

**Summary of the Annual Information Meeting Held
September 10, 2002**

The Facilitator, Liz McKee, called the meeting to order at 3:30 p.m. She called upon Dale Schmekel to make a few comments.

Dale Schmekel spoke briefly about the tragic events which occurred on September 11, 2001, and pointed out that the majority of the people killed or injured during this event were working at their employment at the time. A moment of silence was observed.

Ms McKee explained that the focus of this meeting was on the special examination of the Auditor General, Sheila Fraser. She then provided a list of contact numbers and an e-mail and address at which the public could obtain a copy of the report of this meeting, which will be available in two weeks.

It was explained that the purpose of the meeting was to provide information, and was not a forum to air personal grievances. The Auditor General was available to answer questions regarding her report.

Introductions were then made around the table, and then Ms Fraser provided her opening statement, which was also available in written form in both official languages.

PUBLIC REPRESENTATION ON THE BOARD

Ms Fraser was asked to elaborate on the reasoning behind her recommendation that there be public interest representation on the Board. She explained that, at the present time, there is equal representation for employers and employees, and that the chair is a neutral position. There may, on occasion, be times when the chair is called upon to vote in order to decide a vote, and thereby may be perceived to lose neutrality. If the Board had a public interest representative, which did not represent either the employers or employees, there would not be the need for the chair to cast a vote; as well, it would bring a balance to the Board.

COMPARISONS WITH OTHER JURISDICTIONS

The Auditor General was asked how the Yukon Workers' Compensation Health and Safety Board compared to other boards she had examined. Ms Fraser pointed out that this was the first examination, of this kind, that she had performed. However, her general conclusion was that, overall, the Yukon system is sound. There are improvements that have to be made, but she indicated that she doesn't believe there is any organization in which improvements do not need to be made. She pointed out that the Board has recognized that changes need to be made, and has committed to making improvements and has already started action on many of them.

She indicated that, although not a glowing report, it is a pretty good report.

ADMINISTRATION COSTS

Reference was made to the fact that, of the 58 staff positions on the Board, 37 positions serve the public directly, and the remaining are management support staff. She was asked what she perceives to be a reasonable level of management versus staff.

Ms Fraser responded that she had no benchmark in mind as to a reasonable ratio, particularly in a small jurisdiction such as Yukon. There are many support functions that have to be carried on, whether for a small or a large board. She believes this is one of the challenges this Board faces, in that it has many of the same responsibilities a large board has, but has a much smaller jurisdiction. The information required in order for her to do any benchmarking in relation to other boards is not readily available.

It was then asked whether the number of employees presently on staff appears to be reasonable, compared to their mandate. Mr. Hellsten answered that the Board has to work at demonstrating to the stakeholders that it is operating economically. The Board is at the

early stages of developing performance measures to do that; however, the explanations that have been provided to the Auditor General, as to why the administration costs are so high, seem reasonable.

REMOVAL OF APPEAL TRIBUNAL CHAIR FROM THE BOARD

There was disagreement from the public with respect to removal of the Workers Compensation Appeal Tribunal Chair from the Board. It was pointed out that she only has observer status on the Board and, if it was a desire that the Appeal Tribunal and the Board work together, her removal from the Board would not seem to support this.

Ms Fraser agreed that the Appeal Tribunal Chair is a non-voting member; however, there could be a perception that she lacks independence, when sitting on an appeal, if she has been or is perceived to have been party to decisions which were made initially. She emphasized that it is not necessary to be a member of the Board in order to have cooperation and to work together on issues facing the Board.

Mr. Hellsten pointed out that the report recommends that representatives of the Appeal Tribunal meet regularly with the Board in order to share information.

INCLUSION OF INJURED WORKERS IN THE STUDY

The Auditor General was asked why injured workers weren't included in the study.

Mr. Hellsten indicated that they had consulted with quite a few injured workers, but they were not involved as key players in the system, as defined by legislation: i.e. the Board, Appeal Tribunal and the Workers' Advocate. He pointed out that the Injured Workers Alliance is not identified in legislation as a key player.

REPORTING STRUCTURE

The opinion was expressed that the recommendation that the President report to the Board members, not the minister, and the Chair of the Board report to the Minister, makes the Board more unaccountable. It was felt that there is no

system for the injured workers to go through in order to make the administration accountable. The WCB system was set up for the injured workers, not for the employers.

Ms Fraser indicated there are two elements of response. First, she indicated that a president of a board should not be reporting to two distinct persons; there has to be clear direction and clear responsibility. The president is responsible for day-to-day operations, and therefore takes direction from the Board, who is responsible for the strategic direction of the compensation board; the Chair, who represents the Board, should be accountable to the Minister; the Minister is accountable to the public.

Ms Fraser took exception to the perceived role of the board members. She stated that the board members, as a group, are to represent the best interests of the Board as a whole, not represent any particular constituency. While she agrees that they have to look after the interests of the injured workers, they also have to consider the employers, as they are the ones funding the program. She believes that, if members of the board are viewed as representing constituencies, it is only going to make cooperation and working together for the best interests of the Board more difficult.

The question was asked, how is administration made accountable.

Ms Fraser answered that administration is accountable through the Board, to the Minister, to the public. The reporting relationship should be clear, with no conflicting lines of authority.

A member of the public explained that the concern is that the system is designed to be a deal between the workers and employers, and they are seen to be the ones that have the overall well-being of the system in mind. However, the individual, and the workers collectively, have no ability to make the organization, itself, accountable. The President is accountable to the

Board; the Board is accountable to the Minister; and the Minister has no control over the Board.

The only method injured workers or employee groups have, of effecting change in the administration, is by going after the Minister, who addresses the issue with the Board, who only have the ability to address policy issues with the President. It is in that accountability framework that the employers' and injured workers' communities have no way of requesting accountability to the Board; there is no way they can have their concerns addressed.

Ms Fraser pointed out that the report talks about communication and reporting on performance. Meetings like this are a good example of accountability. However, she pointed out that the Board is there to give direction to the system; the President cannot be accountable to different groups. Such a situation would create chaos in the management of the Board.

Arthur Mitchell pointed out that the board members are supposed to set policy direction, which directs administration, through the CEO, as to how the organization should be run. These board members are supposed to be appointed with consultation with the stakeholders. The Minister gets to respond to the stakeholders' concerns by listening to their input during the appointment process

Another member of the public pointed out that, in paragraph 29 of the Auditor General's report, the responsible Minister must consult with the employers and employer organizations, and workers and labour organizations, about all appointments to the Board. Therefore, if the board members are not accountable, there is another venue to deal with that.

A member of the public pointed out that, at the present time, the President is the one who appears in the Legislature with the Minister to answer questions. He then asked whether, pursuant to the recommendations, it would now be

the Board Chair who would be appearing in that role. Ms Fraser responded affirmatively.

APPOINTMENTS TO THE BOARD

The question was asked whether the recommendations would be that the process for appointments to the Board remain unchanged. Ms Fraser indicated that that process would not change under the recommendations. However, she pointed out that it is left up to the legislators to decide if they think the recommendations are appropriate.

PARAGRAPH 41 - TERMINATION OF FUNDING FOR PROGRAMS

A portion of paragraph 41 was read, with regard to termination of funding for programs such as the mine safety fund. The question was asked whether there was a recommendation made to go along with the statement or observation made in that paragraph. Ms Fraser answered that there was not.

PARAGRAPHS 95 TO 97 - CUSTOMER SERVICE PROJECT

A member of the public expressed his agreement with the report's support of the Customer Service project. He asked whether the Auditor General had any suggestions on how to control some of the risks discussed with regard to the scope of the project, and how to ensure the costs are reasonable.

Ms Fraser indicated that the commitment for the initial part of the project is \$600,000. At the end of the initial project, she expects that the Board and management would revisit the status to determine if the projected costs are still the same, whether there are advantages to continuing, and to update the business case, and to implement a rigorous definition of the project with regard to the steps to be carried out, the time lines and the costs associated with each one of them, and to set up monitoring. The Board feels a strict monitoring of the project is critical to moving forward, and to ensure that there are no surprises and that they achieve the results they

are looking for.

POLITICAL INDEPENDENCE OF THE BOARD

A proposition was put forth by a member of the public, that the Commissioner empowered the Workers' Compensation Board to hold and keep in trust funds available to compensate any injured worker. The Board is impartial and is kept at arm's length from government in order to prevent any political influence on the Board.

The concept that the public is extremely affected by the day-to-day operations of the Board is not really important; people like to think they have some influence over funds that are kept in trust by the Board, however, there is nothing in law or legislation that the public has anything to do with funds that are contributed solely by employers.

It was further proposed that stakeholders would be employees who have been injured; employers that contributed to and built the fund; and the people who are responsible for the fund.

PARAGRAPH 58 -APPEAL PROCESS

It was pointed out that, in paragraph 58, it is indicated that all 22 of the Appeal Tribunal's decisions in 2001 were in the workers' favour. The Auditor General was asked what discussion took place when it was realized that all the cases were going in favour of the injured workers, particularly in light of the steps the worker had to go through to get to the Appeal Tribunal and the costs involved.

Ms Fraser pointed out that one of the recommendations of the report was that there is a need for a quality assurance program for the claims; that the Board needs to ensure that claims are adjudicated fairly and correctly and in accordance with policy. The hope is that this would lead to a reduced number of appeals.

She further stated that there may be indications of a need to have a more rigorous review of the claims process; there are few directives or established procedures; and there

could be a lack of conformity in the decisions that are being made. However, it has been indicated by the Board that they have had difficulty filling positions due to the salary issue.

Another member of the public referred to paragraph 60 of the report, where it was indicated that, of the 26 cases the Appeal Tribunal rendered decisions on, four were found to be beyond its jurisdiction. The person was concerned that there was no way indicated as to how these matters, which were out of the jurisdiction of the Tribunal, could be dealt with. He asked why there was no recommendation how to deal with these matters.

Ms Fraser responded that she is not able to get into issues of policy. A decision has been made that the Tribunal does not have jurisdiction, and it is not up to her to comment on it.

It was pointed out by another member of the public that, if the Tribunal did not have jurisdiction, the Appeal Panel of the board of directors would have jurisdiction.

Ms MacFadgen indicated that, in some cases, in which the Appeal Tribunal initially were not able to take jurisdiction, the Tribunal was able to take jurisdiction by making use of the justice and merit provisions of the Act.

She further pointed out that there is a statutory review to begin in January of 2003, and the issue of jurisdiction could perhaps be more fully considered at that time.

Ms MacFadgen is of the view that stakeholder groups could bring these jurisdiction issues forward as an issue at the time of the statutory review, and could use examples from the Appeal Tribunal where they were unable to take jurisdiction. Due to their independence and impartiality, she is not certain how or if the Tribunal will be participating in the review.

PREVENTION

One person indicated he was pleased that prevention was indicated as a key to reducing the number of workplace injuries. He also referred to the report's comment with regard to the lack of incentive to employers to encourage safety, and indicated that this is an area that employers would certainly like to look at. He indicated that the compensation board needs to determine the level of prevention efforts that it has and that employers can realistically afford. These are key comments employers need to look at, to build on the prevention aspect, because prevention is the only way that assessment rates can be brought down.

SPECIALISTS IN CLAIMS MANAGEMENT

There was reference that, in the report, there was mention of hiring staff that are specialized in the claims management area. The suggestion was made that the Board would have the option of using Outside specialists who visit the Yukon periodically.

Ms Fraser replied that there are very few boards in Canada, and therefore there is not a lot of expertise in this area, and the skills required are very specialized. It was the feeling of the Auditor General that compensation levels are not high enough to attract and retain people with these skills.

PARAGRAPH 27- GOVERNANCE HANDBOOK

It was pointed out that the Injured Workers Alliance has never received a copy of a Governance Handbook. The question was asked whether it is available for review; and why was the Alliance never told about it?

Mr. Armstrong indicated that he could make a copy available immediately.

Mr. Mitchell pointed out, as well, that the process of developing a handbook has been long and ongoing, and there was work being done on it as recently as a week ago; therefore, it has not existed in final form for any significant length of time. The most recent copy was received just

the morning of this meeting.

It was also pointed out that the final handbook could not be put out until the report was received from the Auditor General.

PARAGRAPH 27 - EQUAL TREATMENT

It was pointed out that, recently, a workers' consultant was appointed without consulting with the public and going through the same process the Injured Workers Alliance had to go through in order to get the workers' advocate appointed. The suggestion was made that the board members are taking a special interest in the employers' group by giving them a \$450,000 contract without consulting with the stakeholders.

Ms Fraser indicated that this issue was not addressed in her report, as the position was not created at the time they were completing their report.

Mr. Schmekel replied that what the Board did was consistent with the Act, and it was within their jurisdiction to do it.

It was pointed out that the question was not whether it was consistent with the Act, but rather whether it was consistent with treating the employers' group and the injured workers the same way.

Mr. Enders responded that the Board did do public consultation through the Advisory group.

PARAGRAPH 91 - CONTRACTING POLICY

It was pointed out that paragraph 91 indicates that the Board has no policy on contracting; and that they would adopt the government's structures and guidelines.

The question was asked whether the Board are planning to use the government guidelines until they have their own guidelines developed.

Mr. Armstrong answered that, to the best of the Board's ability, they will do that. There will likely be some issues that would be specific to the Government of Yukon, with regard to lines of authority, that would not necessarily be applicable to the Board and its budgeting and

financial approval process. Therefore, it would not be possible to follow the guidelines completely, but they can undertake to follow them to the best of their ability.

The Board was asked, in view of the new policy being developed for January 2003, and the desire to make this policy open and accountable, what steps would be taken to enter into some sort of consultative process to develop the policy.

Mr. Schmekel indicated he was not aware what consultative process would be followed, as the matter has not been before the Board yet.

The question was asked whether there was generally a policy process.

Mr. Armstrong replied that there are a few different policy processes, dependent on the type of policy being developed. For example, the legislation and Bill 83 required that policies that impact compensation must go out for consultation. However, the contracting policy would not necessarily be interpreted as impacting compensation and, therefore, it may not be required to go for public consultation. However, it is anticipated that there will be some options coming forward from administration, regarding consultation, and the board members would then give that due consideration and make a decision.

FUNDING FOR MINE SAFETY

The question was asked whether there has been any resolution to the lack of funding for the mine safety inspectors' activities.

Mr. Schmekel indicated that this issue has not been resolved.

WAR CHEST

A question was asked whether, when YTG joined the Workers' Compensation Fund, they brought anything to the table other than their employees; was there a war chest available to cover active payments or pensions being made?

Mr. Schmekel answered that the liability was not brought forward, and the YTG maintained their liability.

OPTING OUT

The Board was asked whether they were happy with the opting out part of the agreement between YTG and Workers' Compensation.

Mr. Schmekel pointed out that the opting out provision is there, and governments can make whatever legislative changes they wish.

The member of the public pointed out that this did not seem fair; YTG opted in at their choice, when the fund was nice and fat and capable, and now they are talking about opting out if they are displeased. He asks whether that is fair.

Mr. Schmekel replied that YTG is displeased with the rate they are assessed. Therefore, when looking at whether it is advantageous for government to be in WCB, it must also be considered whether it is advantageous to the Fund to have them in.

Mr. Mitchell added that, practically speaking, the government can amend legislation as it sees fit and, therefore, whether there was an opting out provision or not, the government could pass legislation enabling them to opt out at its discretion.

LENGTHY DELAYS IN HEARING APPEALS

One member of the public indicated that, when he filed his appeals, the date for hearing the appeal was set for four months in the future. He questioned what the hearing officer does, and why it takes four months to get an appeal heard.

Mr. Armstrong replied that the delay was likely a function of workload. There is only one hearing officer, and his time is scheduled fairly consistently into the future. On occasion, there may well be delays of four months to hear an appeal; at other times of the year, there may be a significantly shorter waiting period. However, that person is working full time conducting hearings. Mr. Armstrong said he would see if something could be done to shorten the length of time required in order to have an appeal heard.

PARAGRAPH 56- QUALITY ASSURANCE PROGRAM

A portion of paragraph 56 was read, involving adopting a quality assurance program for claims adjudication in order to minimize adjudication errors, and indicating that such a program would involve a review of higher-risk claims prior to final adjudication as well as a random review of other claims. The speaker indicated that the Injured Workers Alliance has been hearing about the quality assurance program since 1995 and, from his perspective, despite changes that have been made over the years, nothing has changed as far as an injured worker's perspective.

The question was asked regarding what is considered to be a random review of claims.

Ms Fraser indicated she probably couldn't be as specific as the questioner would like, in terms of how the program would work, as that would be up to the Board to determine. However, first of all, the Board would have to say which are the higher-risk claims; indicate what would make some of those claims more complex, requiring a second review; and then take a sampling of the other claims, e.g., sampling a certain percentage of claims each month. However, this sampling would be done before the claim is adjudicated, before a final decision is made.

The Auditor General asked whether the claims that have already gone through the system would be reviewed again. She indicated that this program would only be implemented on a go-forward basis, only on new claims.

Another concern raised was that, by law, an appeal decision must be handed down in 30 days. However, when an issue is taken to administration, you can wait as long as eight weeks and still get no answer. Therefore, the fastest and simplest way to get an answer is to appeal everything.

The speaker then indicated that, on similar matters, injured workers are being treated differently; rules are made for one worker, and

then the next worker asks for the same thing and there is another set of rules set up for that person.

Ms Fraser responded that one link to the report, with regard to one of the concerns, is that the report indicated that the Board needs to have performance measures, and the Board should be establishing certain service levels. These service indicators would allow the Board and stakeholders to track the performance of the Board.

ADJUDICATORÍ'S MANUAL

A speaker pointed out that, since 1995, the Injured Workers Alliance has asked for production of an adjudicatorís manual, as was recommended to be developed by the Gladish Report. This has not been produced to date. The adjudicatorís manual was again being asked for, so that it could be determined by which rules the adjudicators were operating.

Ms Fraser indicated that one of the things noted in paragraph 54 of her report was that there are few directives for established procedures, and that should be a part of the quality assurance program that has been recommended.

EMPLOYERSÍ ADVOCATE - REDUCTION OF APPEALS

A speaker indicated that one of the things weighed heavily, in the decision to ask the Board for an employersí consultant at the Board level, was to reduce the number of appeals relating to dissatisfaction with the actions or contributions made by the Board. There has not been enough time to determine the results, but it will be tested. It is felt that the number of appeals will be reduced over time.

Ms Fraser said that the appeal process is not beneficial to anybody, so if the claim can be settled satisfactorily in the first instance, that would be the preference.

The Board was asked by another person whether they think it is fundamentally fair that the

employers' group have a person present at the meeting, being paid \$75,000; whereas the injured workers have to appear as volunteers. He expressed the opinion that this is an unfair situation.

The Facilitator indicated that, given the magnitude of the issue, and having regard to the time, she would suggest that this is something that could be brought forward for the January 2003 review.

ACCESS TO INFORMATION

The issue of access to information was then addressed by the same speaker. He indicated that, whereas the employer consultant can obtain information regarding injured workers, the injured workers cannot obtain similar information regarding the employer consultant because he is a private entity. He asked where the equality was in that situation.

Ms McKee indicated that that would be another topic that probably would be best discussed during the January 2003 review.

HEALTH AND SAFETY COMMITTEE

A suggestion was made that, for companies with 20 or more employees, there should be an internal health and safety committee established, who were trained and were expected to conduct monthly audits of the business, with regard to possible safety hazards.

Mr. Armstrong indicated that the Yukon does have rules in that regard with the Occupational Health and Safety Regulations, for workplaces that have 20 or more workers. The OH&S Regulations require that there be a safety committee; that there be regular tours of the workplace to ensure things aren't out of line; that the committee comprise members from management and workers; and that management have to respond to the issues raised by the safety committee.

However, he indicated that the Auditor General has pointed out that it's not seen that

enough has been done to ensure that those safety committees are in place, but, in 2002, this issue is being pushed.

The speaker indicated that more has to be done to communicate these requirements to businesses.

ACCIDENT PREVENTION

A member of the public told the meeting that, when young workers are on site, that it is a scary situation, because they do not appreciate the risks involved in their actions. What he would like to see is somebody go into the schools and put on a course of workplace safety for the students.

Mr. Armstrong responded that the Board is currently delivering safety training in the schools; they use whatever time they are allotted, within the school day, to put on their program. It is the Board's desire to do a lot more in the area of young worker safety; however, the reality is that the educational program is under pressure to have all kinds of things included in the curriculum, and the schools have to go through a process of weighing out what they will or will not allow in their schools, and it is a measure of time.

Presenting the work safety program in the elementary schools may be a good spot to start talking about some forms of safety with young workers. As well, there are other initiatives going on in Canada, such as the Passport Program. This is a program whereby a student receives safety training, and the student would be given an electronic passport that they could present along with their rÉsumÉ to a prospective employer, which would show in which work safety courses the student has taken instruction.

In response to a question, Tony Armstrong indicated that the Board has had discussions with the Construction Association, with regard to the possibility of setting up a construction safety association to deliver safety programming and

awareness to workers in general, with a key interest in instruction to young workers coming in as an apprentice.

A speaker indicated that one of his concerns is with safety training, and one of the areas which tends to be left out is the small employer who doesn't have the resources to provide training. He feels that the Board, through a safety association, would be an excellent venue to deliver the training.

SAFETY INSPECTORS

As a result of a question, Mr. Armstrong indicated that the Board has four officers for inspection and compliance; and two officers for education and training.

The opinion was given that, with the number of work sites in the territory, and the number of inspectors available to do inspections, the officers are not on the work sites often enough. It was indicated that there should be low rates, and heavy penalties, which would encourage more workplace safety and compliance.

Another speaker indicated that he has observed several work sites in Whitehorse, and that there are many instances where he has seen work conditions which are very unsafe, and nothing seems to be done about it. He asked whether it would not be a good idea to have somebody going around, unannounced, and requiring that the safety standards be met.

Mr. Armstrong agreed that, sadly, safety infractions can be observed. He pointed out that there were a number of penalties and letters mentioned in the Auditor General's report; however, people should also be mindful of the number of orders that are written in the jurisdiction, which numbered in the neighbourhood of 1100, of which there was follow-up done to ensure compliance with the orders.

Mr. Armstrong pointed out that the Workers' Compensation Board hopes, in the first instance, for compliance with the safety regulations; and

that the regulations be seen as a minimum of what should be done. The compliance they are hoping for is from the workers and the employers.

In the absence of compliance, the Compensation Board has the responsibility and liability for enforcement. However, like with any other regulation, sole reliance on enforcement will not work. The organization must work constructively with employers so that they understand that they have a responsibility to comply, not just because the safety officer may show up, but because they have a responsibility to have a safe workplace and the regulations are there to set the standard for what a safe workplace is.

CARPAL TUNNEL SYNDROME

There was concern expressed by a member of the public that a decision has been made that carpal tunnel is no longer a compensable injury. The speaker was very annoyed by this decision, as he had suffered from carpal tunnel and it was work related, and that he did not believe a person would get carpal tunnel while leading a sedentary life.

Dale Schmekel explained that carpal tunnel can be work-related; however, if it occurs in both arms, current medical opinion is that the problem is genetic. On that basis, some jurisdictions have been refusing claims.

The speaker indicated that he is ambidextrous, and he uses tools with both hands, and could suffer carpal tunnel syndrome in both arms as a result.

(Proceedings adjourned at 5:35 p.m.)

(Proceedings reconvened at 7:35 p.m.)

The meeting was called back to order at 7:35 p.m. Ms McKee introduced herself as the facilitator, and called upon Dale Schmekel to say a few words. Mr. Schmekel spoke briefly in remembrance of the events which occurred on

September 11, 2001, and asked those in attendance to stand for a moment of silence in remembrance of those who were injured or killed during the events of that day.

(Moment of silence observed)

Ms McKee pointed out that the report of this meeting would be available in two weeks, and she provided contact numbers and an e-mail address by which copies of the report could be obtained. She then explained the purpose of the meeting, which is an annual information meeting, and that the Board was present to answer questions. Those in attendance were then asked to introduce themselves. The facilitator then asked for questions from the floor.

PUBLIC REPRESENTATION

A concern was raised with regard to the recommendation that there be public representation on the Board. The speaker indicated that the Board's role is to represent workers and employers, and he is not sure that the public has a role to play. He had a concern that, if the public interest had a seat on the Board, there was more possibility for political interference.

Mr. Schmekel responded that an argument could be made, and has been in other jurisdictions, that the public are the ones who ultimately pay the cost of compensation. He then read paragraph 31 and 32 of the Auditor General's report. Paragraph 31 relates to the Chair being a neutral

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party and that, on occasion, the Chair may be called upon to cast a vote in order to break a deadlock on the Board. Paragraph 32 goes on to indicate that the presence of the public interest on the Board would create a tripartite board, which would help avoid a voting deadlock, making it unnecessary for the Chair to vote, and thereby the Chair's neutrality would not be affected.

Another person indicated that this is the first board, in a number of years, where the Chair had the right to vote. He did not feel the Chair should have a vote, and that if matters were deadlocked, the members should be required to work out their problems.

Douglas Rody read the wording from the preamble of the Act, in which the Workers' Compensation Health and Safety Board is delegated the trusteeship and management of the compensation fund in the best interests of the workers and employers. There is no reference to "public" as a stakeholder. His view is that, in order for a public representative to be appointed, there would have to be changes made to the Act and the preamble to the Act. Before those changes could take place there would be considerable discussion and debate.

Another member of the public expressed his belief that injured workers are also the public, and that they should be allowed to participate individually as a public interest. He does not feel that individual injured workers are being

consulted and, therefore, they should be allowed representation.

JANUARY 2003 ACT REVIEW

Dale Schmekel indicated that the Act review is coming up early next year, and there will be a consultative process; however, he pointed out that, although the Board may be asked by the Minister to conduct the consultative process, it is not the Board that will control what the consultative process will be; the government would have control of what consultation will take place.

A member of the public pointed out his concern that the Board was the body that had agreed to fund the Chamber of Commerce in relation to the Employersí Consultant position, and that they are now saying the government should be the ones held accountable for this, and it should be addressed during the Act review. Mr. Schmekel responded that the Board acted within the jurisdiction the government had given them, and that if he wished to question the jurisdiction under which it was allowed, it should be looked at during the Act review.

The Board was asked to revoke the position of the Employersí Consultant immediately. The speaker felt that the government were not the ones to be held accountable for the Workersí Consultant position being created, but that the Board should be held accountable.

The Board was asked, again, whether they felt
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it was fundamentally fair that a representative of injured workers had to volunteer their time, while the Employers' Consultant is paid \$75,000 a year to represent the Chamber of Commerce. Mr. Schmekel reiterated that the Board acted and created the position within its jurisdiction.

There was confusion with respect to the title of the position of the Employers' Consultant. It was questioned whether it was an "advocate" position or a "consultant" position. It was clarified that the position was that of Employer Consultant, which would act in an advisory capacity.

A question was asked by another member of the public with regard to what role the Employer Consultant would play in relation to its dealings with the Board. Tony Armstrong explained that the Consultant would potentially make representation in front of the Board, but would not make representations on claims appeals. The Consultant would only have the ability to make representations on assessment appeals, or an appeal of an occupational health and safety matter.

VIOLENCE IN THE WORKPLACE AND SCENT-FREE POLICIES

It was pointed out that, three years ago, the Regional Health and Safety Committee met with staff members of the Board, and input was provided with respect to workplace violence and scent-free policies. At the time, the Committee did not feel the regulations addressed those

issues; nor did they give health and safety committees in the workplace what was required in order to compel violence in the workplace prevention programs, or scent-free policies to be established. The questioner asked why it has taken so long to make the necessary changes to the regulations; and what is the plan in terms of those aspects.

Mr. Armstrong indicated that no one had anticipated that the process of working through the occupational health and safety regulations would take as long as it has. He pointed out that they had held a public meeting in June, and had provided an update at that time. At the current time, all appropriate review processes have been completed, and, in the very near future, the recommended changes to the regulations will be forwarded to the Minister for consideration.

He pointed out that violence in the workplace and scent-free workplace policies are only two outstanding areas of interest in the regulations. It has not been determined when those two specific items will be dealt with; however, the next areas that need to be looked at are outstanding and emerging issues in occupational health and safety regulation, with workplace violence and scent-free environment not necessarily being the first and foremost to be addressed.

VIDEOTAPING

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The issue of videotaping injured workers, as part of the investigative process, was brought up for discussion. The question was asked whether the responsibility for videotaping injured workers was going to be passed on to the Employer Consultant.

Dale Schmekel indicated that it was not going to become the Employer Consultant's responsibility. Mr. Armstrong indicated, in response to the question whether WCB was going to continue videotaping workers, that, where it is deemed appropriate, the WCB would initiate an investigation. While acknowledging that, at times, investigating can be considered distasteful, he stressed that the WCB has a responsibility to the Fund, and they may, at times, be compelled to conduct an investigation. He stated that, as reluctant as they are to use it, videotaping is a tool that occasionally has to be used.

It was pointed out by a member of the public that Mr. Armstrong had indicated in the Legislative Assembly that videotapes would only be released to the injured worker if they were going to be used as evidence. The speaker indicated that the injured worker should have the right to have the video provided to them, regardless of whether it was going to be used by the WCB; the worker may be able to use the tape for their own purposes. The question was asked whether the Board still refused to release the

videotapes unless they were going to use them for evidence.

Mr. Armstrong answered that the administration was putting a process in place to determine under which circumstances investigations would be considered, and what happens with the information gathered. Until a policy is put in place, he was not prepared to indicate what the practice is at the present time. He indicated that the process should be in place within six months.

The question was asked whether there would be public consultation with respect to this policy. Mr. Armstrong responded that he does not know whether it will be or not. He indicated that once they have an options paper assembled, and the information is provided to the Board, they can make some determinations.

The speaker then indicated that, at the present time, they will have to advise all injured workers to file for Access to Information in order to determine whether there is a videotape on their file, as that is the only way they have to know whether they have all the information before they attend the Appeal Panel. He pointed out that this would make for a costly process.

Mr. Armstrong pointed out that the workers always have a right to file through Access to Information if they believe there is information on their file that they are not being told about.

However, he suggests that the majority of workers should be quite confident that, when they ask for a copy of their file, they get a copy of their complete file.

A question was asked of Ms MacFadgen, Chair of the Appeal Tribunal, whether, in the case of a videotape on a workers' file, it should be made available to the worker whether the Board wishes to use it or not, as it may contain information that would be beneficial to the worker's case.

Ms MacFadgen was not able to offer a definitive opinion on the subject, but she referred to a directive that would suggest that evidence, that is not used in coming to a decision by an adjudicator or a hearing officer, will not form a part of the worker's file. She did not feel she was the best person to interpret a directive that was not in front of her, and was not one that she wrote. She did indicate that evidence used to come to a decision could be favourable or unfavourable.

Mr. Armstrong indicated that he was not in a position to say he disagreed with the questioner's assertion that a worker should be entitled to the tapes even if the WCB was not going to use them as evidence. However, it was important that the proper steps be taken to ensure a policy is in place to deal with this matter in a good and appropriate fashion. He recognizes that it is an issue to be dealt with, and it will be dealt with.

OCCUPATIONAL HEALTH AND SAFETY

A member of the public indicated that, in the report, mention was made of Occupational Health and Safety, and that there were no members of that body present at the meeting to answer questions. He further indicated that, any time there is a late meeting, no one from OH&S is present.

It was pointed out to the speaker that he could ask direct questions regarding OH&S to the Board, but he indicated that OH&S should be present at the meeting in the evenings in order to answer questions from people who cannot make daytime meetings. He went on to indicate some areas in which he has concerns, and he feels very strongly that they should be present at the meeting to address those issues.

Mr. Armstrong indicated that, at the next meeting, OH&S would be present.

RECRUITMENT AND RETENTION OF STAFF

Reference was made to paragraph 131 of the Auditor General's report, relating to difficulty recruiting and retaining staff due to salary constraints in the Government's classification system. The speaker pointed out that that has been his experience as well, but that his organization had overcome this problem through the use of what is called "market supplement". He asked whether the Board has ever made submissions to the government, requesting approval for the establishment of market

supplements.

Mr. Armstrong answered that the Board has not made presentation to the government about market supplement. Up to the present time, the Board has entered into dialogue with government about the classification of positions. However, this is an area they would like to explore.

MAXIMUM WAGE RATE

Reference was made to the fact that, upon coming into force of the 1993 Act, an inequity was developed in relation to the maximum wage rate paid to injured workers. People who were injured after midnight, January 1, 1993, were paid maximum wage rate under the 1993 Act; and all those injured prior to midnight, January 1, 1993, were paid according to prior legislation. A member of the audience suggested that the Board owed those workers, injured prior to the 1993 Act, retroactive pay for the years in which they did not receive increases until Bill 73 was passed.

Mr. Armstrong indicated that a calculation was eventually done to deal with workers that were hurt prior to the 1993 legislation, but that it was a complicated mathematical calculation to set the maximum wage rate, and that it does not always mean the rates would go up. There have been occasions where the calculation would have kept the wage rate at the same level or, in one year, would have caused the rate to go down. Therefore, it can't always be assumed that the

rate will go up.

Mr. Armstrong pointed out that, as far as what people can do about the old maximum wage rate, Bill 73 has been passed and has been fully implemented by the Board.

It was further pointed out by a speaker that, in 1997, Mr. Armstrong wrote a letter to the Minister responsible, stating that there was a problem with the Act, and it was ignored by the Board for five years, and he feels this Board should be held accountable for that because the workers lost a lot of retroactive money in those five years.

Mr. Rody, as a member of the Board for two and a half years, rejected the suggestion that he is responsible for this matter. He indicated that the Board cannot change legislation, and that, during his time on the Board, he has been totally involved in many matters before the Board, and that, when he was made aware of this particular issue approximately a year ago, he did the best he could to deal with it.

PHYSICIANS OF GENDER CHOICE

One speaker indicated that for the last number of years, he has always raised the issue of the ability of a worker to consult a physician of their gender choice. He indicated that, in the past, he was told that, although it isn't written anywhere, workers were able to request a physician of the gender they wished.

He explained that, during the last year, he
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had an opportunity to determine for himself whether this was accurate, and that he had requested that he be examined by a female physician, and that his request was complied with. He did point out that he had determined that a question had been raised as to why a man would request a female physician, but that the adjudication officer had indicated they were not prepared to ask that question, and that it was agreed he could have a female physician.

SHOW OF APPRECIATION

An individual indicated that, over all the years he has been involved with the Board, this was probably the best one he has seen working together.

ADJOURNMENT

There being no further questions or comments, the meeting was adjourned.

(Proceedings adjourned at 8:50 p.m.)