Patrick.Rouble

From: President @ Whitehorse Chamber [president@whitehorsechamber.ca]
Sent: Friday, June 16, 2006 3:29 PM
To: Patrick.Rouble
Subject: Whitehorse Chamber of Commerce

Re: WCB Act Review Submissions

Please be advised that to avoid confusion the submission to the Act Review Panel from the Whitehorse Chamber of Commerce
representing a Large Employer Group takes precedence over the submission that we have submitted to you as part of the Stakeholders Group for those issues discussed in the submission from the Large Employer Group.

Although we have signed the document from the Stakeholders group it is not totally accurate that we have agreed on all of the 88 issues. The Large Employer Group agreed as a group to submit comments on a few issues separately from the Stakeholders Group.

If you have any questions about this or you require further clarification, please do not hesitate to contact me.

Thank you,

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June 15, 2006

Mr. Patrick Rouble, Chair
Workers' Compensation Act Review Panel
Box 2703
Whitehorse, YT
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Dear Mr. Rouble,

Thank you for the opportunity to provide a written submission to the Yukon Workers Compensation Act Review Panel. The attached response represents the perspective of the Whitehorse Chamber of Commerce representing a group of large Yukon employers which includes; the City of Whitehorse, Northwestel, Yukon Electrical, Yukon Energy, The Hougen Group, and The Whitehorse Chamber of Commerce representing over 400 small to medium sized businesses in Whitehorse. The Yukon Government, as an employer sat in on our meetings, but will present their own perspective to the panel.

A well-functioning workers' compensation system is in the interest of all stakeholders – injured workers, non-injured workers, employers and governments. *Injured workers* who are receiving compensation from the system want to ensure that their compensation is adequate and sustainable. *Non-injured workers* want the security of a financially viable system in place should they become injured, but they also want to ensure that excessively high payroll taxes used to finance the system do not become "killer of jobs" if firms have to reduce employment because of the high payroll taxes. *Employers* want a financially viable system that does not deter their competitiveness. *Governments* want to ensure that compensation is adequate so that injured workers do not become wards of the state, but also that the costs of the system do not deter business investment and the job creation associated with the investment.

Workers' compensation arose as an "historic compromise" whereby workers would receive "no-fault" compensation, and workers and employers could be free of the costly time-consuming and uncertain legal proceedings of the tort liability system. In that vein, a delicate balancing act is required to ensure fair and equitable compensation in a non-legalistic (and hopefully non-adversarial fashion) and where the concept of fair and equitable applies to employers as well as employees. Without such balance the system is in jeopardy.

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The recommendations put forth in this brief are advanced in the spirit of the need to restore that balance. They are not meant to be critical of the basic premises of the system based on the Meredith principles. Rather they are advanced in the spirit of concrete, constructive suggestions to restore balance in order to preserve the system to be in the joint interest of all stakeholders.

The concern is that the costs of the system are rising dramatically and are expected to rise even more so in the future. This is occurring in spite of the fact that injuries themselves are down. The rising costs in part reflect the fact that the duration of claims is increasing substantially. As documented subsequently, this is occurring in part because of features of the workers' compensation system. If these features are not changed to restore balance, the whole system is at risk for all stakeholders.

We would welcome any further discussion or questions on the attached submission, and we are looking forward to the final report of the Yukon Worker' Compensation Act Review Panel.

Ed Sager,
Chair,
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RESPONSE OF LARGE EMPLOYER GROUP TO OPTIONS FOR LEGISLATIVE CHANGES TO YUKON'S WORKERS' COMPENSATION ACT:

On behalf of the Large Employer Group the Whitehorse Chamber of Commerce would like to recognize and thank the WCB for their financial support that enabled us to hire Dr. Morley Gunderson* to assist us in conducting all of the research and preparing our position on the issues.

(June 2006)

* Morley Gunderson is the CIBC Professor of Youth Employment at the University of Toronto, and a Professor at the Centre for Industrial Relations and the Department of Economics. He is also a Research Associate of the Institute for Policy Analysis, the Centre for International Studies, and the Institute for Human Development, Life Course and Aging, and an Adjunct Scientist at the Institute for Work and Health.

INTRODUCTION

The procedure followed in this report will be to state the issue in bold, to highlight the preferred option in italics and then to expand upon the preferred option as appropriate. While we comment upon all the issues in the document prepared by the "Stakeholders Group", we obviously feel some issues are more important than others, and those issues are discussed in this document.

It is important to note that as Yukon heads toward a potential economic resurgence with several potential large scale projects looming, with considerable increases in exploration and mining activity, and increases in Tourism, Conventions, Meetings and Incentive Travel, not to mention the 2007 Canada Winter Games and all the sporting events we are attracting; it will become increasingly important for Yukon to have a competitive regulatory and tax regime in place to attract business to support this economic growth and prosperity.

WCB assessments represent more than a required insurance policy, if we do not get control of the costs of our WCB these assessments, as part of a larger cost analysis can influence decision makers to set up shop in Yukon or go somewhere else. At this time our WCB is an "outlier" in many respects to the rest of the country and if our rates (business assessments) continue to rise it will become a much more important part of the decision to come to Yukon or not.

If it is difficult from a regulatory perspective, and expensive in other areas such as wages and WCB assessments, then given a choice of locations businesses may well decide to settle somewhere else. Finally, if our WCB costs continue to rise in Yukon small businesses will be threatened. We can not continue to say that it is the cost of doing business. Businesses create jobs. As well many small businesses employ students and therefore spend a lot of money training and developing their skills as they enter the job market for the first time. Members of the Act Review Panel, we need you to look carefully at all the recommendations presented to you and to consider very carefully how you recommend to the Minister responsible where Yukon should be positioned in relation to the rest of the country in terms of our WCB Benefits.

The Whitehorse Chamber has worked closely with our partners in Labour and at the Yukon Chamber of Commerce in order to reach a common position on many of the 88 issues identified by the Act Review Panel. The issues that we have agreed to are presented in the "Stakeholders Submission". The Large Employer Group is composed of the City of Whitehorse, The Hougen Group of Companies, Yukon Electrical, Yukon Energy, Northwestel, and the Whitehorse Chamber of Commerce representing over 400 businesses. The issues listed below are those that the Whitehorse Chamber of Commerce, with the full support of the Large Employer Group wants the panel to consider as our position on the issues included in this

document. Some of the issues are also discussed in the Stakeholders submission, however, for clarity we felt it was important to explain our position again in this document.

Opening Comments:

The fact that Yukon's WCB is the smallest jurisdiction in the country makes it imperative for us to act on cost saving measures to protect WCB Funds. In the areas that impact expenditures we must start bringing Yukon into line with the rest of the country. In many areas we are the only jurisdiction administering our fund as we are. This pattern must change! The issues we wish to draw the panel's attention to, and will comment on later in this submission, are listed below.

1. The rest of the country, and indeed in many jurisdictions around the world, the Benefits for workers injured on the job are based on net earnings, we propose going to 80% of net earnings not 75% of gross earnings. We must come into line with the rest of the country and the world. Making this adjustment would save the fund about $275,000.00 in the first year and much more as the years move on.
2. It is commonly understood in the business community that the WCB Legislation has swung far to the left and it is time to start restoring the balance in the legislation. One way to do this is to remove the word "compassion" from our act. We are the only jurisdiction in the country that has this word in its legislation and it has moved the courts to overturn many decisions made by WCB review teams.
3. Currently our WCB Administration has the ability to suspend benefits, but not terminate benefits of a worker that is not co-operating in their recovery. The WCB Administration must have the right to Terminate benefits. This has been agreed to by all the groups in the Stakeholders submission so we will not be commenting on it here.
4. Our Worker's Advocate Office is so out of line from every other jurisdiction in the country it is embarrassing! This office must have controls placed on its budget that brings it into line with every other jurisdiction. As you will see the average cost per worker in most other jurisdictions is between $1.00 and $2.00 per worker while in Yukon the cost is $25.68 per worker. If we adopted the next highest region (Nova Scotia) our rate per worker would be $6.19 and we would save the fund close to $250,000.00 annually. Although the Stakeholders have agreed to having the Workers Advocate Office submit their budget to the WCG for approval, and our group agrees with that, there are still points we want to raise about the Workers Advocate Office.
5. The inclusion of a new section of the Act to discuss employee's responsibilities in the workplace. In several jurisdictions this is dealt with in legislation with headings such as "Serious and Willful Misconduct", "Personal Risks",

"Horseplay", "Drunkenness and Intoxication" and an example of the wording of such proposed legislation is included later in this document.

6. The Large Employer Group supports the initiatives of the WCB in Safety and Prevention of workplace accidents; however we feel that it will take years for this initiative to impact assessments therefore some immediate cost saving measures must be brought into play now as we move toward a safer workplace and safer work ethic.
7. Finally, it is also critically important to get control of the costly appeals process in Yukon.

If we can not control the expenses, then the cost of our WCB will become an unsustainable burden to the many small businesses in Yukon. This review of the WCB ACT implies much more than protecting employees from loss of income due to a workplace injury. Included in this review must be a consideration of the cost to employers of sustaining a WCB that is so generous it has created an unfair burden to the employers that fund it. Because of this it is reasonable and prudent for the panel to research the impact of harmonizing our system with another jurisdiction and to recommend completing a feasibility study to determine that impact. We are not recommending harmonization; we are recommending a study of that option.

During the past decade the cost of maintaining our WCB has been mitigated by subsidies to control the assessment rates to employers from several years of overpayments into the system. Also, a large sum of this money went to groups other than employers, some has been used to fund programs that employers have not been consulted on, and in general the philosophy at the WCB seems to be that the money given by employers to support the system is not theirs to have any say in how it is spent. This perception is disconcerting to say the least.

Below you will find a balanced explanation written by Dr. Gunderson on the pro's and con's of harmonizing our WCB with that of a much larger jurisdiction. In this example Dr. Gunderson uses the British Columbia WCB. In discussions that the Whitehorse Chamber has had with Sid Fattedad, who is the Chief Financial Officer of the B.C. WCB known as "Worksafe B.C.", there has been a very positive response to the... "synergies that would be created by such an approach to Worksafe B.C.". In short they are very supportive of having the Yukon WCB approach them to enter into discussions on harmonizing with the B.C. system. **We feel that this must be pursued to find out if it is a viable option.**

NOTES ON ISSUE OF HARMONIZING WORKERS COMPENSATION WITH BC

Issue # 15 dealing with administrative costs under governance issues, raised the option of harmonizing the Yukon workers' compensation system with that of an adjacent jurisdiction like British Columbia as a possible way to save on worker's compensation costs. More specifically, an option was to:

> Evaluate the opportunity of amending the legislation to harmonize with an adjacent
> jurisdiction (NWT/Nunavut, Alberta or B.C.) with a view to contracting the adjacent
> Board to provide all of the services. This could save $0.60 to $0.70 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 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 was to a larger jurisdiction such as BC or Alberta
- Possibly reducing claims and other costs, since the Yukon is general ly 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:

- Reduced 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 will be expanded upon in turn and a recommendation made at the end or this report.

ADVANTAGES OF SUCH A CONTRACTING ARRANGEMENT

Saving 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 system architecture and platforms; equipment and other infrastructure cost; 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 the worker's compensation system handling one case, elements of such fix costs would have to be incurred. In larger systems, they 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 cost as a percentage of total cost were about 33% in the Yukon, compared to 29% in the NWT/Nunavut (with about two times the claims volume) and 20 to 23% in other larger jurisdictions. In other words, administrative cost as a percent of total cost were slightly over 50% higher in the Yukon compared to most other large jurisdictions in Canada. As indicated in the above quote from the Review document, contracting the services to an adjacent jurisdiction could save $0.60 to $0.70 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 4 Maritime Provinces to explore collaborative options to pool activities and reduce overhead cost.

There are other options for reducing administrative costs and especially the fixed cost 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 (e.g., 3 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. As indicated, the introduction of waiting periods have resulted in a 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 cost associated with administering small claims.

Substantial administrative costs are also associated with re-opening of previously filed claims and subsequent appeals. As indicated, this can account for more than half of the total administrative cost. To contain cost, some jurisdictions have introduced new legislation designed to reduce the number of appeals and re-opening of old claims by placing time limits on appeals and allowing re-opening only if there is substantial new medical 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 substitutes for harmonization. Whether they would apply or not, depends upon whether 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 other complications arise. As well, workers can be bearing the cost of lost wages during the waiting period. Reducing appeals and re-opening 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 by harmonizing with other jurisdictions is a saving of *real resource costs* to the system, 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 re-open 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 the 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 hospital 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 larger jurisdictions 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 serious 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 1,200 employers in the Yukon). In such circumstances, risk would not be pooled. A single severe accident could dramatically affect the liabilities of that rate group and hence its subsequent assessment. The insurance principle would not be in place. However, if the Yukon were harmonized 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 the employers better reflects their expected accident experience since they are in with more similar employers in terms of their expected experience. In contrast, in the current situation in the Yukon with only 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 were 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 Claim Cost and Other Costs

Harmonizing with another jurisdiction may also reduce claim costs and other costs. As documented in other reports, the Yukon is generally an outlier in terms of the provision of high benefits and other costly items. Harmonization would likely move the Yukon closer to the average. For that reason, it likely would be a move in the direction of restoring balance. In that vein, the optics 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 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 services. The concentration of approximately 80 percent of the Yukon population in the single location of Whitehorse also reduces that remoteness. The Yukon also has other succesful experiences with harmonizing with a larger jurisdiction. 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 cost if the former system has to be restored. It may also be the case that the Yukon could negotiate certain conditions as part of the sub-contracting, although this may be difficult given that the benefits are already likely to be in one direction – towards the Yukon.

Possible Reduced Local Employment

Any subcontracted 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 upon 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 the upcoming retirements from the large baby-boom population, the leading-edge of which is now about age 60. The

same applies if any redundant personnel from reorganizing workers' compensation are reallocated 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 does occur, often can be done through attrition and reduced new hiring or through voluntary early retirement 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 another jurisdiction 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 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 a thorough review of its system and has modernized it accordingly.

CONCLUDING OBSERVATIONS

The potential benefits from harmonization and contracting with another jurisdiction appear sufficient to merit further investigation in this area. As such, it would appear sensible to endorse the 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 that evaluation would be to simulate the hypothetical assessment rate structure that the Yukon would experience if their 15 rate groups were merged in 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 rates 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 upon 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 saving will be crucial in the near future as assessment rates will likely escalate both because the 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.

Introduction:

Every other jurisdiction in the country bases their benefits on net earnings rather than gross earnings. That Yukon is lagging so far behind the rest of the country is a costly issue for the benefit liability fund and we strongly recommend that the Yukon finally join every other jurisdiction and change our benefit package to 80% of net earnings. This would have a cost savings to the system of $275,000 in the first year and substantially more in subsequent years. There is no one option to solve our problems with the WCB, we must approach the problem of rising costs from several directions all at one time. This is one of them.

*** Issue # 12 Claims costs (74)*

Options

1. No change to legislation.

2. Amend the legislation to reduce benefits so they are more consistent with other jurisdictions in Canada. Benefit levels in the Yukon system are the largest component of overall cost. Changing wage loss replacement to 80% of net average earnings and placing a threshold on the amount of Vocational Rehabilitation that can be provided will significantly reduce claim cost. The calculation of 80% of net earnings should be formula driven to reduce complexity of individual taxation status. (The board staff would have to quantify the reduction in cost). An 80 % net wage loss replacement combined with the 10% set aside for an annuity will mean that a severely disabled worker, over the long term, receives almost the equivalent of current take

home pay. Injured workers with short duration injuries would have reduced levels of compensation. For example: A worker earning $60,000 a year would experience a reduction of about $175.00 per week from the current benefit levels.

We strongly support option 2 to move to a wage loss replacement rate of 80% of net average earnings. Currently, the Yukon is the only jurisdiction in Canada to continue to base compensation on gross rather than net earnings. According to the Association of Workers' Compensation Boards of Canada's 2005 report on a *Comparison of Workers' Compensation Legislation in Canada,* jurisdictions like Ontario and Saskatchewan switched in 1985, Manitoba in 1992 and PEI in 1995 (p. 207).

Basing compensation on 75% of gross earnings can lead to workers receiving 100% of their former pay, and higher if work related expenses are considered. If the tax rate is 25%, for example, then 0.75 of gross earnings equals 100% of net earnings (i.e., with a tax rate of 0.25, net earnings would be 0.75 x gross earnings which is equivalent to the workers' compensation benefit replacement based on 0.75 x gross). As such, a compensation rate of 0.75 of gross earnings implies that the individual would be receiving their full net earnings after compensation. They would be receiving even more if work related expenses were considered.

No other jurisdiction even approaches such a high rate of compensation. Typical replacement rates range from 75 to 90% of net earnings.

An effective earnings replacement rate at or near 100% of lost income can have important adverse consequences. These consequences are confirmed by empirical evidence based on research (cited in footnotes below). The adverse consequences include:

- No monetary incentive to return to work with a greater incentive to make workers' compensation claims[1] and longer duration claims[2] given the higher benefits
- A greater probability of being out of the labour force and not returning to work[3]
- A greater incentive to make false claims given the higher benefits[4]
- More accidents and injuries[5]

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[1] Increased claims are found in Bruce and Atkins (1993), Lanoie (1992b), Lanoie and Strelisky (1996), Thomason and Pozzebon (1995) with more inconclusive results in Fortin and Lanoie (1992) and Lanoie (1992a). The latter two studies, however, included an earlier time period from 1974-1982 in the province of Quebec. When that earlier time period was excluded and the data restricted to the more recent time period of 1983-1987, the expected positive effect on claims emerged Lanoie (1992b).

[2] Longer durations on claims and out of the labour force were found in Campolieti (2001c), Dionne and St. Michel (1991), Dionne, St. Michel and St. Vanesse (1995), Fortin and Lanoie (1992), Fortin, Lanoie and Laporte (1996), Johnson, Butler and Baldwin (1995) for women but not men, Kralj (1995), Lanoie and Streliski (1996) but not Lanoie (1992b) for an earlier period.

[3] Butler, Johnson and Baldwin (1995), Hyatt (1996) and Johnson, Baldwin and Butler (1995).

[4] That at least some of the claims represent false reporting is suggested by the fact that the longer duration of claims tended to occur on difficult-to-diagnose injuries and diseases, where it is more difficult to monitor if the claim is real or false. The longer claim duration for hard-to-diagnose cases is found in Bolduc, Fortin, Labrecque and Lanoie (2002), Dionne and St. Michel (1991), Dionne, St. Michel and Vanesse (1995) and Fortin, Lanoie and Laporte (1996).

- Longer run persistence of negative effects since even those who return to work often return to the disability rolls, having recurrent spells on and off disability[6]
- Individuals shifting from other income support systems like unemployment insurance or the Canada Pension Plan disability program if workers' compensation becomes more generous, effectively shifting some people from federally financed income support programs to provincial ones.[7]

This Canadian evidence of the negative consequences of high replacement rates is also generally supported by a wide array of US studies; that is, higher benefit replacement rates are associated with an increased frequency and duration of claims as well as not returning to work, with both real accidents as well as false claims increasing[8].

In essence, benefit replacement rates that are at or near 100% of net income can create disastrous incentive effects on the workers compensation system as well as reducing safety and precautions at the workplace. These, in turn, will increase the benefit payouts and hence costs of the system because such benefit payouts are the largest component of total cost.

Evidence of the high costs of benefits in the Yukon relative to other jurisdictions is also provided in the Association of Workers' Compensation Boards of Canada, *Indicator Ratios*, December 2003:

- Benefit Costs per $100 of Assessable Payroll are $2.04 in Yukon, almost twice the weighted national average of $1.19. They are second highest in Canada, second only to Newfoundland at $2.22.

- Average Benefit Costs per Lost Time Claim is $22,539 in Yukon, almost twice the weighted national average of $12,030. They are second highest in Canada, second to NWT/N at $26,190.

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[5] The real effects of higher benefits on accidents is substantiated by the higher risk of a fatality which is not subject to being a false claim. Higher fatalities associated with higher benefit replacement rates are found, for example, in Bruce and Atkins (1993).

[6] The importance of recurrent spells and of considering the full subsequent employment histories is documented in Butler, Johnson and Baldwin (1995), Campolieti (2001a, 2001b, 2001c, 2002), Fawcett (1999), Johnson, Baldwin and Butler (1998) and Johnson, Butler and Baldwin (1995), as well as Burkhauser and Daly (1996) for the US.

[7] Evidence of such "forum shopping" or substitution across programs depending upon their generosity is provided in Bolduc, D., B. Fortin, F. Labrecque and P. Lanoie (2002), Campolieti and Krashinsky (2003), Fortin and Lanoie (1992, 2000) and Robson (1996).

[8] US studies on the effect of benefit rates in workers' compensation are reviewed in Berkowitz and Burton (1987), Burton (1988), Ehrenberg (1988), Fortin and Lanoie (2000), Gunderson and Hyatt (1998), Kneisner and Leeth (1995), Krueger and Meyer (2002), Moore and Viscusi (1990) and Worrall and Butler (1986). US Studies include: Bartel and Thomas (1985), Butler (1983), Butler, Gardner and Gardner (1997), Butler and Worrell (1983, 1985, 1991a, 1991b), Chelius (1974, 1977, 1982, 1983), Chelius and Kavanaugh (1988), Chelius and Smith (1983), Curington (1986, 1994), Johnson (1983), Johnson and Ondrich (1990), Kneisner and Leeth (1989,), Krueger (1990a, 1990b), Krueger and Burton (1990), Leigh (1985), Meyer, Viscusi and Durbin (1995), Moore and Viscusi (1990), Neuhauser and Raphael (2001), Ruser (1985, 1991), Thomason (1993a, 1993b), Worrall and Appel (1982), Worrall, Durbin, Appel and Butler (1993) and Worrall and Butler (1988, 1990).

The review document provided a further jurisdictional comparison of claim costs for the year 2003. Benefit costs incurred were divided by the number of claims reported. The average benefit cost for the Yukon was $10,529 compared to a national average of $7,850. The Yukon was second only to Quebec at $12,318.

The Auditor General's report flagged a concern about increasing claims costs. Such claim costs are driven by a number of factors associated with the high benefit replacement rate. These include the legislated benefits themselves as well as consequences of such high replacement rates such as slower return to work, a higher injury rate, more claims and an increased duration of claims including false claims, and shifts from other less generous programs, as discussed above.

Clearly, changing from a benefit replacement rate of 75% of gross earnings (which implies approximately 100% of net earnings) to a benefit replacement rate of 80% of net earnings would help restore balance by moving the Yukon system in the direction of all other systems in Canada. This in turn would help restore incentives, manage claims cost and facilitate the financial viability of the system in the interest of all parties. It would also have other desirable effects such as reducing accidents as well as false claims and reducing any incentive to shift individuals from federally financed programs like unemployment insurance and CPP-disability to the Yukon workers' compensation system. This is clearly a crucial change to help restore balance.

** Issue # 13 Calculation of wage loss benefits (29)

Options

1. No change to legislation
2. Amend the legislation to provide that loss of earnings compensation will be based on 80% of a workers weekly net earnings from all employment.
3. Amend legislation to base the gross/ net calculation on alternate percentages to those provided in Options 1 and 2.

As indicated, we strongly support amending the legislation to provide that earnings loss compensation be based on 80% of a workers' weekly net earnings from all employment. The existing system of 75% of gross pay is equivalent to approximately 100% of net pay, given a tax rate of about 25% (based on deductions for such items as income taxes, EI and CPP). It can be higher than 100% of net pay for higher income workers who face higher tax rates. The research studies indicate that such high benefit replacement rates are associated with numerous negative outcomes including: increased frequency and duration of claims; slower returning to work; increases in workplace accidents; and increases in false claims.

Moving to such a system of net pay would thereby have numerous positive consequences:

- Reduce the negative consequences of the full earnings replacement rate as discussed above
- Putting the Yukon system, which is the only one still based on gross pay, in line with other jurisdictions, all of which use net pay
- Putting the Yukon system in line with other jurisdictions and countries, none of which provide full income replacement
- Making the system more progressive since using net pay is more advantageous to lower income persons who face lower tax rates

As indicated, 75% of gross pay was close to 75% of *net pay* (i.e., nowhere near full income replacement) in the first 30 or 40 years of workers compensation systems since there were few if

any deductions for income tax, employment insurance or the Canada Pension Plan. As these taxes began to be applied over time, 75% of gross pay provided full income replacement for many and more than full income replacement for high income persons who face higher taxes. This goes against basic insurance principles, creating undesirable incentive effects when the insurance provides compensation that is greater than the income loss.

Switching to a system based on net pay does require additional administrative effort to determine each individual's net pay because of their different taxation status. All other jurisdictions, however, manage to accomplish this task. Furthermore, it can be simplified by using a formula approach which sets out the deductions for such factors as income tax, CP and EI to be made from a worker's gross earnings to
establish their net earnings. The additional administrative cost is also a reason for using a replacement rate like 80% rather than 90% of net. Adding the 90% of net figure to the administrative cost would mean that there would be little or no saving to the system by shifting from gross to net.

Introduction:

As well under Claims Costs the Large Employer Group recommends the inclusion of a "Horseplay" section in the legislation. This clause would place responsibility for employee actions not related to the job outside of the scope of a WCB Claim. Examples of the wording of such clauses are listed below.

43. (1) Compensation under this Act is payable

(a) to a worker who suffers personal injury arising out of and in the course of employment, unless the injury is attributable solely to the serious and wilful misconduct of the worker; and

(b) to the dependents of a worker who dies as a result of such an injury.

(2) The commission shall pay compensation to a worker who is seriously and permanently disabled or impaired as a result of an injury arising out of and in the course of employment notwithstanding that the injury is attributable solely to the serious and wilful misconduct of the worker.

(3) The commission shall pay interest on compensation payable for loss of wages to a worker or the worker's dependents where the payment of that compensation is delayed, for more than 30 days, as a result of circumstances that are in the control of the commission.

(4) The rate of interest paid under subsection (3) shall be calculated in accordance with the provisions of the *Judgment Interest Act* .

6. Horseplay

A worker is covered for injury resulting from horseplay if it can be established that the worker was a non-participant and was in the course of employment at the time of injury.

A worker who is injured while initiating or participating in horseplay is not covered if the activity was a substantial deviation from the course of employment.

The activity may be considered in the course of employment where:

- the interruption of production is too brief to be considered a substantial deviation from the employment;
- horseplay is a common occurrence at work and is condoned by the employer;
- the horseplay is initially harmless and escalates into a dangerous activity and the worker is not a willing participant in the escalation; or

- the worker continues productive employment activity while participating in the horseplay even though the horseplay is unprofessional or non-businesslike.

7. Personal Risks

Coverage does not extend to an injury resulting from a personal risk of the worker, or a risk imported to the employer's premises by the worker.

An imported risk by a worker includes any food, drink, or equipment introduced to the workplace by the worker. For example, a worker brings a knife to the workplace and sustains a laceration to the hand while cutting fruit. The knife represents an imported risk of the worker and coverage is not extended.

8. Serious and Wilful Misconduct

Where it is determined that an injury arising out of and in the course of employment is due to the serious and wilful misconduct of the worker, then compensation shall be denied. However, where a worker is seriously and permanently disabled or impaired as a result of the injury, the Act requires compensation to be paid.

Serious and wilful misconduct is the deliberate and unreasonable breach of rule or law designed for safety, well known to the worker, and enforced. It is the voluntary act of a worker with reckless disregard for the worker's own safety and which the worker should have recognized as being likely to result in personal injury.

Some factors to consider in this determination include:

- Has the worker deliberately violated an enforced order or law?
- Are the actions at the time of the accident deliberate and intentional with a complete disregard for probable consequences?

- Are the consequences reasonably predictable by the worker?
- Has the employer permitted that type of activity or behaviour at the work place?

9. Drunkenness and Intoxication

For health and safety reasons the Commission considers drunkenness and intoxication to be serious and wilful misconduct. An injury that occurs as a result of intoxication (alcohol or substance abuse) is not compensable, unless it arose out of and in the course of employment and the worker is seriously and permanently disabled or impaired.

Introduction:

As you can see from the chart below our Worker's Advocate Office is so out of line with the rest of the country that there is no reasonable explanation. That we allowed this to happen is not right and the situation must be corrected. The costs to the system go far beyond the cost of the Office itself. In our opinion this office is also partly responsible for the problems we experience in the duration of our claims, the cost and increased complexity of our appeals process, and the number of our appeals and the interaction with WCAT. Although the Whitehorse Chamber has agreed to the compromise position established by the Stakeholders Group and explained in that submission we are still concerned about one key issue. In the agreed upon statement it is noted that the Worker's Advocate Office will have to go through the WCB for approval of their budget. The agreement does not address the size of that budget and this is an area of concern. Our Worker's Advocate must establish a budget based on a rate per covered worker. This rate must be in line with the rest of the country with an allowance due to our small jurisdiction. We include the full explanation written by Dr. Gunderson for your consideration.

Issue #11 Annual reporting of Worker's Advocate (8)

Options

1. No change to legislation
2. Amend the legislation to direct the Workers' Advocate to consult with stakeholders to determine suitable performance measures for inclusion in the annual report.

We support option 2 to amend the legislation to direct the Workers' Advocate to consult with stakeholders to determine suitable performance measures for inclusion in the annual report. This is important in an era of accountability, transparency and involvement of stakeholders. Requiring performance measures is becoming more prominent in organisations including those in government and the public sector. This is an issue that was raised by the Auditor General. It is especially an issue when budgets are substantial and there can be discretion as to how they are used.

Our concern with accountability and performance measures is prompted by the fact that the budget of the Yukon Workers' Advocate office in 2003/04 amounted to $25.68 per

worker covered by workers' compensation in the Yukon (see accompanying table). This was by far the highest in Canada, where the costs tended to be more in the neighbourhood of $1.00 - $2.00 per worker. They were also vastly higher in the Yukon compared to other small jurisdictions such as Newfoundland ($0.93), NWT and Nunavut ($5.97), and Prince Edward Island ($1.91). With the budget of the Yukon Workers' Advocate Office being such an extreme outlier, the need for accountability and performance measures becomes paramount.

As indicated, Subsection 13(6) requires the Workers' Advocate, within 90 days after the end of each calendar year, to submit a report summarizing the Workers' Advocate's activities in the preceding year and accounting for expenditures in that year to Minister of Justice. The Minister then makes the report available to the board, organizations representing employers and workers, and the public. The legislation is very clear that an annual report shall be prepared and that all relevant parties and the public will have access to the report. What is unclear is whether the accountability measures, if any, in the report are adequate to the needs of the Minister and the stakeholders. With or without direction from the Minister, the Workers Advocate should consult with stakeholders to determine suitable performance measures for inclusion in the annual report.

We feel that in the interest of accountability and transparency, the Minister of Justice should require the Worker's Advocate consult with the board and representatives of employers and workers, on performance measures that would satisfy their interests and which were capable of being generated without excess cost to the Worker's Advocate.

Provinces	Employed Labor Force, 2004	Coverage %	Number Covered	Workers' Advocate Budget 03/04 $	Per Covered Worker
	(1)	(2)	(3)	(4)	(5)
Alberta	1,754,400	82.9	1,454,398	1,462,000	1.01
British Columbia	2,071,700	93.3	1,932,896	4,900,000	2.54
Manitoba	575,200	67.4	387,685	765,400	1.97
New Brunswick	353,000	96.3	339,939	452,000	1.33
Newfound Land	220,800	97.0	214,176	200,000	0.93
NWT & Nunavut	21,900	99.4	21,769	130,000	5.97
Nova Scotia	445,700	71.3	317,784	1,967,000	6.19
Ontario	6,334,800	71.3	4,516,712	8,744,500	1.94
Prince Edward Island	69,600	91.0	63,336	121,000	1.91
Quebec	3,704,900	93.8	3,475,196	-	0.00
Saskatchewan	490,300	72.7	356,448	536,000	1.50
Yukon Territories	15,300	95.7	14,642	376,000	25.68

Source: Column (1) on Employed Labour Force and Column (2) on % of employed labour force covered are from the Association of Workers' Compensation Boards of Canada, *Workers' Compensation Industry Classifications, Assessment Rates, and Experience Rating Programs in Canada*, 2005, p. 67. Column 3 is calculated as the coverage rate times the employed labour force [i.e., Column 2 (/100) times column (1)]. Column (4) on the annual budgets of the Worker Advocate offices in each jurisdiction across Canada is from *Workers Advocate Office Annual Report, 2004*, Department of Justice, Government of Yukon. pp. 6 &7. Column (5) expresses the budget of the Workers' Advocate Office on the basis of the cost per covered worker [i.e., Column (4) divided by column (3)]

Issue #12 Annual reporting of the Appeal Tribunal, Workers' Advocate and Employer Consultant (63)

Options

1. No change to legislation

2. Amend the legislation to include that the Minister shall table the Tribunal's Annual Report with the Legislative Assembly within a specified time frame and also to require the report contain measures of efficiency and effectiveness of the Tribunals operations.

We support option 2 to amend the legislation to require the Minister to table the Tribunal's Annual Report with the Legislative Assembly and to require that the report contain measures of efficiency and effectiveness. Such a requirement facilitates accountability and transparency. Requiring performance measures of efficiency and effectiveness is becoming more prominent in organisations including those in government and the public sector, and is particularly important here given that the Yukon Workers' Advocate Office has by far the highest cost per covered worker in Canada as documented previously. Furthermore, both the tabling of the report and the use of performance measures of efficiency and effectiveness were recommended by the Auditor General.

As indicated, Subsection 23(c) of the Act requires the Appeal Tribunal to report to the Minister, no later than 90 days after the end of the calendar year, on the number of appeals heard, resolved, and pending before the Tribunal, the activities of the Tribunal generally, and any other matters that the Minister requests. This section also provides the Minister with the *ability to request* the Chair of the Appeal Tribunal to include statistical information that measures the Tribunals efficiency and effectiveness satisfactory to the Minister. Further, nothing precludes the Minister from tabling the Appeal Tribunal Annual report with the Legislative Assembly, *although this is currently not required.*

We support amending the legislation to change these options to *requirements* in the legislation. As indicated, this fosters accountability and transparency and it encourages the development of performance measures that further foster accountability and transparency.

The Workers' Advocate and the Employer Consultant should similarly be requested by the respective Minister to provide a service plan and statistical measures that demonstrated they were meeting the service plan objectives.

Four other Canadian jurisdictions (Newfoundland and Labrador, Nova Scotia, Quebec and Saskatchewan) require the appellate body prepare an annual report that is tabled in the legislature. The Auditor General's report of special examination suggested the Minister may wish to create legislation requiring that the Appeal Tribunal's Annual Report be tabled with the Legislative Assembly within a specific time after it is received by the Minister and further that the Annual Report contain information that would measure the Tribunal's efficiency and effectiveness.

Introduction:

It has become clear that the employer group needs to have an employer's consultant to educate and represent employers as the Worker's Advocate does for the worker. The definition of the role of the Worker's Advocate should be adhered to as it is presented below. For some reason that definition seems to have been expanded and the role of the Worker's Advocate has become much larger than it is intended in the act.

As such, employers also require education, training and representation opportunities as it is offered to workers. To deny this is taking a position that puts one major partner at a significant disadvantage to the other.

Issue #38 Employer education and representation/ Employer's Advocate/Consultant (55)
Issue #39 Worker education and representation/ Worker's Advocate (56)

Options

1. No change to legislation.
2. ***Amend the legislation to include the employers' advisor /consultant role and duties. This would include education and training of employers.***
3. Amend section 13 to include education and training as a role of the worker's advocate. Repeal subsection 108(k) to remove the Board's obligation.

We prefer Option 2 to amend the legislation to include the employers' advisor/ consultant role and duties, including education and training of employers (if the education and training of workers and their representatives is also to be a feature of the worker's advocate office). Our rationale for this preference is:

- **There should be symmetry between employers and employees in having an advocate office, including any training and education function.**
- **This would provide the same possibility for advice, assistance and representation to an employer as is available to workers. This could be important especially to small employers.**
- **Having an employer's advocate office could help in reducing the overall costs of the system through advice in areas of accident prevention, return to work and accommodation**
- **If an education and training role is included in the worker's advocate functions, it should also be included in the employer's advocate functions**
- **We would recommend against adding this function to the task of either the worker or employer advocate office, however, if it involved any additional budget allocation, since the budget is already extensive in this area (as we discussed previously). It should be left up to the existing offices to decide if they would be more effective in allocating more of their *existing resources* towards education and training so that they would have fewer issues to deal with on an ad hoc basis afterwards.**

As indicated, the pertinent sections of the legislation dealing with the workers advocate and the duty of the board to promote awareness of both workers and employers are as follows.

13(1) The Minister of Justice shall appoint a workers' advocate who, from the date of appointment, shall be a person appointed to a position in the public service.

(2) The workers' advocate shall
(a) advise workers and the dependants of deceased workers on the intent, process, and procedures of the compensation system, including the administration of the Act, the regulations, and the policies of the board;
(b) advise workers and the dependants of deceased workers on the effect and meaning of decisions made under the Act with respect to their claims for compensation; and
(c) assist, or at their request, represent a worker or a dependant of a deceased worker in respect of any claim for compensation, including communicating with or appearing before an adjudicator, hearing officer, or appeal committee.

(3) The workers' advocate may refuse to perform any or all of the duties under subsection (2) if, in the opinion of the workers' advocate
(a) no legitimate claim for compensation can be advanced by or on behalf of the worker or the dependants of a deceased worker; or
(b) the expectations of the worker or the dependants of a deceased worker are unreasonable in the circumstances of the claim.

(4) The workers' advocate shall provide written reasons for any refusal under subsection (3) to the worker or the dependants of a deceased worker.

(5) The Minister of Justice shall prepare an annual budget for the workers' advocate and, following consultation with the board, approve the budget, which shall be paid out of the compensation fund.

(6) Within 90 days after the end of each calendar year, the workers' advocate shall submit a report summarizing the workers' advocate's activities in the preceding year and accounting for expenditures in that year to the Minister of Justice who shall make the report available to the board, organizations representing employers and workers, and the public.

(7) Subject to the budget approved by subsection (5), and the *Public Service Act*, the workers' advocate may employ a deputy and any other employees or contract for the provision of any services that the workers' advocate considers necessary for the efficient operation of the office of the workers' advocate.
Subsection 108 (k) requires the Board to "promote awareness of the basic rights and obligations of workers and employers under this Act."

Why do workers compensation systems in Canada have worker and employer advisors/ consultants?
Workers compensations systems are very complex environments. Most of the workers or their dependents who will be required to interact with the system will be unsophisticated with respect to its operation, as will a majority of employers, especially small employers. However, the determinations reached by decision makers within the system can have a profound impact on workers and employers.

For instance, the economic impact of work-related disabilities can be substantial for many workers. The legislation sets out an elaborate entitlement, review and appeal system which will apply to the disabled worker or a dependent who is seeking to obtain any compensation benefits which are payable to him/her. Most workers or dependents will not have the experience or knowledge, on their own, to ensure they receive whatever entitlements they have pursuant to the legislation and the Board's policies.

Similarly, the legislation and regulation poses significant financial, administrative and prevention obligations on employers. Failure to meet these obligations can have a substantial impact on employers. For example, an employer who fails to meet its occupational health and safety obligations can be subject to significant enforcement penalties.

Access to adequate, knowledgeable, and timely assistance is essential to both workers and employers to effectively participate in a system based on significant statutory entitlements and obligations.

If the system is not user friendly and understandable to the participants and adequate assistance provided, the level of frustration and anger among dissatisfied workers and employers will increase. The frustration and anger will no doubt turn outwards from the system – to the legislators, the ombudsman and the media.

The systems in Canada have also provided these resources to avoid a "slide into legalism" where workers and employers must retain a lawyer to represent their case – where typically from one quarter to one third of any financial recovery goes to compensating the lawyer. It is for these reasons Canadian systems provide "lay services" to both workers and employers.

Roles and Duties

Generally the role of both advisors should be to provide their respective constituents with advice, assistance, and when appropriate, representation as well as education and training, consultation and advocacy. The advisors should have a unique perspective into the working of the system and their knowledge, expertise and experience are invaluable aids in identifying perceived strengths and weaknesses of the system. For these reasons the advisors can provide strong insight into proposed legislative, regulation and policy amendments.

The roles and duties of the workers' advocate are clearly outlined in section 13 of the Workers Compensation Act. What might be missing from this section is a secondary focus on providing education about the system to organizations which represent workers.

The employers' advisor /consultant role could be laid out in the statute in a manner similar to that of the workers' advocate in section 13. The specifics in the section should include the authority to provide advice, assistance and, where the employers' advisor determines it appropriate to do so, representation to an employer on any matter of worker compensation, assessments or occupational health and safety. The employers' advisor office should also provide educational and training services to the employer community to de-mystify the system. Both offices should be funded by the system with budgets approved by the same Minister and carry the same level of accountability.

Introduction:

As we are the only jurisdiction in the country to include the word compassion, and that the inclusion of the word has lead decision makers at all levels to judge in favour of employees, has lead to increased costs to the system the word should be deleted from the act.

*** Issue #46 Definition of compassion (84)*

Options

1. No change to legislation
2. Place a definition of compassion in the legislation. Such as: compassion – A strong feeling of sympathy and sadness for the suffering or bad luck of others and a desire to help them.
3. Remove reference to compassion from the Act.

We strongly support Option 3 to remove the reference to compassion from the Act, for the following reasons:

- **The Yukon is the only jurisdiction with the phrase compassion in the legislation. Removing it would therefore move the Yukon away from being an outlier and help restore balance by making it more like other jurisdictions.**
- **The use of the phrase compassion in addition to respect and fairness can tilt decision making in the direction of employees since it seems to suggest an extra consideration in their direction. This is augmented by the legislative requirement of any benefit of doubt going in the employee's favour.**
- **The requirement of respect and fairness should be sufficient, and it should apply to employers as well as employees.**
- **While removal of the phrase compassion from the legislation may seem like an innocuous housekeeping detail, evidence that the existence of the phrase matters is provided by the fact that the Supreme Court has repeated the phrase compassion in their decisions on the Yukon.**

As indicated, the Objects of the Act in subsection 1(h) are:
1(h) to ensure that workers, dependants of deceased workers, and employers are treated with compassion, respect, and fairness. Furthermore, this subsection is repeated as subsection 107(a) as a duty of the Board.

The addition of these principles in the legislation is to provide explicit guidance to the Board, President and staff of the YWCHSB in the delivery of service to employers, workers and dependents. When a worker, employer or dependent believes they have not been treated with compassion, respect or fairness, there are avenues available to lodge a complaint about the service delivery. Placing a dictionary definition of compassion in the legislation is unlikely to change unsatisfactory service delivery – that is the responsibility of the Board and the President.

Below is a listing of the reference materials used by Dr. Gunderson in the preparation of this submission. If the panel requires any more information, explanation, or support materials please do not hesitate to contact the Chamber at 667-7545.

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