

Workers' Compensation Act Committee of Review

Final Report

2011



Ministry of
Labour Relations and
Workplace Safety

November 7, 2011

Honourable Don Morgan
Minister Responsible for The Workers Compensation Act, 1979
Room 355, Legislative Building
Regina SK S4S 0B3

Dear Minister Morgan:

The Workers' Compensation Act Committee of Review, appointed pursuant to section 162 of the Workers Compensation Act, 1979, respectfully submits this report of its review of the Saskatchewan workers compensation system.

The Committee members have appreciated the opportunity to be of service to the workers, employers and the public of the province of Saskatchewan.

Sincerely,



Dr. Roslyn Kunin



Dale Lindemann
Employee Representative



Craig McAuley
Employer Representative



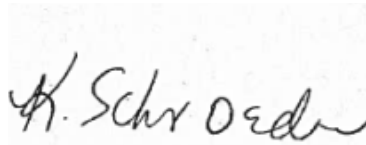
Shelly McFadden
Employer Representative



Marg Romanow
Employee Representative



Lori Sali
Employee Representative



Kaylynn Schroeder
Employer Representative

Acknowledgements

The Committee of Review extends its gratitude to the many individuals and organizations that participated in the review process through written submissions or presentations to the Committee. Each Member of the Committee sincerely appreciates the time and effort you took to share your experiences, concerns and proposals to improve The Workers' Compensation Act, 1979, the regulations and the administration of the Act and regulations.

The Committee wishes to thank the Workers' Compensation Board and its staff, in particular Mitchell Scott, Executive Assistant to the Chief Executive Officer, for assistance and patience in answering the Committee's many questions and requests for information. The Board was cooperative and open to the work of the Committee.

The Committee thanks the Fair Practices Office at the Workers' Compensation Board, as well as the Office of the Worker's Advocate, and the Occupational Health and Safety Division, of the Ministry of Labour Relations and Workplace Safety for their support of the review process and assistance in gaining insights into the daily operation of the workers' compensation program.

The Committee could not have fulfilled its mandate without the enthusiastic support received from many persons in the Ministry of Labour Relations and Workplace Safety under the leadership of the Honourable Don Morgan Q.C. and Deputy Minister Mike Carr.

Others to whom we are indebted for their contribution are: Pat Parenteau, Director of Policy, Central Services, Mary-Ellen Illingworth, Research Officer, and Lianne Woulfe, Client Services Representative.

The Committee extends sincere appreciation to the members' employers for supporting time away from their workplaces and duties and to their families for supporting their time apart.

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Definition of Terms Used in the Report

Act	<i>The Workers' Compensation Act, 1979</i>
Appeal Tribunal	The three person Board of Directors of the Workers' Compensation Board of Saskatchewan.
Appellant	An employer or employee that files an appeal to the WCB.
Board	The Workers' Compensation Board of Saskatchewan.
COR	The 2010 Workers' Compensation Act Committee of Review, as appointed by the Lieutenant Governor in Council through Order in Council.
FTE	Full- time equivalent position. An FTE of 1.0 means that the person is equivalent to a full-time worker; while an FTE of 0.5 signals that the worker is only half-time.
FOIP	<i>The Freedom of Information and Protection of Privacy Act</i>
HIPA	<i>The Health Information Protection Act</i>
LRWS	The Ministry of Labour Relations and Workplace Safety.
No time loss	An accepted claim where no time was taken off after the day of injury.
OHS	The Occupational Health and Safety Division of the Ministry of Labour Relations and Workplace Safety.
OWA	The Office of the Workers' Advocate within the Ministry of Labour Relations and Workplace Safety.
Permanent Functional Impairment (PFI)	A permanent adverse reaction in a worker as a result of work injury which interferes with the normal performance of the worker's body or mind.
Time loss	Accepted claim where worker had to take time off work after the day of injury.
WCB	The Workers Compensation Board of Saskatchewan

Executive Summary

The Workers' Compensation Act Committee of Review (COR) is a guaranteed periodic forum for persons and organizations to describe their experiences with workers compensation in Saskatchewan. The legislative requirement to appoint a COR began on July 1, 1945, and has resulted in an assurance to both workers and employers that they will have an opportunity to share their views and concerns about workers' compensation as well as offer potential solutions.

The current COR was appointed by the Lieutenant Governor in Council on November 12, 2010 based on the advice of business and labour groups in Saskatchewan. The COR mandate was to review *The Workers' Compensation Act, 1979*, *The Workers' Compensation General Regulations, 1985*, *The Workers' Compensation Act Exclusion Regulations* and the administration of the Act and regulations.

The Committee developed a consultation process that involved considering written submissions from the public as well as holding public hearings. The COR received 63 written submissions from employers, employees and organizations, and held public hearings in Weyburn, Regina, Saskatoon, North Battleford, Yorkton and Prince Albert. Both the public hearings and written submissions were considered while the Committee prepared its report.

Although the Final Report contains 57 recommendations which we feel will make the Act and the workers' compensation system in Saskatchewan even better, we acknowledge that under the current structure, WCB is doing its job well. This is reflected in our very first recommendation which calls for the removal of all exclusions from the Act. The COR members have agreed that no fault coverage for injured workers is a mark of a just society and of improved relationships between business and labour, and we note that as of 2009, more than 30% of workers in the province did not have coverage. Additionally, safety funding for these non-covered industries (i.e. agriculture - including commercial farming operations) is provided in part through premiums paid to WCB by employers in covered industries. If (and we certainly hope that this will not be the case) only one of our recommendations is to be implemented, this first one will have the most positive impact for workers and employers in Saskatchewan. Inclusion is a major theme of this report.

Other recommendations deal with the second major theme of prevention as the best and maybe the only way to move toward the excellent goal of Mission Zero. The remaining recommendations are built around enhancing service to WCB's stakeholders and increasing fairness and accountability. We also suggest changes in systems and structures that will improve WCB's operations and the delivery of its services in an efficient and cost-effective manner.

The COR strived to achieve consensus in its recommendations, and were largely successful in this. However, there were two recommendations that the COR members could not quite reach consensus on: Recommendation 8 - Maximum Wage, and Recommendation 51 - Incentives.

Looking at Recommendation 8, COR members all agree in principle on the need for a thorough review of the maximum wage rate in the province. Throughout their deliberations, members have noted that in the past 22 years, the maximum wage rate has only increased by \$7,000. As a result, each passing year increases the number of workers that earn more than the maximum wage rate of \$55,000. Through no fault of their own, these workers risk losing a substantial amount of their annual income if they are injured in the workplace. Recommendation 8 repeats the formula first suggested by the previous Committee of Review. However, current COR members were not able to reach unanimity on how potential increases to the maximum wage should be implemented. The COR members have all agreed that the WCB should introduce increases to the maximum wage rate in a transparent and equitable manner.

Turning to Recommendation 51, all COR members recognize and agree upon the value of safety programs and the need to enhance and increase them. There was not agreement on whether incentives were the best way to do this or whether legal and regulatory requirements were sufficient.

The remaining 55 recommendations had the unanimous support of the Committee and we look forward to their implementation.

The members of the COR are: Dr. Roslyn Kunin (chair); Dale Lindemann, CNH; Craig McAuley, PCL Construction; Shelly McFadden, Saskatoon Health Region; Marg Romanow, Saskatchewan Union of Nurses; Lori Sali, Local 180 Construction and General Workers' Union; and Kaylynn Schroeder, Cameco. By custom, the Vice-Chair alternates between a representative of employer and organized employees from one Committee to the next. Ms. Schroeder was appointed Vice-Chair of this Committee.

Chapter 1: Mandate & Basic Principles

Section 162 of *The Saskatchewan Workers' Compensation Act, 1979* (the Act) specifies that the Government of Saskatchewan appoint a Committee of Review (COR) at least once every four years. This is the report of the Committee of Review appointed on November 12, 2010.

Beyond requiring that the Committee review and report on the Act, regulations and their administration, the Act is silent on the details of the role of COR. The current COR has reviewed the Act, as amended to date and its applications including the operation and functions of the Workers' Compensation Board of Saskatchewan (WCB) and connected bodies.

We have gathered information from written submissions and interviews from relevant stakeholders (workers and employers), affected bodies and groups and the general public through open hearings, as well as from WCB staff and data.

In addition, we have carefully considered the recommendations of the 2006 Committee of Review, particularly those that have not been implemented. Many of these are encompassed in the recommendations in this report.

Meredith Principle

Certain overriding principles have provided a structure and framework for our analysis and recommendations. The first principle is the Meredith Principle. This is the historic compromise between employers and workers that has held since October 31, 1913. Injured employees give up the right to sue their employers. In exchange they are assured of medical coverage and income replacement on a no-fault basis. Employers need no longer fear a possibly business threatening lawsuit by an injured worker. In exchange, they collectively pay for the no fault insurance to cover all workers and for the operation of the Workers' Compensation Board to manage the system.

The Meredith principle and the compensation systems it spawned have resulted in a much more civilized world of work where the implications of injuries have been ameliorated for the workers and the possibility of an injury related suit forcing a company into bankruptcy has been removed. Another positive effect of the Meredith system is that it encourages employers to run a safe, injury-free workplace leading to a healthy, productive workforce.

Major Themes

In addition to the Meredith Principle, six major themes guided the deliberations of this Committee of Review. They were the basis on which our recommendations rest.

Prevention

The first theme that the COR has used in guiding its deliberations and the production of this report is prevention. We agree that the underlying goal of every workers' compensation system and the related bodies that it works with is to minimize human suffering through the reduction or elimination of workplace injuries and deaths. Preventing an injury in the first place is of much greater benefit to a worker and his/her family than even the best post-injury medical care and income replacement. Reducing injuries and the need for claims is the most effective way to contain the costs of the workers' compensation system for employers – both the dollar costs and the related administrative burden.

Therefore, we cannot overemphasize the importance of safety and injury prevention. WCB must not only be seen as a payer of claims after the fact of a workplace injury, but first and foremost as a leader in injury prevention and safe practices.

Inclusion

WCB provides a vital service and its approach to providing this service should be open and inclusive rather than closed and limited. Inclusivity must be considered when providing coverage, sharing information and seeking input about decisions and changes.

Service to Stakeholders

Workers' compensation boards exist because history has shown that the compensation and related services they provide are best delivered through such boards. The boards exist to serve the recipients of their services especially injured workers and employers. A level of service that would be expected by a valued client is due to these stakeholders.

Fairness

WCB must be fair and be seen to be fair to all its stakeholders. Workers must feel that their claims are being fairly adjudicated and that payments are reasonable. Employers should feel that they are paying their fair share, and only that share, of the costs of the system.

Improving WCB Operations

Any organization using other people's money, whether the funders are taxpayers or employers, should strive to be as efficient and effective as possible in the use of those dollars.

Accountability

Honesty and fairness are the pillars on which a just society and the organizations within it rest. All players must be held accountable for their actions. This includes employers, workers and all staff involved in compensation.

Chapter 2: Coverage

Workers' compensation is a not-for-profit insurance program which has been established to provide injury prevention, compensation, medical care and rehabilitation for injured workers with the costs being borne by covered employers. As an insurance program, it has risks and premiums, experience rating and reserves, and all the benefits related to the Meredith Principle. These benefits arise in part because participation is compulsory for all covered employers and coverage is guaranteed for all workers not excluded in the Act or regulations.

How Insurance Works

Basic insurance works by spreading risk. Premiums are paid by a large number of participants each of whom is likely to have a relatively low risk of incurring the event being insured against. Should the event occur, the relatively large costs associated with it are then offset by the insurance.

Managing risk is always a challenge for private insurers who must make sure that their income from premiums will be adequate to cover the costs of all claims. Ideally, they would like a large number of low risk customers who steadily pay premiums and rarely make claims, especially if those claims would be large.

Purchasers of insurance, of course, take an opposite view. They will not want to pay premiums if the risk of an event is low and will want generous coverage for a costly or catastrophic event. Such catastrophes can ruin an insurer, so private insurers protect themselves by limiting the amount of coverage provided in terms of how much will be paid out and for what. They also control risk by refusing coverage to anyone who is, or has become, high risk.

Government controlled, compulsory insurance programs (such as Saskatchewan Government Insurance) deal with risk by requiring everyone regardless of their felt need for insurance to purchase coverage. This broad premium base then funds coverage for high risk individuals whose claims could be more costly and would not likely be covered at any affordable cost under a private system. The broader the base of coverage, the better the system is able to provide for those whose needs for coverage are greatest. Compared to other jurisdictions, WCB in Saskatchewan covers a relatively small proportion of the labour force and excludes many industries and occupations. See Figure 2, page 73 for exclusions and Figures 2, 3 and 4 for data on those workers who are covered. This leads to our first recommendation below.

Recommendation 1 below is a very major shift in the workers' compensation system in Saskatchewan. Nevertheless, a recent precedent has been set in another major provincial insurance program, namely the SGI Personal Injury Protection Plan where coverage is universal with no exceptions.

Why increase coverage?

The basic insurance principles described above are one reason for this recommendation, but several other factors support this position. The WCB publication, The Story of Workers' Compensation in Saskatchewan, (1997) clearly indicates that no fault coverage for injured workers is a mark of a just society and of improved relationships between business and labour. Yet, as of 2009, more than 30% of workers in the province did not have coverage. See Figure 4, on page 75 of the Appendix.

When the COR was asked in hearings to explain the origins of and reasons behind this long and complicated list of exceptions, we were unable to do so as no comprehensive explanatory documentation existed. A complete list of the currently exempt workers can be found in Figure 2 on page 73 of the Appendix.

Many exclusions may have come about for historical reasons that are no longer relevant in the industrial structures of the 21st century. Agriculture is a case in point. Agriculture is an important component of the Saskatchewan economy and a major source of exports. Most agricultural production is now part of the global economy and is undertaken on a large scale very different from the traditional family farm. Workers are doing paid jobs in a sector where serious injuries and even fatalities are, unfortunately, not rare.

According to the Occupational Health and Safety Division of the Ministry of Labour Relations and Workplace Safety (OHS), each year approximately 14 work-related deaths occur in farming and ranching. Less than one-eighth of Saskatchewan's working population live on a farm, but the agricultural sector accounts for over one-third of all work-related fatalities.¹ Looking at the severity of injuries, each year over 200 injuries occur in the agricultural sector that are serious enough to require hospitalization.

As we will see in Chapter 10, OHS is entirely funded by WCB, that is by premiums paid by employers in industries that are not excluded and that are obliged to pay premiums for that coverage to WCB.

OHS does try to provide some safety services in this excluded sector and spends over \$50,000 per year on a media campaign and safety guide for agriculture and ranching. However, the high injury and fatality rates imply limited effectiveness for these efforts, the cost of which, like all OHS expenditures, is borne entirely by employers' premiums in WCB covered industries. Many employers in agriculture do not pay for any of the publicly delivered safety or prevention services they receive. The high injury and death rates indicate that more such services are needed. Employers now covered by WCB should not be asked to pay for services in sectors that do not themselves contribute. This creates the perception of unfairness.

¹ <http://www.stats.gov.sk.ca/stats/ER2010.pdf>

Recommendation 1

The Workers' Compensation Act, 1979 apply to all employees in Saskatchewan with no exclusions.

Should Recommendation 1 not be immediately implemented, the question of how safety and prevention services are provided and paid for in the uncovered sectors must be dealt with. This issue is mentioned at the beginning of this chapter.

For the few remaining small farms that are operated exclusively by families without external paid help, we refer to our second recommendation. This builds on the current practice of offering self-employed people the option of taking out WCB coverage. We support this practice and would like to see self-employed people in all sectors able to take advantage of it.

Issues have arisen about determining the wage level on which to base income replacement for the self-employed. If they pay themselves a wage, there is no problem. Where business owners do not pay themselves a salary, it is very hard to determine how much of the company's income can be attributed to the owner and thus should be covered by WCB. Therefore, we recommend that business owners who do not pay themselves a salary and who seek WCB coverage declare an income level to be covered of an amount between 50% and 100 % of the maximum compensation covered under the Act. Their premiums would be based upon the income level selected.

Recommendation 2

All self-employed people have the option of being covered by WCB, as is currently the case. Where no salary is paid, an income level of not less than 50% of the maximum assessable earnings be chosen by the self-employed and be the base on which premiums are set.

Limitations of Private Insurance

Employers who are currently exempted from WCB coverage told us that they felt that their needs, and those of their workers, were amply met by using private insurance. This Committee is concerned about the limitations of private insurance listed below. We wonder if all employers are aware of these limitations.

1. Since it is not required, some employers may not provide it, leaving their workers and their companies at risk.
2. As noted above with respect to private insurance, a series of claims or even just one very major event could result in the cost of private coverage increasing suddenly and by a large amount. Alternatively, coverage could be denied at any price.

-
3. Lack of WCB coverage means that uncovered employers are burdening the general medical system with health care costs that covered employers must pay for, thereby creating an uneven playing field.
 4. In the case of the public sector, e.g. teachers, though it appears that the private coverage is paid for by the employer, the cost is indirectly borne by the general taxpayers of Saskatchewan, as the Government provides funding to the Saskatchewan Teacher's Federation, who then provide disability benefits to teachers. This provides a publicly subsidized advantage compared to other sectors where employers cover the costs of injuries over and above any publicly funded medical care provided.²

Advantages of WCB Coverage

Apart from the fact that within WCB, coverage cannot be terminated and dramatic increases in premiums can be avoided, there are other advantages to WCB coverage that cannot be provided by the private sector.

1. The employer cannot be sued and, within WCB, there is a less confrontational method to resolve differences and disputes than the costly, winner-take-all court system.
2. Any recurring results of an injury remain covered under WCB up to age 65 and in some cases beyond, as per section 71 of the Act. Should a recurrence of a privately covered injury occur months or years after the initial event, it may be difficult or impossible to get coverage. In fact, the original insurer may no longer be dealing with the worker's employer or may no longer exist.
3. All workers are covered. In cases where private coverage is offered, perhaps under a union agreement, some workers are excluded. An example is substitute teaching. Teachers are currently an excluded group. Subject to the concerns mentioned above, regular teachers are generously covered by a benefit agreement. However, teachers on short term assignments (usually less than 20 consecutive teaching days) have no coverage at all.

In certain cases, the benefits provided to injured workers outside the WCB system are greater than the 90% of net income currently provided by the WCB. Should such higher coverage be desired, there is no objection to employers providing top-up benefits (e.g. as negotiated in the collective bargaining agreements at SaskPower and the health care sector).

² A portion of each teacher's pay cheque goes towards the Income Continuance Program (ICP), the benefit program provided by the Saskatchewan Teachers' Federation for injured teachers.

Who Pays for Specific Claims?

As WCB is an insurance program, the cost of claims must be spread beyond the individual employer. If it is not, WCB becomes only a forced saving program where each employer is encouraged to set aside funds to cover expected claims – in effect, to self insure.

On the other hand, if the insurance principle were to be taken to its extreme and the cost of all claims were to be borne by all employers equally via one provincial claim rate, there would be little reason for any industry groups or individual employers to engage in prevention activities since they would bear the whole cost of such activities while the benefits would be spread among all employers. In essence, employers who had high injury rates and did little to reduce them would be getting a free ride.

To encourage safety and prevention on the part of employers and industry groups and to help reduce the free rider problem, WCB has divided employers into rate groups. Within each rate group, premium rates are adjusted to reflect the cost of claims generated within that group. This provides a positive incentive for employers in each rate group to develop and apply programs and practices to reduce the number and severity of injuries.

There is a degree of arbitrariness and some opposing tensions in determining rate groups. Setting groups as narrowly as possible provides the greatest degree of accountability and the maximum incentive to reduce claims. However, it also weakens the cost-sharing benefit of the insurance principle.

Nevertheless, setting up very large rate groups, especially if there are major differences of size of establishment and patterns of injuries within the group, penalizes the safer organizations within the group and rewards those that have more injuries.

This report will not get into the details of rate setting. We know that there are pressures from certain high risk organizations to be included in larger, lower risk; and, therefore, lower premium, groups. There is also countervailing pressure from the lower risk groups to avoid being tied to those whose injury rates and claim costs are higher. However, we do recommend that:

Recommendation 3

The Workers' Compensation Board examines all rate groups with a view to determining groups in as fairly and balanced a way as possible. The impacts of any changes be analyzed actuarially and a sensitivity analysis of any changes provided.

We will discuss the process of outside involvement in rate group formation and rate setting in Chapter 13 on communication.

There was one situation concerning rate groups that was repeatedly brought to our attention during the hearings. That concerned the very broad group of Government of Saskatchewan employers. In the examination of the size of rate groups recommended above, we suggest that the government components be given particular attention.

Finally, when determining rate groups and coverage, we return to our main theme of safety and prevention. Thus, an important factor to keep in mind when setting rate groups is the ability of each group to work as a unit in activities that would not only reduce premiums within the group; but, more importantly, reduce the number and severity of injures and allow more, if not all, workers to return home in the same good condition in which they left for work. See Chapter 11 for more on incentives for safety programs within rate groups.

Chapter 3: Prevention

There are at least two levels of prevention. Primary prevention includes the positive safety measures taken by workers, employers, safety associations and the WCB prevention department before injuries occur. These would include safety training, providing personal protective equipment, defining work practices, etc.

Secondary prevention consists of the penalties and disincentives incurred after injuries to change behaviour and prevent further injuries and claims. These would include premium surcharges, rate increases, inspections, penalties and fines. Secondary prevention is delivered by WCB through premium rate surcharges and by OHS through enforcement and fines.

Ideally, the WCB should be working to put itself out of business by eliminating workplace injuries and incidents. This is the long term goal of Mission Zero, WorkSafe Saskatchewan's long term goal of eliminating all workplace injuries. We are a long way from that goal. See the data on workplace deaths and injuries in Figures 6-8 on pages 77-78.

However, progress has been made in societal views with respect to workplace injuries and deaths. No longer are they seen as an inevitable cost of doing business as was the case in the past. Workplace injuries are now seen as largely or wholly avoidable.

At the present time and in conjunction with the principles of this report, activities to prevent the occurrence of injuries deserve serious attention. This report will look at the roles of and relationships between the various bodies related to safety information and prevention programs in Saskatchewan to determine the best means of ensuring that prevention services are provided and applied.

Employers' Roles

Just as it is the right of every worker to refuse dangerous work under section 23 of *The Occupational Health and Safety Act, 1993*, every employer should ensure that safety training and equipment are provided and properly used. The employer is required to maintain a safe work environment. Front line supervisors should also make sure that safety practices are adhered to.

Government as Employer

Accountability and encouragement for safer workplaces should be very high within the Saskatchewan public sector as means of demonstrating Saskatchewan's commitment to injury prevention (or even elimination) and to worker safety. Therefore, we recommend that:

Recommendation 4

The Government of Saskatchewan, working with WCB and all public sector employers, take steps to ensure that it is a model employer and an example to the private sector with respect to safe work places and working towards the elimination of claims and injuries.

Industry Groups and WCB

Employers must provide the appropriate training and equipment to their workers and supervisors to create a safe working environment. However, information about safety and prevention programs and practices can often be provided more efficiently and effectively on a sector basis rather than having each individual employer reinvent the wheel in seeking best practices. Smaller employers, especially the 75.7% of employers in Saskatchewan who have fewer than 10 employees,³ lack the resources; whether it be time, capital or human resources, to develop their own safety programs. For these reasons, we make recommendations 5 and 6.

We believe that individual employers and industry groups are in the best position to determine the risks that exist in their own workplaces and the means to minimize them. Where resources exist, mainly in the case of larger employers and organized sectors, industry safety associations should develop and deliver safety and prevention programming to support employers in creating a safe and injury free workplace. An example of an effective safety association is found in the construction industry.

Often the support of WCB is required to set the wheels in motion for an inter-employer safety association and to be the means to collect funds from that sector. These small premium increases within the sector are used to fund the operation of the safety association. These funds should be considered an investment, since it is expected that the work of the safety association will lead to reduced claims and thus lower premium costs. This approach is further developed in Chapter 11.

Just because a horse is led to water does not ensure that it will drink. Just because safety and prevention programs are available through safety associations or from the WCB, does not ensure either the quality or the usage of such programs. We see a role for WCB in providing the necessary guidance of safety programs to ensure that the results match the goals, whether the programs are delivered through safety associations or by WCB. Also, as the suggestions in this chapter imply, we see a bigger role for the prevention department within WCB, which should be resourced accordingly.

³ Canadian Business Patterns 2010, table CDNAIC2_LOC

Recommendation 5

In those instances where an industry has a safety association, those safety associations have the primary responsibility to develop and deliver safety and prevention programming to support employers in creating a safe and injury free workplace.

Recommendation 6

In cases where an industry has no safety associations, WCB actively pursue the formation of safety associations. Where no such associations are formed, WCB be responsible to ensure that employers have access to safety and prevention programming with the costs of these WCB activities borne by those participating rate groups.

We have mentioned that part of prevention lies with the individual workers and employers. The next component occurs with the industry or safety association with WCB filling in where safety associations do not exist. It is believed that prevention training best rests with organizations that can customize it to their needs. This will provide an opportunity for OHS to focus on regulatory training and compliance.

The third level of providing oversight and guidance, through a model of quality assurance, once again should fall to an appropriately resourced prevention department inside WCB.

Role of OHS

One final step still remains necessary in the real world and that is regulation and enforcement, a component of secondary prevention. We see value in having enforcement and regulation delivered by a body outside the WCB, and endorse OHS's on-going role as an administrator of regulations. We will discuss the funding implications of this role in Chapter 11. It is OHS that tells employers what they are required to do to prevent injuries as determined by *The Occupational Health and Safety Act, 1993* and regulations. It is WCB's role, sometimes working with safety associations, to inform employers how they can best reduce injuries and claims. It is OHS, through laws and regulations, that informs all in the workplace (employers, workers, suppliers, etc) what standards they are required to meet to prevent injuries. It is WCB's role, sometimes working with safety associations, to inform all in the workplace how they can best meet those standards while reducing injuries and claims.

As with any organization in any way connected to government, however indirectly, and funded by citizens (in this case employers) on a less than voluntary basis, it behooves OHS to conduct its enforcement duties as efficiently and effectively as possible. This is not only to minimize the cost of its operations, but also to ensure that its scarce resources (human resources as well as dollars) are put to use in a way that ensures the maximum reduction of injuries and the greatest improvement in safe working conditions.

WCB should share its data and collaborate in order to guide and direct where OHS' focus should be in terms of the most effective areas of injury prevention. Additionally OHS should ensure that it uses data driven decision- making with proper consideration of risk.

In order to do this, we recommend that:

Recommendation 7

WCB continue to fully share information with OHS on claims histories and injury data by employer, so that OHS can apply its efforts in ways that lead to the greatest injury reduction and largest improvements in safety.

WCB report to stakeholders and OHS on the effectiveness of OHS' activities. Also see Recommendations 44-45.

We do note the role that WorkSafe Saskatchewan has played in publicizing safety issues and raising public awareness about safety in the workplace.

Safety for All

Finally, we should note that our views on the delivery of prevention are made in light of the first recommendation that all the employees in Saskatchewan be covered by WCB. Thus, the structures described above would apply to all. Should, in the shorter or longer term, some groups remain excluded, a means of delivering safety and prevention services would have to be put into place and monitored to confirm its effectiveness.

A review should be conducted to determine who funds programs for excluded industries and workers.

Maximum Benefit Level

One issue that was repeatedly raised during our information seeking sessions was the maximum annual benefit level. We heard from employers who sought to leave it at \$55,000, the level currently specified in the Act and that has been in place since 2005. However, this fixed maximum level makes no allowance for inflation, basic changes in the cost of living and generally rising incomes as the economy of Saskatchewan grows. It leaves claimants, especially those seriously hurt and thus on long-term benefits, in an ever worsening position with respect to the rest of society.

A strong case can be made for adjusting this amount and putting into place in the Act, a formula to ensure that the maximum benefit level maintains its relative position when compared to earned income in the province. Section 38 of the current Act does now contain a means to ensure that the maximum is adjusted so that it does not get too far out of line with earning levels. An example is the average annual wage which has increased by \$4,268 over the previous four years.⁴ However, section 38.1 caps benefit levels to absolute dollar amounts that negate the adjustment formula. See Figure 3 on page 75 in the Appendix for more on the maximum wage rate and the average industrial wage.

The 2006 COR report made a recommendation with respect to the maximum benefit level which has not been implemented and which we now put forward. Although there was unanimity within the Committee on the need to examine and possibly adjust the maximum wage rate, not all Committee members agreed to the formula in the recommendation below and suggested that WCB engage in a consultative process on how best to proceed on this issue.

Recommendation 8 - Non-Consensus

The maximum benefit level which is currently set at \$55,000 be raised immediately to \$59,000. Over the next 4 years, it be increased annually by a percentage of the annual average wage in Saskatchewan until it reaches 165% of that average annual wage. Henceforth, the maximum be adjusted yearly to remain at 165% of the annual average wage in the province.

We do recognize that this change will have cost implications for employers. Therefore, this recommendation suggests a gradual increase over time to reach the target of 165%. Note that this increase will not be out of line with the general increase in other costs and indeed in incomes.

⁴ <http://www.stats.gov.sk.ca/stats/ER2010.pdf>

Earnings and Moral Hazard

Since the current Act was created in 1979, the structure of the world of work and the way in which most Canadians earn their living has changed dramatically. In the past, it was the norm that the vast majority of people in the labour force had permanent, full-time, full year employment most likely with a large private sector employer or government. Since the recession of the 1980's and increasingly over time, such jobs have become more scarce and an increasing proportion of those in the labour force work less than full-time, full year and frequently change employers. These patterns are not always voluntary.

Originally, workers' compensation legislation would have been drafted with the full time, full year, permanent employee in mind. Now the compensation system must adjust for the many workers who do not meet this pattern. This creates many challenges. The one we look at here is determining earnings for the basis of compensation.

First, we uphold the principle that it is earnings that are to be considered. Workers compensation is an income replacement program. Other sources of income and other income replacement programs such as employment insurance should not come into the calculation. While there is no formula that provides ideal results for every conceivable situation, we think that section 70.1(a) and (b) deal with variable earnings and situations fairly and would like that section to remain in place unchanged. (See Recommendation 2 for a means of dealing with earning levels for the non-salaried self-employed.)

Moral hazard can be described as the tendency for an event to occur with greater frequency because insurance or compensation exists to cover such an event. We acknowledge that the majority of people are honest and do not take undue advantage of systems like WCB. Still, a small minority might and systems must be in place to deal with these.

An issue of moral hazard would occur should an employer encourage an injured worker to use a disability program, or not report an injury rather than filing a claim with WCB. Obviously, there are no data to determine how much, if any, such claim suppression exists.

The potential for moral hazard also exists where a worker receiving WCB benefits might do better than his or her fellow workers. One example would occur if a seasonal worker goes on claim shortly before a lay-off, that worker will continue receiving 90% of net earnings even as other workers receive no wages and lower employment insurance benefits. Employers have noted increases in injury claims after a lay-off notice has been given.

Another example might occur should a worker feign or exaggerate an injury, particularly one that is difficult to diagnose, in order to be relieved of work and to collect benefits.

Failing to report workplace injuries is a moral hazard on the employer side. WCB should be aware of such patterns and effectively deal with such claims.

Recommendation 9

WCB develop processes to minimize moral hazard.

Annuities

Another case where the amounts specified in the Act have not kept pace with current economic realities is that of annuities payable under *The Workers Compensation Act, 1974*. Because of the nature of annuities, they are paid over long periods of time. In those time periods the cost of living has increased substantially, while the amount of the annuities payable, a major source of income for many recipients, has not increased at all. The following recommendation was recommended in section 5.07 of the 2006 COR report.

Recommendation 10

Amend subsection 74(3) to allow the worker to choose to either purchase an annuity or receive a lump sum payment when the accumulated capital and interest is \$25,000 or less in 2012 and to adjust the \$25,000 in increments of \$1,000 annually in subsequent years to reflect the average percentage change in the Consumer Price Index.

Recommendation 11

WCB inform claimants taking out annuities about the options and consequences of choosing an inflation protected annuity versus a flat rate option.

We realize that there are cost implications to this recommendation. For this reason, we are not making it retroactive. Also, any forward looking costs are limited by the fact that annuities are no longer applicable to recent and current claimants; the level of the annuities payable is low partly because of the lack of adjustments in the past and the declining number of annuitants.

Chapter 5: Return to Work

Figures 9-11 on pages 78-79 provide information on the number, duration and costs of claims. All claims, injuries and near misses are best avoided, but it is time-loss claims that have the most deleterious impact on workers and employers. The best way to minimize these impacts is to help the worker get back to work as quickly as can be medically justified.

Thus, the ultimate goal of WCB for injured workers is returning a worker to work that is as close as possible to their pre-injury pay and work. The worker has a role to play in reaching this goal.

Section 51.1 states that “a worker shall take all reasonable action to mitigate the loss of earnings resulting from an injury; and where the circumstances require, co-operate with the board in the development of a rehabilitation plan that is intended to return the worker to a position of independence in suitable productive employment.”

Employers have a duty to accommodate an injured worker by providing alternative duties compatible with any restrictions or limitations a returning worker may have, as specified under *The Saskatchewan Human Rights Code* sections 9, 16 (1), and *The Labour Standards Act* sections 44.3(1) and 44.3(2).

Healthcare professionals, working with workers, have a major role to play in defining limitations and restrictions. WCB also has a role in co-ordinating all these components and managing the claim.

Medical Input

The biggest challenge that was brought to our attention concerning return to work was obtaining, timely, accurate, agreed upon medical information concerning what the worker’s restrictions and limitations are. There was also the issue of who received medical information and when they received it. Note that we shall also be dealing with related issues in Chapter 9 on medical services.

To determine when and how a worker can return to work, a valid medical clearance is required. When the information is received, what information is obtained, how it is provided and who receives it are all questions that bear upon and determine the success of the return to work process.

Physicians (and other healthcare professionals) are busy people and dealing with WCB claimants is often a small part of what they do. They are more likely to deal with people suffering non-work-related illnesses where they need only supply documentation that patients are indeed ill and indicate a likely return to work date.

WCB requirements are different. Employers and those managing claims need to know what their restrictions and limitations are in order to determine what work duties are available within those restrictions. This information should be as pointed and concise as possible, e.g. ‘cannot stand for longer than one hour’ rather than ‘cannot work at a welding job’. Information of this specific type will enable the employer and/or WCB to find alternative hours and duties that will help the injured worker maintain his or her independence, income and connection to the both the workplace and to the world of work.

The Committee and those it consulted did not find an ideal communication method with which to reach physicians, especially, and to ensure that they were familiar with and able to meet the needs of workers, employers and WCB with respect to the information needed to support a safe return to work. Nevertheless, all efforts must continue to educate physicians about their role and the requirements for timely and objective medical restrictions and limitations. The problem appears to be even more acute in smaller communities and in rural areas than in the major cities.

Lack of timeliness in providing medical information can impact the initial adjudication of claims, return to work processes and also appeals. Workers, employers, advocates and WCB staff have all told us about serious delays in obtaining medical information. These delays occur even when WCB offers payment to doctors for the time needed to complete and submit the required forms. Again, all efforts must be made to educate physicians and other health care providers about the importance of providing and submitting reports promptly, emphasizing that a patient's income may depend upon it.

Recommendation 12

WCB actively pursue enhancement of effective strategies for education and follow up with physicians and other healthcare providers with respect to return to work.

There are steps that can be taken to reduce the demands upon physicians and others reporting on claimants' medical conditions. This would be to provide one form for the doctor to complete that would clearly delineate the information required (e.g. restrictions and limitations) and other medical information. Ideally, this form should be electronic. The completed electronic form could be provided to the worker and suitably edited copies (removing private medical information, etc.) could then be supplied to the employer and WCB to guide the return to work options.

There are a number of forms available for physicians to complete when evaluating return to work claims, including one that says that a copy is not required by the Saskatchewan WCB, thus requiring WCB to request and the doctor to complete a different form for WCB. This information does not automatically go to the employer. Many employers did tell us that they did not feel adequately included in WCB processes. Thus, we recommend:

Recommendation 13

WCB create one electronic physician's Return to Work form to ensure clarity and accountability and the timely distribution of relevant information to the employee, employer and WCB.

Privacy considerations must be taken into account in implementing this recommendation. See Chapter 12.

Monitoring Return to Work

Other things being equal, studies show that the longer a worker is separated from employment and the workplace, the greater the challenge in having the worker return to work and the lower the likelihood that the worker will return to their pre-injury condition. Every effort to encourage a timely and safe return to work will pay dividends to the employee, the employer and workers' compensation system. This is true even when the return to work involves reduced hours and modified duties.

But, there often is a lack of return to work opportunities (with the original or other employers) or return to work programs that do not fit the medical restrictions and limitations within a workers' return to work program. Workers may be discouraged if they feel that they are not receiving appropriate, meaningful or productive work. Or they may be concerned that they are not yet medically up to the demands that are being placed upon them.

Employers and even other employees may feel the requirements of accommodating a rigid return to work program go beyond what can reasonably be expected.

Therefore, it is up to the WCB, usually through the case manager, to ensure that return to work programs are consistently applied in the best long term interests of the employee and within the scope of the employer's duty to accommodate that worker.

Recommendation 14

WCB be able to accurately monitor return to work programs and ensure that they are being effectively applied and administered in alignment with duty to accommodate legislation and that the programs incorporate:

- **objective medical and physical restrictions and limitations;**
- **manager and supervisor engagement;**
- **employee, and where applicable, union engagement;**
- **monitoring; and**
- **evaluation.**

Some of the services and return to work components have been covered in this section. Others will be further developed under Communication, Processes and Customer Services, Medical Services and Privacy later in the report.

Chapter 6: WCB Processes and Customer Service

Need for Customer Service

A much too common complaint presented to this Committee of Review was the poor treatment both workers and employers felt they had been receiving at the hands of the WCB. The Committee recognized that those who chose to meet with it were not an unbiased sample of claimants and employers, and were far more likely to be those who have had difficulties and problems than those who were satisfied with the service received.

Nevertheless, the frequency with which lack of service and even bad service was mentioned and the number of presenters asking only to be treated with respect and dignity definitely make this an area for improvement.

Not all claimants complain about poor service. One survey of those whose claims had been accepted and whose claims were still new gave positive responses about dealing with WCB. This surveyed group had not received any unfavourable decisions nor had they been on claim long enough for any difficulties to arise. The results of surveys like these may give WCB an overly optimistic idea of how their services are perceived.

Recommendation 15

All parties involved in a claim are to always be treated with respect and dignity.

There are many possible reasons for the perceived low quality of service. Among them are insufficient staff, lack of training, inefficient processes, time pressures, employee burnout, and poor communication. Nor is the improvement of the level of customer service an easy or quick thing to do. There are at least three major steps needed to yield effective and lasting change in this area. First, the staff must be properly prepared. Second, the means must be provided to deliver good customer service by addressing workload issues. Third, a program of monitoring and evaluation must be put into place to confirm lasting change and continuous improvement. We will deal with each of these steps in turn.

Preparing Staff

Customer service is delivered by people – in this case, WCB staff. However, merely demanding that WCB employees do better is unfair. Staff must be properly equipped and supported in order to provide this service. Below are the main components that must be in place.

Tone at the Top

A very necessary condition for effective change is that it start with and be maintained by the leaders of the organization. Board members and senior management must not only start talking the talk about better customer service. They must follow through with action and commitment through their own actions when dealing with claimants during appeals and at other times. They must build in measurement and accountability on this dimension. Their words and behaviour must indicate on an on-going basis that customer service is a vital component of WCB's way of doing business and not just a temporary priority.

Recommendation 16

WCB executives recognize that fundamental changes need to occur with respect to organizational culture and employee satisfaction. WCB implement the identified changes.

Training

Customer Service is a skill that can be learned which implies that it also can and should be taught. If providing good customer service is considered part of WCB's employees jobs, they should be adequately trained, not only in the basics of dealing with people on a professional level, but also how to handle the special challenges from claimants and others who are hurt, angry, upset and hostile. Employees must also be assured, as they do their best to be polite and professional with difficult and even potentially violent claimants, that appropriate measures are in place and will be followed to ensure their security.

Recommendation 17

WCB staff receive enhanced training in customer service and recognize that these stakeholders are WCB's customers. WCB regularly monitor the effectiveness of the training provided.

Selection

Although many staff have long tenure at WCB, on the occasions when new staff are being hired, people skills should be one of the selection criteria. Yes, as we noted above, such skills can be taught; but it is often easier to hire for people skills and teach technical skills than the other way around. Emphasizing the soft people skills of customer service in the hiring criteria sends a clear message of its importance.

Resourcing

It is almost impossible to provide good customer service when one is overworked and under excessive time pressure. Therefore, those positions that deal routinely with claimants need adequate human resources. Understaffing the customer service functions, especially relative to other components in the organization sends the message that dealing with customers is not important.

Delivering Good Customer Service

Respect

Respect and dignity should be the hallmarks of all dealings with WCB stakeholders whether they are claimants, employers, medical practitioners or others. Respect is first shown by being polite, professional and patient in all interactions. This is especially important when the stakeholder is unaware of the legislation, and the detailed WCB policies and procedures.

Continuous Improvement

Good customer service is not a one-time event. It is an ongoing process that requires a system of continuous improvement. Failing to go forward means falling backward. However, what is everyone's business often becomes no one's business. Therefore, a Continuous Improvement Committee on Customer Service should be set up to implement, monitor and evaluate this on-going process. Such a Committee could be newly formed or developed by restructuring and refocusing existing committees.

Recommendation 18

A program of continuous improvement using input from front line staff be developed and implemented. A Continuous Improvement Committee on Customer Service be set up and maintained within WCB to do this.

Plain Language

A very important dimension of good customer service is communicating. Messages must be delivered, received and understood before they can be acted upon. Plain, unambiguous, easy to understand language is important in verbal communication. However, questions of clarification can be asked and answered when people are talking. Plain language is absolutely essential in written communication where it is more difficult for the recipient to reach someone for explanations. Content should be clearly and simply stated. More technical and legal material can be appended once the main message has been delivered.

Recommendation 19

All WCB decisions be explained in writing using plain language.

Appropriate Systems

Meeting the many and specific demands of implementing the Act and regulations is a daunting task. In order to do it well and to meet stakeholder needs and requirements of good customer service, appropriate systems must be in place. In the 21st century, this means electronic systems. Such systems must allow all relevant users to enter access and communicate information efficiently and effectively. Systems should be well maintained and as user friendly as possible. WCB staff as well as claimants, employers and medical professionals should be provided with the access they require (and only that much access) to work within the electronic system along with any needed training. The WCB on-line system should be easy to access for outside users if the system and its formats are well designed. Appropriate privacy constraints should be built into the system and all applicable privacy legislation should be respected. See Chapter 12.

Recommendation 20

Privacy considerations always be a priority and all applicable privacy legislation be respected.

The contribution of effective communication systems to customer service cannot be over-emphasized. They offer speed and ease of communication along with consistency of message. They reduce time delays and remove the need to submit any component of information more than once. In the long run, they save staff time and dollars. We do recognize that in the short run, building and implementing good systems is time consuming and costly. Nevertheless, getting the right information to the right people at the right time is a very important component of customer service and making use of electronic systems is the only cost effective way of achieving this.

We acknowledge the Eclipse electronic claims processing system which was in the process of being implemented at the time of writing. It will be a big step forward in the right direction, but, like any electronic system, it will require on-going updating and adjustments to meet new needs and expectations and to take advantage of advancing technologies.

Recommendation 21

WCB make use of modern communication processes including electronic transfer of files to get the right information to the right people at the right time. A Continuous Improvement Committee on Information Systems be established to keep communication technology as a focus, and up to date.

It should also be noted that sometimes the right time to gain access to a file or information may not be connected to the appeal process. **Access to files should be restrained only by privacy legislation and should not be limited to having an appeal in process.** We are concerned that many unnecessary appeals are filed and much unnecessary work generated when the issue could have been easily and quickly settled by access to files and information.

Claimants should always have access to their complete files. Subject to privacy considerations, employers should have access to their workers' files. An appeal need not be in process for file access. We discuss this further in Chapter 12.

Monitor and Evaluate

What gets measured gets done and sometimes inappropriate measures lead to unintended consequences. Timeliness is an important component of customer service and providing entitled claimants with a benefit cheque as quickly as possible is a good thing – other things being equal. However, we heard that efforts to minimize time to first cheque sometimes led to less than complete development of claims resulting in more work, appeals, etc. later on.

Recommendation 22

All monitoring and evaluation measures including time to first cheque be examined for unintended consequences and amended if necessary.

Positive means of measuring and evaluating customer service are needed and WCB has already taken steps to get a handle on this by commissioning the Deloitte and Touche report, Saskatchewan Workers' Compensation Board Claims Administration and Service Review, which was presented on September 21, 2009. Such a survey undertaken by a body external to WCB and the Ministry should be repeated on a regular basis at a time when the results could be made available to each incoming Committee of Review. The survey should cover a statistically significant stratified sample of all categories of stakeholders.

The results should be made known within and outside WCB, perhaps in the annual report, and should generate a plan of action for the future – even if it is only to offer congratulations to the staff for the great improvement they have shown!

Recommendation 23

A comprehensive customer service survey be undertaken by the Committee for Continuous Improvement on Customer Service at WCB using an external surveyor prior to the set up each Committee of Review. The results of the survey be made known to stakeholders and used to plan further action.

Chapter 7: Governance

The governance structure of the WCB in Saskatchewan is different from that in many other jurisdictions. The Board members in this province are charged not only with the standard governance duties expected of those on a board, but also with functioning as the final appeal body for the WCB. As a result, Board positions here are full-time jobs and require a very diverse array of knowledge and skills.

Heavy Workload

The first component we will deal with is the workload placed upon the Board and its current three members. The volume of appeals alone is large and demanding. There are often long delays between the filing of an appeal and its conclusion. For example, in 2009 the average time to wait for a decision on appeals to the WCB Board was 191 days, and only 2% of appeals were decided within 60 days. There is truth to the adage that justice delayed is justice denied.

While some of the other recommendations in this report, (e.g. recommendations 15, 17,19 etc.) if implemented, would reduce the number of appeals filed; additional means are still needed to provide more timely service to claimants making appeals.

Also, in the 21st century, failures of governance and inadequate governance processes in many corporate bodies have led to serious, negative financial and legal consequences. The legal responsibilities now being put on boards and their members have increased. An ever rising degree of accountability is expected. All this demands more time and effort on the part of board members. They must also continue to engage in on-going learning to keep up to date with advancing governance practices.

Advantages of Five Directors

A five-person Board of Directors would be in a position to be more active in its governance role and would provide greater accountability to the whole operating process of WCB. More members would mean greater fulfillment of governance roles, both on-going and those recommended in this report. Among the activities this committee sees as being able to benefit from more time and attention from the Board are:

1. Providing increased guidance to the CEO leading to greater efficiency and effectiveness of the organization and a clearer reflection of the needs and inputs of the employer and worker communities.
2. Improving the strategic planning and budgetary processes of WCB by taking a longer term view rather than the day to day operational requirements which are the major concern of management.
3. Providing greater oversight to bodies like OHS which are funded by WCB resulting in greater accountability on the use and effectiveness of those funds.

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4. Overseeing the Continuous Improvement Committees for Information Systems and Customer Service (see Recommendations 18 and 21) to ensure steady advancement in these important areas.
 5. Ensuring that WCB policies are relevant and up to date (see below).
 6. Following up on recommendations from Committees of Review, their status of implementation and their effectiveness.

The above are just some of the areas in which a more adequately resourced Board could take on an enhanced governance role and do more to provide the kind of support to management and accountability to outside stakeholders, as is the role of a board. WCB would then be more able to accomplish its mission and achieve its goals. Having more people to hear appeals and reducing time delays is another major advantage of a larger Board.

The easiest and simplest way to deal with the onerous workload of both appeals and governance is to increase the number of Board members. The current Act allows for a five-person Board. Adding two more people to the Board could be done immediately and would not require any legislative changes. To maintain the balance of stakeholder interests, one new member should be from the employer community and one from the workers. Therefore, we recommend that:

Recommendation 24

An additional two full-time members, one from labour and one from employers, be appointed to the WCB Board of Directors as soon as possible.

At this point in time, we do not recommend any differentiation of duties among the Board members. That is, all Board members, current and new, would fulfill both the governance role and hear appeals. The workload would be made more manageable and the outcomes more timely by having more Board members available to share the duties. This means that all Board members must have the knowledge and abilities to serve both functions. They would all have full-time positions.

However, we do feel that Board members would be more supported in their duties if a document outlining their duties and obligations were provided to them. Such a document is now seen as a basic element in the practice of good governance.

Recommendation 25

A Board manual be created and provided to Board members outlining their duties and obligations and the timing and frequency of same. It should be updated regularly and make up a part of the orientation of any new Board members.

In the future, it may be worthwhile to consider whether greater efficiencies and effectiveness could be achieved by separating Board members' responsibilities so that some Board members are tasked only with appeals with some Board members tasked only with governance. A five-member Board will still include three members (i.e. employer representative, employee representative, and Chair) to hear all appeals as is currently the case. It may also be worthwhile to consider examining the models used elsewhere of having appeals and governance handled by separate bodies. We suggest that future Committees of Review keep these questions in mind.

Getting and Keeping the Best

The Committee was concerned about the ability to attract and retain Board members from the employer and worker communities who would be both able and willing to meet the demands that a WCB Board position would put upon them. While there is an element of community service in working with WCB, adequate compensation must continue to be provided to obtain the caliber of people needed for the complex role that Board positions offer.

Recommendation 26

Board members receive competitive compensation to attract and retain quality personnel.

Two important but contradictory components needed on a good board are continuity and renewal. The term limits in the current Act of four years for Board members and five for the Chair can meet these requirements, and we do not suggest changing them. However, we recommend that appointment dates, and thus terminating dates, be staggered so that at any point in time, some Board positions will be changed to provide for renewal while others will carry on to offer the needed continuity.

Recommendation 27

The terms of Board members be staggered to provide both renewal and continuity.

Consistent Decisions

There is at least one area where having the same people do both governance and appeals provides great potential benefit. This is in the area of policy. Because they hear and decide appeals, Board members will have a very complete on-the-ground appreciation of how WCB policies are or are not working. Because they are the governing body of WCB and, as such, are responsible for the Board policies, it is expected that the Board ensure consistent, viable, up to date policies are in place that reflect the needs of the stakeholder groups. However, we understand that this is not the case, e.g. POL 06/80 Compensation Rates-Reoccurrence, 1980, POL 52/82 Payments Provided at Expense of Employer, 1982, etc.

One source of inconsistency comes from the specification under section 25 of the Act, that the Board in its function as an appeal body is not bound by precedence, but only by merits and justice. We do feel that where the Appeal Tribunal has to defy its policies because they are not meritorious or just, those policies should be changed. See Recommendation 55.

We appreciate the need for flexibility. However, ignoring policies seems to go beyond flexibility and could lead to inconsistency and arbitrariness. One might wonder why the published policies exist if they need not be followed.

Merely saying that a policy does not fit a given situation and thus it can be ignored, is not good governance. More transparent and consistent governance and practice would be achieved by requiring the Board to be bound by its own policies in dealing with appeals. Where such policies are obviously inappropriate, they should be amended, adjusted or eliminated. Given the overlapping roles of the Board members, they are in an excellent position to make and implement any needed changes in policies.

Recommendation 28

Decisions made by the WCB Board with respect to appeals be consistent with WCB policies. Where policies are not appropriate, they be amended within 90 days. Section 25 of the Act be amended to require the Board to consider policies in its decisions.

Recommendation 29

The WCB continue to review its policies to ensure that its entire policy manual is reviewed regularly.

The issue of stakeholder involvement around formulating and changing WCB policies will be dealt with in the Chapter 13 on communications.

Cleaning up the Act

The Act itself is the vehicle that established and enables the entire function of the workers' compensation system and related activities. It is also the focus of this Committee of Review and this report. Many recommendations in this report deal with the Act and its implementation. Here we turn our attention from the substantive components of the Act to what are often referred to as 'housekeeping items'.

The current Act has been in place for over 30 years. It has been amended and changed and, certainly, the world around it and the contexts in which it is applied have changed dramatically. In our work with the Act, we determined the need for several minor changes in the wording of the Act, apart from any substantive changes in content. Some changes, such as making allowances for increases in the cost of living would allow the Act to remain flexible and up-to-date without requiring ongoing legislative changes.

Such changes would include but not necessarily be limited to:

1. providing clear and consistent definitions for all terms e.g. health practitioners vs. health professionals;
2. using pronouns covering both genders;
3. dealing with common-law and same-sex couples;
4. allowing absolute dollar amounts in the Act to be adjusted for the cost of living;
5. ensuring section titles accurately reflect the section's content; and
6. reviewing the housekeeping recommendations from the 2006 Committee of Review report.

This Committee of Review does not have the legal expertise to do such a review, so we recommend that:

Recommendation 30

A line by line legal review of the 1979 Workers' Compensation Act be undertaken to cover 'housekeeping' type items and ensure the Act is up to date and consistent. This report will be conducted using legal input and stakeholder feedback.

We underline that Recommendation 30 above applies only to minor changes in the wording and formatting of the Act such as described in the list above. Many of the other recommendations in this report cover the more substantive changes that we would like to see made to the Act.

Chapter 8: Appeals

Chapter 7 on governance introduces the question of appeals by recommending that there be additional Board resources to ensure timely hearings and decisions.

Chapter 13 on communications recommends that an appeal need not be filed to give stakeholders access to claimants' files. Taking these as given, we will now look at the appeal process in more detail.

The most recent data show that 59% of appeals coming to the Appeals Department are denied. About one in five (19%) appeals are successful. More than one in five (22%) are returned for further development of the file. This strongly reinforces the need for more complete work on files at the front end.

Additionally, in 2009 the Board received 232 appeals. Of the 181 appeals that were decided, 82 were accepted and 99 were denied. At year-end, 134 appeals were pending, and the average days to decision was 191. Only 2% of all appeals were decided within 60 days.

Reducing the Need for Appeals

The first factor to consider is how to reduce the need for appeals. Providing access to files without requiring an appeal to be in process is one way to do this. Improving customer service will reduce appeals. More complete file development and thorough adjudication at the front end of the claim will reduce the number of appeals. Clearer communication early on about the decision and the decision making process will also lead to fewer appeals. All of these factors are reflected throughout this report and in various recommendations. See Chapters 6 and 13.

Nevertheless, there will always be some workers and employers who will want to exercise their right to appeal a decision. In those cases, we want the best service possible provided to all involved.

Two Levels of Appeal

There are several steps a claimant can take when he or she is not satisfied with a decision. The first step is to speak with the claims entitlement specialist or his or her manager. This could yield a changed decision. More likely, and especially if the file has been well developed and the claimant has been treated with respect, a satisfactory explanation for the decision will be given and accepted by the claimant.

If this does not happen, the next avenue open to the claimant is to go to the Appeals Department at WCB. Here the claim will be examined by more senior WCB staff. In fact, this is a first level of appeal. Best practice would be to successfully resolve as many cases as possible at this level and minimize the number of cases having to be brought to the Board in its role as the Appeals Tribunal. Staff in the Appeals Department should see this as their goal and use the tools of their knowledge, customer service skills and abilities in communication to achieve this goal. Superficial efficiencies should be avoided. This level of appeal should not merely push cases through to the Appeals Tribunal for a fast through-put. Nor should the Appeals Department attempt to minimize cases going to the Appeals Tribunal by being overzealous in overturning decisions. See Recommendation 22 in

Chapter 6. Instead, fair treatment, well and politely explained should be provided.

If and only if the issue is not resolved at this level, should a case go to the Appeals Tribunal level. This process should be clear, obvious and well communicated to all parties. The best way to do this is to include both levels of appeal explicitly in the Act. Thus we reiterate Recommendation 22 from the previous Committee of Review:

Recommendation 31

Amend the Act to explicitly include the existing two levels of appeal, namely the Appeals Department within WCB and the Appeals Tribunal.

Being Open and Timely

First we underline the recommendations in Chapter 12 that all information on file be made available to all parties subject only to privacy considerations.

Our next concern returns us to our on-going theme of timeliness. We have covered the need for more Board members, working as the Appeals Tribunal, to hear appeals. However, the Board members do not work in a vacuum. Sufficient, well trained and experienced resources are needed for at least two other levels so that Board members can do their appeal work well. The first level is the internal review process by the Appeals Department in WCB which precedes a Board appeal. The second level is the Board Services staff who actually work on behalf of the Board members by providing the information that Board members need and preparing them for the cases that they are going to hear.

At both these levels, the quantity of staff must be adequate to provide timely service even during vacation seasons. The Committee was advised that it is difficult to provide adequate staffing during vacation seasons. The problem is exacerbated by the long vacation entitlements that many staff have earned with their long service at WCB.

All staff must have sufficient experience and knowledge of all relevant WCB policies and processes to be able to do accurate and thorough work. They must be engaged in continuous learning as legislation and policies change, perhaps even as a result of the recommendations in this report.

Recommendation 32

Adequate resources, both in quantity and quality be provided at all levels of the appeal processes.

Since what gets reported gets done, we also recommend that:

Recommendation 33

The Board publish a report in the Compensation Reporter and Annual Report, showing the numbers of outstanding appeals and how long they have been in process, e.g. three to six months, six to nine months etc., and speak to this at the Compensation Institute and other stakeholder events.

One further comment on timeliness. People have often wondered why there is never enough time to do things right and always enough time to do things over. We feel that the need for many appeals could be eliminated if a little extra time were to be taken to ensure complete and correct development of the file at the front end. Similarly, while we do feel that there is room for an improvement in turnaround time on appeals, we do not want to see increased speed at the expense of the quality of the decision making. Hence, our emphasis on adequate resources.

The Committee discussed putting deadlines or time limits within which a claimant must file an appeal and/or within which the Board must hear and decide upon an appeal.

At this time, we do not recommend imposing time limits on either side. However, to prevent ever on-going appeals we feel that claimants should only be able to file multiple appeals per claim if there is new evidence to bring to bear on the case, especially new medical evidence.

Claimants may file more than one appeal per case **if and only if** there is new evidence **available, especially new medical evidence.** (See POL 31/2010).

Putting limits on the time the Board can take to reach a decision on appeals has worked well in other jurisdictions, resulting not only in faster turnaround, but also major reductions or even elimination of backlogs. Having deadlines to meet can justify the provision of adequate resources to the appeal process. However, there is the possibility that faster decisions could lead to poorer decisions especially if adequate resources are not available. Hence, we stand by our Recommendation 31 for adequate resources and leave to future Committees of Review to consider deadlines once those resources are in place. Additionally, an expanded Board could help to ensure quicker turnaround.

The remainder of this chapter will deal with communication throughout the appeal process. Again, we are picking up a theme found throughout this report.

Claimants have a right to know what is going on with respect to their appeals, what will be happening and when it is likely to happen. A more open process will reduce frustration and, possible anger on the part of claimants and those that work with them. Just knowing when a claim is likely to be heard is helpful. Also, advising claimants in advance about how long it will be until their appeal will be heard will help Board and staff keep long delays top of mind and encourage more timely appeals. Appropriate electronic systems will offer timely, cost effective delivery of this information in most cases on line.

Recommendation 34

Within two weeks of filing an appeal, all appellants be provided with a date on which they can expect their appeal to be heard.

We wish to confirm that all communication to the claimant is in writing and is in plain, easily understood language. It should be complete and provide all the information that the claimant and his or her advocate might need or want. References should be included for all sources used including references to medical data and information. Appropriate sections of legislation should be named and relevant policies cited. This follows from our Recommendation 28 that all policies be kept relevant and up to date and be applied by the Board. Claimants are far more likely to be satisfied with decisions if they clearly understand how they were made and upon what they were based.

Recommendation 35

All appeal decisions be communicated in writing, written in plain language and include the rationale and references to all material used in making the decision.

Even the best written material may not be clear to all claimants at all times and, it goes without saying, that Board decisions are very important to most claimants. Claimants who do not understand or who want to follow up on a decision about which they have been notified in writing should be able to do so. Needless to say, employees should be easily reachable and should be able to answer the claimant's questions. Both electronic and telephone communication options should be available in a timely manner.

Recommendation 36

Each decision include the contact information of a WCB employee for follow up discussion. Claimants are entitled to a follow-up conversation.

Chapter 9: Medical Services

Medical questions are among the most complex and controversial issues that affect WCB and that were brought to our attention. The lack of health and well-being is of vital concern to claimants. Medical diagnosis and treatment is very complex and beyond the knowledge of most people. Physicians who see claimants are independent of WCB and may not be knowledgeable about how WCB works. The physician may not be available in a timely manner either to see injured workers or to respond to requests for information.

Here we focus on two elements. The first deals with when and how medical input is provided and used in the claim process. The second is concerned with the role of the external physician in dealing with WCB claims.

Obtaining Needed Medical Input

We all know, and the Committee was often reminded, that the claims entitlement and management staff at WCB are not health care professionals and should not be making medical decisions. Nor are they in a position to pass judgment on medical information that they receive from physicians and other health care professionals.

Fortunately, there are, within WCB, medical experts well trained in occupational medicine and injury treatment to support claims service representatives. We would like to see better use made of these resources. Doing so would ease the burden on the claims service representative and lead to better decision making at the front end of the claim.

Recommendation 37

WCB adjudicators consult WCB's medical advisory services and ensure their involvement in the early stages of complex claims adjudication to confirm the quality and extent of the medical information presented by the claimant's health care provider, and adjudicator follow up.

We have recommended in Chapter 6 that customer service should be a focus of those dealing with claims and claimants and that there should be a Continuous Improvement Committee on Customer Service to ensure on-going advancement in this area. This Committee should include in its mandate the medical components of dealing with claims and customer and should involve WCB's medical advisors. The result will be better quality information from health care professionals on which better decisions can be based.

This work should not be limited to those within WCB, but should also cover external physicians and other health care providers. Employers, especially smaller employers and those new to WCB will also have to be kept in the loop. See Chapter 13 on communications.

Recommendation 38

A continuous improvement program be implemented to cover the medical aspects of claims adjudication. It be conducted under the Continuous Improvement committee on Customer Service (Recommendation 18) and make use of input from WCB's medical advisory staff.

Pre-existing Conditions

Getting complete and accurate medical information to deal with initial injuries will lead to a better quality of decisions and improve service to claimants. However, a significant number of cases and appeals centre on the recognition or non-recognition of pre-existing conditions. Claims are and should be denied if a worker's inability to work derives solely from a non-work-related pre-existing condition. But the evidence about the origins of a worker's disability is not always clear and unambiguous. Full information decision making is required in these cases. Therefore, below, we endorse and repeat as our Recommendation 39, the Recommendation 5.09 made by the previous Committee of Review.

Recommendation 39

The Board revise its pre-existing condition policy and procedures to ensure that the opinion of the injured worker's health care provider is obtained before making a decision to deny or terminate benefits.

Also in the interest of full information decision making and because we heard that claimants did not think that this was always the case we recommend:

Recommendation 40

The Board ensure that it is evident that medical staff have considered a claimant's work history and any recent medical assessments before reaching a conclusion.

Outside Health Care Providers

We now turn to the role of the external physician. In Recommendation 12 in Chapter 5 on the return to work, we noted the role for WCB in communicating with and educating physicians about their role in the return to work process. We now extend that approach to the entire role that the external physician and all medical staff play in working with WCB and claimants.

We understand that WCB's medical services advisors do maintain some contact and communication with some physicians. This work should be continued and expanded.

Unfortunately, there are times when health care professionals do not meet the legal requirements put upon them by the Act. They do not provide the reports that are requested from them even when WCB pays them a fee to do so. Section 55 of the Act deals with this possibility by providing for a fine of up to \$1000. However, such a fine is applicable and payable only upon summary conviction. The justice system in Saskatchewan has to deal with many serious offences and has limited resources. As a result, WCB fines become less of a priority and may not be dealt with. In the event that fines are not imposed, there is no effective penalty for failing to meet one's legal requirements to report to WCB. A similar condition applies with respect to employers failing to report in section 53 of the Act.

In order to make these penalties and provisions effective, fines on summary conviction resulting in penalties of \$1000 or less should be replaced by an administrative penalty to be implemented by WCB for an equivalent amount.

Recommendation 41

Wherever the Act specifies a penalty of \$1000 or less payable upon summary conviction, this penalty be replaced by an administrative penalty of an equal amount to be collected by WCB.

Chapter 10: Arms Length Bodies

The Meredith principle on which WCB is based is very simple. It says that employers, through premiums, pay the funds to provide injured workers with medical care and income replacement. It is also understood that the funds will cover the functioning of a body (WCB) to administer and operate the system. **Cases where the dollars from premiums are used for other purposes bear close examination.**

Two bodies that are currently being funded by WCB's premium income are the OHS and the Office of the Workers' Advocate (OWA).

Occupational Health and Safety Division (OHS)

Let us start with OHS. This report offers a consistent set of recommendations which are based upon major themes and work together to support one another for a better workers' compensation system.

One major difficulty with respect to OHS funding will be eliminated by the implementation of our first recommendation. OHS currently provides safety and prevention information and training to all industrial sectors including those like agriculture that are currently not covered by WCB and whose employers do not pay premiums. As noted in Chapter 1, we strongly endorse the need for safety training in the agricultural sector and other uncovered sectors, but the current system of requiring those from outside these industries to pay for it is not fair. To remove this unfairness, we stand by Recommendation 1 to provide WCB coverage to all industries.

Another inconsistency with respect to OHS funding arises out of how the funding is delivered. Although all the funding is provided by WCB, OHS must prepare a budget and have it approved and funded through the Treasury Board, who then delivers the funds to OHS. WCB is later invoiced by the Ministry of LRWS for the amount. This means that OHS is bound by all Treasury Board guidelines and policies even though, unlike other entities funded by Treasury Board, it receives no funding from taxpayers. This can lead to perverse effects. For example, even if WCB and employers feel that OHS is doing a good and necessary job and its work should be maintained or expanded, government constraints with respect to budgets and staffing could reduce the OHS function. This funding mechanism is opaque rather than transparent and has no path through which the recipient of the funding can be held accountable to the ultimate source of that money.

To improve both transparency and accountability, WCB should provide funds to OHS through Treasury Board. The amount of funding should be based upon the needs of the OHS operations and should not be limited by extraneous factors.

Recommendation 42

As WCB is the sole funder to OHS, funding to OHS be based upon OHS needs and should be provided by WCB through Treasury Board. OHS is not to be subjected to the staffing limitations or financial restrictions applied to the taxpayer supported ministries or agencies.

Although OHS is funded by WCB, we see some merit in maintaining it as separate body. This is because of its functions. We see OHS playing a major role in regulatory compliance e.g. Occupational Health Committee training, and the prevention department of WCB playing a large role in prevention training. The major role of OHS lies in ensuring that the OHS Act and regulations are enforced and any training offered by OHS should be related to this role. Prevention related training should be provided by WCB.

Recommendation 43

**Training offered by OHS relate specifically to the Act and regulations.
WCB should provide training related to prevention.**

A secondary responsibility that applies to all bodies that are not self-funded is to ensure that the functions are done as efficiently and effectively as possible.

At this time, OHS is not accountable to WCB who is paying the bills with funds collected from employer premiums. We believe that where funding is provided, there should be accountability. In order to demonstrate that good use is being made of the funds OHS receives, OHS should report annually to the WCB Board on its enforcement activities and how effective and efficient they are.

To help achieve these efficiencies, WCB should ensure that OHS has WCB data on claims and injuries by industry, type, etc. This will allow OHS to direct its enforcement activities to areas where they will have the most beneficial results.

We recognize that what we are recommending here will not only require increased reporting on the part of OHS. It also places added demands on WCB as WCB will now be providing data to OHS and receiving reports from OHS so that the latter can demonstrate its effectiveness. Data such as that shown in Figures 11 and 12 on pages 79-80 on claim types by occupation, gender and age could be useful to OHS in making decisions about allocating their resources to get the maximum improvement in worker safety.

Here, we reinforce our Recommendations 26 and 32 to ensure that the Board has sufficient human resources to fulfill all aspects of its role.

Recommendation 44

WCB analyze, report claims and injury data and provide this information to OHS to inform and direct enforcement activities.

Recommendation 45

WCB receive annual reports from OHS that demonstrate increased enforcement efficiencies due to the information received from WCB.

The two recommendations above should be implemented as part of an on-going process of collaboration, co-ordination and communication between WCB and OHS. Information should be shared with stakeholders.

Office of the Workers' Advocate

We turn now to the Office of the Workers' Advocate (OWA). OWA is currently funded in the same manner as OHS, which is through Treasury Board, bound by Treasury Board limitations, but ultimately paid for by WCB. Therefore, we make the same recommendation with respect to funding OWA as we did for OHS and for the same reasons.

Recommendation 46

As WCB is the sole funder to OWA, funding to OWA be based upon OWA needs and be provided by WCB through Treasury Board. OWA will not be subjected to the staffing limitations or financial restrictions applied to the taxpayer supported ministries or agencies. OWA will remain accountable to the Treasury Board.

Because of the role of OWA as an advisor to workers in their dealings with WCB, OWA reports to WCB need not go beyond the basic rules of financial accountability, nor must WCB supply regular reports to OWA. Of course, WCB should respond to any requests for information. OWA will provide reports as required to the Treasury Board.

OWA provides advice and support to one major stakeholder group in the workers' compensation system, namely workers. The other major stakeholder group is employers. Large employers may have the expertise and the resources to deal effectively with WCB without requiring external advice and support.

However, the same cannot be said for small employers. Right now, 75.7% of employers in Saskatchewan have fewer than 10 employees.⁵ Increasing coverage as described in Recommendation 1 will result in adding over 5000 employers to the system in the agricultural sector alone, 94% of them small.⁶ The Committee feels that these and the newly covered employers in other sectors and occupations should have easy and ready access to information on dealing with

⁵ Canadian Business Patterns 2010, table CDNAIC2_LOC

⁶ Ibid.

injuries and working with WCB, but that this service should be provided within WCB and not in a separate office. See Chapter 13 below on communication for our recommendation on small and new-to-WCB employers.

Because of time constraints, we did not cover the Fair Practices Office or WorkSafe Saskatchewan in this report. Nor were these entities mentioned during our hearing process. Future Committees of Review should consider these two bodies.

Chapter 11: Rates and Incentives

Employers are concerned with reducing WCB premium rates, not only to minimize their costs; but, more importantly, because lower rates reflect fewer and less serious injuries to their workers. WCB, with its Mission Zero initiative, also wants to see rates at the minimal level necessary to ensure the on-going financial viability of the system. In this chapter, we will look at the rate setting process and at ways that premium rates – and therefore injury rates – can be pushed even lower.

In any program like WCB with an insurance function, premium rate setting is an actuarial process. Qualified actuaries use advanced mathematical techniques to estimate the costs of future payable claims and determine rates that will cover those costs plus any overhead costs tied to the operation. At WCB, this process is undertaken separately for each individual industrial rate group. In Recommendation 3 we consider the formulation of rate groups.

It is very important that rates be actuarially sound. Setting rates too high places an unnecessary cost burden on employers. On the other hand, rates that are not set sufficiently high can jeopardize the viability and validity of the entire system. Such a situation exists in some jurisdictions. The financial position of The WCB indicates that actuarially sound rates have been used.

The experience rating, as it currently operates, acts as an incentive system based on claims history. Fewer and shorter claims in the past mean lower premium rates now. Discounts and surcharges are based on the claim costs for the advanced program (larger employers) in the form of higher premiums are applied to individual employers based on the number of recent claims filed and the cost of claims. For smaller employers, only the number of claims is considered.⁷

Government as an Employer

‘Do as I do’ always works better than ‘do as I say’. The Government of Saskatchewan should be serving as a model employer with respect to safety and injury prevention in the workplaces under its jurisdiction. This would offer an example to private sector employers.

Recommendation 47

The Government of Saskatchewan value safety and prevention and act as a model employer throughout the public sector by building the culture of safety through the prevention of workplace injuries.

In Recommendation 3, we dealt with the determination of rate groups and we will deal with communication about changing rates and rate groups in Chapter 13 on communication. One issue that was often brought to our attention is considering the provincial government in its role as an employer.

⁷ See WCB’s document Assessment Rate Classification of Industries, 2011

An example of this has to do with the classification of affiliates and sub codes within health care. Fairness among employers should be sought within the WCB system. Actuarial processes provide fairness over time. Changes to incentives described below have the additional advantage of fairness in that safer employers will be less likely to have to carry the burdens of those less safe and employers who make fewer efforts for health and safety will be less able to get free rides from those who make more.

A lack of fairness can arise when a rate group includes very divergent employers with different safety profiles. Here safer employers end up carrying the burden for the more injury prone. We were told that this is often the case in the health care industry. It should be corrected.

Recommendation 48

The rate groups affecting subcodes and affiliates within large sectors such as mining and the health care industry be examined and adjusted for fairness.

Benefit Control

Employers are more motivated to co-operate with WCB and to engage in preventative activities when they feel that WCB is doing all it can to offer the best possible service for valid claimants, ensuring fraud or misuse of benefits is minimized or eliminated. Preventing misuse or benefit control is a valid component of any insurance program.

Employers have noticed and have told us about upsurges in WCB claims among their employees after a lay-off notice has been issued. They reminded us that WCB benefits are higher than employment insurance. However, when these upsurges were mentioned to WCB staff, employers were told that WCB can only look at individual claims and not at patterns or trends. WCB would be more efficient and would have more resources to deal with genuine injuries if they were able to determine patterns, trends, etc. from its claimant data and learn from them. In line with Recommendation 41 above, patterns and trends in claimant data should be shared with OHS above to support their role in enforcement. This and other claimant data such as repeat claimant information should be available to inform claims entitlement and management staff in decision making. See Recommendation 23.

Recommendation 49

WCB be more diligent with respect to benefit control and advise employers of its efforts.

When all else fails and fines and penalties have to be administered, a silver lining can be added to the black cloud of punishment. The funds so collected can be put to good use in prevention activities to enable workers to come home safely rather than the funds collected just disappearing into government revenue. More such funds are likely to be available after the implementation of Recommendation 40 with WCB able to apply administrative penalties rather than waiting for summary convictions which often never go to court.

Recommendation 50

Funds received from fines and administrative penalties imposed by WCB be retained by WCB and rerouted into primary prevention activities.

Leading and Lagging Indicators

Currently, the rates, rewards and penalties delivered by WCB and OHS are all based on lagging indicators. That is they occur after the event, e.g. injuries and claims increase and then a penalty is imposed or premiums rise. Injuries could be reduced and prevention enhanced were WCB to find some leading indicators, i.e. those that precede rather than follow a change in claim patterns. Does, for example, implementing a safety audit reduce the injury rate? We encourage WCB, OHS and industry safety associations to mine their data to see what leading indicators there are. These would advance injury prevention and be very useful in the additional incentive programs we define below.

Additional Incentive Programs

Right now, not only are all incentive programs based on lagging rather leading indicators, but also there are significant time lags between changes in performance and changes in premiums. These reduce any and all incentive effects to change the present. Also, current incentives are strictly financial. No information is offered through these systems to inform about how to actually reduce future injuries and, thus, premiums paid.

Some sectors have set up their own safety programs in order to reduce injuries and ultimately premiums. One example is found in the construction sector.

The Saskatchewan Construction Safety Association is an example of a voluntary, industry funded safety association that has resulted in participating companies achieving more than a 70% reduction in injury rates over the past decade and an injury rate lower than the provincial average for the past two consecutive years, even though construction is usually considered as a high injury industry. See Figure 15 on page 81.

In nearly every location during the public hearings, the Committee of Review was told repeatedly that additional and more immediate incentive programs are needed to create safer workplaces today.

Incentive programs tend to be effective. However, they are not free and require commitment, organization and considerable human and financial resources. Not all sectors can provide these and, at this time, WCB does not offer any financial support for what could turn out to be very valuable programs.

Workers' compensation boards in numerous other jurisdictions do offer immediate and direct financial incentives and support for industry based programs that generate changes in behaviour leading to safer workplaces. We have looked at these, both at what works well and at what could be improved. Some believe that the Saskatchewan WCB and the province's workers and employers could benefit immensely from a carefully designed, implemented and supported additional incentive program.

The incentive programs would be encouraged, but voluntary. They would require the support of employers within the industry as they would be paid for by an additional charge on premiums within the industry. These charges would pay for the running of the incentive program and also any premium reductions (the incentive) that would arise from applying the program and achieving the intended results. All employers in the industry would be motivated to participate since all will be paying for the program in their premiums, but only those who successfully used the program would benefit.

Any safety enhancing program delivered at the employer level and approved by an industry safety association or by WCB would be eligible. Those more organized sectors with larger employers and organized labour in place should be responsible for setting up industry safety programs. Elsewhere, WCB, through its prevention department, could help organize and administer these programs.

Incentive programs should be industry specific both because they are paid for by the industry and because industries have different needs and structures and are at different degrees of readiness for safety and prevention programs. Since one size does not fit all and each industry program will be different, this will enable the incentive programs to be implemented on a gradual basis with each sector able to learn from the experience of its predecessors.

As noted above, programs would be funded by marginal increases in WCB premiums of the employers in the participating sector or industry. Such increases would have to be voted upon and approved by a majority of such employers. It should be emphasized that each incentive program is funded entirely by employers in the relevant sector and is not cross subsidized by other industries or employers. Confirmed implementation of approved, safety enhancing activities would result in an immediate reduction in premiums payable. The positive incentive would be a short term reduction which would be in addition to the long run decrease in premiums from the reduction in injuries. There would also be the negative incentive for all employers in the group to participate in the safety enhancing activities and benefit from safety programs since they are already paying through their premiums.

These incentive programs would be essentially revenue neutral for the industry involved and for WCB as the extra premiums collected in the industry would pay for the costs of the program and earned premium discounts.

This section as well as Recommendation 51 did not receive unanimous agreement by the COR as some felt that legal and regulatory requirements in *The Occupational Health and Safety Act, 1993* as well as the existing experiencing rating (merit rebate) program within WCB should provide sufficient incentive to develop safety programs.

It should be noted that all agreed that efficient and effective safety and prevention programs are beneficial and needed.

Recommendation 51 - Non-Consensus

Voluntary incentive programs be offered within industries and sectors and implemented on a gradual basis. Industries would be responsible for how the incentive program would be structured. Payment for the programs would come from within the industry.

Chapter 12: Privacy

We firmly believe that the operational efficiency of WCB and the perception of WCB by stakeholders and the public will greatly improve if freer access to files and information is provided to all relevant parties. Access to information is a hallmark of a free and democratic society.

The Committee examined the WCB's relationship to FOIP and HIPA and heard opposing opinions on what should be done. The Committee reviewed these opinions but was not able to conduct a thorough legal analysis. We suggest that future Committees examine this issue further.

Openness and the Inquiry Approach

From another perspective, openness and sharing of information is a major component of inquiry based, non-confrontational processes. Not revealing information or the sources of that information and keeping one's findings to oneself is associated with adversarial activities such as is found in a court of law. The difference between the two approaches has been described by Ombudsman Saskatchewan as the following:

There are two primary systems used globally to make decisions under legislation: the adversarial system and the inquiry-based system. The primary difference between these systems is in the role of the decision maker and how that decision maker collects the information relevant to the case in order to reach a decision.

In an inquiry-based system the decision makers, be they judges, members of administrative tribunals, bureaucrats, or others, are responsible to lead the collection of information. The decision maker will often be the one asking the parties and other "witnesses" questions and will be the one attempting to ensure that all relevant information is properly considered.

In an adversarial system, the decision maker is a passive umpire who makes a decision based on a preferred set of facts or "best case" presented by opposing parties.

The parties in an adversarial process collect their own evidence and present it to the decision maker to determine the facts. As a result, the parties have significant control over the process. Issues are framed either before the collection of evidence or during this process. The collection of evidence and how it is presented is inherently partisan. Any evidence that is presented by one side can be tested by the other. If evidence is prejudicial to both sides, it is generally omitted regardless of its relevance. The proponent has the burden of proof to establish the facts to certain threshold.

In most adversarial processes each side assumes responsibility for presenting only that information that is helpful to his or her side of the dispute. The decision maker determines the admissibility of evidence and, on the basis of information led by the parties, determines whose version of the truth constitutes the facts.

The underlying assumption in an inquiry-based system, however, is that the decision maker can conduct a neutral investigation into what is the truth. The decision maker takes a more active role. Separation of investigative and adjudicative powers, rules of evidence and advocates are less important. Because it is the responsibility of the decision maker to determine the facts, it is the decision maker and not the participants who direct the proceedings. Although they are entitled to and relied upon to supply information, the parties do not lead the production of information or evidence and they do not necessarily cross-examine witnesses. All relevant information is considered, whether or not it was submitted by the parties. There is no burden of proof as the facts are non-partisan. The process is usually less formal.⁸

WCB rightly prides itself on using an inquiry based model in its appeal process. This approach is less intimidating to workers and less confrontational for employers using the system. It is less costly because it does not require the amount of legal input and support a court based system needs. It provides greater freedom in decision making to the Appeal Tribunal; though, as we have seen in Recommendation 25 and, again, as consistent with basic democratic principles, this latitude should not be arbitrary and unbridled.

However, WCB has been less than free with making the information that is in the files available and does not advise the parties when additional information is amassed. Currently, an appeal must be in process to generate access to files, creating what could be unnecessary appeals when all that was sought was information. Workers are not even provided with the summary document used by the Appeal Tribunal in dealing with their cases even though both the 2001 and the 2006 Committees of Review recommended that this document be made available.

Hence, our Recommendation 21 about developing suitable systems and sharing relevant information with claimants, and employers on a need to know basis. The recommendation below carries forward that theme and supports open operations and an inquiry based appeal process.

Recommendation 52

All workers and employers have timely access to files without the need to file an appeal. A good rationale such as privacy legislation must be provided for any access that is denied.

⁸ Ombudsman Saskatchewan, Brief to the Committee of Review of The Workers' Compensation Act, 1979.

Acting Responsibly

Providing ready access to information has the potential to improve public and stakeholder perceptions of WCB, reduce appeals and enhance the more open and less confrontational atmosphere that an inquiry based process seeks to generate. However, with every freedom comes responsibility and freer information is no exception.

At this time, the Committee is not aware of any information on a worker's file that the worker him- or herself should not have access to. However, such information may exist.

We have heard in the hearing process that there is often information on a worker's file that the employer should definitely not have access to. An employer needs and should have access to information on a worker's file that affects the worker's ability to work, any limitations and restrictions on that ability and the expected duration of these limitations and restrictions. Certain claim details such as whether or not a claim has been accepted or is being appealed are also important to employers. An employer's disability plan might come into play for rejected claims and an employer might have relevant input into the appeal process.

Beyond such needed information, information about a worker may be on file that the employer should definitely not be privy to. In most cases this would be medical information above and beyond work limitations and restrictions as they affect the current claim.

Therefore, free access to information, while desirable, cannot be unbounded. WCB would require restrictions on what should be made available and to whom and what could not be released. Determining this could be difficult.

WCB should set up a Privacy Office to which requests for information from files would be sent. The staff in this Office would be fully versed in all the relevant legislation and would deal with issues of privacy on a regular basis. As such, they would be in a better position to make and act upon correct decisions than case managers or others who have many other demanding duties and deal with requests for information only sporadically.

With the dedicated resources and expertise available in the Privacy Office, WCB would be in a much better position to respond to requests for information and could provide the openness of a working, inquiry based process.

With up to date electronic systems in place to give staff ready access to the files, most requests for information should be dealt responded to within a week. A longer response time limit should be needed only in rare and very complicated cases.

Recommendation 53

WCB set up a dedicated process for privacy through which all requests for information from files should be passed, and responses to requests be provided in a timely manner.

Chapter 13: Communication

The dimension of communication covers every aspect of a modern organization. WCB is no exception. Communication is needed internally so that all individuals and departments can focus on missions and goals and not work at cross purposes. Communication is needed between WCB and its stakeholders, the workers and employers, so that information can be shared and the best decisions reached. There must also be a clear understanding of how and why each decision was reached and whether the decision concerned a claim, an appeal, a rate or a policy.

Many of the issues covered in the earlier chapters are related to communications. The changes in coverage described in Chapter 2 will require a major communication strategy. Mission Zero is an example of communication on the vital issue of prevention. Any change that hits stakeholders in the pocketbook such as benefits for workers or rates for employers must be well and fully communicated. All communication with stakeholders, especially injured workers, must be done clearly and with the utmost respect as we show in Chapter 6. This applies to written and oral communication and involves the means of delivery and the related factor of timeliness. Access to files is another example of improved communication that we have already discussed. Of course, all communication must respect privacy; hence Recommendation 53 earlier in the report.

WCB already has in place several well used and effective means of communication. They are to be commended for their website. The Compensation (Comp) Institute received ample praise during the hearing process of this Committee. These excellent communication components can be built upon to further improve WCB's relationships and dealings with its stakeholders.

Communication Goes Both Ways

We want to emphasize here that communication is definitely a two-way street. WCB must reach out to stakeholders with the information they want and need in a way that they can easily receive it. Stakeholders must also have a channel of communication to question WCB and to provide their input on matters of concern to them.

One area where communication could be enhanced is between WCB and employers. During the hearing process, employers told us that they felt ignored, neglected and left out of WCB activities even when the matters were of concern to them such as a claim by one of their employees or the setting of the premium rates which they are obliged to pay. Let us look at how communication between WCB and employers could be improved in some specific areas. Recommendation 20 covers the issue of allowing employers access to relevant files making allowance for privacy limitations as mentioned in Recommendation 53.

The setting of premium rates is one area where all communication seems to go one way – from WCB to employers, and premium rates are very important to those who must pay them. Employers want to understand how rates are set, why they are at any given level and what they as employers can do to affect these premium rates.

What employers can do to affect their premiums over the long term is to reduce injuries to benefit from experience rating. In the shorter term, they might take advantage of an incentive program such as described in Chapter 11.

However, many employers are not aware of these programs or exactly how they work. Steps must be taken to ensure that this information is not only available, but that employers actually see and understand it. The same applies to rate setting.

Praise for the WCB Compensation Institute

It was suggested to us, and the Committee concurs, that the WCB Compensation (Comp) Institute be used as a means of improving communication on rate setting. The Comp Institute received very favourable reviews from employers who often suggested expanding it. The information sessions that are offered are well received and should be maintained or augmented. However, apart from question periods at the end of the sessions, the communication flow is strictly from WCB to stakeholders.

We would like to see more opportunities for employers to have input into the rate setting process. Extending the duration of the Comp Institute would be one way to collect any input. A second would be for WCB to distribute a preliminary list of the next year's rates to employer groups and large employers. Information on how and why the rates are set and what employers can do to affect them should accompany this list.

WCB should then provide an opportunity for employers and employer groups to offer input either at the Comp Institute or by other means. Employer input into rates is sought in other jurisdictions. We would not expect a flood of responses to this exercise. Rate setting is complex and time is a scarce resource for most employers. What we would expect is a greater feeling of inclusion by employers in the WCB operation which they finance. The expressions we heard from employers at the hearings could be described more as exclusion and alienation than inclusion.

Recommendation 54

The rates for upcoming years be circulated to employer groups and large employers before finalizing them. Enhanced opportunities be offered to receive employer input prior to finalizing the rates. WCB ensure that information on all aspects of rate setting continue to be provided at the Comp Institute and by other means.

Input into Policies

In Chapter 7, we outlined the need for keeping WCB policies up to date. Our recommendation on this point will, by definition, result in more frequent changes in policy. WCB policies affect not only employers, but also workers.

Perhaps even more than in rate setting because workers as well as employers are directly affected, there is a strong need for both out-going information from WCB and in-coming input from stakeholders on policy changes. Some jurisdictions have requirements and practices which require a formal public hearing process on such changes. This is an onerous burden. Saskatchewan's Act makes no mention at all of any outside input into policy changes, other than to stipulate that the WCB must hold at least one meeting annually to inform all interested parties of the administration of the Act, and policies of the Board. This adds to the perception of WCB as having the power to be unconstrained and arbitrary and not having to listen to the ideas of anyone else.

We do not go so far as to say that a formal process of public hearings should be held before any policies can be changed. We do, however, feel that outside input should be sought and that policy changes not be made in a vacuum. This would be a consultative process. WCB would not be bound by what it heard. It would have to listen to and consider what stakeholders have to say before finalizing any policy changes.

Public hearings could be used to obtain input on proposed policy changes. However, simpler and less costly processes could be chosen. Certainly proposed policy changes should be put on the WCB website. This is necessary but by no means sufficient since it is very passive. Copies of all suggested changes should be sent directly by email or other means to WCB's stakeholder lists. If needed, direct contact could be made with larger union and employer groups to obtain feedback.

Again, this process is consultative. WCB is not to be bound by what it hears, but should definitely take it into account before finalizing any changes. And for really excellent communication, WCB should reply to those who put forward major submissions thanking them for their input and, where necessary, explaining why it was or was not used.

Recommendation 55

WCB be required to seek stakeholder input before finalizing any changes in policy.

Employers are Stakeholders

More of the recommendations in this chapter deal with communication with employers rather than with workers. In part, this is because some issues like rate setting do not directly involve workers.

One might say that some workers already have more channels of communication to WCB than do employers. Unions and labour organizations often help individual workers with their claims. The Office of the Workers' Advocate (OWA) exists to help worker claimants. Individual employers have been known to assist their injured employees through the claims process. Of course, the Fair Practices Offices (FPO) exists to assist all who feel unfairly treated.

It might seem acceptable that more channels of communications and assistance be offered to workers than employers. Worker claimants are injured individuals often with limited resources and knowledge of WCB. Large, well organized employers have resources, knowledge and sometimes entire departments to deal with injured workers and WCB. These companies often do not require additional support beyond the information and opportunity for input that we talk about above in this chapter.

However, such employers make up a minority of all the employers in the province. As noted in Chapter 3, 75.7% of all employers have fewer than 10 employees. And 1,415 or 3.5% have between 50 and 499 workers and only 67 or 0.16% have more than 500. Furthermore, small businesses turn over rapidly with many closing and others opening at any point in time.

The vast majority of small and medium employers (SME's) in the WCB system do not possess the resources or the knowledge that large organizations and unions have. They often see WCB premiums as another tax they have to pay tied to another set of forms they must fill out. Since small companies with less than 10 full-time equivalents (FTEs) accounted for less than 14% of total injuries in 2010, they often must start at square one in dealing with these occurrences.

All those trying to keep a small business going and to meet the payroll for their workers do not have a lot of free time to climb the WCB learning curve. Some, depending on age, sector, etc. may not even be comfortable using electronic sources. It is these employers, not the large companies or public sector organizations who need information, advice and support in dealing with WCB. Some told us that the communication systems that exist are insufficient to meet their needs. More support for SME's is needed now.

The numbers of SME's will be vastly increased with the implementation of Recommendation 1 to extend WCB coverage to all workers. Many of the about to be covered companies are small and all will have no background or experience working with WCB.

Existing channels of communication such as phone lines and the website are not adequate to meet the needs of the currently covered companies. These systems should be maintained and enhanced, but more is needed.

Communicating with New and Small Employers

It was suggested during the hearing process that an Office of the Employers' Advocate be established to balance the Office of the Workers' Advocate. Others suggested that the role of OWA be expanded to serve both workers and employers. The Committee does not recommend either of these approaches.

For the latter, the possibility of having a worker and employer both coming to one advocacy office on different sides of the same claim makes this idea unworkable. For the former and in the spirit of an inquiry based rather than a confrontational model, we felt that advocacy was not the best way to offer smaller employers and those new to the system the help they required.

Instead, we recommend that there be adequate, readily available, exclusively dedicated resources within the workers' compensation system to deal, in a timely manner, with inquiries, etc. from employers who have needs or questions. There should be at least the possibility that one's phone call will be answered rather than having to wait for a call back. Inquiries on email should get a response within the day. Those responding to employers should be able to answer their questions and help them directly without having to refer them on to others. Everything we have said in Chapter 6 about supporting staff to provide excellent customer service applies here.

Recommendation 56

Separate resources be established within WCB dedicated exclusively to serving employers, especially smaller employers and those new to WCB. It be adequately resourced with knowledgeable staff who can respond accurately in a timely manner.

Chapter 14: Conclusions

The 2010 Committee of Review members have studied the Act and considered the views of concerned organizations and individuals who have chosen to provide these views to us in a series of public hearings and in writing. From what we have heard and learned we have formulated 57 recommendations. The reasoning on which the recommendations are based is described in the body of this report.

The report represents the collective views of the members of 2010 Committee of Review. Its goal is to provide advice that will enhance an already well functioning workers' compensation system. In forming our recommendations, we have kept in mind the needs and desires of workers, employers and the Province of Saskatchewan as a whole.

Our recommendations are built around the main themes described at the beginning of this report and repeated below with some examples. The recommendations themselves are repeated below on page 64 where they are tied into the six themes.

Prevention

e.g. supporting safety associations, adding incentive programs, learning from experience as reflected in our data, sharing this experience with OHS, the enforcement agency.

Inclusion

e.g. expanding WCB coverage, providing better access to files, seeking stakeholder input into changes in rates and policies.

Service to Stakeholders

e.g. improved training, support and resources for staff dealing with stakeholders, a dedicated department to serve employers, more access to files and information.

Fairness

e.g. adjusting rate groups, tying maximum payment levels to changes in the cost of living, improving benefit control to reduce fraud.

Improved WCB Operations

e.g. more attention to governance through a five person board, continuous improvement via committees for customer service and information systems.

Accountability

e.g. using fines to hold accountable those remiss in their obligations, requiring reports from organizations funded by WCB and, our final recommendation:

Recommendation 57

A progress report be published annually listing the recommendations from the report of the Committee of Review, their status (e.g. implemented or not) and an explanation for that status. This report be shared with stakeholders and posted on the WCB website.

We urge the Government of Saskatchewan to give careful consideration to these recommendations and to implement them in a timely fashion.

Recommendation Summary and Costing

This recommendation summary and accompanying costing is provided in accordance with the government's practice of costing legislative and regulatory amendments. While not required to do so, the Committee initiated the preparation of a cost analysis to inform itself and stakeholders of the impact of the recommendations.

This costing is one sided. It does not assign a value to financial savings in administration or benefit costs or the significance to individuals, families, communities and public policy from recommendations intended to:

- improve prevention of employment related injury and illness;
- improve recovery of health for injured workers;
- improve program delivery or processes;
- improve claims case management;
- improve earlier, productive and sustained return to work;
- reduce friction and litigation costs within the overall program;
- improve communications and relationships with individual workers, employers and stakeholder organizations;
- improve the ability to recover penalties and revenue from third parties;
- improve financial management;
- achieve program compliance with freedom of information and other legislation generally applicable to all public agencies;
- enhance policy transparency, clarity and certainty and access to Board policy;
- improve the credibility and acceptability of decisions made under the program; and
- accelerate or advance priority in the performance of a Board responsibility that must be discharged in any event.

The valuation of the \$138.2 million immediate increase in future liabilities for the recommendations to increase and index the maximum wage rate was done by the Board's external actuaries using assumptions and valuation methods they used in the Board's recent annual actuarial valuations. This costing projected revenues and component costs for the next six years on the assumption that the actual average assessment rate would remain at \$1.59, the provisional average assessment rate for 2012.

The terms used in this summary have the following meanings.

Nil means either no cost, or a cost that can be absorbed without an increase in administration costs or an increase in reserves for future administration costs.

Immaterial means a cost so small that it is not actuarially material.

Not quantifiable means there is no data or methodology that will identify whether there will be a cost and what that cost will be.

Summary of Recommendations by Chapter

Coverage
<p>1. <i>The Workers' Compensation Act, 1979</i> apply to all employees in Saskatchewan with no exclusions.</p> <p>Themes: Inclusion; Fairness.</p> <p>Cost: Nil</p>
<p>2. All self-employed people have the option of being covered by WCB, as is currently the case. Where no salary is paid, an income level of not less than 50% of the maximum assessable earnings be chosen by the self-employed and be the base on which premiums are set.</p> <p>Theme: Inclusion.</p> <p>Cost: Nil</p>
<p>3. The Workers Compensation Board examine all rate groups with a view to determining groups in as fairly and balanced a way as possible. The impacts of any changes be analyzed actuarially and a sensitivity analysis of any changes provided.</p> <p>Theme: Fairness</p> <p>Cost: Nil</p>
Prevention
<p>4. The Government of Saskatchewan, working with WCB and all public sector employers, take steps to ensure that it is a model employer and an example to the private sector with respect to safe work places and working towards the elimination of claims and injuries.</p> <p>Theme: Prevention</p> <p>Cost: Not quantifiable</p>
<p>5. In those instances where an industry has a safety association, those safety associations have the primary responsibility to develop and deliver safety and prevention programming to support employers in creating a safe and injury free workplace.</p> <p>Theme: Prevention.</p> <p>Cost: Not quantifiable</p>
<p>6. In cases where an industry has no safety associations, WCB actively pursue the formation of safety associations. Where no such associations are formed, WCB be responsible to ensure that employers have access to safety and prevention programming with the costs of these WCB activities borne by those participating rate groups.</p> <p>Themes: Prevention; Fairness.</p> <p>Cost: Not quantifiable</p>

7. WCB continue to fully share information with OHS on claims histories and injury data by employer, so that OHS can apply its efforts in ways that lead to the greatest injury reduction and largest improvements in safety.

WCB report to stakeholders and OHS on the effectiveness of OHS' activities.

Themes: Inclusion; Accountability.

Cost: Nil

Benefits

8. The maximum benefit level which is currently set at \$55,000 be raised immediately to \$59,000. Over the next 4 years, it be increased annually by a percentage of the annual average wage in Saskatchewan until it reaches 165% of that average annual wage. Henceforth, the maximum be adjusted yearly to remain at 165% of the annual average wage in the province.

Non Consensus

Theme: Fairness

Cost: \$138.2 Million

9. WCB develop processes to minimize moral hazard.

Theme: Fairness

Cost: Not quantifiable

10. Amend subsection 74(3) to allow the worker to choose to either purchase an annuity or receive a lump sum payment when the accumulated capital and interest is \$25,000 or less in 2012 and to adjust the \$25,000 in increments of \$1,000 annually in subsequent years to reflect the average percentage change in the Consumer Price Index.

Themes: Fairness; Service to stakeholders.

Cost: Nil

11. WCB inform claimants taking out annuities about the options and consequences of choosing an inflation protected annuity versus a flat rate option.

Themes: Fairness; Service to stakeholders.

Cost: Nil

Return to Work

12. WCB actively pursue enhancement of effective strategies for education and follow up with physicians and other healthcare providers with respect to return to work.

Theme: Service to stakeholders

Cost: Not quantifiable

13. WCB create one electronic physician's Return to Work form to ensure clarity and accountability and the timely distribution of relevant information to the employee, employer and WCB.

Themes: Service to stakeholders; Inclusion.

Cost: Not quantifiable

14. WCB be able to accurately monitor return to work programs and ensure that they are being effectively applied and administered in alignment with duty to accommodate legislation and that the programs incorporate:

- objective medical and physical restrictions and limitations;
- manager and supervisor engagement;
- employee, and where applicable, union engagement;
- monitoring; and
- evaluation.

Theme: Service to stakeholders.

Cost: Not quantifiable

WCB Processes and Customer Service

15. All parties involved in a claim are to always be treated with respect and dignity.

Themes: Service to stakeholders; Improving WCB operations.

Cost: Nil

16. WCB executives recognize that fundamental changes need to occur with respect to organizational culture and employee satisfaction. WCB implement the identified changes.

Themes: Service to stakeholders; Improving WCB operations.

Cost: Not quantifiable

17. WCB staff receive enhanced training in customer service and recognize that these stakeholders are WCB's customers. WCB regularly monitor the effectiveness of the training provided.

Themes: Service to stakeholders; Improving WCB operations.

Cost: Not quantifiable

18. A program of continuous improvement using input from front line staff be developed and implemented. A Continuous Improvement Committee on Customer Service be set up and maintained within WCB to do this.

Themes: Service to stakeholders; Improving WCB operations.

Cost: Not quantifiable

<p>19. All WCB decisions be explained in writing using plain language.</p> <p>Theme: Service to stakeholders.</p> <p>Cost: Nil</p>
<p>20. Privacy considerations always be a priority and all applicable privacy legislation be respected.</p> <p>Themes: Service to stakeholders; Improving WCB operations; Fairness.</p> <p>Cost: Not quantifiable</p>
<p>21. WCB make use of modern communication processes including electronic transfer of files to get the right information to the right people at the right time.</p> <p>A Continuous Improvement Committee on Information Systems be established to keep communication technology as a focus, and up to date.</p> <p>Themes: Service to stakeholders; Improving WCB operations.</p> <p>Cost: Not quantifiable</p>
<p>22. All monitoring and evaluation measures including time to first cheque be examined for unintended consequences and amended if necessary.</p> <p>Themes: Service to stakeholders; Improving WCB operations.</p> <p>Cost: Nil</p>
<p>23. A comprehensive customer service survey be undertaken by the Committee for Continuous Improvement on Customer Service at WCB using an external surveyor prior to the set up each Committee of Review. The results of the survey be made known to stakeholders and used to plan further action.</p> <p>Theme: Service to stakeholders.</p> <p>Cost: Nil</p>
<p>24. An additional two full-time members, one from labour and one from employers, be appointed to the WCB Board of Directors as soon as possible.</p> <p>Themes: Service to stakeholders; Accountability.</p> <p>Cost: The previous Committee of Review estimated this to be \$300,000 per year in 2006.</p>
<p>25. A Board manual be created and provided to Board members outlining their duties and obligations and the timing and frequency of same. It should be updated regularly and make up a part of the orientation of any new Board members.</p> <p>Themes: Service to stakeholders; Improving WCB operations.</p> <p>Cost: Nil</p>
<p>26. Board members receive competitive compensation to attract and retain quality personnel</p> <p>Theme: Improving WCB operations.</p> <p>Cost: Not quantifiable</p>

<p>27. The terms of Board members be staggered to provide both renewal and continuity.</p> <p>Theme: Improving WCB operations.</p> <p>Cost: Nil</p>
<p>28. Decisions made by the WCB Board with respect to appeals be consistent with WCB policies. Where policies are not appropriate, they be amended within 90 days. Section 25 of the Act be amended to require the board to consider policies in its decisions.</p> <p>Theme: Accountability; Improving WCB operations.</p> <p>Cost: Nil</p>
<p>29. The WCB continue to review its policies to ensure that its entire policy manual is reviewed regularly.</p> <p>Theme: Improving WCB operations.</p> <p>Cost: Not quantifiable</p>
<p>30. A line by line legal review of the 1979 Workers' Compensation Act be undertaken to cover 'housekeeping' type items and ensure the Act is up to date and consistent. This report will be conducted using legal input and stakeholder feedback.</p> <p>Theme: Improving WCB operations.</p> <p>Cost: Not quantifiable</p>
<p>Appeals</p>
<p>31. Amend the Act to explicitly include the existing two levels of appeal, namely the Appeals Department within WCB and the Appeals Tribunal.</p> <p>Theme: Improving WCB operations.</p> <p>Cost: Nil</p>
<p>32. Adequate resources, both in quantity and quality be provided at all levels of the appeal processes.</p> <p>Themes: Improving WCB operations; Service to stakeholders.</p> <p>Cost: Not quantifiable</p>
<p>33. The Board publish a report in the Compensation Reporter and Annual Report, showing the numbers of outstanding appeals and how long they have been in process, e.g. three to six months, six to nine months etc., and speak to this at Compensation Institute and other stakeholder events.</p> <p>Themes: Inclusion; Service to stakeholders; Accountability.</p> <p>Cost: Nil</p>

<p>34. Within two weeks of filing an appeal, all appellants be provided with a date on which they can expect their appeal to be heard.</p> <p>Themes: Service to stakeholders; Accountability.</p> <p>Cost: Nil</p>
<p>35. All appeal decisions be communicated in writing, written in plain language and include the rationale and references to all material used in making the decision.</p> <p>Themes: Service to stakeholders; Accountability.</p> <p>Cost: Nil</p>
<p>36. Each decision include the contact information of a WCB employee for any needed discussion. Claimants are entitled to a follow-up conversation.</p> <p>Theme: Service to stakeholders.</p> <p>Cost: Nil</p>
<p>Medical Services</p>
<p>37. WCB adjudicators consult WCB’s medical advisory services and ensure their involvement in the early stages of complex claims adjudication to confirm the quality and extent of the medical information presented by the claimant’s health care provider, and adjudicator follow up.</p> <p>Themes: Service to stakeholders; Operations.</p> <p>Cost: Nil</p>
<p>38. A continuous improvement program be implemented to cover the medical aspects of claims adjudication. It be conducted under the Continuous Improvement Committee on Customer Service and make use of input from WCB’s medical advisory staff.</p> <p>Theme: Operations.</p> <p>Cost: Not quantifiable</p>
<p>39. The Board revise its pre-existing condition policy and procedures to ensure that the opinion of the injured worker’s health care provider is obtained before making a decision to deny or terminate benefits.</p> <p>Themes: Service to stakeholders; Improving WCB operations.</p> <p>Cost: Nil</p>
<p>40. The Board ensure transparency so it is evident that medical staff have considered a claimant’s work history and any recent medical assessments before reaching a conclusion.</p> <p>Themes: Service to stakeholders; Accountability.</p> <p>Cost: Nil</p>

41. Wherever the Act specifies a penalty of \$1000 or less payable upon summary conviction, this penalty be replaced by an administrative penalty of an equal amount to be collected by WCB.

Themes: Improving WCB operations; Fairness.

Cost: Not quantifiable

Arms Length Bodies

42. As WCB is the sole funder to OHS, funding to OHS be based upon OHS needs and should be provided by WCB through Treasury Board. OHS is not to be subjected to the staffing limitations or financial restrictions applied to the taxpayer supported ministries or agencies.

Themes: Fairness; Accountability.

Cost: Not quantifiable

43. Training offered by OHS relate specifically to the Act and regulations. WCB should provide training related to prevention.

Themes: Improving WCB operations; Prevention.

Cost: Nil

44. WCB analyze, report claims and injury data and provide this information to OHS to inform and direct enforcement activities.

Themes: Improving WCB operations; Prevention.

Cost: Not quantifiable

45. WCB receive annual reports from OHS that demonstrate increased enforcement efficiencies due to the information received from WCB.

Themes: Accountability; Prevention.

Cost: Nil

46. As WCB is the sole funder to OWA, funding to OWA be based upon OWA needs and be provided by WCB through Treasury Board. OWA will not be subjected to the staffing limitations or financial restrictions applied to the taxpayer supported ministries or agencies. OWA will remain accountable to the Treasury Board.

Theme: Fairness.

Cost: Not quantifiable

Rates and Incentives

47. The Government of Saskatchewan value safety and prevention and act as a model employer throughout the public sector by building the culture of safety through the prevention of workplace injuries.

Themes: Accountability; Prevention.

Cost: Not quantifiable

<p>48. The rate groups affecting sub codes and affiliates within large sectors such as mining and the health care industry be examined and adjusted for fairness.</p> <p>Theme: Fairness.</p> <p>Cost: Nil</p>
<p>49. WCB be more diligent with respect to benefit control and advise employers of its efforts.</p> <p>Theme: Fairness.</p> <p>Cost: Not quantifiable</p>
<p>50. Funds received from fines and administrative penalties imposed by WCB be retained by WCB and rerouted into primary prevention activities.</p> <p>Themes: Fairness; Prevention.</p> <p>Cost: Nil</p>
<p>51. Voluntary incentive programs be offered within industries and sectors and implemented on a gradual basis. Industries would be responsible for how the incentive program would be structured. Payment for the programs would come from within the industry.</p> <p>Non Consensus</p> <p>Themes: Prevention; Fairness.</p> <p>Cost: Not quantifiable</p>
<p>Privacy</p>
<p>52. All workers and employers have timely access to files without the need to file an appeal. A good rationale such as privacy legislation must be provided for any access that is denied.</p> <p>Themes: Inclusion; Service to stakeholders; Fairness.</p> <p>Cost: Not quantifiable</p>
<p>53. WCB set up a dedicated process for privacy through which all requests for information from files should be passed, and responses to requests be provided in a timely manner.</p> <p>Themes: Improving WCB operations; Service to stakeholders; Fairness.</p> <p>Cost: Not quantifiable</p>
<p>Communications</p>
<p>54. The rates for upcoming years be circulated to employer groups and large employers before finalizing them. Enhanced opportunities be offered to receive employer input prior to finalizing the rates. WCB ensure that information on all aspects of rate setting continue to be provided at the Comp Institute and by other means.</p> <p>Themes: Inclusion; Service to stakeholders; Fairness; Accountability.</p> <p>Cost: Not quantifiable</p>

55. WCB be required to seek stakeholder input before finalizing any changes in policy.

Themes: Accountability; Service to stakeholders.

Cost: Not quantifiable

56. Separate resources be established within WCB dedicated exclusively to serving employers, especially smaller employers and those new to WCB. It be adequately resourced with knowledgeable staff who can respond accurately in a timely manner.

Themes: Service to stakeholders, Fairness.

Cost: Not quantifiable

Conclusions

57. A progress report be published annually listing the recommendations from the report of the Committee of Review, their status (e.g. implemented or not) and an explanation for that status. This report be shared with stakeholders and posted on the WCB website.

Themes: Accountability.

Cost: Nil

Figure 1: List of structural changes proposed at the WCB

Proposed change	Location in the Report
Creation of a Continuous Improvement Committee on Customer Service	Page 27
Creation of an on-line system to allow all relevant users to enter, access and communicate information efficiently and effectively	Page 28
Creation of a Continuous Improvement Committee on Information Systems	Page 29
Creation of a Privacy Office to which requests for information from files would be sent	Page 55

Figure 2: Exemptions

The following industries and occupations are currently excluded from the provisions of the Act:

- (a) Artists, entertainers and performers;
- (b) Circus operations, travelling shows and tradeshows;
- (c) Clergy;
- (d) Commercial fishing;
- (e) subject to section 17 of The Workers' Compensation General Regulations, 1985, employment of persons by the owner of a residence for the purposes of:
 - (i) Construction of that residence;
 - (ii) Making alterations or improvements to that residence; or
 - (iii) Performing domestic functions in that residence;
- (f) Consulates and foreign embassies;
- (g) Dairy farming;
- (h) Demonstrating and exhibiting;
- (i) Feedlot or livestock yard operations that are not in connection with an industry within the scope of the Act;
- (j) Flying operations that have no place of business in Saskatchewan and that are not licensed by the Canadian Transport Commission;
- (k) Fur farms;
- (l) Grazing co-operatives;
- (m) Indian bands or band endeavours on reserves;
- (n) Land clearing, brush cutting or stumping that is not in connection with an industry within the scope of the Act;
- (o) Livestock brokers;
- (p) Mobile farm feed service or portable seed-cleaning plants;
- (q) Door-to-door carriers delivering newspapers, flyers or other publications;
- (r) Peddling or door-to-door sales;

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- (s) Piggery farms;
 - (t) Poultry farms;
 - (u) Salespersons who sell goods for more than one manufacturer or supplier;
 - (v) Salespersons whose employers do not have a place of business in Saskatchewan;
 - (w) Selling or similar canvassing on streets;
 - (x) Show judges;
 - (y) Sports professionals, sports instructors, players and coaches;
 - (z) Trapping;
 - (aa) trucking firms based in the United States of America that employ only American citizens;
 - (ab) voluntary workers, except those in mine rescue work and members of the Emergency Measures Organization or a municipal fire brigade;
 - (ac) the cutting, hauling and sawing of wood for fuel that is not in connection with an industry within the scope of the Act;
 - (ad) industries that have no place of business in Saskatchewan that provide:
 - (A) On-site warranty service, start-up supervision, training or service incidental to a sale or lease arrangement; or
 - (B) Consulting or similar services; unless those industries employ workers who are resident in Saskatchewan.

Forestry operations

- (1) An employer in forestry operations who is:
 - (a) Not operating as part of another forestry operation or under a subcontract, and;
 - (b) Engaged in producing any product in a quantity that is less than a quantity that the board may specify;

Is excluded from the provisions of the Act.⁵

Scope of Act

⁵ If an employer is carrying on both:

- (a) an operation that is within the scope of the Act; and
- (b) an operation in respect of which the Act does not apply;

the Act does not apply to work performed in the operation mentioned in clause (b) unless the employer applies to the board in the manner set out in the Act.

Definitions:

- **No Time Loss** - Accepted claim where no time was taken off after the day of injury.
- **Permanent Functional Impairment** - a permanent adverse reaction in a worker as a result of work injury which interferes with the normal performance of the worker's body or mind
- **Time Loss** - Accepted claim where worker had to take time off work after the day of injury

Figure 3: Maximum Wage Rate and Provincial Average Industrial Wage

Year	Average Industrial Wage	Maximum Wage Rate	Maximum as a % of Average	165%	175%	185%
2000	30,520.88	48,000.00	157	50,359.45	53,411.54	56,463.63
2001	31,075.72	48,000.00	155	51,274.94	54,382.51	57,490.08
2002	31,715.32	48,000.00	151	52,330.28	55,501.81	58,673.18
2003	33,095.92	51,900.00	157	54,608.27	57,917.86	61,227.45
2004	32,878.04	53,000.00	161	54,248.77	57,536.57	60,824.37
2005	34,576.19	55,000.00	159	57,050.71	60,508.33	63,965.95
2006	36,970.96	55,000.00	149	61,002.08	64,699.18	68,396.28
2007	38,991.68	55,000.00	141	64,336.27	68,235.44	72,134.61
2008	40,802.84	55,000.00	135	67,324.69	71,404.97	75,485.25
2009	41,825.16	55,000.00	131	69,011.51	73,194.03	77,376.55
2010	44,005	55,000.00	125	72,608.25	77,008.75	81,409.25

Figure 4: Percentage of Workers Covered by Workers' Compensation (1990-2010)

Coverage Profile	1990	1991	1992	1993	1994	1995	1996	1997	1998
Active Employers	28,966	28,465	28,253	28,803	29,613	29,020	28,222	29,473	31,246
Employees in Sask.	454,300	453,400	448,500	450,800	455,700	459,400	457,500	470,000	476,300
Workers Covered	284,128	288,155	286,011	281,190	283,503	289,593	310,600	316,425	322,409
% of workers covered	62.54%	63.55%	63.77%	62.38%	62.21%	63.04%	67.89	67.32	67.69
Union Members	98,467	103,647	105,731	101,883	105,115	104,387	107,405	115,670	119,000
Opted for Coverage	5,861	5,602	5,327	5,425	5,493	5,367	4,633	4,958	4,857

Coverage Profile	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Active Employers	31,110	31,657	31,225	31,327	31,630	32,125	32,851	33,438	34,364	35,946	38,354	40,365
Employees in Sask.	480,100	485,000	472,000	468,000	475,000	480,000	483,000	492,000	502,000	513,000	521,000	524,000
Workers Covered	321,266	313,949	316,709	314,504	317,305	326,402	327,064	338,898	354,918	362,667	362,150	379,447
% of workers covered	66.92	64.73	67.10	67.20	66.80	68.00	67.72	68.88	70.7	70.70	69.51	72.4
Union Members	126,500	119,800	124,900	125,200	128,000	129,800	131,000	135,100	135,100	140,400	142,600	143,400
Opted for Coverage	4,921	5,091	5,252	5,420	5,266	5,577	5,943	6,776	7,387	8,119	8,864	9,811

Sources: Active Employers: Registered with WCB Employees: Statistics Canada
Workers Covered: Derived by WCB Union Members: Saskatchewan Labour
Opted for Coverage: Registered with WCB

Figure 5: Reported Claims as Percentage of Workers Covered (1996-2010)

	1998	1999	2000	2001	2002	2003	
Workers Covered	322,409	321,266	313,949	316,709	314,504	317,305	
Reported Claims	37,657	36,346	37,717	38,240	39,821	38,919	
As % of Workers Covered	11.68%	11.31%	12.01%	12.07%	12.66%	12.27%	
	2004	2005	2006	2007	2008	2009	2010
Workers Covered	326,402	327,064	338,898	354,918	362,667	362,150	379,447
Reported Claims	37,715	39,904	40,992	41,301	43,303	39,558	38,773
As % of Workers Covered	11.55%	12.20%	12.10%	11.66%	11.94%	10.92%	10.21%

Figure 6: Accepted Fatality Claims 1990-2010

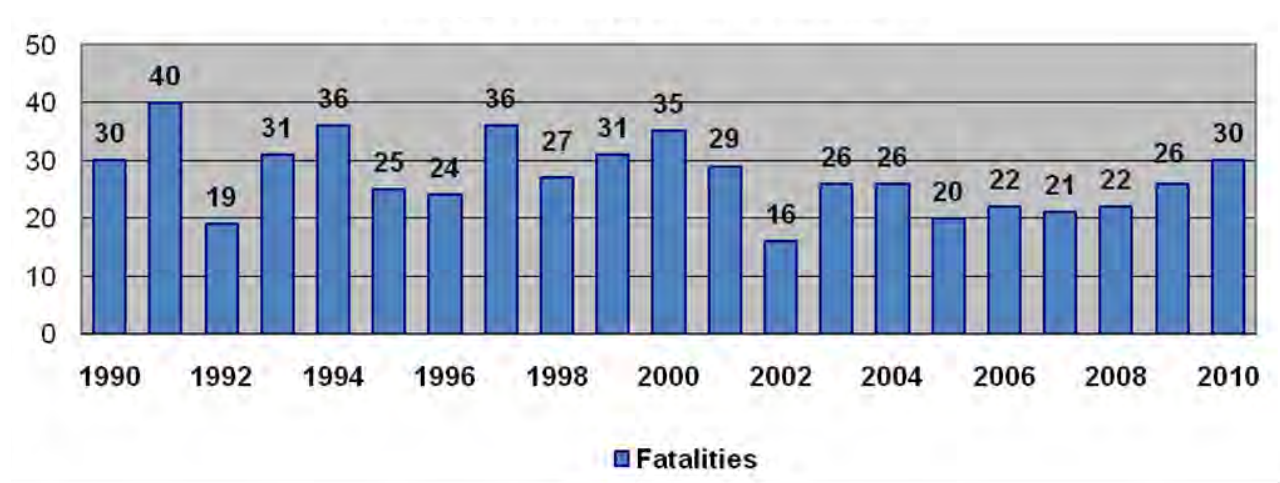


Figure 7: Time Loss Injury rate Per 100 Workers (1998- 2010)

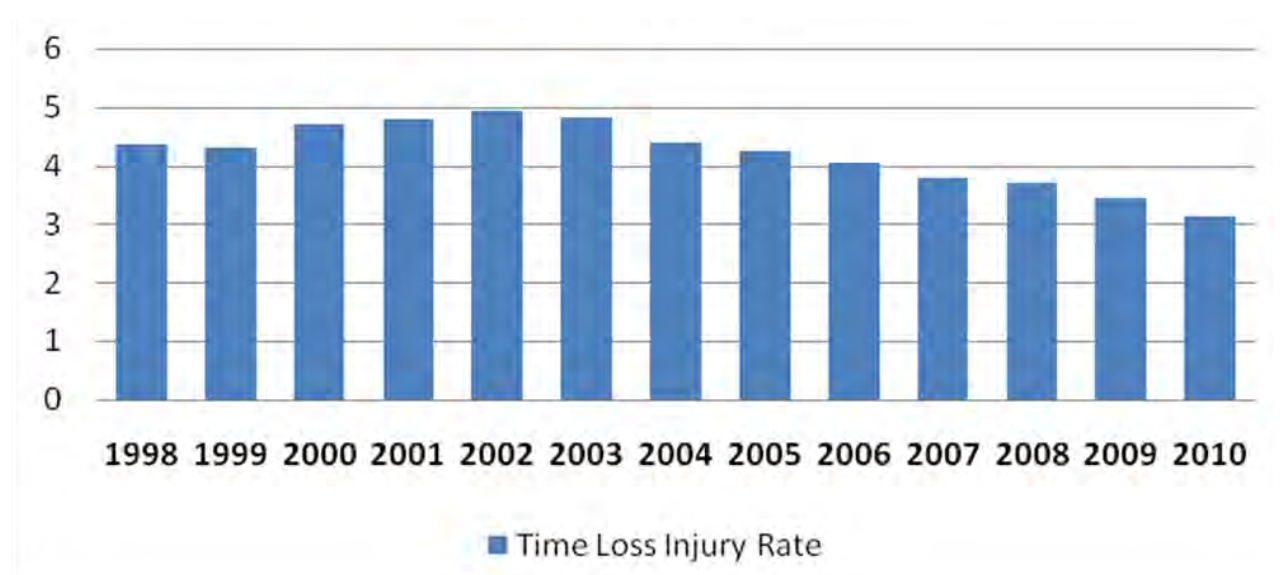


Figure 8: Total Injury Rate per 100 Workers (2000-2010)

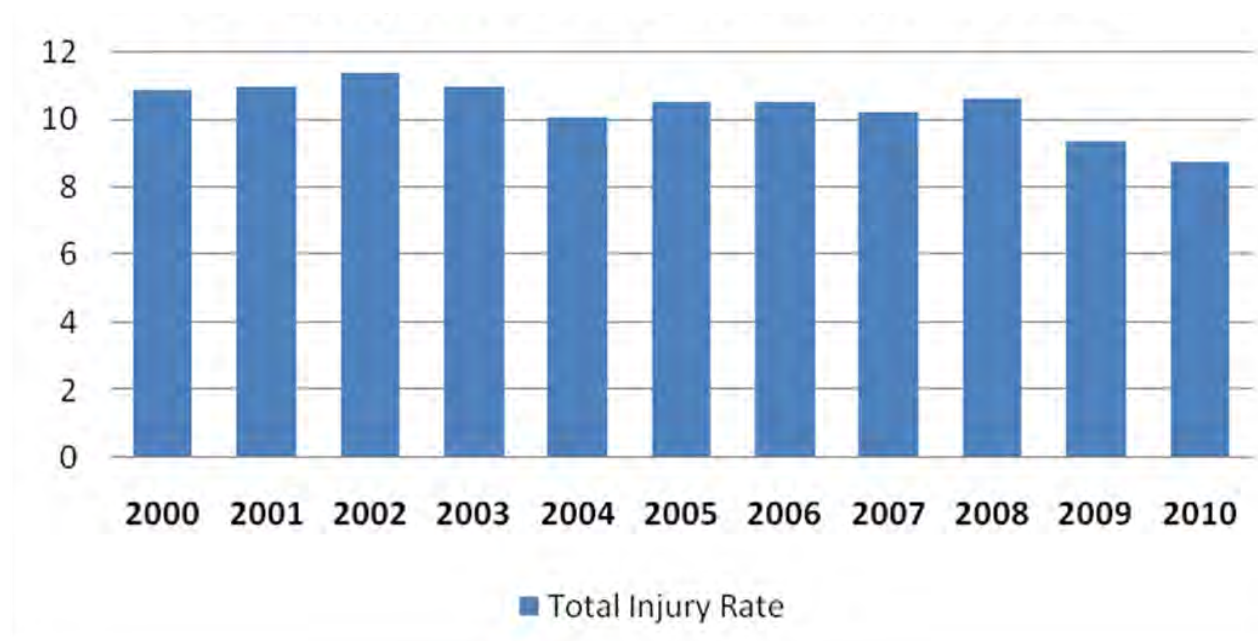


Figure 9: Average Claim Duration (2000-2010)

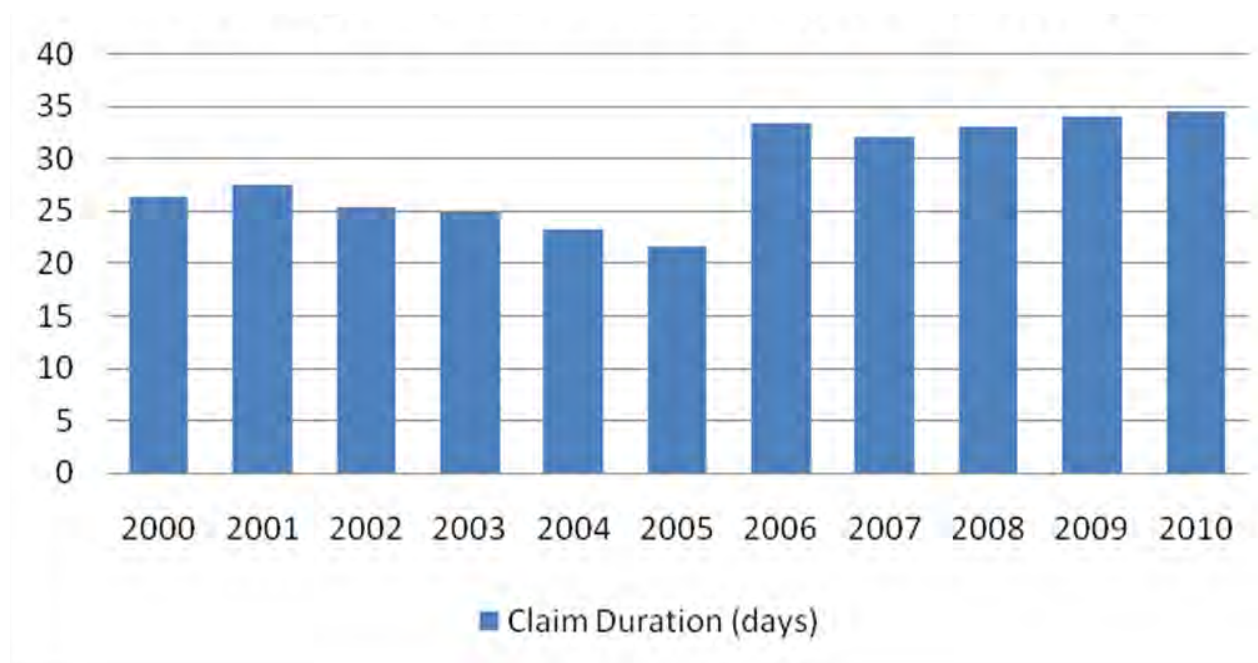


Figure 10: Average Cost Per Claim (2000-2010)

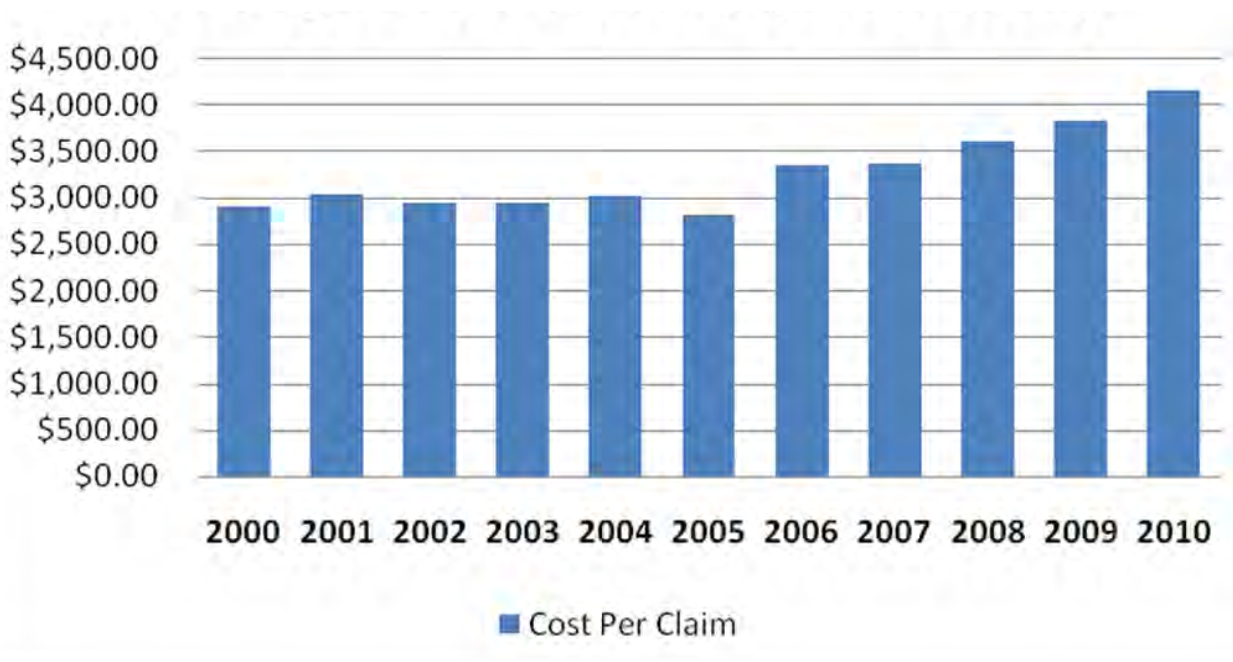


Figure 11: Repeat Claimants (2000-2010)

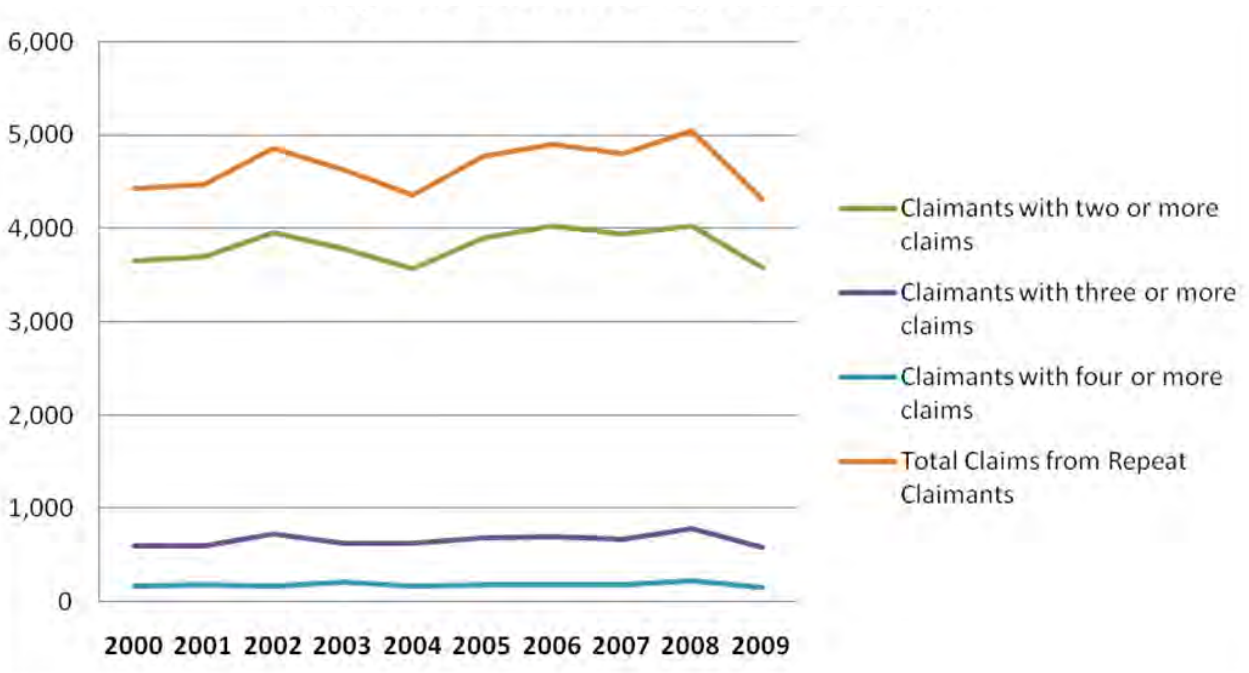


Figure 12: Percentage of Time Loss Claims Continuing After 5,7,10 Years (1990-2010)

Percentage of Time Loss Claims Continuing after 5, 7 and 10 Years (1990-2010)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
>5	0.62%	0.71%	0.83%	0.83%	1.00%	0.89%	1.18%	1.18%	1.28%	1.06%	1.17%	0.95%	0.73%	0.85%	0.70%
>7	0.21%	0.27%	0.22%	0.33%	0.49%	0.43%	0.60%	0.53%	0.52%	0.56%	0.66%	0.78%	0.76%	0.72%	0.74%
>10	0.14%	0.09%	0.14%	0.14%	0.22%	0.20%	0.31%	0.19%	0.28%	0.23%	0.31%	0.41%	0.45%	0.64%	0.59%

Figure 13: Top 10 Claim Type by Occupation for Claims Registered in 2010

Occupation	Time Loss	No Time Loss	Fatality	Total
Assisting Occupations in Support of Health Service	976	873	0	1,849
Motor Vehicle and Transit Drivers	949	845	6	1,800
Cleaners	793	852	0	1,645
Labourers in Processing, Manufacturing and Utilities	570	972	0	1,542
Metal Forming, Shaping and Erecting Trades	421	1,077	0	1,498
Retail Salespersons & Sales Clerks	466	626	0	1,092
Trades Helpers and Labourers	345	674	1	1,020
Nurse Supervisors and Registered Nurses	326	549	0	875
Machinery and Transportation Equipment Mechanics (except motor vehicle)	232	592	0	824
Longshore Workers and Material Handlers	324	452	0	776
Automotive Service Technicians	262	468	1	731

Figure 14: Gender and Type of Claim by Age at Injury for Claims Registered in 2010

Age	Time Loss		No Time Loss		Fatality		Total	
	Male	Female	Male	Female	Male	Female	Male	Female
19 and under	381	157	922	277	0	0	1,303	434
20 to 29	1820	795	4,612	1,444	0	0	6,432	2,239
30 to 39	1,612	889	3,102	1,260	4	1	4,718	2,150
40 to 49	1,628	1,356	2,780	1,632	1	0	4,409	2,988
50 to 59	1,295	1,242	2,216	1,586	11	1	3,522	2,829
60 to 69	391	271	655	349	6	0	1,052	620
70 and over	33	11	98	8	6	0	137	19
Age Unknown	0	0	11	14	0	0	11	14
Total	7,160	4,721	14,396	6,570	28	2	21,584	11,293

Figure 15: Saskatchewan Construction Safety Association Statistics

