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## Workers' Compensation in British Columbia: An Administrative Inventory at a Time of Transition

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# About the WCB

The Workers' Compensation Board of British Columbia is dedicated to the safety, protection and good health of workers. Through education, regulation, and inspection, the WCB manages safe workplaces and practices; through wage-loss compensation and rehabilitation services, it sustains and rehabilitates workers who are injured or suffer industrial disease in the course of doing their job, with the goal of returning them to the workplace; and through counselling and vocational assessment, permanently disabled workers are prepared for changes in lifestyle and employment.

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# About the W. E. Upjohn Institute

The W. E. Upjohn Institute, a nonprofit research organization, was established on July 1, 1945. It is an activity of the W. E. Upjohn Unemployment Trustee Corporation, which was formed in 1932 to administer a fund set aside by the late Dr. W. E. Upjohn for the purpose of carrying on "research into the causes and effects of unemployment and measures for the alleviation of unemployment."

Using in-house staff and external grants, the Institute conducts and supports policy-oriented research in a broad range of topics at the forefront of public debate at the national, state, and local levels. Research projects undertaken by the Institute staff may originate with the staff itself, or in response to concerns and requests from either the public or private sector.

Through all its activities, the Institute is committed to independent analysis. The broad objectives of the Institute are to: (1) link scholarship and experimentation with issues of public and private employment and unemployment policy; (2) bring new knowledge to the attention of policy makers and decisionmakers; and (3) make knowledge and scholarship relevant and useful in their applications to the solutions of employment and unemployment problems.

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November 1991

### **Publication Information**

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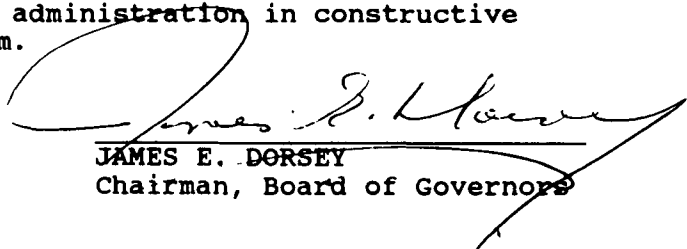
The idea of having a credible, independent and impartial review of the Board's performance immediately prior to the assumption of responsibilities by the Governors was one of the first goals that I set upon my appointment as Chairman.

The purpose is twofold. First, to create a baseline against which the future performance of the Governors and the new legislative structure can be assessed. The community will have the information, in part, upon which it can make this judgment when a follow-up study is done in 1995 by the same reviewers. The second purpose was to have an expert view of the Board based on credible and sound information so that the Board, community and Governors could identify what are real issues requiring attention within the system and to assist in setting priorities.

I am indebted to Paul Petrie for having suggested the administrative inventory model to me. We owe enormous gratitude to Allan Hunt, the Upjohn Institute, Peter Barth and Michael Leahy for having re-arranged their commitments and taking on this task on short notice and within the strict time lines that were set for them. Their expertise, reputation and the quality of this Administrative Inventory speak for themselves.

There are two broad limitations on this work that I regret. The first is that an objective evaluation of the performance of our Assessment Division and the activities of our Medical Services Division could not be included within the scope of this study. We will correct that through subsequent examinations of these areas. Secondly, a comparable study has never been done for the occupational safety and health function and no methodology has been developed. The study team could not be enlarged and a methodology established within the time allowed for this study. I am continuing to work on this project and hope that a similar study of our Occupational Safety & Health Division can be done in the near future.

To those interested in the work of the Board, I commend this study in all its detail and hope that it will assist our community and administration in constructive improvement of our system.



**JAMES E. DORSEY**  
Chairman, Board of Governors



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# Foreword

This Administrative Inventory of the workers' compensation system of British Columbia was undertaken at the request of James E. Dorsey, Chairman of the Board of Governors, Workers' Compensation Board of British Columbia. However, the composition of the study team, the timetable and plan for the study, the selection of individuals to be interviewed, the complete conduct of the study, and the resulting conclusions and observations were under our control. Mr. Dorsey made it clear from the start that he wanted an independent and unfettered review of the WCB. There was no interference with our access to personnel or documents, and we received splendid cooperation from all individuals interviewed.

The study team has also agreed to the request by the WCB that it return in 1995 for an update of this Administrative Inventory. Having established this baseline of performance from 1981 through 1990, we share Mr. Dorsey's keen interest in documenting the changes in the system and its performance over the next five years.

This document is the full and complete report of the study as submitted to the WCB. Nothing has been omitted or censored. A preliminary draft of this document, less chapter 9 "Attention Points," was submitted to the WCB for review of factual content. Of course, the authors remain responsible for any errors of fact or interpretation that remain. The judgments reported here represent our free, independent, and unfettered opinions.



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# Executive Summary

## **Administration of The Workers' Compensation Act**

In British Columbia, as in Canada generally, workers' compensation from the beginning was considered to be a public matter handled by a public body. The Workers' Compensation Board (WCB) of British Columbia has administered the Act continuously since 1917 as an independent provincial agency. The WCB is charged with responsibility to pay the benefits specified by the Act to injured workers, their dependants and survivors. The WCB also has the right to assess employers subject to the Act for the monies necessary to "meet all amounts payable from the accident fund during the year" and to "provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all injuries which occur during the year."

The WCB Board of Governors is presided over by a voting Chairman, with five of the members designated as "representative of workers," five designated as "representative of employers" and two additional voting governors who are "representative of the public interest." In addition, the President of the WCB and the Chief Appeal Commissioner are non-voting members of the Board of Governors by virtue of their office.

There are also organizations created by the Act to facilitate access by workers and employers. The Workers' Adviser Office (WAO) assists workers or their dependants in bringing claims, including actually representing them before the WCB or WCRB if necessary. Similarly, the Employers' Adviser Office (EAO) has a staff to perform advisory and representative services on behalf of employers subject to the Act.

The administrative superstructure of the WCB was substantially overhauled by Bill 27, which was enacted in 1989 and took effect on June 3, 1991. It replaced the old system of Commissioners with a Board of Governors and

created a new Appeal Division, headed by a Chief Appeal Commissioner. This amounted to a separation of the policymaking and appellate functions of the old Commissioners. Bill 27 amendments also created a new position of President and Chief Executive Officer to administer the day-to-day functions of the WCB. This means that the administrative function of the old Commissioners has also been split off and will be handled separately.

The WCB administers the Act from its offices in Richmond and nine Area Offices located around the province. There are four main operational divisions (Compensation Services, Medical Services, Financial Services, and Occupational Safety and Health), plus a number of special purpose divisions and departments which report directly to the President. The Compensation Services Division, consisting of nine departments, is the largest division of the WCB. Compensation Services has responsibility for administering wage loss, pension and medical aid benefits to injured and occupationally diseased workers and their dependants.

The Medical Services Division advises Claims Adjudicators and Vocational Rehabilitation Consultants on medical matters relative to claims. It is responsible for the evaluation of permanent functional impairment, the supervision of the physical rehabilitation of many injured workers, and the administration of the Psychology Department. In addition, Medical Services operates the Leslie R. Peterson Rehabilitation Centre, which provides disability assessment and rehabilitation programs to injured workers.

The Financial Services Division is responsible for raising the funds for the WCB through its Assessments Department and the management of the Board's substantial investments by the Treasurer. Financial Services also includes the offices of the Controller, the Actuary, and the Statistical Services Department. The Information Services Division (ISD) was also part of Financial Services at the time of our observation.

The direct administration of claims is split into four parts, according to location of claim or severity of disability. The Medical Aid Department administers the payment of medical bills for all WCB claimants. The Disability Awards Department adjudicates and administers all fatal and permanent disability claims. Adjudication of temporary disability claims is split between the Area Offices and Lower Mainland (Richmond) office according to the residence of the injured worker.

## **Dispute Resolution Systems**

There are three bodies, excluding the court system, that constitute appellate bodies of the workers' compensation system. These are the Workers' Compensation Review Board, Medical Review Panels, and Commissioners of the Board themselves (until June 3, 1991 when the Appeal Division replaced

it). The source of disputes are the decisions made by WCB officers, that is Claims Adjudicators, Claims Officers, or Vocational Rehabilitation Consultants in the Compensation Services Division of the WCB.

The WCRB may overturn an adjudicator either because it believes an error in law or policy has been made, or because it exercises a different judgment of the facts. The most frequent issue heard by the Review Board is compensability; one-fourth of Review Board decisions were in cases where the WCB had disallowed the claim. In 45 percent of these, the WCRB decided either to allow benefits or to send the matter back to the claims unit for further work. The next most frequently appealed issues were denials by the WCB to reopen cases, WCB decisions to terminate wage-loss payments, and disputes over the size of the permanent partial disability pension awarded. The allow rate for these appeals varies from 39 percent to 52 percent.

To appeal a decision to a Medical Review Panel (MRP), there must be a *bona fide* medical dispute. Almost all MRP cases involve appeals by workers or dependants. A few issues seem to predominate. The most common issue that goes to an MRP is the question of causality, or work-relatedness of the condition. A second very common medical issue is the assessment of the degree of impairment. Though many types of conditions are assessed by MRPs, back conditions are the ones most commonly involved.

## **Benefits**

British Columbia pays benefits that are found in most jurisdictions in North America, that is, medical aid, temporary total, temporary partial, permanent total, permanent partial, disfigurement, survivor's, and rehabilitation benefits. Most, though not all, benefits for compensable injuries or illnesses are associated with the worker's level of earnings at the time of the injury.

Workers with compensable injuries or illnesses are entitled to a very broad range of medical aid benefits. Under most circumstances the Board will pay all the costs of physician and hospital services, medications, diagnostic requirements and appliances. British Columbia allows the worker free choice of attending physician or other qualified practitioner.

Where a worker has incurred a compensable impairment, physiological or psychological, he/she is entitled to a wage-loss benefit, beginning the first working day after the day that the injury or illness occurred. Indemnity benefits for temporary total disability are set at 75 percent of the worker's average earnings, subject to the statutory maximum and minimum benefits. Benefits are available also where there has been a temporary partial loss of earnings.

If a worker sustains a permanent residual impairment due to an occupational injury or disease after temporary total or temporary partial benefits

have been terminated, the worker is entitled to a pension award for permanent disability. Depending upon the condition of the worker, the benefit can be *either* for permanent partial or permanent total disability. British Columbia employs a “dual” approach to benefits for permanent partial disability. A claimant receives benefits based on an assessment of either the degree of physiological (or psychological) impairment, called a permanent functional impairment, or the loss of earnings capacity. A worker’s pension benefit is based on the alternative that provides the larger award.

The process of setting the disability award is one of the most difficult, and potentially contentious, aspects of the benefits scheme. The use of schedules allows for some degree of consistency in the rating of permanent functional impairment. However, in determining wage loss pensions, the WCB is asked to decide what type and quantity of work the person can be expected to achieve that would reasonably be available, possibly with the assistance of a retraining program, and perhaps after geographic relocation. These are very difficult judgments to make.

## **Vocational Rehabilitation Services**

Services provided to clients through the Department include vocational assessment and planning, job readiness and placement assistance, counseling, skill development, and employability assessment. The principal objectives of these vocational rehabilitation services are to: (1) assist workers in their efforts to return to their pre-injury employment or to an occupational category comparable in terms of earning capacity to the pre-injury occupation; (2) provide assistance considered reasonably necessary to overcome the effects of the compensable injury, industrial disease or fatality; (3) provide reassurance, encouragement and counselling to help the worker maintain a positive outlook and remain motivated toward future economic and social capability; and (4) provide preventative vocational rehabilitation services when appropriate.

Referrals for vocational rehabilitation services are typically initiated through the Claims Units and Disability Awards Departments by Claims Adjudicators. During 1990, the Department received 11,453 referrals, which represents nearly 14 percent of wage-loss claims first paid. The Vocational Rehabilitation Consultant (VRC) identifies the nature and extent of vocational rehabilitation services to be provided, if any. The central policy issue of vocational rehabilitation that the Board of Governors must address is whether enhanced “employability” or a return to work should be the primary goal.

The WCB Rehabilitation Centre located in Richmond provides a comprehensive array of services and programs. This state of the art facility provides

comprehensive physical and occupational therapy services, as well as physical conditioning (e.g., work hardening) and assessments in 10 unique industrial workshops. Specialized rehabilitation services are provided through the Amputee Unit, Hand Unit, Head Injury Assessment Unit, Functional Evaluation Unit and the Back Evaluation and Education Programs. During 1990, nearly 60,000 files were reviewed by WCB physicians at the Centre, and approximately 12,500 examinations performed. Vocational rehabilitation services were provided to more than 2,500 injured workers during this same time period.

## **Financing the WCB**

The primary source of income for the WCB accident fund and administration costs is the assessment made on provincial employers covered by the Act and those seeking protection through the Personal Optional Protection program. Employers pay the product of their assessment rate, as adjusted for experience rating, and their assessable payrolls. In 1990, the Board collected about \$515 million through these assessments. The other major source of income, especially in recent years, is investment income. As the fund reserves have increased the investment income has risen from under \$100 million in 1981 to over \$300 million in 1990.

Several things seem especially striking about assessment rates in the province. First, the assessment rates, particularly in recent years, seem low by the standards of other jurisdictions in North America. Moreover, they have been declining, while most jurisdictions are seeking to curb explosive growth in costs over the same period. Many factors account for the ability of the WCB to keep assessment rates down. One of those has been the Board's ability to substantially supplement its assessment income through the income that it derives from its investment portfolio. As of December 31, 1990, the investment portfolio of \$3.219 billion had yielded income during the year of \$303.9 million.

In 1981, the WCB estimated its unfunded liability for incurred future costs at over \$509 million. From 1981 through 1985, the Board was able to eliminate its unfunded liability. This was accomplished in part by maintaining an average assessment rate in those years that was more than sufficient to cover the costs of newly developing claims. It was also helped by very high interest rates (both nominal and real) that allowed the WCB to earn large amounts of investment income on its portfolio of bonds. There was also a large adjustment made to prior years actuarial estimates, which accounted for over \$250 million favorable change in position. Pressures were exerted to keep claim expenses down in the mid 1980s as well.

## System Outcomes

The number of new claims registered at the WCB declined precipitously from 1981 to 1984 (by 23 percent), and did not return to the former level until 1989. The number of wage-loss claims first paid declined even more rapidly (30 percent from 1981 to 1984), and did not surpass the previous peak until 1990. Medical aid only claims fell in-between, with an initial decline of 26 percent and a return to the original level by 1990. For the decade as a whole, there was a net decrease in wage-loss claims per worker of 1.5 percent per year and a net decrease in medical aid only claims per worker of 1.1 percent per year.

Permanent disability claims, however, increased during the decade. From a total of 2.1 per 1,000 workers in 1981, permanent disability claims declined to 1.7 per 1,000 workers by 1985. They rose rapidly thereafter, reaching a total of 2.7 per 1,000 workers in 1990. Thus, permanent disability claims rose by 2.9 percent per worker during the decade of the 1980s. This is a significant increase, with important implications for staffing.

Total claim costs charged per worker have increased by 4.9 percent annually during the decade, from \$215 to \$330. When the aggregate figures are adjusted for inflation, constant dollar claim costs have increased in British Columbia by about 1.5 percent per year, or nearly the same rate of increase as employment. The result is a net decrease of .1 percent per year in real claim costs per worker.

WCB staffing declined as employment declined in the early 1980s, with a lag of one to two years, through 1985, and then rose steadily until 1990, when it jumped by 19 percent. Similar increases are anticipated for 1991, so the growth of staffing at the WCB may be an emerging policy issue. Overall WCB employment rose by 2.7 percent per year from 1982 to 1990, but only by 0.2 percent per year after taking account of employment growth in the province.

Appeals activity at the Workers' Compensation Review Board (WCRB) doubled during the period 1981 to 1990. Even adjusting for employment growth, appeals grew by 8 percent annually. The increase has been much greater than that of the wage-loss claim population at the WCB as shown in an increase of 9.6 percent annually in the appeal rate per 100 wage-loss claims first paid. Administrative costs of the WCRB have increased more than twice as rapidly as those of the WCB as well (24.2 percent annually compared to 10.4 percent). This is due to the growth in the number of appeals and efforts by the WCRB to avoid falling behind in their activity. If one takes account of inflation, costs for the WCRB have grown by 18.8 percent per year from 1984 to 1990, 11.7 percent when expressed per WCB wage-loss claim.

Total assessable payrolls increased from under \$16 billion to over \$28 billion during the decade, or 6.8 percent per year. Assessments increased from \$384 million in 1981 to nearly \$500 million in 1990, or by 3.0 percent per

year. The result is that average assessment rates have been substantially reduced. In addition, abatements of \$99 million in 1987 and \$15 million in 1988 were made to British Columbia employers. This remarkable performance was made possible by the investment income the WCB generates out of its reserves, by changes in actuarial assumptions, and by the substantial increase in the maximum assessable wage rate.

## **Attention Points**

In the process of preparing this inventory, certain features of the workers' compensation system seemed especially notable. In most instances, they are identified because they represent special strengths of the system or because they warrant some attention by those seeking to improve it. The points are not listed in any order of priority. For the convenience of the reader, the attention points are clustered by broad subject area that parallel the outline of the text.

### **ADMINISTRATION**

#### **Growth in Staffing**

If one looks at WCB administrative expenditures in terms of either the volume of new claims registered or wage loss claims first paid, and takes account of inflation, the agency has actually kept costs in check quite well. One element, however, bears special watch. Growth in staffing during 1990 and 1991 seem high. Administrative costs have also ballooned since 1989. With net growth of about 19 percent from 1989 to 1990 and again in 1991, the agency may begin to experience problems of absorptive capacity. Very substantial expansion, even if justified by growth in claims activity, places an inordinate burden on the agency to train and productively integrate so many new personnel.

#### **Managerial Turnover**

We have been told repeatedly by staff of their concerns regarding excessive turnover in the managerial ranks. Their dissatisfaction reflects a sense that standards of performance are being changed, that they and their managers have been at risk for speaking their minds, and that personnel decisions seem capricious. Our conclusion is that the quality of agency performance suffers as a result. It should be emphasized that the turnover is not that which is associated with the implementation of Bill 27.

#### **Planning**

By almost any yardstick, the WCB is a large and sophisticated operation.

Because of that it is especially surprising that the agency has generally eschewed intermediate or long term planning. There is an annual budget exercise that involves managers throughout the agency. That cannot, however, be regarded as a substitute for long term planning.

### **Research and Evaluation**

Policy formation is fostered by both research and evaluation. Evaluation can tell the agency where operational problems exist, but one cannot evaluate what does not yet exist, so the contribution of evaluation is limited. A research function, on the other hand, can help identify alternative structures and policies that could be developed to meet institutional challenges. An adequate research and evaluation unit at the WCB would add significantly to institutional capability and sense of direction.

### **Training**

The WCB should consider developing and utilizing resources in the community that can assist with staff development as well as expanding its internal commitment to this critical area. By devoting resources to staff development, the WCB will enable its employees to maintain and upgrade their skills. Also of considerable importance, staff development can assist in an agency effort to boost the morale of employees and reduce turnover.

### **Management Information**

The Information Services Division has provided an excellent database for the agency; what it has not done is provide access to that database in a timely, convenient manner. Greater attention should be paid to getting the information that is already being collected into the hands of managers and other decisionmakers so that it can be utilized.

### **Matrix Management**

Some persons working within the claims units or area offices do not have direct reporting responsibility there. Instead, they report to managers with professional expertise in vocational rehabilitation services, medical services, occupational safety and health, assessments, or support services. The WCB should carefully examine this matrix management approach to ascertain whether a better structure could be found, particularly if a move to greater decentralization should develop.

### **Decentralization**

It is impossible to avoid noting the differences between the area offices and the main office in Richmond. The area offices offer workers, their families, and employers a human scale that seems very approachable. Frequently, problems are dealt with there on a face-to-face basis. This also could be accomplished within the lower mainland by decentralization. The Governing



Board could minimize the risks of going to a more decentralized system by experimenting with the approach, and reserving judgment on the overall strategy until the experiment is evaluated.

### **Occupational Safety and Health**

This administrative inventory has given virtually no attention to the occupational safety and health division (OSH) of the WCB. Still, it is clear to us that the WCB has not created the potential synergy between Compensation Services and OSH. We know of no other situation in North America where there is greater potential to demonstrate the synergy between a compensation system, a rehabilitation facility, and an occupational safety and health program. A conscious effort by the WCB's management to achieve some of the potential benefits from this alliance should be fostered by the agency.

## **THE CLAIMS PROCESS**

### **Adjudicator Workload**

There are many challenging and stressful jobs in an agency such as the WCB, but few compare with that of the Claims Adjudicator. Serving in the very front line of the agency, the Claims Adjudicator's position requires an incredible balancing of skills and abilities. It seems clear however that the agency continues to heap an excessive burden on these people. There must arise an inevitable tradeoff between moving files out and devoting to them the time needed to minimize mistakes. In many instances, decisions that claimants believe are harmful to them are appealed and ultimately are modified, though appeals can be very costly. But errors of overpayment are just as likely to arise, and these are not likely to be subject to review.

### **Paylag and Criteria of Performance**

The agency monitors the percentage of unit and adjudicator cases where first payments are made within 17 days of the injury. The issue raised here is *not* that the paylag standard is inappropriate. Rather, it is that additional criteria for evaluation are needed. We would urge the development of additional performance measures that incorporate a broader range of institutional goals. An undue emphasis on timeliness may lead to some sacrifice in quality of decision making.

## **DISPUTE RESOLUTION**

### **Appeals**

It is difficult to conceive of a system that permits more levels of appeal than this one. Aggrieved parties have numerous bites at the apple. The upshot of

these features is that the system implicitly encourages appeals. That is a policy choice made by the Provincial Government. However, we feel that rapid increases in appeals can be symptomatic of less effective adjudication or communication with the client at an earlier level. The number of appeals and their sources should be monitored continuously by the WCB.

### **Evaluation of the WCRB**

The Workers' Compensation Review Board is a very significant player in the entire process of compensating workers. For a tribunal of such significance, we were surprised to find that no outside, independent performance evaluation had been made or was contemplated. In addition, an appeal body should have its decisions reviewed for consistency and timeliness.

There have been allegations that both are lacking in WCRB findings, although the current chairman disputes this. We believe that any public program of this magnitude warrants periodic and independent evaluation of its performance to assure that it is operating with fairness and efficiency in compliance with its charge.

### **WCB-WCRB Relations**

For much of the past decade, tension has existed between the Review Board and the WCB. With the recent changes in the structure of the WCB, greater cooperation and understanding between the WCB and the WCRB may be possible. It is urgently needed to assure that the best feasible job of adjudication is done on a timely, cost-effective basis.

### **Manager Reviews**

If the WCB decides to decentralize its claims processing facilities in the lower mainland area, we urge that the manager review function devolve to the local office rather than being retained in Richmond. While there may be some loss in consistency between offices, the improvements in management effectiveness and "natural justice" for clients seem worth the tradeoff.

### **Reducing the Number of Medical Review Panels**

The organization of the Medical Review Panels seems to work well, aside from the substantial delays that have been experienced. However, it should be possible to reduce the instances in which a Medical Review Panel is needed. Again, as in the case of better adjudicator decisions, this would be in the interest of the entire system.

### **Lawyers**

It is no great challenge for a system like British Columbia's to minimize the use of lawyers. Rather, the significant challenge is to provide a fair and equitable system where lawyers are not needed to represent the interests of the parties involved. In general, this province has managed to meet that

challenge successfully, although some persons believe that lawyers are likely to become more significant in the workers' compensation system. If the use of lawyers does increase, the WCB may need to move to regulate legal fees, assuming that is determined to be constitutional.

Worker advocates still assert that there is insufficient qualified representation available to injured workers. The WCB or the Ombudsman may wish to monitor this situation to determine if the system is undergoing significant change in that regard.

## **BENEFITS**

### **Generous But Complex**

Benefits to injured workers and their dependants are relatively generous in British Columbia. The maximum weekly benefit for total disability was the highest in Canada as of January 1, 1991, and the minimum benefit was near the top as well. The province also has a very complicated scheme of benefits. Fairness in compensation may sometimes require complicated benefit schemes to insure that the social objective is accomplished. However, there is also a virtue in being able to explain to a worker or dependant what the basis is for a given level of compensation. Some elements of the current system are not well understood, and that is not surprising. The existing degree of complexity may not itself warrant change, but in considering any future alterations of benefits, the goal of simplicity should be kept in mind.

### **Deeming Earnings**

The theory behind the dual permanent partial disability benefit seems sound. The actual practice of assessing the worker's future earnings capacity is less sound. The implication of this is that the Vocational Rehabilitation Consultants must be very well trained, their work must be carefully supervised, and the agency must monitor the quality of the assessments done. The purpose of this monitoring is to allow the agency to learn from its own experience by comparing hypothetical judgments with subsequent reality.

### **Income Continuity Benefits**

The WCB should give attention to shortening the time gap between the cessation of temporary benefits and the beginning of permanent disability benefits. This would be abetted by encouraging earlier intervention of the Vocational Rehabilitation Consultant in cases that involve significant risks of continuing wage-loss after recovery. The use of income continuity benefits needs to be assessed and possibly revised in this regard.

### **Earnings-Loss Pensions**

It is widely believed in many workers' compensation jurisdictions that the

major disability cases are undercompensated and the minor disability cases are overcompensated, relative to lifetime earnings losses. The British Columbia system may have very different characteristics. However, the potentially large disparity in costs and the relatively “soft” evidence from which such differences in compensation arise, convince us that this is an area that needs further attention. The WCB should launch a study to determine whether approximate horizontal equity is being maintained (i.e. whether persons with similar disabilities are being compensated similarly), and whether vertical equity goals are being met (i.e. whether persons with different levels of disabilities are being compensated appropriately).

## **REHABILITATION**

### **Organizational Structure at the Service Centers**

Within the current organizational structure, attention needs to be given to the role of the Vocational Rehabilitation Consultant and the level of management support (e.g., clinical supervision, ongoing training) provided to these professionals. If decentralization were to result in the development of satellite service centers, the organizational structure should be designed to enhance accountability for services delivered, provide more immediate access to professional clinical supervision, and develop a more cooperative team approach to the adjudication/rehabilitation process.

### **Goals and Expectations**

There needs to be some clarification of the operational goal of the vocational rehabilitation process at the WCB. Specifically, is the goal to enhance the injured workers employability, or is it the actual placement and return to work of the disabled worker? In setting out a clear policy in this regard, the role and function of the Vocational Rehabilitation Consultant will be better defined, performance expectations can be made more explicit and measurable, and accountability will be enhanced.

### **Early Intervention**

Almost all persons familiar with vocational rehabilitation believe that the probability of success, however defined, is enhanced when intervention occurs early. Presently at the WCB, there is a desire to involve the consultant at a much earlier stage of the medical rehabilitation process as part of a coordinated team approach to service provision. The WCB should be encouraged to explore possible service delivery options throughout its operations to enhance early intervention efforts and secure more effective return to work performance.

## **Job Search Services**

The Job Search Program appears to be a highly useful component of Vocational Rehabilitation Services, based on its utilization in other jurisdictions. However, the current program is extremely limited in its size and scope relative to the potential number of clients to be served. An expansion of the program and widening of its services are needed.

## **Access to Services in Area Offices**

On the basis of our observations, the range of rehabilitation services that is available in area offices is more limited than those existing in Richmond. The differential impact of these limitations should be assessed so that possible adjustments can be weighed and considered. This is particularly important where limitations of the local job market constrain the options available for vocational rehabilitation.

## **Funding for Vocational Rehabilitation**

A number of persons both within and outside the WCB have commented that the organization spends very little on Vocational Rehabilitation Services. Presently, with a lack of outcome data related to expenditures in this area, it would be difficult to argue this issue. At the heart of this matter is the WCB's policy. How much of its resources should the WCB devote to rehabilitation and return to work services? If the WCB wishes to determine the pattern of its rehabilitation expenditures on a cost-effectiveness basis, it follows that more studies and ongoing program evaluation will be required to identify what is cost effective for the organization, and the injured workers it serves.

## **OTHER ISSUES**

### **Employer Involvement**

One of the features of the British Columbia system that differentiates it from many others is the lack of employer involvement. While employers help service the system by providing information on injuries, and pay for it through assessments, their involvement with the WCB is quite passive. Further, the appellate process has not been choked by employer appeals. As is true everywhere, there is employer concern about the level of costs, and increases in those costs. But these concerns peaked with the experience of the mid 1980s when the WCB funded their unfunded liability on the way out of a recession, and when employers objected to the resulting surplus, and secured assessment abatements in 1987 and 1988. In recent years, the employer community seems satisfied with WCB performance. As long as costs are kept in check, this attitude is likely to continue.

## **Public Opinion — Staff Morale**

Few things became apparent to us more quickly than the low level of staff morale at the WCB. Aside from attacks in the media, much of which was not rebutted, the agency had stormy relations with the WCRB, was severely rebuked by the Ombudsman, and was often criticized by workers' groups. The staff's morale was an obvious casualty, even though the criticisms were targeted largely at WCB policies and leadership. Labor relations difficulties may have exacerbated the morale problem.

Our sense of the WCB staff is that they are generally highly motivated and dedicated to providing quality service to injured workers. When service quality breaks down, the problem is likely to be the result of excessive workloads. The Board of Governors would do well to nurture its staff and regard it as the unique strength of the agency. There are numerous ways to do that, including the provision of opportunities for staff development and avenues for upward mobility within the agency. Another important goal would be to build a more cooperative relationship with the union, one based on mutual trust and respect.

## **Costs**

All across North America, concerns have mounted regarding the costs of workers' compensation. By contrast, British Columbia is able to provide strong levels of benefits and a high quality of service to most injured workers, without having employer costs explode. This feat is particularly remarkable for a province that has experienced a decade of mediocre economic performance. The WCB has been blessed with a very beneficial performance by its investment portfolio during a time of generally falling interest rates. The tough decision to eliminate the large unfunded liability that existed in the early 1980s helps make it easier to fund the system today. In short, a responsible policy of funding has led to enviable financial results for the WCB and the province's employers. It is vital to the future that this excellent performance be continued.

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# Workers' Compensation in British Columbia

An Administrative Inventory at a  
Time of Transition

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# Chapter 1

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## Introduction

Improving the effectiveness of workers' compensation program administration is an increasingly important theme in legislative debates across North America. Certainly workers have long been concerned that benefits be adequate, prompt and delivered in an equitable manner. Increasingly, employers along with their workers, have paid attention to the program as international competitiveness issues have become so critical. Workers' compensation costs are routinely cited as an important factor in plant location decisions and have become one of the stock-in-trade items for industrial development consultants. But there are few sources that describe how individual state and provincial workers' compensation systems actually function, even fewer that take a comparative perspective.

The methodology of this study is derived from a series of such studies published in the United States by the Workers Compensation Research Institute of Cambridge, Massachusetts. Administrative Inventories have been published by the Institute on Connecticut, Texas, Washington, Michigan, Maine and Minnesota to date. Studies of Pennsylvania, New York, Georgia and Wisconsin are forthcoming. The series was developed to assist public policy makers and other interested participants in making informed comparisons across jurisdictions. Peter Barth, one of the authors of this volume, helped design the administrative inventory format for the Workers Compensation Research Institute and was the author of the first such study published (Connecticut). He and Allan Hunt have each published an additional study in the series (Texas and Michigan, respectively). The inventories all use a common outline, and to the extent possible, address the same basic issues.

This study came into being because of the interest of James Dorsey, Chairman of the Board of Governors of the Workers' Compensation Board of British Columbia (WCB). Upon his appointment in November 1990 he saw a need for an evaluation of the WCB operations to establish a baseline against

which future improvements could be measured. He requested that the Upjohn Institute head a team to perform an Administrative Inventory of the British Columbia system, using the established format.

The objective of this volume is to describe, with supporting evidence, how the workers' compensation system in British Columbia actually functions, and to do so in a way which maximizes the comparability with the other administrative inventories already completed. The treatment is descriptive and the goal is to convey a brief, but adequately detailed, picture of the system. The intent is to allow policymakers and other interested persons to obtain an understanding of the major features of the British Columbia system.

## **The Scope of the Study**

This inventory addresses eight core issues in the British Columbia workers' compensation system:

- How is the system administered?
- How do claims flow through the system?
- What dispute resolution procedures are used, and to what effect?
- What benefits are paid?
- How are vocational rehabilitation services utilized?
- How is the system financed?
- What are the actual costs of administration, benefits, claims processing, and appeal?
- What aspects of the system deserve further attention?

These questions are addressed for the British Columbia system as it existed in July 1991, but data are generally presented for the period 1981 to 1990. This means that it is the earlier WCB organization and administration that produced the results discussed in the text. Where necessary, differences between the previous system and the current system are discussed. This is a primary issue only in the areas of governance of the WCB and appeals from Workers' Compensation Review Board (WCRB) findings, where the statutory amendments of Bill 27 provide entirely new structures.

## **Research Approach**

We conducted this study using a four-step approach. The elements are: (1) an examination of the Act and the policies developed for its implementation, (2) relevant data gathering and analysis, (3) interviews with individuals knowledgeable about the system and its operation, and (4) reconciliation of the observations we have made about the system with the viewpoints of others.

## **THE ACT AND ITS IMPLEMENTATION**

We began the inventory with an examination of the Workers' Compensation Act and Bill 27 (which amended the Act effective in 1991), policy manuals from the WCB and WCRB, and the *Workers' Compensation Reporter* (which contains the decisions of the WCB Commissioners and selected Review Board findings). We reviewed court interpretations of the relevant statutory provisions, WCB annual reports from 1976 to 1990, and published literature on the British Columbia workers' compensation program.

The literature surveyed included the following published reports: "Commission of Inquiry on the Workmen's Compensation Act: Report of the Commissioner," by Justice Charles W. Tysoe (1966); "Review of Organization and Administration of the Workers' Compensation Board of British Columbia," by P. S. Ross & Partners (1976), "Workers' Compensation System Study, Public Report No. 7," by the Ombudsman of British Columbia (1987), and "Report and Recommendations to the Minister of Labour and Consumer Services," by the Advisory Committee on the Structures of the Workers' Compensation System of British Columbia (1988). We also surveyed literally hundreds of documents from the WCB, both published and unpublished.

An extremely valuable resource was the set of policy manuals published by the WCB. The "Rehabilitation Services and Claims Manual" was invaluable to understanding the way in which Board policy is actually applied. The "Assessment Policy Manual" performs a similar function in describing the methods used to finance WCB operations. We also used the "Workers' Compensation Review Board Policies and Procedures Manual" to help in understanding the appeal process at the WCRB.

## **DATA COLLECTION**

The WCB and WCRB provided us with data we requested covering the past ten years. The data are designed to provide a clear perspective on the present status of the system, but also are to assist with an understanding of the antecedents of today's system, to provide some historical perspective.

Many times it has been necessary to qualify the observations drawn from the data, as there are many economic, social, statutory, and administrative changes impacting on the system, and measurements made at two different times are not always comparable. We have tried to keep such qualifications to a minimum in the interest of effective communication. We hope we have not distorted the system performance in the process.

## **INTERVIEWS**

The interviews were designed to probe beyond the statutory language and policy manuals, to discover how the law actually is implemented. We interviewed over 100 individuals with substantial experience in and around the British Columbia system. They represent a wide variety of interests; claims adjudication personnel, vocational rehabilitation consultants, area office managers, claims unit managers, appellate staff, and medical personnel, as well as the top management at the WCB. Outsiders interviewed included representatives of the British Columbia Medical Association, the Workers' Compensation Advocacy Group, and representatives of labour and industry (Council of Forest Industries, British Columbia Federation of Labour, Teamsters Union, Operating Engineers, Floorlayers Union, IWA). We talked with the Chairman, the Registrar, and the Administrative Manager of the Workers' Compensation Review Board and a Medical Review Panel Chairman. Other groups that have an official interest in the workers' compensation system, such as the Ombudsman of British Columbia, the Workers' Advisers Organization, Employers' Advisers Organization, and the Ministry of Labour and Consumer Services were also included. We interviewed a representative from the office of a prominent member of the Legislative Assembly from the minority party and a handful of injured workers, as well. All the individuals we interviewed are listed in Appendix Table SA-3.

We made special attempts to get a diverse set of perspectives to help clarify our view of various parts of the system. The research team of three individuals spent a total of over five weeks on site in Richmond, Vancouver, Victoria, Vernon, Prince George, Terrace and Fraser Valley, attempting to insure that we had absorbed as many as possible of the different perspectives on the WCB.

## **RECONCILIATION**

Finally, we submitted the analysis and conclusions that resulted from our process to many of the people we interviewed, the people who know the system the best. Their cooperation made the study possible in the first instance as they openly shared their points of view with us. Their willingness to cooperate further by checking our perspectives is invaluable to completion of the study.

A limitation of the research approach is that we did not have the opportunity to survey or to interview many individual claimants. Since disabled workers are the major beneficiaries of the workers' compensation program, that can be a serious shortcoming. However, the time and expense involved in securing a representative sample of claimants were prohibitive. Thus, this report relies on the Workers' Advisers Office, the Ombudsman, the represent-

atives of organized labour and injured workers, the personnel of the WCB, and our own consciences to represent the views of injured workers in British Columbia. We hope they will feel that this is their report as well.

## **Organization of the Report**

The report follows the list of basic questions given above. The second chapter provides an overview of workers' compensation administration in British Columbia; who is responsible, to whom are they responsible, and how did they get there? The third chapter examines the processing of claims in the British Columbia workers' compensation system. Chapter 4 discusses the dispute resolution mechanisms in British Columbia.

Chapter 5 describes the benefits available to workers' compensation claimants in British Columbia. The sixth chapter is concerned with the vocational rehabilitation system maintained by the WCB, including the Leslie R. Peterson Rehabilitation Centre in Richmond. Chapter 7 examines the financing of the Board as a public accident fund. Chapter 8 develops the description of system outcomes.

Finally, the last chapter reports our perspectives on some areas that might bear additional examination by policymakers. We hope that the attention points raised will provide a stimulus for discussion of further improvements in the British Columbia system. They certainly are not meant to provide a blueprint for what those improvements should be, this needs to be decided by the workers, employers, and citizens of British Columbia.



## Chapter 2

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# Administration of the Workers' Compensation Act

### **Introduction**

The original Workers' Compensation Act took effect in British Columbia on January 1, 1917. Workers exchanged the right to sue their employers at common law for the "no-fault" right to compensation for personal injury arising out of and in the course of employment. Further, the Act established an Accident Fund to pay benefits for that purpose, funded by assessments against employers who were subject to the Act. The Act was reorganized and consolidated in 1979 and now is referred to as the "Workers Compensation Act, RS 1979, c. 437, as amended."

In British Columbia, as in Canada generally, workers' compensation from the beginning was considered to be a public matter handled by a public body. The Workers' Compensation Board (WCB) of British Columbia has administered the Act continuously since 1917 as an independent provincial agency. The WCB is charged with the responsibility to pay the benefits specified by the Act to injured workers, their dependants and survivors. The WCB also has the right to assess employers subject to the Act for the monies necessary to "meet all amounts payable from the accident fund during the year" and to "provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all injuries which occur during the year." Thus, the WCB does not administer a "pay as you go" system, but one that is intended to be fully funded and actuarially sound.

Coverage is mandatory for industries enumerated in the Act, and voluntary for others. Among those not covered are; banks, insurance companies, law firms, accounting firms, medical and dental practices, social service agencies, and guiding and outfitting businesses. In addition, certain occupations are excluded from the definitions of "worker" or "employer" by statute. These

include casual workers (lawn mowing, etc.), players, performers and similar artists, outworkers, and certain members of the employer's immediate family.

Some of these uncovered individuals (employers, employer's family members, and independent operators) can apply for coverage under the terms of the Personal Optional Protection (POP) provision of the Act. Such coverage can be granted for periods of one month or more. Individuals covered under this program pay the same assessment rate per \$100 of payroll as other employers in the class, but they elect the level of income protection they desire (subject to verification that it does not exceed actual income if greater than \$2,300 per month). Coverage is also extended as a matter of policy to certain voluntary workers who are working without pay in the public interest (volunteer firefighters, mine rescue workers, volunteer nurses, reserve police officers, etc.)

The WCB is the final arbiter on questions of both law and fact, notwithstanding the existence of an independent Workers' Compensation Review Board, and is subject to judicial review primarily on the grounds of "denial of natural justice" or WCB jurisdiction.

Section 96 of the Act specifies that:

The board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising under this Part, and the action or decision of the board on them is final and conclusive and is not open to question or review in any court,...

## **Organization within Provincial Government**

The WCB is an independent provincial agency whose Board of Governors are appointed by the Lieutenant Governor in Council. The Board is not dependent on the Provincial Government for its revenues, as these are raised by WCB assessment against employer payrolls throughout British Columbia. The Ministry of Labour and Consumer Services exercises general oversight of the WCB and it is this Ministry who transmits the Annual Report of the WCB to the Lieutenant Governor. In actual fact, the WCB operates with very considerable independence from the Provincial Government.

## **ORGANIZATIONS IN THE WC SYSTEM**

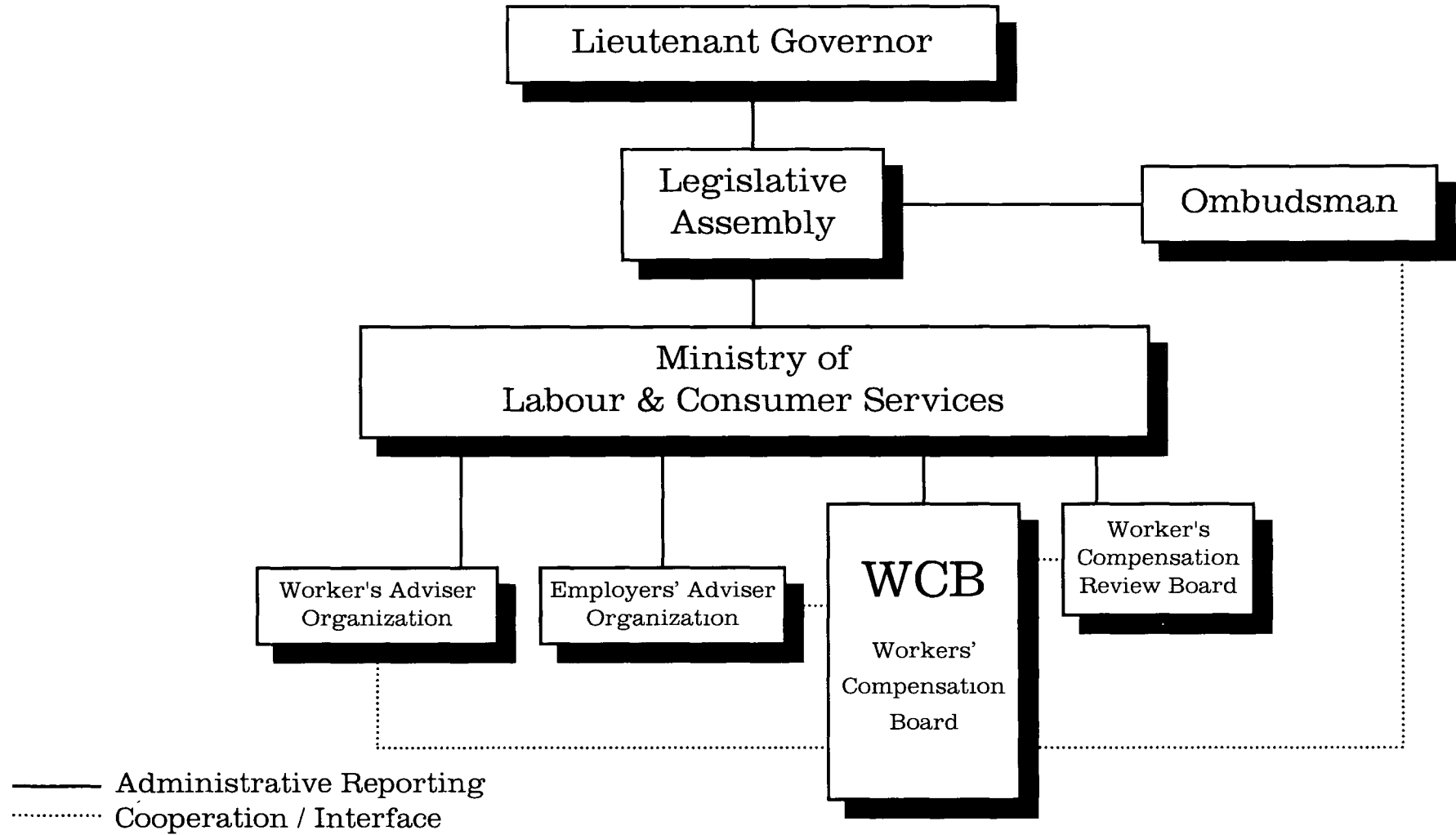
While the Workers' Compensation Board plays the primary role in providing benefits to disabled workers in British Columbia, there are a number of other organizations that play important roles in the workers' compensation system. They will be briefly outlined here and described more fully below.

The decisions of the WCB are subject to review by the Workers' Compensa-



Figure 2.1

## Organization of Workers' Compensation System in British Columbia



tion Review Board (WCRB), which was created in 1974 as Boards of Review and renamed in 1986. After considerable institutional controversy, the findings of the WCRB were made immediately enforceable by the Guadagni decision of the British Columbia Supreme Court in 1988. Prior to that time, it had been WCB policy to use its discretion under Section 96(2) of the Act to “reconsider” Review Board findings in light of WCB policy or findings of fact, thereby delaying implementation of the WCRB’s findings. While the authority of the WCB is maintained, they are required to give immediate effect to WCRB findings now. The Review Board and its role in the system will be discussed in Chapter 4 below.

There are also organizations created by the Act to facilitate access by workers and employers to its provisions. (See Figure 2.1) The Workers’ Adviser Office (WAO) employs some 16 people to assist workers or their dependants in bringing claims, including actually representing them before the WCB or WCRB if necessary. Similarly, the Employers’ Adviser Office (EAO) has a staff of 6 to perform advisory and representative services on behalf of employers subject to the Act.

In addition, the Ombudsman of British Columbia is involved in oversight of the workers’ compensation system, primarily through the request of injured workers for assistance. The ombudsman is not permitted to become involved in an issue which is, or could be, subject to an appeal, so their direct involvement with claimants is limited. The ombudsman also conducted a substantial independent study of the workers’ compensation system in 1987, that foreshadowed some of the changes to the Act that were subsequently enacted into law in Bill 27 in 1989.

The Workers’ Compensation Review Board also reports administratively to the Ministry of Labour and Consumer Services (See Figure 2.1), and its budget is approved by the Ministry before being invoiced to the WCB to be included in the WCB assessment rates. Similarly, the Workers’ Adviser Office and the Employers’ Adviser Office report to the Ministry of Labour and Consumer Services and their costs are also passed along to the WCB for inclusion in the assessment. Thus, the employers of British Columbia bear the direct cost of the entire workers’ compensation system and its administration. While the WCB raises the money to fund these other operations, they exercise no influence over them in a policy sense. Policy guidance comes from the Ministry of Labour and Consumer Services.

## **Organization, Functions and Staffing of the WCB**

Before June 3, 1991 the Workers’ Compensation Board of British Columbia was governed by Commissioners, appointed by the Lieutenant Governor in Council. The Workers’ Compensation Act specified there were to be no more

than five (5) Commissioners, with one of their number serving as Chairman. All Commissioners received full-time salaries for their duties.

The Commissioners served three functions at the WCB. They were the policymaking body, they were the final appeal authority, and the Chairman served as the chief executive officer of the WCB. In addition, the previous Acting Chairman of the Board also served concurrently as General Manager of the Occupational Safety and Health Division and for a brief time had served as Acting General Manager of Compensation Services as well. All this was accomplished with an executive staff of 12 employees and an Appeals Administration staff complement of 34 persons, headed by a Director of Appeals Administration.

## **BILL 27 AMENDMENTS**

The administrative superstructure of the WCB was substantially overhauled by Bill 27, which was enacted in 1989 and took effect on June 3, 1991. It replaced the old system of Commissioners with a Board of Governors and created a new Appeal Division, headed by a Chief Appeal Commissioner. This amounted to a separation of the policymaking and appellate functions of the old Commissioners.

Bill 27 amendments also created a new position of President and Chief Executive Officer to administer the day-to-day functions of the WCB. This means that the administrative function of the old Commissioners has also been split off and will be handled separately. This new WCB came into existence with the swearing-in of the new Board of Governors and Appeal Commissioners on June 3, 1991. It is the administrative structure in place on July 1, 1991 which will be described here, with only occasional references to the previous structure as necessary to provide the proper context. However, in later chapters when operating results are described for the last 10 years, it will be the old structure that is under observation.

The Board has responsibility for a number of other functions that are not typically a part of workers' compensation systems (e.g., occupational safety and health and criminal injury compensation), and they will not be reviewed here. However, it needs to be noted that the WCB administers these functions, and it may be impossible to totally segregate the cost of specific WCB functions. For some statistics, it may be misleading to compare jurisdictions since very different functions may be included.

## **OCCUPATIONAL SAFETY AND HEALTH DIVISION**

First, the WCB is unusual in that it also administers the occupational safety and health program in British Columbia. The Occupational Safety and Health Division of the WCB administers a program of standards setting and

enforcement throughout the province. During 1990, the OSH Division conducted 48,388 workplace inspections, wrote 82,430 compliance orders, and assessed 862 penalties. The Division also maintains an extensive worker and employer safety education program, with 3,580 presentations made by WCB safety, hygiene, and safety and health officers during 1990. The WCB is well known for their safety publications with numerous international prizes and awards. At the end of 1990, the OSH Division of the WCB had 315 permanent employees.

## **CRIMINAL INJURY SECTION**

The WCB administers the Criminal Injury Compensation Act in British Columbia, as well. This Act provides compensation for personal injury or death resulting from crimes within the province. Victims of criminal acts, or their dependants, are eligible for medical, loss of earnings, pain and suffering, and rehabilitation benefits of up to \$50,000. These claims are administered within the Legal Services Division of the WCB and the claim costs are reimbursed by the Provincial and Federal governments. The Vocational Rehabilitation Department also works with these claimants. At the end of 1990, 17 permanent WCB employees were involved in this activity in the Legal Services Division plus other direct services providers.

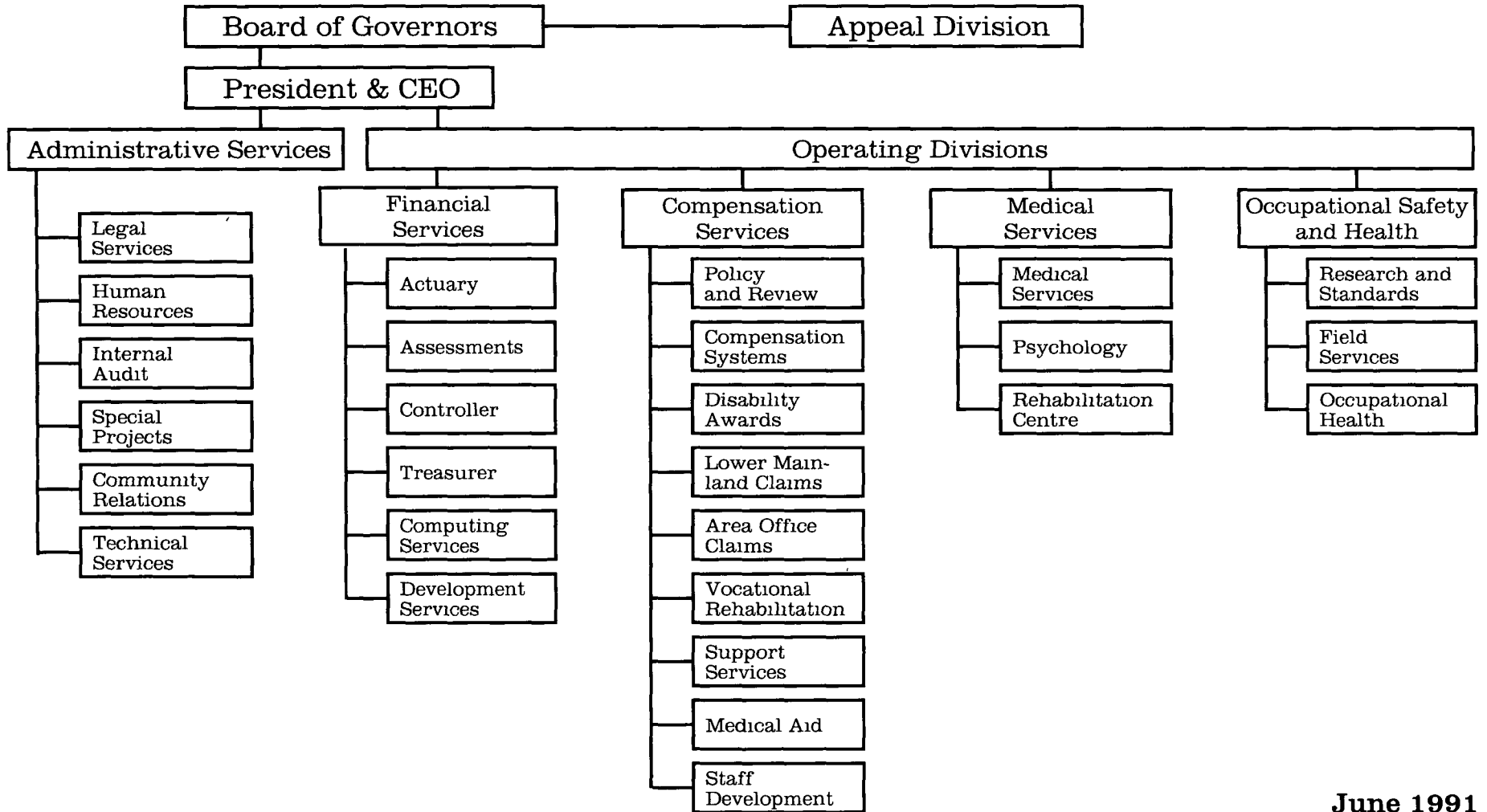
## **ORGANIZATIONAL STRUCTURE OF THE WCB**

The WCB administers the Act from its offices in Richmond, nine Area Offices located around the province (Cranbrook, Courtenay, Kamloops, Nanaimo, Nelson, Prince George, Terrace, Vernon, and Victoria), and several work centres in isolated geographic areas. Figure 2.2 shows the overall organizational structure of the WCB. There are four main operational divisions, plus a number of special purpose divisions and departments, which are listed at the left of the figure and report directly to the President. Each of the Divisions is headed by a Vice President. The next level is generally the department, headed by a Director. Some departments, human resources for example, are also headed by a Vice President and some departments are headed by Managers (e.g., Medical Aid).

The Compensation Services Division, consisting of nine departments, is the largest division of the WCB, with 747 permanent employees at the end of 1990. Compensation Services has responsibility for administering wage loss, pension and medical aid benefits to injured and occupationally diseased workers. This means that Compensation Services makes the decisions on compensating disabled workers for both temporary and permanent impairments arising out of and in the course of employment. This includes the

Figure 2.2

## Administrative Structure of the Workers' Compensation Board



responsibility for adjudicating the right to compensation, and determining whether vocational rehabilitation services could usefully be applied to return a disabled worker to gainful employment. The Compensation Services Division will be described in more detail in a separate section below.

The Medical Services Division advises Claims Adjudicators and Vocational Rehabilitation Consultants on medical matters relative to claims. It is responsible for the evaluation of permanent functional impairment, the supervision of the physical rehabilitation of many injured workers, and the administration of the Psychology Department. In addition, Medical Services operates the Leslie R. Peterson Rehabilitation Centre, which provides disability assessment and rehabilitation programs to injured workers. At the end of 1990, the Medical Services Division had 299 permanent employees.

The Financial Services Division is responsible for raising the funds for the WCB through its Assessments Department and the management of the Board's substantial investments by the Treasurer. Financial Services also includes the offices of the Controller, the Actuary, and the Statistical Services Department. The Information Services Division (ISD) is also part of Financial Services.<sup>1</sup> It includes two departments, Development Services and Computing Services that are shown on the figure. ISD is responsible for the information and data processing needs of the WCB. This includes providing hardware, software, and database applications. The WCB is very thoroughly computerized by public workers' compensation agency standards. During 1990, the WCB mainframe computer handled over 400,000 transactions per day. There were a total of 319 permanent employees in the Financial Services Division at the end of 1990.

Figure 2.2 includes Community Relations and Technical Services under the administrative services arm. There were 98 permanent employees involved in these functions at the end of 1990. For completeness, Figure 2.2 also shows the Human Resources Department (33 employees), Legal Services Department (37 employees), Internal Audit Department (8 employees), and Special Projects Department all of which serve the needs of the President and Board of Governors directly. Human Resources and Legal Services are headed by Vice Presidents.

## **THE BOARD OF GOVERNORS**

The 13 voting members on the Board of Governors of the WCB are appointed by the Lieutenant Governor in Council for terms of up to 6 years. The Board is presided over by a voting Chairman, with five of the members designated as "representative of workers," five designated as "representative of employers" and two additional voting governors who are "representative of

<sup>1</sup> After our observation date of July 1, 1991 the Information Services Division was given its own Vice President and elevated to full division status.

the public interest.” In addition, the President of the WCB and the Chief Appeal Commissioner are non-voting members of the Board of Governors by virtue of their office. A majority of the voting members in office constitutes a quorum of the Board.

The Board of Governors is the highest authority of the WCB and Section 82 of the Act specifies they “shall approve and superintend the policies and direction of the board, . . .” The Board meets at the call of the Chairman and all costs of the Board are paid by the Accident Fund. The voting members of the Board of Governors are part-time office holders. The Board issues its policy pronouncements in Decisions which are published in the *Workers’ Compensation Reporter* as well as through amendment of the various manuals which have been adopted by the Governors as their stated policy.

## **APPEAL DIVISION**

The Appeal Division was established by Bill 27 of 1989. The Division consists of a Chief Appeal Commissioner appointed by the Board of Governors and a variable number of Appeal Commissioners to be appointed by the Chief Appeal Commissioner, selected in accordance with policies established by the Board of Governors. One of these is appointed as Registrar, with the authority to grant extensions of time for appeals, or for decisions to be rendered and to act for the Chief Appeal Commissioner in her absence or in a case where she has a possible or actual conflict of interest or appearance of bias. (See Appeal Division Decision Number 2, May 29, 1991.)

The Appeal Division has authority to hear appeals from Review Board findings by employers or workers (or their dependants), referrals of Review Board findings from the President of the WCB, reconsideration of previous Appeal Division or Commissioners’ decisions, occupational safety and health penalty appeals, appeals of assessment matters, and appeals of decisions under the Criminal Injury Compensation Act. (Appeal Division Decision Number 1, May 29, 1991) In addition, the Board of Governors of the WCB have designated a number of other responsibilities relating to assessment disputes, charging of claim costs, first aid penalties, and the Board’s obligation to issue certificates to the Court. The Appeal Commissioners are appointed expressly as representative of workers, representative of employers, or non-representational members.

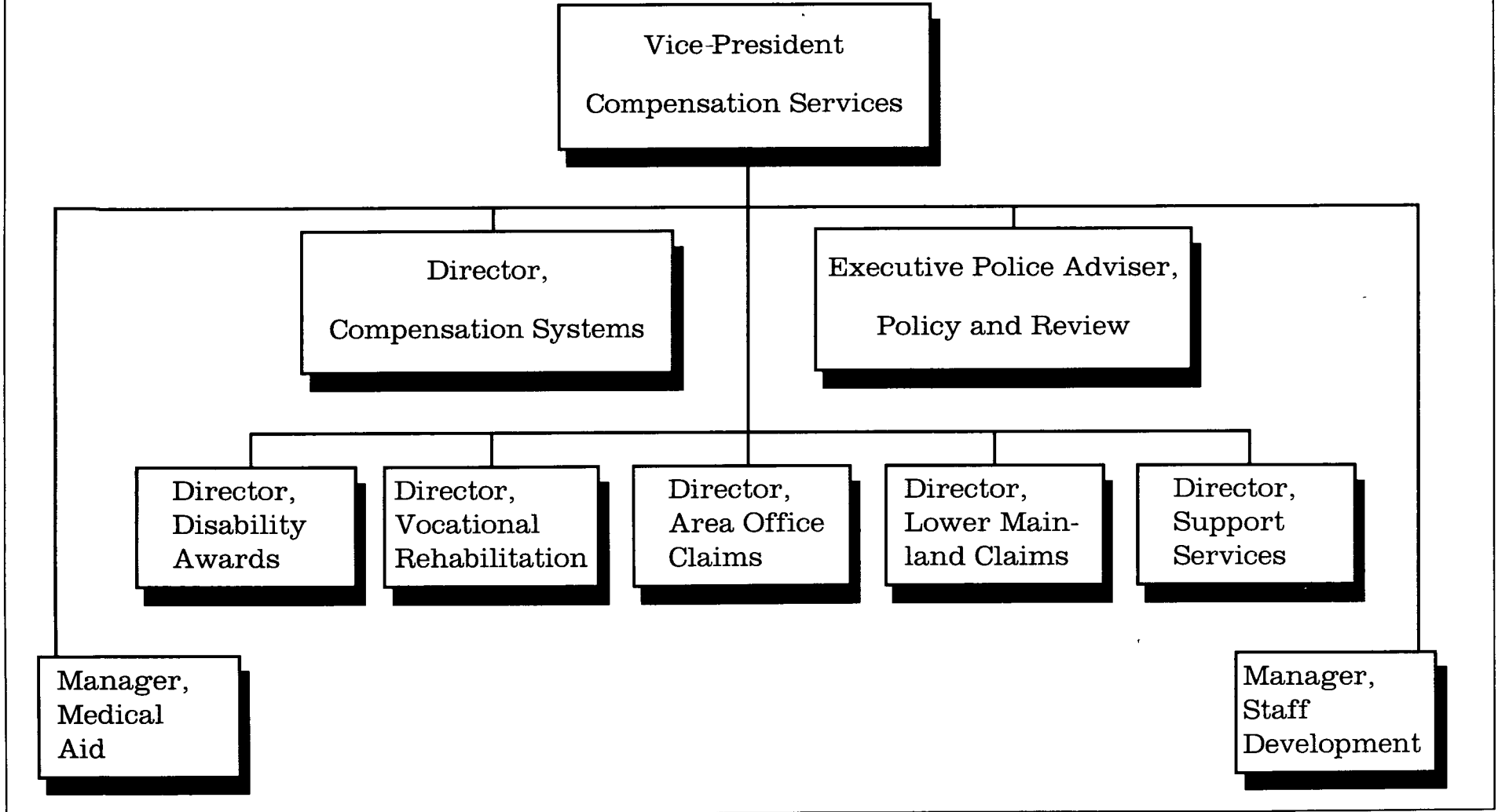
## **Compensation Services Division Organization and Function**

As indicated earlier, the Compensation Services Division is the largest division with the WCB. Since the primary purpose of this report is to describe how the workers’ compensation system functions, a good deal of attention

Figure 2.3

June 1991

# Organization of Compensation Services





will be paid to this critical division. Figure 2.3 shows that it is organized into 9 Departments: Policy and Review, Compensation Systems, Staff Development, Medical Aid, Disability Awards, Area Office Claims, Lower Mainland Claims, Support Services, and Rehabilitation Services. The office of Policy and Review analyzes policy issues and provides policy guidance to the WCB. Compensation Systems is responsible for the maintenance and development of manual and computer systems used in the Compensation Services Division. Advising Divisional Management on a variety of WCB effectiveness issues is also part of their mandate. The Staff Development Department provides services to Compensation Services staff for initial training (particularly of adjudication and vocational rehabilitation personnel) and updating of skills as necessary.

## **CLAIMS ADMINISTRATION**

The direct administration of claims is split into four parts, according to location of claim or severity of disability. The Medical Aid Department (AMAC) administers the payment of medical bills for all WCB claimants (about 40 employees). The Disability Awards Department adjudicates and administers all fatal and permanent disability claims (about 42 employees). Adjudication of temporary disability claims is split between the Area Offices (about 229 employees) and Lower Mainland (Richmond) office (about 168 employees) according to the place of injury or residence of the injured worker.

The Lower Mainland Claims Department is further divided among a series of seven (7) Claims Units that handle adjudication and oversight functions on the basis either of the nature of the claim or random assignment. Some claims are administered by the Rehabilitation Centre for clients who are undergoing special rehabilitation treatments. The simplest claims (no wage loss or minimal wage loss) are triaged to “Unit 9” for rapid processing and to minimize traffic flow to the other units.

Industrial disease claims and claims requiring more extensive investigation are adjudicated in the Special Claims Unit. Examples would include WCB staff claims, third party claims where legal action is indicated, noise induced hearing loss claims, interjurisdictional claims, out of country claims, claims from volunteers, work study and vocational student program claims. Special Claims Unit staff receive additional training in these specialized areas.

There are five (5) regular claim units in the Richmond WCB office. “Claim Units 1 through 5” are assigned claims on a random basis by the claims registration process. The staffing of a typical Richmond claims unit is shown in Table 2.1. About 40 to 45 employees typically work in such a claims unit and they will process about 15,000 new wage-loss claims in a year plus adjudicate numerous matters having to do with old and continuing claims.

**Table 2.1 Typical Richmond Claims Unit**

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MANAGEMENT		2
Manager	1	
Administrative Support Manager	1	
OFFICER STAFF		15
Claims Adjudicators	7	
Claims Officers	4	
Rehabilitation Consultants	4	
SUPPORT STAFF		23
Case Assistants	5	
Phone Control Clerks	3	
File Clerks	6	
Stenos	5	
Payment Clerks	2	
Medical Secretaries	2	
RESOURCE		2
Medical Advisers	2	
TOTAL		42

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SOURCE: Compensation Services Division, Workers' Compensation Board

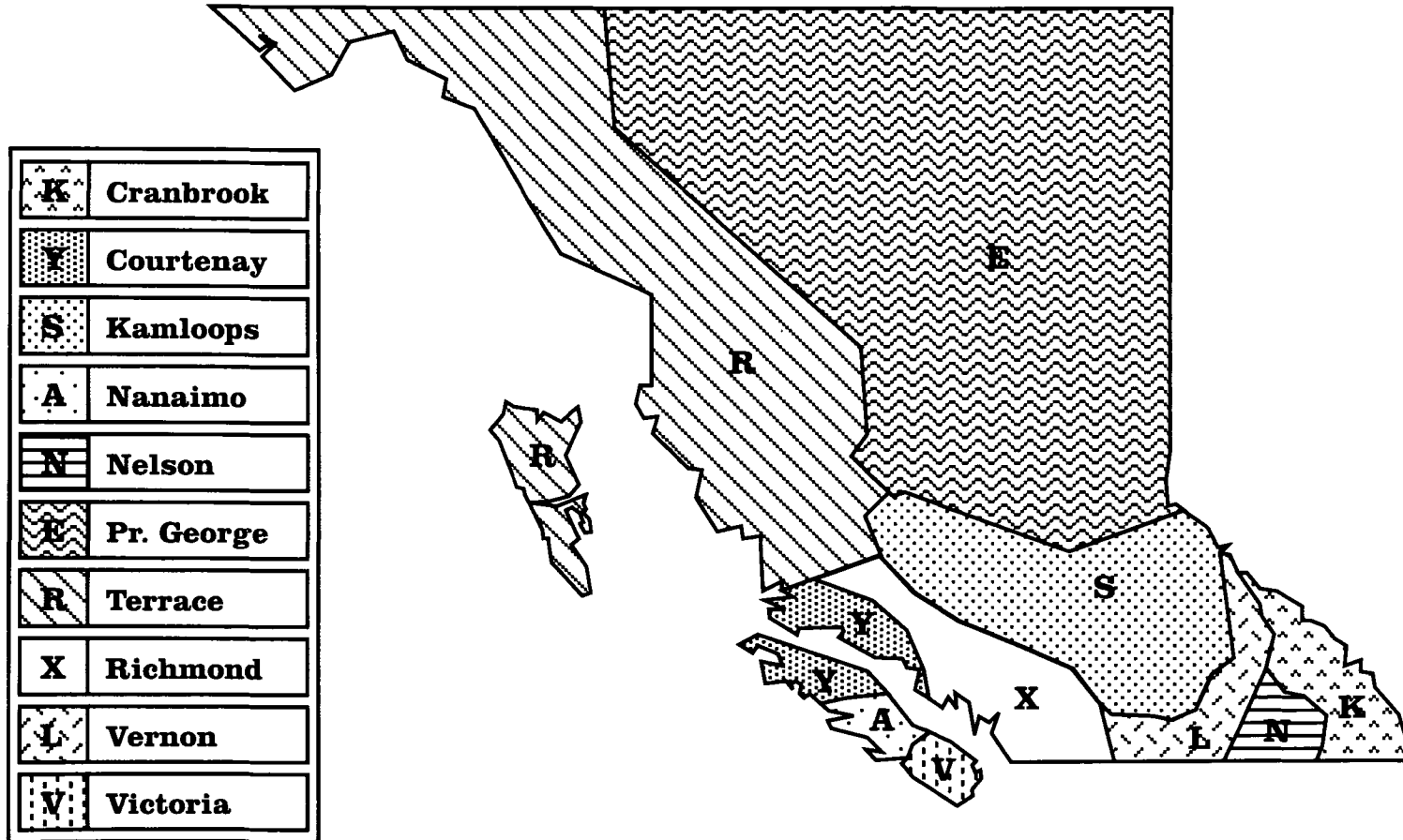
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Claims for temporary disability due to trauma occurring outside the lower mainland geographic area are adjudicated and administered by the Area Office appropriate to the physical location of the claimant's residence. Figure 2.4 shows the rough geographical split between the area offices. However, if a claim involves an industrial disease, or any of the other complicating issues mentioned above, the claim is transferred to the Special Claims Unit in Richmond for adjudication. Staffing in the Area Offices varies according to the claim load, with the largest being similar to that shown in Table 2.1 for Richmond claims units and the smallest being about one-fourth that size.

The Support Services Department is responsible for the supervision of the clerical support to the adjudication functions in the lower mainland. There were a total of 168 permanent positions in this department at the end of 1990. Among the skills represented in Support Services are the following. Stenos transcribe the extensive dictation of the Unit Managers, Claims Adjudicators, Claims Officers, and Rehabilitation Consultants as they communicate Board decisions and inquiries to claimants. Phone Control Clerks handle the heavy telephone volume of the Board, both incoming and outgoing, as claimants inquire about the status of their file, or appointments must be scheduled, or additional documentation is needed. File Clerks are responsible for keeping

Figure 2.4

## Geographical Organization of Workers' Compensation Board



June 1991

the forms moving rapidly into the claims files, rather than piling up in an out-basket where they cannot be retrieved when needed.

The lower mainland claims units are organized under a matrix management system that divides administrative responsibility for the individuals who work in the claim unit. The Unit Manager directly supervises only the Claims Adjudicators, Claims Officers, and Case Assistants in the unit. The Unit Medical Advisers and Medical Secretaries report to management in the Medical Division, the Vocational Rehabilitation Counselors report to management in the Vocational Rehabilitation Department, and the remaining clerical employees report to a Support Staff Manager in the Claims Unit, who reports to management in the Support Services Department.

Presumably, this organizational plan reflects a desire to foster specialization of function and to facilitate rotation of personnel among different units and different assignments. The problems of coordination that this creates for the Unit Manager are not insurmountable, but it seems like an unnecessary complication to divide employees who should be working together on a single goal, processing claims as swiftly and accurately as possible, into so many administrative units. Staff in the Area Offices are not subject to the same degree of separation in their reporting arrangements, and managers who have served in both situations report that the Area Offices function more effectively as a team as a result.

## **VOCATIONAL REHABILITATION SERVICES DEPARTMENT**

The Vocational Rehabilitation Services Department provides vocational assessment and planning, placement assistance, counseling, skill training, and job readiness training referrals, and employability assessments for disabled workers and dependants who are eligible for Board benefits. Such benefits are not granted by the Act as a matter of right; rather the Board is to use its judgment as to who will benefit from vocational rehabilitation services and what services they need. The Vocational Rehabilitation Services Department makes these judgments on behalf of the Board, and then, working with the Claims Adjudicator responsible for the overall conduct of the case, supervises the provision of the services to injured workers and their dependants.

There were a total of 58 Vocational Rehabilitation Consultants employed by the WCB at the end of 1989, but that number has risen rapidly in 1991. The consultants are attached to individual claims units, but their supervision comes primarily from the Vocational Rehabilitation Services Department. The basic goals of the department are:

- (1) To return injured workers to productive employment, paying wages or salaries equal to or greater than what was earned prior to the injury.

(2) To help workers overcome the effects of their disabilities.

Referrals (nearly 12,000 per year) are made by WCB Claims Adjudicators, medical practitioners, unions, social service agencies, and claimants themselves.

Referrals are for claims where medical evidence indicates that the workers will experience difficulty in returning to the pre-injury employment and claims where the pre-injury employment is no longer available because of the length of time the worker has been disabled. In addition, the Vocational Rehabilitation Services Department has the responsibility of preparing “Employability Assessments” to be used by the Disability Awards Department for making permanent disability pension awards. A full description of the Vocational Rehabilitation Services Department and its program is contained in Chapter 6 in this volume.

## **DISABILITY AWARDS DEPARTMENT**

The Disability Awards Department has responsibility for permanent disability claims and fatal claims. As will be described more fully in Chapter 5 on Benefits, the department evaluates permanently disabled claimants by two different methods (“dual” system). The WCB uses both a functional impairment system and a loss of earnings pension system to determine benefit payments for permanently disabled workers covered by the Act. The disabled worker receives whichever of the two permanent disability benefits is greater. The department also pays lump sum disfigurement benefits.

In addition, the Department administers benefits under Section 24 of the Act. This program allows the Board to reconsider the adequacy of benefits being paid to workers who sustained permanent disabilities in injuries 10 years or more previously. It is limited to persons with impairments assessed at 12 percent or more, or to those who today would receive projected loss of earnings benefits.

The Disability Awards Department has 42 employees to achieve its mandate, including 11 Claims Adjudicators and nine Disability Awards Officers, reflecting the serious level of adjudication that is required on these complex cases.

## **Management Issues**

There are a number of other issues that need to be understood to put the remaining chapters of this report into better perspective, beginning with an understanding of the management information systems in place at the WCB.

### **MANAGEMENT INFORMATION**

The Board has the normal management information system issues expected in a large, complex bureaucracy in this information age. The Registration System is a massive, mainframe database system maintained by the Information Services Division (ISD). It provides access to claim status, claimant information, employer data, etc. for any WCB claim throughout the Province of British Columbia.

ISD has also developed the Auto Wage Loss System which calculates benefit amounts, adjusts for inflation or other special entitlements, and generates periodic checks for all WCB cases in current payment status.

### **INTERNAL AUDIT**

The WCB maintains an Internal Audit Department which reports directly to the President. The unit has 8 employees and maintains a regular schedule of audit activity, with units scheduled for audits guided by a five year plan. As a result of a feeling at the WCB that insufficient attention had been given to claims functions by the Internal Audit Department, these units are now being put on a two year audit cycle, beginning in April 1990.

### **STRATEGIC PLANNING**

The WCB did a strategic planning exercise some years ago on a departmental basis. The plans that were prepared gave no evidence of being reviewed by top management, and there was no follow-up. For all practical purposes, the WCB has not engaged in strategic planning in the past. During 1991, many Departments have been looking at this area anew. The Compensation Services Division has prepared an "Action Plan for 1991-92." It appears to be a sizeable step forward. The Medical Services Division also prepared a new plan to submit to the new management at the Board.

## **RECRUITING**

A review of recruiting efforts for key positions at the WCB shows that the Board has no problem in attracting a large number of candidates. For example, the last recruitment effort for Claims Adjudicators drew over 1,300 applications from one weekend ad in a Vancouver paper. The salary level for this position begins at \$44,000 and rises to \$59,000. The Human Resources Department reports that it is typical that the WCB is overwhelmed with applicants when they announce a vacancy. In the case of the search for Claims Adjudicators, it was reported that about 10 percent of the applicants were actually qualified for the job, and the Board hired 12 individuals from the pool.





## Chapter 3

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# The Claims Process

### Claims Registration

The claims registration process is the process that initiates the file on a claim at the WCB (in other words, it is the beginning of the “paperwork”). The Act requires that the injured worker (or dependant, in the case of a fatal claim) notify the employer whenever an injury or disabling industrial disease occurs (Section 53(1)). Notice to the Board by the worker is made on WCB Form 6, “Application for Compensation and Report of Injury or Industrial Disease.” Those covered by Personal Optional Protection use WCB Form 6/7, “Independent Operator’s Application for Compensation and Report of Injury.” The claim must be initiated within one year of the injury or death, except in the case of industrial diseases where it is one year from the date of disablement. Failure to report as required is a bar to compensation, unless it can be shown that there were special circumstances which precluded the filing of an application.

The employer is also required to report to the Board, within three (3) days of occurrence, whenever an injury to a worker arises out of and in the course of employment. The employer reports on WCB Form 7, “Employer’s Report of Injury or Industrial Disease.” The notice period begins to toll when the employer or his/her representative is notified of, or becomes aware of, the injury or illness. Failure to comply may leave the employer liable for the full, direct costs of compensation over and above the usual annual assessment for general coverage, unless the Board is satisfied that the delay in reporting was excusable.

Attending physicians (and other qualified practitioners) are also obligated to report to the WCB when they attend or consult on a case involving injury or industrial disease to a worker covered by the Act. WCB Form 8, “Physician’s First Report” must be filed within three (3) days of first attendance upon the

worker. So long as treatment continues, progress reports must be provided regularly on WCB Form 11, "Physician's Progress Report," or comparable forms 11c and 11n for other practitioners. Failure to report can leave the practitioner subject to suspension or cancellation of rights as a practitioner in the WCB system, and possible notification of this action to the appropriate licensing bodies.

Receipt of one of these three forms (WCB Form 6, 7, or 8) usually initiates a claim at the WCB. Receipt of any WCB form, or other correspondence, triggers the claims registration process. As shown in Figure 3.1, the incoming document is delivered from the mailroom to Claims Registration. Here it is determined whether the Form relates to a claim that is already known to the WCB (identified), in which case the document is "registered" by being keyed in to an advanced database and data retrieval mainframe computer system developed at the WCB, called the Claims Registration System, and sent on to the appropriate Claims Adjudicator or Claims Officer for substantive processing.

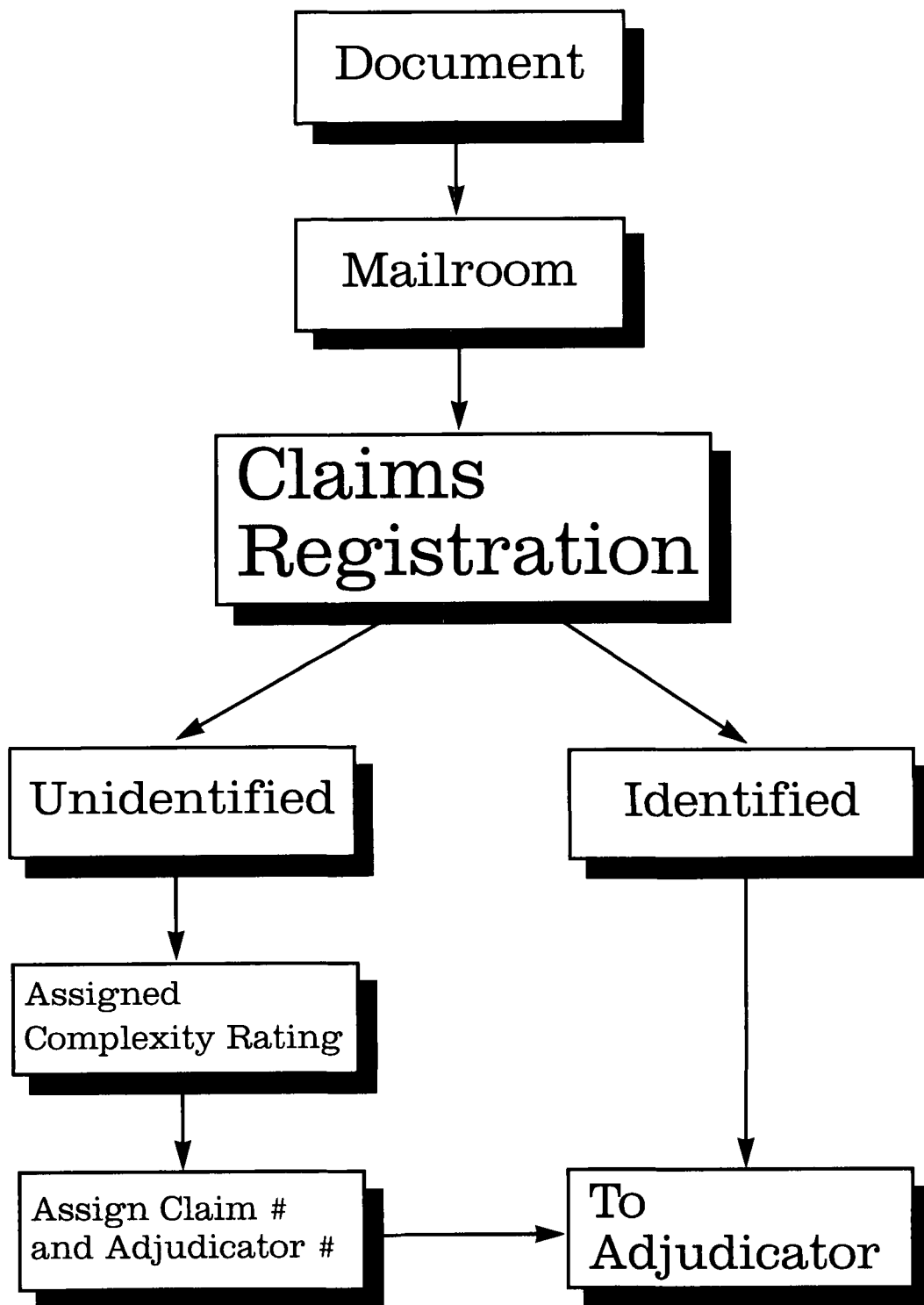
If the incoming document cannot be identified with an existing claim after a thorough search of the computer records by the CRT Operator, a new claim file is started. Then the claim is sent to Claims Unit 9 where it is given a prefix code according to its status and complexity. The computer generates a number which, when combined with the prefix, will determine to which category of officer the claim file will be delivered for processing.

The Employer's Report (Form 7) is also routed through the Assessment Department to ensure that the information about the employer is correct. This saves a great deal of time and trouble later since employers are allowed to protest the posting of inappropriate claims to their account.

An internal study of mail flow within the Compensation Services Division indicates that this process is very efficient. During a one week period late in 1988, 1,665 documents were selected for tracking through the system. Analysis revealed that unnumbered Forms 6 and 8 (Application for Compensation & Report of Injury or Industrial Disease and Physician's First Report respectively), which very frequently initiate a claim, were routed to the destination adjudication unit within 2.5 days. Unnumbered, non-form reports and correspondence arrived at the unit in only 1.5 days. Unnumbered Form 7 (Employer's Report of Injury or Industrial Disease) reports took 3.7 days to reach the adjudication unit, due to the extra stop in the Assessments Department. Numbered reports reached their final destination even quicker. This is a very impressive performance, which may however overstate routine outcomes as the report states that WCB personnel were aware of the study and may have made extra efforts to move the paper rapidly.

Figure 3.1

## Claims Registration Process



June 1991

## Initial Adjudication<sup>2</sup>

For temporary disabilities a WCB Claims Adjudicator (or Claims Officer who performs the same basic functions but for claims at reduced levels of complexity) determines whether compensation is payable in any particular instance. This includes the decision as to whether the claimant was employed under the terms of the Act, was injured in covered employment, whether the injury arose out of and in the course of that employment, whether the claimant is suffering from an industrial disease caused by his/her employment, and any other issues. Medical Advisers are available to assist Claims Adjudicators in reaching these decisions. Of course, all such Claims Adjudicator decisions are subject to appeal to the Workers' Compensation Review Board, and in the case of a medical judgment, appeal to a Medical Review Panel. A full discussion of the appeal process is offered in Chapter 4.

Following acceptance of a claim, the Claims Adjudicator is responsible for determining the type and amount of compensation to be paid. This includes not just weekly wage-loss payments, but also medical aid, transportation and subsistence costs, and other items as necessary. The Auto Wage Loss System assists the adjudication process and executes payments as directed by the Claims Adjudicator or Claims Officer. The initial determination of the weekly compensation benefit rate is made on the basis of worker and employer reports, and is reevaluated after eight weeks. See Chapter 5 for a discussion of the benefits payable under the Act.

It is also the responsibility of the Claims Adjudicator to determine whether a claim should properly be referred to the Disability Awards Department for permanent disability pension evaluation. This would include claims where a medical report indicates that a possibility of permanent disability exists, where a worker indicates that there is an inability to return to employment as a result of the injury, or where there is any other indication of a potential permanent disability.

Since the WCB operates on an inquiry as opposed to an adversary system, WCB adjudicators are themselves obligated to both investigate and adjudicate claims for compensation to the best of their ability. Further, as described previously, the Board has exclusive jurisdiction to determine all questions of fact and law in claims for compensation, and the decision of the WCB is final and conclusive and is not open to review in any court. (Section 96) While representation by the parties is allowed in initial adjudication, it is very rare. So the WCB adjudicators really do have a personal responsibility to both discover the evidence and weigh it carefully.

<sup>2</sup> This discussion is primarily oriented to temporary disability claims. In the WCB system, all permanent disability claims will be adjudicated again by the Disability Awards Department for a permanent pension. This process is described in Chapter 5, "Benefits" in the section "Permanent Disability."

The WCB publishes a very detailed manual, called the “Rehabilitation Services and Claims Manual” (RCM), that lays out Board policies and procedures. This book is the primary resource for adjudicators and others with questions about how particular situations are to be handled. It is formally adopted as WCB policy by the Board of Governors and revised as required by changes in WCB policy.

The WCB is not bound by legal precedent, but decides each claim according to the merits and natural justice of the case. Board officers (Managers, Claims Adjudicators, and Claims Officers) making decisions on claims are guided by WCB policies, as promulgated by the Board of Governors (formerly Commissioners). The Claims Adjudicator is not to begin fact finding with any presumption against the worker, nor with any presumption in his/her favor. However, the Act does specify that “... when there is doubt on an issue and the disputed possibilities are evenly balanced...,” the issue is to be resolved in favor of the worker. The Claims Adjudicator is to examine the evidence to determine whether it is sufficiently complete and reliable to provide a conclusion with some confidence. This judgment, however, is up to the adjudicator operating within the law and WCB policy, subject to review by management or upon appeal.

In the majority of claims, the issues of compensation are determined with reference solely to the evidence submitted in the injured worker’s application, the employer’s report, and the attending physician’s report. However, where this is not sufficient in the judgment of the Claims Adjudicator, the Board has broad powers of investigation, including the power to compel the attendance of witnesses and the production of materials germane to the claim (by subpoena). The Board may take depositions, examine witnesses under oath, and use other “like powers as the Supreme Court.” (Section 87 (1)) The Board also has the power to examine the books and accounts of employers if such is necessary to ascertain whether an industry or person is within the scope of the Act.

A typical claims adjudication unit in Richmond handles nearly 15,000 wage-loss claims per year, not including reopenings. This workload is generally spread between 10 or 11 Claims Adjudicators and Claims Officers (including the contribution of floaters to fill in for vacations, etc.). Thus, on average, each decision maker is adjudicating over 1,300 initial claims per year, more than 100 per month, about 5 per working day. In addition, adjudicators are required to deal with issues that arise from claims that have been previously adjudicated, with reopenings, with status changes, and keeping informed on Board policy, etc. While it is theoretically the case that changes of status on old claims go back to the original adjudicator, this is frequently not possible. With the turnover in the adjudicator ranks, oftentimes an adjudicator receives a voluminous file which must be reviewed to determine whether the claimant is eligible for a new treatment, or perhaps a change in benefit level. Claims Adjudicators are allowed to go into the field to investigate claims, but the

practical reality is that they do not have the time. Sometimes, this results in decision based on insufficient evidence, which may lead to an appeal later on. Unfortunately, existing data tabulations are not sufficient to determine the workload of individual adjudicators or claims units more accurately.

However, the adjudicators feel crushed by the continuous flow of cases onto their desks. A day away from the office due to illness or vacation means another batch of claims will have arrived for adjudication and will be added to the caseload, typically from 60 to 100 claims per adjudicator. In addition, the performance of the individual adjudicators and the unit as a whole is evaluated partly on the basis of the “paylag” between the day following the date of injury and the mailing of the first wage-loss payment. The paylag target is 17 days, and Richmond claims units (except Special Claims Unit) are expected to make payments on at least 40 percent of claims without delay (beyond the 17 days), while Area Offices are expected to achieve 50 percent.

Further, the judgments that are made at initial adjudication may or may not be subject to review. In the simplest temporary total claims, there is not much that can go wrong. But in the more complex cases, the Claims Adjudicator’s judgments are fairly likely to be reviewed by other Board personnel. In addition to the paylag standard, the other means of evaluation for adjudicators is the number of complaints received by the manager. The Claims Adjudicator who rushes his/her claimant interviews (usually over the telephone), does not take the time to fully explain the reasoning behind a denial of benefits, or is otherwise brusque or inconsiderate is likely to find his/her performance questioned on these grounds.

Because of these tensions between quick decisions and correct decisions the Claims Adjudicators seem to be subject to “burnout” of the kind typical in other social service agencies with high case loads. They are required to make decisions that are of great importance to the claimants and others, so it is very important to get it “right,” while at the same time the decisions must be made very quickly, or one falls behind the caseload. The result is an emphasis on “moving the paper” that may be excessive given the importance of the judgments that are being made, and the cost of reconsidering those judgments at the Review Board and beyond.

## **Termination of Benefits**

Temporary wage-loss payments (whether total or partial) continue only as long as the temporary disability lasts. When the physical impairment is no longer temporary, either because it has become permanent, or because the worker has fully recovered, a new determination of eligibility must be made. When an injured worker returns to work, his/her employer files WCB Form 9 “Employer’s Statement of Return to Work.” Absent contrary evidence, this will terminate wage-loss payments, although medical benefits continue, if neces-

sary, to effectuate as complete recovery as possible. The entitlement to medical treatment for the injury or illness never terminates.

When a physician, or other qualified practitioner determines that the worker has plateaued in his/her recovery, but some residual impairment remains, adjudication for a permanent pension must be conducted by the Disability Awards Department. Usually it happens that temporary total benefits are terminated before the Disability Awards Department can adjudicate the permanent pension entitlement. In this case, the Vocational Rehabilitation Consultant can authorize continuity of earnings (“Code R”) payments in anticipation of permanent disability benefits. These payments are designed to bridge the gap between temporary wage-loss benefits and the permanent pension benefit.

## **Disputes During the Duration of the Claim**

The major disputes arising during the duration of the claim are likely to be over the level of the wage-loss benefit (especially where this is reevaluated at eight weeks duration), the appropriate rehabilitative treatment of the condition, the capacity of the injured worker to return to work, and the level of permanent pension entitlement, if any. Because the British Columbia WC system is not an adversarial system, WCB policy guides the determination of the appropriate compensation in such disputed cases. Reference to the Rehabilitation Services and Claims Manual (RCM) will guide the discussion in this section and serve to illustrate the type of policy guidance offered to adjudicators by the manual.

Section 34.54 of the RCM lays out WCB policy to resolve questions about when the worker’s condition has stabilized. The examining doctor is to declare whether:

- (a) the condition has definitely stabilized;
- (b) the condition has definitely not yet stabilized;
- (c) s/he is unable to state whether or not the condition has definitely stabilized and
  - (i) there is a likelihood of minimal change; or
  - (ii) there is a likelihood of significant change.

In the case where the condition has definitely stabilized, the condition is considered permanent and the claim will be referred to Disability Awards for pension assessment. Where the condition has not yet stabilized or plateaued, temporary wage-loss benefits will continue until there is a change in status. If the physician is unsure, but thinks there is likelihood of only minimal change, the claim will be considered for permanent pension. In the case where the physician thinks there is likelihood of significant change, and the prospects for resolution within 12 months are good, the disability will continue to be

considered as a temporary disability claim. If the prospects for resolution within 12 months are not good, the disability will be evaluated for pension based on the workers' present degree of disability, and the claim will be scheduled for future review.

Disputes over medical or other rehabilitative treatment of the claimant are among the most troublesome disputes among temporary disability claims, since they generally pit doctors against each other. WCB policy is laid out in Chapter X of the RCM. Section 21 (6) of the Workers' Compensation Act states that:

Medical aid furnished or provided under any of the preceding subsections of this section shall at all times be subject to the direction, supervision and control of the board; and the board may contract with physicians, nurses or other persons authorized to treat human ailments, hospitals and other institutions for any medical aid required, and to agree on a scale of fees or remuneration for that medical aid; and all questions as to the necessity, character and sufficiency of medical aid to be furnished shall be determined by the Board.

The Board in its Rehabilitation Services and Claims Manual enlarges on this language as follows:

The Board uses its control over treatment to promote recovery, and to exclude choices by patients or doctors that will delay recovery, or create an unwarranted risk of further injury. But the control of treatment by the Board is not intended to exclude patient choices. If there are reasonable choices of treatment, or reasonable differences of opinion among the medical profession with regard to the preferable treatment, or choices to be made that depend on personal preferences, the matter should be regarded as one of patient choice. (Section 78.10)

Disputes with providers of rehabilitative care as to the appropriate treatment, or reasonable charges for that treatment, and potentially with claimants over the selection of the treating physician or institution are common in workers' compensation systems.

The attending physician generally will make the determination of when the injured worker is able to return to work. However, the WCB Unit Medical Adviser will get involved in cases where some question about readiness for return to work arises in the mind of the adjudicator or the attending physician. The Unit Medical Adviser can call the claimant in for a physical exam at the WCB, or can send him/her to another consulting physician for a second opinion. The Claims Adjudicator is responsible for making the final decision, but usually depends heavily upon the advice of the Unit Medical Adviser.

WCB Medical Advisers have the responsibility to advise the Claims Adjudicator whether a given plan of treatment is an appropriate treatment for approval by the WCB. This is an issue most frequently in cases of elective surgery, where the Board requires advance authorization before carrying out



any elective procedures. These provisions inevitably lead to conflicts over the proper course of treatment, or the necessity for proposed procedures to assist the recovery of the injured worker. Some physicians in British Columbia express considerable frustration in dealing with the WCB due to a “haughty attitude.” The perception of some physicians is that the WCB is trying to tell the physicians how to practice medicine under the guise of a managed care system.

## **Claim Re-Openings**

Section 96(2) of the Act (as amended by Bill 27) provides that:

... the Board may at any time at its discretion reopen, rehear and redetermine any matter, except a decision of the appeal division, which has been dealt with by it or by an officer of the board.

Further, the WCB distinguishes carefully between “reopenings” and “reconsiderations.” An application for “reopening” is one that does not question the validity of any previous decision, but requests that further compensation be paid on the basis that the claimant’s circumstances have changed since the decision was made. An application for “reconsideration” is one that does question the validity of a previous decision on a claim and requests that a change be made in that decision. (Rehabilitation Services & Claims Manual, Section 106.20)

The application for reopening is treated as a new matter for adjudication and a decision is made by the Claims Adjudicator, subject to the usual appeal procedures. If the reopening occurs more than three years from the date of injury, the wage rate for benefit determination may be reevaluated by the WCB based on the current circumstances. If the Board feels that the current wage would more nearly represent the actual loss of earnings, it can calculate the compensation as if the recurrence were the happening of the injury. (Section 32(1) of the Act)

Reconsiderations of previous WCB adjudication decisions are treated differently. The WCB is anxious to avoid simply rehashing the same facts; so it is required that an application for reconsideration cite new evidence not available at the time of original adjudication, or a mistake of evidence or law. Under the old act (before Bill 27), such requests were either handled informally by the Claims Adjudicator, or referred to the Commissioners if they involved a Review Board finding. Adjudicators are allowed to correct errors on claims which do not involve in excess of three months retroactive reduction or cancellation of benefits, with consultation and concurrence of their manager. Furthermore, the Directors and Managers within the Compensation Services Division are empowered by the Board to “modify a decision or substitute their decision for any decision ...” made earlier by an adjudicator.

Of course, all initial adjudication decisions of the WCB can be appealed to the Review Board, or, if they involve a medical dispute, to a Medical Review Panel. These procedures are described in detail in Chapter 4.

## **Claim Flow**

Figure 3.2 provides a summary of the overall claim flow, and gives a sense of the general order of magnitude of the various alternatives. It can only give a sense of the magnitudes because all of the numbers in the figure are taken from 1990 annual results, and therefore are not strictly comparable. For example, the number of claims granted permanent disability awards in 1990 does not emanate from the total number of injuries first reported in 1990. Rather the disability awards in 1990 represent the end process of the adjudication of claims from several years, including 1990. Thus, it is not strictly accurate to calculate percentage figures in moving from level to level within the figure. However, this is done to help provide perspective on the dynamics of the claim population in the WCB system, and to enable a better grasp of the relationship between different claim populations.

Figure 3.2 reports that there were over 217,000 injuries first reported to the WCB in calendar year 1990. This includes all “claims” identified during the registration process as new claims originating with some report of injury in 1990. During 1990, it was determined that nearly 3,000 claims were not appropriate, because they were received from injured persons who were not covered by the Act; these claims were “rejected.” Over 48,000 claims were “adjudicated and not paid.” These were claims which were determined to be potentially compensable, but in fact no benefit was actually due, or the claimant did not pursue the claim.

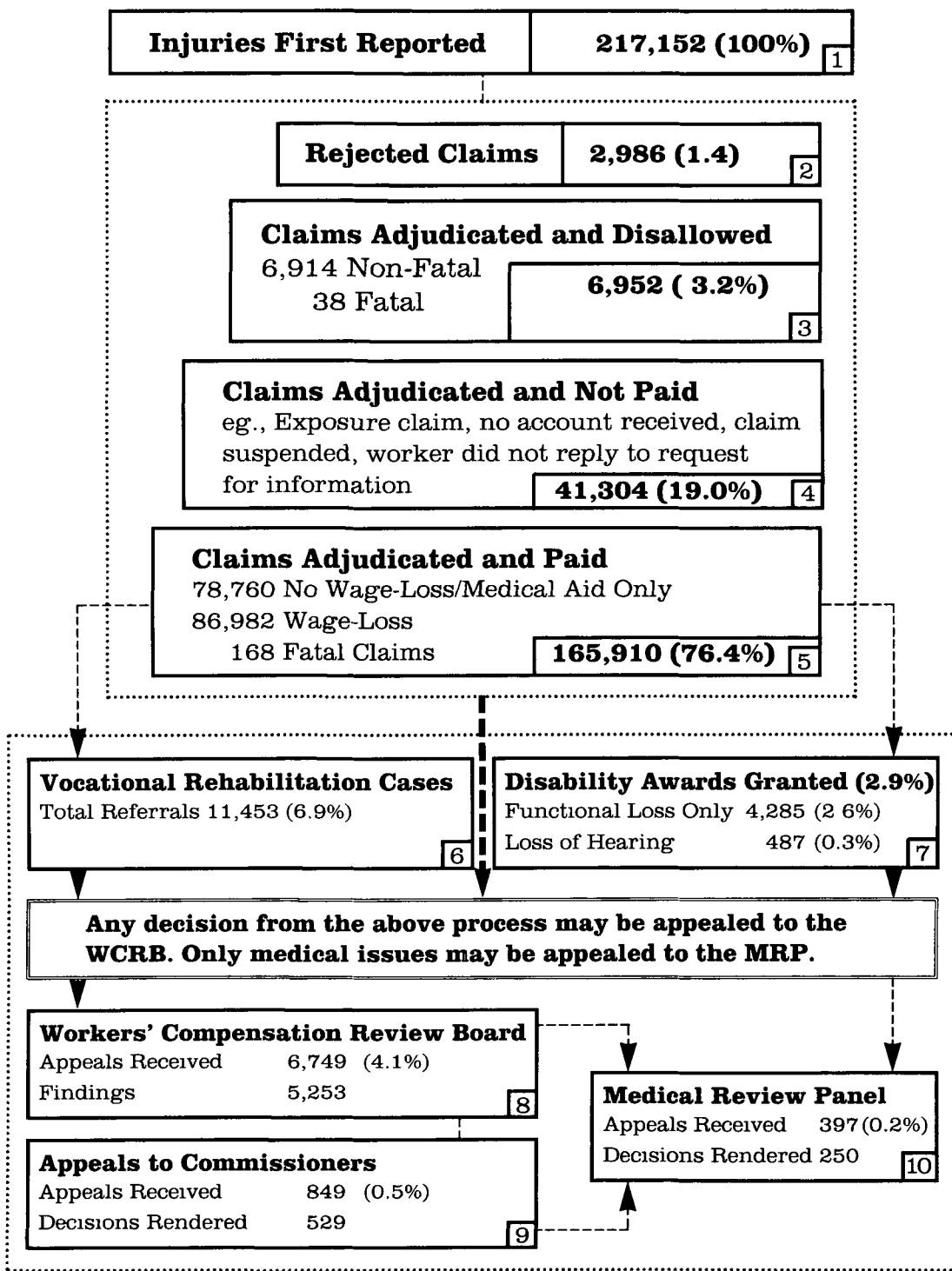
In 1990 the figure shows there were 78,760 claims accepted that did not involve any wage-loss benefit but were eligible for Medical Aid payments. These would be the “no wage-loss” claims. There were also 86,982 wage-loss claims and a total of 168 fatal claims that entered payment status during the year. This gives a grand total of 165,880 paid claims originating during 1990.

A total of 6,952 claims (about 3.2 percent of Injuries First Reported) were “disallowed” by adjudicators during the year, including 38 fatalities. These were claims that the adjudicators did not feel were work related disabilities, or that were otherwise not eligible for benefits. Using the category of claimants who were eligible, but whose claims were not found to be worthy, the WCB cites a claims approval rate of 97 percent for the adjudication process. Of course, some of the claims that were disallowed by the WCB in 1990 will be appealed to the WCRB or MRP and benefits may commence after further adjudication.

During calendar year 1990, the Vocational Rehabilitation Services Depart-

Figure 3.2

## Claims Flow Statistics - 1990



Note: Statistics are for current year but may have arisen from claims in previous years.

### Explanatory Notes to Figure 3.2

- 1. Injuries First Reported:** Includes all initial reports of injury based on Employer's, Worker's or Doctor's first report. Does not include requests for re-opening of existing claims. (SOURCE: Annual Report)
- 2. Rejected Claims:** Claims for benefits by persons who are not "workers" under the Act. For example, Bank Tellers working for federally chartered

banks, Actors or Players in theatrical endeavours. (SOURCE: Compensation Services)

3. **Claims Adjudicated and Disallowed:** In these cases, the worker is entitled to claim as s/he is a "worker" under the Act but the claim has been disallowed through adjudication. For example, a worker claims for a heart attack and the claim is disallowed as not arising in the course of employment. (SOURCE: Statistics Department)
4. **Claims Adjudicated and Not Paid:** Claims of a valid nature but not involving any payment or where no further action is possible due to a failure of contact with injured worker or lack of accounts received. This group would include Exposure Claims, such as hearing loss. The worker may be determined to have lost auditory function but may not require medical aid or pension. (SOURCE: Statistics Department)
5. **Claims Adjudicated and Paid:** Claims received and determined to be proper claims, first paid in 1990. Initial PPD awards are also included in this number in the Wage-Loss category. (SOURCE: Statistics Department)
6. **Vocational Rehabilitation Cases:** Cases are referred to rehabilitation for short-term assistance, counselling, employability assessment, vocational planning and referral for training. These cases are often related to claims filed in previous years and may include cases previously closed in the same year. In 1990, there were 1,789 cases referred for Formal Training, 909 to Training on the Job, and 1,264 to Loss of Earnings Investigations. These categories are not exclusive, i.e., a worker may be provided with formal training followed by training on the job and then assessed for a loss of earnings pension. (SOURCE: Vocational Rehabilitation Services Department, Monthly Stats Report, manually compiled)
7. **Disability Awards Granted:** Generally, these will apply to claims initiated in previous years. Loss of Earnings awards are predicated on the existence of a functional disability. In this table, however, the categories are exclusive. (SOURCE: Disability Awards Department)
8. **Workers' Compensation Review Board:** Several appeals may be received on a single claim, therefore "appeals received" does not equal the number of claims at appeal. For example, a worker may appeal his wage rate, the permanent partial disability award and rehabilitation issue; three appeals on one claim file in one year. A study of findings for the first 5 months of 1990 showed a ratio of 1.21 findings per claim file. (SOURCE: Internal Compensation Services study). "Findings" relate to the issues appealed. Of these findings, 1,704 were found in favor of the Worker who brought the appeal, and 18 in favor of the Employer bringing the appeal, commonly called "Allow or Allow in Part". Another 2,135 were "Denied" to the Worker and 43 were denied to the Employer bringing the appeals.
9. **Appeals to Commissioners:** Under the provisions of the Act in force at the time, a variety of matters could be appealed to the Commissioners including assessment levels, OSH penalties, Criminal Injuries and others. These statistics relate solely to Compensation Cases involving Claims and Rehabilitation issues. Of the 849 appeals received, 682 arose from Review Board findings and were initiated by the Worker or Employer (89 were rejected or withdrawn). WCB staff referred 167 Review Board findings under the provision of section 96(2) of the Act (40 were rejected). (SOURCE: Appeals Administration)
10. **Medical Review Panel:** Medical dispute applications are received and evaluated. In 1990, 221 of the 397 disputes were determined to be bona fide. A total of 233 decisions were made, some arising from the previous year. Of these 129 were rejected on technical grounds, 23 rejected because of time limitations (cases too old), and 81 were withdrawn. (SOURCE: Appeals Administration)

ment received a total of 11,453 referrals. This constitutes 5.3 percent of all injuries first reported, and 13.2 percent of claims adjudicated and paid in 1990. As shown in Figure 3.2, there were 1,789 formal training courses, and 909 instances of training on the job begun for WCB claimants in 1990 as well. During the same period, 4,285 functional impairment awards and 487 loss of earnings pensions were awarded by the Disability Awards Department.

The Review Board (WCRB) received 6,749 appeals during 1990, but each issue constitutes a separate appeal, so this number cannot be compared directly to the number of claims adjudicated during the year. The WCRB published 5,253 “findings” during the year. A WCB staff study of the first five months of WCRB appeals in 1990 revealed an average of 1.21 WCRB “findings” per WCB claim. So a reasonable inference would be that about 5,500 WCB claims were appealed to the WCRB in 1990 ( $6,749/1.21 = 5,578$ ). The question is, what is the appropriate base with which to calculate an appeal rate?

This is not an easy question to answer. If one compares the estimate of 5,500 claims appealed to the total number of injuries first reported (217,152), the appeal rate would be about 2.5 percent. On the other hand, if one compares the estimated number of appealed claims to just the rejected and disallowed claims (9,900), the appeal rate would be 55 percent. Clearly the truth lies somewhere in between since many separate decisions of the WCB are subject to appeal in any particular claim, but the data are not adequate to determine which issues gave rise to the appeal. As a rough rule of thumb, the estimated number of appealed claims can be compared to the number of wage-loss claims entering payment status (86,892). This would yield an estimated appeal rate of about 6 percent.

There were a total of 397 Medical Review Panel appeals received during 1990, with slightly over half upholding the WCB. Finally, there were 849 appeals to the Commissioners, the final form of appeal on questions of fact or law before the creation of the Appeals Division in June 1991. Of the 529 decisions issued, approximately 64 percent were denials. There were also a few decisions on employer-initiated appeals and a small number of referrals from WCRB findings. These subjects will be more thoroughly explored in Chapter 4 on Dispute Resolution Systems.

With over 217,000 new claims registered and over 87,000 wage-loss claims first paid in 1990, the claims process at the WCB is necessarily designed to handle a huge volume. At the same time, it is important that each claim and each claimant receive the individual attention they deserve. Walking the tightrope between these goals is not easy, and the WCB has been criticized by the Ombudsman and others for “bureaucratic” excesses. However, when viewed as a system, in all its detail, it must be conceded that the WCB does an excellent job of handling the burden of the claims process. It is clear that mistakes are made in individual cases, and these mistakes need to be found and corrected, but on the whole the system performs very well.



## Chapter 4

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# Dispute Resolution Systems

### Introduction

The purpose of this chapter is to describe the dispute resolution process used in workers' compensation claims in British Columbia. That process will be sketched very briefly to allow the reader to see the entire picture. Then, the component parts of the process will be separately analyzed. The description will be of the system that existed until June 3, 1991, when the Workers' Compensation Amendment Act, 1989 (Bill 27) went into effect, because there is no experience yet regarding the reforms. The new structure is briefly described at the end of this chapter.

There are three bodies, excluding the court system, that constitute appellate bodies of the workers' compensation system. These are the Workers' Compensation Review Board, Medical Review Panels, and Commissioners of the Board themselves (until June 3, 1991 when the Appeal Division replaced it). Additionally, there are procedures that allow for decisions to be reconsidered or changed even prior to going to one of these three bodies.

The source of disputes are mostly decisions made by Board officers, that is Claims Adjudicators, Claims Officers, or Vocational Rehabilitation Consultants in the Compensation Services Division of the WCB. If either a claimant or employer are dissatisfied, they may ask the officer to reconsider the decision, usually in the light of additional information that the appellant will provide. Where the matter is not reconsidered, or where it has been reconsidered, but the party remains dissatisfied, a manager's review can be requested. The manager is either the area office manager or a member of a unit that specifically conducts such reviews. The manager is able either to accept (including modify) or reject the appellant's view or return the file to the originating unit for further investigation. The manager's review was developed to allow aggrieved parties to have a rapid decision on an officer's

decision, without involving one of the three appellate bodies. For practical purposes, it stands as the first line of appeal in dispute resolution.

A party that wishes to appeal a decision at this point may have one or two options. If the issue in dispute is a medical one, the appeal can be to a Medical Review Panel (MRP) or to the Workers' Compensation Review Board (WCRB). The decision of the MRP is final on medical issues and cannot be appealed. If the appeal is denied by the WCRB, the party is able to appeal that decision to the Commissioners. However, if the WCRB finds for the appellant, the file is sent back for implementation to the unit where the original decision was made. Under any one of six situations (two, as of June 3, 1991) an officer of the Board, typically a Claims Adjudicator can "refer" the issue to the Commissioners for their review and decision. If the disputed issue is a medical one, and if the appellant did not take the dispute to the MRP at the earlier stage in the process noted above but used the WCRB route instead, an appeal of the Commissioner's decision can then be taken to an MRP.

## **Manager Reviews**

Begun in 1985 the Manager Review is only undertaken where a worker, dependant survivor, or an employer seeks a review of a decision by a Claims Officer or Adjudicator. The vast majority of these and any subsequent appeals are made by claimants. Manager reviews are conducted by one of four persons in the Richmond office, when requested, on claims that were adjudicated there. Typically, it is the office manager in an area office that conducts these reviews. In Richmond, almost all reviews are based on a reading of the file. In the area offices, the party that requested the review often visits personally with the manager to explain their complaint and to add any more information as needed.

Prior to 1989, the manager review might support a claimant for one of two reasons. First, if the reviewer believed that an error had been made in applying the law or Board policy, the Claims Adjudicator was reversed. Second, it is alleged that the reviewers also reversed adjudicators in cases where the reviewer anticipated that the WCRB would likely reverse the Claims Adjudicator at a later stage of appeal. In so doing, manager reviewers were seeking to reduce the number of appeals to the WCRB and avoid having the claimant face the delays and psychic costs of an appeal process. It appeared as if they were supplanting the Claims Adjudicator's judgment with their own. However, it reflected the tendency of Claims Adjudicators to reach decisions that were strictly consistent with their operations manual (as they were trained to do), while manager reviewers might also consider the likely decision by the WCRB.

In 1989, a petition signed by the Claims Adjudicators was sent to the Commissioners, as the policy setting body of the agency. Siding with the



Claims Adjudicators, the Commissioners ordered that manager reviews that reversed the adjudicator's judgment would be curtailed. In Richmond, about 85 percent of the reviews lead to acceptance of the Claims Adjudicator's decision. Of the other 15 percent, about one half of these are sent back for further information or inquiry, and about 7–8 percent represent an overturning or modification of the Claims Adjudicator's decision.

For some parties, even if the outcome is not the one they had preferred the manager review may satisfy them that their case has received fair and adequate attention. If not, and they choose to appeal the issue, the next step is to appeal the matter to the WCRB, or possibly to the MRP if it is a medical issue that is at stake. In practice, where a medical issue is in dispute, most claimants still appeal to the WCRB initially.

## **Workers' Compensation Review Board**

Created in 1974 as the Boards of Review, this independent tribunal became the Workers' Compensation Review Board in 1986. Appellants have 90 days to file an appeal with the WCRB, from the date they were notified of the Board officer's decision. However, the WCRB may waive this limitation and apparently is willing to do so.

The WCRB has jurisdiction over appeals of decisions by an officer of the WCB with respect to a worker. This includes Claims Officers, Claims Adjudicators, Vocational Rehabilitation Consultants and their managers but it does not include the Commissioners or an MRP. It is required that the decision must affect a worker, hence, there is no right of appeal to the WCRB by an employer on a decision regarding the cost allocation of a claim or an assessment. Employer appeals to the WCRB occur where the employer is dissatisfied with a WCB decision regarding a worker's claim. Virtually all appeals to the WCRB come from workers or their dependants.

The WCRB consists of 14 panels consisting of three persons, and single person panels. A three member panel consists of one person drawn from the ranks of labour, another person with a background on the management side and a third person, often a lawyer, who is neutral. A one person panel, always employing a person of a neutral background, is most frequently used in those cases that consist only of a "read and review" of the record. Usually, the choice of the one or three person panel is left to the appellant. Prior to 1986, all panels consisted of three persons. The chair of each panel, the non representational member, is called a Vice Chairman of the WCRB.

Representational panel members (drawn from labour or management) are not necessarily nominated by the interest groups to these positions. Persons may apply for the job and use supporting letters indicating that they have some experience in or credentials with employers or labour unions. Disputes involving specific issues or industries are not earmarked for specific panels,

but cases are assigned to panels by the Registrar in a more or less random manner.

Panels hold hearings in 14 locations across the province, throughout the year. Hearings generally run for 1 to 1.5 hours. Appellants are frequently represented by union representatives, private lawyers or the Workers' Adviser Office, and if they choose to, employers may attend claimant appeals. Employers may be similarly represented by private lawyers, the Employers Adviser Office, or other consultant. Witnesses are not normally sworn, oral hearings are taped but transcribed only if there is a subsequent appeal. Worker appellants often bring their spouse and children to the hearing and some informality is deliberately maintained to put a worker appellant at ease. When the panel completes its deliberations, it issues its findings, with reasons, in writing. These documents are generally 7–8 pages, longer than once was the norm, and some critics believe that this is symptomatic of an increasingly legalistic view within the WCRB. The panel decision need not be unanimous, but a dissenting panel member must also explain in writing his/her decision.

The WCRB may overturn an adjudicator either because it believes an error in law or policy has been made, or because it exercises a different judgment of the facts. In most cases, it is the latter that leads to a reversal of the WCB decision. On occasion, this difference in judgment arises because the claimant or his representative provides some information that has not been communicated previously to the Claims Adjudicator, not surprising since the adjudicator has not had the benefit of a hearing with professional representation for the appellant.

As observed above, appeals to the WCRB primarily come from workers or their dependants. In most cases, the appeal is essentially costless to the worker. Some workers appear without any representation and the majority of those who are represented need not pay for it. Consequently, workers that are dissatisfied with any decision made by a WCB officer about their claim have little or no disincentive to appealing it. Indeed, it is intriguing why more workers do not avail themselves of the fullest measure of the appeal process. Worker advocates assert that there is simply not sufficient representation available to handle all the claims that deserve to be appealed.

The data in Table 4.1 reveal the number of appeals received by the WCRB in each year from 1981 to 1990. There is an irregular pattern with sizable jumps in appeals received in 1982 and 1984, then a regular uptrend from 1986 to 1990. One indicator of WCRB activity is the volume of findings, which follows no discernible pattern, showing large increases in 1982 and 1987, and essentially flat in the period 1987 to 1990. Even if one takes account of summary decisions, WCRB activity still appears to have been basically flat in the 1987 to 1990 period, though well above the level of 1983 to 1986. Summary decisions include applications for extension of time, suspensions, withdrawals and deemed abandonments of appeals. Suspensions occur when an appeal is held

**Table 4.1 Appeal Activity at the WCRB**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Appeals Rec'd	2,922	4,090	4,090	5,082	4,045	3,921	4,248	4,966	5,636	6,749
Findings	2,250	2,746	2,867	3,111	2,917	3,259	4,013	4,154	4,141	3,900
Summaries	352	501	748	903	757	788	1,173	1,221	1,233	1,353
Total	2,602	3,247	3,615	4,014	3,674	4,047	5,214	5,375	5,374	5,253

SOURCE: Workers' Compensation Review Board

**Table 4.2 Relative Measures of WCRB Appeal Activity**

Year	(1) Appeals Received/ New Claims Registered at WCB	(2) Appeals Received/ Wage-Loss First Paid	(3) Findings/ New Claims Registered at WCB	(4) Findings/ Wage-Loss First Paid
1981	1.5%	3.4%	1.1%	2.6%
1982	2.6	5.8	1.7	3.9
1983	2.7	6.5	1.9	4.5
1984	3.4	8.5	2.1	5.2
1985	2.5	6.5	1.8	4.7
1986	2.5	6.2	2.1	5.2
1987	2.5	6.4	2.4	6.0
1988	2.6	6.6	2.2	5.6
1989	2.7	7.0	2.0	5.1
1990	3.1	7.7	1.8	4.5

SOURCE: Developed from data provided by Workers' Compensation Board and Workers' Compensation Review Board

in abeyance, pending some outside development. Withdrawals by appellants are self explanatory. A deemed abandonment is where the appellant does not appear to wish to pursue the appeal. It is clear that summary decisions do not require the same investment of WCRB resources as findings.

Table 4.2 indicates four alternative measures of appeals activity. The data in column 1 are the number of appeals received by the WCRB expressed as a proportion of new claims registered at the WCB. Several aspects of these rates need elaboration. First, appeals received is not the same as the number of claims being appealed since there can be multiple appeals for a single claim. (One estimate is that the ratio is approximately 1.21 appeals per claim that is appealed.) Second, the number of appeals includes summary decisions, which often involve little or no activity by WCRB panels. Third, an appeal received in a specific year may arise out of a claim first reported at any time. For example, some appeals come from workers whose permanent partial disability was assessed years earlier, and who wish the WCB to reopen the claim based on some change in condition, but the WCB has declined. Finally, claims first received is not a perfect indicator of WCB decisions in a given year. As shown in Chapter 3, some of these claims first received may not necessitate any WCB action or decisions, and no compensation will actually be sought.

The data in column 1 of Table 4.2 show a very flat pattern, particularly if the

**Table 4.3 Reason for Appeal and Allow Rate at WCRB, 1990**

Reason for Appeal	Percent of Sample	Allow Rate
Claim Disallowed — No compensable Injury	25%	45%
Reopening Denied	19	39
Wage-Loss Benefits Terminated	13	41
PPD Award Insufficient	12	52
Other	30	47
Total Sample Size = 2,322		

SOURCE: Workers' Compensation Review Board

first and last year are ignored. The rate for 1984 appears to be anomalous. A number of parties in British Columbia use this ratio, usually in the 2 to 3 percent range as the indicator of WCRB appeals. However, an argument can be made that the considerably higher rates of column 2, in the 6 to 8 percent range, are a more appropriate measure. Column 2 is the rate of appeals received as a proportion of wage-loss cases first paid. Clearly, the large bulk of WCRB appeals involve disputes in wage-loss cases.

Another indicator of activity is shown in column 3, where WCRB findings (this excludes summary decisions) are shown as a percentage of claims first reported to the WCB. This gauges activity in terms of WCRB output and not in terms, simply, of new appeals input. If one does not consider 1981, this measure has fluctuated modestly in the range of 1.7 to 2.4 percent, with no apparent time trend. Column 4 shows the ratio of WCRB findings as a proportion of wage-loss claims first paid in that year. Since 1983, that rate has remained in the range of 4.5 to 6.0 percent.

The data in Table 4.3 highlight the types of issues appealed to the WCRB. It comes from a sampling of appeals cases decided by the WCRB in the period from January to mid May 1990, and was undertaken by WCB staff. The most frequent issue decided is the one of compensability; that is, one-fourth of Review Board decisions were in cases where the WCB had disallowed the claim. Note that in 45 percent of these, the WCRB decided either to allow benefits or to send the matter back to the claims unit for further work.

The next most frequently appealed issues were denials by the WCB to reopen cases, WCB decisions to terminate wage-loss payments and disputes over the size of the permanent partial disability pension awarded. The allow rate for these appeals varies from 39 percent to 52 percent, as shown in Table 4.3.

Table 4.4 identifies the numbers of appeals allowed and denied, and the

46 **Table 4.4 Findings, Allowed and Denied Appeals**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
<b>WORKER R&amp;R*</b>										
Allowed	241	380	385	443	482	514	437	332	328	306
Denied	327	651	831	929	936	954	839	799	769	643
Allow Rate	42.4%	36.9%	31.7%	32.3%	34.0%	35.0%	35.0%	29.4%	29.9%	32.2%
<b>WORKER OH*</b>										
Allowed	779	819	674	625	669	883	1,151	1,281	1,350	1,398
Denied	787	772	850	1,003	755	841	1,481	1,652	1,627	1,492
Allow Rate	49.7%	51.5%	44.2%	38.4%	47.0%	51.2%	43.7%	43.7%	45.3%	48.4%
<b>EMPLOYER R&amp;R</b>										
Allowed	12	16	25	12	10	10	8	9	5	3
Denied	37	48	57	60	45	31	55	36	38	28
Allow Rate	24.5%	25.0%	30.5%	16.7%	18.2%	24.4%	12.7%	20.0%	11.6%	9.7%
<b>EMPLOYER OH</b>										
Allowed	18	25	25	14	8	6	10	14	4	15
Denied	39	35	21	25	12	20	30	31	20	15
Allow Rate	31.6%	41.7%	54.3%	35.9%	40.0%	23.1%	25.0%	31.1%	16.7%	50.0%

\* R&R — Read and Review

\* OH — Oral Hearing

SOURCE: Workers' Compensation Review Board

**Table 4.5 WCRB Output, 1981–1990**

Year	Number of Panels	Appeals Received Per Panel	Findings Per Panel
1981	6	487	375
1982	7	584	392
1983	7	584	410
1984	7	726	444
1985	7	578	417
1986	12	327	272
1987	14	303	287
1988	14	354	297
1989	14	403	296
1990	14	482	279

SOURCE. Workers' Compensation Review Board

rate of allows from 1981 to 1990, by four categories. The categories are broken down by the source of the appeal, worker or employer, and means of resolution, that is, read and review appeals or oral hearings. Four things seem quite evident from Table 4.4. First, very few appeals are brought by employers. Second, the allow rate for both employers and workers is considerably lower in read and review cases than where a three person panel conducts an oral hearing. Third, the allow rate is substantially higher in appeals initiated by workers, rather than those brought by employers. Fourth, there has been an almost remarkable consistency in the allow rate in claims brought by workers. If one pools the data for the oral hearings and the read and review appeals, the allow rate was between 39 and 47 percent every year except 1984 (36 percent). For the past six years the overall allow rate in worker appeals was always in the range of 40–44 percent.

Table 4.1 indicated the numbers of appeals received and decisions by the WCRB. What is evident from that table is that the WCRB has been forced to cope with serious backlogs. From 1983 to 1990, the WCRB has ended the year with between 3,000–5,000 files pending. To cope with this backlog and with the growth in appeals from 1986, the WCRB has grown in size and added more panels. From 1982 to 1985, there were seven panels, compared with 14 panels from 1987 to 1990. In its busiest year, 1984, there were 726 appeals received per panel and 444 findings issued per panel. (See Table 4.5) The rate of appeals per panel fell sharply in the two years after 1984 but has been rising since 1986. From 1986 on, the rate of findings per panel has remained in a narrow range, (from 272 to 297), and is well below the rates prevailing in the first five

**Table 4.6 Representation on Appeals at WCRB**

	1987	1988	1989	1990	1991 to 7/15/91
Employers' Advisers	1%	1%	1%	1%	1%
Union	52.5%	44.5%	45.2%	26%	38%
Lawyer	15.4%	12.8%	13.3%	12%	14%
Workers' Advisers	6.2%	6.3%	7.4%	5%	6%
No Representation	N/A	N/A	N/A	30%	31%
Officer of a Company	N/A	N/A	N/A	25%	11%

SOURCE: Workers' Compensation Review Board

years of the decade. The WCRB estimates that a finding on an appeal is issued about 10 months after receipt of a notice of appeal.

Earlier it was noted that appellants were able to employ representation at the WCRB. Table 4.6 shows the frequency and the source of representation before the Review Board for the period 1987 to mid July 1991. In about 30 percent of appeals in 1990 and 1991, the appellant was without representation. The labour union is the most common source of representation, though it has fluctuated sharply in this time period from 26 percent to 52 percent. Lawyers are present in between 12 and 16 percent of appeals, and at least twice as often as Workers' Advisers.

## Commissioner Appeals

A number of sorts of appeals could be brought to Commissioners. (The past tense is used here since the Commissioners have been replaced by the new Appeal Division as of June 3, 1991.) First, persons aggrieved by the decision of the WCRB were able to appeal that decision to the Commissioners, so-called Section 91 appeals. These appeals had to be filed within 60 days of the Review Board finding. Second, WCB officers, typically Claims Adjudicators or their managers, could "refer" claims that had been decided by the WCRB to the Commissioners under Section 96(2) of the statute. Employers could appeal assessment decisions to the Commissioners, and criminal injury compensation decisions were also sometimes appealed to the Commissioners. Finally, employers could appeal any safety and health penalties assessed under Section 73. In those cases employer appeals had not been previously adjudicated by the WCRB, since they did impact "a worker."

In most cases going to the Commissioners under Section 91, a worker or



dependant survivor was appealing a decision that had been made by a Claims Adjudicator, with that decision supported by a manager review and upheld on appeal by the WCRB. From the aggrieved workers perspective, however, there were few costs involved in seeking one more review of the issue(s) at hand.

Virtually all appeals under Section 91 were conducted on the written record. Rarely were the parties present for any hearing. Briefs were submitted for the file where an appellant was represented and wished to do so. Typically, a file was read by a Commissioner and then passed on to another. If a majority of Commissioners did on to any other Commissioner. Written decisions were then prepared by a WCB staff officer. A controversial aspect of the process was that individual Commissioners did not sign their decisions and did not actually write them.

A serious difference between the WCRB and the Commissioners was that the WCB was obliged to issue decisions in keeping not only with statute but with its official policy. The Review Board has maintained that it was not under any obligation to render decisions that were consistent with Board policy. In particular, the WCRB has asserted its right not to follow any WCB policy that it regards as unlawful. Perhaps a more central area of difference is that the WCRB panels are not consistent in their regard for WCB policy.

No practice of the WCB engendered greater hostility toward the Commissioners from disgruntled workers and the WCB than the referrals under Section 96(2). In most cases, referrals were utilized when a Review Board panel had allowed a worker's appeal and the claim was returned to the Claims Adjudicator at the WCB to be implemented. Recall from Table 4.3 that the Review Board reverses the WCB decision nearly half the time. Then the adjudicator gets the case back and has to decide either to implement the finding of the WCRB, or refer the matter to the Commissioners.

In September 1986, the Board issued WC Reporter Decision number 403, specifying six reasons that could serve as the basis for a referral by a WCB officer of a Review Board finding:

1. The finding is on a matter outside the jurisdiction of the Review Board.
2. The finding conflicts with the provisions of the *Workers' Compensation Act* or is otherwise based on an error of law.
3. The finding conflicts with Commissioners' earlier decisions, or a decision of a Medical Review Panel on the same claim.
4. The finding conflicts with Board policy. Where there is no apparent policy in effect on the issue being considered by the Review Board it would be expected that the matter would be referred back to the WCB for direction and guidance.
5. The finding amounts to an "original decision" rather than a conclusion on appeal.

51 **Table 4.7 Commissioners' Appeals**

	(Oct 26) 1990	1989	1988	1987	1986	1985	1984	1983	1982	1981
<b>91 APPEALS</b>										
New Appeals	682	766	678	582	419	459	532	553	378	296
Completions	501	570	542	588	313	512	426	339	333	127
Pending at Dec.31	1,091	919	731	590	596	490	543	437	223	178
<b>S.96(2) REFERRALS</b>										
New Referrals	167	138	213	398	174	217	65	86	143	176
Completions	162	183	305	269	178	133	64	82	142	146
Pending at Dec.31	47	42	87	182	116	120	36	35	31	30
<b>S.73 PENALTY APPEALS</b>										
New Appeals	326	163	119							
Completions	207	122	133	- - - - - NOT SEPARATELY RECORDED - - - - -						
Pending at Dec.31	205	92	50							

SOURCE: Workers' Compensation Board

6. The finding is against the overwhelming weight of the evidence.

The directive continues,

These grounds are largely the same as those set out in Decision No. 280 in relation to Board of Review decisions under Section 90(3) as it existed prior to February 20, 1986. The first five raise matters of law, policy, and jurisdiction and have not, in the past been the subject of major controversy. The only ground that has been changed and requires discussion is the sixth.

Data have been collected on the grounds for referring Review Board findings to the Commissioners for the period 1988 to 1990. About 46 percent of referrals were made on the grounds that the Review Board decision was in conflict with Board policy. Another 39 percent were referred because the Review Board decision was considered by the adjudicator to be against the overwhelming weight of evidence.

This area has been the source of much controversy between the WCB and both the Review Board and others, especially worker groups. The new Board of Governors has issued a revised policy on referrals based on Bill 27. Under the new Board policy, referrals to the newly created Appeals Division must be based only on Review Board decisions that WCB officers believe are either in conflict with the law or with the Board of Governor's published policies. Essentially, grounds number 6 of Directive 403 will not exist. In fact, it ceased to be employed by adjudicators by March 1991. Further, referrals in future must be made by the President of the WCB. Both these changes will reduce the incidence of referrals dramatically.

The data in Table 4.7 indicate the volume of Commissioners' appeals brought from 1981 through most of 1990. Appeals under Section 91 were always considerably more numerous than referrals. Section 91 appeals grew from 1981 to 1983, declined then for four years, and began to rise after 1986. In only two years, 1985 and 1987, were the Commissioners able to complete more appeals than were brought. A consequence of this almost ever-growing backlog is that the newly created Appeals Division inherited over 1,700 appeals at its inception in June 1991. In sharp contrast with Section 91 Appeals, referrals were generally handled without significant backlogs. This has been taken as an indication of anti-worker bias at the Commission level by some worker advocates. Also, the number of new referrals annually was highly variable with a low in 1984 (65) and a high in 1987 (398). Neither Section 91 Appeals nor referrals were ever as high as 1 percent of the rate of wage-loss claims first paid that year, and in no year was even one-half of 1 percent of new claims registered at the WCB.

Another way to gauge the scope of appeals to the Commissioners is to compare them with the volume of decisions made by the WCRB. In Table 4.8, column 2 is the rate of new Section 91 Appeals relative to appeal disallowals by the Review Board. One caveat should be noted. Prior to 1988, decisions of the

**Table 4.8 Relative Scope of Commissioners' Appeals**

Year	(1) WCRB Disallowed	(2) Sec. 91 New Appeals/ Col. 1	(3) WCRB Allow	(4) Sec. 96 (2) Referrals/ Col. 3
1981	1,190	24.9%	1,080	16.2%
1982	1,506	25.0	1,240	11.5
1983	1,759	31.4	1,109	7.8
1984	2,017	26.4	1,094	5.9
1985	1,748	26.3	1,169	18.6
1986	1,846	22.7	1,413	12.3
1987	2,405	24.2	1,606	24.8
1988	2,518	26.9	1,636	13.0
1989	2,454	31.2	1,687	8.2
1990	2,178	31.3	1,722	9.7

SOURCE: Workers' Compensation Board, Internal Report, Appeals Administration

Review Board could be appealed directly to Medical Review Panels. From 1988 until 1991 appeals of decisions by the WCRB were only to the Commissioners. Over the period 1981 to 1990, between 22.7 and 31.4 percent of WCRB disallowals were appealed to Commissioners. By comparison, referrals as a percentage of appeals allowed by the WCRB ranged from 5.9 to 24.8 percent, and was 13.0 percent or less in all but three of the 10 years.

In light of the controversy regarding referrals, it is edifying to examine how the Commissioners dealt with them. Column 1 of Table 4.9 shows the proportion of referrals that did not implement (in whole or in part) the WCRB decision, relative to the total number of referrals decided by the Commissioners. For example, in 1981 25.3 percent of the referrals decided in that year were decisions that did not implement WCRB decisions. With the exception of two years, 1984 and 1985, the Commissioners decided to implement in whole or in part the WCRB decision between 63 and 93 percent of the time that referrals were made to them. For the entire 10 year period, 25.6 percent of the referrals decided resulted in Review Board decisions being not implemented. Restated, in about three of every four referrals, the Commissioners sided in whole or in part with the Review Board. Of course, it must be understood that a partial implementation will may not have been satisfying to the worker, or to the WCRB.

Column 2 shows the percentage of all WCRB decisions that were not implemented due to Commissioner decisions in referrals. In only one year

**Table 4.9 Outcome of Referrals to Commissioners**

Year	(1) Referrals Not Implemented/ Referrals Decided	(2) Referrals Not Implemented/ Total Decisions, WCRB	(3) Referrals Not Implemented/ Appeals Allowed, WCRB
1981	25.3%	1.7%	3.6%
1982	21.1	1.1	2.4
1983	36.6	1.0	2.7
1984	60.9	1.2	3.5
1985	76.7	3.4	8.7
1986	25.8	1.4	3.3
1987	31.2	2.1	5.2
1988	10.2	0.8	2.1
1989	7.7	0.4	0.9
1990	8.0	0.4	0.8
1981-90	25.6%	1.3%	3.2%

SOURCE: Workers' Compensation Board, Internal Report

did this exceed 3 percent (1985). Column 3 indicates the percentage of appeals that were allowed by the WCRB that were not implemented by the Board through the process of referral and subsequent Commissioners' decisions. The year 1985 stands out again as an exceptional one, with 8.7 percent of the Review Board allowals not being implemented. This is far out of line with the entire 10 year experience, which shows only 3.2 percent of allowed appeals being not implemented.

One element of caution needs to be exercised in evaluating Table 4.9 Recall that some of the appeals decided by the Commissioners that did not implement WCRB decisions could be subsequently appealed to Medical Review Panels. In those cases, the Commissioners, or the WCRB, could have been subsequently overturned on a medical issue.

A question posed but left unanswered by Tables 4.8 and 4.9 is the reason behind the substantial differences in referrals and referral outcomes on a year-to-year basis. Apparently, changes in the leadership of the Board account for these uneven trends. New persons were appointed at the helm of the Board in 1984, who chose to be more confrontational with the Review Board. The Legislative Assembly responded by making the independence of the WCRB an issue in the subsequent returns of the Workers' Compensation Act, including Bill 27 in 1989. In addition, the Guadagni decision substantially impacted WCB behavior on referrals beginning in 1988. The attitude and

leadership of the WCB also changed over the period 1988 to 1990 and the institutional confrontation was substantially reduced.

Aside from the controversies identified above, the Commissioners were also criticized by those who pointed to their delays in reaching decisions. Over the period 1987 to 1990, it took approximately 17 months from the time a Section 91 appeal was received until a decision was issued. Referrals were decided in 7–8 months during this three year period. Of course, this was after the substantial delays encountered at the Review Board. For the disgruntled claimant, it began to look like a bureaucratic maze, especially when a WCRB finding in favor of a claimant was “reconsidered” by the WCB.

## **Medical Review Panels**

In a dispute over a medical issue a worker or an employer may appeal a WCB decision to a Medical Review Panel (MRP). Prior to July 4, 1988, the appeal to an MRP could be made after a Review Board decision, but from then until June 28, 1991 appeals to an MRP were allowed only after an adjudicator decision or subsequent to a decision by the Commissioners. Now the policy has returned to the original arrangement, appellants must file their request for an MRP review with 90 days of the WCB’s decision.

In order to be allowed to appeal a decision to an MRP, there must be a *bona fide* medical dispute. That determination is usually left to the worker’s attending physician who submits a letter (certificate) attesting to the presence of a dispute to accompany the request for the MRP. The certificate is evaluated by a medical appeals officer of the WCB. It is either accepted or the worker is given further opportunity to procure a certificate indicating that there is a good faith medical dispute. If the WCB finds that there is no *bona fide* medical dispute, that determination may be appealed to the Review Board.

Where an MRP is warranted, a summary of the non medical facts is prepared and sent with all medical reports to a chairman of an MRP. A set of 10 questions is given to the MRP with instructions that the panel limit its response to those issues only. The panel is absolutely bound by the WCB’s non medical findings in the case.

The Lieutenant Governor in Council appoints physicians to serve as Chairmen of Medical Review Panels. Currently, 16 persons serve in this capacity. When the Board accepts an appeal for an MRP, it sends a list of specialists practicing in the field in which the medical dispute occurs to the worker and to the employer, asking them to choose a specialist. The party requesting the panel must exercise that choice within eight days, or no further action is taken on the matter. If the party that did not request the panel, usually it is the employer, does not choose a specialist from the list within

eight days, a selection is made by the Ministry of Labour and Consumer Services.

The panel chairman and the two specialists meet the worker, customarily at the chairman's office. The panel has access to the Board's non medical findings, all the medical information, and any reports contained in the claim file. They each physically examine the worker. A medical history is usually taken as well. The panel is able to request that other tests be conducted if they believe it to be necessary. The three physicians then discuss their findings, and a report for the file is prepared by the chairman. The chairman also drafts the certificate and distributes it to the specialists for their approval. Only two of the three panel members need agree. This certificate contains the answers to the questions the Panel was charged with.

The certificate of the MRP is returned to the WCB where it is analyzed by Appeals Administration staff. Since May 31, 1991, Claims Adjudicators have been responsible for reviewing certificates directly. It must be reviewed for the possibility that the panel has overstepped its jurisdictional grounds. If the certificate is within the Panel's jurisdiction, the issue is resolved, decisively. Section 65 of the Act states,

A certificate of a panel under Section 58 to 64 is conclusive as to the matters certified and is binding on the Board. The certificate is not open to question or review in any court, and no proceedings by or before the panel shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise in any court.

Medical Review Panels can be used in fatality claims as well as disability claims. The sole issue, however, is the cause of death. Only dependants (not employers) may request an MRP and no certificate is needed indicating that a *bona fide* medical issue exists. Also, there is no requirement that an appeal for an MRP be made within 90 days of the WCB's decision.

Almost all MRP cases involve appeals by workers. A few issues seem to predominate. The most common issue that goes to an MRP is the question of causality, or work-relatedness of the condition. A second very common medical issue is the evaluation of the worker's condition. Though many types of conditions are assessed by MRPs, not surprisingly, back conditions are the ones most commonly involved.

For 1988 to 1990, the WCB received 1,199 requests for Medical Review Panels (about 400 per year). Of these, 727 certificates of the existence of *bona fide* medical disputes were accepted (64 percent). Some certificates were rejected, other appeals were out of time, and some appeals were withdrawn or not completed. Of the 899 MRP decisions in that three year period, 50.8 percent upheld or partially upheld the WCB's previous decision.

What factors explain why the WCB's medical decision was considered to be wrong in approximately one half of those claims appealed to MRPs? The most

common source of WCB reversals on medical issues is alleged to be where WCB doctors have not seen and examined the worker. Errors can be easily made when the WCB medical staff rely on attending physician reports that may be somewhat cursory or incomplete or possibly even inaccurate. Of course, only claims where there is reason for someone to believe that an error has been made will come to an MRP in the first place. There are no data available to demonstrate conclusively whether this reversal rate is excessive.

A criticism of the MRP process is that it delays the outcome of the claim, or at least the resolution of any medical disputes. This criticism appears to exist universally where impartial, outside panels of medical experts assist in resolving workers' compensation claims. The delays are due to evaluating the request for the appeal, the need to prepare the files to go to the panels, scheduling the examination, arranging further medical diagnostic tests, getting agreement and final sign-off on the report and certificate, and agency follow-up questions to the panel. Some evidence suggests that the time to complete the MRP process has been reduced in recent years. The Board has collected data on the time it takes from receipt of the claimant's doctor's certificate to the date of file closing. In cases where requests were received in 1984, it took 1,293 days, declining in 1988 to 434 days, and to an average of 275 days in 1990.

## **Appeals Beyond the Board**

Applications for judicial review can be made to the court system on the grounds that WCB decisions have deprived the litigant of his/her right to "natural justice" in the WCB administrative process. These applications would be to the British Columbia Supreme Court and the British Columbia Court of Appeals. In practice these appeals are not common, with perhaps 2-3 cases currently in the courts. The Act contains a very strong privative clause prohibiting court review of the WCB decisions. The courts have said that so long as the WCB acts within its jurisdiction, it will not be overturned, even where the decision may have been wrong. WCB decisions are overturned where the court finds that the WCB has failed to comply with principles of natural justice or if it has rendered a patently unreasonable judgment. A very significant decision where the Supreme Court found, in part, that the Board had gone beyond its jurisdiction, and that the Board's position was "... patently unreasonable in the face of the express words of Section 92" is found in *Guadagni v. British Columbia (Workers' Compensation Board)*. (50 D.L.R. (4th) 374).



**Table 4.10 Disposition of Complaints to the Ombudsman on the Workers' Compensation Board, 1990**

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Resolved	216
Not Resolved	3
Abandoned, Investigation, Not Authorized, Withdrawn	286
Not Substantiated	6
Declined, Discontinued	175
Inquiries	86
Total	772

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SOURCE: Ombudsman Annual Report, 1990.

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## Other Disputes

Not all disputes in workers' compensation cases necessarily lend themselves to appeals. Parties in claims may be dissatisfied with delays in resolving issues, uncertainties as to entitlements, irritation with being unable to speak to the appropriate Claims Officer, Adjudicator or manager, personal slights or seemingly prejudicial statements, insensitivity, or a host of other sources of frustration or anger. In his 1966 Commission of Inquiry on the Workmen's Compensation Act, Justice Charles W. Tysoe recommended that the Board seriously consider the establishment of a Complaints Department (Section 52) to deal with the various grievances that occur in dealing with any large scale organization. The Board created an office to handle complaints but disbanded it later when the offices of Workers' Advisers and Employers' Advisers were created. Since then each of these offices has served its respective constituents, along with the office of the provincial Ombudsman.

In July 1987, the Ombudsman released a 104 page report regarding the workers' compensation system in the province. It made 48 recommendations for change in the system, several of which were instrumental in shaping the subsequent amendments to the statute as Bill 27, passed in 1989 and effective in 1991. (See discussion in Chapter 2.)

The WCB has become very sensitive to complaints that are made of it to the Ombudsman, and has set up a small group to work closely with that body to investigate and resolve them promptly. Table 4.10 is taken from the 1990 Annual Report of the Ombudsman. About 9.8 percent of *all* complaints to the Ombudsman involved the Workers' Compensation Board. Of the 772 complaints regarding the WCB in 1990, 37 percent were abandoned, with investigation not authorized. The Ombudsman's office appears to be optimistic that the WCB is eager to reduce complaints about its performance. Managers at

the WCB are cognizant of complaints regarding their units or offices and are aware of the WCB's eagerness to reduce the number of complaints.

In 1968, amendments to the Act created the Office of Workers' Advisers to assist workers or dependants with their claims and to represent them as needed (although there was representation offered as early as 1954 through the Office of the Compensation Counselor). It has grown to a staff of 10 professional advisers, all located in Richmond, but who regularly travel throughout the province. Aside from assisting claimants, this office provides training for union persons who are themselves worker representatives.

Since about one third of the province's workers are organized, and because the Workers' Advisers office is stretched thin, it focuses its attention on the unorganized workers in the province and those whose unions provide no representational support to their members. For those unions that do provide representatives, it seems clear that many see no need for their members to avail themselves of Workers' Advisers. There has been one assessment made of whether injured workers generally feel that their interests are well served by the Workers' Advisers office. Ninety-six percent of a small sample of injured workers ( $n = 50$ ) were "satisfied" or "very satisfied" with the WAO services they received (Peat Marwick Report, 1990).

Employers, also, have had access to an Office of Employers' Advisers, created by statute in 1974, though relatively fewer have availed themselves of this service than the Workers' Adviser office. With a staff of six Employer Advisers, assistance is provided to employers on issues relating to occupational safety and health penalties, assessments, and claims for workers' compensation. One hundred percent of a small sample of employers ( $n = 20$ ) reported they were "satisfied" or "very satisfied" with EAO services (Peat Marwick Report, 1990).

Aside from the three offices created by law to assist workers and employers in coping with the workers' compensation system, persons wishing to do so have access to private lawyers. As noted earlier, lawyers represent the clients in about 15 percent of the appeals to the WCRB. WCB policy, prohibits paying legal fees in workers' compensation cases, but common knowledge suggests that one-third of the recovery is the conventional fee. Unlike most jurisdictions in the United States, there is no trial bar domination of workers' compensation adjudication or appeals. Part of the reason for this may be historical, but much of it is likely due to the strong posture in the Act and by the WCB that it should administer the law in an inquiry, rather than an adversarial, manner. The prohibition of legal fees also surely plays some role. It is apparent that the provision of Workers' Advisers, both by unions and by the provincial government, along with an active office of the Ombudsman limit the perceived need to retain private lawyers to redress the inevitable errors of a system as large and complex as the workers' compensation system of British Columbia.

## The Appeal Division

In 1989 the Legislative Assembly enacted Bill 27 which recast the organization of the WCB, effective June 3, 1991. In so doing, it altered the dispute resolution system described above, by replacing the Commissioners of the Board with an Appeal Division, headed by a Chief Appeal Commissioner. Appointed for a fixed term agreed on by the Chief Appeal Commissioner and the Governors, the Chief Appeal Commissioner is enabled to appoint Appeal Commissioners.

The Appeal Division has jurisdiction to hear a variety of matters:

- Where the WCRB has made a finding, a claimant or the worker's employer may appeal.
- Where the President of the WCB refers a Review Board finding to the Appeal Division for redetermination on grounds of error of law or contravention of a published policy of the Governors.
- Where a claimant or the worker's employer may apply for reconsideration of a finding made by Commissioners under the former (pre June 3, 1991) Act or a reconsideration of a decision by the Appeal Division itself.
- The 1,742 cases that were backlogged at June 3, 1991.

Additionally, the Appeal Division can hear other appeals including those by employers regarding assessments, classification, OSH penalties and relief of claims costs. (Section 96(6) and 96(6.1))

The appellant may request an oral hearing, though the decision on this rests with the Chief Appeal Commissioner. Where that is the appellant's preference, they may choose a one or three person panel. If the hearing is not an oral one, the choice of either a one or three person panel is that of the Chief Appeal Commissioner. Much like the WCRB, a three person panel shall consist of representatives of labour, of management and a neutral. Where the panel consists of one person, it will be a neutral. In exceptional cases, the Chief Appeal Commissioner may assign a panel of three who are all non representative Appeal Commissioners. Currently, some Appeal Commissioners are lawyers while others are not.

The new, untested Appeal Division faces a daunting task. The statute calls for it to decide any new appeal within 90 days. Aside from an expected flood of appeals from recent decisions at the WCRB, from previous decisions by the Commissioners, and from some employers seeking to have claims costs reallocated, there is the backlog of over 1,700 cases to be dealt with. Decisions will be written and are to be signed by members of the panel. To meet this anticipated crush, the Chief Appeal Commissioner has hired some temporary Appeal Commissioners to fill out the number available. Decisions of a panel may be reviewed by the Chief Appeal Commissioner on limited

grounds or appealed to the Medical Review Panel (where there exists a *bona fide* medical issue). There are no data available on the performance of this new adjudicative entity at this time.

## Chapter 5

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# Benefits

In this chapter we examine the types and levels of benefits provided to workers or their survivors who have suffered a disabling injury or their survivors in the case of a work-related fatality. British Columbia pays benefits that are found in most jurisdictions in North America, that is, medical aid, temporary total, temporary partial, permanent total, permanent partial, disfigurement, survivor's, and rehabilitation benefits. Most, though not all, benefits for compensable injuries or illnesses are associated with the worker's level of earnings at the time of the injury.

### **Establishment of the Wage Rate**

Though most indemnity benefits are tied to the level of the employees wage at the time of injury, the statute requires that WCB set maximum and minimum levels of earnings that are to be used in calculating the compensation rate. The basic compensation rate is 75 percent of average earnings for temporary total disability. However, where worker's earnings exceed the maximum, benefits are based on the maximum earnings level and not on their actual earnings. Where the benefit rate would fall below the minimum set by the WCB, compensation is based on the minimum, although the benefit cannot exceed 100 percent of the worker's earnings level.

The maximum wage level is set annually by the WCB. (See Table 5.1.) Prior to the end of each calendar year, the WCB sets the maximum rate for the coming year using a formula that is applied to the annual average of wages and salaries in the province for the year preceding the one in which the determination is made. The formula is the ratio

$$\frac{Y_i}{Y_B} \times \$40,000 = \text{MAX. WAGE}$$

**Table 5.1 Wage-Loss Benefit Rates**

Year	Max. Annual Wage Rate	75 Percent of Maximum Wage Rate Weekly	Minimum Wage-loss Benefit*
1980	\$20,400	\$293	\$127–133
1981	22,200	319	141–150
1982	24,700	355	159–167
1983	26,182	377	175–178
1984	30,200	434	183–187
1985	32,400	466	189–194
1986	40,000	575	197–201
1987	41,100	591	206–210
1988	41,300	594	215–219
1989	42,200	607	224–229
1990	43,400	624	235–240
1991	45,800	659	247–255

\* Two rates shown as rate is adjusted semiannually. The minimum benefit is either the rate indicated or the worker's wage, whichever is lower.

SOURCE: Workers' Compensation Board, Annual Reports

where  $Y_n$  was the average of wages and salaries in 1984, and  $Y_1$  was that average in the year prior to the one in which the maximum rate is calculated. The maximum wage level is tied to annual average provincial wage levels, lagged by one year, and the minimum is linked to semiannual changes in the consumer price index. Thus, the relationship between the maximum and minimum benefit is a close but not a constant one.

Since most compensation benefits are based on the worker's earnings the WCB must determine precisely what those earnings are. Though the issue may be a simple one in most cases, there are many opportunities for questions to arise. The statute gives the Board considerable latitude in determining the average earnings to be used. Section 33(1) does set the criterion, however, that the decision be "...as may appear to the Board best to represent the actual loss of earnings suffered by the worker by reason of the injury, but not so as in any case to exceed the maximum wage rate...".

Under most circumstances, the WCB follows a two stage process to set the average earnings level. Where a worker sustains a compensable injury or illness, the WCB uses the actual wage rate at the time of the injury, be it reported as a daily, weekly or annual rate. (The WCB will convert this to a weekly rate.) If the worker has two jobs, the lost earnings from both employ-

ments are used, subject to the wage maximum. If it appears that the period of compensation will go beyond eight weeks, or that a permanent disability will result, the Claims Adjudicator in conjunction with the Disability Awards Department, will recalculate the worker's earnings level, to take effect after the eighth week of benefits.

The wage rate used for these longer term cases is meant to be the long term earnings of that worker. Typically, the WCB will use the average of earnings for the one year period prior to the injury. To do that, the Claims Adjudicator will ask for the worker's pay stubs, copies of T-4s, information from tax authorities and/or employers. The purpose behind this is to meet the legislative requirement that the earnings "represent the actual loss of earnings" as compared to what the worker might have been paid on the day of injury.

A number of situations will usually produce significant differences between the immediate wage and average earnings level used in the longer term cases. Casual workers and seasonal workers may have substantial differences between their annual incomes and the rate of pay at the time of injury. Persons who have experienced unemployment in the period prior to the injury may also find a significant change as their wage is reestimated. However, if the Claims Adjudicator believes that unemployment in the year preceding the injury would not likely recur, the flexibility exists to allow the adjudicator to adjust the estimate so that it best represents the worker's likely loss of earnings. For example, the Claims Adjudicator may wish to consider the person's prior earnings for a period farther back than one year. This is likely to be used where an economic downturn may have produced an anomalous pattern of earnings for that worker in the year prior to the injury.

If the worker is an apprentice or a learner, adjustments in the average earnings can be made to take account of any scheduled increase in income that would have been earned in the absence of the injury. Where the injured person is a new entrant to the labour force, the adjudicator uses the wages earned in the one year period or more prior to the injury of a person in the same or similar grade or class of employment. In instances where the employee has had a recent adjustment in his/her wage rate that appears to be a permanent one, the adjudicator can use the average earnings level for a period of three months prior to the injury. In all cases, the goal is to use that level of earnings that represents the likely loss of earnings that the worker sustains because of a compensable injury.

The WCB will also include in its calculation of average earnings, the value of certain fringe benefits that may have been lost, such as room and board and vacation pay. It does not include the value of any unemployment insurance benefits paid during the period under review. Worker advocates allege that the WCB is not very flexible or understanding in determining average earnings. They feel that the WCB frequently uses the facts in a way that actually disadvantages the claimant.

Reopened claims occur frequently in British Columbia, particularly in

cases involving lifetime pensions. If a claim is reopened within three years of the injury for temporary benefits, the wage at the date of injury or the eight week review is used, as adjusted for CPI changes. Where three years or more have passed, a new earnings review will be conducted. Where a pension is being paid the earnings level may be reconsidered where a claim is reopened after three years from the time of the injury.

The Board is able to set a wage for those persons injured while employed as volunteer workers. For certain classes of volunteers, the Board has established a schedule of hypothetical "wages." For persons who have purchased insurance from the Board under the Person Optional Protection program, the Board uses the level of wage-loss protection purchased by the insured, and not the actual loss of earnings. However, where the insured wage is above \$2,300 per month, the purchaser must prove that earnings are at least at that level in order to qualify for the higher benefit.

## **Medical Aid Benefits**

Workers with compensable injuries or illnesses are entitled to a very broad range of medical aid benefits. Under most circumstances the Board will pay all the costs of physician and hospital services, medications, diagnostic requirements and appliances. British Columbia allows the worker free choice of attending physician or other qualified practitioner. The latter include chiropractors, dentists, podiatrists and naturopaths. Medical aid can also be provided by optometrists, dental mechanics, nurses, and physiotherapists. Generally, acupuncture treatments will not be paid for by the WCB. The worker is free to change his/her attending physician, although the WCB may refuse to pay accounts under certain circumstances. For example, where the WCB Medical Adviser decides that the change will be harmful or is medically unsound, the change will not be permitted.

The Board has established a number of guidelines in relation to the treatment given a worker. For example, after eight weeks of treatment by a chiropractor or naturopath, the WCB Medical Adviser must determine whether continued treatments are to be authorized. In these and other decisions, the WCB's practices are dictated by basic principles. One goal of the WCB is to promote recovery, so choices by patients or their health care providers that delay recovery or create unwarranted risks of further injury are unacceptable. However, the WCB also tries to give the patient as much choice as possible.

Health care providers are paid according to a negotiated fee schedule. Presently, the WCB pays physicians at a rate of 110 percent of the rate agreed to between the government and the British Columbia Medical Association under the provincial health care system. The reason that the WCB pays 10 percent above the prevailing rate is due to the requirement that physicians



provide reports to the WCB. Attending physicians are expected to provide such reports initially and at approximately two week intervals during the course of the treatment. In negotiations currently underway, the Board seeks to pay 100 percent of the provincial rate, plus some agreed fee for reports provided by the physicians.

A sensitive area of relations between the Board and the health care community is that the WCB is able to file suit against providers for malpractice. Though not commonly done, the Board is using this power currently in a number of prominent cases, which is the source of considerable resentment by physicians in British Columbia.

Included under its medical aid provisions, the Board will pay for six types of allowances and services, over and above the benefits already noted. They are:

- Clothing allowance — The WCB has a schedule of benefits to be paid for the purchase of clothing by limb amputees and persons requiring the wearing of leg braces.
- Homemaker Services — The WCB will pay for homemaker services for temporary situations, such as the worker having to travel to other areas to receive treatment, or when the spouse of a worker escorts a seriously injured worker to another treatment facility leaving the family unattended.
- Independence and Home maintenance Allowance — This benefit is paid to allow the worker some independence when the injury leaves the worker unable to drive a car, or perhaps to use public transportation, and where taxis must then be used. It also is paid to cover those costs of maintaining a home that the worker him or herself can no longer provide, such as painting, landscaping or repair work. The allowance is only paid in cases of severe impairments.
- Personal Care or Nursing Allowance — The WCB has categorized five classes of very severe impairment ranging from level 1 (e.g., blindness, multiple amputations) to level 5 (e.g., quadriplegic, decerebrate). These categories enable injured workers to receive differing levels of allowances. The allowance is not paid automatically, but only where the claimant requires personal care or nursing services.
- Subsistence Allowance — The WCB will provide a per diem to a worker when the worker is undergoing treatment at a place other than where he/she resides. It may also provide this allowance where the worker is away from home to attend a claims or appeals hearing.
- Transportation Allowance — Under some circumstances the WCB will provide an allowance for travel expenses incurred in connection with a hearing or appeal, or for medical care by a specialist or treatment center.

**Table 5.2 Medical Aid Expense\***

Year	Total Medical Aid Payments (\$000)	Cost Per Registered Claim	Costs for Medical Aid Only Claims (\$000)	Cost Per Medical Aid Only Claim
1981	\$48,805	\$248	\$ 4,938	\$ 66
1982	56,938	356	6,527	104
1983	59,465	392	6,739	119
1984	59,471	394	6,834	124
1985	57,422	362	7,249	125
1986	57,941	371	8,185	142
1987	63,752	377	10,013	168
1988	73,177	380	13,283	183
1989	77,981	377	13,523	183
1990	91,451	421	15,817	201
Annual Growth Rate	7.2%	6.0%	13.8%	13.2%
Real Annual Growth Rate	2.1%	1.0%	8.4%	7.8%

\* Does not include administration expense.

SOURCE: Workers' Compensation Board, Annual Reports

Expenditures for medical aid are shown in Table 5.2. From 1981 to 1990, expenditures on medical aid grew by 7.2 percent annually, and by 6.0 percent annually on a per registered claim basis. However, for the period 1982 to 1989, the medical aid per claim grew by only by 0.8 percent per year. Special note should be given to the large jumps in medical aid expenditures in 1981 and in 1990. Unfortunately, it is not possible to calculate medical aid payments per case precisely since we do not know the total number of claims receiving medical aid payments in each year.

Columns 3 and 4 of Table 5.2 show the total medical aid costs and the per claim medical aid costs for medical aid only claims. The table shows that the total and per claim costs for medical aid only claims have increased about twice as rapidly as for all claims. The table also indicates that most of the increases in medical aid costs during the decade are due to increasing costs per claim. This can be deduced from the fact that the medical aid costs per claim grow at almost the same rate as overall medical aid payments for medical aid only claims.

## Wage-Loss Benefits

Where a worker has incurred a compensable impairment, physiological or psychological, he/she is entitled to a wage-loss benefit, beginning the first working day after the day that the injury or illness occurred. Benefits are paid where the worker sustains a temporary total or a temporary partial disability. Indemnity benefits for temporary total disability are set at 75 percent of the worker's average earnings, subject to the statutory maximum and minimum benefits. (See Table 5.1) This benefit is paid only where the worker suffers a loss of wages. There is no maximum period of time for which such benefits can be paid.

Temporary total disability benefits are terminated when the worker is no longer temporarily and totally disabled. If the worker returns to employment, total disability no longer exists. Where the worker's condition is judged to have stabilized or "plateaued," it is no longer temporary. The decision rests with the Claims Adjudicator, based upon information received from the worker and/or employer and from the biweekly reports of the attending physician or other practitioners. If temporary total disability benefits are terminated, either indemnity benefits end, temporary partial benefits are paid, or the person is evaluated for purposes of paying a permanent pension.

Temporary partial benefits are paid where the worker has some actual or potential earnings, after sustaining a compensable injury or disease. The worker is entitled to an indemnity benefit of 75 percent of the difference between the average earnings before the injury and the average amount earned, or that could be earned potentially, after the injury. This benefit is terminated where the worker no longer has any wage loss, or when the medical condition is judged to have stabilized, and the worker is assessed for a pension. In some cases, the temporary partial benefit will be terminated where the worker's condition changes and a temporary total disability benefit is paid. A decision to reduce or to terminate a wage-loss benefit may be appealed by the claimant.

A third category of wage-loss benefit, aside from temporary total or temporary partial disability benefits is the income loss benefit. The benefit is paid out of Medical Aid where a worker who has been injured loses time and wages from work because of the need for medical examination or treatment. This benefit is provided if it is not practical for this examination or treatment to be provided during nonworking hours. Typically, the benefit will be the same as that paid for temporary total disability.

Data on wage-loss claims are shown in Table 5.3. Following 1981, wage-loss claims dropped off very sharply with the recession and continued to decline through 1984. Since then, these claims have risen each year, with a growth of 30.3 percent for the three year period ending in 1990. The pattern of payments for wage-loss shows very modest growth when evaluated in total or

**Table 5.3 Wage-Loss Claims and Costs**

Year	Wage-Loss Claims First Paid	Wage-Loss Claims First Paid/ 100 Employed	Total Wage-Loss Payments (\$000)	Total Wage-Loss Payments/ Wage-Loss Claims First Paid
1981	86,264	6.8	\$119,778	\$1,389
1982	70,255	5.8	127,054	1,808
1983	63,291	5.3	124,748	1,971
1984	60,044	5.0	117,193	1,952
1985	62,052	5.1	116,557	1,878
1986	63,066	5.0	130,575	2,070
1987	66,869	5.1	147,002	2,198
1988	74,815	5.5	169,952	2,272
1989	81,046	5.6	185,778	2,292
1990	87,147	5.9	205,080	2,353
Annual Growth Rate	0.1%	-1.5%	6.2%	6.0%
Real Annual Growth Rate	—	—	1.1%	1.0%

SOURCE: Workers' Compensation Board, Annual Reports

on a per claim basis, especially after the major increase from 1981 to 1982 is set aside. Total wage-loss payments grew by only 6.2 percent annually, 1.1 percent in real terms from 1981 to 1990. From 1983 through 1990, wage-loss payments per wage-loss claim first paid grew by only 2.6 percent annually, without consideration for any inflation that occurred over this period. This measure is only an indicator, since it treats all wage-loss payments in a given year as going to claims originating in that year, but it indicates that wage-loss costs have been under control, unlike many jurisdictions in North America during the decade of the 80s.

Of course, the pattern of usage of wage-loss benefits must reflect the movements in employment in the province. From 1981 to 1982, the unemployment rate exploded and employment levels fell. Employment remained stagnant, and only by 1986 had employment in British Columbia regained its level of 1981. Employment grew modestly thereafter and the unemployment rate gradually receded, though it was still high by absolute standards even in 1990. In general terms then, the labour market took a serious drop after 1981, bottomed out in 1983 to 1985, and then began to strengthen, though without becoming genuinely robust, through 1990. In roughly similar fashion, the rate

of wage-loss claims first paid to the level of employment moves down after 1981, bottoms out in 1984 to 1987, and moves upward again in the years 1987 to 1990.

## **Permanent Disability**

If a worker sustains a permanent residual impairment due to an occupational injury or disease after temporary total or temporary partial benefits have been terminated, the worker may be entitled to a pension award for permanent disability. Depending upon the condition of the worker, the benefit can be either for permanent partial or permanent total disability. We examine first the more common case of permanent partial disability.

British Columbia employs a “dual” approach to benefits for permanent partial disability. A claimant receives benefits based on an assessment of either the degree of physiological (or psychological) impairment, called a permanent functional impairment, or the loss of earnings capacity. A worker’s pension benefit is based on the alternative that provides the larger award.

Permanent disability awards are the responsibility of the Disability Awards Department within the Compensation Services Division. As soon as it becomes evident that a permanent disability is likely to result from a claim, the file is forwarded to that unit for purposes of setting the worker’s average earnings level. The realization that a permanent disability will likely result is generally based on reports from the attending physician, or from the Claims Adjudicator and the Unit Medical Adviser. When the disability determination is likely to be straight forward and not involve any permanent earnings loss, the matter is handled by a Disability Awards Officer (DAO). If the matter is likely to be problematic, or there will be some residual earnings loss, the file is sent to a Claims Adjudicator Disability Awards (CADA).

Until the worker’s condition “plateaus,” the claim is supervised by a Claims Adjudicator in a regular claims unit or area office. When the temporary benefits are terminated the file is sent to Disability Awards and the worker is examined there by a Disability Awards Medical Adviser (DAMA). Since there may be a gap of several months from the time that temporary disability benefits are terminated and permanent partial disability benefits begin, those workers who are not reemployed may find themselves temporarily without income. Some may depend upon welfare or unemployment compensation. In some cases, the WCB will allow a worker to continue to receive income replacement benefits until the permanent disability benefits begin to be paid. This practice, known as continuity of earnings, or “Code R,” is utilized only when there is significant permanent functional impairment and where it is likely that there will be a loss of earnings based on the impairment. The Vocational Rehabilitation Consultant that has monitored the claim is the source of the recommendation that continuity of earnings be utilized.

## PERMANENT FUNCTIONAL IMPAIRMENTS

The medical examination by the DAMA results in a recommended value of the Permanent Functional Impairment. Most physical impairments are “scheduled,” that is, the DAMA quantifies the degree of impairment according to values spelled out in specific publications. The *AMA Guides to the Evaluation of Permanent Impairment* have been adapted for use in the case of many impairments, but other guidelines are employed for use with other types of impairments. Occasionally, the CADA or a DAO will raise issues about the DAMA’s assessment which can lead to changes, but usually this assessment is adopted.

If the worker has a permanent functional impairment of 20 percent, for example, the worker is entitled to a lifetime pension benefit of 20 percent of 75 percent (that is 15 percent) of the worker’s average earnings as determined by the Disability Awards Department, subject to the maximum and minimum levels of earnings. The award is modified based on age so that for each year that the worker’s age exceeds 45 at the date of the award, the percentage rate of compensation is increased by one percent up to a maximum of 20 percent (age 65) of the assessed impairment. For example, suppose a worker at age 60 is given a 40 percent impairment rating. The age adaptability factor would be 15 percent of 40 percent (or 6 percent), providing the worker with a permanent partial disability rating of 46 percent. The benefit would be a lifetime pension of  $.46 \times .75 \times$  average earnings level. After one year, permanent pension benefits are subject to revision semiannually based on changes in the consumer price index.

Where the worker had a pre-existing condition, the assessment rating of the compensable impairment could underestimate the impact of a specific injury. An underestimate could also occur where an injury leads to multiple impairments, and the simple summation of the separate ratings would not reflect the full effects of impairment. In either case, the DAO or CADA may allow that an “enhancement factor” be added to the impairment rating. By parallel, where a summation of multiple impairments leads to an overestimation of the worker’s overall impairment, a devaluation may be utilized.

In the vast majority of claims, the impairment is scheduled. Where the injury is not scheduled, the DAMAs use their judgment to set an impairment rating. In unscheduled impairments, no age adaptability factor is employed, since the judgment of impairment can take age into account, as well as any pre-existing conditions. A DAMA conducts about 14 impairment evaluations weekly. Currently, there are five Board-employed DAMAs in Richmond, plus outside medical consultants are used in certain specialized areas such as psychiatry, ophthalmology, cardiology, etc.

## LOSS OF EARNINGS PENSIONS

It has been noted that the worker's benefit is based on either the degree of impairment or on the loss of earning capacity, whichever is higher. We turn now to the process used to determine the degree of earnings loss. Initially, the procedure is the same, since an impairment rating is made first. If the worker is receiving a continuity of earnings benefits, the process is expedited so that a permanent disability benefit can begin to be paid quickly. The Vocational Rehabilitation Consultant (VRC) who has worked with the file prepares an employability assessment. It will describe the person's work history, the training and education that the worker has received, and any work activity since the injury. It is possible that the worker will be sent by the rehabilitation consultant to the Functional Evaluation Unit (FEU). (See Chapter 6) Typically, the worker is evaluated over a two week period and a detailed and technical report on the worker's capabilities is prepared by the FEU. The report covers the areas of occupational therapy, remedial therapy, and functional evaluation based on activity in an occupational setting. This report is used by the VRC to prepare the employability assessment. With this information, the consultant is expected to identify two or three jobs that the worker could perform, and that are potentially available in the relevant labour market. The pay rates for these jobs at the time of the injury are also identified.

It might be noted that these evaluations are very controversial. Worker advocates believe that they are biased against the claimant and designed to absolve the WCB of responsibility, or reduce the cost of wage-loss pensions, in many permanent disability cases. When combined with the "deeming" procedure for jobs that may or may not actually be available to the worker, it is easy to see how a disabled worker whose pension was denied might feel he/she was being given a fast shuffle by the WCB.

The CADA then has four basic sets of information to utilize, that is, the worker's previous earnings level, the functional impairment assessment from the DAMA, the FEU report, and the Vocational Rehabilitation Consultant's employability assessment. Based on these, the CADA makes a recommendation to a three person Disability Awards Committee, made up of a manager from the Disability Awards Department, a senior DAMA, and a rehabilitation manager. It is this committee that has the responsibility to determine the size of any projected earning loss benefit that will be paid.

In practice there are two techniques that are utilized to estimate earnings loss. First, if the worker has returned to work after the injury stabilizes, the rehabilitation consultant might use the worker's actual earnings as the basis for judging any long term projected earnings loss due to the injury or illness. Alternatively, the consultant may ask, what type of employment is this worker capable of taking? The recommendation could also be based on the expected competence of the worker after having completed a training or education

program that the consultant believes will allow the worker's potential to be maximized.

A numerical example may help clarify how the projected loss of earnings capacity is calculated. Suppose a worker is injured in 1988, with average earnings of \$2,000 per month (below the earnings maximum at that time). He/she is assessed in 1990 as having a 30 percent, scheduled, permanent functional incapacity. If the worker is below age 45 in 1990, there is an entitlement to a lifetime monthly pension of  $.30 \times .75 \times \$2,000$  or \$450 per month. Alternatively, the Disability Awards Committee accepts the rehabilitation consultant's determination that the worker is capable of working no more than 60 hours per month at clerical work (that is available) and that paid \$10 per hour in 1988. Perhaps the worker is already employed at this job and working a 15 hour week. Or perhaps, the judgment is made that after a three month course, the worker would be able to do that job, working up to 60 hours per month, and that the pay in that job in 1988 was \$10 per hour. Hence, the worker's monthly earnings loss due to the injury or disease is \$2,000 minus \$600 (60 hours @ \$10 per hour) or \$1,400 per month and there is an earnings loss entitlement of  $.75 \times \$1,400$  or \$1,050, clearly exceeding the benefit based solely on the assessment of permanent functional impairment. In this instance, the worker would receive the wage-loss pension of \$1,050.

Benefits based on the impairment assessment alone are payable for life, though they are adjusted if the impairment assessment is changed. Benefits paid for projected earnings loss are not lifetime benefits for two reasons. First, the WCB will reassess the worker's income status two years, or occasionally one year, after setting the pension. Thereafter, the CADA has discretion over whether or not to reassess the worker. In some cases, a physician or hospital charge will indicate that the worker's physical condition may have changed, in turn requiring that a new assessment be made of the permanent functional impairment and of the worker's projected earnings level.

A second reason that the earnings loss is not a lifetime benefit is that workers are not projected to work and earn for a lifetime, but instead, to retire in their later years. However, the WCB is mindful also that a worker's retirement benefits are likely to be reduced due to earnings losses as a consequence of a compensable injury or disease. To take account of these two factors, the WCB uses a somewhat complex formula. If the injury occurs when the worker is age 50 or less, the pension based either on impairment or projected earnings loss is payable for life — unless the worker's assessed condition is subsequently changed. If the worker is age 65 or over at the time of injury, the pension is based strictly on permanent functional impairment and not on projected earnings loss. If the injury occurs when the worker is age 51–64, and the worker's benefit is based on earnings loss, that benefit (unless changed due to reassessment) is payable until age 65. At age 65, the pension becomes the benefit based on the permanent functional impairment, plus a fraction of the difference between the two methods. That fraction is set at 15/15ths (of the



difference between the two methods) and declines by 1/15th for each year of age beyond 50. For example, if the injury occurred at age 60, a worker receiving an earnings loss benefit would receive a lifetime pension at age 65 consisting of the impairment based benefit plus 5/15ths of the difference between the earnings loss and impairment based benefits.

An injured worker may also be entitled to a lump sum benefit where the injury or industrial disease results in a permanent disfigurement. This award will be paid only if the disfigurement is judged to be serious and potentially harmful to the worker's projected earning capacity. Thus, the WCB will take into account the worker's occupation and the visibility of the scar, in addition to the size and appearance of the scar.

If the worker's injury is superimposed on a pre-existing disability, the statute obligates the Board to compensate only for the proportion of the disability — following the compensable injury — that may reasonably be attributed to the injury. "The measure of the disability attributable to the personal injury or disease shall, unless it is otherwise shown, be the amount of the difference between the worker's disability before and disability after the occurrence of the personal injury or disease" (Section 5(5)). The apportionment based on a pre-existing disability is applied both to impairment based and to projected earnings loss pensions.

In cases involving exceptionally serious injuries, e.g., total blindness, paraplegia, severe loss of cerebral powers, the worker may be judged to be permanently and totally disabled. In such claims, the lifetime pension is awarded as soon as it is clear that the worker will survive his injuries. Benefits are based on 75 percent of the worker's average earnings, subject to a maximum (same as for temporary disability) and a special minimum just for permanent and total disabilities. (Section 22(2))

Pension benefits are commuted (paid in a lump sum) where the monthly pension is below \$100 per month and the commuted value is under \$40,000. If the monthly pension is between \$100 and \$125 and the value of the commutation is between \$40,000 and \$60,000, the worker is given a choice of taking a lump sum or the monthly pension. Where the pension amounts exceed these levels, the Board will very rarely permit commutations to be paid and only in cases where the calculation is based on permanent functional impairment. Partial commutations are also permitted. However, payment of a commutation does not close out a case. Therefore, workers may seek medical aid benefits subsequent to the payment of any lump sums and their disability status may be reassessed subsequently, with some possibility of a revision in either direction.

The process of setting the disability award is one of the most difficult, and potentially contentious, aspects of the benefits scheme. The use of schedules allows for some degree of consistency in the rating of permanent functional impairment. Even here, however, it must be recognized that some room exists for DAMAs to differ in their ratings, to say nothing of the inherent quality and

rationality of the schedules. The core issue, however, is the extraordinary difficulty in identifying the worker's projected earnings capacity. Where the worker has suffered some earnings loss, the Board is asked to decide what type and quantity of work the person can be expected to achieve that could reasonably be available, perhaps with the assistance of a retraining program and perhaps after geographic relocation. Unlike some other compensation agencies, however, the WCB intends that these decisions will be reassessed periodically. Hence, serious errors in assessing projected earnings losses can be caught by a subsequent reappraisal of the worker. Of course, the worker always has a right to appeal the Board's decision as well. (See Chapter 4.)

The difficulty in seeking to estimate future earnings loss raises many issues, including the paramount importance of the skill of the Vocational Rehabilitation Consultant. And because there is considerable room for judgment in doing this, it promotes maximal opportunity for an appeals body such as the Review Board to supplant that judgment with its own. This issue will be discussed again later.

## **Permanent Disability Incidence**

Table 5.4 describes the changing incidence of permanent disability claims first paid. From 1981 to 1990, these claims rose by almost 50 percent, though the numbers actually declined in most years until 1987. From 1987 to 1990 alone, permanent disability claims increased by 48 percent. If one compares the numbers of these claims to temporary total disability claims first paid, we see a similar time pattern (column 2). Beginning in 1987, there was a sharp increase in the proportion of permanent disability claims first paid to temporary total disability claims first paid. By 1990, the proportion of permanent disability claims first paid to temporary total claims first paid was 4.7 percent, almost 50 percent higher than the 3.2 percent of 1981.

Column 3 lists the claim costs charged for permanent disability claims from 1981 to 1990. These costs include medical aid costs and pension reserves set aside for these cases. Clearly, these costs have grown considerably over this period, so that even after inflation is accounted for, average annual growth was 2.3 percent. Column 4 displays the claims costs charged for permanent disability claims per permanent disability claim first paid in that year. On that basis, per case costs rose from \$38,586 to \$49,262 from 1981 to 1990 or 27.7 percent. However, since the consumer price index rose by 60 percent over this period, controlling for inflation, the real cost per case actually fell by 2.5 percent per year.

The data in Table 5.5 are unpublished and are taken from an internal report prepared by the Disability Awards Department. They reflect the composition of claims being adjudicated there from 1986 to 1990 (preliminary). Column 1 indicates that claims involving projected loss of earnings pensions

**Table 5.4 Permanent Disability Claims and Costs**

Year	(1) Permanent Disability Claims First Paid	(2) Perm. Disability Claims First Paid/ Temporary Total Claims First Paid	(3) Claim Costs Charged for Permanent Disability* (\$000)	(4) Claim Costs Charged for Perm. Disability Claims/Permanent Disability Claims First Paid
1981	2,631	3.2%	\$101,520	\$38,586
1982	2,424	3.6	101,252	41,771
1983	2,531	4.2	105,654	41,744
1984	2,419	4.2	96,363	39,836
1985	2,071	3.5	80,789	39,009
1986	2,095	3.4	78,366	37,406
1987	2,656	4.1	102,437	38,568
1988	3,272	4.6	156,318	47,774
1989	3,446	4.5	159,407	46,259
1990	3,935	4.7	193,846	49,262
Annual Growth Rate	4.6%		7.5%	2.8%
Annual Growth Rate per Worker	2.9%		5.7%	
Real Annual Growth Rate			2.3%	-2.5%

\* Includes medical aid costs, and pension reserves set aside, not pension payments.

SOURCE: Workers' Compensation Board. Annual Reports

are a small number, but rising very rapidly since 1987. Column 2 indicates the rising proportion of total permanent disability awards accounted for by these earnings loss claims. Column 3 places a dollar value on awards and reserves for these earnings loss claims, rising from \$17.1 million in 1986 to \$78.5 million (preliminary) in 1990, a jump of 359 percent, during a period when the inflation rate advanced by approximately 19 percent. Not surprisingly then, the ratio of reserves and awards for functional loss benefits (and Section 24 benefits, a relatively small program that adjusts compensation for impairment claims more than 10 years old) to earnings loss benefits declined substantially from 1986 to 1990. Earnings loss pension cases were about 10 percent of all claims first paid for permanent awards, but accounted for over

**Table 5.5 Disability Awards Activity**

Year	(1) Number of Loss of Earnings Claim, First Paid	(2) Col. 1/Total Number of Awards Made	(3) Reserves and Awards for Loss of Earnings (\$000)	(4) Col. 3/ Total Reserves for Permanent Disability Claims
1986	208	7.7%	\$17,165	21.5%
1987	215	6.6	23,151	22.6
1988	433	10.0	56,831	29.2
1989	423	9.5	59,221	30.0
1990*	543	10.8	78,496	31.1

\* Estimate

SOURCE. Internal Report of the Disability Awards Unit, November 5, 1990.

31 percent of the reserves and awards for permanent disability claims in 1990.

If one examines the costs per award in loss of earnings pension cases, they grew from \$82,525 in 1986 to \$144,314 in 1990 (74.8 percent). During the same period, the average cost per case where the benefit was based on permanent functional impairment increased from \$18,375 to \$21,255 (15.7 percent). There is no ready explanation for this very rapid rate of increase in the number of loss of earnings pensions or their rapidly rising average cost. These figures are based on a specific internal study for the period 1986 to 1990 and may not be indicative of a trend over the period 1981 to 1990.

## **Vocational Rehabilitation Benefits**

While a more detailed description of rehabilitation services, programs and benefits is available in Chapter 6, major benefit programs provided through the Vocational Rehabilitation Services Department will be briefly summarized here.

Vocational rehabilitation services are provided to injured workers, and in some cases to the workers' dependants in order to offset the effects of compensable injuries, industrial diseases and fatalities in accordance with Section 16 of the Workers' Compensation Act. Services provided include vocational assessment and planning, counselling, skill development, job readiness and placement assistance, and employability assessments.

In support of these services the Vocational Rehabilitation Services Department provides certain benefits to the injured worker to sustain rehabilitation efforts. Wage-loss equivalency benefits provided by the Department are pay-

able only when temporary wage-loss benefits have concluded. These benefits may be awarded when workers are either awaiting or undertaking specific vocational programs. In addition, transportation and subsistence allowances, as well as accommodation at the WCB's Rehabilitation Residence are also considered benefits in support of the vocational programs. As discussed earlier, it is also possible that the worker is given a rehabilitation income continuity allowance between the period following the termination of wage-loss payments and the commencement of permanent partial disability pension (Code R payments).

During the rehabilitation process, workers participating in work evaluations are provided financial assistance at wage-loss equivalency. For workers participating in the Job Search Program or actively seeking re-employment, a discretionary benefit in the form of a job search allowance is available, and computed at wage-loss equivalency rates.

If work site or job modifications are required to facilitate re-employment, the WCB may provide the required financial assistance to accommodate the work site or job in relation to the worker's functional needs, including expenditures for special equipment and tools. When training on the job is utilized as a training and placement strategy, the WCB will develop shared cost arrangement with the employer.

When the WCB is supporting a formal training program for an injured worker the benefits provided would normally include: a training allowance at wage-loss equivalency when enrolled in a full-time program, tuition, fees and any required books, materials and equipment; and travel and subsistence allowance where appropriate. In certain cases, the WCB may contribute to the cost of starting a business in lieu of providing training.

In cases where there has been a compensable fatality of a worker, the Board may offer assistance, when needed, to a dependant spouse or other dependants for counselling, and training in order to improve the spouse's earning capacity.

Finally, when providing services to individuals with spinal cord or other severe injuries the WCB may additionally provide vehicle modifications, house renovations, personal care allowances, independence and home maintenance allowances, and homemaker services. Service requirements are assessed and recommended by the Vocational Rehabilitation Consultant.

## **Death Claims**

In compensable death claims, funeral and accidental death expenses are paid by the WCB, subject to a maximum that is adjusted semiannually. Under certain circumstances, the WCB may pay the expense of transporting the body. Death benefits are paid to dependants of the worker, that is, family members who were wholly or partly dependant upon the worker's earnings.

Where two workers are married and both are contributing to the support of a household, dependency is deemed. Children cease to be dependants when they become 18, or at age 21 if they are regularly attending school.

Where the surviving spouse has two or more children, the monthly compensation benefit, when combined with any federal benefits to or for those dependants, is the compensation rate that would have been paid had the worker been permanently and totally disabled at the date of death, plus a monthly stipend for every child beyond two in number. Thus, where the surviving spouse with two or more children may receive a benefit under the Canada Pension Plan, the Board offsets the workers' compensation benefit so that together, benefits do not exceed 75 percent of the worker's average earnings, plus the stipend for any children beyond two. The worker's average earnings are subject to the permanent total disability maximum and to a minimum average earnings level that differs from the one utilized in cases of permanent total disability.

Where there is a surviving spouse and one child, the benefit is 85 percent of what would have been paid had the worker sustained a permanent and total disability at the date of death, i.e.,  $85\% \times 75\% \times$  average earnings. Again, this benefit is subject to an earnings maximum and minimum, and an offset for any federal benefits.

If the dependant spouse has no children, the death benefit then depends upon the age of the person. Subject to the earnings maximum, if the survivor is 50 years or older, or an invalid, the survivor's benefit is 60 percent of the monthly compensation that would have been paid had the worker been permanently and totally disabled at the date of death, subject to the offset for any Canada Pension Plan benefits. There is a minimum benefit level set by the WCB and in such cases there is no offset for federal benefits.

If the surviving spouse is without a child, not an invalid, and below the age of 40, the benefit paid is a capital sum, with an installment paid immediately and the entire balance paid within six months. It is noteworthy that the size of this benefit is invariant with respect to the worker's average earning level.

Where the surviving dependant has no children, and is not an invalid, and is between age 40 and 50, the benefit is essentially set on the basis of four factors; that is, the benefit formula used for childless survivors over age 50 together with the minimum benefit applicable where the person is above age 50, an increasing sliding scale for each year of age from 40 to 50, and the worker's average earnings level. The federal benefits offset is applied.

Benefits are subject to recalculation when children cease to be considered children, or where a survivor is no longer an invalid. If the survivor remarries, benefits are terminated and the widow or widower is given a sum equivalent to two years of benefits.

Data on fatality claims are shown in Table 5.6 for the period 1981 to 1990. In the early part of this period, death claims declined, in part a product of the decline in employment in the province. After dropping steadily through

**Table 5.6 Fatality Claims and Costs**

Year	(1) Claims	(2) Charged (\$000)	(3) Col. 2/Col. 1
1981	197	\$15,887	\$ 80,645
1982	176	19,453	110,528
1983	148	16,303	110,155
1984	134	16,594	123,836
1985	126	13,382	106,206
1986	120	17,313	144,275
1987	140	19,369	138,350
1988	162	23,804	146,938
1989	175	24,260	138,629
1990	168	24,927	148,375
Annual Growth Rate	-1.8%	5.1%	7.0%
Real Annual Growth Rate per Worker	-3.3%	3.4%	5.3%
Real Annual Growth Rate		0.1%	1.9%

SOURCE: Workers' Compensation Board, Annual Reports

1986, claims began to rise between 1986 and 1989. Claims costs increased from 1981 to 1990, overall, but in large measure this was associated with inflation over this period. Claims costs charged per fatal claim (column 3) have risen more rapidly than the inflation rate over this period.

## Other Benefits

It has been noted already that Canada Pension Plan benefits are offset by the Board in specified death claims. It has also been observed that some earnings loss pensions are adjusted when the recipient becomes 65 years of age, partly to take account of any retirement benefits that the worker may receive.

During periods of unemployment due to workplace injuries or diseases, the worker may be eligible to receive unemployment insurance benefits. However, if the worker is receiving a wage-loss benefit from the WCB, then he/she cannot collect unemployment insurance for the same time period for

which the WCB has paid. The WCB is considered the first payer, and if both benefits are paid for the same period, the worker is obliged to reimburse the Canada Employment and Immigration Commission. The Board is not required, however, to enforce this. If the worker receives wage-loss benefits for a time period for which welfare benefits are also received, the Ministry of Social Services and Housing is eligible to be reimbursed by the Board. In turn, the Board will deduct this from the worker's entitlement.

As the exclusive remedy, workers or their survivors are not able to sue their own employers for workplace injuries or illnesses. Unlike many other jurisdictions, however, a worker or survivor with a compensable claim is prohibited from suing virtually *any* employer or worker (who acted as a worker) in the province if they wish to collect workers' compensation benefits. Thus, where a worker or dependant has a cause of action, they must elect to pursue *either* a court action *or* their workers' compensation entitlement. If the law suit is pursued, the WCB takes no action on the claim. If the claimant recovers less from the suit than the entitlement under workers' compensation, the WCB will pay the claimant any compensation benefits that are appropriate, minus the recovery from the law suit or any third party settlement.

If the claimant chooses to elect worker's compensation and not to sue, the WCB is subrogated to the action. The WCB is able to sue not only for the value of any disbursements that it made with regard to the claim, but all damages that the worker or survivor could have recovered had they pursued the suit. Not only does the WCB file suit in such third party cases, it has also filed malpractice suits when it believed such actions were warranted.



## Chapter 6

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# Vocational Rehabilitation Services

The Vocational Rehabilitation Services Department is located within the Compensation Services Division of the Workers' Compensation Board (WCB). Services are provided to injured workers, and in some cases the workers' dependants in accordance with Section 16 of the Workers' Compensation Act, which serves as guiding legislation for the Department. This legal mandate indicates that:

- (1) To aid in getting the injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation;
- (2) Where compensation is payable under this Part as a result of the death of a worker, the Board may make provisions and expenditures for the training or retraining of a surviving dependant spouse, regardless of the date of death; and
- (3) The Board may, where it considers it advisable, provide counselling and placement services to dependants.

Services provided to clients through the Department include vocational assessment and planning, job readiness and placement assistance, counselling, skill development, and employability assessment. The principal objectives of these vocational rehabilitation services are to: (1) assist workers in their efforts to return to their pre-injury employment or to an occupational category comparable in terms of earning capacity to the pre-injury occupation; (2) provide assistance considered reasonably necessary to overcome the effects of the compensable injury, industrial disease or fatality; (3) provide reassurance, encouragement and counselling to help the worker maintain a positive outlook and remain motivated toward future economic and social

capability; and (4) provide preventative vocational rehabilitation services when appropriate.

Referrals for vocational rehabilitation services are typically initiated through the Claims Units and Disability Awards Departments by Claims Adjudicators. However, workers may also be directly referred by physicians, hospitals, union representatives, employers, and other agencies, or by seeking assistance themselves. During 1990, the Department received 11,453 referrals, which represents 5.3 percent of all work injuries reported and nearly 14 percent of wage-loss claims first paid.

In terms of eligibility for services, it is the Vocational Rehabilitation Consultant (VRC) who makes the determination and identifies the nature and extent of vocational rehabilitation services to be provided, based on whether it appears that such assistance may be of value to a WCB client. While referral guidelines exist for immediate referrals (e.g., spinal cord injuries, major extremity amputations, severe brain injuries) and general referrals (e.g., anticipated problems returning to work, requests for employability assessments), eligibility decisions and the nature and extent of services to be provided are presently interpreted as discretionary rather than an automatic entitlement.

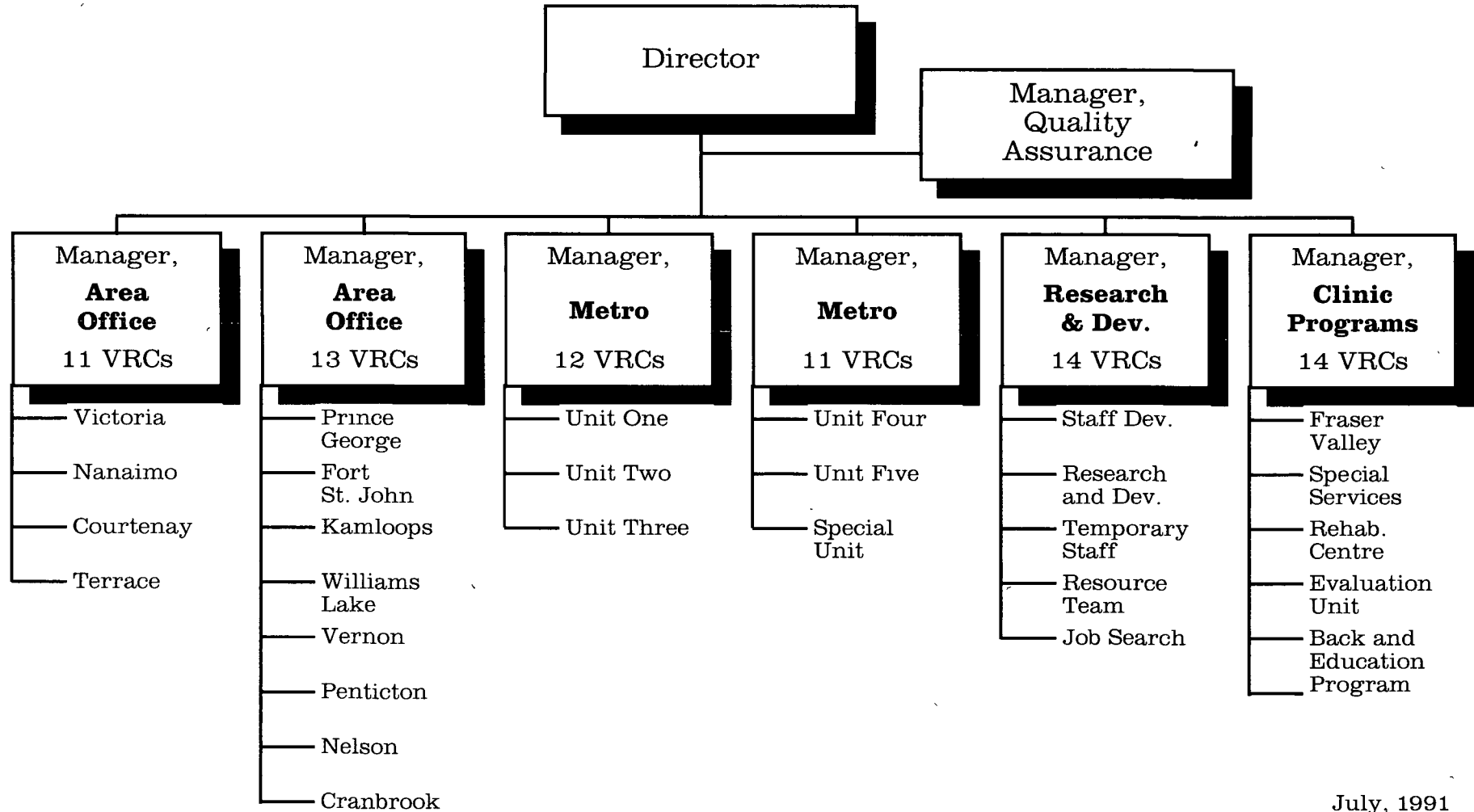
As a result of the discretionary nature of eligibility decisions and service provision, the philosophy and values of the Department, in the form of formal and informal policy, take on great importance in the delivery of services to injured workers. According to interviews with managers and consultants there appears to be a clear commitment to early intervention, individualized services, and priority services to those individuals with severe disabilities. However, it was suggested that more limited types of assistance are provided to individuals with less severe disabilities and that these services are contingent on the perceived motivation and commitment of the injured worker.

## **Organizational and Administrative Structure**

The Vocational Rehabilitation Department presently consists of a Director, who reports to the Vice President of the Compensation Services Division, seven (7) Managers, sixty-nine (69) Vocational Rehabilitation Consultants, and two (2) Project Officers. The organizational chart displayed in Figure 6.1 shows the current structure and management responsibilities assigned to each of the seven managers, along with the number of VRCs supervised. While this structure accurately displays direct supervisory relationships among the vocational rehabilitation staff, the Compensation Services Division is organized into Claims Units and Area Offices where a matrix management structure is utilized. All vocational rehabilitation managers, regardless

Figure 6.1

# Organization of Vocational Rehabilitation Services



of their geographical responsibilities, are located at the WCB Richmond main office.

The majority of the vocational rehabilitation staff are centrally located at the Richmond main office or at the Rehabilitation Centre, which is located adjacent to the main office. Two of the vocational rehabilitation managers have responsibility for the area offices which cover all but the lower mainland area of the province. (See Chapter 3.) Approximately 60 percent of all referrals come from the lower mainland area, and 40 percent from the area offices throughout the rest of the province. Staffing levels for the Department have recently been increased from 58 in 1990 to 69 in 1991 or an increase of 16 percent. When reviewing staffing levels for the Department for the past 10 years there has been an overall increase of 28 percent (from 50 in 1981 to the present). However, the actual number of consultants dropped substantially in 1984–1987 (to a low of 41 in 1985), and then rebounded significantly, with a 19 percent gain in 1988, when 58 consultants were employed. The overall staffing pattern suggests periods of stability (1981–83, 1989–90) great fluctuation (1984–87) and significant growth (1988 and 1991) in the number of consultants employed within the Department.

Also during the past 10 year period the Department has experienced an extraordinary level of turnover in leadership, with seven different individuals holding the Director position during this time period. This lack of stability in leadership appears to have had profound effects on staff morale, as well as impacting the overall performance of the Department. Some of the problems that appear to have resulted from this situation include very mixed messages over the years regarding the expectations of service delivery for the vocational rehabilitation staff. This would also include an uncertainty and a general lack of commitment during past years to developing strategic plans for future departmental development, setting clear goals and expectations of performance for managers and consultants, providing the required level of resources to meet the departmental mandate, and implementing and utilizing management information systems to monitor the performance of the Department in relation to the mission.

Additionally, staff hired and trained during these various administrations (many of whom are still with the WCB) were provided with different expectations regarding standards of performance and this has resulted in a very heterogeneous group of professionals. Finally, the discretionary nature of Section 16 benefits has over the years allowed political forces to determine to some extent the mission of the Department (e.g., increased focus on cost savings, holding down vocational rehabilitation expenditures). Without consistent professional leadership, the Department has gone through a long period of uncertainty and ambiguity. While some of these issues are now beginning to be addressed, the impact of this lack of consistent leadership on these critical management areas is still keenly felt throughout the Department.

The manager's role has been quite adversely affected by those leadership limitations identified previously. There has also been a lack of formal training available for new and continuing management staff. The complexities associated with managing a professional vocational rehabilitation staff are daunting, particularly within a matrix management system. At the manager level, there has also been a great deal of turnover.

Six of the seven managers within the Department supervise Vocational Rehabilitation Consultants, with an average supervisory ratio of 1 to 12 (one manager is assigned to a quality assurance role). This ratio alone, considering the varying levels of experience, education, and training among the VRCs would appear to be excessive. However, when one considers the added factor that vocational consultants are physically located in separate units within the WCB Richmond office and Rehabilitation Centre, and also located throughout the province in area office locations, the demands of vocational rehabilitation management take on even greater significance. (See Figure 6.1) These distance factors appear to affect the level and quality of (1) training provided for new personnel, (2) ongoing professional clinical supervision, (3) budget oversight and expenditure approval activities, and (4) general communication between managers and consultants in the various units and area offices.

There are, however, a number of initiatives which have been undertaken over the past year by the management staff which appear very positive. In conjunction with the 1991 Action Plan for the Compensation Services Division, the vocational rehabilitation management staff have developed a series of special projects to address some of the Department's immediate needs. A requested revision of Chapter XI of the Rehabilitation Services and Claims Manual, is complete and has been submitted to the Chairman for consideration by the Board of Governors. This document upon review appears to be a substantial improvement over the previous version in terms of organization and clarity and provides consultants with specific guidance in relation to service delivery. Work continues on the development of a computer software package that will be utilized to determine appropriate staffing levels and the effectiveness of the services provided by the Department. This area appears to be one of the most critical, as the Department presently does not possess the capability to produce this type of essential management information and program evaluation.

## **The Vocational Rehabilitation Consultant**

The Vocational Rehabilitation Consultant is the principal service provider and coordinator of all individual vocational rehabilitation services provided by the WCB. In this role the VRC determines the nature and extent of the vocational rehabilitation services to be provided to injured workers.

According to the Board's official position description, the function of the consultant is as follows.

The Vocational Rehabilitation Consultant is responsible for: expediting the return to employment of injured workers through the assessment of the employment handicap and the implementation of appropriate programs or training that may be required to facilitate their return; conducting job searches; preparing employability assessments; adjudicating, managing and expediting rehabilitation expenditures; participating in Job Search Techniques Program; and for other related duties.

In order to effectively perform this multifaceted professional role of providing individualized services to injured workers with various backgrounds, functional impairments, and needs, an array of competencies are required of the Vocational Rehabilitation Consultant. These professional competencies would include knowledge and skills in vocational assessment and planning, vocational and personal adjustment counseling, case management and coordination, and employer development and job placement. In addition, the consultant is required to have knowledge of the functional and psychosocial impacts of disability, the ability to utilize occupational and labour market information, and detailed knowledge of the WCB policies and procedures.

While there were no specific data available to determine the proportion of consultant time related to the various functions performed, there are well detailed descriptions of the responsibilities, functions and activities of the consultant in the official position description and in other descriptive information (e.g., Performance Profile) on the consultant's role. To get a more complete understanding of these responsibilities and duties, a number of consultants were interviewed and observed at various locations within the province. (See Appendix Table SA-3 for a list of individuals interviewed.)

For the typical consultant working with a general caseload the service delivery process begins when medical opinion indicates that the worker has physically plateaued, but has residual problems resulting from the impairment that constitute barriers to return to work. For other consultants, such as those working with specialized caseloads (e.g., spinal cord and other severe impairments), first involvement with the case would occur at a much earlier point in the medical rehabilitation process.

In most general situations at this point, a team meeting is called involving the Claims Adjudicator, Vocational Rehabilitation Consultant, Unit Medical Adviser and a Claims Adjudicator from Disability Awards. During this meeting, in addition to a full review of the case, plans are determined regarding the stoppage of wage-loss benefits, and the potential need for the utilization of income continuity or "Code R" benefits.

One of the first functions performed by the consultant is the assessment of employment handicap of the injured worker and the evaluation of socioeco-

conomic factors that surround the specific situation. This is done initially through a comprehensive review of the case file including memos, medical reports, correspondence and other pertinent records. The formal decision to open a vocational rehabilitation case is based on this review process.

Following this review and initiation of the case within the Case Management System (computerized client tracking system), interviews are conducted with the injured worker, accident employer, union representative, and when considered appropriate, members of the worker's family. Information collected through these sources, and any formal testing or evaluations requested from the Functional Evaluation Unit or Psychology Department are utilized in the development of the initial vocational assessment on the worker.

Once this initial information has been developed, the consultant along with the worker, develop and implement a vocational rehabilitation plan designed to expedite the worker's return to the labour force in accordance with a five phase model of the vocational rehabilitation process (discussed in detail later). In developing this plan the consultant will first explore potential options for return to work with the accident employer, including potential job or work site modifications, or any retraining that may be required, and document the outcomes of these contacts. Sometimes, further testing in relation to physical capacities is performed at this point in order to assist in matching the capabilities of the worker with the requirements of various jobs. The need for formal or informal training (TOJ) is determined, as well as any required job search assistance. Throughout this period, supportive counseling is utilized by the consultant to assist in the problem solving process, plan development, and implementation.

Worker advocates point out that the role of the Vocational Rehabilitation Consultant in assessment of the injured worker's prospective earning power may conflict with the subsequent role in vocational rehabilitation. Since some workers are likely to disagree with the VRC's judgment about the jobs they may be able to perform after vocational rehabilitation, this tension is probably inevitable.

Consultants are also required to assess the special needs of seriously disabled workers and develop recommendations with respect to both employment and daily living needs and care. These requests are generally made to Medical Aid Section when special equipment is required. (See discussion of benefits in Chapter 5) In addition, an array of modification services are available, including home modifications to provide access, drivers training, and vehicle modification. In these situations, although the consultant can call on other professionals at the Board to assist with decisionmaking, he/she must be able to recognize the functional impact of the impairment on employment and independent living needs, and take the steps required to resolve these complex issues for the seriously disabled worker. Other case management and coordination functions include the ability to authorize or deny income continuity payments to workers, and to adjudicate, manage and expedite

**Table 6.1 Vocational Rehabilitation Consultants Experience Levels**

<b>Years of Experience</b>	<b>Experience at WCB n(%)</b>	<b>Total Rehabilitation Experience n(%)</b>
0-2	20 (.27)	3 (.04)
2-3	17 (.23)	2 (.03)
4-5	10 (.14)	9 (.12)
6-7	2 (.03)	11 (.15)
8-9	3 (.04)	12 (.16)
10-11	11 (.15)	11 (.15)
12-13	2 (.03)	9 (.12)
14+	8 (.11)	16 (.22)

SOURCE: Data provided by WCB administrative staff from personnel records

vocational rehabilitation expenditures in support of vocational rehabilitation plans with individual workers.

Other significant functions required of the consultant include providing services (e.g., counseling, retraining and placement) and information to widows and dependants of workers involved in fatal industrial accidents or disease. They also conduct surveys of business establishments and develop relationships with the employer community to obtain vacancies suitable for specific injured workers, as well as establish ongoing relationships with other community service providers that might be utilized for vocational rehabilitation purposes. And finally, consultants provide services to other departments within the WCB, such as conducting employability assessments for Disability Awards for the computation of earnings loss pension awards for workers.

## **EDUCATION AND EXPERIENCE**

There are presently 69 Vocational Rehabilitation Consultants (and 4 temporary consultants) employed by the WCB. In terms of educational background, 33 percent of these individuals have attained a masters degree or higher (22 masters, 2 Ph.D), and 67 percent have a bachelors degree or lower (39 bachelors, 10 Grade 12). The majority of degrees awarded were in counseling or related human service fields. The experience levels of the VRCs were also reviewed, including the number of years as a consultant with the WCB and their overall vocational rehabilitation experience. In calculating the overall experience, the definition of acceptable work experience used by the Canadian Association of Rehabilitation Professionals (CARP) was applied.

As shown in Table 6.1 a large proportion of consultants have been with the



organization for less than four years. In fact, nearly 50 percent of all consultants have less than four years of experience in their present role, and 64 percent of all consultants would fall below the six year experience level. These figures would indicate that a substantial proportion of the staff have had limited experience within their present role, especially significant because of the lack of direct pre-service preparation. One aspect which may qualify this concern is the number of total years of vocational rehabilitation experience. As indicated in Table 6.1, the majority of staff have had much higher overall levels of experience than specific experience with the WCB, with only 19 percent demonstrating less than six years of total vocational rehabilitation work experience.

## **FORMAL TRAINING**

Given the expanding knowledge and skill competencies required of Vocational Rehabilitation Consultants to effectively address the potentially complex needs of the injured worker, and the general lack of pre-service educational programs available to specifically prepare individuals for these roles, the orientation training program offered by the WCB for new employees plays an extremely significant role in the Department. There is presently only one full-time staff development trainer (and one backup trainer) to address these needs. This staff member also contributes to training in other areas (e.g., claims), is responsible for continuing education for more experienced consultants, and participates on special projects.

Initial orientation training for consultants was expanded to 14 weeks in 1989. The training currently includes three weeks of practicum. The first practicum (one week) occurs during the fourth week of training, and the final two week practicum is at the end of training, where the new staff member is paired with another more experienced consultant in a mentoring type relationship. All new permanent vocational rehabilitation staff receive the 14 week training prior to caseload assignment. Temporary staff, who are presently used to fill in for vacation leaves, receive only 8 weeks of training. However, the continued use of temporary staff for this purpose is currently under review. Detailed curricula have been developed to guide the training.

In 1989, the WCB also began cross training adjudicators and consultants, by including in each training package a review of the other discipline and the process each goes through with injured workers. Presently, the staff member in this area is also in the process (80% complete) of rewriting and reorganizing the main policies and procedures handbook for the Department to improve the format and clarity of this document for consultants' use.

There appears to be general agreement among the vocational rehabilitation staff that the current training program is inadequate for new consultants. It has been suggested that the time devoted to training be expanded to at least

six months, and that the formal training be more systematically integrated with actual experience under the close clinical supervision of an experienced consultant. Additionally, there are plans, if resources are made available, to develop a core curriculum where all trainees (Vocational Rehabilitation Consultants, Claims Adjudicators, and others) would participate in training on a common core of required knowledge and skill areas, and then would break out into the specialized training required by their respective roles. This strategy appears to have the added benefit of bringing claims and vocational rehabilitation personnel together early in the learning process, to develop relationships and obtain an understanding of each other's role in the process.

## **CLINICAL SUPERVISION AND PROFESSIONAL DEVELOPMENT**

With the current limitations of the orientation training program and the limited experience of a number of consultants (e.g., 50 percent with less than four years job tenure) systematic clinical supervision, ongoing training and quality assurance appear critically required. However, as indicated previously, the organizational structure presents serious barriers to effectively carrying out these important supervisory tasks. To address clinical supervision and training needs some of the managers apparently use a random method of case review, particularly with newer consultants. However, in other cases it is only when the vocational rehabilitation plan or expenditure plan exceeds \$6,900, that a consultant's plan is even reviewed by management.

Over the past year, management has made some initial progress developing standards of practice, and more recently worked on a Performance Profile to assist in clinical supervision, prescriptive training and consultant performance evaluation. While these resources are still in the development stage they are intended to provide added clarity in terms of performance expectations. Presently, with the lack of standards, and the limitations of outcome information available per consultant's caseload, these evaluations are apparently viewed as too subjective.

For the more experienced consultant, efforts to formally expand professional competency levels through continuing education and in-service training appear very limited. In addition, at the management level, there currently is no formal training program to orient the new manager to their respective role or provide specific managerial skill enhancements on a regular ongoing basis. As a partial result of these factors, consultants complain of low morale, inadequate training and supervision, and the need for clarification regarding the mandate and the expectations of vocational rehabilitation service provision.

Recently there have been some important initial developments in the professionalization of the consultant's role. An increasing number of consultants are joining the Canadian Association of Rehabilitation Professionals

(CARP) as professional members. The Commission on Rehabilitation Counselor Certification (CRCC) recently implemented, upon request, a Canadian Certified Rehabilitation Counselor (CCRC) certification process and a number of consultants at the WCB successfully passed the written examination to attain this national credential of competency in the vocational rehabilitation counseling profession.

Finally, there has been a substantial amount of development activity performed by a number of local professionals, including WCB personnel, to develop a pre-service graduate training program in vocational rehabilitation counseling at a university in British Columbia. All of these factors appear very promising for the future development of the vocational rehabilitation counseling profession at the WCB and within the province.

## **Vocational Rehabilitation Process**

The vocational rehabilitation process utilized by the WCB is structured to provide individualized services to injured workers depending on the unique needs and circumstances of each case. During the process, ongoing medical opinion, and various WCB and community resources assist the consultant and the worker in developing and implementing a vocational rehabilitation plan. Ongoing consultation with the worker, the accident employer, and where applicable, the union are emphasized by Department policy in order to maximize all possible opportunities for re-employment.

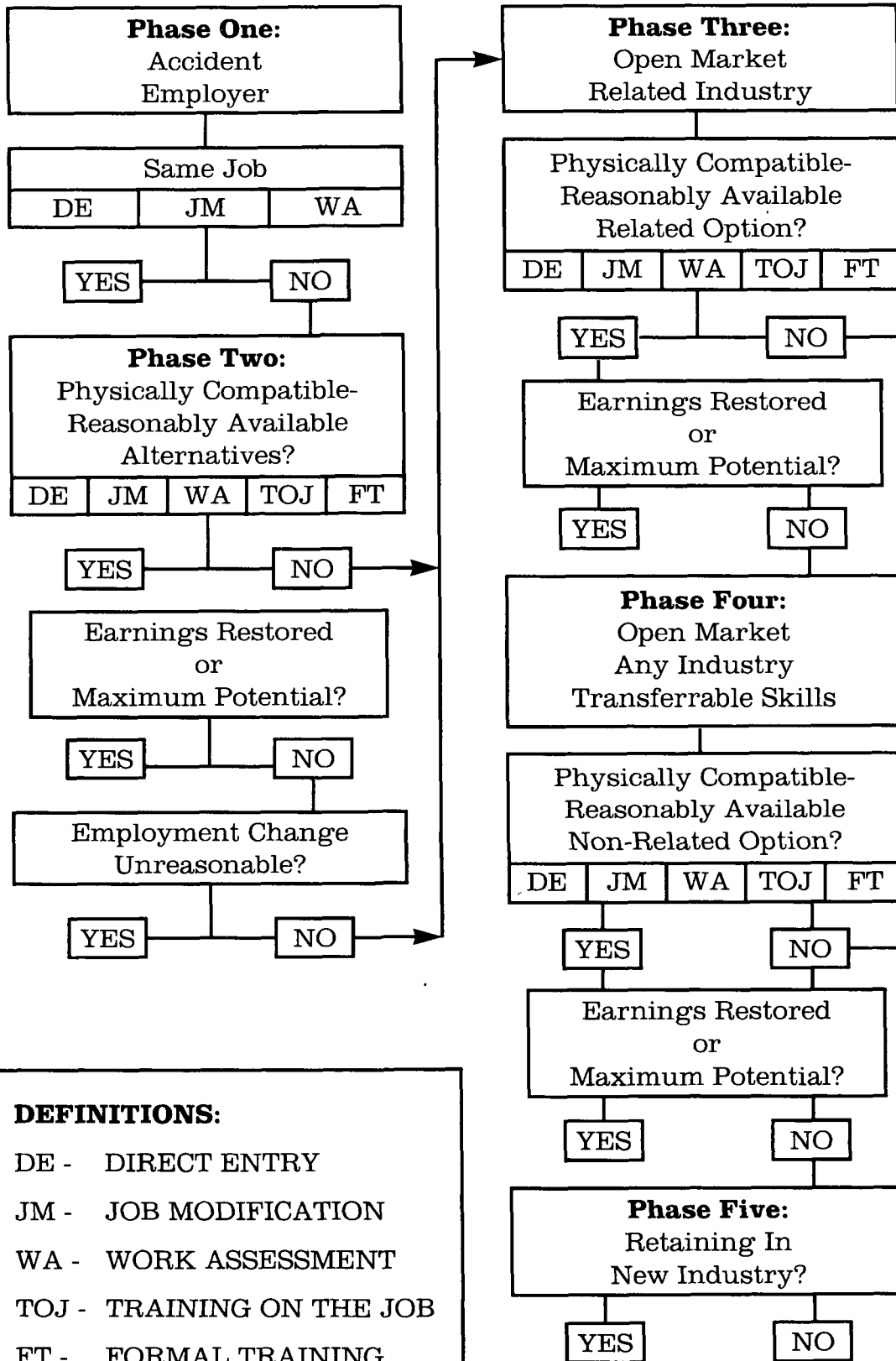
The vocational rehabilitation process, when operationalized, involves five sequential phases of what is termed vocational exploration, which appears very similar to most hierarchical models used in workers' compensation return to work programs. Figure 6.2 provides a visual display of this process according to the Case Management Model which is used as a guide by WCB consultants.

In the first phase of this process all efforts are made to assist the worker to return to the same job with the accident employer. Typical service interventions might include programs of physical conditioning or work hardening, graduated return to work (work assessments), work evaluation, and refresher training or skill upgrading. In phase two, when it has been determined that the worker cannot return to the same job, the accident employer is encouraged and assisted by the consultant to make required work site accommodations and job modifications or provide alternative in-service placement. Similar interventions are provided in this phase as described above, but in addition work site/job modification and/or supplementary skill development involving training-on-the-job and/or formal training may be required.

Both phases one and two relate to the return to work with the accident employer's organization. If the past employer is unable to accommodate the worker in any capacity, the strategy shifts to phase three where vocational

Figure 6.2

# Case Management Model



**DEFINITIONS:**

- DE - DIRECT ENTRY
- JM - JOB MODIFICATION
- WA - WORK ASSESSMENT
- TOJ - TRAINING ON THE JOB
- FT - FORMAL TRAINING

exploration is utilized to identify suitable occupational options in the same or related industrial sector, capitalizing on the worker's directly transferable skills. If a wider more inclusive search is required in situations where the worker is unable to return to alternative employment in the same or related industry the strategy will shift to phase four where vocational exploration will progress to suitable occupational opportunities in all industries, emphasizing the worker's profile of transferable skills, aptitudes and interests. The programs and interventions used by the consultant and worker in the preceding phases may apply to these cases, and in addition job search assistance may be provided.

Finally, phase five is utilized if existing skills are insufficient to restore the worker to suitable employment, and the development of new occupational skills is required. In this phase, training programs are used for the development of new occupational skills, as well as the application of required interventions used in the previous phases to help the worker secure employment once trained.

While this five phase hierarchical model of vocational exploration appears quite clear, the expected level of involvement of the consultant in actually facilitating the return to work of an injured worker appears more open to individual consultant interpretation of their role and the required assistance of the worker. In Chapter XI of the Claims and Rehabilitation Service Manual it states that "the consultative process is facilitated and sustained by the Vocational Rehabilitation Consultant in response to the worker's determination for vocational reintegration. While it is up to the consultant to assess workers' needs and appropriate levels of vocational rehabilitation assistance, it is ultimately the responsibility of workers to decide their own vocational future."

One of the principle issues that emerges when discussing the vocational rehabilitation process is expected outcome. While a great deal of divergent opinion exists among consultants, managers, and worker advocates, the issues appear to center around whether the WCB's mission is to provide services to injured workers to enhance "employability," or to focus on "placement" and the return to actual employment. An example of the result of this ambiguity is that the professional staff of the Department (managers and consultants) were unable either collectively or in relation to individual caseloads to report their placement rate. A related problem that could be exacerbated by these issues is when permanent disability earnings loss pensions are based on "deemed" jobs rather than actual post-injury employment. The deeming process is used in situations where the consultant, using all available information, makes the judgment that a worker is capable of performing a particular job or occupation, and that the job is reasonably available to the worker. Once the consultant has "deemed" the job, the worker is treated by the WCB as if this is an accomplished fact for compensation purposes. While there is certainly a legitimate need for such a procedure in cases of last resort,

significant potential exists for overuse of the “deeming process” in situations where the policy focus is on developing employability rather than actual placement.

While it is quite normal for Boards to focus on employability rather than employment when vocational rehabilitation is viewed as discretionary within workers’ compensation systems, policy clarification is clearly warranted in this case, based on the amount of uncertainty observed and the formal requests made recently from consultants for a reaffirmation of the WCB’s commitment to help injured workers return to employment. If the policy of the WCB was to enhance the commitment to return to work services with placement as the goal, then it could be anticipated that a number of changes would result. For instance, a greater proportion of consultant time would be devoted to employer development and placement related services, which may affect current staffing patterns and professional training needs.

## **REFERRALS AND EARLY INTERVENTION**

The referral process for vocational rehabilitation services along with criteria and procedures are well developed. There does, however, appear to be great variability experienced in the timing of the referral to the consultant. In relation to promoting early intervention efforts at the Board, certain types of impairments such as spinal cord injuries and other severe disabilities (e.g., traumatic brain injuries, amputations) receive immediate attention by the consultants. For example, in units which specialize in providing services to severely injured workers, Vocational Rehabilitation Consultants join an interdisciplinary team early in the total rehabilitation process to provide consultation and assist with problem solving.

Administrators at the WCB Rehabilitation Centre appear interested in re-focusing their efforts toward return to work and increasing the visibility, earlier intervention, and expansion of the role of the consultant within the team approach at the Centre. Throughout the WCB, while there appears to be general agreement regarding the potential value of early intervention efforts by the consultant, there are also some barriers to this involvement that require attention. These include natural time delays in the claims adjudication process, present caseload demands, and situations where there are discrepancies between worker reported problems and medical evidence.

In most of the units, referrals from claims are assigned to consultants on a random basis to assure fairness and equity. However there have been a number of experimental approaches to case assignment and team building that appear to have some promise and should be considered for more wide spread implementation. One such approach currently being used on a limited and experimental basis is the use of what are termed “pods.” This relates to teaming up two Claims Adjudicators and support staff with one

Vocational Rehabilitation Consultant within a “work cell” or “pod.” This arrangement was implemented in Richmond Claims Unit 2 in 1990 to promote teamwork and synergy within the unit. This type of approach appears to have significant potential advantages for establishing more of a team concept in the claims and vocational rehabilitation process by increasing the knowledge and appreciation for team member roles and functions, and improving the focus of the team on problem solving in relation to the injured worker’s needs.

## **VOCATIONAL REHABILITATION PLANNING**

At the beginning of the vocational rehabilitation process, following initial vocational assessment, the consultant and the worker devise an interim vocational rehabilitation plan that generally identifies objectives, services to be provided, responsibilities and time frames. The plan is a critical document, directly linked to the five phased model of vocational exploration, and it is intended to be dynamic, with changes made to the plan when required and accompanied by appropriate documentation. The Department has recently decided to review the format of the vocational rehabilitation/expenditure plans for consistency and adequacy of information and to develop more explicit guidelines for consultants. In developing this type of individualized, written vocational rehabilitation/expenditure plan, the consultant is required to review and report on background and medical information, and identify what vocational rehabilitation actions have been taken. Conclusions from Functional Evaluation Unit assessments or permanent functional impairment conclusions regarding physical capacities are identified and vocational rehabilitation options explored in consideration of these factors and transferable skills. In developing this plan, specific vocational recommendations are identified including supporting rationale and a strategy to monitor plan implementation.

In a related issue, the current Departmental policy requires manager approval of all plans where expenditures are in excess of \$6,900. Plans which do not exceed this expenditure amount are not formally reviewed or approved by management. There has been some discussion of removing this arbitrary approval level, and replacing it with an overall focus of increased accountability for expenditures in relation to their eventual effectiveness.

Finally in this area, the Workers’ Compensation Advocacy Group made a series of recommendations in a paper entitled “Defining the Right to Vocational Rehabilitation,” which are relevant to a discussion of the vocational rehabilitation process and plan development. This group recommends that the process needs to be more worker driven, more focused on return to work and placement, and more humanistic and participatory for the worker in the areas of plan development and decision making.

## **GEOGRAPHIC AND SINGLE INDUSTRY FACTORS**

Although the vocational rehabilitation process described previously is utilized throughout the WCB, there are some very unique geographic and single industry factors that greatly affect employment opportunities and resources available in some of the more remote areas of practice within the province. These geographic issues are characterized by a general limitation of opportunities for re-employment following injury, and typically result in expanded consultant time on complex cases, extensive travel, and the need for creative problemsolving. For the injured worker in these locations, the vocational rehabilitation process becomes very difficult as well, particularly if they were previously employed in high wage occupations (e.g., faller, logging industry), have limited formal education, and do not wish to relocate their families to more urban areas where expanded opportunities for training and re-employment may exist.

## **Services and Resources**

In this section the various services available and programmatic resources offered by the Board in support of vocational rehabilitation will be briefly reviewed. Depending on the individual worker's needs these services may be provided individually or as a continuum of services specified in the worker's vocational rehabilitation plan. While workers are awaiting or undertaking these services and programs, wage-loss equivalency benefits may be provided through the Department if wage-loss benefits have terminated. In addition, transportation, subsistence allowances, and accommodation at the Board's Rehabilitation Residence may also be provided in support of vocational programs for the individual worker.

## **WORK SITE AND JOB MODIFICATION**

During any phase of the vocational rehabilitation process, the Board may provide technical and financial assistance to modify jobs or alter work sites to accommodate and facilitate the return to work of injured workers in physically compatible working conditions. Modifications are undertaken in consultation with workers, employers, unions and other treating professionals. When required, other expenditures, such as special equipment and tools, may be provided as well.



## **VOCATIONAL/WORK EVALUATIONS**

There are various techniques and formal services available to the WCB to help assess the worker's capabilities and work potential, which can be utilized during any phase of the vocational rehabilitation process. Formal vocational assessments of interests, aptitude, achievement, intelligence and personality are available through referral to the Psychological Department at the WCB Rehabilitation Centre. In addition, the Vocational Evaluator, within the Functional Evaluation Unit can provide certain types of formal testing (e.g., interest, aptitude, achievement, worksamples), as can other similar assessment resources in the outlying community.

Work evaluations, which are defined by the WCB as a method of assessing a worker's employment capabilities and potential in an actual work environment with an employer, or in the simulated setting of the Board's Functional Evaluation Unit, are also available depending on the needs of the individual case. Workers participating in a work evaluation program are provided financial assistance at wage-loss equivalency, and are not paid wages when evaluated in an actual employer's work site.

## **JOB SEARCH ASSISTANCE**

For those workers who require assistance in securing employment, there are various services and formal programs available, as well as financial support that may be provided during the search process. These types of assistance would typically be introduced during the third phase of the vocational rehabilitation process, and could include: (1) individual and/or group counselling; (2) referral to internal resources, such as the Job Search Program; (3) referral to prospective employers; (4) referral to other agencies and external job search programs; and (5) the provision of a job search allowance.

The Job Search Program is located at the WCB Rehabilitation Centre in Richmond. This three-day program, which has been in existence for some 15 years, is designed to help workers develop the knowledge and skills required to conduct a successful search for employment. The current program trains only 12 workers per week. Program staff appear interested in improving the program and are aware of some of the present limitations. One interesting comment received during the interview process was that workers were coming to the program with very little clarity about job or career goals, which indicated to the staff that consultants were not doing enough vocational exploration with their clients prior to referral.

Recently, in response to concerns about the nature and adequacy of services provided through this program, a program evaluation study was conducted. Data collected and analyzed for this study included surveys of

Vocational Rehabilitation Consultants, worker-clients, and reviews of relevant file information on those previously served. Some of the positive comments received about the present program were that it provided the worker with increased knowledge of job search/interviewing skills, a professionally prepared resume, and generally increased the worker's motivation and self confidence.

Additionally, consultants apparently felt that the program provides help to workers that individual consultants cannot provide, and the program provides the referring consultant with a second opinion on worker motivation and confidence. Perceived limitations of the present program included the lack of follow-up with workers attending the program, general limitations regarding the program format and contents, and lack of accessibility to consultants and workers in the area offices.

The conclusions drawn from the study's findings provided a series of recommendations for program improvement and expansion. These recommendations included: (1) lengthening the program to allow for more worker contact and in-depth assistance, (2) re-introduction of certain aspects of the Azerin Job Club model (e.g., practice interviewing, telephone contacts) (3) conduct more follow-up; (4) provide better services to the area offices; and (5) investigate the possibility of programmatic expansion to provide a full range of services (e.g., Manitoba program).

Finally, during any point within the job search process, the Board can provide a discretionary benefit in the form of a job search allowance to workers who are actively seeking employment or attending the formal Job Search Program. The amount of the allowance does not exceed wage-loss equivalency, and it is within the consultant's discretion to continue or suspend this type of support.

## **TRAINING**

There are two general types of training situations that are sponsored by the WCB. The first is training on the job, which may be provided at any phase of the vocational rehabilitation process and may include skill enhancement or the development of new occupational skills. The second type is formal training which relates to courses or programs which augment or upgrade a worker's existing skills or qualifications or provide for new occupational skills. Formal training is typically accessed during the fifth phase of the vocational rehabilitation process.

Training-on-the-job (TOJ) is identified as the preferred method of training by the WCB. During 1990, 909 TOJs were sponsored by the WCB in an effort to return the worker to an employment situation. This training approach is undertaken at an employer's work site and is designed to provide the worker with specific skills leading directly to employment. A shared-cost arrange-

ment is made with the employer to support this type of training program for the worker. This appears to be a very effective and widely used training/ placement strategy. However, the Workers Compensation Advocacy Group argue that this approach is too often applied, without adequate consideration of upgrading for future job security and career development.

Formal training may include full-time or part-time trades, technical or academic programs offered through recognized training or educational institutions. During 1990, 1,788 formal training programs were sponsored by the WCB. There are three different categories or levels of support offered by the WCB if a worker, who has sustained a compensable injury or disease, wishes to undertake a formal training program and seeks assistance from the WCB. The first category is for situations where the training is “directly related to the disability.” In this case, the WCB provides the cost of any formal training program necessary to overcome the effects of a residual disability. The primary policy guideline used in these cases is that the WCB, where practical, should support a program sufficient to restore the worker to an occupational category comparable, in terms of earning capacity, to the pre-injury occupation. A secondary guideline used by consultants in this category relates to the severity of the disability, where according to policy, the WCB will go to “greater lengths” and presumably greater expenditures for cases of severe disability, than when the impairment is less serious.

The second category of formal training is where the “training is related partly to the disability.” This would be in cases where injured workers decide that they want to utilize vocational rehabilitation training assistance to effect a general advancement of their education in order to upgrade the employment opportunities available to them. In cases such as these the consultant will estimate the total expenditure that would have been incurred under Section 16(1) of the Act if the worker had taken a program considered reasonably necessary to overcome the effects of the compensable injury. The worker is then offered that amount as a contribution towards the cost of the more advanced training selected. The WCB makes an exception of policy in this area for cases where the disability is very severe. In these situations the case is treated as it would be under the first category and is fully supported by the WCB.

The third training category is used in cases where the “training is unrelated to the disability,” and considered part of a typical career pattern of advancement unrelated to the disability. In these cases, while no support may be offered, the worker does sometimes have the option of a commutation of pension to meet the costs of the program. Finally, in some situations the WCB may contribute to the costs of starting a business for a worker instead of providing formal training. The amount contributed would equal that which would have been spent on an appropriate training program for the worker.

## **LEGAL SERVICES**

In some cases legal services are provided where appropriate, as part of the worker's vocational rehabilitation at either the request of the worker or an officer of the WCB. However, legal advice is not provided in relation to any matter under adjudication at the WCB. Typical types of assistance may include: indebtedness or insolvency; matrimonial problems; conveyancing; workers' estates; and advice to a surviving spouse.

## **EMPLOYABILITY ASSESSMENTS**

One of the most difficult activities undertaken by the consultant is providing assistance in the assessment of employability for permanent disability and for partial disability under Sections 23(3) and 30(1) of the Workers' Compensation Act. For permanent disabilities requests for this service are made by the adjudicator in Disability Awards during the process of assessing permanent and partial disability pensions when it is felt that, because of the compensable disability, the worker may sustain a loss of earnings which is greater than that compensated for under the physical impairment method of pension assessment. (See Chapter 5 for a full description.) Vocational Rehabilitation Consultants receive an average of three to four requests for these assessments per month. In 1990, 1,264 employability assessments were conducted by consultant responding to these requests from Disability Awards.

In conducting this assessment, the consultant is required to identify occupations that appear suitable and reasonably available to the worker over the long term future (short term for Section 30). In identifying the suitability of occupations and resultant wage earning capacity, the consultant is required to take into consideration the limitations imposed by the residual compensable disabilities, and the potential vocational rehabilitation measures or interventions that may be of assistance to the individual worker in pursuit of these reasonably available occupations. This task requires a high degree of skill to identify occupations that are consistent with present physical limitations of the individual, and the ability to actually predict the potential earning capacity of the job if training and other theoretical interventions were applied. It is the predictive aspects of this process that appear problematic for the consultant in projecting the workers earning capacity. In cases of temporary partial disability, the consultant identifies suitable employment opportunities (as opposed to occupations), which are available immediately or within the period under review (2 weeks, one month). In making this determination the consultant needs to be reasonably certain that workers would have these opportunities open to them, should they wish to apply.

During the past year the Department has conducted an Employability Assessment Project with the goal of reducing the present backlog in assess-

ments and improving the process and reports using a newly designed format. This project is now complete and staff will be trained in the new procedures and reporting format. During the project, each assessment conducted averaged about 13 hours of consultant time. While this initially appears excessive, in discussions with consultants and managers some see the task as too demanding and others feel that consultants who possess good time management skills can more readily pull much of the required information together without excessive time demands. It appears clear, however, that these quite difficult and complex tasks require significant time from consultants.

## **SPECIALIZED SERVICES**

The WCB has developed a number of very specialized services in response to the unique needs of certain types of severe impairments experienced by workers and their families. These include: (1) spinal cord and other severe injuries (e.g., head injury, hearing impairment, total vision loss, and bilateral amputations); (2) industrial diseases; and (3) assistance for surviving spouses and dependants of deceased workers.

In the specialized vocational rehabilitation service area for spinal cord and other severe disabilities, while the overall goals of the process are similar to other vocational rehabilitation programs, because of the severity of the disability, greater assistance including earlier involvement is required of the consultant. Additional assistance which may be provided in these types of cases include: vehicle modifications; house renovations; personal care allowances; independence and home maintenance allowances; and, homemaker services.

Another area of specialized services relates to workers affected by industrial disease. These cases involve a wide range of conditions enumerated in Schedule B in the Act. They vary with respect to the serious nature and immediacy of the problems. However, once the medical situation has stabilized, the focus of services shifts to vocational exploration typically starting at the third phase of the vocational rehabilitation process, and the provision of services to effect re-employment in situations where the working conditions are not endangering the worker.

Finally, in cases where a worker's death is compensable, the WCB has statutory authority to provide counselling and placement services to the surviving spouse and dependants. This could even include training assistance in situations where there is a need to improve the spouse's earning capacity to support the family of the deceased worker.

## **RESOURCES AND PROGRAMS**

There are a number of valuable resources and programs within the Board that consultants utilize to provide assistance to the worker during the vocational rehabilitation process. In addition, other community resources in outlying locations are also used to support the individual vocational rehabilitation process.

The WCB Rehabilitation Centre located in Richmond provides a comprehensive array of services and programs. This state of the art facility provides comprehensive physical and occupational therapy services, as well as physical conditioning (e.g., work hardening) and ongoing assessments in 10 unique industrial workshops. Specialized rehabilitation services are provided through the Amputee Unit, Hand Unit, Head Injury Assessment Unit, Functional Evaluation Unit and the Back Evaluation and Education Programs. Also located adjacent to the Centre is the Rehabilitation Centre Residence, which is a dormitory type residence available to workers who reside out of town, which can house up to 195 individuals receiving services at the Centre.

During 1990, nearly 60,000 files were reviewed by WCB physicians at the Centre, and approximately 12,500 examinations performed. Vocational rehabilitation services were provided to more than 2,500 injured workers during this same time period. While all therapeutic areas of the Centre are significant contributors to the rehabilitation process, a few of these programs stand out for their unique services offered in vocational assessment and preparation for return to work. These programs would include the Occupational Therapy Program, Psychology Department, Functional Evaluation Unit, and Job Search Program (which was discussed earlier in this chapter).

The Occupational Therapy Program provides an impressive complement of assessment and therapeutic approaches which are geared to maximize work readiness. One particularly unique phase of this program provides the worker with exposure to the industrial workshops, where occupational trainers work together with the therapist to train and evaluate the worker in relation to real work tasks and demands that are significant to the worker's vocational rehabilitation. In addition, through collaboration with the Functional Evaluation Unit, some 60 of these tasks have been standardized and normed for performance reference and certification to potential employers.

The Psychology Department at the Centre served approximately 900 workers in 1990. Vocational Rehabilitation Consultants utilize these services for formal interest, aptitude, achievement and personality testing as well as counselling services, when these services are required for vocational rehabilitation purposes.

Finally, the Functional Evaluation Unit (FEU) provides a very specific and unique resource for vocational planning purposes. The Unit provides an objective appraisal of the worker's functional capacities and assists in the identification of suitable vocational alternatives for the purpose of return to

work. This program, which has been in operation for about three years, receives about 70 percent of its referrals from Vocational Rehabilitation Consultants. When a worker has medically plateaued, is no longer eligible for wage-loss payments, and a residual impairment brings into question the specific physical capacities of the individual, a two week evaluation is typically requested by consultants. The FEU utilizes standardized tasks within the Industrial Workshops, commercial worksamples, and an array of technological tools and equipment which have been programmed and modified specifically to measure various physical capacities. These results are then related to the requirements of specific jobs to identify suitable employment for further exploration.

During the past year this program has increased its referrals by 25 percent, providing services to approximately 500 injured workers. Recently it has developed the capacity to perform a special two day evaluation to compare the specific physical demands of a particular job with the capacities of an individual worker. Plans are also being developed through this unit to expand WCB services through the development of ergonomic teams which would include the Vocational Rehabilitation Consultant, Vocational Evaluator, Occupational Therapist, and OSH personnel or an engineer. This team would follow the individual worker back to the work site to perform ergonomic assessments and assist the employer with other work related concerns.

While these extensive resources at the Rehabilitation Centre are readily available to workers in the lower mainland area of the province, they are at times difficult for workers to access from more remote geographic areas. In these cases consultants from the area offices, where approximately 40 percent of the vocational rehabilitation referrals originate, have developed relationships with local service providers in an attempt to develop needed resources in addition to utilizing services available at the Rehabilitation Centre. However, even with local resource utilization the area offices appear to be at a disadvantage in relation to accessible services and programs.

One particularly valuable resource available to all consultants has been the provision of computer support for job matching and exploration programs and the recent development of a case management computer tracking system. These products were for the most part designed and implemented through the Research and Development unit in the Department. Specific software available includes: Vocational Rehabilitation Program, the WCB Automated Wage Loss System, Case Management System, Discovery Training Network, and a variety of other support software (e.g., Writing Assistant, Filing Assistant, MS Word, Harvard Graphics).

The Vocational Rehabilitation Program, which was developed internally in 1987, was the first computerized resource for the consultant which assisted with job matching. This system, which is still in operation, is in need of updating. Other systems, however, are now available such as Discovery which provides training resource information, Filing Assistant which is a data base

package used to access the job opportunities file, and the newly acquired Manufacturers Directory. Other job matching systems commercially available are currently being evaluated for their potential application.

One of the problems experienced in the past was the lack of support available from Information Services Division in relation to the Department's unique needs. This relationship has apparently improved recently, but previous delays in response to requests have caused problems in the past. For example, the development of the Case Management System was done almost entirely from within the Department as a result of the anticipated time delays in development if the request had been made through ISD.

The research and development section of the Department appears to be operating with minimal staff and resources. The fact that they have been able to develop and implement systems to assist the consultants and the overall Department is noteworthy. However, there are many areas that are in critical need of development and expansion, including the full development of a management information system, ongoing research on outcomes and program effectiveness, and the development of effective marketing tools for the Department.

## **Outcomes**

While individual consultants are required to follow-up on cases receiving services, the Department currently does not have an adequate system to determine the total effectiveness of services provided to injured workers. Without this type of comprehensive data on outcomes it is not possible to make any assessment of the total effectiveness, quality, or cost benefit of services provided. This lack of program evaluation data and management information is critical to the effective delivery of vocational rehabilitation services and needs to be addressed immediately.

Although this type of data has never been systematically collected or highly utilized in program evaluation and development, up until about five years ago there were some data collected on placement rates. In reviewing records and reports available at the WCB, the last available studies in relation to cost benefit analysis were conducted in 1981 and 1984. No later data or studies are available.

In a recent effort to provide accurate data on individual caseloads, the Case Management System was developed by personnel within the Department. This computerized client tracking system was implemented in January of 1991, and is now capable of generating process data on services provided and the current status of workers on an individual consultant's caseload. This system, which is just coming on line effectively, appears to have enormous potential to track and aggregate data related to services and outcomes. These data, combined with other sources of information on expenditures (AWL



**Table 6.2 Major Expenditures by Type**

Type of Expenditure	Year					
	1985	1986	1987	1988	1989	1990
Wage-Loss Equivalency**	1.61*	2.36	2.92	3.58	4.10	5.08
Miscellaneous***	0.91	1.46	1.87	2.40	2.67	2.48
Income Continuity (Code R)	—	—	1.52	3.72	3.57	2.91
Training on-the-job	—	—	—	0.28	0.94	1.2

\* Amounts expressed in millions of dollars

\*\* Wage-loss equivalency = job search, rehabilitation allowance and formal training allowance

\*\*\* Miscellaneous category = subsistence, travel, renovations, tuition and supplies

SOURCE: Workers' Compensation Board, Internal Document, Data from AWL System

system), could provide the Department, if development and testing continue, with the type of management information required to evaluate the effectiveness and cost benefit of vocational rehabilitation services provided.

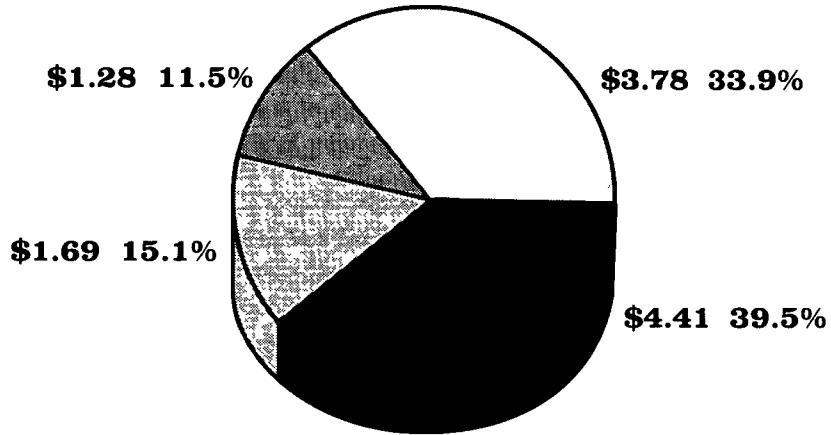
Two programmatic exceptions to this general lack of follow-up and program evaluation are the Job Search Program and the Functional Evaluation Unit. In the Job Search Program, a recent study was conducted in response to perceived problems and concerns with the nature and effectiveness of the services provided. The resulting study has clearly identified some of the problems and developed a series of recommendations for program improvement and expansion. In the Functional Evaluation Unit, ongoing follow-up has been an integral aspect of the program since its inception three years ago. Studies have been developed to identify the effectiveness of services provided, and in some cases these empirical findings have even been published in professional journals.

While aggregate outcome statistics were not available for review, data were made available regarding certain specific vocational rehabilitation expenditures from 1985 through 1990, which were derived from the WCB's Auto Wage Loss System. As indicated in Table 6.2, where expenditures are displayed by type, wage-loss equivalency expenditures (i.e., job search, vocational rehabilitation allowance, formal training allowances, work assessments) have risen rapidly over this period, from \$1.6 million in 1985 to \$5.1 million in 1990 (a 25.8 percent annual increase). Expenditures related to training on the job have also risen substantially for the period that data were collected, from \$0.28 million in 1988 to \$1.2 million in 1990. Income continuity payments

Figure 6.3

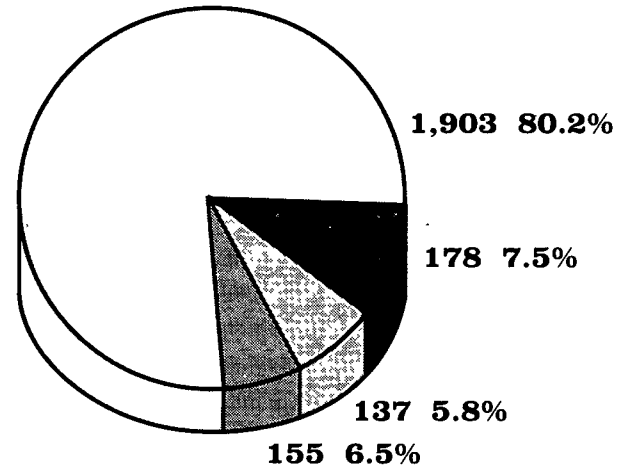
## Vocational Rehabilitation Budgets Budgets by Expenditure Level

**Expenditures (millions)**  
January to November 1990



**Total: \$11.16 million**

**Budgets Approved**  
January to November 1990



**Total: 2,373 budgets**



however (which relate to payments to the worker during pension assessment), show a general decline from \$3.72 million in 1988 to \$2.91 million in 1990. Finally, the pattern of expenditure for miscellaneous areas (e.g., subsistence, travel costs, home and auto renovations, other miscellaneous costs) shows an overall rise from \$0.91 million in 1985 to \$2.48 million in 1990 (22.2 percent annual increase), with a slight decline from 1989 to 1990. While not indicated on the Table, total vocational rehabilitation expenditures (including all expenditures) rose from \$4.6 million in 1986 to \$12.8 million in 1990 (22.7 percent annual increase).

In relation to budgets approved for individual cases, data were obtained for the period January through November, 1990. As indicated in Figure 6.3, there were 2,373 vocational rehabilitation budgets approved during this period, with total expenditures at \$11.16 million or \$4,705 per case. The great majority of budgets approved (1,903 or 80 percent) were under \$6,500, but these represented only 34 percent of the Department's total expenditures. At the other extreme, budgets approved in excess of \$15,000, while representing only 8 percent of the total (or 178), accounted for nearly 40 percent of the Department's total expenditures. It appears from these figures that a large proportion of the expenditures made during this time period were for a fairly small proportion of workers. There is no current way to judge whether this is an appropriate ratio.

Finally, during this same period, the Department indicates that they processed 11,453 referrals. However, they made program expenditures for only 2,373 claims. The explanation for this large discrepancy is that many of the cases were resolved through assessment and counselling services, which are not reflected in vocational rehabilitation expenditures. Another contributing reason for the difference was that many of the workers went back to work through a graduated return to work program, or a work assessment program, where the Claims Adjudicator continued to pay partial wage-loss benefits while the worker returned on this graduated basis.



## Chapter 7

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# Financing the WCB

### Introduction

The purpose of this chapter is to describe the methods used to fund the Workers' Compensation Board. As the agency charged with providing present and future benefits to disabled workers and their dependants, the WCB has an immense responsibility to the workers and employers of the province.

The WCB's income flows from its own activities and not from an appropriation by the government. Basically, the Board has five sources of funds, though three of them are relatively small. The three small sources are third party recoveries, penalties collected by the Board, and deposit accounts. Penalties are levied against employers who operate in violation of occupational safety and health standards. The data in Table 7.1 show that penalties have been in the range of \$2.5–4.5 million from 1982 to 1989 and never exceeded 1 percent of the total payments by employers to the Board. A sizeable jump occurred in 1990, to almost \$7.5 million, well above the range of the previous decade. In 1990, inspections were conducted in 43,388 establishments, and 862 penalties were assessed, up 33 percent from the 647 penalties in 1989. The average penalty amount was \$8,600, also a sizeable increase.

Another source of income derives from deposit accounts, a small number of very large employers that are required to pay directly to the Board the cost of all compensation benefits distributed to their workers, plus a share of administration costs and a contribution to the reserve funds. Included in this group are Canadian Pacific Ltd., Canadian National Railways, Air Canada, the Government of the province, British Columbia Railway Co., and the Workers' Compensation Board itself. These employers are required to maintain a credit balance account from which benefit closing costs and administration charges are drawn monthly. There have been no additions to the number

**Table 7.1 Sources of Workers' Compensation Board Income (\$000)**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990*
Classes	379,976	449,395	423,799	446,381	456,120	399,749	296,367	402,133	495,743	514,660
Deposit Accounts	36,388	29,955	30,942	29,747	18,639	18,486	24,532	36,776	21,288	31,125
Penalties	1,529	4,518	3,098	3,925	3,460	3,104	2,465	3,042	3,706	7,415
Total Assessments	417,893	483,868	457,839	480,053	478,219	421,339	323,364	441,951	520,737	553,200
Investment Income	96,250	130,039	139,468	170,349	235,374	279,692	248,790	272,595	315,947	303,852
Total Income	514,143	613,907	597,307	650,402	713,593	701,031	572,154	714,546	836,684	857,052

\* Preliminary

**Sources of Workers' Compensation Board Income, Percentages of Total**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990*
Classes	73.9%	73.2%	71.0%	68.6%	63.9%	57.0%	51.8%	56.3%	59.3%	60.1%
Deposit Accounts	7.1	4.9	5.2	4.6	2.6	2.6	4.3	5.1	2.5	3.6
Penalties	0.3	0.7	0.5	0.6	0.5	0.4	0.4	0.4	0.4	0.9
Investment Income	18.7	21.2	23.3	26.2	33.0	39.9	43.5	38.1	37.8	35.5

\* Preliminary

SOURCE: Workers' Compensation Board, Annual Reports

of employers originally allowed to have deposit accounts and it is Board policy not to add other employers in the future.

In some respects, deposit accounts are analogous to self-insured employers that are permitted in some other jurisdictions, with the WCB serving the role of third party administrator. There are differences, however, since the WCB is also the adjudicator of the claim. Moreover, if a deposit account should ever become unable to pay its costs of workers' compensation, the WCB would still be responsible to assure that injured workers or their dependants were paid. In 1988 deposit account payments exceeded 8 percent of all WCB assessments, but in most years, these employers have paid in the neighborhood of 5 percent of the WCB's receipts. (See Table 7.1.)

The primary source of income for the WCB accident fund and administration costs is the assessment made on provincial employers covered by the Act and those seeking protection through the Personal Optional Protection program. Employers pay the product of their assessment rate, as adjusted for experience rating, and their assessable payrolls. In 1990, the Board collected about \$515 million through these assessments.

The other major source of income, especially in recent years, is investment income. As the fund reserves have increased the investment income has risen from under \$100 million in 1981 to over \$300 million in 1989 and 1990.

## **Classification and Experience Rating**

Assessment rates for employers are based on two factors, the experience of the industry within which the employer is classified, and the individual experience of that employer. Employers are grouped according to 64 subclasses. The criterion used to create a subclass is that it must contain a large enough group of employers to provide a valid or credible insurance base. The choice of the classification is made by the WCB based on the industry of the employer, and not based on either an occupational or hazard classification. All employees in that firm or establishment are included within the same classification. Multiple classifications for an employer are possible, though not commonly applied. It occurs where the employer engages in two or more separate and distinct industrial activities.

Once an employer is placed into a subclass, a significant portion of the employer's assessment rate is predetermined. Consequently, the selection of the employer's classification can be contentious. An aggrieved employer can appeal his classification to a unit manager or an assistant audit manager in the Assessment Department. Beyond that, an appeal can go to the Director of Assessments and to the Appeal Division (Commissioners under the old law). While classification decisions are usually clear cut, there can be difficult distinctions that must be made. In those instances, the decision is made by the Classification Committee of the WCB. For example, the basic rate in 1991 for

“Hotel” was \$0.73 per \$100 of payroll while “Bed and Breakfast Operation” was \$1.22. “Leather Luggage, Manufacture or Repair” had a basic rate of \$0.50 per \$100 while “Luggage, N.E.S., Manufacture or Repairment” had a basic rate of \$1.70 per \$100 or 240 percent greater. It is hardly surprising that some employers will dispute the classification into which they are placed, or request reclassification if the nature of their operation is changed.

The rate for a classification is based on the group’s costs of compensation for injuries and diseases. Once the subclassification’s costs for the year ahead are estimated, each employer pays an assessment based on the firm’s assessable payroll, and the subclassification rate (holding aside individual experience rating). For example, an employer must pay 5 percent of the total costs assessed against a classification, if its assessable payroll is 5 percent of the entire subclassification’s assessable payroll.

Each group rate is reviewed and adjusted annually. In addition to the actual costs incurred by a group, a factor is added to amortize any unfunded liabilities for the WCB as a whole and to provide for necessary reserves on a group basis. Rate movements are constrained by a “swing limit” of 20 percent per year; that is, individual class rates cannot go up or down by more than 20 percent in a given year. The WCB is allowed to adjust rates more frequently than once a year, but that practice is avoided.

Prior to 1986, individual firms were not experience rated, with the exception of plans applicable to the construction industry, forest products and metal mining, and the logging industry. Beginning in 1986, experience rating in these lines was moved to a more uniform approach, and its coverage was extended to most businesses in the province, starting with trucking and heavy manufacturing. Experience rating (called ERA) was welcomed by those who believed that it would add encouragement to employers to maintain a safe workplace environment. It also was hailed by those employers who believed that their own past compensation cost experience was superior to the average for their group. Since the Assessments Department was still required to fund the WCB’s operation, it must be understood that ERA *per se* did not lower group or overall assessments, but merely reallocated them within groups. Where an employer would be rewarded for good experience and have his rate reduced, other employers in that same class would necessarily have to make up this difference.

ERA was not welcomed by all parties, however, even those with a historic commitment to workplace safety. Some people have argued that experience rating brings little improvement in employer safety practices, but, instead, produces a powerful inducement for employers to challenge claims for compensation. Anecdotal comments about the effects of ERA are common, but the WCB has not made any analysis of them.

ERA is applied prospectively, that is, based on a firm’s experience in the past, its future assessment rate may be modified. An employer’s past experience is calculated based on injuries occurring in the second and third years



prior to the application of the rating. Costs are estimated based on what was incurred in those two years and the six months of the year immediately prior to the application. For example, the 1990 ERA of an employer is based upon claims originating in 1987 and 1988. Costs are based on the compensation paid against those claims during 1987, 1988 and the first six months of 1989. Most costs of record during this time period, including the capitalized value of pensions awarded are counted against an employer's experience. Some persons believe that certain employers have tried to stretch out claims adjudication, so that expensive cases do not have disability awards entered until the period for calculating ERA has passed. In the example provided, if the injury occurred on December 31, 1987, only those costs incurred by June 30, 1989, would enter the calculation of the employer's ERA. In such cases, the decision by the WCB about when the worker's condition has plateaued, and the speed of the disability awards process can be highly significant. It should be recalled, however, that one way for the employer to slow the process down, to appeal the case to the Review Board, apparently is not very widely used. As noted earlier, very few appeals are being taken to the Review Board by employers.

Not all costs are assessed against an employer for purposes of experience rating. Those that are not counted include:

- over payments;
- where the Board has recovered claims costs in a third party action;
- certain types of industrial diseases including non traumatic hearing loss, silicosis and cancer;
- rehabilitation costs;
- if a substantial amount of compensation has been awarded, and the injury or death was caused or substantially contributed to by a serious breach of duty to care of an employer in another class or subclass, the Board may order that some or all of the costs be charged to that other class or subclass. (Section 10(8));
- where there has been a disaster which would unfairly burden a class or subclass. (Section 39(1)(d));
- where a pre existing condition has enhanced a disability, the costs of the portion of the disability enhanced are excluded. (Section 39(1)(e)).

Some employers have brought large numbers of claims that allegedly qualify for exclusion under ERA to the WCB, as they become aware of the opportunity to reduce, even retroactively, their compensation assessments. Indeed, some private consultants, who are very familiar with the WCB, are working with businesses to assist them in having past costs of claims reduced under Section 39(1)(d) and (e).

Where a fatal claim is paid, the cost calculation is somewhat different. The employer's experience is adjusted by the WCB average cost of fatalities, not

**Table 7.2 Average Assessment Rates\***

Year	(1) Maximum Assessable Wage	(2) All Classes, Excluding Deposit Accounts	(3) Deposit Accounts
1981	\$22,200	\$2.42	
1982	24,700	2.70	
1983	28,182	2.81	
1984	28,182	2.78	
1985	28,182	2.77	
1986	39,000	2.19	\$0.53
1987	35,000	1.97	0.67
1988	41,300	1.79	0.68
1989	42,200	1.78	0.53
1990	43,400	1.74	0.86

\* Per \$100 of assessable payrolls.

SOURCE: Workers' Compensation Board, data provided by Assessments Department

the actual costs incurred in that claim. The reasoning behind this is that costs in fatal claims can be extremely large, but they may also be very low. The difference in costs is often a matter of chance, such as the presence of any dependants and their ages. Employers in very low cost cases should not benefit relative to employers in very high cost cases, so this averaging technique is applied.

Based upon the employer's experience, the rate that is assessed to that employer may be modified through ERA. Merits or demerits for that employer are applied to his subclass rate. In most, though not all sectors, the maximum adjustment is 33.3 percent of the basic rate. For example, since the rate for the handling of scrap metal or junk in 1991 is \$5.51 per \$100 of assessed payroll, the very lowest rate in this subclass would be \$3.67 (2/3s of \$5.51), and the worst rate for an employer classified here could be \$7.35 (4/3s of \$5.51). The cost difference between the very best and worst rated firms in the industry would be a factor of 100 percent. Or seen differently, a firm with a poor track record and maximum demerit could reduce its compensation costs by 50 percent with exemplary experience, a very significant improvement.

Once the appropriate subclass assessment rate is calculated, and the employer's individual ERA is set, the payment is based on the firm's assessable

payroll. The figure is simply the summation of all wages paid by the firm, except that wages above a maximum level are not included. Any pay beyond that amount is not included in the assessable payroll. These rates are shown in column 1 of Table 7.2 for the period 1981 to 1990. In 1984 and 1985, two especially difficult years economically, the WCB did not increase the maximum assessable payroll rate.

Table 7.2 shows the average assessment rates paid per \$100 of assessable payroll by employers in the province from 1981 to 1990. Column 2 contains the average rate for all employers, excluding deposit account classes. Column 3 contains the average assessment rate per \$100 of assessable payroll for deposit account classes. It is important to recall that the average annual rates reported in Table 7.2 are simply averages. Based on any firm's experience rating and the experience of the firm's classification, the actual rate paid may be considerably more or less than the average.

Several things seem especially striking about assessment rates in the province. First, the assessment rates, particularly in recent years, seem low by the standards of other jurisdictions in North America. This is particularly so for the last four years indicated. Not only do the rates in the province seem low, they have been declining, while most jurisdictions are seeking to curb explosive growth in costs over the same period. Though it is true that the rate for deposit accounts has spurted in the past year, that rate is still an extraordinarily low one. Many factors account for the ability of the WCB to keep down assessment rates. One of those has been the Board's ability to substantially supplement its assessment income through the income that it derives from its investment portfolio.

## **Investment Income**

As with any large insurance carrier the WCB maintains a portfolio of investments. Because the WCB has already incurred liabilities that must be paid in the future, it has collected assessments in the past as these liabilities were developed. Those funds constitute a sizeable pool of assets that represent a valuable future resource, where properly managed. As of December 31, 1990, the investment portfolio was \$3.219 billion. Income from this pool for 1990 was \$303.9 million. For the years 1981 to 1990, investment income appears in Table 7.1. The importance of investment income is easy to see. In 1987, investment income was 43.5 percent of total income and in 1989, it was 37.8 percent of total WCB income. This means that assessments in 1989 would have had to be nearly 64 percent higher if the WCB had no reserves at all.

Historically, the Board's portfolio of investments was dominated by long term debt issues, consisting of federal and provincial (including other provincial) government and Crown Corporation bonds. In 1990, a movement was made into equities and by the end of the year, 12 percent of the portfolio was

**Table 7.3 Unappropriated Surplus (Unfunded Liability)  
Workers' Compensation Board Accident Fund**

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<b>Year</b>	<b>Surplus (Liability)</b>
1981	\$(509,756,000)
1982	(504,350,000)
1983	(433,559,000)
1984	(358,353,000)
1985	( 31,844,000)
1986	111,310,000
1987	77,899,000
1988	59,520,000
1989	225,549,000
1990	92,647,000

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SOURCE: Workers' Compensation Board, Annual Reports

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equities and 77 percent was long term bonds. The WCB plans to expand the range of its investments in the near future to include real estate, plus United States and other foreign equities.

As market values of securities change, and as income from investments rise and decline, the value of the pool of assets changes. This, together with changes in the amount of assessment income and expenditures, plus the reestimation of reserves needed for future payments in claims incurred, all contribute to the degree to which the WCB is actuarially over or underfunded. In 1981, the WCB estimated its unfunded liability for incurred future costs at over \$509 million. (See Table 7.3) To remedy this, assessment rates on employers were kept higher than they otherwise would have been, to permit annual surpluses to erode the unfunded liability.

Surpluses allow the WCB to assess employers at an annual rate below what is needed for actuarial soundness based on that year's claims. However, when there is a sizeable surplus, allowing effectively for reduced assessment rates, some controversy can be expected regarding the speed with which the surplus is amortized. More rapid amortization of a surplus (or deficit) means a larger impact on current assessment rates. A slower pace of amortization means that assessment rates will not be substantially affected in the short term. As a general rule, employers prefer rapid amortization of fund surpluses, and slower amortization of unfunded liabilities.

In 1981, the WCB found itself with an unfunded liability in excess of \$500 million dollars. From 1981 through 1985, the Board was able to reduce and eventually to eliminate its unfunded liability. This was accomplished in part

by maintaining an average assessment rate in those years that was more than sufficient to cover the costs of newly developing claims. It was also helped by very high interest rates (both nominal and real) that allowed the WCB to earn large amounts of investment income on its portfolio of bonds. By 1986 the WCB found itself with a new problem, that is, a large unappropriated surplus (\$111.3 million).

There were a number of other factors that contributed to this financial turnaround. There were minor changes in accounting policies from amortized book values. There was also a large adjustment made to prior years actuarial estimates, which accounted for over \$250 million favorable change in position. As discussed earlier, there were also reported to be serious pressures exerted to keep claim expenses down in the mid 1980s.

Though assessment rates were lowered, the Board also declared an abatement of \$99 million to provincial employers as a way to “cope” with its unappropriated surplus in 1987 and another \$15 million in 1988. This is reflected in the average assessment rates reported in Table 7.2. The Board has had only limited success until now in eliminating its surplus. It is important to realize how significant this bounty has been since 1986 in allowing the average assessment rate to be kept in check. For example, were it not that the WCB is amortizing what remains of its surplus, the average assessment rate for 1991 would not be \$1.93 (as estimated) but, instead, would be \$2.14 per \$100 of assessable payroll. Viewed differently, the assessment rate for 1991 is approximately 10 percent below what the WCB needs for that year, due to the WCB’s fund surplus that has been generated by its past and present investment income.

## **OTHER**

Section 41 of the Act gives the Board the authority to establish a silicosis fund, to pay for claims of workers who are disabled or killed by this industrial disease. To do that, a class has been created with two subclasses, “silicosis, coal mining” and “silicosis, metalliferous mining” (020300 and 020400, respectively). The assessment rate is levied on these groups of employers, but only on the assessable payrolls of those workers in occupations with dust exposures. The assessment rate in 1991 was set at \$0.00, meaning that because of the health of the silicosis fund, no assessment will be made in that year.



## Chapter 8

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# System Outcomes

### **Introduction**

This chapter will provide an overview of outcomes in the workers' compensation system of British Columbia. In a sense it is a review of what has come before, because little new material will be introduced in this chapter. However, relating these outcome measures here, without all the explanation and the qualifying details necessary in earlier chapters, has the virtue of highlighting the performance of the system directly. It also provides an excellent summary of the findings of the study before the attention points are introduced in Chapter 9.

It has been observed throughout North America that workers' compensation systems are influenced by economic conditions and by developments in the labour market. This is true in British Columbia as well. The British Columbia economy is subject to considerable cyclical fluctuation in employment. Table 8.1 shows that while employment expanded by nearly 200,000 during the 1981 to 1990 period (1.6 percent per year), year to year conditions fluctuated widely. From a low of 6.7 percent in 1981, the unemployment rate more than doubled to 14.7 percent in 1984 (employment actually declined by over 6 percent) with the major international economic downturn.

Moreover, the recovery of the British Columbia economy has been rather sluggish. In fact, it was not until 1986 that the 1981 level of employment was reattained, and unemployment did not fall back under the double digit level until 1989. During this period, average weekly earnings rose from \$363 per week to \$516 per week (4.0 percent per year), but prices rose faster (5.0 percent per year). The net result was that real wages declined by about 1.0 percent per year over the decade.

**Table 8.1 British Columbia Economic Indicators, 1981–1990**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Annual Growth Rate
Average Employment in BC (000)	1,270	1,202	1,190	1,191	1,220	1,270	1,306	1,358	1,435	1,469	1.6%
Unemployment Rate in BC	6.7%	12.1%	13.8%	14.7%	14.2%	12.6%	12.0%	10.3%	9.1%	8.3%	
Average Weekly Earnings	\$362.93	\$397.17	\$425.40	\$429.69	\$441.56	\$444.02	\$453.42	\$446.52	\$491.63	\$515.91	4.0%

SOURCE: Statistics Canada



**Table 8.2 WCB Claims Volume, 1981–1990**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Annual Growth Rate
<b>New Claims Registered at WCB</b>	196,470	159,739	151,815	150,919	158,673	156,312	169,059	192,515	207,019	217,152	1.1%
Per 100 Workers	15.5	13.3	12.8	12.7	13.0	12.3	12.9	14.2	14.4	14.8	-0.5%
<b>Wage Loss Claims</b>											
First Paid	86,264	70,255	63,291	60,044	62,052	63,066	66,869	74,815	81,046	87,147	0.1%
Per 100 Workers	6.8	5.8	5.3	5.0	5.1	5.0	5.1	5.5	5.6	5.9	-1.5%
<b>Medical Aid Only</b>											
Claims	74,955	62,886	56,413	55,314	57,880	57,630	59,610	72,703	72,499	78,760	0.6%
Per 100 Workers	5.9	5.2	4.7	4.6	4.7	4.5	4.6	5.4	5.1	5.4	-1.1%

SOURCE Workers' Compensation Board, Annual Reports

## Utilization

Table 8.2 shows that these trends were also reflected in the growth of the WCB case population. The number of new claims registered at the WCB declined precipitously from 1981 to 1984 (by over 23 percent — four times as great as the employment decline), and did not return to the former level until 1989 (as did employment). The number of wage-loss claims first paid declined even more rapidly (over 30 percent from 1981 to 1984), and did not surpass the previous peak until 1990. Medical aid only claims fall in between, with an initial decline of 26 percent and a return to the original level by 1990.

The result is that the figures for growth rates from 1981 to 1990 don't have much meaning unless they are standardized for employment levels. Therefore, Table 8.2 also presents these measures per employed worker. It is clear that all measures of WCB activity declined drastically from 1982 to 1984 (or even 1985), and then gradually increased again. For the decade as a whole, there was a net decrease in wage-loss claims per worker of 1.5 percent per year and a net decrease in medical aid only claims per worker of 1.1 percent per year.

Table 8.3 gives more detail on wage-loss claims by type of disability. It shows that temporary total claims declined by 31 percent from 1981 to 1984, and by a total of 1.7 percent per year for the ten year period. However, temporary total claims per worker are at nearly the same rate in 1990 as they were in 1982, so it would be more correct to say that there was no marked trend. Fatal claims show a clear downward trend for the decade with a net decrease from 1.6 fatalities per 10,000 workers to 1.1 per 10,000 workers. While all of this decrease occurred during the first half of the period (1981 to 1986), it is at least reassuring that there has been little or no upward trend in fatality rates since that time.

Permanent disability claims, however, increased during the decade. From a total of 2,631 (2.1 per 1,000 workers) in 1981, permanent disability claims declined to 2,071 (or 1.7 per 1,000 workers) by 1985. But then they rose rapidly after 1986, reaching a total of 3,935 (2.7 per 1,000 workers) in 1990. Thus, permanent disability claims rose by 4.6 percent per year (2.9 percent per worker) during the decade of the 1980s. This is a significant increase, with important implications for staffing. These claims are much more time consuming and involve both the Compensation Services Division and the Medical Services Division.

In summary, it seems clear that claims volume in British Columbia is driven primarily by employment levels and WCB policy decisions. Thus the claims population should follow employment trends rather closely. With the possible exception of permanent disability claims since 1987, there does not appear to be any particular trend in the number of claims that WCB policy makers should be alarmed about.

**Table 8.3 Wage-Loss Claims by Type, 1981–1990**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Annual Growth Rate
<b>Temporary Total</b>											
Claims	83,436	67,655	60,612	57,491	59,855	60,851	64,073	71,381	77,425	83,044	-0.1%
Per 100 Workers	6.6	5.6	5.1	4.8	4.9	4.8	4.9	5.3	5.4	5.7	-1.7%
<b>Permanent Disability</b>											
Claims	2,631	2,424	2,531	2,419	2,071	2,095	2,656	3,272	3,446	3,935	4.6%
Per 1,000 Workers	2.1	2.0	2.1	2.0	1.7	1.6	2.0	2.4	2.4	2.7	2.9%
<b>Fatal Claims</b>											
Claims	197	176	148	134	126	120	140	162	175	168	-1.8%
Per 10,000 Workers	1.6	1.5	1.2	1.1	1.0	0.9	1.1	1.2	1.2	1.1	-3.3%
<b>Wage-Loss Claims</b>											
Claims	86,264	70,255	63,291	60,044	62,052	63,066	66,869	74,815	81,046	87,147	0.1%
Per 100 Workers	6.8	5.8	5.3	5.0	5.1	5.0	5.1	5.5	5.6	5.9	-1.5%

SOURCE: Workers' Compensation Board, Annual Reports

**Table 8.4 Appeals Activity at WCRB, 1981–1990**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Annual Growth Rate
WCRB Appeals Received	2,922	4,090	4,090	5,082	4,045	3,921	4,248	4,966	5,636	6,749	9.7%
Per 1,000 Workers	2.3	3.4	3.4	4.3	3.3	3.1	3.3	3.7	3.9	4.6	8.0%
Per 100 Wage-Loss Claims	3.4	5.8	6.5	8.5	6.5	6.2	6.4	6.6	7.0	7.7	9.6%
Findings	2,250	2,746	2,867	3,111	2,917	3,259	4,013	4,154	4,141	3,900	6.3%
Per 1,000 Workers	1.8	2.3	2.4	2.6	2.4	2.6	3.1	3.1	2.9	2.7	4.6%
Per 100 Wage-Loss Claims	2.6	3.9	4.5	5.2	4.7	5.2	6.0	5.6	5.1	4.5	6.2%
Summaries	352	501	748	903	757	788	1,173	1,221	1,233	1,353	16.1%
Per 100 Wage-Loss Claims	0.4	0.7	1.2	1.5	1.2	1.2	1.8	1.6	1.5	1.6	16.0%
Total WCRB Decisions	2,602	3,247	3,615	4,014	3,674	4,047	5,214	5,375	5,374	5,253	8.1%
Per 100 Wage-Loss Claims	3.0	4.6	5.7	6.7	5.9	6.4	7.8	7.2	6.6	6.0	8.0%
Number of WCRB Panels	6	7	7	7	7	12	14	14	14	14	9.9%

SOURCE: Workers' Compensation Review Board

## Appeal Activity

As discussed in Chapter 4, the British Columbia workers' compensation system is fairly free of litigiousness. However, there is some question about whether recent trends threaten that state of affairs. Table 8.4 shows that appeals activity at the Workers' Compensation Review Board (WCRB) doubled during the period 1981 to 1990. It shows an annual increase of nearly 10 percent in appeals received at the WCRB, 8 percent annually when corrected for employment levels. The increase has been much greater than that of the wage-loss claim population at the WCB as shown in the increase of 9.6 percent annually in the appeal rate per 100 wage-loss claims first paid.

As discussed in Chapter 4, much of this increase was experienced in the early 1980s (from 1981 to 1984). Presumably, the increase in appeals activity during the economic downturn reflects the same social dynamic seen in other jurisdictions. When layoffs occur and employment opportunities are reduced, some displaced workers will revive old injury claims and, in their desperate financial situation, will push them as far as they can. This is the usual interpretation for the fact that litigation activity in workers' compensation system reaches its cyclical peak after employment and injuries.

After 1984, the number of appeals received dropped back down from about 5,000 to about 4,000 per year for three years. At the end of the 1980s, the number of appeals to the WCRB was again showing strong growth (17 percent in 1988, 13 percent in 1989, and 20 percent in 1990). The Chairman of the WCRB is forecasting continued rapid increases in appeals in the future (20 percent for 1991), and it remains to be seen whether the addition of an Appeal Division at the WCB will have any impact on overall WCRB appeals volume.

Table 8.5 shows the level of appeal activity at the Commissioner level from 1981 to 1990. The Section 91 appeals are appeals from WCRB decisions by workers, or dependants, or employers. Section 96 (2) refers to referrals from WCB officers who objected to WCRB findings. The Section 73 appeals are from employers, regarding assessments or safety and health matters. The table indicates that the incidence of appeals from WCRB decisions grew rapidly during the decade (over 12 percent per year). It is also noteworthy that only in 1985 were the Commissioners able to complete more appeals than they received. Thus, the backlog has been growing pretty continuously throughout the decade.

As reported previously in Chapter 4, referrals do not show any particular trend over the period, but peaked in 1987 and have declined since. However, it is clear that overall, appeals from WCB decisions has been a major growth area during the last 10 years. Given this, it is no surprise that the government decided to alter the appeal procedure with Bill 27. (See discussion in Chapter 2) This area will need careful monitoring in the future.

**Table 8.5 Commissioners' Appeals, 1981–1990**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Annual Growth Rate	Growth Rate Per Worker
<b>Commissioners' Appeals</b>												
<b>91 Appeals</b>												
New Appeals	296	378	553	532	459	419	582	678	766	682	12.6%	10.9%
Completions	127	333	339	426	512	313	588	542	570	501	20.6%	18.8%
<b>S.73 Penalty Appeals</b>												
New Appeals	N/A	N/A	N/A	N/A	N/A	N/A	N/A	119	163	326		
Completions	N/A	N/A	N/A	N/A	N/A	N/A	N/A	133	122	207		
<b>Referrals to WCB</b>												
Commissioners	176	143	86	65	217	174	398	213	138	167	-0.6%	-2.2%
Referral Decisions	146	142	82	64	133	178	269	305	183	162	1.2%	-0.5%

SOURCE: Workers' Compensation Board, Appeals Administration

**Table 8.6 WCB Staffing Levels, 1981–1990**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Annual Growth Rate	Growth Per Worker
TOTAL WCB STAFF		1,638	1,524	1,435	1,391	1,433	1,528	1,611	1,711	2,034	2.7%	0.2%
COMPENSATION SERVICES STAFF	640	654	606	567	563	567	588	616	687	747	1.7%	0.1%
Per 1,000 Initial Claims	3.3	4.1	4.0	3.8	3.5	3.6	3.5	3.2	3.3	3.4	0.6%	-1.0%
COMP ADJUDICATORS (CA + CO)	163	165	164	144	138	143	146	164	167	191	1.8%	0.1%
Per 1,000 Wage-Loss Claims	1.9	2.3	2.6	2.4	2.2	2.3	2.2	2.2	2.1	2.2	1.7%	0.0%
VOC REHAB CONSULTANTS	50	52	51	47	41	44	47	58	56	68	3.5%	1.8%
Per 100 Permanent Disability Claims	1.9	2.1	2.0	1.9	2.0	2.1	1.8	1.8	1.6	1.7	-1.1%	-2.6%

SOURCE: Workers' Compensation Board

## Administrative Workload

Table 8.6 gives a summary of the resources employed at the WCB for the period 1981 to 1990. All data are not available for all years, so the annual growth rates reported are calculated for the available period and may not be strictly comparable, since they cover different periods. Total WCB staff has grown at 2.7 percent per year, from 1,638 to 2,034 since 1982. However, this is only slightly faster than the growth in provincial employment over the same period, as indicated by the fact that the growth rate per worker is only 0.2 percent per year.

What is interesting is that the WCB staff levels declined as employment declined, with a lag of one to two years. So total staffing declined through 1985, and then rose steadily until 1990, when it jumped by nearly 19 percent. Similar increases are anticipated in 1991, so the overall level of staffing at the WCB may be an emerging policy issue.

As indicated earlier, the WCB does a great many things other than just process workers' compensation claims, from administering the occupational safety and health program (to prevent injuries and diseases in the first place) to raising the money to fund the costs of the entire system. So it is perhaps more informative to look at the staffing level of the Compensation Services Division alone.

Table 8.6 shows that the staff directly involved in processing claims and adjudicating rights to compensation grew from 640 permanent positions in 1981 to 747 in 1990. This is an annual growth rate of 1.7 percent, or 0.1 percent per worker employed in the province. Further, the table shows that the number of staff positions has increased only slightly more than the claims burden. The table shows that Compensation Services Division staff positions per 1,000 initial claims increased by only 0.6 percent per year over the decade. However, attention to the individual values reveals that there was a fairly steady decline from 1982 through 1988.

An additional figure shown in Table 8.6 is the number of first line decision makers (Claims Adjudicators and Claims Officers) available to handle the claims volume. The table indicates that the number of adjudicators has expanded at almost exactly the same rate as the Compensation Services Division as a whole, 1.8 percent per year and 0.1 percent per year per worker. When expressed as the number of adjudicators per 1,000 wage-loss claims, it can be seen that there has been a modest increase of about 1.7 percent per year, almost all of which is accounted for in 1982. Again, the message is no significant growth. However, as was discussed earlier there is a problem with turnover of Claims Adjudicators and a significant part of the problem seems to be due to burnout. The complexity of the adjudicator job increases steadily, and there is a definite feeling, both within the WCB and in the outside community, that adjudicators are stretched too thin.

The number of Vocational Rehabilitation Consultants has expanded more



rapidly than the adjudication staff. However, this is rather misleading since the absolute number of consultants actually declined from 1982 through 1985 and then rose rapidly in discrete steps in 1988 and 1990. This followed the dramatic increase in permanent disability claims in 1987 and 1988. Considering that the workload of the Vocational Rehabilitation Consultants would be determined primarily by the number of permanent disabilities, especially permanent partials, these trends appear to follow basic claim trends as well. Table 8.6 shows that the number of Vocational Rehabilitation Consultants per 100 permanent disability claims allowed has actually decreased by 1.1 percent per year over the period from 1981 to 1990. As discussed in Chapter 6, there are also significant questions about how the existing consultants are deployed, and whether they are optimally effective in their mission. These issues will be revisited in the next chapter as well.

## **Cost of the System**

The WCB performs an invaluable public mission, and the cost of performing that mission is not the only consideration in evaluating the performance of the agency. However, administrative costs are an issue, particularly in these days of scarce resources, and the efficiency of the WCB as an administrative operation is relevant to both injured workers and their employers. This section will examine the administrative costs of the workers' compensation system in British Columbia, but first we will review the benefit cost information presented earlier in Chapter 5.

Table 8.7 shows the total claim costs in each year from 1981 through 1990 by type of disability. Annual growth rates are shown, together with growth rates per worker and real or constant dollar (deflated) growth rates. It is apparent from the table that the cost of claims has been increasing faster than employment levels, but that costs of different types of claims have shown very different trends. The slowest growth has been in the cost of fatal claims, which have been virtually constant when controlling for price increases (only 0.1 percent annual increase). Obviously the average cost of fatal claims has increased somewhat, since it was shown earlier that the overall incidence of fatal claims has declined.

The most rapid increase in claim costs has occurred in medical aid only claims (13.8 percent annual increase, and 8.4 percent in constant dollars). This reflects substantial price increases in the medical care area (more rapid than the general CPI market basket of goods and services), since Table 8.2 showed that the number of medical aid only claims per worker had actually declined. It is important to remember that medical aid costs are included within the other disability categories as well, and the causes their rates of increase to be higher than they otherwise would be depending on how much medical treatment is involved.

130 **Table 8.7 Total Claim Costs by Type of Disability, 1981–1990**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Annual Growth Rate	Growth Rate Per Worker	CPI Deflated Growth Rate
<b>Claim Costs Charged by Type</b>													
Medical Aid Only													
Claims	4,938	6,527	6,739	6,834	7,249	8,185	10,013	13,283	13,523	15,817	13.8%	12.0%	8.4%
Temporary Total													
Claims	150,466	161,437	158,678	150,565	150,032	163,117	180,793	206,219	224,616	250,167	5.8%	4.1%	0.8%
Permanent Disability													
Claims	101,520	101,252	105,654	96,363	80,789	78,366	102,437	156,318	159,407	193,846	7.5%	5.7%	2.3%
Fatal Claims	15,887	19,453	16,303	16,594	13,382	17,313	19,369	23,804	24,260	24,927	5.1%	3.4%	0.1%
<b>Total</b>	<b>272,811</b>	<b>288,668</b>	<b>287,375</b>	<b>270,357</b>	<b>251,452</b>	<b>266,981</b>	<b>312,613</b>	<b>399,625</b>	<b>421,806</b>	<b>484,757</b>	<b>6.6%</b>	<b>4.9%</b>	<b>1.5%</b>
<b>Total Cost Per Worker</b>	<b>215</b>	<b>240</b>	<b>241</b>	<b>227</b>	<b>206</b>	<b>210</b>	<b>239</b>	<b>294</b>	<b>294</b>	<b>330</b>	<b>4.9%</b>		<b>-0.1%</b>

SOURCE: Workers' Compensation Board, Annual Reports

**Table 8.8 Administrative Costs of the WCB, 1981–1990**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Annual Growth Rate	CPI Deflated Growth Rate
WCB Administrative Cost (\$000)	\$54,563	\$66,908	\$67,866	\$67,007	\$65,858	\$69,289	\$75,153	\$88,033	\$97,863	\$121,461	9.3%	4.1%
Compensation Services Cost (\$000)	N/A	N/A	N/A	\$21,394	\$19,162	\$19,666	\$24,767	\$28,591	\$30,951	\$38,276	10.2%	5.4%
Per Wage-Loss Claim				\$356	\$309	\$312	\$370	\$382	\$382	\$439	3.5%	-0.9%
Per New Claim Registered				\$142	\$121	\$126	\$147	\$149	\$150	\$176	3.7%	-0.8%

SOURCE: Workers' Compensation Board

As discussed earlier, permanent disability claims have increased much more rapidly in the last decade than temporary disability claims (see Table 8.3), and this is reflected in the claim costs charged as well. Table 8.7 shows that overall temporary total claim costs have increased less than one percent per year (0.8 percent) in real terms. However, overall costs of permanent disability claims have increased at nearly three times that rate (actually 2.3 percent per year) for the same period.

Total claim costs charged have increased by 6.6 percent annually during the decade, from \$273 million in 1981 to \$485 million in 1990. Further, this represents a sizeable increase of 4.9 percent per year in claim costs per employed worker. When these figures are adjusted for inflation, the table shows that total constant dollar claim costs have increased in British Columbia by about 1.5 percent per year.

The table also shows the growth in total claim costs per worker employed in British Columbia from \$215 to \$330 over the period. This is a growth rate of 4.9 percent per year in nominal terms and a small decrease of 0.1 percent per annum in real terms. The figures for total claim costs per worker reveal an interesting pattern. Benefit costs rose until 1983, and then declined substantially (by almost 15 percent) through 1985. After 1986, costs began to escalate again, growing by 9.5 percent per year in nominal terms (5.1 percent in real terms) up to 1990.

Table 8.8 shows the WCB administrative costs for the period 1981 to 1990 for the agency as a whole and for the Compensation Services Division. WCB administrative costs have increased from nearly \$55 million in 1981 to over \$121 million in 1990. This is an annual growth rate of 9.3 percent per year (4.1 percent in real terms).

Table 8.8 also shows the administrative costs for the Compensation Services Division for most of the period. This is an appropriate comparison, since this inventory has concentrated on claims issues. While data are only available since 1984, the growth rate at this division has been just about the same (10.2 percent in nominal dollars compared to 10.4 percent for the total WCB over the same six year period). In real terms, Compensation Services costs rose by 5.4 percent per annum.

However, when costs for the Division are reported relative to the case workload, it appears that administrative costs have actually declined over the seven years for which data are available. The table indicates that the Compensation Services Division administrative costs have increased from \$142 to \$176 per new claim registered, or an increase of 3.7 percent per year from 1984 to 1990. When deflated by the CPI, this is actually a reduction in 0.8 percent per year in the real cost of processing claims. The same trend result is obtained when the administrative costs are expressed in terms of dollars per wage-loss claim. From 1984 to 1990, administrative costs have declined by almost 1 percent per year in constant dollars. This is a very impressive performance, particularly in the face of escalating wage levels and increasing administrative

**Table 8.9 Administrative Costs for WCB and WCRB, 1984–1990**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Annual Growth Rate	Growth Rate Per Worker	CPI Deflated Growth Rate
<b>WCB Administrative</b>													
Cost (\$000)				\$67,007	\$65,858	\$69,289	\$75,153	\$88,033	\$97,863	\$121,461	10.4%	6.6%	5.7%
Per Wage-Loss Claim				\$1,116	\$1,061	\$1,099	\$1,124	\$1,177	\$1,207	\$1,394	3.8%	0.2%	-0.7%
Per New Claim													
Registered				\$444	\$415	\$443	\$445	\$457	\$473	\$559	3.9%	0.4%	-0.6%
<b>WCRB Administrative</b>													
Cost (\$000)				\$1,353	\$1,660	\$3,200	\$3,574	\$2,596	\$4,507	\$4,957	24.2%	19.9%	18.8%
Per Wage-Loss Claim				\$23	\$27	\$51	\$53	\$35	\$56	\$57	16.7%	12.7%	11.7%
Per New Claim													
Registered				\$9	\$10	\$20	\$21	\$13	\$22	\$23	16.9%	12.8%	11.8%
<b>Total Cost</b>													
WCB + WCRB (\$000)				\$68,360	\$67,518	\$72,489	\$78,727	\$90,629	\$102,370	\$126,418	10.8%	7.0%	6.0%
Per Wage-Loss Claim				\$1,139	\$1,088	\$1,150	\$1,177	\$1,212	\$1,263	\$1,451	4.1%	0.5%	-0.4%
Per New Claim													
Registered				\$453	\$425	\$463	\$466	\$470	\$495	\$582	4.3%	0.7%	-0.2%

SOURCE: Workers' Compensation Board, Annual Reports

**Table 8.10 Assessments Costs of WCB, 1981–1990**

	1981	1982	1983	1984	1985	1986	1987*	1988*	1989	1990	Annual Growth Rate	CPI Adjusted
Number of Employers	81,222	77,534	82,723	85,155	86,940	89,808	94,074	98,523	103,515	106,088	3.0%	—
Maximum Wage Rate	\$22,200	\$24,700	\$26,182	\$26,182	\$26,182	\$30,000	\$35,000	\$41,300	\$42,200	\$43,400	7.7%	2.6%
Assessable Payrolls (\$000,000)	\$15,841	\$15,876	\$16,016	\$16,244	\$16,764	\$18,481	\$20,912	\$23,755	\$26,531	\$28,676	6.8%	1.7%
Assessments (\$000,000)	\$384	\$428	\$450	\$451	\$464	\$405	\$312	\$409	\$473	\$500	3.0%	-1.9%
Average Assessment Rate (\$ per 100)	\$2.42	\$2.70	\$2.81	\$2.78	\$2.77	\$2.19	\$1.49	\$1.72	\$1.78	\$1.74	-3.6%	-8.2%
Assessments per Employed Worker	\$302	\$356	\$378	\$379	\$381	\$319	\$239	\$301	\$330	\$340	1.3%	-3.5%

\* Special assessment abatements of \$99 million and \$15 million respectively were granted in 1987 and 1988.

SOURCE: Workers' Compensation Board, Assessments Department

complexity. Perhaps it also accounts for some of the complaints about the WCB being unresponsive and impersonal.

Table 8.9 combines the overall administrative costs of the WCB and the WCRB. Separate figures are not available from the other organizations involved in workers' compensation in British Columbia (Worker's Advisory Organization, Employer's Advisory Organization, Ombudsman) though these tend to be quite small relative to the WCB and WCRB. Administrative costs of the WCRB have increased more than twice as rapidly as those of the WCB (24.2 percent annually compared to 10.4 percent). This is due to the growth in the number of appeals and efforts by the WCRB to avoid falling behind in their activity. If one takes account of inflation, costs for the WCRB have grown by 18.8 percent per year from 1984 to 1990, 11.7 percent when expressed per WCB wage-loss claim.

Overall administrative costs for the WCB and the WCRB combined have grown by 10.8 percent per year since 1984, 6.0 percent when adjusted for inflation, but actually a slight decrease (0.4 percent annually) per wage-loss claim. However, the escalating costs at the WCRB bear monitoring, particularly given the recent increases in appellate activity. The Chairman of the WCRB is very concerned about delays increasing again in the near future, but is not able to secure additional positions until the need is demonstrated by performance deterioration.

To appraise the cost of the WCB to the employers of British Columbia, Table 8.10 shows the number of employers, the maximum assessable wage rate, class assessable payrolls, class assessments, and average class assessment rate for each year from 1981 through 1990. This table excludes the deposit account employers. The number of employers has expanded at 3.0 percent per year, while the maximum assessable wage rate has increased by 7.7 percent per year. Note that this is after the assessable wage rate maximum was held constant for three years in the mid 1980s. There was clearly some catch-up for this period from 1986 to 1988, when the maximum wage rate increased by over 15 percent per year.

Total assessable payrolls increased from under \$16 billion to over \$28 billion during the decade, or 6.8 percent per year, only slightly less than the increase in the maximum. Assessments increased from \$384 million in 1981 to nearly \$500 million in 1990, or by 3.0 percent per year. This means that the growth rate in total assessments was less than half the growth rate in assessable payrolls! The result is that average assessment rates have been substantially reduced. In addition, abatements of \$99 million in 1987 and \$15 million in 1988 were made to British Columbia employers. This remarkable performance was made possible by the investment income the WCB generates out of its reserves, and by the substantial increase in the maximum assessable wage rate.

The average assessment rate dropped substantially in 1986 and has continued to slide down since. The Association of Workers' Compensation

**Table 8.11 Average Assessment Rate, Canada 1989–1991**

Province	Average Assessment Rate per \$100 Payroll		
	1989	1990	1991
British Columbia	\$1.77	\$1.79	\$1.93
Alberta	1.75	1.90	1.94
Saskatchewan	1.58	1.62	1.60
Manitoba	2.25	2.23	2.20
Ontario	3.12	3.18	3.18
Quebec	2.68	2.50	2.32
New Brunswick	1.88	1.94	2.04
Nova Scotia	1.34	1.47	1.66
Prince Edward Island	1.57	1.60	1.80
Newfoundland & Labrador	2.31	2.50	3.00
Northwest Territories	2.35	2.47	2.69
Yukon	1.79	1.65	1.69

SOURCE: Association of Workers' Compensation Boards of Canada

Boards of Canada published a fact sheet reporting the average assessment rate for British Columbia and the other provinces. (See Table 8.11) It should be noted these figures are not directly comparable due to varying funding policies, the differing level of benefits payable and the degree of funded or unfunded liabilities. In comparison with the other provinces, the British Columbia rate was well below that of most others, and especially lower than the two largest provinces of Ontario and Quebec. This reflects a number of factors, especially the fact that British Columbia fully funded their liability by keeping assessments high (and restraining benefits) in the first half of the decade. This is apparent in Figure 8.1 which shows total class assessments and total benefit payments (excluding administrative costs and other WCB functions). The surpluses generated in the early 1980s are today making it possible to keep assessments substantially lower than they would have otherwise been.

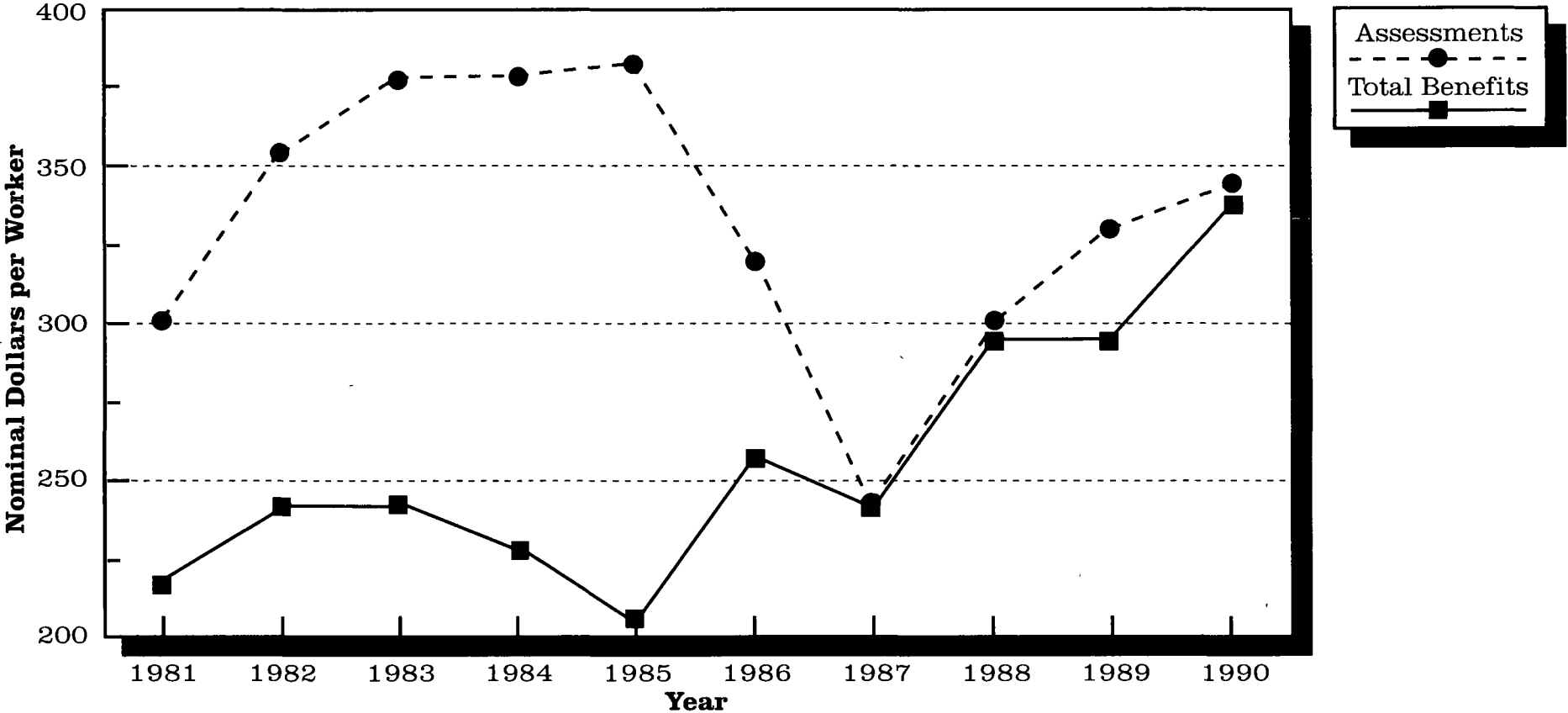
## Speed of Resolution

The primary measure of speed of resolution that is kept by the WCB is the paylag statistic, the percent of wage-loss claims where payment is made within 17 days of the first lost work day. This measure is most appropriate for



Figure 8.1

### Total Benefits and Assessments at WCB 1981 to 1990



**Table 8.12 Paylag by Adjudicating Unit 1991  
(January through May)**

	Paylag Standard	% Year to Date
Vancouver Unit 1	40.0	41.9
Unit 2	40.0	46.1
Unit 3	40.0	42.0
Unit 4	40.0	40.4
Unit 5	40.0	38.2
Unit 9	65.0	60.1
Special Unit	—	9.1
Nanaimo	50.0	55.6
Prince George	50.0	66.0
Cranbrook	50.0	69.5
Vernon	50.0	65.1
Nelson	50.0	58.2
Terrace	50.0	60.4
Kamloops	50.0	60.4
Victoria	50.0	52.9
Courtenay	50.0	70.9
<b>TOTAL ALL OFFICES</b>	—	48.1

SOURCE: Workers' Compensation Board, Internal Report

relatively simple temporary total claims. Table 8.12 shows the paylag statistics for the first five months of 1991, organized by adjudicating unit. For the entire WCB, 48 percent of wage-loss claims were paid within 17 days. Individual unit performance varied from slightly below 40 percent to over 70 percent (excluding Special Claims Unit). Of course, the performance of an individual adjudicating unit depends largely upon the particular assignment the unit has taken on. For instance, the Special Claims Unit handles many claims that are especially difficult to adjudicate (see Chapter 2) and their paylag performance reflects that. These predictable factors should be reflected in the paylag standard which is set for the unit.

Paylag performance would also reflect the number of claims received in a month relative to the staff complement actually available, neither of which are strictly controllable. Vacancies, training requirements, illnesses, vacation schedules and other more or less unpredictable factors all will impact on this measure. Given that claims are randomly assigned among the Richmond units, these factors should produce only minor variations in performance.

However, the area offices have special problems since they are more geographically isolated and subject to the influence of single industry concentrations. With smaller staffs, they also face more rigid constraints due to the indivisibilities of people and positions. Yet, the area offices also have many inherent advantages in teamwork and coordination and the standard set for them exceeds that for Richmond, as does their performance.

Statistics are also kept on the total paylag for all claims, whether they make the 17 day threshold or not. According to an internal WCB report that reviewed all claims with dates of injury in 1988 through 1991, 73.7 percent of all claims were paid within 30 days of leaving work due to injury or illness. About 93.1 percent were paid within 60 days, 97.1 percent were paid within 90 days. This is a very good performance.

The more difficult questions about speed of resolution arise in the more complicated cases, particularly the permanent partial disability cases. These cases usually begin as claims appropriate for paylag measurement as well, and only gradually reveal themselves to be potential problems. Thus, it would also be interesting to know how long it takes for appeals and other more contentious administrative processes. Such statistics are not kept by the WCB, however, we can infer what delays might exist in administrative treatment from the size of the backlog of cases at various points in the process.

For instance, it was shown in Chapter 4 (Table 4.7) that there were 1,343 appeals pending at the Commissioner's level at the end of 1989. Just directing our attention to the 1,091 Section 91 appeals, it would be reasonable to assume that this is approximately a two year backlog, since the Commissioners were generating about 500 to 600 completions each year.

It was also shown in Chapter 4 (Table 4.1) that the Workers' Compensation Review Board has received more appeals than it has resolved (sometimes substantially more) in all but three of the last ten years (1986, 1987, and 1988). As of the end of April 1991, the WCRB reported that they had a backlog of 5,962 appeals. Since the WCRB has been generating about 3,000 decisions (findings and summaries) annually, this would also appear to be about a two year backlog.

Unpublished material made available by the WCRB indicates that the average elapsed time for Review Board findings with a hearing is between 10 and 11 months, including 1.2 months for the file to arrive from the WCB. The Chairman of the WCRB stated that it was his opinion that hearings should not be scheduled in less than 5 or 6 months because of delays in getting the record from WCB, delays in securing medical depositions, etc. His experience suggests that hearings in less than 6 months require too many continuances, because the record is not yet complete.

**Table 8.13 Turnover in Critical Positions, 1988–1991**

	Current Employment	Resident in 1988	Terminated since 1988
Managers	59	27 (46%)	11 (19%)
Claims Adjudicators	124	95 (77%)	21 (17%)
Claims Officers	49	23 (47%)	6 (12%)
Vocational Rehabilitation Consultants	73	43 (59%)	17 (23%)

SOURCE: Special Tabulation by Workers' Compensation Board, Human Resources Department

## Problems, Solutions and Results

A major problem at the WCB is staff morale and turnover. The agency has been through some difficult times during the past decade, with the devastating economic downturn, criticism from the Ombudsman and other outside organizations, continuing institutional resentments of the WCRB, a work stoppage by the WCB employees in 1989, and substantial changes of direction imposed by Board leadership.

The turnover problem is something tangible that can be measured and which serves as an indicator of staff satisfaction. Table 8.13 shows the turnover for four critical positions in the Compensation Services Division at the WCB over the last two and one-half years. The percent of current employees that were resident in the same positions at the end of 1988 (2.5 years ago) ranges from 46 percent in the case of managers to 77 percent for Claims Adjudicators.

The termination rates report the number of employees that have left the WCB during the last 2.5 years, ranging from 12 percent for Claims Officers to 23 percent for Vocational Rehabilitation Consultants. The figure for Claims Officers reflects a substantial increase in the number of such positions at the WCB and widespread promotions to this position from clerical positions recently.

It is surprising to find such a high rate of turnover among Managers, with less than half having held their current positions just 2.5 years ago. Discussions with WCB staff indicate that there may be problems with the compensation levels not being commensurate with the responsibility levels of some of

these jobs. There also is a sense that there has been a notable lack of job security for Compensation Service Managers in the last few years.

Overall, these rates of turnover do not seem excessive, but it is curious that the job that everyone agrees is the “burnout” job, Claims Adjudicator has a lower level of turnover than either Vocational Rehabilitation Consultants or Managers in the Compensation Services Division. This situation deserves further scrutiny by higher management.



## Chapter 9

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# Attention Points

In the process of preparing this inventory, certain features of the workers' compensation system seemed especially notable. In most instances, they are identified because they represent special strengths of the system or because they warrant some attention by those seeking to improve it. We make several recommendations that the WCB and its new leadership might choose to consider. However, the primary purpose of this chapter is to point to those aspects of the system that persons both in and out of the agency should find are notable. The points are not listed in any order of priority. For the convenience of the reader, the attention points are clustered by broad subject area that parallel the outline of the text.

### **The Agency**

#### **GROWTH IN STAFFING**

Between 1985 and 1990, total staff has risen by 46.2 percent. From 1987 to 1990, staff growth exceeded 26 percent. Apparently, substantial growth has continued in 1991. In the light of this experience, the rapid growth in the administrative costs of the WCB are hardly a surprise. Critics of the WCB can be anticipated to point to either area, personnel or costs, as evidence of an agency that is out of control.

The reality over the past decade is somewhat different. If one looks at administrative expenditures in terms of either the volume of new claims registered or wage loss claims first paid, and takes account of inflation, the agency has actually kept costs in check.

One element, however, bears special watch. Growth in staffing from 1989 to

1990, and in the current period seem high. Administrative costs have also ballooned in the period since 1989. With net growth of about 19 percent from 1989 to 1990 and again in 1991, the agency may begin to experience problems of absorptive capacity. Very substantial expansion, even if justified by growth in claims activity, places an inordinate burden on the agency to train and productively integrate so many new personnel.

## **MANAGERIAL TURNOVER**

Any large organization must walk a fine line in seeking to achieve an optimal rate of turnover. In one light, managerial turnover can reflect a willingness to infuse an organization with fresh blood, and to derive benefits flowing from new approaches and energy. It can also reflect a structure that rewards good performers with upward mobility in the organization. In another light, however, excessive turnover reflects dispirited ranks; it undermines continuity and it creates numerous challenges for the staff that report to these persons.

We have been told repeatedly by staff of their concerns regarding excessive turnover in the managerial ranks. Their dissatisfaction reflects a sense that standards of performance are being changed, that they and their managers have been at risk for speaking their minds, that personnel decisions seem capricious, and that the quality of agency performance suffers. It should be emphasized that the turnover is not that which is associated with the implementation of Bill 27.

## **PLANNING**

By almost any yardstick, the WCB is a large and sophisticated operation. Because of that it is especially surprising that the agency has generally eschewed intermediate or long term planning. There is an annual budget exercise that involves managers throughout the agency. That cannot, however, be regarded as a substitute for long term planning. A plan may not be particularly useful for the agency as a whole in the light of legislative mandates and political constraints, however, it should be a significant management tool at the division level and below. The process can lead to the creation of operations standards, the measurement and periodic assessment of goals, and the reallocation of resources within the agency. The Compensation Services Division is to be commended for leading the way with their 1991 Action Plan.



## RESEARCH AND EVALUATION

The WCB continually assembles data for use as management information tools. Such data are vital to alert managers to areas of emerging problems and to gauge performance through time. For example, how are area offices meeting the paylag standard this year compared with last? Management information systems are no alternative or substitute for program evaluation, however, and neither are internal audits. Program evaluation represents a commitment to analyze programs or elements of programs in order to understand if and how they work. Are the programs cost effective?. What explains why some units function better than others? What are the correlates of claims that are likely to be appealed?

An agency such as the WCB should be expected to seek answers to such questions on a continuous basis. To do so, the Board of Governors could opt either to create an internal research and evaluation group that would undertake such studies with WCB staff, or to use a smaller staff group that would contract out with academics and management consultant groups to have such studies done. The former strategy promises more predictable performance and more control by higher management. The latter strategy might improve the connections of the WCB in the community and might stimulate more creative thinking. It would take some time to develop a stable of contractors who are familiar with the WCB and its mission, but commitment to evaluation will give the WCB more control over its own destiny.

It might also be advantageous to combine the evaluation function with a more explicit research function. Policy formation is fostered by both research and evaluation. Evaluation can tell the agency where operational problems exist, but you cannot evaluate what does not yet exist, so the contribution of evaluation is limited. A research function, on the other hand, can help identify alternative structures and policies that could be developed to meet certain institutional challenges. The objective is to create a unit that can look at the world with a fresh, open-minded perspective, and to help the agency design creative solutions to institutional problems of mission and goal.

A research unit could examine the following kinds of issues, for example: How are workers' private pension entitlements affected by permanent disabilities? Are current WCB deeming practices accurate? Are the long-term disabled being adequately compensated? Is there a systematic problem with over or under reserving for particular types of claims? Are there alternative methods that will allow for better performance in this area? How much vocational rehabilitation is enough? When should early intervention with vocational rehabilitation get the highest priority?

An adequate research and evaluation unit at the WCB would add significantly to institutional capability and sense of direction. We recommend that such a unit be created in the near future.

## **TRAINING**

Any employer as large as the WCB needs to devote resources to staff training. With the very substantial growth in the number of personnel, particularly over the recent past, the WCB's needs are substantial. The Compensation Services Division, the agency's largest unit, has recently beefed up its Staff Development Centre to try to meet these needs. However, most of the Division's training is still aimed only at its new staff. This may be understandable in the light of the rapid growth in new staff. However, it is obvious that the WCB as a whole has not given sufficient energy to the training needs of existing staff. This shortcoming has been brought to our attention by a number of persons in different positions in the agency. One particularly obvious area is in the Vocational Rehabilitation Services Department, where the Vocational Rehabilitation Consultants have had very different types of training and skill backgrounds prior to their employment at the WCB. An internal staff development program could help to minimize these differences. A great deal can be gained by improving professional interaction and creating peer pressure for excellent performance. The WCB should consider developing and utilizing resources in the community that can assist with staff development as well as expanding its internal commitment to this critical area.

By devoting resources to staff development, the WCB will enable its employees to maintain and upgrade their skills. Also of considerable importance, staff development can assist in an agency effort to boost the morale of employees. It is likely to do that in a number of ways, including enhancing the probabilities that staff will have upward mobility within the agency.

## **FACILITIES**

The WCB has provided its staff and its clients attractive and functional settings. Unlike the grim and austere settings that sometimes characterize government facilities, and workers' compensation offices particularly, the area offices and Richmond facilities provide employees with a pleasant environment in which to work and to interact with the public. However, the Richmond site can be imposing, and at least one critic has characterized it as an "institutional fortress." This is an unfortunate perception that can be addressed with more decentralization as discussed below.

The WCB has not lagged in its utilization of contemporary office technology. It appears to be well equipped in terms of electronic hardware and utilization of these resources seems reasonable. The agency has clearly not short-changed itself in its efforts to provide staff with the physical tools to do their jobs. Nor has the WCB short-changed its clients in the facilities available for worker rehabilitation. The Rehabilitation Centre is a first rate facility,

among the finest in North America. In general, the WCB has an excellent physical plant and is using it in a constructive manner.

## **MANAGEMENT INFORMATION**

While the study team did not undertake a full review of the Information Services Division, it heard enough complaints to warrant an attention point about the management information system at the WCB. The Information Services Division has provided an excellent database for the agency, what it has not done is provide access to that database in a useful, user-friendly manner. Greater attention should be paid to getting the information that is already being collected into the hands of managers and others so that it can be utilized in a timely manner.

## **MATRIX MANAGEMENT**

The WCB has adopted a matrix management approach that may warrant rethinking. Some persons working within the claims units or area offices do not have direct reporting responsibility there. Instead, they report to managers with professional expertise in vocational rehabilitation services, medical services, occupational safety and health, assessments, or support services. Aside from the simple management difficulties that this has imposed, it makes it more difficult to develop a team approach by professionals to the management of cases. Possibly, no better alternative exists to this imperfect approach. It would seem likely that a more effective statement of the goals of the WCB would leave room for professional management of units and area offices, with access to expertise in the professional areas provided outside the regular chain of command. Minimally, the WCB should carefully examine its existing approach to unit management to assure itself that no better means could be applied, particularly if a move to greater decentralization develops.

## **DECENTRALIZATION**

It is impossible to avoid noting the differences between the area offices and the main office in Richmond. The area offices offer workers, their families, and employers a human scale that seems very approachable. Frequently, problems are dealt with there on a face-to-face basis. The size and scope of the Richmond office can be intimidating, particularly to injured workers. It appears that most problems and complaints are handled by telephone, as well they should. However, one must wonder if complaints regarding the WCB's services would decline if more claims were dealt with by smaller and more

accessible offices. Many of the reasons for centralization may no longer apply with the technology that the WCB has or could easily acquire. Clearly, some functions of the WCB warrant centralization, but for those involving contact with the public, diseconomies of scale may have occurred in Richmond. Satellite offices would remedy some of this, and this step has been under consideration for over a decade. We support decentralization within the lower mainland, but the Governing Board could minimize the risks of going to a much more decentralized system by experimenting with the approach, and reserving judgment on the overall strategy until the experiment is evaluated. It is clear to us that area offices deserve more attention as models.

## **OCCUPATIONAL SAFETY AND HEALTH**

Almost no other workers' compensation agency in North America includes an occupational safety and health responsibility. This is despite the obvious linkages between injury prevention programs and injury rehabilitation and compensation programs. It seems likely that these linkages were perceived as benefits by those responsible for placing both sets of programs into a single agency in British Columbia.

This administrative inventory has given virtually no attention to the occupational safety and health division of the WCB. But it is clear to us that the agency has not created the potential synergy between these two important parts of the WCB organization and mission. Aside from sharing common office space in Richmond and the Area Offices, the two functions seem to be carried out completely separately. This is very unfortunate.

We know of no other situation in North America where there is greater potential to demonstrate the synergy between a compensation system, a rehabilitation facility, and an occupational safety and health program. The overall mission of the WCB should be understood by all to be to prevent injuries first, rehabilitate injured and diseased workers and return them to work second, and compensate those who cannot be prevented from permanent impairment last. It is not only more humane, it is more economical as well. A conscious effort by the WCB's management to achieve some of the potential benefits from this alliance is a goal that should be endorsed by the agency.

# **The Claims Process**

## **WORKLOAD**

There are many challenging and stressful jobs in an agency such as the WCB, but few compare with that of the Claims Adjudicator. Serving in the very front line of the agency, the Claims Adjudicator's position requires an incredible balancing of skills and abilities. It requires an understanding of the law and WCB policies that cannot be acquired quickly; the WCB Rehabilitation Services and Claims Manual runs to several hundred loose leaf pages. Great care and tact is needed in dealing with claimants, attending physicians and other health care providers, employers, advocates, medical advisors, and the WCRB. Apparently, this job is doable since the agency functions quite well most of the time. That is a tribute to the skill and dedication of these adjudicators.

But it seems clear that the agency continues to heap an excessive burden on these people. As such, even where the adjudicator is able to maintain only a small backlog, the quality of the adjudicator's work must suffer. There must arise an inevitable tradeoff between moving files out and devoting to them the time needed to minimize mistakes. In many instances, decisions that claimants believe are harmful to them are appealed and ultimately are modified. The administrative cost is considerable, especially if the case goes to the WCRB. Errors in favor of a claimant are not as likely to be appealed and are, thus, less likely to be rectified. In theory, errors of either sort would occur at the adjudicator level with equal probability.

Excessive workloads result in problems beyond payment errors, however. They lead to complaints that adjudicators are difficult to reach by telephone, or do not return calls promptly, that they seem abrupt when they are contacted, or that their letters are cryptic or curt. Additionally, adjudicators are unable to investigate claims and do other tasks that involve getting out into the field, especially in Richmond where workloads are the highest. All of these problems are byproducts of a system that assigns too many claims — both new and old — to the adjudicator, the primary decisionmaker in the entire system.

## **PAYLAG AND CRITERIA OF PERFORMANCE**

There are few objective standards of performance applied to the claims units. One that is cited by all parties, however, is the measure of paylag. This is an appropriate standard, but when it is the foremost one utilized, it creates certain difficulties. Since it is measured from the day following the date of injury, and not based on the date reported to the WCB, some claims could never be paid within 17 days. How can a unit's performance be assessed on a matter over which it lacked any control?

Excessive emphasis on the paylag could conceivably lead units to postpone work on a claim where the 17 days had already elapsed, and concentrate instead on claims where the standard could be met. An undue emphasis on timeliness may lead to some sacrifice in quality as well. It is true that complaints received about particular adjudicators also play some role in the evaluation of performance. However, this is rather non-systematic and cannot be relied upon as an effective counter to the paylag pressure.

The issue raised here is *not* that the paylag standard is inappropriate. Instead, it is that additional criteria for evaluation are needed. For example, how quickly are first payments made from the date of notice to the WCB of an injury or disease? How often are there errors in the adjudicator's determination of the claimant's average earnings? How frequently are adjudicators' findings remanded or reversed at the manager's review? What is the appeal rate to the Review Board? What is the reversal rate? How often has the opportunity for early referral to vocational rehabilitation been missed? We would urge the development of additional performance measures that incorporate a broader range of institutional goals.

## **CLOSING CLAIMS**

Unlike many other jurisdictions in North America, workers' compensation claims are never closed in British Columbia, so long as the worker is alive. Changes in the worker's condition, medically or economically, can lead to a reopening at any time. Health care expenditures may appear for payment at the WCB at any time for claims that have been totally inactive for years.

This feature is notable, particularly for the U.S. audience. In the U.S., insurers, attorneys and claimants all eagerly seek closure of claims, usually through the compromise and release procedure. This provides the injured worker with a lump-sum monetary settlement, and usually no recourse if his/her physical condition deteriorates later. The insurer, in exchange, secures the certainty of closure in exchange for the lump-sum cash payment.

The fact that this option is not allowed in British Columbia probably goes a long way toward explaining the relatively low incidence of disputes over claims in the system. We suspect that prohibiting settlements leads to higher claims administration costs but lower social costs, as reflected in worker satisfaction with the system. It is striking that we have not heard of anyone in British Columbia who would advocate for implementing such a change. It is remarkable that what is accepted as the normal way of doing business at the WCB should be regarded as unthinkable by most insurance carriers and workers' compensation system administrators in the United States. It seems to be one very significant advantage of the non-adversarial system of adjudication used in British Columbia.

# **Dispute Resolution**

## **APPEALS**

It is difficult to conceive of a system that permits more levels of appeal than this one. Aggrieved parties have numerous bites at the apple. Aside from requesting that a finding be reconsidered by an adjudicator, the appellant has access to the Manager Review, the Workers' Compensation Review Board, the Appeal Division, possibly the Medical Review Panel, and potentially to the courts. Under most situations, a favorable decision for a claimant at any of these levels is decisive, particularly since the use of referrals has been limited. Moreover, access to union representatives and worker advisers means that most worker or dependant appellants incur no out-of-pocket costs in pursuing appeals.

The upshot of these features is that the system implicitly encourages appeals. That is a policy choice made by the Provincial Government and the WCB and it represents an adaptation of the non-adversarial system. However, it suggests that significant numbers of appeals cannot be cited as conclusive evidence of some structural shortcoming at the WCB. However, it is imperative that all decision makers involved in the system remember that more appeals, more administrative costs, and more delays are not good things in themselves. Thus, there should be more attention paid to appeals as a symptom of ineffective or insufficient adjudication or communication with the client at an earlier level. We would feel more comfortable with such measures if we had more confidence in the data used to develop them as well.

## **EVALUATION OF THE WCRB**

The Workers' Compensation Review Board is a very significant player in the entire process of compensating workers. Appeals received, appeals received per 1,000 workers, appeals received per 100 wage loss claims received by the WCB, all have at least doubled between 1981 and 1990. From 1984 to 1990 the WCRB's panels more than doubled from 6 to 14 and its budget tripled. Most significantly, perhaps, but not as easy to quantify, the Review Board has had an impact on the WCB and its procedures.

For a tribunal of such significance, we were surprised to find that no outside, independent performance evaluation had been made or was contemplated. In addition, an appeal body should have its decisions reviewed for consistency and timeliness. There have been allegations that both are lacking in WCRB findings although the current chairman disputes this. It is true that the WCRB has implemented some staff development measures in recent years, and we believe the Chairman when he claims to be emphasizing consistency and quality of decisionmaking with internal controls. However,

we also believe that any public program of this magnitude warrants periodic and independent evaluation of its performance to assure that it is operating with fairness, and with efficiency in compliance with its charge.

## **WCB-WCRB RELATIONS**

For much of the past decade, tension has existed between the Review Board and the WCB. Worker advocates feel that decisions by WCB adjudicators have sometimes appeared to be hasty or even harsh. The WCRB probably reviews a large percentage of these. And referrals to the Commissioners by unrepentant adjudicators after WCRB findings have reversed their judgment could lead to instances where Review Board decisions were never even implemented. In certain types of cases (e.g. repetitive motion injuries), the Review Board very frequently overturned adjudicators, whose consistent negative determinations may have appeared to be products either of obduracy or of anti-claimant sentiment.

In the opinion of many WCB staff, the Review Board panels rendered inconsistent findings and their standards of judgment were compromised by emotional responses to face-to-face meetings with claimants and their families. While adjudicators wrestled with difficult issues by referring to the codified policies of the Rehabilitation Services and Claims Manual, the WCRB panels could overturn them without having to cite any specific error. In the past, dialogue between the WCB and WCRB has been inconsistent at best. Yet both agencies are attempting to implement the same statute, and both serve the same fundamental purpose. With the recent changes in the direction and the structure of the WCB, greater cooperation and understanding between the WCB and the WCRB may be possible. It is urgently needed to assure that the best feasible job of adjudication is done on a timely, cost-effective basis.

## **MANAGER REVIEWS**

Persons aggrieved by decisions of adjudicators may request Manager Reviews. In Richmond, this specialized task is carried out by the Policy and Review Office in the Compensation Services Division. In the area offices, however, the task is left to the manager of the office. This can be a very time consuming activity, but one that cannot be compromised or abridged. This kind of first level review keeps the managers in touch with the case load and with the performance of the Claims Adjudicators, the Vocational Rehabilitation Consultants, Medical Advisors, and others involved in processing the claim.

If the WCB decides to decentralize its claims processing facilities in the



lower mainland area, we urge that the manager review function devolve to the local office rather than being retained in Richmond. While there may be some loss in consistency between offices, the improvement in management effectiveness and “natural justice” for clients seem worth the tradeoff. However, there is a continued role for the Policy and Review Office in reviewing and codifying these decisions for the Rehabilitation Services and Claims Manual when required. This will prevent any inconsistencies from getting out of hand.

## **REDUCING THE NUMBER OF MEDICAL REVIEW PANELS**

The organization of the Medical Review Panels seems to work well, aside from the substantial delays that have been experienced. Fortunately, the process appears to have been speeded up in recent years. It seems designed to assure that an aggrieved party receives a fair assessment by an impartial set of qualified experts.

However, it may be possible to reduce further the instances in which a Medical Review Panel is needed. *Bona fide* medical disputes have arisen when medical issues have been decided based on a review of a file only. If a Medical Advisor had actually examined the claimant or discussed the issue with the treating physician, some disputes would not have arisen, or at least would not have continued to an MRP. That is the view of at least one experienced party in this area. If disputes can be eliminated in this way, those cases would be resolved more quickly and without the expense of a panel. Again, as in the case of better adjudicator decisions, this would be in the interest of the entire system. It is galling both to the worker and his/her physician to have the WCB make decisions of such magnitude on the basis of the file alone.

## **LAWYERS**

Rather few lawyers are involved with workers' compensation in British Columbia. Unlike the programs that have developed in most U.S. states, the provinces of Canada have remained relatively free of lawyer involvement. With access to Worker Advisors and labor union representatives, injured employees or their dependants need not face the WCB or WCRB on their own. Nor must such workers share their disability compensation benefits with their representatives, as is commonly the case in jurisdictions with substantial lawyer involvement.

It is no great challenge for a system like British Columbia's to minimize the use of lawyers. Rather, the significant challenge is to provide a fair and equitable system where lawyers are not needed to represent the interests of the parties involved. In general, this province has managed to meet that challenge successfully, although some persons believe that lawyers are likely

to become more significant in the workers' compensation system. If the use of lawyers does increase, the WCB may need to move to regulate legal fees, assuming that is determined to be constitutional.

Worker advocates still assert that there is insufficient qualified representation available to injured workers. The WCB or the Ombudsman may wish to monitor this situation to determine if the system is undergoing significant change in that regard.

## **Benefits**

### **GENEROUS BUT COMPLEX**

Benefits to injured workers and their dependants tend to be relatively generous in British Columbia. The maximum weekly benefit for total disability was the highest in Canada as of January 1, 1991, and the minimum benefit was near the top as well. Benefit entitlements begin the first day following the disabling injury. In several other respects the case can be made that benefits are reasonably high.

The province also stands out as having a very complicated scheme of benefits. The alternative benefits depending upon a surviving spouse's age and the number of dependant children are examples in this regard. Benefit adjustments in cases of permanent partial disability that relate to a worker's age are also notably complex. Fairness in compensation may sometimes require complicated benefit schemes to insure that the social objective is accomplished. However, there is also a virtue in being able to explain to a worker or dependant what the basis is for a given level of compensation. Some elements of the current system are not well understood, perhaps even by those adjudicating the claims. The existing degree of complexity may not itself warrant change, but in considering any future alterations of benefits, the issue of simplicity should be kept in mind.

### **DEEMING EARNINGS**

A critical element in the setting of a pension for a permanent partial disability is the deeming process. In this process, a Vocational Rehabilitation Consultant must assess the future earning capacity of a disabled worker. In some instances, this judgment must be made based on assumptions that are far from firm. There may be some issue of whether or not the worker could benefit from relocation, for example. And depending upon the Vocational Rehabilitation Consultant's judgment, the worker's pension may be based

solely on the degree of permanent functional impairment, or it may include additional amounts for anticipated earnings losses.

The theory behind the dual permanent partial disability benefit seems sound. The actual practice of assessing the worker's future earnings capacity is less sound. The implication of this is that the Vocational Rehabilitation Consultants must be very well trained, their work must be carefully supervised as they develop real world experience, and the agency must monitor the quality of the assessments done. The purpose of this monitoring is to allow the agency to learn from its own experience by comparing hypothetical judgments with subsequent reality.

One of the difficulties in estimating what a worker is capable of earning is the possible significance of worker relocation. The problem is especially acute when an injured worker is employed in a primary industry, resides in a small, possibly isolated community, and is likely not to find reemployment in that area. With relocation, earnings loss may be reduced. However, at what point is it unfair to impose a relocation requirement? What if the spouse has a well paid job in the community or a pension entitlement that would be threatened by relocation? These are basically policy matters that the Governing Board must eventually resolve. We simply note that there is considerable responsibility being placed on the judgment of the Vocational Rehabilitation Consultants.

## **INCOME CONTINUITY BENEFITS**

A problem of income maintenance may exist for workers in the time period between the ending of temporary disability benefit payments and the establishment of the permanent partial disability pension. In some instances, the Vocational Rehabilitation Consultant may recommend that continuing income replacement be provided to bridge that gap. Since the payment is discretionary, it is not difficult to imagine that the plight of some workers may escape the attention of the Vocational Rehabilitation Consultant and his/her needs will be unmet. Unemployment insurance, union benefits, or welfare may serve as a bridge. The use of income continuity benefits needs to be assessed and possibly revised. Even after that is done the WCB should give attention to shortening the time gap between the cessation of temporary benefits and the beginning of permanent disability benefits. This would be abetted by encouraging earlier intervention of the Vocational Rehabilitation Consultant in cases that involve significant risks of continuing wage-loss after recovery.

## **EARNINGS-LOSS PENSIONS**

In recent years, about 10 percent of new permanent partial disability cases result in the payment of earnings-loss pensions. The balance of cases result in benefits based upon permanent functional impairments. Yet, approximately 45 percent of the reserves set aside to pay for such claims are for the loss of earnings cases. In 1990, the average reserve for a loss of earnings claim was nearly seven times greater than the average reserve in permanent functional impairment cases.

It is generally agreed in workers' compensation circles that, typically, the major disability cases are undercompensated and the minor disability cases are overcompensated, relative to lifetime earnings losses. The British Columbia system may have very different characteristics. Unfortunately, it is impossible to make any statement about the equity of compensation across these cases in British Columbia without a full study.

However, the potentially large disparity in costs and the relatively "soft" evidence from which such differences in compensation arise, convince us that this is an area that needs further attention. The WCB should launch a study to determine whether approximate horizontal equity is being maintained (i.e. whether similar disabilities are being compensated similarly), and whether vertical equity goals are being met (i.e. are different levels of disabilities being compensated appropriately). This would include estimates of the proportion of lifetime earnings losses that are being replaced for a wide variety of injuries and illnesses.

Such a study should increase public confidence in the working of the entire workers' compensation system. It will also make it possible to identify the characteristics of the most difficult wage-loss pension cases so as to better facilitate early intervention in these claims to minimize the long-term suffering and costs that such claims entail.

## **Rehabilitation**

A number of attention points that have already been noted are certainly significant in the rehabilitation area, e.g. strategic planning, over centralization of services, possible excessive turnover of management, the need for research and program evaluation, and ongoing professional development, could all be listed here. However, since these have already been noted above, they are not reiterated in this section.

## **ORGANIZATIONAL STRUCTURE AT THE SERVICE CENTERS**

Within the current organizational structure, attention needs to be given to the role of the Vocational Rehabilitation Consultant and the level of management support (e.g., clinical supervision, ongoing training) provided to these professionals within the claims units and area offices. The present demands on rehabilitation management appear excessive, both in relation to the number of consultants supervised by each manager and because the Vocational Rehabilitation Consultants are physically located in separate units from management within the WCB Richmond office, Rehabilitation Centre, and in area offices. Additionally, the varying levels of experience, education, and training among consultants place serious demands on rehabilitation management and on staff development.

If decentralization were to result in the development of satellite service centers, the organizational structure should be designed to enhance accountability for services delivered, provide more immediate access to professional clinical supervision, and the development of a more cooperative team approach to the adjudication/rehabilitation process. Consideration should be given to the establishment of a lead consultant or supervisory position within each unit to provide more direct professional supervision and ongoing training for consultants. The role of the manager also needs to be reviewed with the goal of separating the technical responsibilities from the management responsibilities.

## **GOALS AND EXPECTATIONS**

There needs to be some clarification of the operational goal of the vocational rehabilitation process at the WCB. Specifically, is the goal to enhance the injured workers employability, or is it the actual placement and return to work of the disabled worker? While it is not unusual for workers' compensation agencies to focus on employability rather than employment when rehabilitation is viewed as discretionary within workers' compensation systems, policy clarification is needed based on the amount of uncertainty observed.

In setting out a clear policy in this regard, the role and function of the Vocational Rehabilitation Consultant will be better defined, performance expectations can be made more explicit and measurable, and accountability enhanced. If the primary goal of the WCB is to return the person to work, a number of changes will be required. For example, a greater proportion of consultant time would be devoted to employer development and placement related services, which would in turn affect current staffing levels and professional training needs.

## **EARLY INTERVENTION**

Almost all persons familiar with vocational rehabilitation, believe that the probability of success, however defined, is enhanced when intervention occurs early. Presently at the Rehabilitation Centre, there is a desire to involve the consultant at a much earlier stage of the medical rehabilitation process as part of a coordinated team approach to service provision. The WCB should be encouraged to explore possible service delivery options throughout its operations to enhance early intervention efforts through team approaches.

## **JOB SEARCH SERVICES**

The Job Search Program appears to be a highly useful component of the provision of Vocational Rehabilitation Services, based on its utilization in other jurisdictions. However, the program is extremely limited in its size and scope relative to the potential number of clients to be served. Expanding the program and widening its services are needed. The WCB should consider lengthening the program to allow for more worker contact and in-depth assistance, a re-introduction of certain aspects of the Azerin Job Club model, providing more follow-up and better or alternative service options for the area offices, as well as programmatic expansion to provide a full range of services (e.g., Manitoba program). If the goal of employment is to be restored to primacy in the vocational rehabilitation process, these measures will be required.

## **ACCESS TO SERVICES IN AREA OFFICES**

On the basis of our observations, the range of rehabilitation services that is available in area offices is more limited than those existing in Richmond. The differential impact of these limitations should be assessed so that possible adjustments can be weighed and considered. This is particularly important where limitations of the local job market constrain the options available for vocational rehabilitation.

## **FUNDING**

A number of persons both within and outside the WCB have commented that the organization spends very little on Vocational Rehabilitation Services. Presently, with a general lack of outcome data related to expenditures in this area, it would be difficult to argue this issue. At the heart of this matter is the WCB's policy. How much of its resources should the WCB devote to rehabilita-

tion and return to work services? If the WCB wishes to determine the pattern of its rehabilitation expenditures on a cost-effectiveness basis, it follows that more studies and ongoing program evaluation will be required to identify what is cost effective for the organization, and the injured workers it serves.

## **Other**

### **EMPLOYER INVOLVEMENT**

One of the features of the British Columbia system that differentiates it from many others is the lack of employer involvement. While employers help service the system by providing information on injuries, and pay for it through assessments, their involvement with the WCB is quite passive. Though this could symptomize an attitude of resignation, our sense is that it reflects a generally positive view of the state of workers' compensation in British Columbia. Moreover, it suggests that workers have encountered little resistance by employers as they utilize the system.

Further, the appellate process has not been choked by employer appeals. As is true everywhere, there is employer concern about the level of costs, and increases in those costs. But these concerns peaked with the experience of the 1980s when the WCB funded their unfunded liability on the way out of a recession, and when employers objected to the resulting surplus, and secured assessment abatements in 1987 and 1988. In recent years, the employer community seems satisfied with WCB performance. As long as costs are kept in check, this attitude is likely to continue.

### **PUBLIC OPINION — STAFF MORALE**

Few things became apparent to us more quickly than the low level of staff morale at the WCB. Some of that is probably in response to outside criticism of the WCB; some sniping at any major public entity is inevitable. It appears, however, that the agency was particularly subject to attack during and since the period in the mid 1980s, when the WCB policy seemed to be driven by a desire to reduce expenditures. Aside from attacks in the media, much of which was not rebutted, the agency had stormy relations with the WCRB, was severely rebuked by the Ombudsman and was often criticized by workers' groups. The staff's morale was an obvious casualty, even though the criticisms were targeted at WCB policies and leadership. Labor relations difficulties may have exacerbated the morale problem.

Our sense of the WCB's staff is that they are generally highly motivated and dedicated to providing quality service to injured workers. When service

quality breaks down, the problem is likely to be the result of excessive workloads. The Board of Governors would do well to nurture its staff and regard it as the obvious strength of the agency. There are numerous ways to do that, including the provision of opportunities for staff development, and avenues for upward mobility within the agency. Another important goal would be to build a more cooperative relationship with the union, one based on mutual trust and respect.

## **COSTS**

All across North America, concerns have mounted regarding the costs of workers' compensation. By contrast, British Columbia is able to provide strong levels of benefits and a high quality of service to most injured workers, without having employer costs explode. The feat is particularly remarkable for a province that has experienced a decade of mediocre economic performance. In part, the WCB has been blessed with a very beneficial performance by its portfolio during a time of generally falling interest rates. The tough decision to eliminate the large unfunded liability that existed in the early 1980s helped make it easier to fund the system by the end of that decade. Even without its investment income, a responsible policy of funding that liability has led to enviable financial results for the WCB and the province's employers. It is vital to the future that this excellent performance be continued.



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# Statistical Appendix

**Table SA-1 WCB Statistics, 1981–1990**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Annual Growth Rate	Growth Rate per Worker	CPI Deflated Growth Rate
<b>AVERAGE EMPLOYMENT IN BC (000)</b>	1,270	1,202	1,190	1,191	1,220	1,270	1,306	1,358	1,435	1,469	1.6%		
<b>UNEMPLOYMENT RATE IN BC</b>	6.7%	12.1%	13.8%	14.7%	14.2%	12.6%	12.0%	10.3%	9.1%	8.3%			
<b>CPI ADJUSTMENT FACTOR – JULY</b>	60.9%	46.3%	39.4%	34.9%	29.4%	24.0%	18.9%	14.1%	8.5%	3.5%	5.0%		
<b>AVERAGE WEEKLY EARNINGS</b>	\$362.93	\$397.17	\$425.40	\$429.69	\$441.56	\$444.02	\$453.42	\$446.52	\$491.63	\$515.91	4.0%		-1.0%
<b>MAXIMUM WEEKLY BENEFIT JULY</b>	\$319.32	\$355.28	\$376.59	\$434.38	\$466.02	\$575.34	\$591.17	\$594.04	\$606.98	\$624.25	7.7%		2.6%
<b>MINIMUM WEEKLY BENEFIT JULY</b>	\$149.83	\$166.81	\$177.90	\$186.65	\$193.87	\$201.40	\$210.47	\$218.92	\$228.91	\$240.28	5.4%		0.4%
<b>NEW CLAIMS REGISTERED AT WCB</b>	196,470	159,739	151,815	150,919	158,673	156,312	169,059	192,515	207,019	217,152	1.1%	-0.5%	
<b>WAGE-LOSS CLAIMS FIRST PAID</b>	86,264	70,255	63,291	60,044	62,052	63,066	66,869	74,815	81,046	87,147	0.1%	-1.5%	
<b>CLAIMS FIRST PAID BY TYPE</b>													
Medical Aid Only Claims	74,955	62,886	56,413	55,314	57,880	57,630	59,610	72,703	72,499	78,760	0.6%	-1.1%	
Temporary Total Claims	83,436	67,655	60,612	57,491	59,855	60,851	64,073	71,381	77,425	83,044	-0.1%	-1.7%	
Permanent Disability Claims	2,631	2,424	2,531	2,419	2,071	2,095	2,656	3,272	3,446	3,935	4.6%	2.9%	
Fatal Claims	197	176	148	134	126	120	140	162	175	168	-1.8%	-3.3%	
<b>TOTAL</b>	161,219	133,141	119,704	115,358	119,932	120,696	126,479	147,518	153,545	165,907	0.3%	-1.3%	
<b>CLAIM COSTS CHARGED BY TYPE</b>													
Medical Aid Only Claims (\$000)	\$4,938	\$6,527	\$6,739	\$6,834	\$7,249	\$8,185	\$10,013	\$13,283	\$13,523	\$15,817	13.8%	12.0%	8.4%
Temporary Total Claims (\$000)	\$150,466	\$161,437	\$158,678	\$150,565	\$150,032	\$163,117	\$180,793	\$206,219	\$224,616	\$250,167	5.8%	4.1%	0.8%
Permanent Disability Claims (\$000)	\$101,520	\$101,252	\$105,654	\$96,363	\$80,789	\$78,366	\$102,437	\$156,318	\$159,407	\$193,846	7.5%	5.7%	2.3%
Fatal Claims (\$000)	\$15,887	\$19,453	\$16,303	\$16,594	\$13,382	\$17,313	\$19,369	\$23,804	\$24,260	\$24,927	5.1%	3.4%	0.1%
<b>TOTAL (\$000)</b>	\$272,811	\$288,668	\$287,375	\$270,357	\$251,452	\$266,981	\$312,613	\$399,625	\$421,806	\$484,757	6.6%	4.9%	1.5%

**Table SA-1 WCB Statistics, 1981–1990 (Continued)**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Annual Growth Rate	Growth Rate per Worker	CPI Deflated Growth Rate
TOTAL WCB STAFF	N/A	1,638	1,524	1,435	1,391	1,433	1,528	1,611	1,711	2,034	2.7%	0.2%	
COMPENSATION SERVICES STAFF	640	654	606	567	563	567	588	616	687	747	1.7%	0.1%	
COMP ADJUDICATORS (CA + CO)	163	165	164	144	138	143	146	164	167	191	1.8%	0.1%	
VOC REHAB CONSULTANTS	50	52	51	47	41	44	47	58	56	68	3.5%	1.8%	
COMPENSATION SERVICES COST (\$000)	N/A	N/A	N/A	\$21,394	\$19,162	\$19,666	\$24,767	\$28,591	\$30,951	\$38,276	10.2%	6.4%	5.4%
WCB ADMINISTRATIVE COST (\$000)	\$54,563	\$66,908	\$67,866	\$67,007	\$65,858	\$69,289	\$75,153	\$88,033	\$97,863	\$121,461	9.3%	7.5%	4.1%
NUMBER OF EMPLOYERS	81,222	77,534	82,723	85,155	86,940	89,808	94,074	98,523	103,515	106,088	3.0%		
MAXIMUM WAGE RATE	\$22,200	\$24,700	\$26,182	\$26,182	\$26,182	\$30,000	\$35,000	\$41,300	\$42,200	\$43,400	7.7%		2.6%
ASSESSABLE PAYROLLS (\$000,000)	\$15,841	\$15,876	\$16,016	\$16,244	\$16,764	\$18,481	\$20,912	\$23,755	\$26,531	\$28,676	6.8%		1.7%
ASSESSMENTS (\$000)	\$383,520	\$427,812	\$450,158	\$450,930	\$464,352	\$405,111	\$411,460	\$424,248	\$473,122	\$499,687	3.0%		-1.9%
AVG ASSESSMENT RATE (PER \$100)	\$2.42	\$2.70	\$2.81	\$2.78	\$2.77	\$2.19	\$1.97	\$1.79	\$1.78	\$1.74	-3.6%		-8.2%
FUND PAYMENTS													
Wage-Loss Payments (\$000)	\$119,778	\$127,054	\$124,748	\$117,193	\$116,557	\$130,575	\$147,002	\$169,952	\$185,778	\$205,080	6.2%	4.5%	1.1%
Medical Aid Payments (\$000)	\$48,805	\$56,938	\$59,465	\$59,471	\$57,422	\$57,941	\$63,752	\$73,177	\$77,981	\$91,451	7.2%	5.5%	2.1%
Pension Payments (\$000)	\$63,736	\$72,836	\$84,137	\$97,560	\$96,668	\$102,090	\$108,248	\$126,127	\$146,591	\$164,287	11.1%	9.3%	5.8%
TOTAL (\$000)	\$232,319	\$256,828	\$268,350	\$274,224	\$270,647	\$290,606	\$319,002	\$369,256	\$410,350	\$460,818	7.9%	6.2%	2.8%
FUND BALANCE													
Investment Income (\$000)	\$96,250	\$130,039	\$139,468	\$168,095	\$206,147	\$230,990	\$246,947	\$270,853	\$310,081	\$333,578	14.8%		9.3%
Surplus or (Unfunded Liability) (\$000)	(509,756)	(504,350)	(433,559)	(358,353)	(31,844)	\$111,310	\$77,899	\$59,520	\$225,549	\$92,647			

SOURCE: Workers' Compensation Board, Annual Reports, and Internal Reports

**Table SA-2 Appeal Activity, 1981-1990**

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Annual Growth Rate	Growth Rate per Worker
<b>WCRB APPEALS REC'D</b>	2,922	4,090	4,090	5,082	4,045	3,921	4,248	4,966	5,636	6,749	9.8%	8.0%
Per 1,000 Workers	2.3	3.4	3.4	4.3	3.3	3.1	3.3	3.7	3.9	4.6	8.0%	6.3%
Per 100 Wage-Loss Claims	3.4	5.8	6.5	8.5	6.5	6.2	6.4	6.6	7.0	7.7	9.6%	7.9%
<b>FINDINGS</b>	2,250	2,746	2,867	3,111	2,917	3,259	4,013	4,154	4,141	3,900	6.3%	4.6%
Per 1,000 Workers	1.8	2.3	2.4	2.6	2.4	2.6	3.1	3.1	2.9	2.7	4.6%	
Per 100 Wage-Loss Claims	2.6	3.9	4.5	5.2	4.7	5.2	6.0	5.6	5.1	4.5	6.2%	
<b>SUMMARIES</b>	352	501	748	903	757	788	1,173	1,221	1,233	1,353	16.1%	14.3%
Per 100 Wage-Loss Claims	0.4	0.7	1.2	1.5	1.2	1.2	1.8	1.6	1.5	1.6	16.0%	
<b>TOTAL WCRB DECISIONS</b>	2,602	3,247	3,615	4,014	3,674	4,047	5,214	5,375	5,374	5,253	8.1%	6.4%
Per 100 Wage-Loss Claims	3.0	4.6	5.7	6.7	5.9	6.4	7.8	7.2	6.6	6.0	8.0%	
<b>NUMBER WCRB PANELS</b>	6	7	7	7	7	12	14	14	14	14	9.9%	8.1%
<b>WCRB BUDGET (\$000)</b>	N/A	N/A	N/A	1,353.3	1,660.0	3,200.0	3,574.2	2,595.7	4,507.2	4,957.5	24.2%	
<b>COMMISSIONERS' APPEALS</b>												
<b>91 APPEALS</b>												
New Appeals	296	378	553	532	459	419	582	678	766	**682	12.6%	10.9%
Completions	127	333	339	426	512	313	588	542	570	**501	20.6%	18.8%
<b>S.73 PENALTY APPEALS</b>												
New Appeals	N/A	N/A	N/A	N/A	N/A	N/A	N/A	119	163	**326		
Completions	N/A	N/A	N/A	N/A	N/A	N/A	N/A	133	122	**207		
<b>REFERRALS TO</b>												
<b>WCB COMMISSIONERS</b>												
Referral Decisions	176	143	86	65	217	174	398	213	138	167	-0.6%	-2.2%
	146	142	82	64	133	178	269	305	183	162	1.2%	-0.5%
<b>ALL MATTERS FOR COMMISSIONERS</b>												
New Matters	636	662	769	708	823	774	1,537	1,683	1,509	**1,678	11.4%	9.7%
Completions	422	616	532	597	745	646	1,356	1,660	1,296	**1,369	15.1%	13.3%
Pending at year end	223	254	518	629	707	835	950	967	1,161	**1,453	22.9%	21.0%

\*\* Figures as of 10/26/90 and are not included in growth rates

SOURCE: Workers' Compensation Review Board and Workers' Compensation Board

**Table SA-3 List of Persons Interviewed**

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**WCB Senior Executives**

James E. Dorsey, Chairman, Board of Governors  
Ken Dye, President and CEO, Workers' Compensation Board  
Connie Munro, Chief Appeal Commissioner  
Ed Bates, Vice-President, Legal Services  
Len McNeely, Vice-President, Compensation Services  
Dr. Tony Nichini, Vice-President, Medical Services  
Bill Evans, Vice-President, Financial Services  
George Balfour, Director, Special Projects

**Other WCB Directors and Department Heads**

Doug Smith, Controller  
Bud DuGas, Director, Assessments  
Tom Hum, Manager, Internal Audit  
Dr. John Bardsley, Director, Rehabilitation Centre  
Dr. Barbara Foxwell, Assistant Director, Rehabilitation Centre

**Appeal Division**

Connie Munro, Chief Appeal Commissioner  
Paul Petrie, Appeal Commissioner/Registrar  
Verna Ledger, Appeal Commissioner

**WCB Managers**

Keith Younie, Actuary  
Barney Biggs, Manager, Assessment Policy  
Denny Regier, Manager, Data Resource Management  
Ron Gibson, Manager, Statistical Services Department  
Dr. Chris Cooke, Manager, Functional Evaluation Unit  
Judith Jenkins, Manager, Labour Relations  
Dr. Beverley Tamboline, Senior Disability Awards Medical Advisor

**Compensation Services Department Heads**

Dick Hurst, Director, Claims — Area Offices  
Joe Pinto, Director, Claims — Lower Mainland  
Roger Hepplewhite, Director, Compensation Systems  
Nick Gallagher, Director Disability Awards and Acting Director,  
Vocational Rehabilitation  
Art Quinn, Executive Policy Adviser — Policy and Review  
Nick Attewell, Executive Policy Adviser — Policy and Review  
Jacqueline Nichol, Director, Support Services  
Grant McRitchie, Manager — Staff Development Center  
Rick Leslie, Manager, Medical Aid

**Compensation Services Managers**

Penny Masterton, Area Office Manager — Prince George  
Ken Beddie, Area Office Manager — Terrace  
Dave Duncan, Area Office Manager — Vernon  
Rob MacDonald, Area Office Manager — Victoria

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### **Table SA-3 List of Persons Interviewed – Continued**

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Rob Ingraham, Manager, Special Unit  
Ursula Bowditch, Manager, Unit 9  
Maureen Cain, Manager, Unit 3  
Terry Bogoyo, Project Manager, Compensation Systems  
Carol Sallenback, Assistant Manager, Disability Awards  
Karen Clarke, Administrative Support Manager, Auxiliary Services

#### **Vocational Rehabilitation Department**

James Watson, Manager, Vocational Rehabilitation  
Henry Harder, Acting Manager, Vocational Rehabilitation  
Ken Sykes, Manager, Vocational Rehabilitation  
Vladimir Yakimov, Manager, Vocational Rehabilitation  
Linc Johnson, Manager, Vocational Rehabilitation  
Judy Alexander, Manager, Vocational Rehabilitation  
Paul Lin, Manager, Vocational Rehabilitation  
John Hewitt, Vocational Rehabilitation Consultant, Victoria  
Bob Marsh, Vocational Rehabilitation Consultant, Victoria  
Daljit Dhariwal, Vocational Rehabilitation Consultant  
Eric Fielder, Vocational Rehabilitation Consultant  
Dave Rabson, Coordinator, Job Search Program  
Peter Hopkins, Staff Trainer, Vocational Rehabilitation  
Patricia Swenson, Vocational Rehabilitation Consultant  
Rae McInnes, Research and Development Officer Vocational  
Rehabilitation  
Kerri Favelle, Research and Development Officer Vocational  
Rehabilitation  
Atul Gokhale, Vocational Rehabilitation Consultant  
Greg Misener, Vocational Rehabilitation Consultant, Terrace  
Dave Fraser, Vocational Rehabilitation Consultant, Terrace  
Barry Ennis, Vocational Rehabilitation Consultant, Prince George

#### **Representatives of the Compensation Employees' Union**

Rick Coleman, Business Manager  
Nancy Andrews, Adjudicator, Unit 5  
Bill Hawkins, Adjudicator, Victoria Area Office

#### **Other WCB Staff**

Janice Hight, Counsel to the Chairman  
Carmen Grant, Personnel Advisor, Human Resources Department  
Taranjeet Bhullar, Adjudicator, Victoria Area Office  
Linda Boynton-Lee, Claims Officer, Unit 9  
Dennis Campbell, Adjudicator, Special Unit  
Simon Stubbs, Disability Awards Officer, Disability Awards  
Jennifer Glover, Adjudicator  
Gary Horsting, Adjudicator, Vernon  
Sue Danyluk, Disability Awards Officer, Disability Awards  
Janice Woodland, Adjudicator, Disability Awards  
Linda Els, Adjudicator, Prince George

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## **Table SA-3 List of Persons Interviewed – Continued**

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### **Ministry of Labour and Consumer Services**

Ron Buchhorn, Assistant Deputy Minister (ADM) Labour Relations  
Colin Aykroyd, Policy Specialist, Policy and Legislation Branch

### **Workers' Compensation Review Board**

Jack Bibby, Chairman, WCRB & Senior Vice-Chairman of  
Administration  
Doug Strongitharm, Registrar, WCRB  
Beverly Greenlaw, Manager, WCRB

### **Other Organizations**

Dr. Nigel Clark, Medical Review Panel Chairman  
Ray Bozzer, Employers' Adviser  
Blake Williams, Workers' Adviser  
Pat Anderson, Office of the Ombudsman  
Sonja Hadley, Office of the Ombudsman  
Dan Barrett, Constituency Assistant in Riding Office of Moe Sihota  
(MLA–New Democrat)

### **Interested Parties Outside the System**

Workers' Compensation Advocacy Group  
James Sayre, Community Legal Assistance Society, Vancouver  
Allan McLean, Schroeder, Pidgeon & Company, Vancouver  
Tom Galbraith, International Union of Operating Engineers  
William Kessel, Floorlayers Union  
Allan Zdunich, Burnaby Unemployment Action Center  
Michael Carleton, Executive Director, British Columbia Premier's  
Advisory Counsel for Persons with Disabilities  
Leila Quastel, Occupational Therapist and Professor, UBC  
Steve Graham, Langley Association for the Handicapped  
Deborah Mills, Iam Cares  
Dr. Norman Finlayson, Executive Director of BCMA  
Dr. Clive Thompson, Assistant Executive Director of BCMA  
Dr. Brian Hunt, Neurosurgeon  
Dr. Barrie Purves, Neurosurgeon  
Dr. Ken Kolotyluk, President, Council of General Practitioners  
Jerry Smith, Health and Safety Director for IWA  
Bert Hawrysh, Vice President for Safety and Health at Council of  
Forest Industries (COFI)  
Bob McGregor, Teamsters Union Representative  
John Weir, British Columbia Federation of Labour  
Northwood Pulp and Timber Limited  
Art Hinz, Sawmill Safety Coordinator  
Wilf Williams, Pulp Area Safety Coordinator  
Valley Autohaus, Fraser Valley  
Robert Harris, Injured Worker  
Sarwin Sahota, Injured Worker  
Don Tonsaker, Director, Otter Training School

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# Acknowledgements

This study was undertaken with little advance notice. The preliminary discussions occurred at the end of March 1991, and this report is being finalized at the end of September 1991. The fact that the study was done at all reflects the efforts of a great many people. The fact that it was done in six months from conception to completion, is due to the extraordinary efforts of a few very talented individuals who deserve our deepest gratitude and some public recognition.

First is Jim Dorsey himself. As the incoming Chairman of the Board of Governors of the Workers' Compensation Board of British Columbia, Mr. Dorsey recognized the need for some objective, independent assessment of the WCB at this important point in its history. His willingness to throw open the doors of the WCB and invite outsiders to document the process and the result is a model of exemplary public policy leadership.

Second is Terry Bogyo, the WCB staff member assigned to us for the duration of the project. Terry made this study feasible in the time frame available, and we stand in awe of his energy, patience, breadth of understanding, and his ability to get the job, *any job*, done. Terry was our travel agent, tour guide, driver, meeting arranger, introducer, translator, explainer, listener, reactor, and friend during the four separate time periods that project staff were physically present in British Columbia over the summer of 1991. He was also our lifeline on the telephone during the difficult process of putting our observations together while physically located over 2,000 miles away from the subject.

Third are the employees of the WCB and all the allied agencies in British Columbia. We are especially indebted to those individuals who took the time to carefully review our draft document for errors of fact or interpretation. During the study, we encountered splendid cooperation wherever we went in British Columbia. This is a testimonial to the public spirit of the people of the

province as well as to their understanding of how important the mission of these agencies is to a sense of social well-being. For those of us from South of the Border, it was very welcome.

Fourth, we must thank Elizabeth Anderson and the other personnel at the W. E. Upjohn Institute for Employment Research who supported this effort. Elizabeth transcribed untold hours of dictation, coped with three distinct and largely incompatible methods of creating written text, and served as the glue that held the project together when the three of us were otherwise occupied.

Last, but by no means least, we must thank our families for putting up with an unusually demanding summer schedule and the routines of long hours and deadline pressures. We could not have done it without them.

HAH  
PSB  
MJL  
Kalamazoo, Michigan  
October 1991

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# Biographical Sketches

**H. Allan Hunt** is a native of Wisconsin, educated at the University of Wisconsin – Madison, Lehigh University, and the University of California at Berkeley. He earned his Ph.D. in economics from the latter institution in 1974. He has been employed at the W. E. Upjohn Institute for Employment Research in Kalamazoo, Michigan since 1978 and was appointed to his current position as Assistant Executive Director in 1989.

Dr. Hunt's research experience has involved him in the areas of workers' disability compensation, employment and training policy, and the employment impacts of technological change. He has 15 years research experience in workers' compensation policy issues and is the author or co-author of seven books and numerous reports and articles. His current research interests are in disability compensation systems and methods of employer disability prevention and management.

**Michael J. Leahy** is an associate professor in the Rehabilitation Counseling Program at Michigan State University. He received his doctorate in Rehabilitation Psychology from the University of Wisconsin – Madison, a master's degree in Rehabilitation Administration and Services from Southern Illinois University, and a bachelor's degree in Vocational Rehabilitation Services from the University of Wisconsin – Stout. He has over 17 years of experience in rehabilitation as a counselor, administrator, researcher and educator.

Dr. Leahy has published numerous articles and book chapters and has presented his research to a variety of rehabilitation and business audiences, including international presentations. He has held leadership positions within rehabilitation counseling professional organizations at the state, regional and national levels. He is a two-time recipient of the American Rehabilitation Counseling Association Research Award (1986, 1990), recipient of the 1989 Outstanding New Career Award in Rehabilitation Education from the National Council on Rehabilitation Education, and was awarded the 1989 Distinguished Service Award by the Michigan Rehabilitation Counseling Association.

**Peter S. Barth** received his Ph.D. in Economics from the University of Michigan in 1965. His career includes extensive research in Worker's Compensation policy and law in both the U.S. and Canada. He was the Executive Director of The Presidential Commission on State Workmen's Compensation Laws and Director of Research in the Department of Labor's Office of the Assistant Secretary for Policy Evaluation and Research. Since 1973, he has been with the Department of Economics at the University of Connecticut. His current research interests include Workers' Compensation, Manpower and Labour markets.

Dr. Barth's publications in the area of Workers' Compensation include a report for the Ontario Royal Commission on Workers' Compensation, and Asbestos and Administrative Inventories on Workers' Compensation in Connecticut and Texas published by the Workers' Compensation Research Institute. Other works include a report on the use of Medical Review Panels in selected Canadian jurisdictions and numerous articles and proceedings. He is a member of the American Economics Association and the Industrial Relations Research Association.



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