouble:** Would you like the opportunity to clarify your position, then?

**Rob King:** Our submission was that the worker should be able to put that money into a retirement plan or an annuity of his choice so that they control it, and that was more or less the idea behind that submission is that they have a little more authority over their pension than there is right now.

**Douglas Rody:** We would have some concerns with that. It opens up the possibility that if the worker controls it, that the worker would cash in that annuity before retirement, which is defeating the purpose of the annuity. The annuity there is there to provide an injured worker with income after retirement.

**Rob King:** Replying to Mr. Rody's comment: There would be certain rules that the worker would have to follow – and that would be one of them – that it's locked in until 65 if they're going to control it, that it be locked into whatever pension plan or whatever annuity or whatever term deposit or whatever, that it's locked in, it receives interest every year, it generates interest,

so that they will have something at 65; and they can't access it or withdraw it until they're age 65. We agree with the purpose of the annuity, and that is to provide for a pension when you turn 65. So, this isn't some sort of a cheap attempt to try to get that annuity money and go and buy a motor home. All it is saying is, "Look, it's my pension. Let me control it."

**Sandy Babcock:** It's the Yukon Chamber's position that there are strong policies and guidelines in place that determine how the board invests its money; and the way it invests its money is the way it does its long-term planning and determining its future liabilities and the integrity of the financial aspect of the fund. So, we would not support individuals handling their own annuities or investments. The control must be maintained within the board.

**Rick Karp:** Mr. Chair, the Whitehorse Chamber agrees with the Yukon Chamber and with Mr. Rody on that matter, and we would like to state that the 10 percent annuity is generous. The average in the country is 7.5 percent, but we don't want to change that. We'll stay being generous, but the board – with the amount of investments that they have – would allow this 10 percent, this annuity, to grow at a greater rate than an individual putting it into something else. So, the individual worker, having the 10 percent annuity, which is higher than the rest of the country, would benefit more. So, this is why we would like to leave it as it is.

**Alan Byrom:** I think I did hear, and it could be a rumour, that Alberta WCB invested in Enron.

**Chair Patrick Rouble:** That's outside the scope of this discussion.

**Alan Byrom:** Why I'm saying this is what our concern was is that the annuities that are there are really protected, that we will get them, that if something happens to take that away in some form ...

**Valerie Royle:** The board's opinion on this is to leave it as it is. An individual investing takes much more risk than a 134 million dollar investment fund that's managed by a board of directors. Any changes to that policy have to be approved by Cabinet, by Government. As well, the Yukon Consolidated Fund backs the Injury Fund; and so, an injured workers' money is, in the opinion of the board, far safer in the board's investment fund than an individual who may invest in Enron. So, what would happen to that injured worker whose fund had negative growth and did not have the money for retirement? So, certainly the stability in the fund is far greater than any individual could have on their own, given the amount of the fund and the management of it.

We do agree, though, that the annuity, in the event of a worker's death, should go to the spouse and dependent children. That same provision is currently there for a fatality on the job. That has worked very well from an

administrative perspective. We haven't had controversy to deal with. So, that seems to work very well, and that's what the board would recommend. Obviously, if there was no spouse or dependent children, the annuity would remain in the fund.

**Rob King:** As far as the worker controlling this annuity, this is not a new idea. This was in the Act. This was in the '86 Act, that the worker could transfer his annuity into a superannuation plan that he belongs to. So, we didn't just pull this out of the sky. This provision already existed.

**Rick Karp:** Mr. Chair, I have a question here: Are we dealing with the Act from 1986? What year are we dealing with?

**Chair Patrick Rouble:** The current Act, however, I think it is appropriate to bring up past practices or past changes in the Act as examples of how it could be done or how it has been done.

**Rob King:** I just want to point out that this isn't some lame-brain scheme that we just sort of thought up. This actually still does exist in the Act, in the '86 Act. So, people who were injured under that Act still can transfer to a superannuation plan.

**Chair Patrick Rouble:** Can we move on to issue 20, rehabilitation assistance for incidental costs.

**Douglas Rody:** We feel this is a policy issue and don't see a need to change the legislation.

**Rick Karp:** We agree with that.

**Sandy Babcock:** Yukon Chamber agrees.

**Valerie Royle:** As does the board.

**Chair Patrick Rouble:** Are there other comments?

**Alan Byrom:** Just a comment that quite often the injured worker doesn't actually apply for those incidentals, even though they're there. It's just a comment. It's a neutral statement really. Like, if I was to drive to town to see the doctor, I could submit a bill for my mileage, but there are lots of things that we don't do.

**Chair Patrick Rouble:** It is certainly appreciated that this Act review has brought to the surface many other issues that could be addressed through policy or practice.



**Alan Byrom:** The incidentals are good. When compensation works, it's good. Sometimes it's up to the worker to take advantage of them or let it ride, but the incidentals are good.

**Chair Patrick Rouble:** Moving on to issue 21, maximum wage and assessable earnings rates.

**Douglas Rody:** All you have to do is read this to know that there is some need for change. This is in the definitions, I believe, and page 80 of the Act, 79 and 80. The maximum wage rate for a year

“[The] “maximum wage rate” for a year means

(a) for 1993, \$50,000,

(b) for 1994 to 1997 inclusively, the product of

(i) \$50,000, and

(ii) the quotient obtained when the average wage for the year is divided by the average wage for 1993,”

So, in other words, for '95, in order for the board to set the average wage for '95, they had to take the average wage for '95, divided by the average wage for '93. The problem there, of course, is that you don't know the average wage for '95 until sometime towards the end of '96, and they have to set the average wage at the beginning of '95; and it carries all through that definition up to the current year. So, basically what the board essentially has to do is anticipate the average wage or through some tortuous route come to a maximum, the average wage.

What we would say is somehow the formula has to be changed. Basically, we're going to have to use available statistics to look forward or to project forward; but whatever we come up with, the information should be publicly available. We need to have it in advance of the year for which the wage is being set. I understand the information the board uses now they get from Stats Canada and it's very expensive. We would like to suggest that whatever formula we use that the information be either free or as inexpensive as possible, and it should be tied to wages in the Yukon and reflect the wages of the majority of Yukoners. The idea that it be targeted to the 90<sup>th</sup> percentile of workers I think is something we can accept.

However the information is gathered and where it's obtained from and what it is, it's going to have to allow the board sufficient time prior to January 1 of a given year for them to set that wage and assessable earnings and give notice to the public and stakeholders as to what that wage would be.

So, it needs to be changed, but how it's changed – what we'll work on – is something we're going to have to think about.

**Valerie Royle:** Well, we'll have it by June 15<sup>th</sup>.

**Laurie Butterworth:** We'll have a couple of quick meetings to deal with this!

**Valerie Royle:** Yes, we have some options; but based on those criteria – which the board of directors had looked at – and talking to stakeholders, it was felt was reasonable. We've had issues with trying to estimate the future, which is obviously not an exact science. Because we have to purchase the information from Statistics Canada, we can't share it. So, we had that issue earlier where someone asked, "Well, how does this work," and we were prohibited – because it's proprietary information – from providing that, which we don't think is fair in a transparent system. We should have something set that if a worker or an employer wants to know where it came from, we should be able to give them the information and right now we can't. So, anyone picking up the Act who wants to read that section would need to be a mathematician and perhaps an economist to be able to figure out how it's done, and that's really not the intention of –

**Laurie Butterworth:** Or a fortuneteller!

**Valerie Royle:** Or a fortuneteller, thank you, to be able to read that section, and that's not the intention of this legislation. So, we're working with our actuary and our stakeholders to try and find an alternative, and we'll have an option for you by June 15<sup>th</sup>.

**Michael Travill:** What about the max, should there be a max or should there not be a maximum compensation rate?

**Douglas Rody:** Well, we haven't discussed that at length; but from a Labour point of view, I think we're comfortable with the maximum being aimed at something that would capture the 90<sup>th</sup> percentile of workers in the Yukon. What's the actual maximum today?

**Valerie Royle:** 69,5.

**Douglas Rody:** I mean, for employers who have employees making beyond that, there is the option of purchasing additional insurance; but 69,5 covers most people.

**Chair Patrick Rouble:** Is there another comment?

**Alan Byrom:** I was just thinking that the legislation is going to last for 10 years, so we're looking at 10 years. Oil and gas, wages could ... So, you have to be prepared for something. You have to look to the future when you're doing caps.

The only other comment, which is a little bit further back relating to the pension thing about your estates and your dependents, if you are a single worker without dependents, they could use a portion of the pension annuity to pay for the funeral.

**Michael Travill:** There is already coverage for funeral expenses.

**Alan Byrom:** If you just die –

**Valerie Royle:** He's right, if you die as it relates to your work injury; but if you were just walking on the street and had a heart attack and it wasn't related to your compensable injury at all, then, no, you wouldn't get death benefits.

**Alan Byrom:** Right, so the compensation system would get your annuity, because you've got no dependents, and they wouldn't pay for your funeral either. I just wanted to introduce the idea in case they could take that portion; because after all, it is your annuity until you drop dead.

**Chair Patrick Rouble:** Finally, regarding the issue of assessment of earnings when a worker or a director has earnings from multiple employers.

**Douglas Rody:** What we would suggest is we would agree with the last line of your narrative:

"It would be an impossible task for the administration of the board to know when instances of excess assessment occur ..."

**Ivan Dechkoff:** So, no change?

**Douglas Rody:** No change.

**Valerie Royle:** Actually, from a practical perspective, when a director indicates they have several companies, we only assess them in one, and the director chooses. So, we were surprised by this being an issue, based on what our assessment people are telling us.

**Chair Patrick Rouble:** Folks, that concludes the issues identified under "benefits". Does anyone have any closing comments?

**Rob King:** Just something that I neglected to mention with regards to annuities, and that's why our organization brought this up; and Val can confirm this. In about 1990 Newfoundland, with one stroke of the pen, all annuities of workers were removed, they were taken away; and we want to be protected against that happening to us. That's why the notion or the suggestion that we be able to transfer it into our own pension plan or annuity plan, that's where that came from.

**Rick Karp:** Mr. Chair, I would just like to say for the Whitehorse Chamber of Commerce that comments and statements made today may change, because "benefits" also occur later on in our discussions. So, some of the things that we have stated today may change.

**Chair Patrick Rouble:** The panel can certainly appreciate this. We understand the wholistic nature ...

**Douglas Rody:** You're going to have to define that.

**Chair Patrick Rouble:** The inter-related nature of all aspects of compensation, we did need to find some structure to help facilitate these discussions. So, we certainly appreciate that views and thoughts and concerns may change, based upon these discussions. Indeed, that's part of the reason for having meetings like this.

Thank you very much, folks, for your participation today. I'm certain I speak for all three of us. We sincerely appreciate the hard work and effort you've put into analyzing these issues and preparing your thoughts and comments and your submissions. We certainly look forward to working through the rest of the issues with you folks.

Thank you, we'll adjourn.

(The meeting adjourned at 3:05 p.m.)