



WORKING TO MAKE A DIFFERENCE

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November 18, 2011

Ms. Jill Callan  
Chair  
Workers' Compensation Appeal Tribunal  
150-4600 Jacombs Road  
Richmond, BC, V6V 3B1

Dear Ms. Callan:

**RE: WCAT Decision 2011-02362**

On September 22, 2011, you issued a determination that portions of policy items AP1-37-1 and AP1-37-3 ("Policies") of the *Assessment Manual* are so patently unreasonable that they are not capable of being supported by the *Workers Compensation Act* ("Act") and its regulations. This determination was made under section 251(3) of the *Act*, which gives the Workers' Compensation Appeal Tribunal ("WCAT") discretion to refuse to apply a policy of the board of directors ("BOD") "*only if the policy is so patently unreasonable that it is not capable of being supported by the Act and its regulations.*"

Your determination was formally received by the BOD on September 23, 2011, and any appeal proceedings pending before WCAT that were considered to be affected by the Policies were suspended. Under section 251(6) of the *Act*, the BOD is given 90 days to review the Policies and determine whether they should be applied.

The impugned provisions of the Policies pertain to section 37 and sections 96(4) and 96(5) of the *Act* and provide for an annual classification cycle whereby each employer is assigned a classification unit for assessment purposes on an annual basis. These classification decisions are then subject to the section 96(5)(a) 75-day reconsideration limitation pursuant to which WorkSafeBC may then assign employers to different classification units in order to correct any classification errors made in the past.

On September 29, 2011, the BOD Chair sent the parties to the WCAT appeal and any suspended appeals, along with employers' groups which made submissions to the WCAT, a letter inviting them to make submissions on this issue by October 28, 2011. The BOD received nine written submissions.

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This letter is to advise you that on November 8, 2011, the BOD met to finalize its determinations under section 251(6) of the *Act*. After careful deliberations and consideration of the submissions on this issue, advice from its General Counsel, and from WorkSafeBC's Policy and Research Division, the BOD determined that the WCAT may refuse to apply the impugned provisions of policy items AP1-37-1 and AP1-37-3 of the *Assessment Manual* in accordance with section 251(1) of the *Act*.

I include for your reference a copy of the BOD resolution and revised policy items AP1-37-1 and AP1-37-3.

Yours truly,

A handwritten signature in cursive script, appearing to read "George Morfitt".

George Morfitt, FCA  
Chair, Board of Directors

Copies to: David Anderson, President and CEO  
Ed Bates, General Counsel and Secretary to the Board  
Roberta Ellis, Senior Vice President Corporate Affairs  
Parties to Suspended Appeals