

# **Report of the Select Committee on the Workers' Compensation Act**

November, 1998  
First Session of the  
Fifty-Seventh General Assembly

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**House of Assembly  
Nova Scotia**

Honourable Ronald S. Russell, CD  
Speaker  
House of Assembly  
Province House  
Halifax, Nova Scotia

Dear Mr. Speaker:

In accordance with Resolution 844 passed by the House of Assembly on Monday, June 22, 1998, the Select Committee on the Workers' Compensation Act is pleased to submit its report to the Second Sitting of the First Session of the Fifty-Seventh General Assembly.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael Baker".

Michael Baker, MLA  
(Lunenburg)  
Chairman  
Select Committee on the Workers' Compensation Act

Halifax, Nova Scotia  
November 1998

## **Membership of Nova Scotia's Select Committee on the Workers' Compensation Act**

Michael Baker, MLA,  
chairman  
Lunenburg

Frank Corbett, MLA  
Cape Breton Centre

Hyland Fraser, MLA, vice  
chair  
Antigonish

Charlie Parker, MLA  
Pictou West

Rosemary Godin, MLA, vice  
chair  
Sackville-Beaver Bank

Ernest Fage, MLA  
Cumberland North

Charlie MacDonald, MLA  
Inverness

Jim DeWolfe, MLA  
Pictou East

Michel Samson, MLA  
Richmond

The Select Committee on the Workers' Compensation Act also had a number of consultants represent the interests of major stakeholder groups. The consultants were asked to provide their expertise on various issues strictly for advisory purposes to committee members. For the purposes of determining the final recommendations contained in this report only members of the Legislative Assembly participated in the voting process.

Luc Erjavec  
Business consultant

Jim Neville  
Injured Worker consultant

Dr. Anthony Lamplugh

Medical consultant  
Michael Power  
Legal consultant

The Select Committee on the Workers' Compensation Act also relied on Gordon Johnson of the Legislative Counsel Office to provide expertise in drafting legislation.

### **Procedures and Operations**

The Select Committee on the Workers' Compensation Act met on the following dates:

Committee Meetings

June 29, 1998

July 16, 1998

August 21, 1998

September 24, 1998

September 29, 1998

October 2, 1998

October 13, 1998

October 20, 1998

October 22 , 1998

October 27, 1998

November 3, 1998

November 17, 1998

November 19, 1998

November 20, 1998

November 23, 1998

November 24, 1998

November 26, 1998

## Public Hearings

August 25, 1998 - Yarmouth

August 26, 1998 - Wolfville

August 27, 1998 - Bridgewater

September 1, 1998 - Sydney

September 2, 1998 – Port Hawkesbury

September 3, 1998 - Stellarton

September 8, 1998 - Truro

September 9, 1998 - Halifax

September 10, 1998 - Halifax

September 22, 1998 - Sydney

September 23, 1998 - Amherst

## Notices

Notices of committee meetings and public hearings were sent to all members of the committee, staff of the caucus offices, and the legislative staff.

Advertisements for the public hearings were placed in all English- and French-language daily and weekly newspapers in the province. News releases and weekly media advisories were issued giving details of the hearings.

## Transcripts

Transcripts of the public hearings are available from the Legislative Committees Office, Third Floor, Dennis Building, 1740 Granville Street, P.O. Box 2630 Station M, Halifax, N.S., B3J 3N5; Telephone 1-888-388-6489 or 902-424-4432.

## Research Material

The Legislative Committees Office compiled most of the research for the Select Committee on the Workers'

Compensation Act. The Workers' Compensation Board and the committee's consultants provided the majority of technical information distributed to the committee members.

### **Select Committee Report**

The Report of Nova Scotia's Select Committee on the Workers' Compensation Act was compiled and written by Doug Hadley. Once the initial draft was edited, it was then sent to the individual committee members and consultants for consideration. Following revisions the report was tabled with the Speaker on November 26, 1998.

The report was distributed to: the Speaker/Clerk of the House, all Members of the Legislative Assembly, all Nova Scotians who made presentations at public hearings, the legislative libraries in all provinces and territories, the chairs of all workers' compensation boards throughout Canada, and the news media.

The report is available to the general public through the Nova Scotia Government Bookstore at 1700 Granville St., Halifax; 1-800-526-6575 or 1-902-424-7580.

### **Acknowledgements**

The Select Committee on the Workers' Compensation Act wishes to extend its gratitude to those Nova Scotians who appeared during the public hearings for taking the time to voice their opinion on the Workers' Compensation Act; and to the many others that telephoned, faxed, e-mailed, mailed or hand-delivered their submissions.

The Select Committee on the Workers' Compensation Act also wishes to thank:

The consultants, Luc Erjavec, Dr. Anthony Lamplugh, Jim Neville and Michael Power for representing the interests of major stakeholder groups;

From the Legislative Counsel Office, Gordon Johnson for providing expertise in drafting legislation;

From the Legislative Committees Office, for organizing committee meetings and public hearings, Mora Stevens, co-ordinator of the select committee and staff members Kim Sheppard, Darlene Henry and Sherri Mitchell;

From Communications Nova Scotia: Jim Vibert, executive

director, and staff for editorial, advertising, media relations, website, and graphic design, in particular, Maggie Marwah, editor, Rick Payne, graphic design consultant, and Geoffrey Kerson, co-ordinator of electronic publishing services;

Others whose assistance was invaluable to the committee were: Rodney Caley, editor of Hansard, and Hansard staff; Don Ledger, co-ordinator Legislative Television and Broadcast Services, and the staff that accompanied the committee on its hearings throughout the Province Paul Read and Paul Walsh; and Michael Laffin, co-ordinator, House of Assembly Operations, and staff.

## **Executive Summary**

The Select Committee on the Workers' Compensation Act was established under Resolution 844 on June 22, 1998, by the unanimous agreement of the House of Assembly. This committee was made up of nine members from all three political parties and four consultants representing the interests of injured workers and the business, legal and medical communities.

The mandate of the Select Committee was to review changes to the Workers' Compensation Act and, in particular, to review recommendations of the Auditor General with respect to his audit of the Workers' Compensation Board, Workers' Advisors Program and Workers' Compensation Appeals Tribunal.

The process entailed asking Nova Scotians for their ideas on how to make the current system better. Their response was overwhelming. In all, we heard from 174 presenters at the public hearings and an additional 90 submissions were received by phone, fax, e-mail and regular post.

Interest was extremely high. So high, we had to schedule two additional meetings—one in Amherst, and one in Sydney. In all, the committee held 11 public meetings. We started in Yarmouth and finished in Amherst. In between we met in Wolfville, Bridgewater, Port Hawkesbury, Stellarton, Truro, and two times in Sydney and Halifax.

Many of the presentations we heard were heart-rending. Many were filled with frustration for a system they feel let them down. They were all filled with passion. The committee, would like to thank each and every Nova Scotian who took time to share their views on this important issue.

The current Workers' Compensation system in Nova Scotia

has many problems. There is a backlog of appeals at the Workers' Compensation Appeals Tribunal of more than 2,500. Both the select committee and the auditor general agree extraordinary methods must be undertaken to reduce the current backlog.

The Appeals Tribunal has introduced a plan to reduce the backlog by July 2000. The committee feels this is a promising first step but must go farther. In some cases, there are individuals with appeals in the system for more than 10 years. This is totally unacceptable. These people deserve some answers. They need to bring closure to their cases and be free to move on with their lives.

To reduce the backlog immediately, the committee recommends implementing three specific initiatives: restoring Amended Interim Earnings Loss benefits for some claimants; reinstating survivor's benefits for spouse's who remarried prior Oct. 1, 1992; and awarding a lump sum payment for individuals who meet specific criteria and were injured between March 29, 1985 and March 23, 1990. If any of these individuals currently have an appeal at WCAT, by accepting this award they agree to remove their case from the appeal process and not be eligible for further appeal.

Following this initial step, the committee supports the additional hiring of appeals commissioners to work specifically on reducing the current backlog. Using the Alternative Dispute Resolution program the backlog could be reduced, and possibly eliminated by the end of 1999.

A streamlined appeals process with legislated timelines would ensure a backlog of this magnitude would never occur again. Removal of the Reconsideration stage of the appeal process and Leave to Appeal at WCAT would shorten the timelines from first appeal to a final decision. From the time an appeal is launched at WCAT through to a final decision the committee suggests legislating a timeline of 90 days. Following this process, an individual or organization would be free to appeal to the Nova Scotia Court of Appeal.

The workers' compensation system has an unfunded liability of more than \$360 million. This jeopardizes the long-term viability of workers' compensation in Nova Scotia and undermines the ability of the WCB to do what is right—pay compensation to injured workers. The unfunded liability needs to be reduced in a manageable way. Many employers feel their economic viability is being threatened by excessive assessment premiums. Employers need to do their part to reduce the unfunded liability, but the system must be fair.

Even though assessment premiums is the main revenue generator for the workers' compensation system, the committee does not support a continual increase in average assessment rates. The committee is of the view systemic changes including the introduction of universal premiums, implementing periodic payments, refining assessment rates and reducing the waiting period for new employers will impact positively on the system.

To ensure assessment rates are not increased disproportionately, the committee urges the province and the Board negotiate a guaranteed rate of return on investment. This guarantee would ensure the burden of covering any shortcomings in return on investment is not placed solely on the shoulders of business.

Fairness must be the underlying principle to the workers' compensation system if the system is to work properly. Injured workers' need to have a system which compensates them fairly when they have been injured on the job and treats them with respect. Employers need a system which charges them affordable rates while removing the burden of guilt when a worker is injured in their workplace. This system is a "no-fault" insurance system. Nothing more, nothing less.

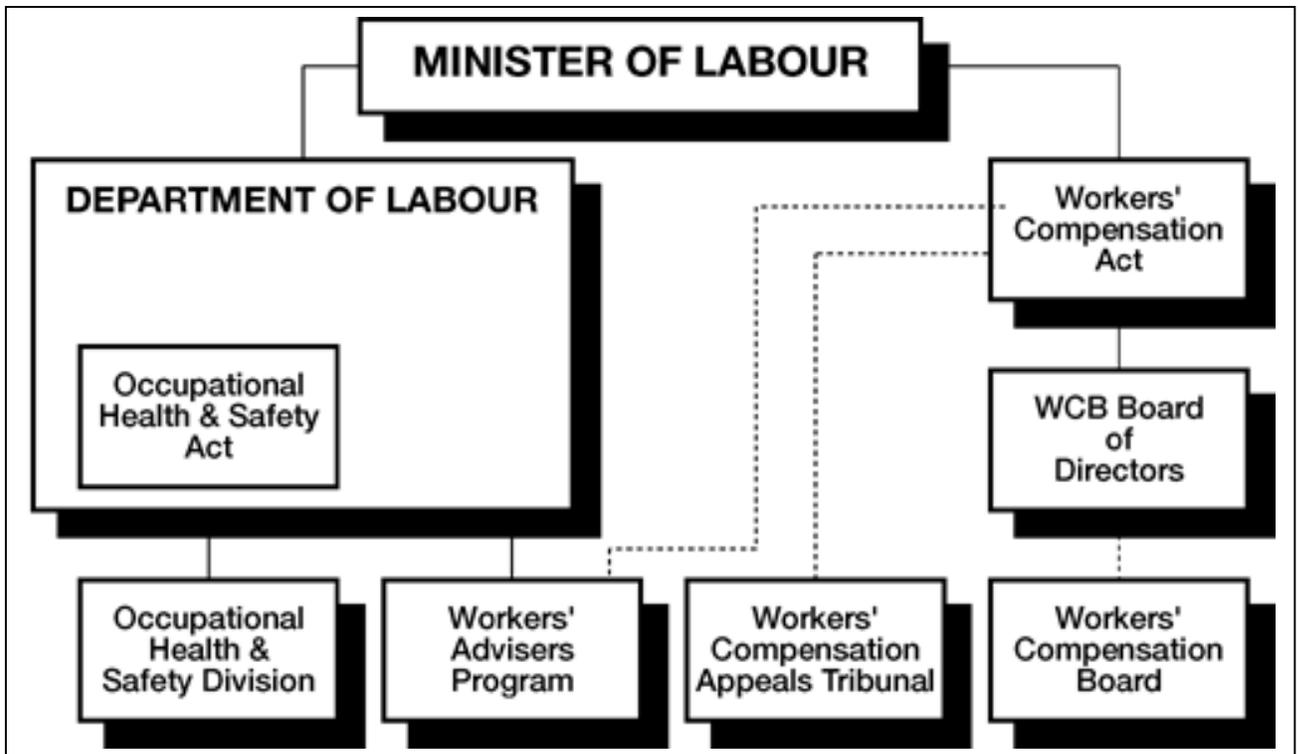
As part of the mandate, the committee has reviewed the Auditor General's audit of the Workers' Compensation system. Many of the Auditor General's findings support the committee's recommendations.

Workers' compensation is a concern for all Nova Scotians. This system is not perfect but it is the sincere hope of this committee that the changes it recommends will improve workers' compensation into the next millennium.

## **Components of the Workers' Compensation System**

The Nova Scotia Workers' Compensation System includes the Workers' Compensation Board, workers and their representatives (Workers Advisers Program), employers, health care providers, Workers' Compensation Appeals Tribunal, government and others involved in preventing injury and disease in their workplace.

The system falls under the authority of the Minister of Labour who oversees the administration of the Workers' Compensation Act. A new Workers' Compensation Act was proclaimed by the Nova Scotia Legislature on Feb. 1, 1996 replacing the original act which had been in place for almost 80 years.



### **Workers' Compensation Board**

The Nova Scotia Workers' Compensation Board (WCB) was established in 1917 by the Nova Scotia Legislature under the Workmen's Compensation Act. It was designed to act as a state-administered workplace insurance scheme based on "the Meredith principles" of universal, no-fault coverage and collective liability. The WCB is responsible, in accordance with the Act, with assisting injured workers and their employers by providing timely health care and compensation for work-related injuries, providing rehabilitative support to facilitate the efforts of injured workers to return to work, and levying and collecting assessment premiums from employers.

### **Workers' Compensation Appeals Tribunal**

The Workers' Compensation Appeals Tribunal was established in June 1995, under Part II of the new Act which came into effect on Feb. 1, 1996. This tribunal replaced the old Appeal Board as the legal entity for all WCB appeals. WCAT

is designed to work as an independent tribunal, although it is funded by the accident fund of the WCB and must operate within the policies established by the WCB Board of Directors. WCAT hears appeals from decisions rendered by the WCB.

### **Workers' Advisers Program**

The Workers' Advisers Program (WAP) was established under Part III of the new Workers' Compensation Act. Under the Act, the WAP is mandated to assist, advise and represent injured workers in their appeals through the compensation system. WAP is independent of the WCB and is funded by the Department of Labour. WAP replaced the Workers' Counsellor Program in which injured workers were represented by private lawyers who submitted invoices for services rendered to the provincial government.

### **Backlog**

To file an appeal at WCAT, a case must have received a final decision from the WCB including a review of the original decision by the hearing officer. When WCAT was established, more than 2,000 cases at the Appeal Board were without a hearing officer's decision. These were immediately referred back to the WCB and have since been referred to as Transitional Appeals. Some of these Transitional Appeals have already been in the system for eight years or more, which gives a sense of the frustration and despair many of these individuals feel. Of the 2,153 Transitional Appeals, 1,268 (59 per cent) were eventually filed as appeals with WCAT. These appeals have contributed greatly to the current gridlock which plagues the tribunal.

The current backlog of appeals at WCAT (as of Nov. 1, 1998) is 2,534. Since the formation of the tribunal, there have been 1,268 Transitional Appeals; 2,185 New Appeals (filed since June 1, 1995); and 919 final decisions, for a total of 2,534. These numbers are much too high.

To deal with the backlog, the WCAT has proposed a backlog reduction plan to be implemented beginning in January 1999 with the elimination of the backlog in July 2000. The plan includes the hiring of 10 additional hearings officers to hear cases and make decisions on the backlogged cases.

It is apparent to both the committee and the Auditor General that extraordinary measures, over and above WCAT's plan to reduce the backlog, must be undertaken to reduce and ultimately eliminate the appeals backlog.

In his report, the Auditor General is critical of WCAT stating:

the workers' compensation system does not have a system in place to identify and determine why there is a backlog, nor has anyone taken ownership of the backlog;

when WCAT was established it appears there was no clear plan in place to deal with the backlog of appeals inherited from the old Appeal Board;

WCAT is legalistic in nature and design and might not be appropriate for a mass appeals system where disputes often arise over questions of judgement rather than points of law;

The Auditor General also questions whether WCAT's plan for eliminating the backlog has been thoroughly analysed to determine its cost and possibility of success. The committee supports this opinion as it agrees that WCAT's plan to reduce the backlog does not fully address the urgency of the issue. It recommends the following additional procedures:

Restore Amended Interim Earnings Loss benefits for the 298 claimants injured between March 29, 1985 and March 23, 1990 who received AIEL payments until they were removed back to a CRS pension;

Reinstate survivor's benefits for spouse's who remarried prior to Oct. 1, 1992 and had their benefits terminated under the previous legislation. The benefits for these individuals will be made retroactive to Oct. 1, 1992 thus ensuring equality;

Award a lump sum payment of \$7,500 for individuals who have never returned to work<sup>1</sup>, currently in receipt of a CPP Disability Pension and a CRS pension for permanent medical impairment awarded for their accident which occurred between March 29, 1985 and March 23, 1990;

(Any individuals who fall into one or more of the above three categories and currently has an appeal at WCAT, by accepting this award they agree to remove their case from the appeal process and not be eligible for further appeal.)

immediately change the legalistic approach to

hearings and cases;

specialize functions within WCAT allowing for greater efficiency;

hold "policy appeals" which are common to a large number of appeals and will provide greater clarity for future appeals;

acquire useful management information systems which will allow for greater tracking capabilities and efficiency.

These are examples of some measures which the committee strongly recommends being implemented. The committee is also of the view the following more specific issues in this section need to be addressed to help reduce the backlog.

1 For clarification purposes, Never returned to work is described as having never exceeded a maximum income of \$5,000 in any year after the time of their accident, exclusive of CPP Disability Pension, any severance package received from an employer, and any WCB benefits.  
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### **Alternative Dispute Resolution**

The ADR project began on a trial basis in May 1997. To date it has been limited to Transitional Appeals but, as it is a fundamental part of WCAT's strategy to reduce the appeals backlog, plans are in place to use the ADR process for new appeals beginning in January 1999. ADR is a mediated session which sees the claimant, his/her workers' adviser and a WCB representative try to reach an agreement on compensation and avoid the appeals process. Participation in the project is voluntary and, if an appeal is not settled, it is returned to WCAT.

In theory, the ADR process is fundamentally sound although in practice it is substantially flawed. Participants feel they have two limited choices: accept a decision which they feel is, in many cases, not adequate; or return to an appeal system which is hopelessly backlogged. Clients who appeared before the committee felt as if "a gun had been put to their head". They had no choice but to accept.

The committee agrees with the Auditor General's report and recommends that the ADR process should be

continued as it is a tool which can reduce the backlog quickly and effectively when applied properly. Claimants who choose not to participate in ADR, or choose not to accept the settlement, need not fear having “a gun to their head” because their appeals would not be stuck in a backlogged appeal system because it would no longer exist.

Clients designated as having Chronic Pain who participated in the ADR process should be brought back into the system because they were not made aware the WCB was writing a new policy to deal with Chronic Pain. In many cases their workers' advisers did not provide them with adequate representation because they advised their clients to accept an offer without informing them a policy was in place in Nov. 1997. The people in this situation felt they had no choice but to accept what was offered.

### **Hiring More Staff**

WCAT advocates hiring 10 additional appeals commissioners to deal specifically with the backlogged appeals. It is expected these individuals would allow WCAT to reach its target date of July 2000 for eliminating the backlog.

The committee supports the hiring of additional staff on a term basis to deal specifically with the backlog. Staff training should begin immediately and with new staff adjudicating cases as soon as they are sufficiently trained. From the committee's understanding, WCAT is able to function sufficiently on the handling of new appeals entering the system since Jan. 1, 1998. Once the backlog has been eliminated, WCAT appears capable of handling appeals at current staff levels.

## **Appeals Process**

### **Appeals Bound by Policy**

According to Section 183 of the Act, WCAT is bound by the policies of the WCB. Many workers feel this contradicts the claim that WCAT is truly an independent tribunal. There is a feeling of hopelessness because the tribunal is bound by policies created by the group which originally denied the claim.

Some workers asserted the overall fairness of the tribunal was compromised by making the policies of the WCB binding

because if too many cases were decided in the workers' favour, the WCB would write a policy to make a correction. They claimed the old Appeal Board found in the workers favour as much as 90 per cent of the time.

The committee understands the need to establish a "common set of ground rules" for ruling on appeals. It is problematic and most likely impossible to have an efficient system which uses one set of rules at one level and a different set of rules at another. In this regard, the committee recommends that WCAT only adhere to policies which in their opinion are consistent with the spirit and intent of the Act. Policies which are ultra vires<sup>2</sup> or not in accordance with the Act shall not be followed.

2 ultra vires - v. Latin - beyond the power of  
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### **Legal Representation in the Appeals Process**

In the appeal process, injured workers are legally represented by an adviser from the Workers' Advisers Program. This person is supposed to assist, advise and represent the worker through all phases of appeal from the time an appeal reaches WCAT until a final decision is rendered.

Many workers who appeared before the committee expressed their concern with the quality of the representation they received. Common complaints include: the lack of knowledge an adviser had with the specifics of a case; a lack of preparation; and the refusal for advisers to travel to the worker's home area for appointments if it is inconvenient for the worker to travel to Halifax or Sydney.

A lack of knowledge with the specifics of a case can be caused by a crisis in timing. A worker who has requested representation could wait as long as eight weeks for a worker adviser to review their case. At the same time, deadlines for Reconsideration and Hearing Officer appeals must be filed to meet deadlines. Consequently, advisers are often forced to file appeals without knowledge of all the details.

More stability must be brought to the advisers program. Advisers should be assigned cases strategically, perhaps by being matched up with similar cases or by dividing by geographic proximity.

In theory, worker advisers travel to the worker's home area for appointments if it is convenient for the worker. In practice

this is not done consistently. Many presenters related stories of how they were forced to travel to either Halifax or Sydney, often at their expense and with significant discomfort, if they wanted timely representation. The underlying message was if they wanted timely representation, workers must make it to an appointment at the advisers convenience.

Workers' advisers must do a better job at making their services available to the clients they represent. Effort must be made to visit injured workers in their communities without the threat of penalty. If an adviser is unable to meet a worker in their community or provide legal services, the committee recommends that the worker has the option of engaging legal representation of their choice, either through Legal Aid or a private lawyer. The cost of this option would be limited to an amount of \$1,200 per claim.

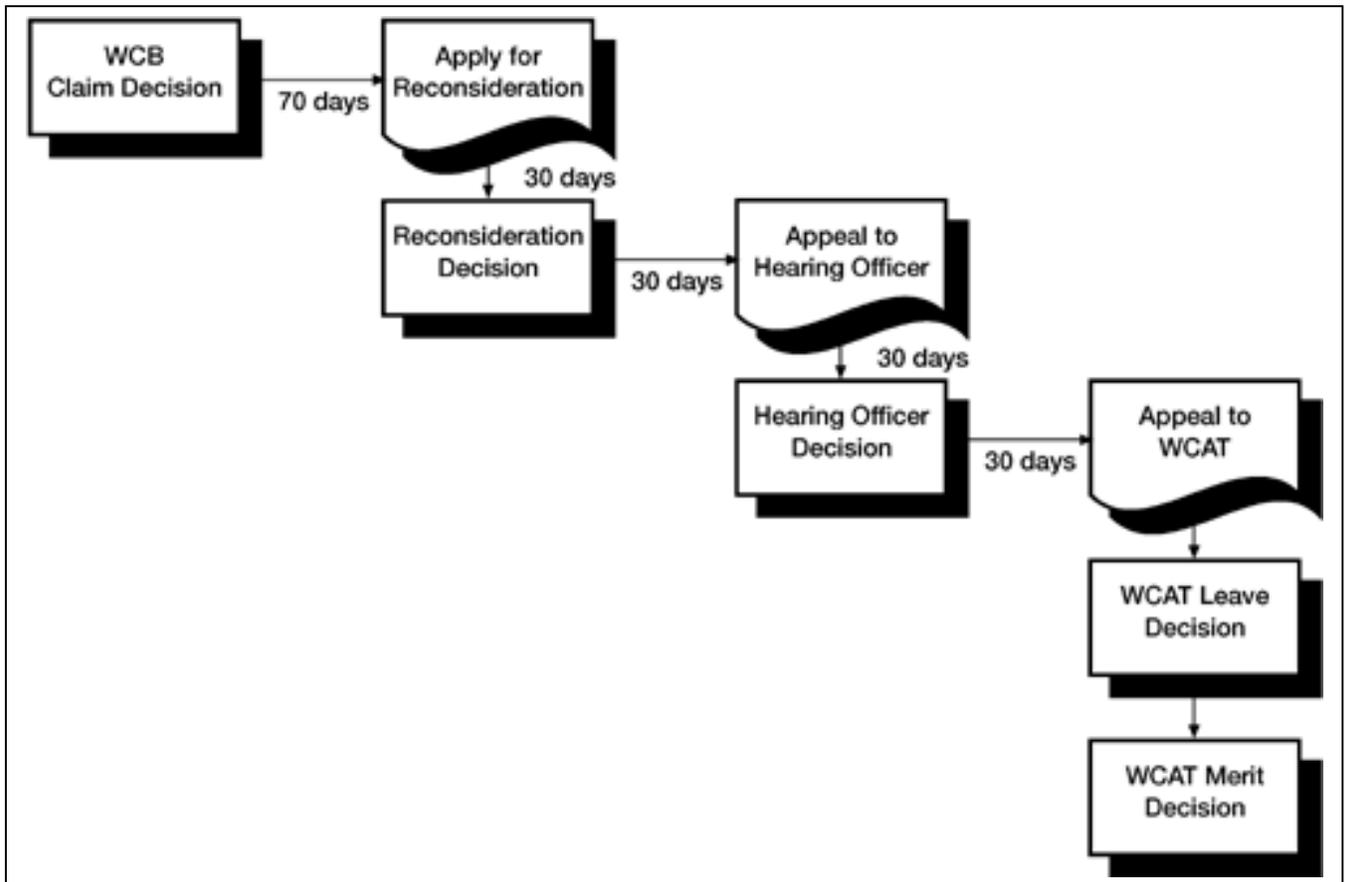
The committee understands the Workers' Advisers must perform many difficult tasks, however, they must do a better job representing their clients. The services they provide are not unlike those provided by Nova Scotia Legal Aid. Injured workers have the right to informed representation at their hearings and there are serious concerns, under the current structure, of the ability of the Workers' Advisers Program to meet its expectations. Many of the major concerns for injured workers surround this basic right to informed representation and the committee strongly recommends the realignment of the WAP within the Nova Scotia Legal Aid system.

This move would transfer the administration and the annual costs of the WAP from the Department of Labour to the Department of Justice and remove questions concerning the independence of the program. It would allow the program to operate within a more complete structure—operating from Yarmouth to Amherst to Sydney and all points in between—making it more accessible to more Nova Scotians.

### **Length of Appeal Process**

The length of the appeal process is a serious concern for the committee as well as many Nova Scotians. Currently there are seven stages an injured worker or employer must progress through from the time a claim decision is issued by the WCB until WCAT makes a final decision. This process can take as long as 190 days (more than 6 months) before it even appears at WCAT, which currently has no legislated timelines. There is no closure for many individuals because they are welcome to

file Leave to Appeal at WCAT as often as they wish if they are not happy with the decision.



The committee recommends that all outstanding appeals before the tribunal be concluding within one year of the date the Select Committee on the Workers' Compensation Act tables its report.

The committee also recommends limiting the number of Leave to Appeal's a claimant can file on a specific case as there needs to be closure for these individuals. If an individual is dissatisfied with a decision, they have the right to appeal their case to the Nova Scotia Court of Appeal. The committee and the Auditor General suggest reducing the stages of appeal and legislating timelines for cases to be heard at WCAT.

### **Reconsideration**

When an applicant files an appeal, it is first given Reconsideration. At this stage, the file is reviewed by the case

worker who made the original decision. A client has 70 days to apply for Reconsideration and the case worker then has 30 days to render a decision.

Many workers are concerned the integrity of this process is compromised because they feel it is not likely the reviewer will overturn their original decision. The committee and the Auditor General suggests eliminating the Reconsideration Process and allowing appeals to proceed directly to Hearing Officer stage. This will save the appellant as many as 100 days in their appeal.

### **Appeal to Hearing Officer**

In the current process, the second stage of the review structure is conducted by a hearing officer at the WCB. The hearing officer has 30 days to render a decision which is considered the final decision of the WCB.

In a revised appeal structure, the hearing officer would be the first stage of appeal. Their duties and procedures for rendering a decision would continue as currently followed.

### **WCAT Appeals**

After the hearing officer makes a decision, the injured worker or employer has 30 days to file an appeal with WCAT. Currently there are no legislated timelines to hear an appeal and render a decision. There is much frustration that the process drags on far too long.

A two-stage decision-making process is employed by WCAT for new appeals (filed after June 1, 1995)—Leave Decision and Appeal Decision. Leave to Appeal is a review of the merits of the case (a paper review) by the Appeal Commissioner. The commissioner reviews the leave application, the WCB claim file and any submissions which the worker or employer may provide. Under Section 243 (7) of the Act, leave is granted if the Commissioner is satisfied the hearing officer made an error, made a decision beyond their powers, or the case “raises a novel issue of law and general policy significance in the general administration of the Act.” The decision of the Chief Appeal Commissioner, to grant or deny Leave to Appeal is final and not subject to appeal in any court.

The committee heard from a number of presenters who felt they were denied Leave to Appeal on the basis their medical information was incomplete or their condition worsened

beyond what had been documented.

The committee recommends a injured worker has the right to stay their proceedings for up to one year to acquire more medical evidence. If the worker chooses to stay their case, they would not receive benefits, beyond what they are currently in receipt of, until their case is heard.

The WCB would also have the right to request to stay a claimant's proceedings for up to one year to acquire more medical evidence, however, the benefits a worker was receiving immediately prior to the stay of proceedings would be paid for the duration of the stay.

The second stage in the decision-making process at WCAT is the Appeal Decision. At this stage, the appeal commissioner determines if the hearing officer made an error, interpreted a section of the Act incorrectly or made a decision beyond their powers. Following a decision of the Chief Appeal Commissioner, a participant may appeal to the Nova Scotia Court of Appeal on the jurisdiction of the Appeals Tribunal, but on no other question of law.

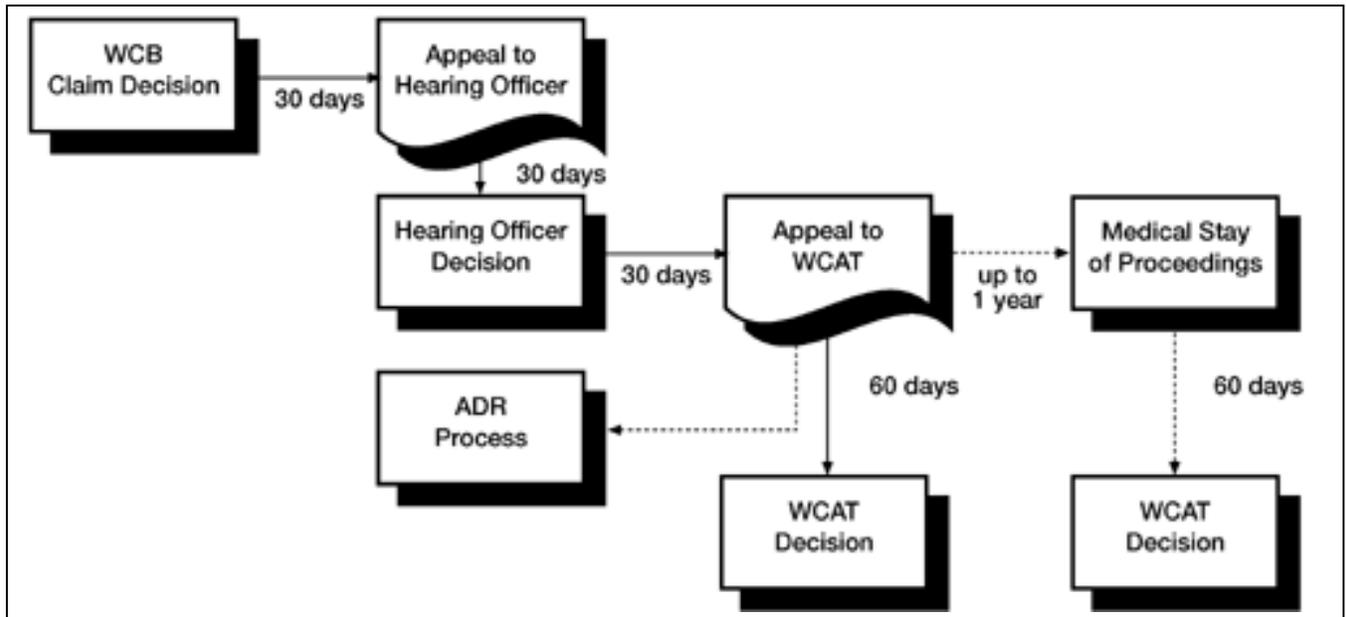
The committee is of the opinion that having two stages in the WCAT decision-making process drags out the process and recommends the removal of Leave to Appeal. Currently, at the leave stage the right to appeal is granted if the Chief Appeal Commissioner is satisfied with the merits of a case. This is essentially the first step toward a decision. If the commissioner is satisfied there is merit to the case, a hearing will be held and an oral decision would be made immediately with a formal, written decision to follow.

The committee also suggests legislating timelines for deciding appeals at WCAT. Following an appeal to WCAT, an injured worker or employer must have their case heard within 60 days, with a formal, written decision to follow within 30 days.<sup>3</sup> Any individual or organization dissatisfied with a decision of WCAT has the right to appeal to the Nova Scotia Court of Appeal. The committee recommends the grounds for appeal to the Court of Appeal be changed to those contained in the former Act. (Corresponding legislation attached in Appendix B

3 Subject to the removal of the current backlog at WCAT.  
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Once a decision has been reached at WCAT, a worker is

unable to try the same appeal again. Closure needs to be given to the thousands of individuals currently tied up in the appeals system. The committee recommends the following streamlined appeals process, with legislated timelines for decisions, will bring this assurance to the system.



## Injured Workers Issues

### Amended Interim Earning Loss Policy

Following the Nova Scotia Court of Appeal decision, known as the Hayden decision, the WCB introduced an Amended Interim Earnings Loss policy on Nov. 24, 1993 to compensate claimants who suffered an earnings loss as a result of a work-related injury.

The AIEL policy was instituted temporarily until new legislation could be drafted. At the time it was implemented to provide the payment of an earnings loss award based on 50 per cent of the workers' actual loss of earnings. While it was never promised, the implication for the recipients of the AIEL payments was that their benefits would increase with the introduction of new legislation.

For most claimants, the coming into effect of new workers' compensation legislation on Feb. 1, 1996 did result in increased benefits as earnings loss benefits on average exceed

the benefits paid under the old Clinical Rating Scale. Unfortunately the legislation was only made retroactive to March 23, 1990, the day the WCB were ordered to begin paying earnings loss benefits by the Nova Scotia Court of Appeal.

Approximately 298 claimants who were injured between March 29, 1985 and March 23, 1990 received AIEL payments until they were moved back to a CRS pension. The committee recommends these claimant be restored to their AIEL benefit level effective Jan. 1, 1999, without any payments made retroactively.

If any of these individuals currently have an appeal at WCAT, by accepting this award they agree to remove their case from the appeal process and not be eligible for further appeal.

### **Injured Workers' Groups**

The committee heard presentations from four regional injured workers' organizations who act as advocates for injured workers across the province. Each group is of the opinion the legal rights of injured workers are not being properly represented by the Workers' Advisers Program.

There were claims by the injured workers' groups that on many occasions they had been successful in securing benefits for an injured worker after an adviser had told the client they were not entitled to anything. This appears to be especially critical during the ADR process because an adviser may tell a client to accept an offer as "the best they will get" when they are legally entitled to greater benefits.

Under Section 272, the Act allows for the Minister of Labour to fund injured workers' groups. The committee urges the government to exercise the authority contained in Section 272 and provide established injured workers' organizations with a grant to operate. In many cases, injured workers feel these organizations are their only friend and results seem to indicate these groups can be an effective advocate in representing the rights of injured workers.

The committee also recommends that claimants be allowed to have one individual of their choice accompany them to any hearing, meeting or appeal they have within the workers' compensation system. This individual could be a family member, member of an injured workers' organization or someone they trust.

## **Benefit of the Doubt**

Section 187 of the Act provides that benefit of the doubt, in case of a dispute, always favours the worker. Serious concerns were raised that this is not always practised by the WCB. For example, some workers claim they were sent to as many as 10 medical experts who all said their injury was caused at work and the WCB still did not award benefits.

One of the fundamental principles of the Workers' Compensation Act hinges on providing the worker with the benefit of the doubt in cases of dispute. While the reality may be that the worker does indeed have this right, the perception is that "when in doubt, don't pay out."

The committee recommends that the WCB always remember that they have the responsibility under Section 187 of the new Act to give the worker the benefit of the doubt in all cases. In cases of dispute, regarding the worker's condition, the decision of an Independent Medical Review Commission will be binding. It is essential to the public's perception of fairness that this section be adhered to.

## **Medical Opinion**

Time and again, the committee heard cases where the medical opinion of a specialist was overruled at a later stage by the board's doctor, who happens to be an MD. In some cases there were examples, despite all medical evidence, that the WCB case worker handling the file "did not accept the medical evidence as relevant to the worker's claim." Workers view this non-acceptance as outrageous and a purposeful attempt on the part of the WCB to deny them benefits.

The committee agrees it is often necessary for a second medical opinion. However, under no circumstances should a non-medical opinion overrule the opinion of a paid specialist. The committee urges the establishment of an Independent Medical Review Commission to oversee the adjudication of cases where there appears to be some doubt as to the extent of the injury.

In such cases where the WCB has a concern regarding the diagnosis of a patient by a medical specialist, over and above the worker's family doctor, the Independent Medical Review Commission will review the case and

make a decision. Regarding matters of medicine, such a decision will be final and binding.

In the appeal process, if WCAT requests the opinion of the Independent Medical Review Commission, the decision of the commission would be final and binding on all points of medicine.

Many of the problems related to medical disagreements centre on a lack of understanding of the workers' compensation system within the medical community. In some cases, family physicians and even medical specialists are unaware of how the WCB relates an injury to a person's inability to work. As reiterated in the Auditor General's report, the committee feels the WCB must undertake a proactive education program to make the medical community more aware of the system's many complexities and the role of medical diagnosis and treatment within workers' compensation.

### **Permanent Impairment Benefits**

Injured workers expressed concern with Section 71(b) of the Act. This section only allows for an adjustment of the worker's permanent impairment benefit rating if the Board views the change in the worker's condition to be of 10 percentage points or greater. For example, under board policy the CRS pension only allowed for a 10 per cent PIB for a back injury, or 20 per cent if the worker had a single surgery, or up to 30 per cent if the worker had multiple surgeries. In a case where a claimant had received a 12 per cent PIB, they were not able to receive any additional benefits, regardless of how much their condition deteriorated.

The committee was made aware of the inadequacy of Permanent Impairment Benefits under the old CRS pension to provide a suitable living allowance to workers injured before March 23, 1990. The committee heard many heart-rending stories where hardship, emotional and mental distress, divorce and even suicide were the final outcomes.

The situation for many of these people was made even worse by the decision to pay Interim Wage-Loss benefits to individuals prior to the enacting of new legislation on Feb. 1, 1996. The Hayden decision, based on an injury which occurred on March 29, 1985, decided that benefits under the former Act should have been based on earnings loss. The new legislation established March 23, 1990 as the date from which earnings loss benefits would be paid. Individuals injured prior to this date, in receipt of Interim Wage-Loss benefits, were

returned to the benefits they received through their CRS pension.

The committee feels it is important to address the effects of this decision for all workers who were injured between March 29, 1985 and March 23, 1990. The committee supports the immediate removal of Section 71(b) from the Workers' Compensation Act, which only allows for an adjustment of the worker's permanent impairment benefit rating if the WCB views the change in the worker's condition to be of 10 percentage points or greater.

The committee is also of the view something must be done for the group of people who were wronged by the arbitrary decision to establish March 23, 1990 as the date to award earnings loss benefits.

For individuals who have never returned to work<sup>5</sup>, currently in receipt of a CPP Disability Pension and a CRS pension for permanent medical impairment awarded for their accident which occurred between March 29, 1985 and March 23, 1990, the committee strongly recommends the awarding of a lump sum pension of \$7,500.

If any of these individuals currently have an appeal at WCAT, by accepting this award they agree to remove their case from the appeal process and not be eligible for further appeal.

5 For clarification purposes. Never returned to work is described in footnote number 1.

Back

## **Deeming**

In calculating permanent impairment benefits only the portion of earnings loss which can be attributed to a work-related injury is used. Following re-training, the WCB can then "deem" an individual capable of participating in an occupation under certain guidelines (i.e. only able to work 20 hours per week). After an individual is "deemed", the WCB can calculate their new benefits based on their rehabilitated capabilities. As a result, benefit levels can drop significantly if the individual is unable to find work at the "deemed" level. There was great concern deeming was used to deliberately reduce benefits instead of making an individual more employable.

In the committee's view, the options of what a worker

can do and what is available are two different things. When using deeming the WCB must also use common sense. For example, if a worker is being retrained for a job as a carpenter, but is unable to climb a ladder or swing a hammer, they should not be deemed as being capable of doing this job. In rural areas it is very difficult for many able-bodied individuals to find employment let alone an injured worker who may have a permanent disability. Deeming is another example of an instrument which increase a worker's frustration with the system. The committee recommends the WCB review its policies where an individual's "deemed" earning capabilities are higher than what they are actually earning.

### **Re-training**

By most accounts, injured workers are able and willing to participate in rehabilitation and re-training programs. The committee heard stories where workers were reportedly determined to be uncooperative by the WCB for not taking part in rehabilitation and re-training programs and had their benefits terminated. In their presentations, clients felt they were unjustly penalized even though they were only following the advice of their physician.

The committee also heard claims that the re-training programs offered to people were often totally unsuitable. Complaints of being too old, or too disabled to function in a particular program were common.

An additional problem with re-training programs is the lack of jobs for many workers outside of urban areas. Participants in re-training programs often complained they were re-trained for jobs that were not available in their region.

In the committee's view, the most important aspect in rehabilitation and re-training programs is the use of common sense. An individual should only be re-trained if there is a real opportunity for that person to find employment, otherwise these programs will do little other than to raise a worker's level of frustration.

The medical opinion of a worker's family doctor must be given serious consideration before any decision is made to terminate benefits. According to Section 84 (1)(b), the worker must co-operate with any medical treatment which promotes their recovery.

Compassion is also important. The committee feels it is

important that workers be encouraged to return to work, but they should not be placed in a position where they are doomed to failure or which further jeopardises their health.

### **Temporary Recurrence of Illness**

It is possible for a worker to suffer a temporary recurrence of illness, over and above an extended earnings-replacement benefit they are already earning. This recurrence was not taken into account when setting the benefit the worker received.

In cases where an illness recurs temporarily, the committee recommends that allowance be made for extended earnings-replacement benefits to be topped up temporarily.

### **Seasonal Workers**

To calculate benefit levels, the WCB looks at a worker's income based on the previous two years of employment. In theory, this does bring a level of fairness to the process but it can create problems for seasonal workers (those without steady employment) because they are penalized for lack of work. The committee heard from a number of individuals mainly in the construction industry who felt they were being treated unfairly due to the lack of work in their occupation.

For those people who collect Employment Insurance benefits, these benefits are considered as income for calculating WCB benefits. Another problem exists because EI benefits are calculated at 58 per cent of net earnings, and these earnings are then calculated at either 75 or 85 per cent to determine WCB benefits. In many cases, seasonal workers pay a great monetary penalty for being injured on the job.

The committee encourages the WCB to follow the policy which most accurately reflects the income loss the worker will suffer in the future.

### **Supplementary Benefits**

Questions were raised concerning the provision of supplementary benefits paid to workers. There was a general agreement among workers that using 100 per cent of the CPP Disability Pension to determine total personal income is excessive.

The committee recommends future supplementary benefits should be calculated using only 50 per cent of the CPP Disability Pension to determine total personal income.

### **Survivors Benefits**

On Oct. 1, 1992, legislation was enacted to permanently protect survivors' benefits for spouses who decided to remarry. Prior to this date, widows and widowers who remarried had their survivors benefits permanently terminated. The committee heard from a number of widows whose benefits had been terminated upon remarriage and were not reinstated when the subsequent marriage ended.

In 1985, the equality provisions of the Canadian Charter of Rights and Freedom became law which provides equal protection and benefit of the law without discrimination. The former Workers' Compensation Act was amended in 1992 to reflect this and ensure widows and widowers would no longer have their benefits discontinued upon remarriage.

The committee recommends reinstating survivor benefits for all widow's and widower's who remarried prior to Oct. 1, 1992 and had their benefits terminated under the previous legislation. The benefits for these individuals will be made retroactive to Oct. 1, 1992 thus ensuring equality.

For further clarification, in cases where a worker was injured before the coming into force of the new Act and died as a result of the injury after the coming into force of the new Act, the survivor pension is payable until death.

If any of these individuals currently have an appeal at WCAT it is anticipated they would accept this award and terminate their appeal.

### **Other Medical Issues**

Presentations were made to the committee by individuals with injuries and/or illnesses, such as environmental illness or repetitive strain injuries, which are currently not compensable under the Act. Individuals suffering with these afflictions would like to see further study given to their illness or injury to determine if they should be compensable in the future.

The committee heard presentations from individuals

seeking compensation for environmental illness and repetitive strain injuries. The committee feels it is important for both issues to be further clarified within the medical community-at-large before decisions regarding compensability are made.

## **Employer-related Issues**

### **Assessment Rates**

Nova Scotia has, on average, the third highest employer assessment rates in Canada with a current plan calling for a steady increase in assessment rates over the next 45 years. At the same time, most other provinces are decreasing their assessment rates, with at least two other provinces considering rebating surpluses back to employers. Employer assessment rates are the primary source of revenue generation for the WCB and as a result the primary source of revenue for paying down the unfunded liability which currently stands at approximately \$360 million.

The committee recommends that average assessment rates should not be increased for the foreseeable future as it places many businesses at a competitive disadvantage with their counterparts in other provinces.

### **Waiting Period**

Under the current legislation, out-of province employers working in Nova Scotia, in industries required to pay assessment premiums, are not required to begin paying premiums for up to six months after they start business. Many employers feel this gives companies from outside Nova Scotia a competitive advantage because they do not have to factor the cost of premiums into their estimates.

The committee recommends reducing the waiting period requiring out-of province employers working in Nova Scotia to pay assessment premiums from six months to one week bringing Nova Scotia's waiting period in line with other provinces.

### **Assessment Rate Deadline**

The WCB sends out yearly assessment notices in November outlining to employers what their assessment rates will be for the following year. Employers, particularly those in smaller businesses and the construction industry, feel the lateness of

notification places undue burden on their planning because it does not give them enough time to plan for the following year and allocate the necessary funds to pay the premiums.

The committee recommends implementing a yearly mandated date of Sept. 1 for the WCB to submit assessment notices to employers.

### **Amnesty Period**

Under the current legislation, employers in industries required to pay assessment premiums who do not pay are subject to fines from the WCB.

The committee is concerned some employers choose not to pay premiums to avoid paying a penalty. To encourage businesses to voluntarily enter the system, the committee recommends an amnesty period, commencing Jan. 1, 1999 and lasting until Jan. 1, 2000, be introduced.

### **Standard Industry Codes**

The committee heard many presentations from employers who felt their current assessments were too high. In some cases, employers felt victimized because they were placed in an inappropriate category under the Standard Industry Codes (SIC). It should be noted that SIC codes were originally designed for categorizing import and export business and were not intended for use under workers' compensation. Employers agree the SIC codes are a good place to begin but more attention must be given to fine-tuning assessment categories.

The committee recommends the legislation be amended to establish a review committee to fine-tune assessment premiums. The review committee should include equal representation from both employer and employee groups. The committee also suggests that common sense be used when placing employers in categories. There appears to be many examples where an employer is inappropriately placed in a category which is not reflective of their risk.

### **Payments of Premiums**

For many employers, especially those of the seasonal variety, there is concern that the payment of yearly assessment rates in one lump-sum creates financial hardship. They would like to see an alternative approach whereby payments are made periodically based on actual salaries paid to workers.

The committee suggests the WCB introduce a periodic payment approach based on actual salaries paid to workers. The committee recommends the WCB work with employer stakeholder groups, the Nova Scotia Department of Business and Consumer Services and Revenue Canada to implement an efficient system by Jan 1, 2000.

### **Unfunded Liability**

At present, the unfunded liability of the workers' compensation system is approximately \$360 million or 50 per cent of the amount needed to cover all current and future payments to the system. This can be attributed to years of artificially low assessment rates for businesses and poor management on the part of the WCB. The liability jeopardizes the long-term viability of workers' compensation in Nova Scotia and undermines the ability of the WCB to do what is right—pay compensation to injured workers.

As employers are the main revenue source for the WCB they must contribute to decreasing the unfunded liability. Many employers feel their economic viability is being threatened by excessive assessment premiums, part of which is used to pay down the unfunded liability. Employers need to do their part, but the system must be fair. The unfunded liability needs to be reduced in a manageable way.

The committee agrees the unfunded liability is cause for great concern and recommends the WCB provide stakeholders with its plan to reduce the unfunded liability.

### **Universal Coverage**

Workers' compensation provides employers with no-fault insurance. For organizations required to pay assessments premiums, coverage removes the right of the employee to sue their employer. Under the current legislation, a number of organizations are exempt from paying workers' compensation premiums.

The principle of universality provides the greatest advantage to stabilizing the unfunded liability. This in turn will ensure that increases in assessment rates should not rise faster than prescribed under the current plan to reduce the unfunded liability. Following the principles of workers' compensation in other provinces,

the committee strongly recommends providing universal coverage for all employers with more than three employees, with the exception of the agriculture industry, unless otherwise excluded by regulation. Extending universal coverage will offer benefits to both employers and employees throughout the system and ensure the system remains economically sound.

### **Self-Insured Organizations**

Some larger employers have the option of administering their own compensation plan. To do this they must pay the WCB a premium to cover their contribution to the unfunded liability. Employers without the benefit of a self-insured plan are concerned these organizations may not be paying their fair share.

To ensure no organization pays more or less than they are required, the committee suggests the WCB devise a formula to determine the amount self-insured employers would be required to pay. For example, the formula would include the cost of claims multiplied by administrative costs, plus their portion to cover statutory obligations. This formula would remove the pressure from the WCB of having to negotiate with every organization.

### **Provincial Guaranteed Rate of Return**

With the passing of legislation on Feb. 1, 1996, the provincial government agreed to guarantee the WCB an annual rate of return on investments of 4% per cent until the unfunded liability was erased. In the spring of 1998, the province removed itself from this position.

The guaranteed rate of return was established to bring stability in dealing with the unfunded liability. The committee recommends the Department of Finance and the WCB negotiate the reestablishment of a guaranteed rate of return for the life of the unfunded liability beginning April 1, 1999.

## **WCB Administrative Issues**

### **Administration Costs**

Many people outside the WCB consider administration costs

to be too high, especially when self-insured employers claim they can administer their programs for much less. The workers' compensation system is a huge multi-million dollar operation, designed to provide benefits to injured workers and no-fault insurance to employers, and public confidence in the system is undermined by excessive administrative costs.

The committee recommends the WCB continually examine its administrative costs to ensure the organization is running efficiently. For example, the committee suggests administrative savings could be gained through a streamlined appeals process which eliminates the Reconsideration stage and removing the cost of administering the Occupational Health and Safety Act. Both the committee and the Auditor General urge the WCB to utilize technology to a greater degree in data collection. The committee further recommends that the expenses incurred by the Auditor General in conducting the audit shall be paid out of the WCB's Accident Fund.

### **Corporate Performance Measures**

The WCB annual report is the primary vehicle used to communicate performance to stakeholders. Relevant statistics including administrative costs, processing times, revenues generated from premiums, investment returns and claims payouts are presented on a year-by-year basis. The annual report does not compare this data to industry standards or performance expectations making it difficult to compare the WCB's performance to other organizations or other compensation systems.

The committee is of the opinion, supported by the auditor general, that the WCB and WCAT must review corporate performances on a continual basis. In 1997, the Minister of Finance pledged to make the government more accountable by tabling business plans for all Crown corporations. The committee recommends that the WCB and WCAT establish five-year business plans indicating performance levels, strategic goals and core functions.

The committee also recommends the WCB and WCAT file their annual reports within three months of the end of their fiscal year. The reports should be in a format which follows the same standards of disclosure as required for the Nova Scotia Public Accounts. The WCB should also report key corporate and financial indicators on a quarterly basis.

To help the WCB achieve these performance measures, the committee suggests the WCB form a stakeholder committee to examine and establish corporate performance measures. The stakeholder committee should include equal representation from all stakeholders. The committee also suggests the WCB issue quarterly reports to give stakeholders more confidence that the system is being run efficiently.

### **Customer Service**

Serious questions were raised concerning the quality of service injured workers receive from WCB administrators, case workers and front-line staff. A common complaint to the committee was, "They made me feel like a criminal, when the only crime I committed was getting injured on the job."

A number of individuals also expressed concern that it was difficult to make contact with anyone at the WCB by telephone. Calls are almost always automatically transferred to voice mail and often go unreturned. They find it extremely difficult to make contact with anyone at the WCB before 9 a.m. and after 3:30 p.m.

In two separate presentations, the WCB made it clear to the committee that customer satisfaction was of paramount importance, however, complaints of this nature were much too common. The WCB is quick to point out that many hours and thousands of dollars have been invested in customer service training, and in independent surveys, elements of customer satisfaction (i.e. politeness, clarity of letters, etc.) consistently score more than eight out of 10.

The committee realizes and understands the difficult job WCB staff must undertake each day, especially in cases where a decision has been made to deny a claim. This is not a easy task and in many cases, individuals are sure to have a level of frustration concerning their plight. While it appears some progress has been made in improving customer service, the WCB definitely needs to improve in this area. The committee has concerns regarding the accuracy of any customer satisfaction surveys conducted in the past as it is not convinced a true representative sample was taken.

The WCB needs to continuously work at improving its level of customer service. The committee and the Auditor General recommend that serious consideration should be given to lengthening the hours of operation. Further

training for all workers should be viewed as a necessity. Compassion needs to be on display at all times. All injured workers need to be treated with dignity and respect which has not always been the case.

### **Occupational Health & Safety Act**

A new Occupational Health and Safety Act was passed in 1996 to promote, co-ordinate, administer and enforce occupational safety and health in the Province. The Act emphasizes a proactive approach to accident prevention by making all parties in the workplace responsible for safety.

The OH&S Act falls under the jurisdiction of the Department of Labour. The WCB has contributed annually to the administration of the OH&S Act through its Accident Fund. In 1996, the cost was \$1.3 million. In 1998, it was \$4.1 million and it is expected to rise to \$7 million by the year 2000.

As the OH&S Act clearly shows, "Occupational Health and Safety is everyone's business." To this regard, the committee recommends the cost to the WCB for administering the OH&S Act be proportional to the percentage of employees who fall under their administration. The remaining administrative costs should be generated from other sources within the Department of Labour.

### **Mandatory Review of Act and Regulations**

The Act currently mandates a thorough review of the Act and regulations at the end of the third complete fiscal year to ensure it is meeting the needs of stakeholders.

The committee is of the opinion the current review should substitute for the mandated review as the system now needs time to adjust to proposed changes. The next review should take place at the end of the seventh complete fiscal year which occurs in 2004-05.

### **Third-Party Claims**

Workers injured on the job by a third-party are not able to seek civil damages. Under Section 17 of the former Act, individuals injured on the job were allowed the option of pursuing damages against the third party (not the employer) or accepting workers' compensation benefits. As the Act now stands, the WCB does pursue third-party liability cases through

a single supplier.

The committee recommends the return to the legislation under the former act which allows for individuals injured on the job to seek damages in court against the third party.

If any of these individuals currently have an appeal at WCAT, by accepting this award they agree to remove their case from the appeal process and not be eligible for further appeal.

### **Workers' Compensation Board Policies**

Section 183 (6) of the Act allows the WCB to pass policies and make them retroactive to a date of its choosing. A great number of presentations and submissions were made on this topic and the unanimous agreement is that this policy is viewed as totally unfair by the workers and must be removed.

The general perception among workers is that the WCB can at any time write a new policy and apply it to their individual case with the result being a reduction in the amount of compensation being paid.

The committee recommends the use of Section 183 (6) only in cases where retroactivity is beneficial to the worker. In those cases, retroactivity can be applied. Legislation is viewed as prospective and board policy should be reflective of the legislation it supports.

### **Conclusion**

We, the members of the Select Committee on the Workers' Compensation Act, recommend that a single piece of legislation be passed during the current Fall Sitting carrying out all of our recommendations at the earliest possible opportunity with the full support of the House of Assembly.

### **Terms of Reference**

The Select Committee on Workers' Compensation, a nine-member all-party committee, was struck by Resolution 844 on June 22, 1998, during the First Session of the 57th General Assembly.

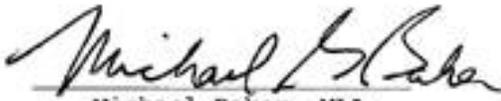
Resolution 844 states:

Be it resolved that:

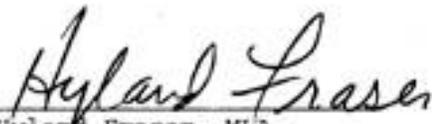
- a. this House declare that a Select Committee on Workers' Compensation be established;
- b. this House declare that the select committee be chaired by the member for Lunenburg and be composed of such members as the striking committee shall determine, an equal number of whom shall be members of the Government Party, an equal number of whom shall be members of the Official Opposition and an equal number of whom shall be members of the Third Recognized Party in the House, including the Chair;
- c. the mandate of the select committee is to review changes to the Workers' Compensation Act and, in particular, to review recommendations of the Auditor General with respect to his audit of the Workers' Compensation Board, Workers' Advisors Program and Workers' Compensation Appeals Tribunal;
- d. if this House is not sitting when an interim or final report is completed by the select committee, the select committee shall table the report with the Clerk of the House; and
- e. the House declares, pursuant to Section 36 of the House of Assembly Act, that the select committee shall not be dissolved by prorogation of the House and the select committee is authorized to continue its inquiry after the House is prorogued; and
- f. all the powers and privileges of the House of Assembly Act applicable to committees apply and are in full force and effect during the sittings of the select committee; and
- g. the House requests the Legislature Internal Economy Board, on behalf of the select committee, to employ such members and staff as may be necessary to enable the select committee to carry out its duties; and
- h. the House requests the Legislature Internal Economy Board to provide the select committee, its members and staff, with such facilities and funds as are required to carry out its functions as provided for by Section 80 of the Public Service Act.

STATEMENT OF SUBMISSION

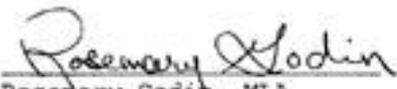
All of which is respectfully submitted to the  
House of Assembly this 25th day of November 1998

  
Michael Baker, MLA  
Chair

I concur

  
Hylard Fraser, MLA  
Vice Chair

I concur

  
Rosemary Godin, MLA  
Vice Chair

I concur

  
Charlie MacDonald, MLA

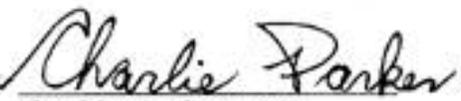
I concur

  
Frank Corbett, MLA

I concur

  
Michel Samson, MLA

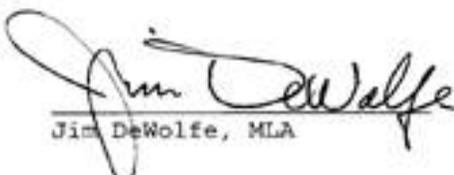
I concur

  
Charlie Parker, MLA

I concur

  
Ernie Fage, MLA

I concur

  
Jim DeWolfe, MLA



House of Assembly  
Nova Scotia

#### STATEMENT FROM THE CHAIRMAN

I would like to begin by thanking my fellow members on the Select Committee on the Workers' Compensation Act. Their dedication and hard work on behalf of all Nova Scotians on this most complex issue can only be described as outstanding.

Equally, I would like to extend my thanks to the great number of Nova Scotians who took the time to tell us how the workers' compensation system affected them or their family and friends. Their efforts were much appreciated by committee members.

The numerous presentations helped point to the many significant deficiencies with the workers' compensation system. Many of these have existed for a long period of time, others are relatively recent. All, however, are complex because it is a system with many fundamental problems, not least of which is a huge unfunded liability. This liability limited the ability of committee members to recommend as many changes as they would have wished. It also prevented us from recommending reducing rates that have become a burden on the business sector.

The committee sincerely hopes the financial situation of the Workers Compensation Board will soon improve so that more of the systemic problems can be adequately addressed in the future.

Committee members brought to the table diverse political, philosophical and personal experiences. We, however, all worked toward what we felt was the best interest of the workers and employers of this province, and indeed all Nova Scotians. Obviously compromise and a willingness to see and respect other points of view were critical to making this process work.

As part of this process all of the members of the committee and hence the parties they represent, were required to make decisions that would positively affect as many people as possible and which would address some of the many long-standing injustices in the system.

Unfortunately, we were not able to address all the issues in this report, but it does not change one fact: This is a good report for thousands of Nova Scotians and for the workers' compensation system.

I would like to express my thanks to our four consultants -- Lue Erjavec, Dr. Anthony Lamplugh, Jim Neville and Michael Power -- for their invaluable assistance throughout this process. I would also be remiss for not acknowledging the work of Gordon Johnson in drafting the legislation included in this report, the staff of the Legislative Committees Office for their work behind the scenes, and Doug Hadley of Communications Nova Scotia for writing the report.

In closing, it is the sincere hope of this committee that when our recommendations are implemented, much-needed fairness will be returned to the system. Now is the time for action.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael Baker".

Michael Baker, MLA  
Chairman  
Select Committee on the Workers' Compensation Act

## Appendix A

### Individuals Appearing Before the Select Committee

Joe Awad  
Bob Baudoux  
Betty Bauman  
Judy Benjamin  
Gerald Boudreau  
Gordon Buchanen  
Rachael Buckley  
Kenneth Burgess  
Paul Burrell  
Ron Burrows  
Barry Carruthers  
Judy Clarke  
Ernest Connors  
Aubrey Coombs  
David Coleman  
Laura Coleman  
Wayne Davis  
Barb Dion  
Jane Doane  
John Doyle  
Pat Doyle  
Ozzie Doyle  
Louis Dubois  
Roger Eisnor  
Jane Farrell  
Thomas Fisher  
James Fitzpatrick  
Dr. Maida Follini  
Neil Gilchrist  
David Gillis  
Ralph Gosby  
Ethel Green  
Robert Green  
Carl Gouchie  
Wesley Gray  
Heather Gregory  
Randall Hallette  
Peggy Hancock  
Ernie R. Hawes  
Lorne Heighton  
Wilfred Herridge  
Theresa Hiltz  
Wayne Hines  
Kim Horne  
Harry How  
Vickie Huston

Wayne Isaacs  
Murray Johnston  
Burnley Jones  
Gordon Joshua  
Timothy Keenan  
Edward F. Kelley  
Walter Kozera  
Debbie Krewenki  
Garnet Lake  
Roy Lambert  
Wilfred Landry  
Bernie LaRusic  
Barry Lawrence  
Barb Lewis  
Gerald Locke  
Mary Lloyd  
Marie MacDonald  
Richard MacDonald  
Sharon MacIntyre  
Leo F. MacKay  
Dave MacKenzie  
Lloyd MacKenzie  
Charles MacLean  
Raymond MacLean  
Rod MacLean  
Sheila MacLean  
Wes MacLean  
Dale MacLennan  
Margaret MacLeod  
Margaret MacSween  
Joseph Marchesen  
Bill Markie Jacqueline  
Markie  
Shirley Marryatte  
Chester Marshall  
Myron Marshall  
Paul McChestney  
Lyle McGillivray  
Dave McManaman  
Ronald B. McNutt  
John Melanson  
Ralph Messenger  
Raylene Morris  
Donna Morrison  
Francis Morrison  
Joseph Muise  
Sherry Munroe

Stephen Nicholson  
Gary Noiles  
Clarence Oliver  
Larry Oravec  
David Parker  
Donna Penney  
Wallace Peters  
Gerry Petrie  
Marion Pettigrew  
Gary Randall  
Lloyd Rector  
Coady Robar  
Alan Robichaud  
Barry Rushton  
Theresa Sarty  
Harold Selig  
Ross Sharples  
Harvey Short  
Graham Simms  
Ernest Stroud  
Brian Smith  
Connie Smith  
Gary Smith  
Ivan Stulac  
Gary Swinimer  
Allen Taylor  
William G. Taylor  
Alexandra Teed  
Calvin Teed  
Lucy Thomas  
Verna Thompson  
James Tobin  
Gerald Toomey  
Gideon F. Travis  
Ronald Tynes  
Jackelene Vandermeer  
Beverly Veinotte  
Marjorie Walker  
Ken White  
Don Wilson  
Terry York

**Organizations Appearing Before the Select Committee**

Adhoc Committee—  
Employees Organization  
Peter O'Brien, Co-Chair  
Carol McCulloch, Co-Chair

Alliance of Manufacturers &  
Exporters Canada  
Dick Smith  
Carol Forsey

Athol Forestry Co-op  
Warren Murley

Atlantic Building Supplies Association  
John Ward  
Don Sherwood

CHEVS (Camp Hill Environmental  
Victims' Society)  
Marie Welton  
Jim Struthers  
Loretta O'Neil  
Christine Fletcher

CAW—Local 4612  
Blaise MacDonald, President

Canadian Federation of Independent  
Business  
Peter O'Brien

Canadian Restaurant & Food  
Services Association  
Joyce Reynolds

Cape Breton Injured Workers  
Norm Gillis  
John MacKinnon  
Clarence Oliver

Cape Breton Island Building &  
Construction Trades Council  
Cliff Murphy

Construction Association of N.S.  
Carol McCulloch

C.U.P.E.  
Barb Kowalski, National Rep

Energetic Foods Inc.  
Robert McKelvie, President

Fancy Foods Ltd.  
S.J. Hughes

HRM & District Injured  
Workers' Association  
Allan Comeau  
Russell Gallant  
Joan Landry

IMO Foods Ltd.  
S. J. Hughes  
Philip LeBlanc

Injured Employees' Self Help Group  
of Nova Scotia  
Gerard Tremere, Info. Officer

North Nova Forest Owners Co-op Ltd.  
JoAnne Craib

Nova Scotia Federation of Labour  
Rick Clarke, President  
Betty Jean Sutherland, General V.P.  
Alex MacDonald, Treasurer

NSGEU (Nova Scotia Government  
Employees Union)  
David Peters, President  
Ian Johnson

Nova Scotia Nurses Union  
Heather Henderson, President

Pictou County Injured Workers'  
Association  
Mary Lloyd, President

SCL Technologies  
G.L. Cormier (Gerry)

Truro and District Labour Council  
Danny Cavanagh

United Mine Workers  
Steve Drake  
Ralph MacNeil

United Steel Workers—Local 1231  
Barry Carruthers  
Fielding Smith  
Don MacKenzie  
Hubert MacGillivray  
Ernie MacInnis

Victims of Interim Wage Loss  
Wilfred Herridge

Wagner & Associates  
Ray Wagner  
Brenda Roberts  
Jennifer Christian

Workers' Compensation Board  
David Stuewe  
Innis Christie  
James Houston

