

YUKON WORKERS' COMPENSATION HEALTH AND SAFETY BOARD

ANNUAL INFORMATION MEETING

HELD DECEMBER 15, 1999
AT THE GOLD RUSH INN
WHITEHORSE, YUKON

TONY ARMSTRONG
KAREN RUDDY
KAREN WAROWAY
JOE RADWANSKI
ARDEN MEYER

PRESIDENT
PRESIDING MEMBER
MEMBER
MEMBER
MEMBER

DAVID LEVERTON

FACILITATOR

TRANSCRIBER:

DOUG AYERS

J.G. MOORE & ASSOCIATES LTD.

(Meeting called to order at 2:00 p.m.)

The meeting opened by Arden Meyer making introductions of Members present. David Leverton then explained the parameters of the meeting and the floor was opened for questions.

REPORTING

The Board was asked if, in keeping with the spirit of the Act coming into effect January 1, will the Board be producing a document that outlines what was discussed at this meeting.

Mr. Armstrong replied that Doug Ayers would be producing summary notes and the Board will be producing a summary report.

SYSTEM NOT WORKING WELL

The Board was questioned about some recent comments made indicating that the system was not working too well; that it was not a worker problem but a system problem. If it is a system problem, is something being planned to rectify the problem; when might the results start to appear?

Mr. Armstrong explained that he was talking about systemic problems within the organization.

Every organization develops some formal and informal systems to deal with issues. Within Workers' Compensation, there are a large number of

systems or methods by which any number of things are done, from paying bills to managing the whole claim.

There is a lot of room for improvement in the systems within the organization in order to do things better. Some important first steps have been taken to start addressing some of these problems. One example was going out and doing the strategic plan in the fashion it was done, and the building and reorganization that was done as a result of that. Impacts from doing that will be seen throughout the year 2000.

As far as concrete steps for change go, the Special Examination or Operational Audit Plan will be placed before the Minister by March 30th and, as required by Bill 83, the Special Examination or Operational Audit Plan will commence within six months of that date, and some real and concrete suggestions or recommendations will flow out of the audit, that will be very tangible, and the organization will have to act diligently in terms of addressing those concerns. It will be a very visible exercise in that the stakeholders will be able to see it taking place; the stakeholders will also know when the results are in as to what needs

to be dealt with and how it is planned to deal with them.

A follow-up question indicated that there was a misunderstanding as to the word "audit", and it was understood to be only a financial audit, and the speaker was not as concerned about expenditures for office furniture, etc., but more concerned about what was going to be done for the stakeholders. He pointed out that for many types of claims, Workers' Compensation works well and the worker has gone back to work. The problem is when a person is seriously injured and nobody wants to address it because large sums of money are involved. Therefore, if these are the kinds of things referred to, as far as changes to improve the system are concerned, this is what is most important.

Mr. Armstrong indicated that that is what he is referring to. However, he emphasized that there is a balance in the concerns. He indicated that the systemic issues he referred to are not administration costs. The systemic issues are how people are dealt with on a day-to-day basis, week-to-week basis, month-to-month basis, year-to-year basis. This mainly refers to workers, but also to

the employers.

However, when referring to a balance, there are the systemic issues, and there is the Operational Audit. It is a very broad approach suggested in Bill 83. Administration costs are a concern to some, and those issues also have to be considered. The scope of the Special Examination is broad enough that administration costs, even to fine detail, can be undertaken; but at the same time, systemic issues must be looked at. Administration costs are there to deliver the program; the "how" is where the concerns are.

There was still some confusion about the term "audit". Again, Mr. Armstrong explained that what was meant in Bill 83, under "Special Examination", and "Operational Audit", is not a financial audit; it is referring to an audit of the system as it relates to how the system operates.

TRAVEL EXPENSES

The Board was questioned about the difference in the way travel and accommodation expenses were handled as they related to injured workers and employees of the Workers' Compensation Board. The questioner found it very offensive that injured workers are required to stay in the type of

accommodations that they are provided; i.e. a rooming house with six other people, compared to private hotel rooms for employees of WCB.

Mr. Armstrong indicated that the WCB has taken steps to insure a balanced or level playing field in this regard. Board travel and claimant travel has been reviewed, staff travel will be looked at, and all costs that staff or the Board can bill for are now exactly the same as what an injured worker can bill for, so that all travel costs will be the same. He indicated that mileage charges for witnesses and claimants had been raised to be consistent with what staff are allowed.

There was then a question as to whether this would be retroactive, to which Mr. Armstrong indicated it would not.

SYSTEM NOT WORKING WELL

The following passage from the Gladish Report was read: The Board members expressed the opinion that an investigation of the Workers' Compensation Board operations was not needed as alleged issues concerning management practises and poor employee morale were unfounded. It viewed the issues as the protestations of a small number of disgruntled injured workers who believed they were not getting

the benefits they wanted, and complaints of a few disgruntled employees.

It was then suggested that Mr. Armstrong admitted he was running a dysfunctional organization; as a result of that, the board members were asked whether they still hold the opinion that the investigation was not needed. Are the board members willing to write a public apology for placing the blame for the need of the investigation on the workers?

The speaker then went on at length, and then asked the question: "What do you guys get paid 200 bucks a day for to be there? Is it to protect disgruntled injured workers' rights; or is it to protect dysfunctional organization?"

Mr. Meyer answers that their role is to attempt to insure that we have a viable Workers' Compensation system in place to serve injured workers. He confirmed that it is their role to protect the injured workers' rights, just as it is to protect the rights of everyone else in the system.

IMPLEMENTATION OF GLADISH REPORT RECOMMENDATIONS

It was suggested the Board ignored the injured workers' concerns, as outlined in the Gladish

Report, particularly in reference to the deeming and chronic pain policy. The speaker indicated the Board doesn't want to take advice from the Gladish Report, from the Ombudsman's office, or anybody else. It would rather challenge the Ombudsman's office on a point of law, rather than accept the recommendations based on merit. He then asks why the board members back up the administration no matter how dysfunctional their actions are.

An example was given, where a claim was adjudicated in 1992. The response letter was sent in May of 1997. Approximately six months later, the Department of Justice did an investigation into the same issue. The legal opinion provided at that time was that WCB knew nothing about the claim until 1994. This is an obvious discrepancy. It was then questioned whether the WCB was either lying to the investigator or lying to the Ombudsman's office.

The board members were then asked whether they would be prepared to investigate this.

Mr. Meyer stated that they would not be prepared to investigate this matter on an individual claim basis. However, the questioner stated this was not about an individual claim, but

that it related to the Board's dealing with two independent investigations, and telling two different stories.

TRAVEL EXPENSES

Appreciation was expressed for the changes that have taken place with respect to travel and accommodation expenses. A question was asked whether this change will be coming out in the Policy Manual, and is that change effective now; or is it a directive that will be seen in the Board Directives. Were there any other policies that have come out in the very recent past?

Mr. Armstrong replied that there are two policies and one directive; one is Board travel, and the other is witness and claimant travel. The Board travel was signed off three or four weeks ago, and it is uncertain whether it has been circulated to Policy Manual holders yet but it will be. The claimant and witness travel required one paragraph changed, so it is going to the Board for review at the next policy meeting. Since the Board had instructed to have the one paragraph changed, it will likely be approved and it will be signed off at that meeting, and then it will be circulated.

It was then pointed out by the questioner that the problem he has is that, at last year's annual meeting, it was made very clear that the policies that were of extreme importance to the workers were the policies with regard to CL-35 and with regard to deeming. At the last annual meeting, it was indicated by the board that those were priorities and would be worked on as soon as possible. There were other priorities, such as needle stick. However, no policies have been seen with regard to the needle stick, CL-35 or deeming, despite being the ones highlighted as absolutely needing to be done.

The question in this regard is, in the Annual Report, page 7, policies that have been reviewed are listed, as well as a number of policies that were revoked. The problem is, it is difficult to identify, on some of the listed policies, which of them are dealt with under the titles listed in the book. Is it possible to go through the list and indicate what policy numbers they are?

Mr. Armstrong indicated he cannot do that off the top of his head. He committed to Mr. Travill to provide the specific policy numbers. However, specifically with respect to needle stick, there

has been considerable work done, and it is scheduled for the policy meeting in December.

The point was then raised that the Chair had said in the Legislature that CL-35 was going to take until the summer for passage; whereas, in the past, the statement has been made that the Board develops 12 to 24 policies a year. It was then questioned whether a six month development of one policy is inconsistent with the projection of 12 to 24 policies a year.

Mr. Armstrong replied that Bill 83 contemplates public/stakeholder consultation and involvement, which causes time lines to be stretched. If the issues are to be effectively discussed, and receive back concerns, it will take longer to do. It is not realistic to try to complete 24 policies in a year if public consultation is involved.

BEAR ATTACK FILM

A participant pointed out that a group had applied to the Benefit Enhancement Fund for funding for a bear attack video. The figure of \$80,000 has been suggested.

The question is, has there been a commitment to spend that money on a bear attack video?

Mr. Armstrong replied that the organization referred to did not make a submission to a reserve; they made a submission to the Board to produce a couple videos. The amount is in the neighbourhood of \$60,000, and a commitment was made to fund the project.

The speaker found this expenditure to be astounding. He questioned how many workplace injuries result from bear attacks; what is the frequency of that, compared to the frequency of other injuries? There has to be some justification for spending this money, in light of the fact that people, as a result of CL-35, are getting benefits of \$8 per day.

Mr. Armstrong was not able to say how many bear attacks there are, but they do occur; as well as close encounters. The primary concern was related to people working in the exploration business, which is increasing in the territory. The concern is that this type of accurate and useful prevention information is not available to train people.

Mr. Armstrong indicated that a side benefit to the production of this information, as well as being beneficial for work sites, is that the

general public can also benefit from watching the video.

He indicated that the total cost of the film was far more than \$60,000, and different industry groups are funding the majority of the expenses.

The intent is that the videos are interactive and do not require an expert to deliver the training; that any work operation can have the video available at the worksite and put on a training session. Some of the videos are fairly generic, in that there are common issues for various industries; however, others were quite industry specific.

The questioner is still interested to know the statistics on the numbers of attacks and the frequency, as that is the basis for the rationale for spending the money. He feels that this video should be the responsibility of Tourism or Renewable Resources.

The next question he had was to know what the plan was to get this information to the people working in the bush. Is this going to become required viewing for all those working in the bush?

Mr. Armstrong made it clear that this is not a Workers' Compensation and Health and Safety Board

initiative. It is an initiative by an organization called the International Association of Bear Biologists, particularly the Yukon branch. The majority of funding comes from outside of WCB. The WCB is participating in the initiative because there is value seen, that some workers are at risk in this area, and there is not a lot of information presently available.

The WCB is not taking on responsibility of delivering the training. They are participating in the development of the materials to put on the program. The intention of the organization producing the video is to make it as interactive as possible, so that it is usable at the worksite and does not need an expert to do the instruction.

Although Mr. Armstrong is not aware of the frequency of bear attacks, he stresses that the severity of the attacks is very significant. There is not likely a huge rate of frequency, but the severity of the impact is significant. If just one attack is prevented, it is worth the \$60,000.

The questioner indicates that Mr. Armstrong has still not answered his question. He would still like to know what the plan for delivery is going to be. For \$60,000, the proponents of the

video must have a plan as to how to get this to the people affected. Is there a plan; is Mr. Armstrong aware of a plan?

Mr. Armstrong answers that they have a delivery plan, but he does not have the details of it. He undertakes to obtain the plan from the proponent. The Board will receive in the order of 25 videos, and the intent is to make them available at their offices, as well as the school and any other appropriate locations, i.e. Watson Lake, Dawson City.

Another speaker expressed the opinion that the Board was just throwing the money around on this project, because those people working in camps carry guns and that is all they really need. He has never heard of any major run-ins with bears, other than the usual skirmish which is quite easily taken care of.

This particular worker suggested that the WCB should consult with the stakeholders, as it is their money; or maybe the Injured Workers' Alliance could get money to make their own video for the purpose of enlightening the Board on what their life is really like on the street.

CL-35

A participant pointed out that the addendum to Policy CL-35 had been indicated, in the Legislature, as having been approved by the Board.

He asked each member if they had approved that policy.

Mr. Radwanski indicated he was not on the Board at the time. Ms. Waroway indicated that they did not approve it as a policy; as a board, they did sit and were aware of it and accepted it as an addendum.

The speaker then referred back to the Gladish Report, and read the statement, "It is important that the Board not lose sight of the needs of those whom it serves when developing new policy. Must never satisfy their own interests or overlook the needs and interests of the stakeholders." He then read a recommendation from the report: "The policy and planning directorate must provide external stakeholders, as well, a greater opportunity to bring forward the issues or concerns for review."

He pointed out that the Gladish Report preceded CL-35 by eight months. He declared that no one told the Injured Workers that CL-35 was being brought out; therefore, the Board ignored the recommendation in the Gladish Report.

The questioner then asked why the Injured Workers' Alliance wasn't consulted about CL-35 before it was put into effect. He suggested the WCB is stealing money from the injured workers pockets to subsidize the employers' assessment rates.

He then pointed out that, as a carpenter, he can earn \$25 per hour, and the employer pays assessment rates based on \$25 per hour. If the worker is injured after working for two months, the WCB asks for income tax records that show he's been on Employment Insurance for the past 10 months. If his income averages out to \$8 per hour over the year, he will only be paid 75% of the \$8 per hour.

The speaker then suggests, in order to be fair to the injured worker, before any employer hires a worker, they should ask for the income tax return so the assessment rate is based on the previous 12 months of earnings for the worker they are going to hire. Because, at the present time, the employer is paying assessment rates based on \$25 per hour, and then WCB is only paying the injured worker 75% of \$8 per hour.

Ms. Waroway replied that she did not realize that people were being asked for their income tax

records.

Mr. Meyer indicated he was aware of the request for income tax records. He feels it is part of what he would view as normal process, to establish a record of earnings in order to establish a benefit level. Generally, the employers provide this information through payroll records.

The questioner stressed that, if he works for two months before injury, his earnings should be based calculated on what he earned during those two months, not the previous 12 months.

Mr. Meyer posed the question, with respect to a long term disability, as to how an annual income pattern can be established if income tax records are not considered. Do you just take the word of the employee, as to what they earned?

The questioner indicated that this is not just a long term situation; that any injured worker is affected. He then asked the Board members if they were going to immediately remove the addendum, CL-35; or were the workers just going to receive lip service, saying, Yes, in six months, we're going to deal with this.

An example was given by another speaker, of a

person acquiring insurance for a vehicle, shortly after which they are involved in an accident. He indicated that, even if they had only been covered for a week, they would still be covered. Would the board members be happy with an insurance company that refused to pay their damages because they had not held the insurance for a full year?

Ms. Waroway indicated her understanding is the insurance would be in effect immediately. There was agreement that the board members would not like to be informed that their vehicle would not be covered.

The questioner then likens the situation to a worker, where they may be employed for one week, one minute, it doesn't matter. If the accident happens on site and it's covered by Workers' Compensation, the worker should be covered. He feels it is very difficult for the board members to put themselves in the shoes of someone working out in the field and being seriously injured, and he wants to know why they feel a determination of loss of income should be based on what the injured worker earned previous to the job on which they were injured. If a person is working for X dollars, the compensation should be based on X

dollars; nothing else. He asks if he is being unreasonable when he suggests this scenario?

Mr. Meyer responds that he doesn't think the questioner is being unreasonable.

BEAR ATTACK VIDEO

In response to a question, Mr. Armstrong indicated that the \$60,000 for the video was being funded out of the Compensation Fund, but not from the Benefit Enhancement Fund. It is not a drawdown, withdrawal or commitment against the Prevention and Benefit Enhancement Fund.

It was indicated by another person that, when he talked to two board members just minutes ago, they had indicated that it was coming out of the Benefit Enhancement Fund. Is it coming out of the Benefit Enhancement Fund or is it coming out of the Workers' Compensation Fund; or where?

Mr. Armstrong indicated that it is all part of the Compensation Fund. What is referred to as the Prevention and Benefit Enhancement Fund, is not a fund; it is a reserve. There are several reserves within the Compensation Fund. The video tape is a charge against the Compensation Fund. A pitch has been made by two organizations that this video is something that fit within the prevention area, that

it was something Workers' Compensation should be involved in.

A Board decision has been made to commit against the Compensation Fund for the video; it is not a charge against the Prevention and Benefit Enhancement Reserve.

EXCESS FUNDS

A speaker raised the issue that Workers' Compensation had found there was \$30 million above and beyond what was really needed; that \$20 million was given back to the employers. He questioned the name of the reserve this money went into.

Mr. Armstrong indicated it was called the Rate Transition Reserve. He further clarified that he, personally, as had been implied in the question, did not find that there was too much or too little money; and he didn't move any of the money. As a result of the legislatively required yearly actuarial review of the benefit/liability, the benefit/liability was found to be overstated and needed to be brought in line with the assumptions that the independent actuarial firm made. They made recommendations to the Board as to what the appropriate level for the benefit/liability should be, and the Board made a decision about that.

There was in the neighbourhood of \$30 million difference; approximately 20 million went to the Rate Transition; approximately 11 million went into the Prevention and Benefit Enhancement Reserve.

The speaker indicated the part that annoys him the most is the term they applied, "Prevention and Benefit Enhancement". He indicates this leads back to the OH&S, and he does not believe this should be part of the Workers' Compensation Board package.

He does not believe OH&S should even have offices at WCB as they relate to everybody prior to an accident, not just injured workers. It appears the reserve is being put aside for the employers, regarding prevention, but it should be put aside for the workers.

Mr. Armstrong responded that, in the Strategic Plan, one of the common threads that runs through it is the idea of prevention; preventing a disability from happening, because it would be best if nobody was injured. However, if a disability does occur in the workplace, efforts should be made to make sure this does not happen again; and secondly, dealing with the person who experienced the disability. So, throughout the Strategic Plan, there is an intent that preventing disabilities is

a worthwhile goal; whether preventing it from reoccurring, assisting the worker to get back to work, eliminating the disability, etc.

The speaker reiterates that he feels the reserve should be called only the Benefit Enhancement Reserve.

CL-35

Why is this policy not on a regular policy statement form, like other Board policy statements and directives? Why did it take so long to get a signed copy of CL-35?

Mr. Meyer responds that it's not a policy document, it is a policy application, and it is an internal working document for application of policy, like a directive.

A copy of a directive was then shown, and the question was repeated; why was CL-35 so different in appearance? The speaker indicated he found it curious that the one thing that has affected the benefits for injured workers so profoundly is a document that is different from everything else, and took the Workers' Advocate almost two years to get a signed copy.

Another question related to why an annual income pattern is what is to be considered in

assessing loss of income. Section 22 refers to worker's weekly loss of earnings; section 23 also refers to worker's weekly loss of earnings. Why does an annual pattern have to be established?

Mr. Armstrong responded that, in CL-35, there is a list of different methods that may be used in calculating loss of earnings. The majority of times, when a report is received from an employer, the earnings are clearly indicated and there is no difficulty in determining the loss. However, there are times when that information is not provided, or the worker is not of a permanent nature with the employer, doing seasonal work, where the Board may look at using other periods of income to determine the loss.

The question was raised, why not use the hourly or weekly income? Mr. Armstrong indicates that the question is a very good one, and one that must be resolved. However, in regard to CL-35, the board has done considerable work; has become aware of issues and concerns; has committed not to pass a new CL-35, but to consult with stakeholders on CL-35 before it is passed. However, prior to going out to consult with stakeholders, they wish to have a look at what form of consultation they are going

to use; this will take place in January. The next thing on the list is CL-35, at which time all the questions will be dealt with, and a policy statement will be arrived at which meets everyone's needs.

The speaker points out that, in several of the documents, the words "fair and just" are used, and he suggests that the current application of CL-35, averaging income over the year, is not fair and just. He suggests that it would not affect the consultation methods if CL-35 was simply revoked, and the Board go back to the old policy of calculating loss, and strongly urges the Board to follow this line of action, until a new policy is put in place.

Mr. Meyer indicated the Board would take this under advisement.

Another speaker provided the information that, prior to CL-35 coming into effect, the Board determined the rate of compensation based on the hourly or weekly rate immediately before the accident took place. The Board would first apply test (a); if test (a) is not applicable, the Board would proceed to test (b). Test (a) was a calculation of the worker's hourly rate at the time

of the disability, times the weekly hours of work, times 52; and (b) was a calculation of the worker's annual salary, divided by 52. If it was required to use either three or five years, there was provision for the Board to use a longer period of pre-injury accident earnings.

The board was again strongly urged to revoke CL-35 while they were contemplating what the policy should be. Mr. Arden reiterated that this would be taken under advisement.

Mr. Armstrong confirms that Mr. Meyer is right, in that, with a policy statement, there is a step that happens prior to that, and there is a Board submission, which, depending on the issue, might outline rationale, options, impacts, etc. That submission would go to the board, who would review that and make its determinations around what it saw as appropriate, and instruction would be given back that a policy statement be developed, and then the policy statement comes back to the board and is reviewed to insure that the policy statement reflects what the intent of the particular policy, and then the board signs the policy off.

The issue that is being wrestled with, in

relation to CL-35, was that the original came in, in July of '93 and was made retroactive to January 1st. A submission went forward in 1995, to make changes to CL-35. That submission was turned down and no changes were made; the policy stayed as it was.

Application problems continued, administratively, with CL-35, and went back to the board, requesting further direction or clarification of the board's intent for CL-35. The application document is as a result of that; there was very specific direction given, as to how CL-35 was to be applied. That document was reviewed with the board February 12, 1997, and was signed off.

But there is not a submission that goes with it.

The question was then raised, What were the application problems with CL-35 as it existed?

Mr. Armstrong explained that there was difficulty in selection of which one of the particular areas, of the descending order on the back page of CL-35, suited a particular claim, and they did not want inconsistency in the application.

So they went back to the board and asked, What is a consistent application; how is this specifically to be applied? The intent was the specific

application of that policy.

There was then the question that surely someone must have realized what an adverse effect this was going to have on seasonally employed injured workers, who are injured soon after entering into the construction season. Mr. Armstrong responded that it would be safe to say that an understanding of the seasonal question, as well as a number of other questions, were certainly discussed. Changes to CL-35 were intended to take those sorts of things into account. The Yukon Federation of Labour has made a proposal in relation to that. But at the Board level, in 1995 and 1997, certainly there was understanding around this issue, but there was not resolution to the issue; and without resolution to the issue, administratively, clear direction was required on what was to be done with that policy.

The next speaker asked whether CL-35, as proposed, was an addendum or an application. Mr. Armstrong answered that it is an application document related to CL-35. It is not a policy, itself. In answer to a further question, Mr. Armstrong, indicated that he did not write the application document at all.

Another member of the audience explained that each level of appeal is to follow the Act and the policies approved by the board of directors. The Act also lays out that the policies of the administration and the board of directors are to be made public. We are now in the situation where we have Act, policies, directives, applications and addendums. Only the Act and original policies are made available.

If, now, the directives, applications and the addendums are being used to make determinations in the overall adjudication of a claim, should they not be made publicly available and be contained within the policy manuals that are submitted to the general public and to the representatives of workers who have those documents? When we are in the situation of using documents, procedures, policies and addendums that are not disclosed to the public, there is something wrong with that setup.

Mr. Armstrong first clarified that appendices, addendums, attachments to policies are attached right to the policy when they are circulated.

The speaker pointed out that we are talking about a policy that was passed in 1997; his manuals

are more up-to-date than that, and this application was not in his manual.

Ms. Ruddy agreed with the speaker that, from an appeals standpoint, he had a very valid point.

This issue has not come up before but, having now been raised, it is something that is worth taking a look at.

Another speaker asked how long it took to give the Workers' Advocate a signed copy of this addendum to policy CL-35. Mr. Armstrong answered that he did not know. The speaker then asserted that the Workers' Advocate indicated it took over a year and a half to get a copy.

The speaker then referred to section 93 of the Act, "Make publicly available all policies of the Board relating to claims procedures, assessment procedures, occupation health and safety". It is very clear that these policies are to be made available to the injured workers. In 1995, a commitment was made to mail any addendums to the policies to the Injured Workers' Alliance; that has yet to occur. It is difficult to fight issues because the information is not made available to the workers. "Why have you not told us about this new addendum to the policy, in the 1997 Annual

Information and the 1998 Information Meeting?"

Mr. Armstrong answered that it is not a new policy.

The question was then asked, "Why didn't you give it to us at the 1997 or the 1998 Annual Information?"

Mr. Armstrong responded that the application document is not a new policy. The Administration went to the board and said, we are having a problem consistently applying CL-35. What is the intent?

What is the application of CL-35? The application document is a response to that; it is CL-35.

The question of why the workers were not informed of this application document was then placed to the board members in general. Mr. Meyer answered that it was not new policy; it was akin to a management directive to staff, as to an attempt to instruct them to consistently apply the intent of the original policy CL-35. It was an internal administration document, directing adjudicators and staff how to consistently apply CL-35. It was not a change in policy. All changes to policy are to be published, but this represented, in the view of the board at that time, no change to policy.

Ms. Waroway and Mr. Radwanski indicated they

did not know why it was not publicly distributed.

It was strongly argued that, even if the board did not see this as a new policy, certainly the people affected by it saw it as a new policy. The question was again asked, "Why did it take the Workers' Advocate a year and a half to get a signed copy of the application?" It was only received a week ago.

Ms. Ruddy indicated that the unearthing of the signed document had to do with examining, based on what has come out in the media lately, whether or not the board had been aware of and had approved that application document.

Mr. Travill explained that, in February 1998, the policy came into effect, and the Administration started using it to determine claims. In approximately March of 1998, complaints were made, formally and informally, about it. July 9, 1998, he wrote a letter to the chair of the board, John Wright, and specifically requested whether it had been signed by the board; and outlined the adverse effects it had on a number of cases.

Following that, the President was assigned to respond, and his response was that he'd get back to him in his own good time. Following that, the

issue has been brought up continually, especially at Annual Information Meetings and, on Friday last, after discussions with the new communications individual, a signed copy was provided. The original document was received from one of the adjudicators in early March, but the question of whether the board had signed it was raised and, at that time, some of the board members were approached and they did know of it.

In response to further questioning, it was indicated by Ms. Ruddy and Mr. Armstrong that they do not have an answer as to why it took so long for a signed copy to be received. However, Mr. Armstrong pointed out that the document received by the Workers' Advocate, in March, is the same document as the signed copy; however, it was not signed.

LEGAL FEES

In 1998, \$208,000 was spent on legal fees. How much of that was spent on the appeal panel legal costs, specifically related to Independent Appeal Panel counsel?

Mr. Armstrong does not have a break-out of the legal fees, but he will provide it by January 15th.

It was pointed out by one of the speakers that

90% of all claims are settled satisfactorily; it is the other 10% that are having continuing problems.

He asked the board, do they feel they are capable of changing things so that the best interests of the 10% are treated in a very equitable way.

First, Ms. Ruddy clarified one point; the speaker had referred to representation, and all the board representing the injured workers. In terms of the composition of the board, there are two worker reps., two employer reps., a chair and an alternate chair who are neutral.

However, if the question is how the injured worker is viewed in making the decisions and what the board thinks should be done, Ms. Ruddy explained that that consideration is a major component of everything the board does. However, with respect to the question about change, and changing direction, there is a commitment from everyone on the board to make that change. However, this is a large organization, there are a large number of policies, there is a large history, and change is going to take time.

The board is comprised of citizens who have other commitments, and change is taking place as fast as possible. There is a commitment to change,

starting with the exercise of the Strategic Plan, there is a commitment within the organization and all of the board members.

The question was raised whether the board feels they are capable of making the necessary change in attitude. The board responded that they would not be there if they didn't think they could make changes.

PROFESSIONAL SUPPORT - RELATIVE IMPORTANCE

A speaker pointed out that the board lawyer has an extremely large, plush, office. The board doctor has had his office downsized to a little desk in a little room. The perception is that legal issues are more important than medical issues. The question is, Why has this perception been created?

Mr. Armstrong pointed out that the medical consultant's office serves two purposes: it is a medical office but; also, it is an examination area. The medical consultant's office is approximately the same size as any other management group office.

It was explained that the office that legal counsel uses is no bigger and no smaller than the office of other senior managers in the

organization. Mr. Armstrong has not measured the offices to know precisely the sizes, but he emphasized that there is no significant difference among them. Some of the furniture in the legal consultant's office has been taken from other offices in the building. Because of things that happen in a medical examining room, it would not be a prudent move to have a lawyer using it for his office.

The questioner then asked if he could measure the offices. Mr. Armstrong replied that, rather than measure, he could look on the blueprint.

CL-35

Mr. Armstrong was asked, since policy CL-35 had not been enforced previously in the manner it is being done now, whether it was his instructions that caused it to be enforced now. Mr. Armstrong answered that, as Chief Executive Officer, his responsibility is to ensure that the policies of the board are implemented and followed within the organization. If the board issues a document instructing things to occur, it is then his job to have it implemented.

The questioner then asked, since the board is his boss, how can he instruct the board to enforce

the policy? Mr. Armstrong clarified that he instructs the staff, not the board. He takes his direction from the board.

Mr. Armstrong explained that the application document was reviewed and approved by the board members. Once that was done, his duty is to see that it is implemented. Once any policy has been approved, it is not a question whether he agrees or disagrees with it, it is his job to have the policy implemented.

The questioner then asked whether it is true that, when somebody has difficulty interpreting a policy or an appeal decision, they do not go back to the board to find out what they really meant; the internal officers just go ahead and interpret the appeal or policy the way it is?

Ms. Ruddy indicates that she disagrees with that. She explained that there are occasions, depending on the decision, where Administration has come back to the panel and asked for clarification on a decision. She is not suggesting this happens in every case; however, it does happen that, where there is need for clarification, that the appeal panel is turned to for clarification.

The issue was again raised regarding the

request for a copy of a signed policy. It was indicated that it took 18 months to receive the signed copy, after being asked for. Through questioning by the board, it was established that an unsigned copy of CL-35 had been provided within a month of asking for it. However, Mr. Travill explained that, if a signed copy had been provided sooner, it would have changed the manner in which the issue could have been addressed to the board.

When there is an unsigned copy, with no indication from the board or the administration that it has been signed, then it has to be dealt with as issues of an appeal under the Act and under the policies, not as an issue of a policy that is accepted by the board and therefore can only be changed by the board.

GENDER BALANCE FOR MEDICAL CONSULTANTS

A member of the audience pointed out that, seven years ago, he had raised the issue of gender balance for medical consultants. At that time, the medical consultant was and had always been a male.

It was agreed that there should be a choice for workers, particularly when examinations are involved. It is his impression that this issue has never been dealt with, as there is still only a

male medical consultant.

Ms. Waroway responded that the board has a female doctor that a woman can ask for.

The question was raised whether it had been made known to the workers that the choice was available. It became evident that it was not clear whether this information had been made available to workers. It was suggested that injured workers be told immediately that they have a choice as to the gender of the physician.

Mr. Brohman then expressed his support for the Injured Workers' Alliance, in their call for the removal of the current medical consultant.

LEGAL CONSULTANT COSTS

Ms. Ruddy was questioned whether there is a budget figure for legal services for the year 2000.

Ms. Ruddy answered that the budget will be dealt with on the coming Friday. She was then asked whether the Injured Workers' Alliance would be able to get a copy of the budget for legal services.

Ms. Ruddy was not sure what the position was, but she assumed that it would not be available at this point as nothing had been approved yet.

When further questioned about its availability after it had been approved, Ms. Ruddy replied that

she had not considered this situation before, and she would like an opportunity to consider issues of confidentiality, etc. Her initial reaction is that there shouldn't be a problem to get a proposed budget for legal services, but she will have to consider it further.

FURNITURE FOR WORKERS' ADVOCATE

The question was raised that, since the workers' couch and chair has been removed from the front entrance, would the board members approve a couch and chair for the Workers' Advocate's office so the injured workers could have something to sit on. Ms. Ruddy responded that the Workers' Advocate office has its own budget that is under consideration.

The questioner then asked if the board would be able to increase the budget by \$2-3,000 so a couch and chair could be purchased. Ms. Ruddy explained that the Workers' Advocate budget is done in negotiation with Justice, so they would be the ones to speak to.

(Proceedings adjourned)

(Proceedings reconvened)

EXAMINATIONS BY MEDICAL CONSULTANT

A speaker asked what kind of examinations the

medical consultant performs. Mr. Armstrong explained that the medical consultant fills a number of rolls. Some are training and educational in nature; medical opinions; examinations where required.

The questioner then asked what would constitute the need to perform an examination. Ms. Lilles responded that where the medical consultant might do an examination would be in those situations where perhaps the attending physician asks for the medical consultant's advice. This occurs when the problems are somewhat unique and the attending physician wants a second opinion from someone who has expertise in occupational injury.

Another situation would involve a worker who has a permanent impairment, where the medical consultant does the examination. These are the two main situations.

The speaker then indicated that she had participated in the recent Workers' Compensation Act Review, and that she was made to understand that the medical consultant's role is to offer education and advice to the board or the appeal panel, etc., on a medical condition; not about an individual workers medical case and what the

problem is. So her understanding is that examinations should not be performed by the medical consultant.

She further asserts that, if a second opinion is being asked for, as a specialist in occupational medicine, it would appear to be a conflict of interest; the attending physician would want a second opinion from someone who is totally independent of the board. Mr. Armstrong responded that the inference is not being made that, when further expertise is sought by the worker's doctor, that they necessarily go to the medical consultant.

It may be that the worker's doctor asks the medical consultant to do that and, if the worker's doctor asks him to do that, that is fine.

A follow-up question was, If the worker's doctor asks the medical consultant for a second opinion, would the doctor be asking for the opinion from him/her as another doctor in the community, or as the Workers' Compensation doctor? Mr. Armstrong's opinion is that the worker's doctor is asking another doctor for a medical perspective, and it is the doctor's qualifications that are relevant, not that they are the medical consultant.

When the medical consultant provides a medical

opinion to another doctor, it is done on a doctor-to-doctor basis.

The questioner indicated that her understanding is that if the board's medical consultant sees a worker, on the request of the worker's personal doctor, not as part of the medical consultant's duties, then the medical consultant cannot see the patient on behalf of the WCB. Mr. Armstrong replied that, in that case, the doctor would want to be very careful and exercise discretion about seeing the patient in dual capacity. The medical consultant would want to be very careful not to put themselves in the position of providing a second opinion based on their area of expertise, and then providing a medical opinion in relation to their role as the WCB medical consultant. The WCB has an alternate medical consultant who could provide the medical opinion for the WCB, so that this conflict would not arise.

The speaker then indicated that she had understood Ms. Lilles to say that, when the worker's doctor asked for a second opinion from the medical consultant, that the opinion was being asked of the consultant as the WCB doctor with a particular specialty. Ms. Lilles responded that

that was correct; she is not sure how other jurisdictions operate but, simply due to the size of Yukon, there is not a broad range of specialists here, and that the board's medical consultant is the only doctor in the territory with a specialty in occupational and environmental medicine, and other physicians in the community respect his work in that area; so, when they need someone else to review a file for them, they will ask for his expertise in the area.

The speaker reiterated that her understanding is that the medical consultant's function is to be a consultant on medical education kinds of things, and not to do medical examinations. Mr. Armstrong responded that the medical consultant is performing examinations only if he is asked by the attending physician, or dealing with a permanent impairment award in which the doctor deals with a series of measurements, etc., to arrive at a medical measurement of permanent impairment.

Mr. Armstrong explained that a measurement for a permanent impairment is usually made in a two year time frame; usually the person experiencing the impairment has reached a plateau at that point.

A permanent impairment award does not end a claim;

the claim is still existing for a long time afterward. If the person's abilities decrease, they may come back and ask for a further measurement.

LEGAL COUNSEL

In response to a question, Mr. Armstrong indicated that the WCB has a lawyer on staff, four days a week. His purpose is to provide legal advice; to assist the organization in insuring it complies with legislation; to insure it complies with policy; to assist in insuring that occupational health and safety investigations are done properly; to assist in the area of prosecutions under the Workers' Compensation Act; to coordinate the information to the Department of Justice, in the area of Occupational Health and Safety prosecutions; to carry forward all subjugated claims, etc.

The speaker asked the question that, if you have a lawyer making sure the WCB is doing the right thing, why is it that the injured worker can't have a lawyer full time on staff? He indicated that the Workers' Advocate has done a great job and has met with a degree of success, but he wonders why there is not a full time lawyer

available to look after the legal requirements of the injured workers.

Ms. Ruddy answered that the quick answer is that the legislation expressly prohibits the board from paying legal costs. However, she did note that, in respect of the appeal panel, there is independent appeal panel counsel provided. There is no one presenting and arguing a case on behalf of the Administration at the appeal, unless someone is brought in as a witness at either the request of the panel or independent appeal panel counsel.

CL-35

The next speaker read from BD04, which states: "This policy is adopted to provide guidance for all branches of the Corporation, setting out a comprehensive approach to policy development and application." CL-35 is a policy application statement, it didn't go through the normal route.

Therefore, he suggested that policy BD04 has been contravened.

Mr. Armstrong responded that there is not a question that CL-35 did not go through the normal route. What he explained is that he had said previously that there was no policy submission developed for that application document. There are

other times when a straightforward policy statement will go to the board and there isn't a submission attached to it. A submission is not required on each and every issue that the board may have to make a policy decision on. There may be a small question that does require a decision by the board and, in those cases, it may simply be a policy statement that goes to the board for their consideration, discussion and approval or change, or whatever happens. But not everything that goes to the board, for policy, has a policy submission.

CL-35 did not have a policy submission, but that does not mean that it did not go to the board. In fact, it did go to the board.

Ms. Ruddy further explained that, when they receive something that does not have a full-blown submission attached, that it is simply a matter of saying, "Okay, here it is, yes, sign." A lot of the material comes orally, there are discussions and presentations made. It is not just a matter of something is put in front of the board, it is signed and taken away.

One of the speakers indicated that he had been in the workforce for 48 years. In the past, when a person got hurt, the only questions asked about

wages were what the hourly wages were on the day you got hurt, and how much did you earn per week, and that was the basis for the compensation. However, now the worker is being asked for his income tax return, which is supposed to be a private document, and the WCB wants to look at it to determine the loss of income over the year. He does not understand how this can be done.

Ms. Ruddy explained that it was only logical to require some verification of income, and the income tax is simply one form of verification. Mr. Armstrong supported Ms. Ruddy's comment, and pointed out that the income tax or a T-4 slip is not the only way that loss of earnings or prior earnings can be verified. However, there are times, when all other avenues have been explored, there is no other way to verify income.

The speaker then expressed that the WCB, in the past, has never asked how long you have worked.

The question has always been, when did you get hurt and how much did you make, and the compensation has always been based on how much you earned on the day you got hurt, and how much you earned the week prior to that.

LEGAL COUNSEL

The next speaker told the meeting that he had written a letter, asking one of the vice-presidents to explain the difference between the roles of a board lawyer and the administration lawyer. He received a letter last July, saying the president was going to respond. This has not happened.

He then asked the question, What is the difference between the roles of an independent appeal panel lawyer, and the Administration lawyer?

Ms. Ruddy explained that independent appeal panel counsel's role is primarily to protect the integrity of the appeal process, to insure that all relevant information is put before the appeal panel, and that all the relevant legislation and policies are brought to the attention of the panel, upon which they should be basing their decision.

The role is specific to the particular matter being dealt with, and their role is limited to that.

With respect to in-house counsel, the role is to advise Administration and, in some cases, the board, on broader issues, not so much on specific matters, to make sure Administration is abiding by the Act and everything.

The speaker then raised a question relating to

a letter he had received, and his confusion as to whether the letter was sent as independent appeal panel counsel, or as the Administration lawyer. Ms. Ruddy indicated she was not prepared to comment on specific cases. She explained that the other difficulty she has is that this example given by the speaker concerns a specific action, and she is not prepared to comment on anything that may be the subject of a court action.

The speaker reiterated that he is not referring to a specific case, but he just wants to know whether the lawyer's letter is being sent as independent appeal panel counsel, or as the Administration lawyer. He said it does not matter what the opinion expressed in the letter is, he just wants to know on whose behalf it is written.

Ms. Ruddy responded that she imagined it was coming from whoever signed the letter. The speaker explained that the lawyer signed it, but he doesn't know who the lawyer is representing. Ms. Ruddy explained that, without knowing all the details, there is no way she can answer the question, and she is not prepared to comment on a specific case.

The speaker again tries to raise a specific instance of conduct by counsel, and Ms. Ruddy again

indicates she is not prepared to comment.

The speaker then went on to express his belief that the Administration has paid legal counsel to coerce board members to breach their own act; yet they can't pay injured workers' lawyers. Ms. Ruddy responded that, number one, she has already answered the question about payment for legal counsel, which is expressly prohibited in the Act; number two, nobody is paid to coerce the board to do anything.

The speaker continues to try to talk about his own personal case, and Ms. Ruddy makes it clear, again, that they will not speak about specific cases.

MEDICAL CONSULTANT

The next speaker pointed out that in section 12(1) of the Act, it reads: "A medical practitioner who attends a worker who has or may have suffered a work related disability shall...." What interpretation does the board give to "A medical practitioner who attends a worker..."? Ms. Ruddy asks the speaker for an opportunity to look at the full section to get the context. After reading the section, Ms. Ruddy then responded that the definition would be that it refers to the attending

physician/family doctor.

The speaker then asked if it is correct that any other physician that may be seen in relation to anything to do with that particular injury, in the future, would not apply to this section. Ms. Ruddy indicated that "A medical practitioner who attends a worker..." would refer to anybody who, in the course of an individual's treatment, would be attending and treating that particular individual. An example would be when somebody is sent Outside to see a particular expert; they would be people who would fall under this section.

The next question related to a person who, of their own inclination, decided to see someone in relation to a back injury. Initially, it was a back injury, then it developed into a chronic pain situation, so they, of their own volition, went to see someone other than their own personal physician to get an opinion or a referral to someone else.

Would section 12(1) apply to all those people you see, even five years down the line?

Ms. Lilles answers that, in matters where the board is not paying for these doctors' visits, whether or not the board receives the reports from the various doctors is entirely up to the physician

or the medical practitioner who provides the service. If the claim has come to closure, and the worker goes on receiving medical care, there is no requirement on the medical practitioner to forward their reports to the board if the board has not requested the report and is not paying for it.

The questioner was unclear as to when a claim is still active. Ms. Lilles explains that if the claim has been closed, typically what happens is the adjudicator will write to the attending physician and indicate that this claim has come to conclusion and the board is no longer prepared to pay for services incurred in regard to this particular matter. That puts the doctor on notice that, even if they continue providing care, they no longer provide the WCB with reports and the WCB does not pay for the reports. However, if a person, in their appeal, wishes to bring this material forward as new information, they are entitled to do so.

A further question was asked, whether, if a person is still in appeal, and initiates a referral to an outside expert, at their own expense and own initiative, would the examining doctor be under an obligation to send their report to the board. Mr.

Armstrong replied that, no, they would not.

A follow-up question was, If, for whatever reason, the outside examining doctor, without notification to or discussion with the injured worker, sent their report to the board, what would the board do with the report? Ms. Lilles responded that the board often gets unsolicited reports relating to cases that are under appeal. This information typically comes directly from the doctor, and the board considers it new information, and the adjudicator pulls the file, reviews the information, and asks the question, "Is there something significant here that would cause you to reconsider a decision?"

The speaker then asserted that, if the board was going to consider this type of information, all workers should be notified now, so that they know, when they go to see a doctor, they should consider whether or not to let the doctor know that the information is or is not to be released to the board. When the information is released to the board without the worker's knowledge or consent, the doctor/patient confidentiality is totally broken. Her position is that, if the worker has not been informed that this information is to be

made available to the board, that WCB should not have any right to the information.

Ms. Lilles indicates that the real issue here is with the treating physician; they are disclosing information with respect to the patient, and should have their permission in order to disclose it. The board does not have a role in determining whether that permission has been given; they assume, by virtue of the fact the report was sent to them, that the permission was granted. Ms. Ruddy added the comment that, if that information is made available without the worker's knowledge or consent, and that fact is brought to the board's attention, the worker can ask to have it removed from the file.

CL-35

The speaker alluded to the fact that, when anyone retires on a pension plan, their pension relates to their highest income earned during a person's career, which is usually at the end of your career. It would appear that this logic does not apply to CL-35; that, in fact, CL-35 is being used by the board to reduce benefits as much as possible, by looking at a much wider range of earning capabilities over a seasonal employment.

He then asks the question, now that the board has heard from this group of people complaining vehemently about CL-35, and keeping in mind that some of the board members were put on the board by the people in attendance, when are you going to change CL-35, and is it going to be retroactive?

Ms. Ruddy responded that this issue is number one on the policy list, of things that have to be changed. The board has made a commitment to go to consultation on this because, as noted from today, there are a lot of people who want to make sure their concerns are heard with respect to this policy as well as others. She explained that her hope is that it can be dealt with as quickly as possible; however, she could not give a definite time-frame because it will depend partly on how the consultation process is carried out, and the process has not yet been decided upon. She did stress that the board recognizes there is an urgency and that it needs to be dealt with as quickly as possible.

The speaker asked the other board members to express their views. Mr. Meyer supported Ms. Ruddy's comments. Ms. Waroway said she hoped it is the first thing they do on consultations.

Mr. Radwanski indicated that, first, before consultation takes place, the amendment to CL-35 should be revoked as soon as possible, and the revocation should be made retroactive, and then go on to make new policy.

In response to a question as to when the next board meeting was, Ms. Ruddy indicated it would be held the coming Friday, December 17, and this matter can be put on the agenda. She would not give any indication as to what the outcome would be, but there would be no difficulty having a discussion on this issue on Friday.

BACKLOG OF CLAIMS

The speaker pointed out that there are a number of clients who are stuck two-thirds of the way through the process of having their claims dealt with. He then asserted that the only thing that will look good on this board is if they can come up, at this time next year, and say that they had resolved, to the satisfaction of X number of clients, this number of long-term claims to the satisfaction of the injured worker.

In light of that, he asked the board, can they say that they are going to make a determined effort to get some of the long-term claims off the books;

not kicked off the books, but satisfactorily dealt with. He would like to see, next year, the number of long-terms claims that have been satisfactorily resolved.

MEDICAL CONSULTANT

The question was asked, why does the board not retain their own medical consultant who is not a part of the practising medical practitioners in the community; in other words, one whose sole responsibility is to the board and not to the community at large? The speaker sees a huge potential for conflict of interest when the doctor has their own patients to deal with, and also has responsibilities to the WCB.

Mr. Armstrong replied that the one area that the current medical consultant deals with, outside of the WCB's role for the medical consultant, is allergies. The community requested that the medical consultant not remove himself from that area of practice, as he is the only one, locally, who has that area of expertise.

The speaker says that the medical consultant's area of expertise is irrelevant, since a person may get injured on the job and have to see this doctor in relation to Workers' Compensation, then later on

see the same doctor for treatment, irrespective of Workers' Compensation, when the doctor is in his own practice. To her perception, there is a tremendous potential for conflict of interest.

Ms. Ruddy indicated that they would take this matter under advisement.

The speaker then asked how much was set aside for retaining a medical consultant. Mr. Armstrong indicated he would provide the specific numbers by January 15th.

CLOSING COMMENTS

Mr. Travill took the opportunity to thank the board, on his own behalf and on behalf of the organizations he represents, for coming out and listening to the concerned citizens. He recognizes that it is a difficult situation coming out and addressing some quite unhappy people, but he believes this gives the board the forum to hear the concerns and complaints.

Ms. Ruddy thanked all of those who came in the afternoon and the evening for taking the time out of their busy days to be here and to share their concerns with the board.

(Proceedings concluded at 9:20 p.m.)