

Volume I Chapter 11 - The Board's Internal Ombudsman

Overview

The creation and mandate of the Board's Internal Ombudsman is noted and the commission summarizes the submissions it received concerning the WCBO. While some supported the Ombudsman and the service it provides, others raised concerns about communication difficulties with the office. The largest set of comments questioned the independence of the office. The commission limits its comments to a suggestion that inclusion of confidentiality and other provisions regarding the WCBO within the legislation would significantly enhance the public's view of the impartiality of this office. The commission acknowledges the recent provincial ombudsman's report on the WCBO but makes no formal recommendations concerning this office.

Major Points

- Submissions on the WCB Ombudsman were both supportive of the job done and critical of communications and potential impartiality.
- Workload and the location of the WCBO within the WCB offices were the source of most complaints
- The commission found
 - No statutory and little administrative authority for the internal ombudsman
 - No powers for the WCBO to investigate complaints concerning the Workers' and Employers' Advisers or the Review Board, Criminal Injuries or Workplace Act issues.
 - A lack of protection for those who complain to the WCBO
 - No legislative authority to support the claim of neutrality for the position
 - Limited powers to resolve or publicly report on issues
- The commission concluded "a statutory foundation for the board's internal ombudsman" and the inclusion of certain key features of the classical ombudsman would "go a long way to improve the internal ombudsman's image" and "...significantly enhance the public's view of the impartiality and neutrality of the board's ombudsman".
- The audit by the provincial ombudsman is acknowledged but no formal recommendations are included in this chapter.

Volume II Chapter 1 - The Adequacy of Benefits

Overview

This chapter deals with guiding principles and the structure for providing adequate benefits. Together, the recommendations constitute a major overhaul of the pension and rate making systems. The majority of the recommendations require legislative amendment. If adopted, consideration would have to be given to transitional provisions to accommodate the new system as well as consequential policy changes.

Major Points

Compensation for Permanent Disability

The Commission recommends:

- Discontinuing the “functional” method of estimating impairment of earning capacity under Sections 23(1) and (2).
- An amendment providing for a lump sum award, inversely proportional to the age of the worker, to recognize non-economic loss.
- Compensating permanent loss of earning capacity with reference to net average earnings before the injury and the net average amount the worker is able to earn after the injury.
- An amendment requiring a review of loss of earnings awards at 2 and 4 years, with adjustments made where there is material change in circumstance.

The Structure of Benefits Adjudication

A) The Commission recommends:

- The development of policies to ensure discretion in Section 33(3) to establish average pre-injury earnings is appropriately and consistently applied.
- An amendment to index time-of-injury earnings to reflect current dollars when pensions are set.
- An amendment to expressly allow an initial wage rate to be based on actual earnings.
- An amendment to expressly allow for a rate review (the Board to conduct a study to determine when such a review should be done e.g., at 8 or 13 weeks).

B) The Commission recommends:

- Amendments to Sections 22, 23, 29, and 30, to base benefits on net earnings calculated by deducting EI, CPP, and income tax. The earnings replacement rate would be based on 90% of net average earnings.
- Amendments to include EI income in average earnings in certain cases.
- A study to be conducted by the Board to ensure that the CPI is an appropriate inflationary index under Section 25.
- Amendments establishing a statutory minimum for permanent total disability at minimum wage and for permanent partial, temporary total, and temporary partial disability, where actual earnings are less than minimum wage, compensation would equal net average earnings. [Sections 22(2), 23(4), 29(2) and 30(2) respectively.]
- Maximum wage rate under Sections 33(1) and (6) be adjusted annually to an amount equal to 200% of the average industrial wage in BC for the 12 months prior.
- An amendment to require an employer to pay wages for the first day of injury.

- Amendments to allow stacking of certain supplementary disability benefits and “top-up” paid by the employer as well as integration of certain CPP benefits. Social assistance benefits payable to a worker would not be deducted from compensation.
- Amendments to provide for a retirement annuity at age 65 (with a rebuttable presumption) at which time the loss of earning award would cease. The annuity would be payable for life and would be based on the size of the worker’s earnings loss award and the number of years the worker received the benefit.

Re-employment Obligations & Employer Maintenance of Benefit Plans

The Commission recommends:

- Amendments to mandate re-employment and accommodation obligations with consequential penalties on employers and reduced or suspended benefits to workers for failure to accommodate or co-operate. Workplaces with 20 or more people would have to keep a position open for at least two years following the date of injury.
- Amendments so that employers fund certain existing benefit plans for injured workers for 12 months or earlier if the worker returns to work.
- The Board would create and maintain a schedule designating those benefit plans to which the employer must maintain contributions.

Volume II Chapter 2 - Fatality Benefits

Overview

The issue of fatality benefits was addressed in the Royal Commission's Interim Report. This Chapter deals with fatality benefit issues that interact with issues dealt with in the final report (i.e., compensation levels, age distinctions, and termination of benefits upon a surviving spouse's remarriage). All five recommendations in the chapter would require legislative amendment. Corresponding amendments to the *RSCM* would be required for the majority of the recommendations and, in one or two cases, new policies may need to be drafted.

Major Points

Current Calculation of Benefits for Surviving Spouses and Children

- Commission recommends that calculation of pension entitlement for surviving spouses and other dependants under s.17 of the *Act* continue to be calculated as a percentage of the pension the deceased worker would have received had he or she sustained permanent total disability.
- Commission recommends no change to statutory minimums.

Distinctions Based on Age of Surviving Spouse

- Commission recommends that s.17(3)(c), (d) and (e) be repealed to eliminate age-related distinctions, and that all surviving spouses receive pensions.

Pensions for Life

- Commission recommends that with one exception (surviving spouses of workers whose work-related disability did not arise until after the worker retired) pensions be payable to surviving spouses for the latter's lifetime.

Lump Sum Payments for Surviving Spouses

- Commission recommends a lump sum payment to all surviving spouses calculated independently of earnings and varied according to the spouse's age at the time of the worker's death (\$5000 for a spouse aged 50 years or older and increased by \$1000 for each year the spouse is younger than 50 years, to a maximum of \$75 000). Payment to be periodically adjusted for changes in the consumer price index.

Stacking and Integration of Federal Benefits

- Commission recommends that periodic benefits payable as a result of the death of a worker be integrated with survivor benefits payable under the *Act*; and that CPP periodic benefits payable as a result of the dependant's contribution to the plan not be integrated with survivor benefits payable under the *Act*.
- Dissent: This would transfer some of the costs of the work-related injury or illness to the worker and, following the worker's death, to his or her family.

Effect of Remarriage of a Common Law Marital Relationship on Benefits.

- Commission recommends that pension benefits payable to surviving spouses continue regardless of changes in the surviving spouses' marital status.

Volume II Chapter 3 - The Scope of Compensation Coverage: Who is Covered?

Overview

The Commission supports the principle of universal coverage and recommends legislative amendments to allow for broader compulsory coverage. In addition, the Commission makes recommendations about employer liability that would increase the role of prime contractors in collecting and remitting assessments. Also, it recommends legislative amendments for the fishing industry, which would make owner/operators of fishing boats the “employer” of the crew. Finally, it proposes legislative amendments to extend coverage for out-of-province workers.

Major Points

Universal Coverage

- The Commission recommends the Act state explicitly the principle of universal coverage of workers and employers, and authorize the Board of Governors to exempt and admit parties from coverage.

Definitions of Workplace Parties

The Commission recommends:

- The Act define the following terms: “employer” and “worker” to include any person(s) deemed as such by the Board; “independent operator” to mean a self-employed person who is not a worker or an employer, or deemed as such by the Board; and, “public interest” as it relates to volunteers.
- The Board develop industry-specific guidelines for determining workplace status for problematic occupations.
- The Act be amended to authorize the Board to identify, and designate through Regulations promulgated by Cabinet, those industries requiring compulsory coverage for labour contractors and independent operators, and to increase the current minimum amount of personal coverage required.

Principals of Incorporated Businesses

- The Commission recommends the Act be amended so that principals of incorporated companies should not automatically be regarded as workers; and that personal optional protection be made available to proprietors, partners and executive officers and directors of a corporation as per the Ontario Act.

Employer Liability

- Commission recommends that the Act be amended to allow prime contractors to deduct and remit to the Board the estimated payroll assessments of their contractors and subcontractors.
- The Board should inform employers of their potential liabilities under the Act.

The Fishing Industry

The Commission recommends:

- The definition of “employer” in the Act be amended to include the owner or operator of a boat, and the definition of “worker” be amended to include crew members of a fishing vessel who are in a profit-sharing arrangement.
- Owner/operators in the fishing industry be required to register as “employers”, be required to pay assessments, and be primarily responsible for safety on their boats.
- Commercial fish purchasers be responsible for collecting assessments from fishers selling to them, for fish bought in BC. Owner/operators be required to remit directly to the Board assessments for off-shore sales.
- Experience rating would apply to owner/operators.
- Fishers who are independent operators or employers working on fishboats be required to purchase coverage from the Board.

Out-of-Province Workers

- The Commission recommends the Act be amended so that employers can apply to the Board to extend out-of province coverage to workers for up to 12 months.

Volume II Chapter 4 - Determining Work Relatedness

Overview

This Chapter deals with the process for determining the work-relatedness of injury, death and disease. The Chapter contains 19 recommendations and a number of additional observations. Fifteen recommendations would require legislative amendment. The remaining four recommendations would have medium to long-term administrative and/or policy implications.

Major Points

Causation

Commission recommends that:

- The *Act* be amended to set out the objective of compensating for work-related injuries, disease and death and the industry's obligation to fully fund compensation for such.
- Section 5(5) be amended to do away with proportionate entitlement and make compensation payable for the period between the date on which the disability occurred and the date on which it would have occurred in the absence of the workplace disease or injury.

Methods for Recognizing Occupational Disease

Commission recommends that:

- The *Act* clarify that occupational diseases can be recognized under s.6(4)(b), as well as by inclusion in Schedule B, by regulation of general application and by order dealing with a specific case.
- The Board retain its current authority to revise Schedule B.
- An Occupational Disease Standing Committee (ODSC) be established as a committee of the governors.
- The *Act* require gazetting of additions to and deletions from Schedule B before they take effect.
- The Board undertake a study of factors which should guide additions to and deletions from Schedule B.
- Periodic reviews of Schedule B be undertaken (results to be included in Annual Report).
- The *Act* allow parties to request that the ODSC reconsider a relationship recognized in Schedule B.
- The presumption in s.6(3) apply *unless there is clear and convincing evidence to the contrary*. Dissent: This could effectively remove the presumption.

Length of Time between Exposure and Onset of Disease

- Commission recommends that the Board be authorized to either depart from the "at or immediately before" time requirement in s.6(3) in the case of diseases with long latency periods or specify the time interval associated with this phrase.

Suspended Claims

- Commission recommends that the Board undertake a more detailed analysis and reporting of "suspended" occupational disease claims.

Exposures

Commission recommends that:

- The Board investigate the merits of recording exposures.

- The *Act* require that, under certain conditions, employers be obligated to protectively reassign workers whose health is placed at risk as a result of accumulated workplace exposure to designated contaminants.
- The *Act* be amended to require compensation for a loss of earnings caused by an underlying work-related sensitization or allergy which is medically diagnosed and results solely from accumulated exposure to a workplace contaminant that has been designated by the Board in a schedule.
- The *Act* be amended to authorize the Board to prescribe policies governing the provision of prophylactic healthcare, notwithstanding that the workplace exposure has not yet produced an injury or occupational disease.

“Stress” or Psychological Injury Claims

- Commission recommends definition of “personal injury” be amended to include both physical and mental or psychological harm and provides conditions upon which non-physical conditions arising from non-physical or non-traumatic stimuli or stressors are compensable including a new standard of proof of clear and convincing evidence.

Volume II Chapter 5 - Section 10: Limitation of Actions Elections Subrogations Section 11: Certification to Court

Overview

Section 10 contains the “historic compromise” which is the founding principle of workers’ compensation, i.e.: workers are entitled to compensation benefits on a no-fault basis and employers are immune from legal action. When a worker is injured by a non-employer or non-worker they must elect to sue on their own or claim compensation benefits. If they do the latter their cause of action against the party who caused the injuries is subrogated to the Board. If the Board maintains a legal action against the non-employer/worker and recovers damages the monies go to refund the Board plus an administration fee and any excess goes to the worker. The only recommendation made in regard to Section 10 pertains to the administration fee, i.e.: it should be calculated in a different manner than it is now. This is a relatively minor policy matter.

Section 11 gives the Board jurisdiction to certify to the court whether the parties are workers, employers and other matters relevant to the legal action. The commission recommended no changes be made to the certification process as set out in Section 11.

Major Points

Limitation of Actions against Workers

- ♦ worker/worker bar introduced in 1974
- ♦ Commission believes worker/worker bar should be preserved
- ♦ Commission finds that at least part of the funding of the no-fault system is shifted to workers and it is therefore reasonable that workers should also acquire the benefit of immunity from legal action obtained by employers at the system’s inception.

Exception to Limitation of Actions Relating from Use or Operation of Motor Vehicles

- ♦ This is discussed and rejected

Three Month Time for Electing to Claim Compensation Under the Act or Bring an Action

- ♦ This is discussed and the present legislation and practice approved

Section 10(6) and 10(11): Costs and Administration Charges on Subrogated Actions

- ♦ present practice of charging 29% of claims costs as an administration fee is rejected
- ♦ Commission recommends administration fee be calculated in a manner more equitable to the Board and injured workers and not be based on Board’s overall administration costs
- ♦ recommendation is a policy matter and is not of major financial or other significance

Apportionment of Damages

- ♦ no recommendation in regard to Section 10(7)

Certification to Court

- ♦ no changes to the certification process as set out in Section 11

Volume II Chapter 6 - Fatalities Investigations

Overview

This chapter deals with

- how fatalities are reported to the Board,
- how they are investigated and followed up,
- how the Board relates to survivors and other concerned agencies such as the Coroner, and
- how the information gained from fatalities is used to prevent further fatalities by new regulations or otherwise.

The Commission makes no suggestions for amendment to the *Act* or regulations. It makes four recommendations that would generally require the Board to set up a Board wide, separate program to coordinate all information and activities concerning fatalities, and ensure that follow up activity occurs to prevent recurrence.

Major Points

Collecting, managing and distributing of data

- The Board should be the primary public body responsible for investigating work deaths but is unable to provide meaningful information on them. The Board keeps fatalities information in a fragmented manner. For example, it does not track out of jurisdiction deaths, sometimes fatalities are not reported to Prevention and if an accident involves more than one fatality, the Board will track the investigation, not the deaths. The existing Prevention database does not use consistent coding of data and is claims focussed.
- The Board should locate all existing sources of information and create a comprehensive fatalities information management system by consulting with staff and external interest groups. This should be available for use by internal and external users. (Recommendation 198)
- The Board should provide a full and accurate account in its Annual Report of its efforts to eliminate workplace fatalities. (Recommendation 200)

Relationship to survivors and agencies

- There is no electronic tracking of coroners' reports and recommendations.
- The Board has no official position in relation to deceased workers' families beyond its obligation to provide benefits to dependents.
- There are no agreements with other agencies regarding the reporting of deaths.
- The Board should develop and implement protocols with the BC Coroner's Service, the Department of Vital Statistics, the BC Ambulance Service and any other relevant agency (i.e., federal and municipal police forces). (Recommendations 198 and 199)

Prevention of future fatalities

- There should be a process for examining the effectiveness and consistency of enforcement and educational activities with respect to fatalities, and the training of officers should include a component on fatalities. (Recommendation 199)
- The Board in co-operation with interest groups should establish the manner in which work-related fatalities information can be used to aid in ongoing regulatory review and the development of other regulatory and non-regulatory instruments. (Recommendation 201)

Volume II Chapter 7 - Performance Indicators

Overview

This chapter covers the principle of performance management using performance measurement indicators. The Commission had reservations about the Board's current performance indicators but acknowledged the progress the Board has made in this area and noted the Board has shown concern with making improvements to performance measures. Throughout the Chapter, the Commission suggests "questions" the Divisions might ask to enhance performance management information.

Major points

The Commission recommends (202) that the Board complete the implementation of the recommendations of the Auditor General's accountability review.

The Commission commented on the need for continuing evolution of performance measurements.

The Commission says the current macro indicators do not sufficiently address the Board's mission of improved safety, return-to-work, and fair compensation. These deficiencies are attributed to the lack of timely and descriptive measures of performance against those objectives. The Board's press release (April 11, 1998) contained reference to performance improvement - "...eliminated its unfunded liability last year, the result of fewer injuries, a successful return-to-work program and strong investment returns...". The Commission found that in fact, the Board was unable to reliably say how many workers returned to work after Board intervention.

The Prevention division is currently working on its ability to link effort to result by improving its data gathering and analysis functions. In particular, it has a dedicated team working on the corporate data Warehouse project to better correlate its data on activities with those of other divisions.

The Board's system for claims management currently does not clearly define and track claims inventory as it moves through the system. Without proper inventory tracking, the Board's return-to-work efforts cannot be properly measured. This issue is being addressed on a number of fronts within Finance and Compensation Services. The Finance division (in ESS) is working on improving claim cost estimation while the Compensation Services division is moving forward with its Claim M.I.S. system.

Volume II Chapter 8 - Organizational Capacity

Overview

This section relates to the Human Resources strategies and issues facing the Board. The commentary and recommendations are entirely administrative in nature, requiring no legislative change and little change in policy.

Major Points:

Human Resource Planning:

- Commission reported that each division is responsible for planning their Human Resource requirements and that this leads to a “crisis management” approach according to “interviews with staff.” They suggest that a formal system of “Human Resource Planning” would solve these problems.
- They report that the need for a modern Human Resource Information System had been identified, but had not “met the 35% return on investment hurdle rate” and had not been approved. The “HR Division has confirmed that the current system did not provide the necessary information to support timely decision making and support strategic initiatives.”
- They report that in a decentralized model, such as that employed by the WCB, line divisions require adequate human, financial and information sources to address a changing workforce internally and externally. “This lack of information is exacerbated by a high level of turnover amongst managers, who are largely recruited externally.”
- They acknowledge that the HR Division has identified HR Planning as a priority, but “note little activity to date.” The formal recommendation is that the Board adopt a Human Resource Planning Model.

Centralized versus Line responsibility for Human Resources:

- They comment upon the relative strengths and weaknesses of a decentralized model of Human Resource Management, in which the line has “strategic responsibility for its human resources”. They cite as weaknesses - a potential “lack of corporate consistency resulting from different management philosophies and resources and inadequate cross-functional coordination”, then as strengths, they cite “flexibility, the use of specialists and ability to accommodate diverse program needs”, although noting that “its unclear these positive aspects are real.”

Staff and Management Scans

- They comment on the Staff Scan and Management Scan (incorrectly identifying the “Management Scans” as “360’s” – the latter being confidential reports of one’s behaviour as observed by one’s boss, peers and subordinates). They quote the highest and lowest scores and comments from both scans. They then quote a May 1996 SEC discussion of the “360” process in which it is recorded that the SEC had agreed that “360’s were a reality check on behaviour rather than a measurement of performance”, implying the SEC were dismissing the importance of the Management Scan results.
- They acknowledge that the division “has demonstrated some progress – but would benefit from more on-going follow up and evaluation” and formally recommend that “The Board of Governors evaluate the relevance and effectiveness of HR programs and resources”

Labour Relations:

- They comment that there have been significant improvements in the Labour Relations area – noting that grievances have decreased by 50%-60% - but pointing out that two thirds of the remaining grievances are related to recruitment & selection , which they describe as a “still a Human Resources activity.”

The SEC :

- They describe the history of the SEC structure, citing that the “collegial style selected in 1993 led to bottlenecks...tension...unhealthy... imbalanced accountability, capacity and authority...” – which then led to the current approach. “ While the current administration has made some progress in advancing a management philosophy – further work is required.” They note little record of SEC members ever disagreeing with one another – a function of the continuation of a collegial approach to decision making.

Responsibility of the Governing Body ...and the CEO:

- They describe the role of the HR Committee, commenting that problems include – the part-time nature of Panel appointments and high turnover rates – which produces unstable leadership (?), “ the Board appears to face a number of challenges recruiting executives (?), no comprehensive T&D plans, Presidents succession plans only recently implemented, - they then make their major observation – “no terms of reference or procedural bylaws for the SEC”.
- They report that the Human Resource strategies included in early drafts of the Strategic Plan were downplayed in subsequent published versions, suggesting that the strategies were abandoned.
- They comment that “ In a system where the internal accountability is diffuse, the VP and Division appear to be largely reactive to the ...divisional VPs with clearer mandates and lines of authority.”
- The Commission is of the view that the current management structure is not conducive to an integrated organizational model. “ Given the diversity of opinion and approach (note - this appears to contradict their earlier observation of an absence of healthy disagreement at SEC meetings), a lack of terms of reference and the diffusion of HR responsibility throughout the organization – it is unlikely the Board will achieve many of its stated HR goals. ...terms of reference would go a long way to addressing this problem”. Formal recommendation – adopt Terms of Reference for the SEC.
- Finally they address the issue of accountability to the Panel and reproduce and recommend, as a formal recommendation, that the Board adopt, (virtually word for word) the existing Terms of Reference for the HR Committee of the Panel.

Volume II Chapter 9 - Funding

Overview

This chapter covers the issue of “funding” from assessments to reserve setting, to legislative matters, to experience rating and finally to the management of the Accident Fund’s investment activities. There is support for the ongoing reclassification project and for experience rating, although suggestions for further work on the experience rating proposals.

The Commission had 15 recommendation to make on these areas:

Assessment	3
Reserve setting	2
Legislative	2
Experience rating	6
Investing	<u>2</u>
	15

The highest profile recommendations suggest certain retroactive benefits be paid out of the provincial treasury, a rate stabilization amendment, and raising the experience rating limits to greater than 33 1/3 %.

Major points

Assessments:

The Commission endorses full funding policy rather than pay-as-you-go and recommends legislation be amended to be explicit in that regard. It also recommends amendments to section 10(8) to allow transfer of costs between classes or subclasses in circumstances that would enhance fairness and behavior modification of employers. Finally it recommends that any assessment rate capping policy be accompanied by an amortization plan that retires the subclass’ deficit.

Reserve setting:

The Commission recommended that the Act be amended to require the Board to set aside a reserve for latent occupational diseases as well as to include reference to benefits and employer rate stabilization.

Legislative:

The Commission recommends that where eligibility or increased entitlement for benefits is determined to apply retroactively, the Provincial legislature should determine whether and to what extent the benefits should be funded by society at large as opposed to solely by the accident fund. To the extent the accident fund is responsible for the cost, the Commission recommends that a schedule for the retirement of any deficit be put in place.

Transfer of Costs:

The commission recommends a legislative amendment to allow transfers of costs between a class or subclass.

Experience Rating:

The Commission has endorsed most of the recommendation of ESS (Employer Service Strategy) as they relate to experience rating of employers. Specifically, that ER be continued and that fuller claim cost attribution be applied (longer window of claim history), that ER limits be greater than

33%. The Commission recommended a new factor be taken into account in experience rating – frequency of lost time claims.

The Commission recommended certain housekeeping matter relating to the tracking and performance of the investment portfolio. No legislative amendments were recommended.