

Decision of the Governors

Number: 1
Date: April 8, 1991
Subject: Appeal Division Administration, Practice and Procedure

Whereas the *Workers' Compensation Act*, as amended, provides:

- A. In Section 85(7)(b) that the Chief Appeal Commissioner shall implement the policies of the Governors with respect to the administration of the Appeal Division.
- B. In Section 85.1 that the Chief Appeal Commissioner may determine the practice and procedure of the Appeal Division subject to any policies of the Governors.

And whereas the Governors publicly invited and received submissions on the administration, practice and procedure of the Appeal Division.

The Governors make the following policy with respect to the administration, practice and procedure of the Appeal Division.

1.0 Scope of Proceedings Before the Appeal Division

The role of the Appeal Division is to inquire into the merits of matters properly brought before it.

In appeals commenced under Section 91, the appellant should be required to outline the reasons for the appeal explaining how the Review Board finding is in error.

In appeals commenced under Sections 96(6) and 96(6.1), the appellant should be required to outline the error of law or fact or contravention of the published policy of the Governors in the decision under appeal.

The Appeal Division will adopt a procedure that ensures the issues in an appeal are identified during the course of the appeal so that all parties may understand and have an opportunity to respond.

The Appeal Division has the discretion to initiate and to conduct a full inquiry into all of the issues arising out of an appeal once the matter is before it. The Appeal Division has the discretion to determine what evidence it will accept in the course of conducting its proceedings.

The Appeal Division may seek medical opinions independent of those offered by the parties or the Board.

2.0 Representation Before the Appeal Division

The procedure of the Appeal Division shall recognize and facilitate the appearance and participation by workers and employers acting for themselves or lay advocates acting on their behalf.

Where the participation of other parties in the procedure will assist inquiry into the merits of the issues, the Appeal Division may give notice to or allow intervention by these other parties. For example, where an employer is no longer registered with the Board, the Appeal Division may give notice of an appeal commenced by a worker to the relevant industry association and the Employers' Advisor. Or in appeals commenced under Sections 96(6) and 96(6.1), the Appeal Division may give notice of the appeal to the workers or trade union representative of the workers employed by the employer who may have an interest in the appeal.

3.0 Panels

A one-member panel shall consist of either the Chief Appeal Commissioner or a non-representational Appeal Commissioner selected by the Chief Appeal Commissioner.

A three-member panel shall consist of either the Chief Appeal Commissioner or a non-representational Appeal Commissioner who shall preside over the panel and one Appeal Commissioner chosen from the worker representatives and one Appeal Commissioner chosen from the employer representatives.

The assignment of one or more Appeal Commissioners to a panel in a particular case shall be made by the Chief Appeal Commissioner or another Appeal Commissioner to whom there has been a delegation under Section 85(8).

In cases where an oral hearing is to be held, the appellant shall have the right to choose whether the appeal will be determined by a one-member panel or a three-member panel. Where the appellant does not elect the type of panel that will determine the appeal, the choice will be made by the Chief Appeal Commissioner.

In matters under Sections 10(8) and 11 and in exceptional cases where the Chief Appeal Commissioner considers that the issues in the appeal warrant it, the Chief Appeal Commissioner has the authority to constitute a panel consisting of three non-representational Appeal Commissioners, which may include the Chief Appeal Commissioner. In such a situation, the appellant shall not have the right to choose the type of panel that will determine the appeal but must accept the choice of the Chief Appeal Commissioner.

4.0 Hearings

A party in any case shall have the right to request an oral hearing, but must provide reasons why an oral hearing is necessary. The Appeal Division has the discretion to decide whether an oral hearing will be granted in any case. Parties will be notified in advance of the final decision whether an oral hearing will be held.

The Appeal Division shall give liberal consideration to the following factors in deciding whether to grant a request for an oral hearing:

- (a) there is significant new evidence to be presented which requires an oral hearing;
- (b) the appeal raises a significant policy issue;
- (c) there appears to be an error or confusion in the finding or decision under appeal;
- (d) there is evidence to suggest there is an error of fact in the finding or decision under appeal;
- (e) there is a significant issue of credibility involved.

An oral hearing may not be granted if:

- (a) there are no reasons given as to how the finding or decision under appeal is in error;
- (b) there are no reasons given for the request for an oral hearing;
- (c) there was no request for an oral hearing before the Review Board;
- (d) the issue is purely medical and the appeal can be determined on the basis of written expert medical opinions alone.

The Chief Appeal Commissioner shall determine the extent to which oral hearings will be conducted throughout the province based on the objective that as far as is practicable and reasonable all parties should have access to appear before the Appeal Division when a request for an oral hearing has been granted.

5.0 Application of Board Policy By the Appeal Division

The Appeal Division shall apply and interpret the Act, Regulations and existing Board published policy. The Appeal Division does not have the authority to create new policy. The Appeal Division must make its decisions according to the merits and justice of each case as directed in Section 99.

Where the Chief Appeal Commissioner considers it necessary that the Governors address a policy issue prior to a decision being made in one or more appeals, the Chief Appeal Commissioner has the authority to bring that policy issue before the Governors for consideration and to postpone the Appeal Division's decision in the appeal until the policy issue has been addressed by the Governors.

6.0 Discretionary Authority

The Appeal Division may exercise the Board's discretion to refer a worker for examination by a Medical Review Panel pursuant to Section 58(5) with or without the worker's consent.

The Appeal Division may exercise its discretion pursuant to Section 91(2) to direct the Review Board to reconsider in any case where it considers it appropriate and will generally do so where it finds an error of law or contravention of published policy of the Governors in a referral from the President under Section 96(4).

The Appeal Division has a specific authority to reconsider a decision of the Appeal Division under Section 96.1. The Appeal Division shall not exercise the Board's plenary independent power to reopen, rehear and redetermine matters under Section 96(2) of the Act.

7.0 Decisions

Decisions shall be written in plain language explaining the conclusion reached and the reasons for that conclusion.

A decision of the Appeal Division shall be signed by all members of the panel that made the decision. A dissent shall be signed by the Appeal Commissioner dissenting.

8.0 Publication of Appeal Division Decisions

While Section 99 provides that the Board and therefore the Appeal Division “. . . is not bound to follow legal precedent,” the publication of Appeal Division decisions can usefully assist in communicating and creating an understanding of the meaning of the Act, Regulations and Board policies, practices and procedures. Publication can also aid in the goal of having like cases treated alike and explaining the meaning and effect of changes in the law and policy under which the workers’ compensation system operates.

Publication further serves the useful role of holding the system publicly accountable.

These goals do not require the publication of every decision. In addition, the right of privacy of parties established in Section 95 has to be respected.

Selected decisions of the Appeal Division shall be published under the direction of the Chairman with the assistance of the Chief Appeal Commissioner to ensure that all key decisions are reported.

THIS POLICY IS EFFECTIVE JUNE 3, 1991.

Editors’ note: This decision was affirmed and remade by the Governors on June 3, 1991.



Decision of the Governors

Number: 2
Date: April 8, 1991
Subject: Policy for Selection of Appeal Commissioners

Whereas the *Workers' Compensation Act*, as amended, provides:

- A. In Section 85(1)(b) that there shall be an Appeal Division of the Board consisting of a Chief Appeal Commissioner and one or more Appeal Commissioners appointed by the Chief Appeal Commissioner who are selected in accordance with the policies established by the Governors.
- B. In Section 85(2) that, subject to the approval of the Governors, the Chief Appeal Commissioner may appoint part-time or temporary Appeal Commissioners.

The Governors make the following policy with respect to the appointment of Appeal Commissioners to the Appeal Division.

1.0 Part-time or Temporary Appeal Commissioners

The Chief Appeal Commissioner has the authority to appoint part-time or temporary Appeal Commissioners within a budget and on general conditions approved by the Governors.

2.0 Types of Appeal Commissioners

There shall be Commissioners of three different characters:

- 1. Non-representational Appeal Commissioners – These Appeal Commissioners will have no special perspective although they may have had either an employer or worker perspective in their background.
- 2. Worker Representatives – These Appeal Commissioners will have a worker interest perspective.

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3. Employer Representatives – These Appeal Commissioners will have an employer interest perspective.

3.0 Qualifications of Appeal Commissioners

No candidate for the position of Appeal Commissioner is disqualified from consideration because of any present or past association with any corporation, organization, or interest group.

The following is a list of qualifications that a candidate for the position of Appeal Commissioner might possess. It is not expected that any one candidate would possess all of these qualifications.

1. A comprehensive understanding of the workers' compensation system obtained as an advocate, adjudicator, advisor or through some other direct involvement in the system.
2. University graduation in law and practice in the area of administrative law or university graduation in an appropriate related discipline.
3. Experience as an adjudicator in some type of quasi-judicial function.
4. Knowledge of the principles of injury insurance, occupational safety and health, and assessments.
5. Knowledge of the principles of natural justice.
6. Knowledge of the skills required to conduct quasi-judicial proceedings.
7. Demonstrated impartiality and neutrality with the capacity to make objective and non-partisan judgments.
8. Demonstrated worker or employer interest perspective, perhaps with ongoing involvement in the activities of worker or employer interests, and an ability to rise above those perspectives.
9. Practical knowledge of worksites and workplace environments.
10. Demonstrated adjudicative skills and capability of making consistent decisions.

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11. Demonstrated communication skills – articulate speaker, good listener, and excellent writing skills to effectively communicate in clear and concise language.
 12. Demonstrated analytical skills with the ability to comprehend technical issues and grasp and develop concepts.
 13. Demonstrated capability of making well-reasoned decisions within the parameters of the legislation and in accordance with the policies of the Governors.

THIS POLICY IS EFFECTIVE APRIL 8, 1991.

Editors' note: This decision was affirmed and remade by the Governors on June 3, 1991.



Decision of the Governors

Number: 3
Date: April 8, 1991
Subject: Published Policy of the Governors

Whereas the *Workers' Compensation Act*, as amended, provides:

- A. In Section 82 that the Governors shall approve and superintend the policies and direction of the Board, including policies respecting compensation, assessment, rehabilitation, and occupational safety and health.
- B. In Section 82(a)(vii)(B) that the Governors shall determine the manner in which their policies shall be published.
- C. In Section 96(4) that the President may refer a finding of the Review Board to the Appeal Division for redetermination on grounds of error of law or contravention of a published policy of the Governors.
- D. In Sections 96(6) and 96(6.1) for an employer appeal on the grounds of error of law or fact or contravention of a published policy of the Governors.

The Governors make the following determination, resolution and bylaw.

1.0 Published Policies – June 3, 1991

The published policies of the Governors, as of June 3, 1991, consist of the following:

- 1. *Assessment Policy Manual;*
- 2. *Occupational Safety and Health Division Policy and Procedure Manual;*
- 3. *Rehabilitation Services and Claims Manual;*
- 4. *Workers' Compensation Reporter – Decision Nos. 1 – 423.*

2.0 Published Policies – After June 3, 1991

After proclamation of the *Workers' Compensation Amendment Act, 1989*, the published policies of the Governors shall consist of the documents listed above, amendments to the three policy manuals, any new or replacement manuals issued by the Governors, and all decisions of the Governors declared to be policy decisions.

3.0 Conflicts

In the event of a conflict between the Act or Regulations and the published policy of the Governors, the Act and Regulations are paramount.

In the event of internal conflict in published policy of the Governors, the interpretation of the policy most consistent with the intention of the Act or Regulations is to be applied.

4.0 Manner of Publication

An original of each policy signed by the Chairman shall be filed with the Secretary of the Board.

The policies of the Governors shall be published in print in the three policy manuals or the *Workers' Compensation Reporter*. They may also be published through an accessible electronic medium or in some other fashion that allows the public easy access to the policies of the Governors.

The Chairman shall supervise the continuation of the *Workers' Compensation Reporter*. It will include decisions of the Governors and selected decisions of the Appeal Division. It may include key decisions of the Review Board and Courts on matters affecting the interpretation and administration of the Act or other matters of interest to the community.

THIS POLICY IS EFFECTIVE JUNE 3, 1991.

Editors' note: This decision was affirmed and remade by the Governors on June 3, 1991.

Decision of the Governors

Number: 4
Date: April 8, 1991
Subject: Designation and Assignment to Appeal Division and Chief Appeal Commissioner

Whereas the *Workers' Compensation Act*, as amended, provides:

- A. In Section 82 that the Governors shall superintend the policies and direction of the Board and select and define the functions of the Chief Appeal Commissioner.
- B. In Section 96(6.1) that the Governors may designate that an employer who has received a notice relating to an assessment, classification, monetary penalty or apportionment of or shifting of costs between classes, not referred to in Section 96(1) but designated in the policies of the Governors, may appeal to the Appeal Division.

The Governors make the following designations of appeals to the Appeal Division and assignment of authority within the Board.

1.0 Designations under Section 96(6.1)

The Governors designate that an employer who has received a notice relating to an assessment, classification, monetary penalty or apportionment or shifting of cost between classes for which no appeal to the Appeal Division is specifically provided in Section 96(6), may appeal to the Appeal Division.

This designation includes, but is not limited to, the following:

- 1. First Aid penalties levied under Section 70;
- 2. charging of claims costs under Section 47(2).

2.0 Assignment to the Chief Appeal Commissioner and Appeal Division

The Governors assign to the Chief Appeal Commissioner and the Appeal Division:

1. the Board's obligation to issue certificates under Section 11;
2. the Board's authority to reallocate claims costs between employers under Section 10(8).

The Chief Appeal Commissioner may determine the practice and procedure for the conduct and disposition of these matters, including the character of panels assigned.

THIS POLICY IS EFFECTIVE JUNE 3, 1991.

Editors' note: This decision was affirmed and remade by the Governors on June 3, 1991.

Decision of the Governors

Number: 5
Date: May 6, 1991
Subject: Interest

Whereas the *Workers' Compensation Act*, as amended, provides:

- A. In Section 92(3) that interest is to be calculated in accordance with the policies of the Governors and beginning 31 days after the date on which the Review Board made its finding or beginning on an earlier day determined in accordance with the policies of the Governors.
- B. In Section 96(7) that the commencement of an appeal under Subsection 96(6) or 96(6.1) does not relieve an employer from paying an amount in respect of which the appeal is commenced but, if the appeal is successful, the amount to be returned to the employer shall be accompanied by interest, calculated in accordance with the policies of the Governors.

The Governors make the following policy with respect to the payment of interest under these sections of the Act.

1.0 Section 92(3)

The interest payable under Section 92(3) shall be paid from the date determined in accordance with the Board's general policy with respect to the payment of interest on retroactive benefits as set out in #50.00 of the *Rehabilitation Services and Claims Manual*.

Notwithstanding the preceding paragraph, where no interest is payable under #50.00 because the commencement date of the retroactive benefits is less than one year prior to the date the retroactive benefits are being processed, interest will be paid beginning 31 days after the date on which the Review Board made its finding.

The amount of interest to be paid is to be calculated in accordance with the interest rates set out in #50.00 of the *Rehabilitation Services and Claims Manual*.

2.0 Section 96(7)

The interest payable under Section 96(7) shall be calculated and paid in accordance with Policy No. 40:70:40 in the *Assessment Policy Manual* on “Interest Rebates.”

The amount of interest to be paid is to be calculated in accordance with the interest rates set out in 40:70:40 of the *Assessment Policy Manual*.

THIS POLICY IS EFFECTIVE JUNE 3, 1991.

Editors' note: This decision was affirmed and remade by the Governors on June 3, 1991.

Decision of the Governors

Number: 6

Date: June 21, 1991

Subject: Functions of the President and Chief Executive Officer

Whereas the *Workers' Compensation Act*, as amended, provides:

In Section 82(a)(i) that the Governors shall select and define the functions of the President and Chief Executive Officer.

The Governors select and define the following functions for the President and Chief Executive Officer.

Summary

The President is accountable to the Governors for planning, organizing, directing and controlling the overall operation (except Appeals, which is the responsibility of the Chief Appeal Commissioner) of the Workers' Compensation Board in accordance with the policies, standards and objectives established by the Governors.

Specific Responsibilities

1.0 Strategic Planning

Supports the Governors in the development of a long-range Strategic Plan for the Workers' Compensation Board of British Columbia. This plan will include the identification of the needs of the community the Workers' Compensation Board of British Columbia serves and a future vision of the role the Board will play in meeting those needs. In addition, the plan will identify the critical issues that must be addressed in order to realize the future vision and will set short-, medium- and long-term objectives, strategies, and budgets in order to address those issues.

Submits to the Governors a quarterly analysis of progress in achieving objectives, sets out rationale for variances and recommends modifications of the plan for the remainder of year.

2.0 Objectives for President and Chief Executive Officer

At the beginning of each year, and in conjunction with the Governors, establishes an annual list of objectives to be achieved in the forthcoming year.

3.0 Leadership of Human Resources

Provides strong and effective leadership to the employees of the Workers' Compensation Board of British Columbia in order to capitalize on the full potential of this critical resource. Will stimulate, motivate, guide and direct all those on staff to contribute their maximum to the realization of the WCB's goals and objectives.

4.0 Organization and Management of Staff

Develops and maintains an effective organization structure that reflects operational needs and prescribes the authority and responsibilities of staff as they relate to the accomplishment of specific objectives and priorities.

Ensures the establishment of a clear definition of the responsibility of each employee, the ongoing management, direction and motivation of the staff, and a system of measurement of employee performance, each being carried out in a manner that will ensure that the objectives established in the Strategic Plan are accomplished.

Consults with the Governors relative to decisions on the selection, promotion, utilization and retention of executive staff.

5.0 Policies and Programs

Within the context of the Workers' Compensation Board's Strategic Plan, recommends new and revised policies and programs to the Governors in order to meet the changing needs of the community and to recognize new developments in workplace safety and injury prevention.

Accountable to the Governors for meeting the operational objectives established for the Workers' Compensation Board of British Columbia and for ensuring the quality of programs meets standards established by the Governors.

6.0 Communications

Establishes and maintains an effective communications process to ensure the decisions of the Governors are conveyed to Board staff, workers, employers, client groups and other interested parties, and prepares the annual report on behalf of the Governors.

7.0 Board of Governors

Ensures that Governors have all the information necessary to exercise properly their responsibilities including reviewing Board policies and programs. Upon the appointment of each new Governor, coordinates a program which will provide new members with background information on the Workers' Compensation Board of British Columbia, the role of a Governor and the general issues facing the Workers' Compensation Board at that time.

Reports to the Governors on all activities of the Workers' Compensation Board's operations including financial, policy, programs and personnel issues. Develops and presents recommended courses of action and alternatives to the Governors for their consideration.

8.0 Financial and Administrative Management

Develops and presents to the Governors an annual budget and implements effective administrative systems to ensure the efficient utilization of the financial resources of the Workers' Compensation Board, within the objectives, policies, plans and budgets established by the Governors.

Develops and recommends to the Governors a long-term financial plan and provides advice and guidance on the financial implications and program benefits of all policy decisions.

9.0 Appeals

Develops a good working relationship with the Chief Appeal Commissioner to ensure the overall objectives of the Board are fulfilled in an efficient manner.

10.0 Review Board

Monitors the decisions of the Review Board to ensure decisions conform with the law and with Board policy.

Refers Review Board decisions to the Appeal Division in the event that decisions contravene the law or Board policy.



REPORTER

Decision of the Governors

Number: 7
Date: June 21, 1991
Subject: Functions of the Chief Appeal Commissioner

Whereas the *Workers' Compensation Act*, as amended, provides:

In Section 82(a)(i) that the Governors shall select and define the functions of the Chief Appeal Commissioner.

The Governors select and define the following functions for the Chief Appeal Commissioner.

Summary

The Chief Appeal Commissioner is responsible to the Governors for the general operation of the Appeal Division and shall 1) attend and participate as a non-voting member at meetings of the Governors, 2) implement the policies of the Governors with respect to administration of the Appeal Division, 3) preside at hearings or meetings of the Appeal Division. The Chief Appeal Commissioner will establish a credible, effective appeal process while working with the Board and within the parameters of the legislation.

Specific Responsibilities

1.0 Reporting to the Board

Keeps Governors apprised of critical developments in terms of decisions on claims and trends in claims decisions.

Provides periodic reviews of practices, procedures and analysis of the decisions of the Appeal Division to the Governors.

Carries out all duties and functions assigned by the Governors in accordance with policies and established by the Governors.

Decision of the Governors

Number: 8
Date: January 6, 1992
Subject: Reopening and Reconsideration of Past Commissioners' Decisions (An Amendment to Decision of the Governors No. 1)

The Governors were asked to determine who within the Board is to exercise the statutory discretion under Section 96(2) of the *Workers Compensation Act* to reopen, rehear and redetermine the previous commissioners' decisions. Under Section 17(5) of the *Workers Compensation Amendment Act, 1989* the Appeal Division is given authority to review past commissioners' decisions "... on the same grounds and in the same manner as set out in section 96.1 ..." The Executive Committee proposed an assignment of this additional authority, with certain limitations, to the Appeal Division.

The Governors unanimously adopted the following resolution:

RESOLVED THAT the Appeal Division of the Workers' Compensation Board of British Columbia shall exercise the authority of the Workers' Compensation Board of British Columbia under section 96(2) of the *Workers Compensation Act* to reopen, rehear and redetermine any decision made by the former Commissioners prior to June 3, 1991, where the Chief Appeal Commissioner finds that the decision was based upon an error of law or involved or involves an issue under the *Canadian Charter of Rights and Freedoms*; and that the appropriate amendments be made to the *Rehabilitation Services and Claims Manual, Assessment Policy Manual and Occupational Safety & Health Division Policy and Procedure Manual*.

Decision 1, (1991)

THIS POLICY IS EFFECTIVE JANUARY 6, 1992.

This Decision amends the last paragraph of Section 6.0 in Decision 1, (1991) 7 W.C.R. 7 at 10. Although the resolution was passed on January 6, 1992 it has been included in the December 1991 edition because of its impact on Decision 1 appearing earlier in this volume.



REPORTER

Bylaw No. 2*

Statement of Roles and Responsibilities of the Voting Governors of the Workers' Compensation Board

As made by the Governors of the Workers' Compensation Board of British Columbia, the STATEMENT OF ROLES AND RESPONSIBILITIES OF THE VOTING GOVERNORS OF THE WORKERS' COMPENSATION BOARD dated October 7, 1991, which follows, is enacted as bylaw.

The existing voting Governors have signed the last page of the STATEMENT to certify that they have read and understood the STATEMENT and that, as a condition of their appointment, they will observe the STATEMENT.

BYLAW NO. 2 has been passed by the Governors at a meeting of the Governors duly called for that purpose on October 7, 1991.

Date: October 7, 1991

James E. Dorsey
Chairman of the Governors

* Bylaw No. 1 is currently under review by the Governors and will be published at a later date.

October 7, 1991

**STATEMENT OF ROLES AND RESPONSIBILITIES OF THE
VOTING GOVERNORS OF THE WORKERS' COMPENSATION BOARD**

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1. Preamble

On June 3, 1991, the *Workers' Compensation Act* was amended to provide for a new governing body for the Workers' Compensation Board. This body, the "Board of Governors," is now responsible for approving and superintending the policies and direction of the WCB and planning for its future. The Board of Governors also selects and defines the functions of the president and the chief appeal commissioner.

As a result, the Board of Governors has, subject to the statutory enactments of the Legislative Assembly, complete and final responsibility for the policies, direction and future of the entire provincial workers' compensation system.

The governors have decided that, in order to carry out their duties and responsibilities in the manner intended by the *Workers' Compensation Act*, they must subscribe to a common expression of their roles and responsibilities, including standards by which governors shall conduct themselves as governors. The purpose of this document is to set out this common expression.

2. Representative Nature of the Governors

The Board of Governors is the body through which workers – the beneficiaries of the compensation, rehabilitation and occupational safety and health principles fundamental to the workers' compensation system, and employers – who fund the system, are able to participate effectively in the initiation, development and approval of the policies, programs and procedures of the Workers' Compensation Board. Through the governors' proper stewardship of the WCB, workers and employers will share ownership of the workers' compensation system.

Because the exercise of the statutory authority of the WCB will profoundly affect individual workers and employers, they have the predominant positions on the Board of Governors. However, the Board of Governors is also the guardian of important social policies reflected in the *Workers' Compensation Act*, *Workplace Act* and *Criminal Injury Compensation Act*. Society as a whole therefore has an interest in the stewardship of these policies and, through the governors representative of the public interest, is able to express this interest.

The chairman is not a representative governor in any capacity – of neither workers, nor employers, nor the government.

3. Legislative Role of the Governors

The Board of Governors is composed of thirteen voting members – the chairman, five members representative of workers, five members representative of employers and two members representative of the public interest – and two non-voting governors – the president and the chief appeal commissioner of the WCB.

The Board of Governors is not a typical “corporate board of directors.” Rather, the representative governors' primary duty and responsibility is to represent the interests of their constituencies. Representation is a personal obligation and is not transferable.

The governors are “legislators.” They are policy-makers vested with broad discretion in many areas. The constituencies of the representative governors are broadly based.

As with any body of “legislators” representing diverse, and often conflicting, interests, the representative governors may be partisan. Debate among the governors during meetings may therefore be vigorous. This situation was intended and will be healthy for the workers’ compensation system.

Partisanship may also engender external debate in the community. This situation, too, was intended and will be healthy for the workers’ compensation system. Each governor will encourage this debate and support the rights of the parties of interest to participate and to make their views known on particular issues.

It is the role of the governors to debate questions within the Board of Governors before decisions are made. Once the Board of Governors has made a decision, it is the duty of any governor who may disagree with the decision to notify the Board of Governors before publicly expressing disagreement with the decision.

It is the role and duty of each representative governor to seek to know and to understand the general, broad interests of the constituency he or she is intended to represent. It is also the role and duty of each representative governor to seek to know and to understand the general, broad interests of other constituencies and individuals upon whom the exercise of the statutory authority of the WCB impacts.

4. Role of the Chairman

The chairman is selected after consultation with the governors’ representative of workers and employees. The chairman is consulted on the appointment of governors representative of the public interest.

The chairman is not a representative governor. Rather, it is the role and duty of the chairman to both serve and lead the Board of Governors in the productive discharge of its duties and responsibilities.

The chairman presides at all meetings, which the chairman calls to be held at any place in British Columbia the chairman decides after consultation with the governors.

The chairman may designate a governor representative of the public interest to act in the chairman's place during the chairman's temporary absence. While so acting the designated governor has the power and authority of the chairman.

The chairman is responsible for facilitating the making and for monitoring the implementation of decisions of the Board of Governors by the WCB.

The chairman is a public spokesperson on broad policy matters within the authority of the WCB and affecting the operation of the workers' compensation system.

The chairman maintains liaison with the minister of labour and other members of the Legislative Assembly on behalf of the Board of Governors and the WCB.

The chairman manages the Office of the Board of Governors within the WCB.

Not later than March 31st of each year, the chairman shall publish a comprehensive written report on the activities of the chairman and Board of Governors in the preceding year. The report shall contain a review of the operation of the Board of Governors and its accomplishments and identify any issues that arose in relation to this Statement of Roles and Responsibilities of the Voting Governors.

5. Governors' Duties Conducting Corporation Business

The Workers' Compensation Board is a corporation. A role of the governors will be to perform certain "business functions" necessarily incidental to the statutory mandate of the WCB. For example, the Board of Governors is empowered to authorize the WCB to acquire and dispose of land and buildings. In performing such "business functions," governors have the same duties and responsibilities towards the WCB that a "corporate director" normally has towards his or her corporation. These are:

- (a) Duty of Honesty – to act honestly and in good faith.
- (b) Duty of Loyalty – to give his or her undivided loyalty to the corporation.
- (c) Duty of Care – to act in a prudent and diligent manner, keeping himself or herself informed as to the policies, business and affairs of the corporation.

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- (d) Duty of Diligence – to make those inquiries which a person of ordinary care in his or her position or in managing his or her own affairs would make.
 - (e) Duty of Skill – to exercise the degree of skill to be reasonably expected from a person of his or her knowledge and experience.
 - (f) Duty of Prudence – to act carefully, deliberately and cautiously, trying to foresee the probable consequences of each proposed course of action.

The governors occupy a position of trust. The highest personal fiduciary standards will apply to their conduct.

On appointment to office, and thereafter, governors shall arrange their private affairs in a manner that will prevent Real, Potential or Apparent Conflicts of Interest from arising. If such a conflict arises between the private interests of a governor and the duties and responsibilities of that governor, the governor will resolve the conflict in favour of his or her duties and responsibilities as a governor.

For this purpose:

- (a) A “Real Conflict of Interest” occurs when a governor has knowledge of a private interest that is sufficient to influence the exercise of his or her duties and responsibilities as a governor.
- (b) A “Potential Conflict of Interest” occurs when there exists some private interest that could influence the exercise of a governor’s duty or responsibility, provided that he or she has not yet exercised that duty or responsibility.
- (c) An “Apparent Conflict of Interest” exists when there is a reasonable apprehension which reasonably well-informed persons could properly have that a Real Conflict of Interest exists on the part of a governor.

A “Conflict of Interest” may be economic or otherwise. A “Conflict of Interest” may be either “direct,” i.e., pertaining to the governor personally, or “indirect,” i.e., pertaining to the governor’s family, dependants, associates or employer.

However, a governor’s inherent representative capacity does not constitute a Real, Potential or Apparent Conflict of Interest.

When a governor considers that he or she has a Real, Potential or Apparent Conflict of Interest with respect to a particular issue, that governor will advise the chairman prior to discussion or decision on the issue by the governors and will absent himself or herself during the discussion and decision.

A governor who identifies a possible Real, Potential or Apparent Conflict of Interest on the part of another governor will advise the chairman and the governor perceived as having the Conflict of Interest immediately.

In the case of a difference over the presence of a Real, Potential or Apparent Conflict of Interest, the chairman shall determine where such a Conflict of Interest exists. In the case of the chairman, the two governors representative of the public interest shall jointly decide.

On any policy question where a governor's personal circumstance may be a Real, Potential or Apparent Conflict of Interest, the governor shall disclose the circumstance to the Board of Governors and it shall decide, on a case-by-case basis, whether such a Conflict of Interest exists.

6. Other Ethical Considerations

Other types of conduct by governors, listed below, are considered to be inappropriate:

- (a) interfering with the day-to-day administration of the WCB by the president, by contacting individual WCB officers and employees in order to influence their conduct, decisions, etc., with respect to individual matters or otherwise.
- (b) interfering with the exercise of the quasi-judicial decision-making authority of the WCB, by contacting the chief appeal commissioner or individual appeal commissioners to influence their decisions or personally making representations to the Appeal Division or an officer of the WCB.
- (c) accepting transfers of economic benefits, except compensation authorized by law, that are connected directly or indirectly with the performance of a governor's duties and responsibilities as a governor, other than customary hospitality or other benefits normally and legitimately received as an incident of the protocol or social obligations accompanying those duties and responsibilities.

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- (d) stepping out of a governor's role as a governor to assist private entities or persons in their dealings with the WCB where this would result in preferential treatment to any person.
 - (e) knowingly benefiting from information that is obtained in the course of a governor's duties and responsibilities as a governor and that is not generally available to the public.
 - (f) disclosing any matter or thing that comes to a governor's knowledge by reason of his or her appointment which the Board of Governors has decided should remain confidential.
 - (g) disclosing information contained in individual claim files or pertaining to the claim of an injured or disabled worker, except as authorized by law.
 - (h) using a governor's office as governor to seek to influence a decision, to be made by another person, to further his or her private interest.
 - (i) engaging in personal conduct which exploits for personal gain a governor's position of authority.
 - (j) remaining a governor after having been elected as a member of the House of Commons or of the Legislative Assembly of the Province of British Columbia.

7. Post-Appointment Conduct

Governors shall not act, subsequent to their appointment as governors, in such a manner as to take improper advantage of their appointment. The highest standards will apply to their conduct in relation to the Workers' Compensation Board.

A governor shall not, for a period of six months for each year of appointment as a governor to a maximum of eighteen months after ceasing to be a governor, directly or through any other person or persons communicate with a governor, voting or non-voting, or with an officer or employee of the WCB for the purpose of influencing, for personal gain, the Board of Governors or the WCB on any matter that was part of the governor's duties and responsibilities or is part of the duties and responsibilities of a governor. This prohibition does not, however, extend to a former governor acting in the course of his or her responsibilities and duties as an official of a recognized worker or employer organization.

For the same period of time, the governors shall not conduct official business with a former governor acting on behalf of himself or herself, or on behalf of another person or entity, except as an official of a recognized worker or employer organization.

8. Implementation of Statement of Roles and Responsibilities

Existing governors will sign a document certifying that they have read and understood this Statement of Roles and Responsibilities and that, as a condition of their appointment, they will observe the Statement.

Future governors will, before or on assuming their official duties and responsibilities, sign a document certifying that they have read and understood this Statement and that, as a condition of their appointment, they will observe the Statement.

All governors will subscribe to the following oath upon their appointment:

I, _____, sincerely promise and swear (or affirm) that I will diligently and honestly perform all of the duties of a Governor of the Workers' Compensation Board. In carrying out the duties imposed upon me by this office, I will at all times use the best of my judgement, skill and ability, and conduct myself with integrity. I will not disclose any matter or thing that comes to my knowledge by reason of my office except as required for the proper discharge of my duties.

(Signature of Deponent)

It is the responsibility of all governors to review their obligations under this Statement at least once a year.

Conforming to this Statement will not absolve a governor of the responsibility to take such additional action as might be necessary to prevent Real, Potential or Apparent Conflicts of Interest.

Conforming to this Statement will not absolve a governor from conforming to any specific references to conduct contained in the *Workers' Compensation Act* or to the relevant provisions of legislation of more general application such as the *Criminal Code*.

This Statement applies to the exercise of the Governors' duties and responsibilities under the *Criminal Injury Compensation Act*, the *Workplace Act* and any other legislation which the Workers' Compensation Board may be charged with responsibility for superintending and directing.

We, the undersigned, hereby certify that we have read and understood the foregoing Statement of Roles and Responsibilities and that, as a condition of our appointment, we will observe the Statement.



Robert Hugh Buckley

James Matkin

Peter Cameron

John St. C. Ross

James E. Dorsey

Angela Schira

Murray Farmer

Stanley Shewaga

Leif Hansen

Mark Thompson

Bonnie Hayes

Len Werden

Elyne Johnson

Bylaw No. 3

Board of Governors Procedural Bylaw

As made by the governors of the Workers' Compensation Board of British Columbia, a bylaw relating to the procedure for meetings of the Board of Governors and other matters is enacted as follows:

Section 1 – Interpretation

- 1.1 **Definitions** – In this Bylaw, unless the context otherwise requires:
- (a) “Act” means the *Workers' Compensation Act*, RSBC 1979, c.437, as amended;
 - (b) “Board of Governors” means the governors;
 - (c) “Governor” means any one of the individuals appointed by the lieutenant governor in council under Section 81(1) of the *Act*, the president appointed under Section 84(1) and the chief appeal commissioner appointed under Section 85(1)(a);
 - (d) “this Bylaw” means this BYLAW NO. 3;
 - (e) “Voting Governors” means all of the governors other than the president and the chief appeal commissioner; and
 - (f) “Conflict of Interest” means any one of a Real Conflict of Interest, a Potential Conflict of Interest or an Apparent Conflict of Interest, all as described and defined in the Statement of Roles and Responsibilities of the Voting Governors of the Workers' Compensation Board.
- 1.2 **Definitions in Act to apply** – Unless otherwise indicated, all terms contained in this Bylaw which are defined in the *Act* shall have the meanings given to such terms in the *Act*.

Section 2 – Meetings of the Board of Governors

- 2.1 **Regular meetings** – Regular meetings of the Board of Governors shall be held not less than ten (10) times in each calendar year, at the call of the chairman, at any place in British Columbia that the chairman decides after consultation with the governors, except that in no case shall more than two (2) months elapse between regular meetings.
- 2.2 **Annual meeting** – One (1) of the regular meetings each year shall be designated the Annual Meeting and shall be held on such day in February or March of the year that the chairman decides after consultation with the governors. The Annual Meeting shall deal with, among other matters which may be presented, the review and approval of the annual report (including the annual financial statements) which is required to be made by March 25 each year.
- 2.3 **Notice of regular meetings** – To ensure the availability of the governors, the chairman shall, at least fourteen (14) days prior to each regular meeting, deliver a copy of the agenda for the meeting to each governor. The agenda so delivered shall constitute notice of the meeting, except that failure to deliver the agenda within the time specified shall not invalidate the meeting provided the agenda is delivered at least seven (7) days prior to the meeting.
- 2.4 **Agenda and supporting materials** – The agenda for a regular meeting shall, subject to Section 2.5, be set by the chairman, and:
- (a) shall describe the date, time and place of the regular meeting;
 - (b) shall be sufficiently descriptive of the matters to be decided that the governors will be able to identify the matters without disclosing any information which, for reasons of confidentiality, is not to be disclosed to persons other than the governors;
 - (c) shall be accompanied by supporting materials relating to the matters set out in the agenda whenever possible; and
 - (d) shall contain the proposed schedule of regular meetings for the following six (6) months.
- 2.5 **Request of Governors** – Upon the written request of five (5) voting governors received at least fourteen (14) days prior to a regular meeting, the chairman shall place a matter on the agenda for the regular meeting.

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- 2.6 **Distribution of supporting materials** – If it has not been possible to distribute all of the supporting materials with an agenda for a regular meeting, all such supporting materials shall be distributed to each governor at least twenty-four (24) hours prior to the regular meeting unless all voting governors present at such meeting consent to the distribution of particular material at the meeting.
- 2.7 **Special meetings** – The chairman may call a special meeting of the Board of Governors at any place in British Columbia that the chairman decides, by delivering written notice to each governor at least twenty-four (24) hours prior to the special meeting; and the written notice shall include the date, time, place and purpose of the special meeting.
- 2.8 **Request of Governors** – Upon the written request of five (5) voting governors, the chairman shall forthwith call a special meeting at any place in British Columbia that the chairman decides, by delivering written notice to each governor at least fourteen (14) days prior to the special meeting; and the notice shall include the date, time, place and purpose of the special meeting.
- 2.9 **Postponement or cancellation** – Subject to Section 2.1, the chairman may, after consultation with the governors, postpone or cancel a meeting of the Board of Governors, except a special meeting called under Section 2.8, by delivering written notice to each governor of the postponement or cancellation at least twenty-four (24) hours prior to the scheduled time for the meeting.

Section 3 – Quorum

- 3.1 **Quorum** – A majority of the voting governors then in office shall constitute a quorum at a meeting of the Board of Governors and no business shall be conducted unless a quorum is present in the meeting.
- 3.2 **Participation by telephone** – A governor may participate in a meeting of the Board of Governors by means of such telephone or other communications facilities as permit all persons participating in the meeting to hear each other, and a governor participating in a meeting by such means is deemed to be present at the meeting and shall be counted in the quorum.

Section 4 – Conduct of Meetings

- 4.1 **Chairman to preside** – The chairman shall preside at all meetings of the Board of Governors and, subject to this Bylaw, shall decide the procedure to be followed, with due regard for the views of the other governors.
- 4.2 **Robert’s Rules of Order** – The chairman may, in resolving procedural disputes, if necessary, refer to *Robert’s Rules of Order*, 1990 Edition which shall govern where applicable and not inconsistent with the *Act* or this Bylaw. The chairman’s decision on the interpretation of such Rules of Order shall govern.
- 4.3 **Matters to be decided** – Unless otherwise agreed by all voting governors present, only matters set out in the agenda for a regular meeting shall be decided at that regular meeting and only matters set out in the notice for a special meeting shall be decided at that special meeting.
- 4.4 **New business** – A governor may raise, as “new business,” a matter not set out in the agenda for a regular meeting and the chairman shall place the matter on the agenda for the next or a subsequent regular meeting.
- 4.5 **Vacancy** – A vacancy in the membership of the governors does not impair the right of the other governors to act.

Section 5 – Resolutions and Voting

- 5.1 **How matters to be decided** – At meetings of the Board of Governors, every matter shall be decided by resolution duly moved, seconded and carried by a majority of the votes cast by voting governors present and entitled to vote.
- 5.2 **Personal vote only** – No governor may vote on behalf of any other governor.
- 5.3 **Unequal representation** – In the event that the number of governors representative of workers and the number of governors representative of employers present at a regular meeting or at a special meeting of the Board of Governors are unequal, the representative group having the lesser number of governors present may, provided that all governors of that group who are present agree, require that voting on a particular matter be postponed until either the next regular meeting or, with the consent of all voting governors present, a special meeting duly called for this purpose, in

which case the chairman shall place the matter on the agenda for the next regular meeting, or call the special meeting, as the case may be, and, subject to Section 5.4, the matter may be dealt with at that next regular meeting or at the special meeting, even if the number of governors representative of workers and the number of governors representative of employers present at that regular meeting or at the special meeting are unequal.

- 5.4 **Other representative group** – If voting on a particular matter is postponed by the requirement of one representative group under Section 5.3, but at the next regular meeting or at the special meeting the other representative group has the lesser number of governors present, that other representative group may, provided that all governors of that group who are present agree, require that voting on the matter be further postponed until either the next regular meeting or, with the consent of all voting governors present, a special meeting duly called for this purpose, in which case the chairman shall place the matter on the agenda for the next regular meeting, or call the special meeting, as the case may be, and the matter may be dealt with at that next regular meeting or at the special meeting, even if the number of governors representative of workers and the number of governors representative of employers present at that regular meeting or at the special meeting are unequal.
- 5.5 **Restriction on postponement** – A representative group may only exercise its right to postpone voting under either Section 5.3 or Section 5.4 once with respect to a particular matter.
- 5.6 **Absence of representative group** – In the event that either all governors representative of workers or all governors representative of employers are absent from a regular meeting or a special meeting of the Board of Governors, the chairman shall adjourn the meeting and call a special meeting to be held not earlier than five (5) business days and not later than fifteen (15) business days after the date of the meeting being adjourned and, at that special meeting, provided a quorum is present, all matters on the agenda to be decided at the adjourned regular meeting or special meeting may be dealt with, even if all governors from the representative group which was absent from the adjourned regular meeting or special meeting are also absent from the special meeting.
- 5.7 **Voting** – Voting shall be by show of hands on the resolution. The chairman shall declare to the meeting the decision on every matter in accordance with the results of the show of hands and that decision shall be entered in the minutes of the meeting.

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- 5.8 **When chairman to vote** – The chairman may only vote in the case of an equality of votes and then the chairman shall have a single casting vote.
- 5.9 **Recording of votes** – A governor who is present at a meeting of the Board of Governors, including a governor deemed to be present under Section 3.2, shall be deemed to have consented to any resolution passed or action taken at that meeting unless the governor dissented on the matter and requests that a written record of his or her dissent be entered into the minutes of the meeting either at the meeting or by written notice to the chairman within two (2) business days after the meeting.

Section 6 – Conflicts of Interest

- 6.1 **Conflict of Interest of a Governor** – Where a governor considers that he or she has a Conflict of Interest with respect to a particular matter, that governor shall advise the chairman prior to discussion or decision on the matter by the governors and shall withdraw from the meeting during the discussion and decision on the matter.
- 6.2 **Possible Conflict of Interest of another Governor** – A governor who identifies a possible Conflict of Interest on the part of another governor with respect to a particular matter shall advise the chairman and the governor perceived as having the Conflict of Interest immediately, and, except in the case described in Section 6.3, if the governor perceived as having the Conflict of Interest agrees or, in the case of a disagreement, if the chairman decides that there is a Conflict of Interest, the governor perceived as having the Conflict of Interest shall withdraw from the meeting during the discussion and decision on the matter.
- 6.3 **Conflict of Interest of the Chairman** – In case of a difference over the presence of a Conflict of Interest on the part of the chairman, the two governors representative of the public interest (or one of such governors if only one is present at the meeting) shall decide whether such a Conflict of Interest exists. If it is decided that a Conflict of Interest exists, the chairman shall designate an acting chairman under Section 9.1 for, and shall withdraw from the meeting during, discussion and decision on the matter. The acting chairman may vote on the matter.

Section 7 – Minutes

- 7.1 **Minutes to be taken** – Minutes shall be recorded of each meeting of the Board of Governors evidencing the decisions taken and shall be presented for the approval of the governors at the next or a subsequent meeting.

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- 7.2 **Signature of chairman** – Upon approval by the governors with or without amendment, the minutes shall be signed by the chairman and the minutes, if purported to be signed by the chairman, shall be evidence of the proceedings which were taken at the meeting.
- 7.3 **Effect of chairman’s signature** – Where minutes of a meeting have been entered and signed in accordance with Sections 7.1 and 7.2, the meeting shall be deemed to have been duly held and convened and all proceedings at the meeting shall be deemed to have been duly taken until the contrary is proved.
- 7.4 **Preservation of minutes** – Minutes of all meetings of the Board of Governors and copies of all supporting materials relating to the matters dealt with at the meetings shall be retained by the Office of the Board of Governors in the manner directed by the chairman.

Section 8 – Committees

- 8.1 **Committees** – The Board of Governors may, from time to time by resolution, constitute, dissolve or reconstitute standing committees and special committees consisting of such governors and having such procedures as the Board of Governors may decide, provided that:
- (a) the chairman shall be an ex officio member of all committees;
 - (b) the Board of Governors may appoint a chairman of each committee or may direct the committee members to appoint a chairman from among the committee members;
 - (c) the composition of all standing committees shall reflect the worker, employer and public interest representative composition of the Board of Governors; and
 - (d) minutes shall be taken of all meetings of standing committees, with original copies of the minutes retained by the Office of the Board of Governors in the manner directed by the chairman and photocopies of the minutes sent to all governors.
- 8.2 **Authority of committees** – Every committee so constituted shall have the authorities, powers and discretions which are delegated to it by resolution of the Board of Governors and shall act in accordance with the directions, including the procedures to be followed, which the Board of Governors imposes on it.

Section 9 – Chairman Designate

- 9.1 **Chairman may designate** – The chairman may designate a governor representative of the public interest to act in the chairman’s place during the chairman’s temporary absence, and while so acting the designated governor shall have the power and authority of the chairman.

Section 10 – Delivery

- 10.1 **Method of delivery** – All agendas, supporting materials for meetings, notices, statements and other documents in writing required or permitted under this Bylaw to be delivered to governors may be mailed, postage prepaid, addressed to a governor or may be delivered to a governor either personally or by leaving it at his or her usual place of business or residential address, or may be sent by telegram, telex, facsimile or other method of transmitting visually recorded messages.

Section 11 – Remuneration of the Governors

- 11.1 **Governors’ remuneration.** – In consideration of carrying out their responsibilities under the *Act*, the voting governors shall be paid out of the accident fund:
- (a) remuneration in an amount determined by the lieutenant governor in council, and
 - (b) reasonable and actual travelling and out-of-pocket expenses necessarily incurred by them in discharging their duties.
- 11.2 **Calculation of per diem** – Where the remuneration determined by the lieutenant governor in council is in whole or in part a per diem rate, then, unless otherwise fixed by the lieutenant governor in council, the amount to be paid in respect of the per diem rate to a voting governor shall be calculated as follows:
- (a) for less than four (4) hours of work in a day, a governor shall be entitled to one-half of the per diem rate;
 - (b) for more than four (4) hours of work in a day, a governor shall be entitled to the full per diem rate;
 - (c) only one full per diem payment shall be made to a governor for each twenty-four (24) hour day;

(d) preparation time of up to one (1) day per regular meeting, special meeting, committee meeting or other meeting of the Board of Governors shall be remunerated; and

(e) reasonable travel time shall be included in qualifying time.

11.3 **Time for claiming** – A governor shall only be paid remuneration under Section 11.1(a) or be reimbursed for expenses under Section 11.1(b) where the governor has submitted a claim for such remuneration or expenses within three (3) months of the meeting of the Board of Governors in respect of which the remuneration is to be paid or the expenses were incurred.

Section 12 – Annual Review

12.1 **Annual review** – This BYLAW NO. 3 shall be reviewed by the Board of Governors within one (1) year of being passed by the Board of Governors and thereafter annually.

This BYLAW NO. 3 has been passed by the governors at a meeting of the governors duly called for that purpose on October 7, 1991.

Date: October 7, 1991

James E. Dorsey
Chairman of the Governors

