

Yukon Workers' Compensation Act
Subsection 105.(1) Research Series:

Combined Administration of the
Workers' Compensation Act and the
Occupational Health and Safety Act

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Combined Administration of the *Workers' Compensation Act* and the *Occupational Health and Safety Act*

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1.0 Introduction

The Yukon Workers' Compensation Health and Safety Board is responsible for the combined administration of two worker-related statutes, the *Workers' Compensation Act* and the *Occupational Health and Safety Act*. Subsection 105.(1) of the *Workers' Compensation Act* requires that a review of the *Act* be initiated no later than January 1, 2003. In turn, a requirement of the review, as outlined in paragraph 105.(1)(b) of the *Workers' Compensation Act*, is that the "effectiveness and appropriateness of the board administering both the *Workers' Compensation Act* and the *Occupational Health and Safety Act*" be considered.

The purpose of this study is to report on the required consideration of the effectiveness and appropriateness of the combined administration of both Acts by the Yukon WCHSB. At the time of project scoping the primary analytical tool identified for use in the examination of the effectiveness and appropriateness of integrated administration was the "business case". While cost and benefit factors of both quantitative and qualitative types were identified in the course of the research, the issues encountered were complex. As a result, the analysis which follows does not result in a ratio 'greater-or-less-than-one' type of conclusion as is commonly found in business case analyses.

The main methodology employed in the study was a document review. As the administrative history of the workers' compensation and OHS functions date back many, many decades, research efforts included the review of the reports of Royal Commissions on workers' compensation in three jurisdictions: Ontario (1967), Alberta (1975) and British Columbia (1999). A chance visit to the British Columbia Workers' Compensation Library proved to be most useful in locating the older reports.

The objectives of the workers' compensation (WC) and occupational health and safety (OHS) functions are complementary in intent. However, the development of each of the functions was quite different. Accordingly, Section 2 of the paper briefly examines the structural considerations which underlie the development of the two functions. Section 3 describes the factors identified and thought to be relevant to the assessment of effectiveness and appropriateness including the option of combining the Yukon's WC and OHS legislation. An assessment of the identified factors in the context of effectiveness and appropriateness is presented in Section 4. The paper wraps up in Section 5 with a brief conclusion.

2.0 Structural Considerations

2.1 Meredith's Compromise and the OHS Function

While in the Canadian context the historical development of workers' compensation systems and the occupational health and safety function may be shared, it is not all that similar. As a result, a thorough assessment of alternative approaches to the administration of the *Workers' Compensation Act* and the *Occupational Health and Safety Act* requires an examination of how the WC systems and the OHS functions have evolved.

In terms of jurisdictional authority, responsibility for the administration of workers' compensation rests solely with Canada's provincial and territorial governments. The Yukon workers' compensation system, like all others across Canada, was founded on the Meredith Principles. Often referred to as the 'historic compromise' between labour and business, the Meredith Principles have defined the relationship between workers injured on the job and their employers for almost 90 years. A key feature of the Meredith approach is that it is not invoked until a workplace injury occurs.

In contrast to workers' compensation, jurisdictional responsibility for occupational health and safety is shared between the provincial/territorial and federal governments. Occupational health and safety systems have been designed and implemented in all jurisdictions to prevent workplace injury so that compensation for injury is minimized or is not required at all. As a result, because the Meredith Principles speak to what happens only after a worker is injured in the workplace, OHS systems are not explicitly part of the 'historic compromise' between workers' and their employers.

One other factor in the development of OHS systems is also of relevance to the question at hand. While the identification of who should bear the compensation costs of workplace injury has been clear from Meredith's day, it has been much less clear who should bear the costs of OHS activities. On the compensation side of the equation, employers bear the direct cost of compensation through payment of premiums and in return receive protection from lawsuits arising from injuries. On the prevention side, with the exception of Quebec, premiums for the funding of OHS activities are not collected as a separate levy directly from employers. Funding is sought from other sources including WC premiums and tax-based revenues. Table 1 below shows how the OHS function is funded in different jurisdictions across Canada.

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Table 1: Source of funding for OHS function

Full WCB funding	Partial WCB funding**	Employer funded
British Columbia	Alberta	Quebec
NWT/Nunavut	Manitoba	
Ontario	Newfoundland	
Saskatchewan	Nova Scotia	
Yukon	Prince Edward Island	
Sources: (1) <i>Comparison of Workers' Compensation Legislation in Canada 2001</i> , Association of Workers' Compensation Boards of Canada, 2001, and (2) Susan Ryan, Yukon Workers' Compensation Health and Safety Board, <i>pers. comm.</i> * Between 1992 and 2000 the Government of Yukon provided funding to the YWCHSB in the amount of \$329,500 per year for OHS-related activities. As of the 2001 fiscal year, the Government of Yukon ceased to provide funding to the YWCHSB for OHS activities. ** In jurisdictions where a workers' compensation board provides only partial funding for the OHS function, the remaining funding is provided by a provincial government.		

In summary, the basic terms of the compensation relationship between employers and employees, including how compensation is to be funded, was clearly laid out by Meredith. The absence of a similar reference point for OHS has led to the relatively more disjointed development of OHS systems across Canada. To wit, an implicit objective of this study is to consider whether the OHS function should continue to be administered by the Workers' Compensation Board and not the reverse -- the continued administration of the WC function by a Yukon Occupational Health and Safety Board.

2.2 Assignment of Responsibility for the OHS Function

Evidence of the restless role of OHS in Canada can be found in the assignment of responsibility for the OHS function prior in the various jurisdictions. Prior to the 1970s, most workers' compensation boards in Canada were responsible for both the compensation and prevention aspects of workplace injuries. In the 1970s, however, the overall pattern began to shift away from combined delivery of OHS and workers' compensation functions to separate delivery. Between 1972 and 1990 several jurisdictions reassigned statutory responsibility for occupational health and safety from a workers' compensation board to a provincial government agency (Table 2).

Table 2: Reassignment of statutory OHS responsibility from a WCB to a provincial government between 1972 to 1990

Saskatchewan	Alberta	Manitoba	Newfoundland	Nova Scotia	Ontario
1972	1976	1977	1978	1985	1990
Source: <i>Comparison of Workers' Compensation Legislation in Canada 2001</i> , Association of Workers' Compensation Boards of Canada, 2001.					

Reversals on the assignment of responsibility for the OHS function in more recent years have resulted in a mixed pattern of delivery of the OHS function

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across jurisdictions in Canada. As shown in Table 3 below, out of Canada's 10 provinces and three territories, separation of responsibility for the workers' compensation and OHS functions is found in a total of four and responsibilities are combined in the other nine.

Table 3: Current assignment of responsibility for WC/OHS legislation

WCBs responsible for administering OHS legislation (in whole or in part)	Provincial governments responsible for administering OHS legislation**
British Columbia	Alberta
New Brunswick	Manitoba
Newfoundland	Nova Scotia
NWT/Nunavut*	Saskatchewan
Ontario	
Prince Edward Island	
Quebec	
Yukon	

Source: *Comparison of Workers' Compensation Legislation in Canada 2001*, Association of Workers' Compensation Boards of Canada, 2001.
* The Workers' Compensation Board of the NWT and Nunavut administers workers' compensation and safety legislation for both jurisdictions.
** Note that workers compensation boards in all 13 jurisdictions participate to some extent in OHS and prevention activities through information sharing and other measures.

3.0 “Business Case” Analysis

This study was undertaken in fulfillment of the *Workers' Compensation Act* paragraph 105.(1)(b) requirement that the “effectiveness and appropriateness of the board administering both the *Workers' Compensation Act* and the *Occupational Health and Safety Act*” be considered as part of the *Workers' Compensation Act's* 10 year review. The terms of reference for the study require that the primary tool of analysis be in the form of a “business case”.

While originally found only in the vocabulary of the for-profit private sector, use of the business case concept has migrated to the not-for-profit and government sectors over the last decade. Factors characteristic of the not-for-profit sector are often best described in qualitative rather than quantitative terms; workers' compensation and OHS issues are no exception. In addition, the issues specific to the fields of workers' compensation and OHS are complex and are not easily reduced to binary representations. As a result, readers are forewarned that the analysis which follows does not result in a ratio ‘greater-or-less-than-one’ type of conclusion.

A total of four key issues, or factors, with relevance to the examination of “appropriateness and effectiveness” were identified in the course of research.

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While the initial identification of the factors was found to be straightforward, distilling a factor to its essence was much more challenging. The writer took heart many times from an observation found in the report of the Royal Commission on Workers' Compensation in British Columbia that "the literature on workers' compensation contains more heat than light".¹ The five key factors identified and discussed in the remainder of this section of the paper include:

- current scope of the WC and OHS functions
- combined WC and OHS legislation
- degree of consolidation of the OHS function
- financial considerations
 - synergy of combined administration
 - OHS funding sources
 - relative OHS funding levels
- conflict of interest

3.1 Current Scope of WC and OHS Legislation

With respect to the application of the *Workers' Compensation Act* and the *Occupational Health and Safety Act*, the scope of coverage of each *Act* does not exactly match in terms of which industries are included. In the case of workers' compensation Section 2 of the *Workers' Compensation Act* provides that the *Act* applies to "all employers and workers in all industries". Notwithstanding section 2 of the Yukon *Workers' Compensation Act*, employees of the Government of Canada fall under the jurisdiction of the federal *Government Employees Compensation Act*. Under the federal legislation, employees of the Government of Canada working in the Yukon are deemed to be employed in the Province of Alberta and their claims for compensation are handled by the Workers' Compensation Board of Alberta.

The application of the OHS *Act* is somewhat narrower than that of the WC *Act*. Subsection 2.(1) of the OHS *Act* provides that it applies to "...and in respect of employment upon or in connection with the operation of any work, undertaking or business other than a work undertaking or business under the exclusive jurisdiction of the Government of Canada."² Thus, federal public servants and other individuals employed in the federally regulated industries are not included under the umbrella of OHS activities at the territorial level.³

¹ Government of British Columbia, *For the Common Good* (Final Report of the Royal Commission on Workers' Compensation in British Columbia), Volume I, chapter 2, page 5.

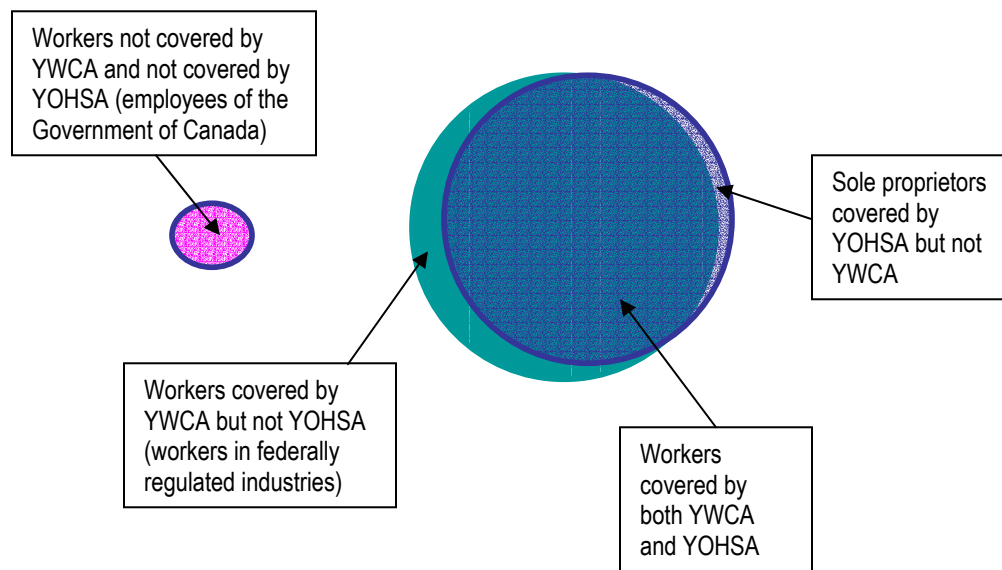
² Subsection 2.(1) of the OHS *Act* also exempts work performed by the owner/occupants on private residences and associated lands and binds the Government of Yukon and all boards, commissions, foundations, corporations or other similar agencies established as agents of the Government of Yukon.

³ Federally regulated industries include airports, telephone and cable systems, ferries, tunnels and bridges, radio and television broadcasting, banks, federal government departments and corporations, pipelines,

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While the application of the OHS *Act* is narrower, it does not mean that all workers covered under OHS legislation are also included in the coverage of workers' compensation legislation. Sole proprietors, regardless of type of business activity they may be engaged in, are not required to arrange for workers' compensation coverage. As a result, a relatively small number of workers who operate businesses structured as sole proprietorships who do not opt for workers' compensation coverage may fall under the regulatory eye of only the OHS *Act* and not the WC *Act*. The scope of coverage of the Yukon WC and OHS legislation is described in Diagram 1 below.

Diagram 1: Yukon Workers' Compensation Act (YWCA) and Yukon Occupational Health and Safety Act: (YOHSA): Scope of Coverage



Thus, in respect of the workers covered by one or both of the Yukon WCA and the Yukon OHS, the footprint of the OHS function generally fits within the footprint of the workers' compensation function. If all sole proprietors were to opt for workers' compensation coverage the fit would be complete. In terms of the effectiveness of joint administration of the WC and OHS functions, while it is difficult to conclude that the current approach is necessarily optimal, it can be said that other less-optimal arrangements are possible. For example, if the OHS

canals, shipping and shipping services, uranium mining and processing, grain elevators and inter-provincial and international transportation (e.g. railways, highways and air transport). At the national level it is estimated that 10 percent of the Canadian workforce fall under federal jurisdiction (from http://www.oshforeveryone.org/wsib/getting_started/understanding/understanding.html)

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function covered industries which were outside the scope of *Workers' Compensation Act*, it could be argued that the OHS function could be more efficiently delivered by another agency with existing linkages to the out-of-scope industries.

3.2 Degree of Consolidation of the OHS Function

As discussed in section 2.1 above, the systems of occupational health and safety which have evolved in jurisdictions across Canada have done so in the absence of a common set of guiding principles such as those laid out by Meredith in 1913. As a result, occupational health and safety legislation and regulations have tended to be introduced on a by-industry basis according to the development pattern of the industry. For example, according to an issue paper prepared in 1997 for the Royal Commission on Workers' Compensation in British Columbia, no less than 20 separate pieces of British Columbia legislation contain OHS references. The legislation and associated regulations apply to a wide span of industries ranging from mining, forestry and fishing to elevators, river rafting and aerial tramways.

In contrast, all Yukon industries, with the general exception of those under federal jurisdiction, are covered under a single statute and associated regulations. The Yukon *Occupational Health and Safety Act* was amended in 1992, the same year that the Occupational Health and Safety Unit was moved from the Government of Yukon's Department of Justice to the Workers' Compensation Board.⁴ The regulations associated with the OHS *Act* apply to both specific industries and activities such as mine safety, blasting and commercial diving as well as to pan-industry health and safety matters such as general safety, occupational health, first aid and radiation protection.

An alternative approach for the delivery of a subset of OHS functions has recently been re-instituted in Alberta. The approach is reminiscent of the early days of the OHS function when industry-specific safety associations were active on the front-line in the prevention of "industrial disease". While Alberta's Department of Human Resources and Employment continues to undertake to OHS enforcement activities, the Alberta Workers' Compensation Board provides funding to a number of safety associations to promote industry-specific research, training and education in safe work practices. Agencies funded include:

- Alberta Construction Safety Association
- Alberta Hotel Safety Association
- Alberta Municipal Health and Safety Association
- Alberta Trucking Industry Safety Association

⁴ The name of the Board was also changed in 1992 to the Workers' Compensation Health and Safety Board to reflect the reassignment of responsibility for the OHS function from the Department of Justice to the Workers' Compensation Board.

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- Metal Fabricating Health and Safety Association
- Petroleum Industry Training Service

The YWCHSB does not currently provide funding for prevention and safety activities to specific industry groups. All OHS activities directed to workers under Yukon jurisdiction are delivered by the YWCHSB. The high degree of consolidation of the OHS function in the Yukon likely contributes to a higher level of effectiveness than might be the case if responsibility for OHS activities were scattered among several departments and agencies.

3.3 Combined WC and OHS Legislation

The *Workers' Compensation Act* and the *Occupational Health and Safety Act* currently exist as two separate pieces of legislation. While both pieces of legislation are administered in tandem, they contain significant differences with regard to the making of operational policy.

Under authority of subsection 88.(2) of the *Workers' Compensation Act*, the Board may, by order, make rules consistent with the Act (and the associated regulations made under the Act). Under section 93, the board shall establish policies relating to various areas, including occupational health and safety, and those policies shall be made public. In other words, the Board may make and implement workers' compensation policy, including rules, as provided in the Act. In contrast, the *Occupational Health and Safety Act* does not confer any explicit occupational health and safety rule-making authority on the Board.

Thus, the key factor identified for consideration relates to the asymmetry in rule-making authority between the two pieces of legislation. The issue manifests itself as a call to combine the two pieces of legislation so that the asymmetry may be rebalanced by granting the Board more power to make OHS rules and policy.

The question of whether OHS regulations should be made under Board or Cabinet authority is by no means specific to the Yukon. Current practice in other jurisdictions, however, clearly favours a separation of responsibilities. Only in the jurisdictions of NWT/Nunavut, Prince Edward Island and British Columbia do workers' compensation boards have the authority to make OHS regulations. Further, the situation in British Columbia could quite possibly change in the near future. Both the 1997 Royal Commission and the 2002 Core Services Review recommended that OHS regulation-making authority be transferred to Cabinet from the British Columbia Workers' Compensation Board.⁵

⁵ Government of British Columbia, *A Review of Workers' Compensation Legislation Discussion Paper*, Ministry of Skills Development and Labour, June 2002, page 25. The Royal Commission recommended that a line department or a separate agency be responsible for formulating OHS regulations while the Core Services

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The issues which characterize the discussion around whether OHS regulation-making authority should be vested in the Board or government are many and varied. Table 4 below presents a summary of the issues. Note that current practice in the Yukon is a hybrid of the Board *or* government approaches. While only Cabinet has the authority to pass OHS regulations, the development of OHS regulations is the responsibility of the YWCHSB.

Table 4: Comparison of OHS Regulation-Making Authority

Board Authority	Government Authority
<p><u>Advantages</u></p> <ul style="list-style-type: none"> • Board has required technical expertise and experience in developing OHS related regulations • Board better positioned to make timely responses to changing industry conditions • Board is arms-length from government; “politically independent” process • If consultation requirement incorporated in regulation-making process, stakeholder views relatively easier to garner 	<p><u>Advantages</u></p> <ul style="list-style-type: none"> • Government better able to incorporate public policy objectives into regulations • Government expected to act in best interests of public even in absence of consensus • Does not require delegation of quasi-law making authority to an arms length agency which would constitute an exception to common law-making practice • Cabinet is elected and is directly responsible for its regulatory decisions
<p><u>Disadvantages</u></p> <ul style="list-style-type: none"> • Broader public interest perspective not reflected under bi-partite Board structure • Consensus-seeking nature of Board could limit number of regulations enacted • Limited accountability since public may not vote out Board • Inherent perception of unfairness resulting from agency with authority to make regulations also being the same agency with authority to enforce regulations (limited separation of power) 	<p><u>Disadvantages</u></p> <ul style="list-style-type: none"> • Under current Yukon situation, government does not have required technical expertise and experience in OHS field • Acquisition of OHS technical expertise and skills will require additional resources within government • Stakeholder input may be less effective with increased distance between WC/OHS client base and regulation makers

Source: Adapted from *Core Services Review of the Workers' Compensation Board* (report prepared by Alan Winter for the Government of British Columbia), March 2002.

Review recommended that the WCB should retain its role in the development of OHS regulations. Current Yukon practice is consistent with the Core Services Review recommendation.

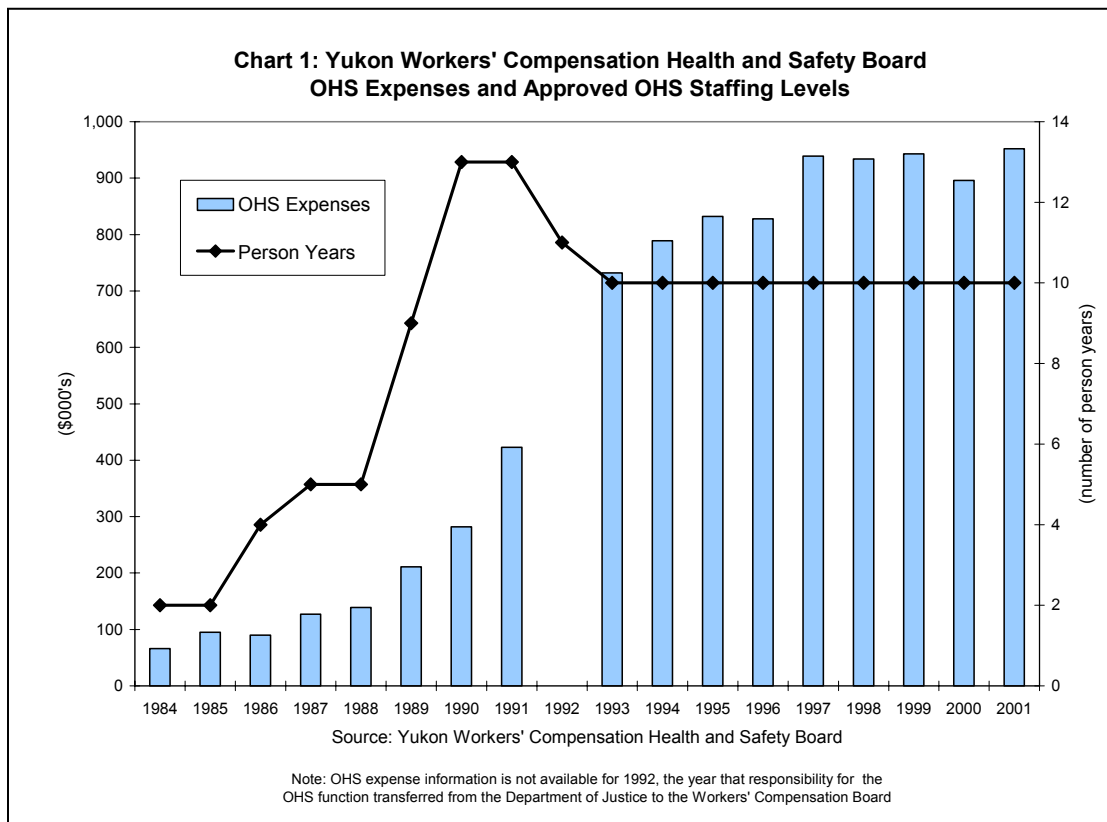
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3.4 Financial Considerations

With regard to the financial aspects of the question at hand, the effectiveness and appropriateness of combined workers' compensation and OHS administration, three financial considerations were identified: synergy of combined administration, OHS funding sources and relative OHS funding levels. Each of the three are discussed below. By way of background, Table 5 and Chart 1 below present some baseline financial information for the Yukon WCHSB.

Table 5: Yukon WCHSB Key Statistical Measures

	1999	2000
Total Premium Revenue (\$000's)	6,500	6,800
Total OHS Costs Paid (\$000's)	943	896
Compensation Fund Ratio (%)*	117.4	112.0
Source: <i>Key Statistical Measures</i> , Association of Workers' Compensation Boards of Canada, March 2002.		
* ratio of total assets to total liabilities (including reserves); 100% = fully funded		



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3.4.1 Synergy of combined administration

The first financial consideration concerns synergy, or the extent to which cost efficiencies can be gained by sharing access to administrative services needed for the administration of both the *Workers' Compensation Act* and the *Occupational Health and Safety Act*. The creation of synergies requires that the objectives of the workers' compensation and OHS functions not be at cross purposes.

No evidence was found in the course of research that would suggest that the two functions are operating with cross purposes. In fact, the mission statement for the WCHSB, shown in Table 6 below, clearly indicates that a high degree of integration and subsequent potential for synergy between the two functions.

Table 6: Yukon WCHSB Mission Statement

Working together with workers, employers, injured workers and their families, we focus on:

- preventing workplace injury, disease and disability;
- addressing the needs of workers and employers in changing work environments;
- fairly compensating workers with work-related disabilities; and
- helping workers overcome work-related disabilities in both human and economic terms.

We manage 'the fund' wisely to meet our long-term stewardship responsibilities on behalf of our stakeholders.

We ensure that our staff are knowledgeable, skilled and compassionate in providing a broad range of quality services to employers, workers, injured workers and their families.

3.4.2 OHS funding sources

The second financial factor identified concerns the source of funding for the OHS function. As noted in section 2.1, as of the 2001 fiscal year, the Government of Yukon no longer provides funding to the YWCHSB for OHS activities. In consideration of Meredith's historic compromise, it has been argued that WC premiums were never intended for prevention-focused OHS activities. The expenditure of premiums for a purpose other than compensation reduces the aggregate amount available for compensating injured workers. The argument suggests that to preserve the workers' historic entitlement, OHS activities should be funded from other sources such as general tax revenues.

According to the argument, one way of guaranteeing that WC premiums are not used to fund OHS activities is to place responsibility for the OHS function back with a Government of Yukon line department. Tax revenues could then readily be used to fund the OHS function. What the argument for separation of administration does not seem to fully consider, however, is that the spending on OHS activities is an investment in both the health of workers and the compensation fund. If prevention activities reduce injuries, payout demand on the compensation fund decreases and employer premium levels can be maintained or

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reduced. Thus, the key issue is not so much the source of funding for OHS activities but whether prevention activities are earning a positive return on investment.

In the circumstance that OHS activities were earning a 'negative rate of return' then it is true that funding the OHS function, in whole or in part, from WC premiums may constitute a drain on the workers' compensation fund. However, it is generally accepted that OHS activities do reduce the number and severity of injuries. In addition, as the Yukon workers' compensation fund is currently fully-funded, it appears reasonable to the writer to expect that the fruits of Meredith's historic compromise could be shared for the benefit of workers and employers alike. In the event that the fund becomes less than fully funded, this particular factor could perhaps be revisited at that time.

3.4.3 Relative OHS funding levels

The third financial consideration relates to the level of spending on the OHS function relative to other jurisdictions. The premise here is that a finding of OHS spending levels in the Yukon similar to spending levels in other jurisdictions should provide some assurance of the appropriateness and effectiveness of the combined administration of the workers' compensation and OHS functions.

According to performance indicator ratios for the year 2000 published by the Association of Workers' Compensation Boards of Canada (AWCBC) in March 2002, the Yukon board has the second highest level of OHS spending in Canada (Table 7). Measured in terms of OHS costs per \$100 of assessable payroll the Yukon spends \$0.17. Only in the NWT/Nunavut jurisdiction was OHS spending higher at \$0.20 per \$100 of assessable payroll. The spending level next lowest to the Yukon's is found in Quebec where \$0.16 per \$100 of assessable payroll was spent on OHS activities. Cost ratios for OHS, with the exception of Prince Edward Island, are lowest in jurisdictions where responsibility for the OHS function is separate from

Table 7: OHS Spending by Workers' Compensation Boards/Commissions - 2000

	Combined/separate responsibility for WC/OHS functions	OHS costs per \$100 of Assessable Payroll (\$)
AB	separate	0.03
BC	combined	0.10
MB	separate	0.07
NB	combined	0.11
NF	combined	0.12
NWT/NU*	combined	0.20
NS	separate	0.06
ON	combined	0.12
PEI	combined	0.06
QC	combined	0.16
SK	separate	0.07
YT	combined	0.17

Sources: *Comparison of Workers' Compensation Legislation in Canada 2001*, Association of Workers' Compensation Boards of Canada, 2001 and *Performance Indicator Ratios*, Association of Workers' Compensation Boards of Canada, 2002.
 * The Workers' Compensation Board of the NWT and Nunavut administers workers' compensation and safety legislation for both jurisdictions.

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workers' compensation. Note that the cost figures described above and in Table 7 do not reflect taxpayers' costs for OHS activities; only amounts paid by workers' compensation boards in the various jurisdictions are included in the calculations.

3.5 Conflict of Interest

Out of the four factors identified for analysis, "conflict of interest", while often referenced in the documents reviewed, was the hardest to pin down in terms of just what it means. Typically, conflict of interest refers to a financial transaction influenced for the benefit of an individual through use of authority or privately-held information. Alternatively, conflict of interest can be of a 'moral' nature where an individual imposes a particular point of view on a decision or transaction.

The individuals involved in the administration of the workers' compensation and OHS functions are public servants operating in a not-for-profit environment. As a result it is not immediately clear to the writer how an individual may improve their own "bottom line" through actions taken in the course of their duties. In consequence, conflict of interest is taken to mean, for the purposes of this study, as competing interests at the organizational level.

One example of "organizational conflict of interest" encountered was that which arises from the same department being responsible for, on one hand, promotion of resource development and on the other, the regulation of safety in the same industry. The premise is that worker safety can be compromised when the balance between the promotion and regulatory functions is weighted too heavily in favour of promotion. The issue is a non-starter in the Yukon context as the WCHSB plays no role in the promotion of resource and industrial development.

Another example of "organizational conflict of interest" appears to derive from the Yukon Board's bipartite composition. The Board includes equal numbers of employer and employee representatives and has governance responsibility for the OHS function. The potential for conflict of interest is said to exist because, it is presupposed, that the employer representatives on the Board can collectively exert their influence to ensure that the enforcement function is underfunded. An underfunded enforcement function would reduce the risk of employers of having to pay penalties if compliance with health and safety standards were reduced.

Thus, as the argument goes, employers can benefit from a reduction in their costs by relaxing compliance with prescribed health and safety standards at the expense of workers faced with increased risks of injury. The plausibility of such an argument need not be considered since the potential for such a conflict of interest is symmetric. Because the Board has equal numbers of employer and employee

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representatives, employers are equally at risk of at risk of the worker representatives exerting their influence to ensure that the enforcement function is overfunded. An overfunded enforcement function would increase the health and safety compliance costs faced by employers to levels in excess of those required to achieve the prescribed health and safety standard. Thus, according to this version of the argument, it is employers who are at risk of paying excessive costs for the safety of workers who cannot be found at fault for injury under the terms Meredith's compromise.

It would seem to the writer that what is more important than the plausibility of either perspective of the conflict of interest argument is the selection of competent representatives of both workers and employers. That is, members who are capable of working, within a board structure common to many jurisdictions, to determine an appropriate and fair balance between worker safety and employer-borne compliance costs.

4.0 Assessment of Effectiveness and Appropriateness

The assessment of the effectiveness and appropriateness of the combined administration of the *Workers' Compensation Act* and the *Occupational Health and Safety Act* requires an understanding of the meaning of each of the terms. This section presents definitions of each of the terms and a summary assessment of the factors identified.

Effectiveness, one of the trio of terms which together characterize the concept of comprehensive audit, is defined by Canada's Office of the Auditor General as *...the extent to which the outcomes of an activity match the objective or the intended effects of that activity*⁶. In the context of this study, the activity in question is the combined administration of the worker's compensation and OHS functions. The assessment does not consider the effectiveness and appropriateness of the delivery of the program activities of either the workers' compensation or OHS functions, *per se*.

Appropriateness, a rather more nebulous concept, is defined as *"the extent to which the design of a program or its major components, and the level of effort being made, are logical, given the specific public policy objectives to be achieved."*⁷ For the purposes of assessment, appropriateness is used as a reverse test - is the current approach of combined administration of the workers' compensation and OHS functions clearly identifiable as unreasonable in the circumstances?

⁶ Government of Canada, *Value for Money Audit Manual*, Office of the Auditor General of Canada, April 2002, page 88.

⁷ Prosser, Robert G., *The Role of Audit in Furthering Public Policy Accountability*, National Association of Local Government Auditors Quarterly, December 1995 (<http://www.nalga.org/qrtly/12.95C.html>).

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An assessment of the effectiveness and appropriateness of factors identified in the course of this project are summarized in Table 8 below.

Table 8: Summary Assessment of Effectiveness and Appropriateness

Factor	Effectiveness	Appropriateness
Scope of WC/OHS functions	<ul style="list-style-type: none"> except for employees of the Government of Canada, Yukon WC legislation covers all industries; footprint of OHS function generally fits within WC function (exception is sole-proprietors who do not opt for coverage) 	<ul style="list-style-type: none"> Yukon situation similar to other jurisdictions
Degree of OHS consolidation	<ul style="list-style-type: none"> OHS function highly consolidated; complementary WC and OHS mandates 	<ul style="list-style-type: none"> consistent with public policy objectives of ensuring worker safety
Combined WC and OHS legislation	<ul style="list-style-type: none"> occupational health and safety rule-making authority held by government means broader public interest representation; separation of powers serves to remove perception of unfairness; regulations currently developed by agency with most technical expertise and experience 	<ul style="list-style-type: none"> Yukon approach similar to most other jurisdictions
Synergy of combined administration	<ul style="list-style-type: none"> WC and OHS goals highly integrated; high potential for synergy 	<ul style="list-style-type: none"> separation of administrative responsibility likely to lower potential for synergy
OHS funding sources	<ul style="list-style-type: none"> not applicable (a dollar is a dollar) 	<ul style="list-style-type: none"> in addition to the Yukon, four other jurisdictions do not receive OHS funding from the relevant provincial or territorial government (Table 1)
Relative OHS funding levels	<ul style="list-style-type: none"> Yukon OHS costs high relative to other jurisdictions (second only to NWT/Nunavut) but not inconsistent with overall Yukon WCHSB operating costs 	<ul style="list-style-type: none"> examples of alternate approaches exist in other jurisdictions but potential for relative efficiencies in a northern jurisdiction unknown
Conflict of interest	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> industry promotion role separate from regulatory role; no scope for promotion-based conflict Yukon approach (bipartite board) common in other jurisdictions

5.0 Conclusion

Subsection 105.(1) of the *Workers' Compensation Act* requires that a review of the *Act* be initiated no later than January 1, 2003. In turn, a requirement of the review, as outlined in paragraph 105.(1)(b) of the *Workers' Compensation Act*, is that the “effectiveness and appropriateness of the board administering both the *Workers' Compensation Act* and the *Occupational Health and Safety Act*” be considered. The purpose of this study has been to fulfill the paragraph 105.(1)(b) requirement and report on the effectiveness and appropriateness of the combined administration of both Acts by the Yukon WCHSB.

The issues which characterize the debate around combined *versus* separate administration of the *Workers' Compensation Act* and the *Occupational Health and Safety Act* are not specific to the Yukon. A variety of approaches to the administration of workers' compensation and OHS which address those same issues can be found across Canada's 13 workers' compensation jurisdictions.

The Yukon's approach of combined administration under the direction of a bipartite board is not unique. It fits well within the parameters defined by practices in other jurisdictions. As a result, it is a conclusion of this research project that the current combined administration arrangement does not present any significant structural impediments to the combined achievement of the objectives of both statutes.

In addition to the finding that the combined administration approach is not unique to the Yukon, project research did not identify any factors which clearly suggest that the Yukon situation is significantly different than in other jurisdictions. In other words, in this circumstance, there does not appear to be anything unique about the Yukon situation which requires a unique solution. Thus, it is a further conclusion of this research project that in terms of the qualitative factors examined, the existing combined administration arrangement appears to fit reasonably well within the general parameters of effectiveness and appropriateness.

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