

FOR THE COMMON GOOD: Final Report of the Royal Commission on Workers'  
Compensation in British Columbia January 20, 1999 RECOMMENDATIONS  
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## FOR THE COMMON GOOD:

### Final Report of the Royal Commission on Workers' Compensation in British Columbia

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## Recommendations

### Governance and Accountability in the Workers' Compensation System

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#### Operations: Rehabilitation Division

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The commission recommends that:

### **GOVERNANCE AND ACCOUNTABILITY IN THE WORKER'S COMPENSATION SYSTEM**

1. the Workers Compensation Act be amended to include a clear statement that the purpose of the provincial workers' compensation system is to provide social and economic benefits to the people of British Columbia efficiently, effectively and in a fair and sustainable manner by:

- a) preventing work-related injury and illness;
- b) rehabilitating and returning injured workers to work;
- c) providing fair and equitable compensation; and
- d) providing reasonably cost-effective insurance to employers.

2. the Workers Compensation Act be amended to require an independent review of the workers' compensation system not less than every ten years.

3. the board of governors be the stewards of the workers' compensation system and that in this role their responsibilities include, but not be limited to:

- a) setting strategic directions;
  - b) setting high-level and operational policy;
  - c) requiring the functions, systems, controls and mechanisms for operating the organization to be in place and maintained;
  - d) monitoring organizational performance and requiring corrective action where necessary;
  - e) ensuring the protection of assets and investments;
  - f) making board policies available to the public; and
  - g) being accountable through the provincial Legislature for the operation of the workers' compensation system.
4. there be stakeholder representation on the governing body of the Workers' Compensation Board of British Columbia.
5. the governing body of the Workers' Compensation Board of British Columbia consist of:
- a) three worker representatives;
  - b) three employer representatives;
  - c) three public-interest representatives; and
  - d) a neutral chair.
6. the president and CEO of the Workers' Compensation Board of British Columbia continue to sit as an *ex officio* non-voting member of the governing body of the board.
7. there be four full-time governors including one worker, one employer and one public-interest representative and the chair of the board of governors.
8. the Workers Compensation Act be amended such that:
- a) the board of governors be required to develop and review at least annually a profile describing the desirable skills, abilities and experience of future governors;
  - b) candidates for vacancy on the board of governors be sought through widely accessible advertisements, as well as through consultations with interested parties;
  - c) a deputy minister reporting to the minister responsible for workers' compensation be responsible for:
    - i) reviewing the candidates for each vacancy;
    - ii) developing a short-list of candidates who meet the profile and have the representational requirements of the vacancy;
    - iii) consulting with the stakeholder constituencies about the makeup of the shortlist; and
    - iv) presenting the short-list of candidates to cabinet; and that
  - d) the Lieutenant Governor in Council appoint governors to the governing body of the Workers' Compensation Board from the list of candidates presented to cabinet.
9. the Workers Compensation Act be amended to require the board of governors to develop and review at least annually a comprehensive orientation and training program to be completed by all new governors prior to commencing their duties.
10. appointments to the governing body of the Workers' Compensation Board
- a) be for a term of not more than three years; and
  - b) be restricted to two terms totalling six years.
11. no more than four appointments, only two of which may be full-time appointments, shall expire in any one year.

12. the Workers Compensation Act be amended to include a duty for governors:

- a) to act in the best interests of the workers' compensation system and to exercise the care of a reasonable person;
- b) to avoid conflicts of interest, broadly defined; and
- c) to maintain the confidentiality of all information received in the course of their duties.

13. the Workers Compensation Act be amended such that an individual appointment to the board of governors of the Workers' Compensation Board can be revoked only for cause, including breach of trust associated with a legislated duty.

14. members of the current panel of administrators be re-appointed for one- to two-year non-renewable terms to provide continuity through the transition to the new governance structure.

15. initial appointments to the board of governors of the Workers' Compensation Board be for staggered terms that provide parity across constituencies.

16. quorum be set at five governors and the chair of the board of governors, six being one person more than half the members of the board of governors if there are no vacancies.

17. policy decisions must be approved by five governors.

18. the Workers Compensation Act be amended to require the board of governors:

- a) to develop a manual setting out their governance practices and procedures;
- b) to review and update the manual at least annually; and
- c) to make the manual publicly accessible.

19. the board of governors annually evaluate their effectiveness in discharging their stewardship function and report the results of the evaluation in the *Annual Report*.

20. the board of governors be required to report annually to the minister responsible for the Workers' Compensation Board.

21. all performance information included in the *Annual Report* of the Workers' Compensation Board be reviewed and attested to by the Office of the Auditor General of British Columbia, including:

- a) the adequacy and appropriateness of the performance indicators reported on; and
- b) the accuracy of the information provided.

22. the audit of performance measures undertaken by the Office of the Auditor General of British Columbia be paid for from the Accident Fund.

23. the report to the minister be tabled in the Legislature within 15 days of when the *Annual Report* is delivered, or when the Legislature begins sitting, whichever is earlier.

24. the Workers Compensation Act be amended to require the Workers' Compensation Board to report performance information, with specific reporting requirements to be established by regulation of the Lieutenant Governor in Council, based on the performance information requirements listed above.

25. the Workers' Compensation Board report on key performance measures semiannually within 30 days of the end of each reporting period.

26. the Workers Compensation Act be amended to require the Workers' Compensation Board to annually produce a strategic plan that:

- a) sets out:
  - i) strategic objectives for the coming year;
  - ii) priority initiatives with measurable outcomes; and
  - iii) targets for all performance measures.

b) is presented to the minister responsible who is required to make the strategic plan public by immediately tabling it in the Legislature, if it is sitting, or within 15 days of it beginning to sit.

27. the Workers Compensation Act be amended to:

- a) distinguish between rules, practice guidelines and procedures, as described in the above text;
- b) clearly identify and describe the scope of the rule-making powers of the board of governors of the Workers' Compensation Board;
- c) require the board of governors of the Workers' Compensation Board to approve all practice guidelines and procedures; and
- d) require the Workers' Compensation Board to clearly identify, publish and make publicly available all rules, practice guidelines and procedures.

28. the Workers Compensation Act be amended to require the formation of a committee comprised of the chair of the board of governors and the three full-time governors, to be known as the governors' priority committee.

29. the governors' priority committee be responsible for the policy development process, including:

- a) identifying issues;
- b) consulting interested parties;
- c) supervising research;
- d) developing and analyzing options; and
- e) developing recommendations to take to the board of governors for approval.

30. the governors be required to develop a detailed approach to policymaking, including standards for effective consultation, that the governors priority committee must apply when developing policy recommendations.

31. the Workers' Compensation Board implement a regulatory development and evaluation model based on the following procedures:

- a) policy development, including:
  - i) active monitoring and data capturing mechanisms to identify problems that need to be addressed;
  - ii) clear definition of problems;
  - iii) assessment of risk;
  - iv) selection of the most appropriate policy instruments (regulatory or other);
  - v) assessment of the benefits and costs of those instruments; and vi) public consultation;
- b) regulatory program development and implementation, including:
  - i) educating those to be regulated to ensure compliance;
  - ii) training those who will enforce the regulations;
  - iii) monitoring compliance effectively;
  - iv) meaningful enforcement;
  - v) collecting administrative penalties in a timely fashion; and
  - vi) an effective appeal mechanism; and
- c) evaluation of the enforcement and compliance program, and the true effectiveness of the regulatory instrument.

## **OPERATIONS: PREVENTION DIVISION**

32. the Workers' Compensation Board:

- a) develop a mechanism to monitor and evaluate the effectiveness of its prevention programs and services;
- b) incorporate the results of the evaluations in the program planning process in an open and consistent manner; and
- c) report the results of the evaluations and their use publicly in the *Annual Report*.

33. the Workers' Compensation Board retain the responsibility for providing occupational health and safety programs and services.

## **OPERATIONS: REHABILITATION DIVISION**

34. Section 16 of the Workers Compensation Act be amended to:

- a) make clear that the primary objective of vocational rehabilitation is to restore the earning capacity of the worker, as far as reasonably possible; and
- b) provide that, in determining whether vocational retraining is to be provided, and the nature and extent of such retraining, the board shall consider the following factors:
  - i) the extent to which earning capacity will be maximized;
  - ii) the level of resources required to complete the retraining;
  - iii) the expected duration of the retraining program;
  - iv) the preferences of the worker;
  - v) the realistic probabilities of the worker successfully completing the program;
  - vi) the long-term outlook or demand for employment in the identified area;
  - vii) the motivation of the worker; and
  - viii) such other matters as the board may deem relevant.

35. the Workers' Compensation Board:

- a) ensure that the policy addressing post-injury earning employability emphasize the development of employable skills; and
- b) in determining post-injury earning capacity, take appropriate measures to ensure that deeming of unrealistic occupations does not occur and not be allowed as a substitute for appropriate vocational rehabilitation.

36. the Workers Compensation Act be amended such that a worker entitled to a loss of earnings award be provided continuity of income from the conclusion of short-term wage loss benefits until commencement of the award at a rate estimated by the board.

37. the Workers' Compensation Board monitor and evaluate the competence and quality of rehabilitation services provided by third-parties. This should include:

- a) performance standards that provide reliable and valid information on the quality of services provided; and
- b) an obligation on third-parties to report on compliance with performance standards.

38. the Workers' Compensation Board:

- a) use third party information to maintain an up to date list of preferred third-party service providers; and

b) provide workers access to the list of preferred third-party providers.

39. the Workers' Compensation Board adopt clear, consistent and rational indicators of:

a) the success of vocational rehabilitation; and

b) internal performance.

## **OPERATIONS: COMPENSATION DIVISION**

40. Sections 54(1) of the Workers Compensation Act be amended by replacing the phrase "of its occurrence every with "of the date that the employer is notified of the occurrence of an."

## **COMPENSATION ADJUDICATION**

41. the Workers Compensation Act be amended to enshrine an inquiry model of claims adjudication.

42. the responsibilities of all categories of claims adjudicators be clearly stated in statute in a manner that makes their actions and decisions reviewable;

43. Section 99 of the Workers Compensation Act be amended to clarify that:

a) rules established by the board of governors of the Workers' Compensation Board are binding on the board and its staff and must be followed; and

b) in adjudicating a claim on the merits and justice of the case, the Workers' Compensation Board and its staff must render decisions with due regard to the rules, practice guidelines or procedures that may apply.

44. the Workers' Compensation Board:

a) develop and implement measures to evaluate the quality of its adjudicated decisions; and

b) report on the results of its evaluation of adjudication decisions in the *Annual Report*.

45. the Workers Compensation Act be amended to place a duty on the Workers' Compensation Board to adjudicate and implement decisions including the decisions of an internal review or the Appeal Tribunal, without undue delay.

46. the Workers' Compensation Board adopt policies to monitor and reduce the intervals of time between the various phases of claims adjudication.

47. the Workers Compensation Act be amended to ensure that decision letters meet the guidelines currently set out in *Rehabilitation Services and Claims Manual* policy #99.20.

48. the Workers Compensation Act be amended:

a) to require the board to pay interest on compensation payable for wage loss benefits to a worker, or benefits payable to the worker's dependents, where the initial adjudication of that compensation is delayed more than 60 days after the board was in receipt of sufficient notice to consider the claim to have been commenced, if the circumstances that resulted in the delay were or ought to have been in the control of the board; and

b) the rate of interest be calculated in accordance with Section 7 of the Court Order Interest Act, rather than on the basis of the rate of return of the board's investment portfolio.

49. the amount of funding for the Workers' Advisers and Employers' Advisers programs should be sufficient to ensure that they can adequately discharge their mandate under the Workers Compensation Act.

50. Workers' Advisers and Employers' Advisers be subjected to performance audits and their budgets be contingent on the offices meeting their performance objectives.

51. Section 57(1) of the Workers Compensation Act be amended to provide that the worker's right to compensation shall be suspended only if the worker unreasonably fails to attend the requested examination or unreasonably obstructs that examination.

52. the Workers Compensation Act be amended:

- a) to state that a worker claimant has a duty to take all reasonable steps to reduce or eliminate any permanent impairment and loss of earnings resulting from an injury and to refrain from insanitary and injurious practices which tend to imperil or retard recovery;
- b) to authorize the board to reduce, suspend or terminate compensation benefits if the worker does not meet that duty;
- c) to make the reduction, suspension or termination of compensation benefits discretionary and not mandatory; and
- d) to incorporate the procedural safeguards set out in the Workers' Compensation Board's current policies.

53. Section 35(1) of the Workers Compensation Act be replaced with a new provision that authorizes the Workers' Compensation Board to pay compensation benefits to the public trustee, a legal guardian or the designated substitute decision-maker of an injured worker when those representative are authorized by law to receive such payments on behalf of the injured worker.

54. Section 98(3) of the Workers Compensation Act be amended to exempt its application to awards for non-economic loss.

55. Section 98(4) of the Workers Compensation Act be amended by repealing the "likely to be a charge on the municipality" condition, being the first condition of that section.

## **COMPENSATION AND ASSESSMENT APPEALS**

56. the Workers Compensation Act be amended to establish a final appeal to an appeal tribunal external to and independent from the Workers' Compensation Board.

57. the Workers Compensation Act be amended to establish a 90-day period of time in which the claimant and/or the employer may object to an initial adjudication decision, beginning with the communication of the decision by letter to the claimant and employer;

58. the Workers Compensation Act be amended to establish a statutorily mandated re-adjudication of a claim by the original decision maker.

59. the Workers Compensation Act be amended to establish a 30-day period of time in which the claimant and/or employer may seek an internal review of a re-adjudication decision, beginning with the communication of the decision by letter to the claimant and employer. This objection will initiate a review if:

- a) the party filing the objection objected to the initial adjudication and the re-adjudication has not changed the initial decision; or
- b) the re-adjudication has provided a different decision (in whole, or in part) than the initial adjudication.

60. the Workers Compensation Act be amended to establish an internal review of a re-adjudication decision consisting of either:

- a) a read and review of the claim file, including new information provided by parties to the appeal, by a senior, experienced adjudicator (internal review officer), which must be completed within 60 days; or
- b) an active investigation of the claim by a senior, experienced adjudicator. This investigation shall include a hearing (formal or informal), either at the request of one of the parties to the appeal or where the officer determines it is necessary.

61. the Workers Compensation Act be amended to establish a 30-day period of time in which the claimant and/or employer may appeal an internal review decision to the Appeal Tribunal, beginning with the communication of the decision by letter to the claimant and employer. This objection will initiate an appeal it:

- a) the party filing the objection objected to the re-adjudication and the internal review has not changed that decision; or
- b) the internal review has provided a different decision (in whole, or in part) than the re-adjudication.

62. the Workers Compensation Act be amended to define the jurisdiction of the Appeal Tribunal to hear appeals to decisions rendered by the Workers' Compensation Board's internal review processes, and that the jurisdiction of the tribunal:

- a) be inquiry-based;
- b) have full substitutional jurisdiction by way of hearing *de novo*; and
- c) retain jurisdiction over the Workers' Compensation Board's implementation of its decisions.

63. the Workers Compensation Act be amended to:

- a) authorize the Appeal Tribunal to develop methods and procedures to help promote consistency in decision making, such as those suggested in the Supreme Court of Canada's Consolidated-Bathurst decision;
- b) require the Appeal Tribunal to publish all tribunal decisions in a manner which does not identify the parties; and
- c) exclude the public and other parties from Appeal Tribunal hearings except with the expressed consent of the participants.

64. the moneys required for the administration and operation of the Appeal Tribunal be provided by government in the same manner that the Workers Compensation Review Board is currently funded (Section 93 of the Workers Compensation Act).

65. the Appeal Tribunal be held accountable through:

- a) the development and adoption of objectives and Key Performance Indicators;
- b) the tabling of an annual report with the Minister of Labour detailing, among other things, the tribunal's objectives and Key Performance Indicators and an evaluation of its strategies for achieving the objectives; and
- c) a public review of the tribunal's proposed rules, guidelines or procedures, before they are approved by the cabinet.

66. the chair of the Appeal Tribunal:

- a) not be a member (voting or non-voting) of the governing body of the Workers' Compensation Board; and
- b) not report to the governing body of the Workers' Compensation Board.

67. the Workers Compensation Act be amended such that:

a) the Appeal Tribunal consist of:

- i) a chair;
- ii) one or more non-representational vice-chairs: and
- iii) other members the Lieutenant Governor in Council considers necessary, 2/3 of whom must be selected in equal numbers from persons having backgrounds associated with employer interests and persons having backgrounds associated with worker interests;

b) the chair of the Appeal Tribunal be appointed by the Lieutenant Governor in Council for a renewable term of five years;

c) tribunal members be appointed by the Lieutenant Governor in Council for renewable terms of four years:

- i) on the basis of merit; and
- ii) from a list of candidates screened by a committee appointed by the Lieutenant Governor in Council and chaired by the chair of the Appeal Tribunal;
- d) cabinet consider renewals of tribunal members having due regard to any recommendations of the chair of the Appeal Tribunal; and
- e) individual tribunal members not be removed prior to expiry of their term, except for just cause as determined by an independent body after giving the member a full opportunity to be heard.

68. Sections 89(5), (6) and (7) of the Workers Compensation Act be amended to apply to the Appeal Tribunal.

69. the Appeal Tribunal be required to provide written reasons for its decision and to forward them to the parties and the Workers' Compensation Board as is currently set out in Sections 90(3) of the Workers Compensation Act.

70. the Appeal Tribunal, at its discretion, institute pre-hearing conferences to address:

- a) the timing and extent of disclosure;
- b) the use of expert evidence;

- c) identification of issues on appeal;
- d) the need and manner in which to resolve a *bona fide* medical dispute;
- e) the need for any additional investigation or evidence to address those issues;
- f) the need for the appellant or respondent to be referred to the Workers Advisers or Employers' Advisers; and
- g) procedural issues such as the duration of the hearing and the need for interpreters.

71. the Appeal Tribunal need not consult with the parties to the appeal before making a decision to accept or deny a request for an oral hearing or a read and review.

72. the Appeal Tribunal's decision regarding the form of a hearing not be appealable.

73. an appellant granted an oral hearing may request that the appeal be addressed by:

- a) a one-member panel consisting of the chair or a vice chair; or
- b) a three-member panel consisting of the chair or a vice chair and one member with a background associated with worker interests and one member with a background associated with employer interests.

74. the decision to grant the request rests with the Appeal Tribunal, which should make that decision after applying prescribed criteria similar to those currently employed by the Workers' Compensation Review Board in rendering similar decisions.

75. the current Medical Review Panel Department be replaced with a medical issues adjudication branch under the administrative authority of the Appeal Tribunal.

76. the Workers Compensation Act be amended such that the decisions of a medical issues adjudication panel be binding decisions.

77. the Workers Compensation Act be amended such that the Appeal Tribunal may refer only a *bona fide* medical dispute to the medical issues adjudication branch on the application of the parties or on its own motion, after considering all relevant information, including any certificates supplied by the worker's or employer's physician that there is or may be a *bona fide* medical dispute.

78. a medical dispute may be referred to the medical issues adjudication branch by the Appeal Tribunal either immediately following the pre-hearing conference or at any time during the hearing of the appeal, but not before the pertinent non-medical facts are determined.

79. non-medical facts be established either through:

- a) a statement prepared by the Appeal Tribunal and endorsed by the parties: or, failing such an agreement
- b) findings of fact made by the Appeal Tribunal following a hearing, which may be called for that purpose alone.

80. Section 61(1) and (3) of the Workers Compensation Act be repealed and replaced by a provision stating that:

- a) the specific medical questions for determination are to be articulated by the Appeal Tribunal; and
- b) the questions posed by the Appeal Tribunal, and only those questions, be answered by the medical issues adjudication panel, and that the questions be answered:
  - i) in writing; and
  - ii) with supporting reasons.

81. Section 63(4) of the Workers Compensation Act be repealed and replaced by a provision stating that the opinion of a medical issues adjudication panel is:

- a) an opinion shared by the majority of the members of the panel; or, if no opinion is shared among the members,
- b) the opinion of the chair of the panel.

82. a medical issues adjudication panel be authorized by the Workers Compensation Act to prepare, separate from the panel's report to the Appeal Tribunal, a narrative to be sent to the worker's treating physician outlining any health matters the panel discovers which are unrelated to the claim.

83. Sections 60 through 65 inclusive of the Workers Compensation Act be consequentially amended to give full effect to the recommended restructuring of the review of medical causation.

84. the Workers Compensation Act be amended such that:

a) medical issues adjudication panels are not permitted to question the general applicability of the presumption afforded by Section 6(3)/Schedule B; and

b) medical issues adjudication panels have the same jurisdiction as an adjudicator to decide whether a presumption afforded by Section 6(3)/Schedule B has been rebutted and to answer the causation question in accordance with its finding.

85. chairs and vice chairs of the medical issues adjudication panels continue to be appointed by the Lieutenant Governor in Council as currently provided for Medical Review Panels in section 58(1) of Workers Compensation Act, except that the appointments be for five year renewable terms.

86. the Workers Compensation Act be amended to authorize the Lieutenant Governor in Council to establish criteria, in consultation with the chair of the Appeal Tribunal, for the appointment of chairs and vice chairs of medical issues adjudication panels with regard to establishing terms and conditions of appointments and administrative performance criteria as recommended in *Medical Review Panel System: Time Delays in the Processing of MRP Applications - A 1996 Perspective*.

87. the cabinet consider the renewal of chairs and vice chairs of medical issues adjudication panels having due regard to any recommendations of the chair of the Appeal Tribunal pertaining to compliance with terms and conditions of appointment and administrative performance criteria.

88. the Workers Compensation Act be amended to remove the board's current authorities under the Act in support of the medical review process and transfer those to the Appeal Tribunal.

89. the chair of the Appeal Tribunal:

a) in consultation with the medical community, including the College of Physicians and Surgeons of British Columbia and possibly the dean of the faculty of medicine of the University of British Columbia;

i) establish and maintain a list of duly certified and licensed specialists in particular classes of injuries and disabilities in respect of which workers have claimed compensation; and

ii) establish terms and conditions of appointment and administrative performance criteria; and

b) be authorized to periodically review and remove specialists from the list having regard to continuing qualifications, availability and compliance with terms and conditions of appointment and administrative performance criteria.

90. with the consent of the parties, a medical issues adjudication panel may be either a one member panel, consisting of a specialist selected by the Appeal Tribunal, or a three member panel consisting of a chair or a vice chair, one member nominated by the worker and one member nominated by the employer from a list of specialists prepared by the chair of the Appeal Tribunal.

91. the Appeal Tribunal:

a) be mandated to ensure that medical issue adjudications are completed in a timely fashion; and

b) have sufficient administrative authority to establish timeframes for completing medical issue adjudications and to develop procedures to help medical issues adjudication panels meet those time limits.

92. Section 58(5) of the Workers Compensation Act be repealed.

93. all requests for a medical issues adjudication should be made to the Appeal Tribunal.

94. Section 73 levies be appealed under what will become Division 14 of Part 3 of the Workers Compensation Act.

95. the scope of reconsideration as prescribed by Section 96.1 be retained only for compensation claims appeals and be no longer available for appeals under Sections 96(6) and 96(6.1), as is the case for occupational health and safety appeals by way of what will become Section 211(4) of Part 3 of the Workers Compensation Act.

96. Section 96.1 of the Workers Compensation Act be amended to allow for only one reconsideration of an Appeal Tribunal decision.

97. the Workers Compensation Act be amended to authorize the Workers' Compensation Board to accept an application to reopen and re-adjudicate a compensation claim file when a claimant's circumstances are such that, had those circumstances existed at the time of the initial adjudication, the adjudication

decision would have been different.

98. assessment appeals by employers pursuant to sections 96(6) and 96(6.1) no longer be restricted to grounds of error of law or fact or contravention of published policy;

99. if necessary, the Appeal Tribunal may conduct the employer's appeal by way of a hearing *de novo*.

100. the Appeal Tribunal may exercise substitutional, not simply supervisory, jurisdiction.

101. the Workers Compensation Act be amended such that an objection by an employer does not operate to suspend payments to the claimant pending the outcome of the employer's appeal.

102. the Workers Compensation Act be amended to ensure that the death of a worker does not extinguish the right of the estate of the deceased worker to stand in the worker's shoes and:

a) file a claim or pursue a claim already filed; or

b) file an appeal or pursue an appeal already filed for compensation benefits under the Act that would have accrued to the worker until his death.

103. that the Workers Compensation Act be amended such that:

a) the Appeal Tribunal must apply the Workers' Compensation Board's rules and practice guidelines and cannot do more than identify when a rule or guideline is contrary to the Workers Compensation Act or regulations;

b) when the Appeal Tribunal identifies a Workers' Compensation Board rule or guideline that, in its opinion, is contrary to the Workers Compensation Act or is not authorized by the Workers Compensation Act, it must refer the rule or guideline in question to the board of governors for review and binding determination;

c) decisions by the board of governors of the Workers' Compensation Board on all rule or guideline issues referred to them by the Appeal Tribunal are binding on the tribunal;

d) the chair of the board of governors of the Workers' Compensation Board may state a case on any question of law, including, but not limited to, the legality of a rule or guideline or the constitutionality of legislation, to the British Columbia Court of Appeal; and

e) the Appeal Tribunal not be required to follow legal precedent, but must make its decisions according to the merits and justice of each particular case.

104. on receipt of notice that a Workers' Compensation Board rule or guideline, is, in the opinion of the Appeal Tribunal, contrary to the Workers Compensation Act, the board of governors of the Workers' Compensation Board shall address the matter in a manner similar to that provided under Ontario's Workplace Safety and Insurance Act, 1997, Sections 126(4) to (8) inclusive and:

a) the board of governors must confirm or amend the board rule or guideline within 90 days; or

b) refer the matter under notice to the Court of Appeal within 90 days of its receipt.

105. the Workers Compensation Act be amended to make it clear that, until such time as the board of governors amends a rule or guideline, or the Court of Appeal corrects a rule or guideline by a reference, board adjudicators should continue to apply the impugned rule or guideline to claims.

106. the Workers Compensation Act be amended to clearly state that where the Appeal Tribunal is of the view that, in relation to a case before it, no rule or guideline exists in respect of the matter, or where a rule or guideline exists but is vague or ambiguous, the tribunal shall:

a) decide the appeal; and

b) refer the issue to the board of governors of the Workers' Compensation Board for their consideration.

107. the Workers Compensation Act be amended to clearly state that the Appeal Tribunal has the authority to declare, in a specific case before it, any applicable legislation, rule, guideline or procedure to be contrary to the Canadian Charter of Rights and Freedoms, but only insofar as the declaration may apply to that specific case.

## DISCLOSURE

108. the Workers' Compensation Board remain a "public body" governed by the provisions of the Freedom of Information and Protection of Privacy Act.

109. pre-appeal disclosure of information in possession of the board continue to be governed by the disclosure and protection of privacy provisions of the Freedom of Information and Protection of Privacy Act.

110. adjudicators and others employed by the board exercise a broad discretion in determining the extent of disclosure with reference to the need to know.

111. the board review and develop, as appropriate, policies pertaining to routine pre-appeal disclosure of a claim file to employers consistent with the principles of the Freedom of Information and Protection of Privacy Act.

112. all information pertaining to a claim made by a worker used to adjudicate the claim either be:

- a) stored in a master claim file; or, if not stored in a master file,
- b) referenced in a master file.

113. the board take adequate measures to ensure that requests for disclosure by workers and employers for information pertaining to them do not require specialized language which, if not used, would limit the disclosure which would otherwise be available to them;

114. prevention information pertaining to an employer, including but not limited to

- the compliance history of the firm,
- the results of inspections and accident investigations,
- police reports,
- lab test results,
- exposure levels tests,
- safety officers' notes, and
- other prevention data, either be:

- a) stored in a master file; or, if not stored in a master file
- b) referenced in a master file;

115. assessment information pertaining to an employer either be:

- a) stored in a master file; or, if not stored in a master file
- b) referenced in a master file.

116. the Workers' Compensation Board develop clear policies which direct where the variety of information which it collects and uses will be stored.

117. the board take steps to ensure the integrity of its E-file information storage and retrieval system, including but not limited to measures to:

- a) retain an audit trail of all entries and deletions;
- b) prevent unauthorized access;
- c) preserve the information against loss or corruption;
- d) prevent compilation of unsolicited material; and
- e) annotate and correct file entries.

118. the Workers' Compensation Board take all reasonable measures to ensure that instances where information is received that is unquestionably unrelated to the claim are minimized by educating and informing third party information providers, such as doctors' offices and hospitals of such occurrences and the steps they

should take in the future to provide only relevant information.

119. except in the case of information obtained pursuant to Freedom of Information and Protection of Privacy Act, Section 95 of the Workers Compensation Act be amended to include parallel provisions pertaining to non-disclosure by workers and others of an employer's prevention file and, to the extent applicable, assessment file information.

120. Section 95 of the Workers Compensation Act be amended to clarify that it applies to the Appeal Tribunal and to outside providers of services to the Workers Compensation Board, as well as to the board.

121. the Workers' Compensation Board investigate all complaints of unauthorized disclosure of information under Section 95 of the Workers Compensation Act and refer to Crown Counsel such matters deemed appropriate for prosecution.

122. Section 95 (3) of the Act be amended to require the written consent by a worker or an employer for access to their file by the Workers' Advisers or Employers' Advisers.

123. employers participating as either appellants or respondents to a decision of the board under appeal receive, on request, full disclosure of the board file(s) pertaining to the appeal, subject to any worker objection to release of specific medical information which is made and sustained.

124. in the event of a worker objecting to disclosure of specific information, the internal review officer or the Appeal Tribunal will determine, after giving the parties an opportunity to be heard, whether the information should be disclosed for the purposes of the appeal.

125. there be parallel provisions pertaining to objections by employers to release of information contained in prevention files on occupational health and safety appeals.

## THE ADEQUACY OF BENEFITS

126. the current calculation of compensation for permanent loss of earning capacity using the "functional" method of estimating the loss from the nature and degree of the injury as set out in Sections 23(1) and 23(2) of the Workers Compensation Act be discontinued; (**Dissent: Commissioner G. Stoney**) and that

127. compensation for permanent loss of earning capacity be awarded only with reference to the difference between the worker's net average earnings before the injury and the net average amount which the worker is earning or is able to earn in some suitable occupation after the injury. (**Dissent: Commissioner G. Stoney**)

128. the Workers Compensation Act be amended to provide that the loss of earnings award be reviewed and, if necessary, adjusted two years and four years after the setting of the award, in order to ensure that it accurately reflects material and substantive changes in the worker's circumstances.

129. where a worker has sustained permanent disability and it has been determined that no loss of earnings award should be made, the worker may appeal that decision.

130. no adjustment to loss of earnings benefits for permanent disability should be made unless there has been a material change in circumstances since the initial determination which arises from the worker's disability and affects the worker's earning capacity.

131. the Workers' Compensation Board develop policies to better guide adjudicators in identifying those claims to which Section 33(3) of the Act should apply.

132. the Workers Compensation Act be amended such that past earnings used in determining pre-injury average earnings be translated into current dollars.

133. the Workers Compensation Act specifically provide that the Workers' Compensation Board may, where it considers it appropriate, base the initial wage rate for compensation on the actual wage rate earned by the worker at the time of injury.

134. the Workers Compensation Act authorize the board to conduct a rate review of average earnings in cases where the initial wage rate for compensation was based on the worker's actual wage rate at the time of injury.

135. the Workers' Compensation Board study the costs and benefits to the system and to affected workers, which would result from extending the wage rate review from eight weeks to thirteen weeks, including an assessment of the extent, if at all, to which higher benefit costs associated with further delaying the rate review would be offset by savings achieved through earlier recovery and return to work.

136. the Workers' Compensation Board continue to have authority to prescribe guidelines to assist in determining average earnings under Section 33 of the Workers Compensation Act.

137. the Workers Compensation Act be amended to state that:

- a) employers with 20 or more workers be required to re-employ injured workers for a period of up to two years following the date of the injury, if the worker has at least one year of tenure with the employer prior to the injury; **(Dissent: Commissioner 0. ExeII)**
- b) the Workers' Compensation Board evaluate, as and when appropriate following the injury, the worker's fitness to work, and periodically report on these determinations to both the worker and the employer;
- c) an injured worker who meets the *bona fide* occupational requirements of the time-of-injury position is entitled to be re-employed in that position, or one comparable to it, on notice from the board;
- d) a worker suffering residual impairment due to the work injury that prevents the worker from returning to the time of injury position, but who meets the *bona fide* occupational requirements of another available position with the time of injury employer, is entitled to the first consideration to be hired to that position;
- e) in all cases where the injured worker is returning to the pre-injury employer, the employer and other workers be obliged to accommodate the worker so that the worker can perform the time-of-injury position, or a suitable alternative position;
- f) the employer and workers be relieved of the obligation to accommodate the injured worker where such accommodation imposes undue hardship on the employer or other workers;
- g) the factors to be considered in the assessment of undue hardship should be set out in the Workers Compensation Act
- h) where a worker has initiated a request for re-employment, and is unlawfully denied employment, the worker is entitled to compensation benefits for a period equivalent to the re-employment entitlement period, if not otherwise already in receipt of those benefits;
- i) where an employer fails to accommodate a worker as expected under the law, or fails to re-employ in circumstances where the obligation exists, consequential penalties be levied on the employer; and
- j) for any interval where a worker fails to co-operate with or participate in the re-employment process, the board shall be entitled to reduce or suspend benefits otherwise payable under the Workers Compensation Act.

138. Sections 22(2), 23(4), 29(2) and 30(2) of the Workers Compensation Act be amended such that:

- a) in the case of permanent total disability, the compensation awarded must not be not less than an amount equal to that which a worker would earn at the minimum wage established in the province, working forty hours per week; and
- b) in the case of temporary total disability, permanent partial disability or temporary partial disability, the compensation shall not be less than this amount unless the worker's actual earnings are less than that, in which case the worker must receive compensation in the amount equal to the worker's net average earnings.

139. the maximum wage rate under Section 33(1) and (6) of the Workers Compensation Act be adjusted annually to an amount equal to two hundred percent of the average industrial wage in British Columbia for the twelve month period immediately preceding the adjustment.

140. that the Workers Compensation Act be amended such that:

- a) benefits under Sections 22, 23, 29 and 30 of the Act be based on net rather than gross earnings; and
- b) net earnings be calculated by deducting from gross earnings the following items:
- i) Employment Insurance premiums paid by the worker;
  - ii) Canada Pension Plan contributions paid by the worker; and
  - iii) source deductions for federal and provincial income tax. **(Dissent: Commissioner G. Stoney)**

141. the Workers Compensation Act be amended such that with the exception of

- Canada Pension Plan contributions
- Employment Insurance contributions
- vacation benefits
- sick leave, and

- other benefits provided to the worker solely for the purpose of performing the worker's job,

contributions to a worker's benefit plans be maintained by an employer for twelve months beginning on the date on which the disability arose, or until the worker returns to work, whichever occurs first.

142. the Workers Compensation Act be amended such that the legislation authorize the board to create and maintain a schedule designating those benefit plans to which contributions must be maintained by the employer in accordance with recommendation #141.

143. the Workers Compensation Act be amended to authorize the board to include employment insurance income in average earnings for the calculation of compensation benefits payable beyond the eight week review (or other period established by legislation or policy) where the board determines there to be a regular and established pattern of dependency on that income which would likely have continued into the future.

144. Section 22 of the Workers Compensation Act be amended to change the compensation payable for permanent total disability from an amount equal to 75% of the worker's average earnings to an amount equal to 90% of the workers net average earnings. **(Dissent: Commissioner G. Stoney)**

145. Section 29 of the Act be amended to change the compensation payable for temporary total disability from an amount equal to 75% of the worker's average earnings to an amount equal to 90% of the workers net average earnings, payable for so long as the disability lasts. **(Dissent: Commissioner G. Stoney)**

146. Section 23(3) of the Act be amended to change the compensation payable for permanent partial disability from an amount equal to 75% of the difference between the average earnings of the worker before the injury and the average amount which he or she is earning or able to earn in some suitable employment after the injury, to an amount equal to 90% of the difference between the worker's net average earnings before the injury and the net average amount which he or she is earning or able to earn in some suitable employment after the injury. **(Dissent: Commissioner G. Stoney)**

147. Section 30 of the Act be amended to change the compensation payable for temporary partial disability from an amount equal to 75% of the difference between the average earnings of the worker before the injury and the average amount which he or she is earning or able to earn in some suitable employment after the injury, to an amount equal to 90% of the difference between the worker's net average earnings before the injury and the net average amount which he or she is earning or able to earn in some suitable employment after the injury, payable for so long as the disability lasts. **(Dissent: Commissioner G. Stoney)**

148. the Workers' Compensation Board take measures to ensure that the basket of goods and services which underlies the measurement of the Consumer Price Index under Section 25 of the Workers Compensation Act reasonably reflect the consumption patterns of injured workers.

149. Section 5(2) of the Workers Compensation Act be amended to require the employer to pay an injured worker full wages for the day on which a compensable injury occurs if these wages had been payable had the injury not occurred.

150. the Workers Compensation Act be amended such that the following benefits not be deducted from compensation otherwise payable under the Act:

- supplementary disability insurance benefits payable to a worker by virtue of a plan purchased privately by the worker;
- supplementary disability insurance benefits payable to a worker by virtue of an employer-sponsored plan contributed to by the worker and/or the worker's employer; and
- supplementary "top-up" payments in respect of work-related injury paid directly by the employer to the worker.

151. the Workers Compensation Act be amended such that Canada pension plan benefits payable to a worker as a result of a disability which is compensable under the Act be deducted from compensation payable to the worker; **(Dissent: Commissioner G. Stoney)** and that

152. social assistance benefits payable to a worker not be deducted from compensation benefits payable to a worker.

153. the Workers Compensation Act be amended such that:

- compensation for non-economic loss be:
  - inversely proportional to the age of the worker; and
  - calculated without regard for loss of earning capacity but rather with reference to a formula incorporating a percentage impairment schedule or rating chart corresponding to the nature and extent of injury or impairment, multiplied by a maximum value to be determined on further study; and
- compensation for non-economic loss associated with permanent functional impairment or disfigurement arising from work related injury or disease, be paid under the Act as a lump sum in addition to compensation for any related loss of earning capacity. **(Dissent: Commissioner G. Stoney)**

154. the Workers Compensation Act be amended such that:

a) in cases of permanent disability, loss of earnings awards shall:

i) cease upon the worker retiring, or attaining the age at which the worker would have retired but for the injury or disease; and

ii) be replaced thereafter with loss of retirement benefits for the lifetime of the worker; **(Dissent: Commissioner G. Stoney)**

b) loss of retirement benefits are calculated by multiplying two percent of the worker's loss of earnings benefit by the number of years during which the benefit was received, up to a maximum of 35 years; and

c) unless the contrary is shown, it shall be presumed that the worker would have retired but for the injury or disease on reaching the age of 65.

## FATALITY BENEFITS

155. the Workers Compensation Act be amended such that the age-related distinctions in Section 17 (3) (c), (d) and (e) be repealed and replaced by a provision that states that:

a) childless non-"invalid" surviving spouses age 50 and older at the time of the worker's death, will receive 60% of the monthly amount which would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and

b) surviving spouses below 50 years of age at the time of the worker's death will receive 1 % less than 60% for each year of age below 50 years of age to a minimum of 30%.

156. the Workers Compensation Act be amended such that the benefits described in recommendation #155 not be paid to surviving spouses of workers whose work-related disability did not arise until after the worker retired.

157. the Workers Compensation Act be amended such that:

a) a surviving spouse receives a lump sum payment equal to \$45,000 for a spouse aged 50 years or older at the time of the worker's death and increased by \$1,000 for each year the spouse is younger than 50 years, to a maximum of \$75,000; and

b) to require that the lump sum payable be periodically adjusted for changes in the consumer price index (Section 25).

158. the Workers Compensation Act be amended such that:

a) Canada Pension Plan periodic benefits which become payable to a dependant as a result of the death of the worker should be integrated with survivor benefits payable under the Act; **(Dissent: Commissioner G. Stoney)** and

b) Canada Pension Plan periodic benefits to which a dependant becomes entitled as a result of the dependant's own contribution to the plan not be integrated with survivor benefits payable under the Act.

159. the Workers Compensation Act be amended such that pension benefits payable to surviving spouses continue regardless of changes in the surviving spouses' marital status, either through lawful marriage or qualifying common-law relationships.

## THE SCOPE OF COMPENSATION COVERAGE IN BC: WHO IS COVERED?

160. the Workers Compensation Act be amended such that the principle of universal coverage of workers and employers, independent of industry class or occupation, be stated explicitly.

161. the Workers Compensation Act be amended such that the exclusive authority of governors to exempt specific industries or occupations and admit otherwise exempted classes on specified terms, be stated explicitly.

162. the Workers Compensation Act be amended to include the exemption criteria set out in resolution of the governors #60, dated February 7, 1994, and the resolution of the panel of administrators, dated May 15, 1996.

163. the definition of "employer" found in Section 1 of the Workers Compensation Act be amended to include any person deemed by the Workers' Compensation Board to be an employer for the purposes of workers' compensation.

164. the definition of "worker" found in Section 1 of the Workers Compensation Act be amended to include any person or group of persons deemed by the Workers' Compensation Board to be a worker for the purposes of workers' compensation in a manner similar to that found in the Alberta Workers' Compensation Act, Section 11(2).

165. Section 3 of the Workers Compensation Act be amended to include a definition of the term "public interest" as interpreted by Workers' Compensation Board policy #20:10:40 — *Admission of Employers, Workers and Independent Operators*.

166. "independent operator" be defined in Section 1 of the Workers Compensation Act as a self-employed person who is not a worker or an employer, or deemed by the Workers' Compensation Board to be a worker or employer.

167. the Workers' Compensation Board develop industry-specific guidelines for problematic occupations (i.e., fallers, couriers, and others identified by the board) for the purpose of establishing workplace status.

168. the Workers Compensation Act be amended such that:

- a) the Workers' Compensation Board be authorized to identify and designate through regulations, promulgated by cabinet, those industries and occupations requiring compulsory coverage for independent operators and labour contractors; (**Dissent: Commissioner O. Exell**) and
- b) independent operators and labour contractors purchasing personal optional protection, including those independent operators and labour contractors working in an industry or occupation designated by the Workers' Compensation Board as requiring compulsory coverage, be required to purchase coverage in an amount which is the greater of the current minimum for personal protection and the amount commensurate to their proven earnings.

169. the Workers Compensation Act be amended such that:

- a) executive officers and directors of an incorporated enterprise be treated in like manner to a proprietor or partner of a non-incorporated enterprise; and
- b) personal optional protection be made available to proprietors, partners and executive officers and directors of a corporation on terms similar to those described in Section 12 of the Ontario Workplace Safety and Insurance Act.

170. all Workers' Compensation Board policy relevant to determining work relationships, including, but not limited to, Decisions No. 26, 32, 138 (to the extent that it is not inconsistent with Decision No. 255), 255 and policy numbers 20:10:30 and 20:30:20 of *the Assessment Policy Manual* be consolidated and made readily accessible to staff and the general public in one manual.

171. the Workers Compensation Act be amended to allow prime contractors the authority to deduct and remit to the Workers' Compensation Board the estimated payroll assessments from their contractors and subcontractors, as estimated by the Workers' Compensation Board, without the necessity of the parties consent.

172. the Workers' Compensation Board take positive steps to inform small and medium businesses, as well as non-traditional employers, such as homeowners contracting for services, of their potential liabilities as employers under the Workers Compensation Act.

173. the definition of "employer" in Section 1 of the Workers Compensation Act be amended to include the owner or operator of a boat or vessel rented, chartered or otherwise used in the fishing industry.

174. the definition of "worker" in Section 1 of the Workers Compensation Act be amended to include a person who becomes the member of the crew of a fishing vessel under any profit-sharing arrangement.

175. Section 4 of the Workers Compensation Act be amended such that:

- a) owner/operators in the fishing industry:
  - i) are responsible for registering as "employers" with the Workers' Compensation Board;
  - ii) are deemed employers of persons working on their boats;
  - iii) are primarily responsible for occupational health and safety on their boats;
  - iv) are responsible for collecting and remitting assessments in respect of fishing revenues generated on their boats from off-shore sales; and
  - v) are responsible for collecting and remitting directly to the board, as may be required, assessments adjusted to reflect the claims cost experience of the employer;
- b) the Workers' Compensation Board establish a fixed rate assessment to be collected by commercial purchasers at the point of sale and remitted, according to each vessel's registration, to the board;
- c) every provincial commercial purchaser is responsible for collecting and remitting to the Workers' Compensation Board assessments based on a fixed percentage, as established by the board, of each vessel's sales to the purchaser; and

d) the Workers' Compensation Board be responsible for establishing a method for applying experience rated assessments to fishing vessels registered in British Columbia.

176. the Workers Compensation Act be amended such that:

- a) fishers who are independent operators or employers working on fishboats be required to purchase coverage through the Workers' Compensation Board; and
- b) payments by such individuals be incorporated in the flat-rate assessment collected and remitted to the Workers' Compensation Board by commercial purchasers.

177. Section 8 of the Workers Compensation Act be amended to provide a mechanism whereby employers with workers who otherwise qualify for out-of-province coverage but are expected to work out of province for six months or more, may make an application to the Workers' Compensation Board for extended coverage, at the discretion of the board and on such conditions as may be prescribed by the board, for a further term not exceeding six months.

## THE SCOPE OF COMPENSATION COVERAGE IN BC: DETERMINING WORK-RELATEDNESS

178. the Workers Compensation Act be amended to:

- a) set out the objective of providing compensation for injury, death and disease sustained by workers and arising out of the production process; and
- b) confirm the obligation upon industry to fully fund compensation for injury, death and disease sustained by workers and arising out of the production process.

179. Section 5(5) of the Workers Compensation Act be amended to provide that in the case of permanent disability:

- a) (subject to (b), below) where disability occurs as a result of occupational disease or personal injury arising out of and in the course of employment, compensation is payable under this Part unless it is determined that such disability would in any event have occurred as a result of factors unrelated to such injury or disease; and
- b) where disability occurs as a result of occupational disease or personal injury arising out of and in the course of employment, compensation is payable for the period between the date on which disability occurred and the date on which it would have occurred in the absence of the occupational disease or personal injury.

180. Section 6(4)(b) of the Workers Compensation Act be amended to clarify that the board may designate or recognize a disease as being a disease peculiar to or characteristic of a particular process, trade or occupation:

- a) by regulation of general application;
- b) by order on terms, conditions and limitations which the board deems adequate and proper; or
- c) by order dealing with a specific case.

181. the Workers' Compensation Board retain its current authority to revise Schedule B as authorized by section 6(4)(a).

182. the Workers Compensation Act require that an Occupational Disease Standing Committee be constituted as a committee of the governors in recognition of the importance of issues related to occupational diseases.

183. the Workers Compensation Act require the governors to gazette all additions and deletions to and from Schedule B before they take effect, in order to provide cabinet with sufficient opportunity to supervise the proposed changes.

184. the Workers' Compensation Board undertake a study of the factors which should guide additions to, and deletions from Schedule B.

185. the Workers Compensation Act be amended such that periodic comprehensive reviews of Schedule B be undertaken and that the results of such reviews be included in the board's *Annual Report*.

186. the Workers Compensation Act be amended to include a provision allowing parties to request that the Occupational Disease Standing Committee reconsider a relationship recognized in Schedule B between a disease and process or industry.

187. the concluding words of Section 6(3) of the Workers Compensation Act be amended to provide that the disease should be deemed to have been due to the nature of that employment "unless there is clear and convincing evidence to the contrary." (**Dissent: Commissioner G. Stoney**)

188. the Workers Compensation Act be amended to authorize the Workers' Compensation Board to either:

- a) depart from the "at or immediately before" time requirement in section 6(3) in the case of occupational diseases with long latency periods; or
- b) specify the time interval associated with the phrase "at or immediately before" within which a particular disease listed in Schedule B must arise in order for the section 6(3) presumption to apply.
189. the board undertake a more detailed analysis and reporting of "suspended" occupational disease claims.
190. the Workers' Compensation Board investigate the merits of recording exposures for purposes which might include:
- a) record-keeping regarding individual workers' exposure;
- b) data collection regarding the incidence of occupational disease; or
- c) monitoring of the levels and incidence of potentially harmful exposure on particular work sites.
191. the Workers Compensation Act be amended such that:
- a) an employer offer alternative employment to a worker at significant risk of deterioration to health who has at least one year tenure with the employer, if the risk is medically certified to arise directly from only the worker's accumulated exposure to specific workplace contaminant(s) designated by the board pursuant to a schedule designed for that purpose; and
- b) the employer be relieved of the obligation to reassign a worker where such reassignment imposes undue hardship on the employer or affected co-workers.
192. the Workers Compensation Act be amended such that where a loss of earnings is caused by an underlying work-related sensitization or allergy which is medically diagnosed and results solely from accumulated exposure to specific workplace contaminant(s) designated by the board pursuant to a schedule designed for that purpose, compensation for such loss is payable in the same fashion as compensation for occupational disease.
193. the Workers Compensation Act be amended such that the Workers' Compensation Board may prescribe policies governing the provision of prophylactic healthcare to workers who are otherwise qualified to receive it, notwithstanding that the workplace exposure has not yet produced an injury or occupational disease.
194. the definition of "personal injury" found in the Workers Compensation Act be amended to include both physical and mental or psychological harm.
195. non-physical conditions arising from non-physical and non-traumatic stimuli or stressors be compensable under the Workers Compensation Act under the following conditions:
- a) the condition is medically recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV);
- b) the condition is established by clear and convincing evidence to have arisen out of and in the course of employment;
- c) the stressors leading to the psychological disability are objectively verifiable and are excessive or unusual in comparison with the stressors experienced by the average employee in that type of employment; and
- d) the stressors leading to the psychological disability are not related solely to generic work processes, such as labour relations issues, disciplinary actions, demotions, layoffs, termination or transfer, when done in good faith and in a lawful and non-discriminatory manner. **(Dissent: Commissioner 0. ExeII)**
196. Section 99 of the Workers Compensation Act be amended to add the exception that where there is doubt on an issue "except for an issue related to whether a non-physical condition arising from non-physical and non-traumatic stimuli or stressors arose out of and in the course of employment," evenly disputed possibilities must be resolved in a worker's favour. **(Dissent: Commissioner 0. ExeII)**
- SECTIONS 10 AND 11: LIMITATIONS OF ACTIONS, ELECTIONS, SUBROGATIONS AND CERTIFICATIONS TO COURT**
197. the fee that the Workers' Compensation Board charges for pursuing subrogated claims be more equitable to the board and to the injured worker and not be based on the board's overall administration costs.

## FATALITY INVESTIGATIONS

198. the Workers' Compensation Board:

- a) identify the components of a comprehensive fatalities information management system by consulting with staff and external interest groups, including other agencies, and formal and informal organizations representing spouses and dependants of deceased workers;
- b) locate, identify and index all fatalities-related information currently within the board's various divisions, departments and regions and locate this index in an easily accessible central location;
- c) identify the divisions, departments, programs and staff positions within the Workers' Compensation Board responsible for collecting, retaining, analyzing and distributing information on fatalities and clearly state their roles and responsibilities;
- d) identify those areas and programs within the Workers' Compensation Board that should have access to a fatalities database and develop, implement and monitor a system to ensure that those areas:
  - i) have appropriate access to fatalities information; and
  - ii) incorporate fatalities information in their planning processes;
- e) identify those outside the Workers' Compensation Board that should have access to a fatalities database (i.e., survivors, researchers, other agencies) and develop, implement and monitor a system to ensure:
  - i) an appropriate level of confidentiality; and
  - ii) easy and complete access to relevant fatalities information;
- f) implement a "single window" approach for both internal and external access to fatalities information; and
- g) 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) for:
  - i) the ongoing transfer of information pertaining to workplace fatalities; and
  - ii) cross-referencing data to ensure the completeness and integrity of the fatalities information management system.

199. the Workers' Compensation Board develop and implement a fatalities program that includes, among other things:

- a) a statement describing the Workers' Compensation Board's role in preventing workplace fatalities and its relationship to survivors;
- b) agreements with external agencies (e.g., Coroners Services and Vital Statistics) covering the investigations of fatalities and follow-up activities;
- c) evidence-based targeting that, among other things, examines the effectiveness of enforcement activities and worker, employer and public education campaigns in reducing workplace fatalities;
- d) field officer and staff training that specifically addresses fatalities in the workplace, including a review component to ensure consistent field activities; and
- e) records management that allows rapid access to useful information.

200. the Workers Compensation Board provide a full and accurate account in its *Annual Report* of its efforts to eliminate workplace fatalities, including publishing references to:

- a) prevention- and causality-driven data about fatalities;
- b) measures to prevent re-occurrence in each instance of workplace death (including occupational disease);
- c) coroner's findings and recommendations and the Workers' Compensation Board's response (follow-up activities and policy or regulatory changes) to both the findings and recommendations; and
- d) summaries of board-funded research into workplace fatalities (including occupational disease).

201. the Workers' Compensation Board in co-operation with interest groups, 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.

## PERFORMANCE INDICATORS

202. the Workers' Compensation Board complete the implementation of the recommendations of the Office of the Auditor General found in the document entitled *Workers' Compensation Board of British Columbia: Accountability Reporting Review*.

## ORGANIZATIONAL CAPACITY

203. the Workers' Compensation Board implement a corporate human resources planning model.

204. the board of governors of the Workers' Compensation Board monitor and evaluate the effectiveness and relevance of human resources programs and initiatives.

205. the board of governors of the Workers' Compensation Board develop Terms of Reference for the senior executive committee to promote an administration that:

- a) understands its purpose and whose interests it represents;
- b) is comprised of people with the necessary knowledge, abilities and commitment to fulfill their responsibilities;
- c) understands the objectives and strategies of the organization it administers;
- d) understands what constitutes reasonable information for good administration and once informed, is prepared to act to ensure that the organization's objectives are met and that performance is satisfactory; and
- e) fulfills their accountability obligations to the governing body by reporting on their effectiveness.

206. the Terms of Reference for the senior executive committee define:

- a) the responsibilities, roles and duties of the president and vice presidents;
- b) the operational management structure;
- c) management systems and practices required for effective administration; and
- d) performance reporting.

207. the board of governors of the Workers' Compensation Board:

- a) annually review and report on the extent to which:
  - i) human resources management and employee compensation policies are consistent with the goals of the organization and the practices of other comparable Crown Agencies; and
  - ii) human resources management and employee compensation meet the test of public scrutiny; and including information on the data used to develop the report and the methodology used in its analysis of i) and ii) above;
- b) establish annual performance agreements with all directly reporting employees;
- c) annually review and report on the board's training and development plan;
- d) annually review and report on the president's succession plans for executive management; and
- e) review all appointments at the senior executive level before they are made.

## FUNDING

208. the Workers Compensation Act be amended to explicitly require that the current and expected future costs of claims be fully funded as periodically estimated by the actuary for the Workers' Compensation Board.
209. Section 39 of the Workers Compensation Act be amended to require the board to provide a reserve fund to meet deficiencies which may otherwise arise from potential future occupational disease compensation.
210. Section 39(1 )(d) of the Workers Compensation Act be amended to include reference to benefits and employer assessment rate stabilization.
211. 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.
212. the Workers' Compensation Board prepare a schedule for the retirement of any deficit in the accident fund which may be expected to arise once societal allocation issues have been determined.
213. Section 10(8) of the Workers Compensation Act be amended to allow transfers of costs within a class or subclass.
214. the Workers' Compensation Board explore the potential benefits of adjustments to experience rated assessments on the basis of factors other than pure claims cost, including, in appropriate circumstances:
- a) the frequency of lost time claims; and
  - b) the specific circumstances of different sub-classes of employers. In all instances the factors used must have a reasonable proven link to safety outcomes and be capable of objective measurement.
215. the Workers' Compensation Board establish policies that permit greater equity in experience rating of assessments for small employers.
216. where the Workers' Compensation Board adopts a system of experience rating for small employers with reference to factors other than pure claims cost, those factors must have a reasonably proven link to safety outcomes and be capable of objective measurement.
217. the Workers' Compensation Board's experience rating assessment program be amended to capture claims costs attributable to a compensation claim until the date a permanent disability award for loss of earnings is set, or 36 months, whichever event last occurs.
218. experience rating for long-latency claims not apply to an employer with a worker claiming compensation for an occupational disease having a long latency period, unless the worker was employed with that employer for a duration at least equal to the latency period.
219. the board prescribe policies pertaining to setting rate increase caps at the subclass level with reference to an amortization schedule under which the subclass deficiency is to be retired.
220. the Workers' Compensation Board allow adjustment to experience rated assessments of greater than 33%.
221. the Workers' Compensation Board take the following factors into consideration in its investment policies:
- a) that there be stakeholder input through the board of governors;
  - b) that there be established selection criteria for delegating investment activity with mechanisms for reporting by the delegate to the person delegating;
  - c) that contracts for the board's external actuary be tendered every five years;
  - d) that managers of portfolios for the accident fund be evaluated on the basis of both return on investment and risk characteristics, relative to an appropriate benchmark;
  - e) investment monitoring reports be prepared by an investment consulting firm incorporating a full qualitative analysis of each investment manager; and
  - f) that a party independent of the board be given the responsibility of monitoring the fixed income portfolio.
222. the treasurer not sit on the investment committee and manage the fixed income portfolio unless there are adequate measures in place to monitor any potential conflict of interest which may arise as a result of occupying both positions.