

WORKERS' COMPENSATION

# REPORTER

## WORKERS' COMPENSATION REPORTER

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# REPORTER

## Decision of the Appeal Division

**Number:** 91-0802  
**Date:** November 8, 1991  
**Panel:** Patrick L. Byrne, James L. Tonn, Sarwan Boal  
**Subject:** O.S.H. Penalty – A Program of Compliance

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This is an appeal of the June 14, 1991 decision of the director of Field Services, Occupational Safety and Health Division (O.S.H.) to impose a penalty assessment of \$7,500.00. The director concluded that the employer violated certain *Industrial Health and Safety Regulations* on November 22, 1990 and the circumstances warranted the penalty assessment.

The employer appeals on the grounds of a contravention of a published policy of the governors. The issue is whether the employer has a lawful excuse for the violations.

### Background

The employer is a general contractor. On November 22, 1990 the employer's worksite was inspected by a W.C.B. occupational safety officer. The officer observed the following infractions and cited them on inspection report #90811762:

Inadequate footwear:	regulation 14.08(1)(2)
Inadequate lighting:	regulations 13.81(b)(c), 8.44
Inadequate housekeeping:	regulation 8.54
Single scaffold plank:	regulation 32.10(1)
Protruding steel:	regulation 34.28(11)

On December 19, 1990 the employer was sent a show-cause letter proposing a penalty assessment of \$7,500.00 on the basis that the first four infractions were of a repeat nature.

On March 25, 1991 the employer attended a divisional oral hearing and presented evidence. On June 14, 1991 the director imposed the penalty assessment.

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## Evidence and Argument

There is no dispute that the observations of the officer on November 22, 1990 and the subsequent citations are factual. The employer argues that the penalty assessment was inappropriate based on the employer's efforts to comply. They quote O.S.H. policy 1.0.0 (page 4, part 1):

If the order issued refers to items which have been overlooked by a management actively pursuing a policy of compliance with the regulations, a penalty assessment will not normally be considered.

The employer's evidence is that over the past three years the inspection reports issued by the Board indicate that the employer has taken significant and substantial steps to improve its occupational safety and health record. Further, that this was due to a strong commitment to workplace safety.

The employer's evidence of their commitment is that they hired a full-time safety coordinator, with executive authority and responsibility to develop policies and procedures to bring the employer into compliance. Further, the safety coordinator has authority to dismiss workers who neglect or refuse to follow these policies or procedures. Finally, a safety program has been implemented, including a reprimand policy as well as weekly tool-box chats where safety issues are discussed.

The employer presented evidence that:

[their] recent safety record, particularly since it began employing a full-time safety coordinator, has been much more favorable than before, as evidenced by the numerous "clean sheets" issued in 1990 and 1991.

The employer points to the October 12, 1990 inspection at the same worksite which found no violations as significant evidence of their compliance with the regulations at that time.

The employer also maintains that the above evidence demonstrates that:

From the foregoing it is clear that [the employer] is actively pursuing a policy of compliance with the regulations. There is no basis in fact to suggest that [the employer] is complacent about workplace safety. There is certainly no basis for suggesting that [the employer] deliberately fails to comply with the regulations. On the facts, [the employer] is making vigorous efforts to comply with the regulations and to adopt sound practices, and will continue to do so.

## Findings and Reasons

The employer interprets O.S.H. policy 1.0.0 such that where a management is actively attempting to comply with the regulations, penalty assessments should not normally be considered. O.S.H. policy 1.0.0 differs from O.S.H. policy 1.4.1. (Applications of Sanctions) which states, in part:

If the orders refer to items which have been overlooked by a management actively pursuing a program of compliance, sanctions should not normally be considered.

The important distinction is that 1.0.0 merely requires a policy of compliance while 1.4.1 requires a program of compliance. These are significantly different tests. The panel favours the use of 1.4.1 for several reasons. The first is that 1.4.1 is specific to the application of sanctions and secondly the intent of the *Workers Compensation Act* is to prevent workplace injuries and diseases. Such injuries and diseases are better prevented by employers having a program of compliance with the regulations rather than merely a policy of compliance. In this case, it is the employer's program of compliance that is pertinent to the application of sanctions.

The second point with respect to policies 1.0.0 and 1.4.1 is the interpretation of the term "actively pursuing" a program or policy of compliance. The employer takes the position that the term means "actively attempting to comply" with the regulations. The panel does not agree. Considering the intent of the *Act* described above, it would defeat the intent to allow employers to merely attempt to comply with regulations. The proper interpretation of the term, in this case, is that the employer have a program of compliance and normally be in compliance with the regulations by "actively pursuing" their program. It is only when a few items are overlooked in such a program can the employer be excused from penalty assessments, based on point 1 of policy 1.4.1. (the policies allow lawful excuses based on other points). This approach is supported in policy 1.0.0. (page 3) which states in part:

... Such frequency in the use of sanctions could also be a discouragement to an employer who is *conscientiously striving to maintain a continuing compliance with the regulations*, and who has simply overlooked one or two particulars. (emphasis added)

The employer's evidence is that the program designed to ensure compliance with the regulations was implemented sometime after the inspection of November 22, 1990. While the panel was impressed by the sincere efforts of the employer to implement a program, the panel considers only those efforts made on or before November 22, 1990, the date of the infractions, to be pertinent to the penalty assessment under appeal.

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The employer's evidence is that on November 22, 1990 they had a written health and safety program but it had not been implemented.

The panel finds that the employer did not have a program of compliance on November 22, 1990.

The penalty assessment was imposed at \$7,500.00. This amount appears in the recommended schedule of penalties in O.S.H. policy 1.4.1 as a type 3, high-risk penalty. The violations on which the assessment was based are clearly not high-risk violations. Considering this employer's previous penalty assessment record the assessment under appeal is more properly placed in the type 2 category in the amount of \$6,000.00.

### **Conclusion**

The employer did not have a program of compliance at the time the infractions occurred. The panel finds that there is no contravention of a published policy of the governors with respect to the application of the penalty. There is, however, an error in the quantum of the penalty assessment.

THE APPEAL IS ALLOWED, IN PART. THE PENALTY ASSESSMENT IS REDUCED TO \$6,000.00.

*Editors' note: This decision has been edited for publication.*

## Decision of the Appeal Division

**Number:** 91-0944  
**Date:** December 17, 1991  
**Panel:** Cassandra Kobayashi, James L. Tonn, Verna Ledger  
**Subject:** Medical Review Panel: Enabling Certificate

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The worker is appealing the Review Board findings arising from two decisions of the senior medical appeals officer, medical review panels.

The issue on appeal is whether the worker has met the statutory requirements to be examined by a medical review panel; in particular does the Certificate for Appeal to a Medical Review Panel (the enabling certificate) contain sufficient particulars to define the question in issue pursuant to Section 58(3) of the *Workers Compensation Act*.

### Background

The worker is a firefighter. He was carrying a burning chesterfield from a fire when his hand jammed in the doorway, injuring his right wrist. The diagnosis was a fractured lunate in the wrist. A permanent partial disability pension 3.54% of a totally disabled person was awarded.

The worker appealed this decision to the Workers' Compensation Review Board who unanimously allowed the appeal, finding the award should be adjusted upwards.

The Review Board findings were referred to the commissioners of the Workers' Compensation Board under Section 96(2) of the *Workers Compensation Act*. The Board believed the Review Board findings were in breach of Board policy to regard the recommendation of a disability awards medical advisor as expert evidence that should not be disregarded unless there is other expert evidence to the contrary. The commissioners reversed the Review Board's findings and the original pension award was reinstated.

The worker sought to appeal the commissioner's decision to a medical review panel. The worker's Request for Examination stated the commissioners "have underestimated the degree to which my compensable injury affects the function of my hand, wrist, and arm."

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Also submitted was a Certificate for Appeal to a Medical Review Panel from Dr. O. This enabling certificate stated the medical decision which he disputes is “the worker’s disability does not exceed 3.54% of total.” Dr. O said the reasons why he believes a medical dispute exists are “the worker has a degenerated lunate bone with advanced arthritis in the radiocarpal joint of his right wrist. This causes pain, weakness and reduced movement of the wrist.”

The senior medical appeals officer of the Board determined that the doctor had not provided sufficient particulars to define the question in issue. As a result, the worker’s request for examination by a medical review panel was rejected. The decision letter stated:

Section 61 of the *Act* precludes a Medical Review Panel from stating the worker’s disability in terms of *percentage of disability of the whole body*. Therefore, the question of the percentage of disability cannot be placed before the Panel. However, if the physician disputes a particular medical decision from the permanent partial disability examination, this medical decision can be placed before the Panel. The findings noted by Dr. O on the Certificate do not differ from the medical findings or medical limitations on which your award was based.

The worker’s counsel sought reconsideration of that decision, arguing that there is nothing in the *Act* to preclude Dr. O from referring to a percentage of disability. She submitted that Dr. O’s statement on the degree of disability could have been worded differently, such as “to the extent stated by the Workers’ Compensation Board.” The representative also wrote that Dr. O’s specific medical findings have not been acknowledged by the Board in their permanent partial disability assessment. She said it is clear what the doctor was saying, and does not want to bother physicians with excessive paper work when matters have already been well defined.

As a result of this letter, the senior medical appeals officer asked the advice of Dr. C, director of the Board’s Medical Services.

Dr. C replied:

Dr. O has not provided any evidence in his Certificate which would indicate that this worker has developed stiffness greater than found by Dr. B. In fact, Dr. O has made no attempt whatsoever to quantify this stiffness. Dr. B was aware when she conducted her examination that there were arthritic changes affecting the lunate and she particularly mentions degenerative changes in this radiolunate joint. The pain and weakness referred to by Dr. O was also noted by Dr. B. In my opinion, Dr. O’s findings have been acknowledged by the Board in the assessment by Dr. B.

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The senior medical appeals officer confirmed her decision to reject the doctor's certificate. She agreed that there is nothing which precludes a physician from referring to a percentage of disability in the certificate. She referred to Dr. C's opinion and concluded that "the findings of Dr. O have been acknowledged by the Board."

The worker's counsel submitted another certificate. This certificate was from Dr. Y and stated:

3. The medical decision which I dispute is the decision that:

The disability received by the worker is only 3.54% of total.

4. The reasons why I believe a medical dispute exists are:

Patient still says he is painful at that wrist; he cannot play tennis or work around his farm. He says the only reason why he is still working is because he is "fire-captain" which involves little manual skill. He is never put in line for fire-fighters.

This certificate was also rejected on the following grounds:

Dr. Y does not provide sufficient particulars to define the question in issue. Dr. Y has not provided any particulars to indicate that the extent of the worker's permanent impairment is greater than that already acknowledged by the Board.

The worker appealed to the Review Board. Extensive submissions were received from the worker's counsel and the employer's representative. In denying the appeal, the panel had two concerns. First, the Review Board suggests the doctor's certificate must address the physical findings on which the pension is based, not the percentage of disability assigned to those findings:

On the facts of this case, it is impossible to tell whether the worker's attending physician disagreed with the physical findings of the Board's Disability Awards Medical Advisor, or whether he agreed with those findings but concluded that they merited an award greater than 3.54% of total ...

Section 58(3) requires the Certificate to provide "sufficient particulars to define the question in issue." Plainly, a Certificate that does not distinguish between a disagreement regarding physical findings and a disagreement regarding the amount of pension which those physical findings warrant, cannot constitute a Certificate which complies with Section 58(3).

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Second, the Review Board said that the worker's physician cannot phrase his or her disagreement in terms of a percentage of disability because the statute prohibits the medical review panel from stating its conclusion in terms of a percentage of the whole body:

Thus, the Certificate of the attending physician, if accepted as a proper Certificate, would require a Medical Review Panel to decide whether the percentage of total disability is correct. Yet Section 61 forbids the Medical Review Panel from making any such finding. It seems axiomatic to us that if the Medical Review Panel cannot describe a disability in terms of "percentage of disability of the whole body," it cannot consider whether "a disability of the whole body" is greater than that found by the Board.

The panel concluded that the two doctors' certificates did not comply with the statutory requirements to provide "sufficient particulars to define the question in issue," and did not describe a "bona fide medical dispute."

## **Legislation and Policy**

The *Workers Compensation Act* provides a mechanism for a worker or employer to initiate an appeal to a medical review panel. One of those requirements is that a physician submit, in writing, an enabling certificate "certifying that in the opinion of the physician there is a bona fide medical dispute to be resolved, with sufficient particulars to define the question in issue ...."

The Board policy which interprets this subsection is set out in the *Rehabilitation Services and Claims Manual ("Manual")*, Item #103.00. The *Manual* lists the major types of medical decisions made by the Board including whether the worker has any residual effects from the compensable injury, but not whether those residual effects constitute a "disability" for compensation purposes.

Item #103.12 sets out Board policy with respect to enabling certificates:

An appeal by a worker or employer must be supported by a certificate issued by a physician, certifying that in his opinion there is a bona fide medical dispute to be resolved, with sufficient particulars to define the question in dispute. In other words, the certificate must state exactly in what respect the physician differs from the medical conclusion of the Board.

Item #103.41 states that the Board identifies in advance the medical decision in dispute "to avoid the risk of the panel answering questions which are not relevant for compensation purposes."

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Item #103.45, "Questions for Decision by the Panel," sets out the questions to be answered by the panel under Section 61(1) of the *Act*. These include "the existence or non-existence of a disability" and "if there is a disability, its nature and extent, but not stated in terms of percentage of disability of the whole body." These questions are always answered by a medical review panel along with any questions posed by the Board under Section 61(3) of the *Act*.

## **Reasons for Decision**

We allow the worker's appeal for the following reasons. Both doctors' certificates identify the medical decision in dispute, namely the nature and extent of disability. We find that the degree of disability may be expressed by the physician with reference to the award as a percentage of disability.

It is not relevant to the sufficiency of the enabling certificate whether the *Act* prohibits the medical review panel from stating its findings in terms of percentage of disability. There is no legislative requirement that the exact wording of the medical question in issue as stated on the doctor's certificate be submitted to the medical review panel for determination. In fact, Section 61(3) and Board policy are that the Board determines the wording of any additional questions as it sees fit.

We note that Section 63(1) does allow a medical review panel to certify on the nature and extent of disability. Therefore, the nature and extent of disability is a "bona fide medical dispute" and the physician need only identify the question to that degree.

The policy of the Board is perhaps a more strongly worded version of the statutory requirements; however, we find that policy is satisfied if the physician identifies that he believes the worker is more disabled than recognized by the Board.

We do not agree that the doctor must identify the specific examination findings by the disability awards medical advisor with which he disagrees. We interpret the reference to "medical decision of the Board" in Section 58(3) as referring to a decision communicated to the parties. The "P.P.D. Exam" by the disability awards medical advisor is not a "medical decision." It is not desirable or practical for appeals to be launched from such examination reports or other medical opinions offered by Board doctors.

In administrative law, a decision must stand on its own. If the information is not in the decision, it is speculation to say this or that evidence was considered. While we know Board practice is to rely on the disability awards medical advisor's recommendations, we cannot assume that every finding stated in the report was used by the disability awards officer in making the decision.

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In this case, the worker is appealing the commissioners' decision. Neither the Board nor employer has taken the position that the commissioners' decision is not a medical decision. The essence of the commissioners' decision was to reverse the Review Board's findings and implement the original disability award.

The commissioners' decision states that Dr. B referred to radial and ulnar deviation in her report and must be considered to have taken account of it in her assessment. No specific mention is made of the degree of deviation. Dr. B's findings with respect to reduced movement of the wrist are included by the commissioners only to the extent of quoting Dr. B's breakdown for the components of her assessment:

2.5% of total for the restriction at the wrist and approximately 0.5% of total for the slight restriction of supination of the forearm.

There are no physical findings of range of motion or other examination findings reported in the commissioners' decision under appeal. The physicians who filled out the enabling certificates were entitled to rely on the decision under appeal. Their identification of a medical dispute must refer to that decision, not evidence in the file.

We note the director of Medical Services' opinion that the first certificate did not provide "evidence" indicating a greater degree of stiffness than found by Dr. B. The requirement of "evidence" could be interpreted as adding to the statutory requirements for a proper enabling certificate. Section 58(3) of the *Act* requires a certificate certifying that in the physician's opinion there is a bona fide medical dispute with sufficient particulars to define the question in issue.

We also note that the director of Medical Services considered whether any of the doctor's findings on his certificate had not been acknowledged by the Board's assessment. The director compared the enabling certificate to Dr. B's examination report. With respect, this process is not properly part of the decision in determining the sufficiency of a physician's certificate. It is the commissioners' decision, not Dr. B's recommendation, which is under appeal.

Both certificates identify particulars not mentioned in the commissioners' decision. The first certificate mentions a degenerated lunate bone with advanced arthritis, pain, weakness and reduced movement of the wrist. Aside from the last item, none of these findings are mentioned.

The second certificate mentions the worker's pain, that he cannot play tennis or work around his farm, and that he is able to continue working only because he is a "fire-captain," which requires little manual skill.

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In allowing the appeal, we note that the legislature has carved out from the Board's jurisdiction a separate appeal process before a medical review panel. The medical review panel determines its own procedure and determines what evidence it will receive. The decision of a medical review panel is binding on the Board, and there is no appeal from their decision.

However, the Board controls access to medical review panel appeals: the Board determines the sufficiency of the enabling certificate, and other preliminary matters in an appeal to a medical review panel. The Board should not unduly restrict access to this appeal process. The *Act* requires the Board to ensure that the statutory requirements are met. The addition of any preliminary requirements defeats the legislative intention that employers and workers have access to this avenue of appeal outside the Board.

THE APPEAL IS ALLOWED.

*Editors' note: This decision has been edited for publication.*



# REPORTER

## Decision of the Appeal Division

**Number:** 91-1085  
**Date:** December 20, 1991  
**Panel:** Connie Munro, Chief Appeal Commissioner  
**Subject:** Fettering of Discretion

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The employer is appealing a decision of the Assessment Department dated February 26, 1991. This decision reclassified the employer's registration with the Board from class 140605 to class 062202 on a compulsory basis, effective January 1, 1992.

The appeal is pursuant to Section 96(6) of the *Workers Compensation Act* which states that:

- (6) An employer who has received notice of
  - (a) an assessment under section 39, 40 or 41,
  - (b) a classification, special rate differential or assessment under section 42, or
  - (c) an additional assessment, levy or contribution under section 73

may, not more than 30 days after receiving the notice or within a longer period the chief appeal commissioner may allow, appeal the assessment, classification, special rate, differential or additional assessment, levy or contribution to the appeal division on the grounds of error of law or fact or contravention of a published policy of the governors.

The employer is a non-profit society funded by the Ministry of Social Services and Housing. It operates programs to provide social rehabilitation, family counselling, and special education services to children who are referred to the society from the Ministry of Social Services and Housing.

From August 15, 1960 to January 7, 1978, the employer was classified in class 6, subclass 26 for assessment purposes.

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In a letter dated March 28, 1978, the Board informed the employer of a change of classification as part of the ongoing review of registrations. Effective January 1, 1978, it would be registered in class 14, subclass 06 (social service agency). The employer did not object to the change.

In December 1990, the Classification Committee of the Assessment Department introduced a new practice set out in a Classification Committee Minute (the "Minute"). This Minute purports to bring the community care industry into line with similar industries. The classification criteria no longer depend on licensing and funding. Rather, according to the Minute:

- Where a Social Service or Health Facility provides overnight accommodation with physical assistance, the classification will be 062608
  - on request, if fewer than 10 bedrooms
  - compulsory, if 10 or more bedrooms.
- Where there is no overnight accommodation such as Day Care Centres, Crisis Centres, or Clinics, the classification will be 140605 on request.

The Minute provides the following explanation for these changes:

The Assessment Department, in an attempt to update the policy, *conducted a study of the Community Care Industry.*

We found that the *Community Care Facility Act* is administered by a number of different bodies such as the Provincial Adult Care Licensing Board, the Provincial Child Care Licensing Board, the Ministry of Health and the Ministries of Social Services and Housing. All of these bodies control certain aspects of the industry which makes it difficult to keep abreast of their policies and changes in the industry.

We also found during the study that not all facilities fell under the *Community Care Facility Act* such as Crisis Centres, Drop-in Centres, etc., although they do receive funding through grants from the Ministry of Health and some also receive grants from the Ministry of Social Services and Housing. Where the funding comes from depends upon whether the services provided lean toward mental health issues or family crisis issues (i.e. financial difficulties, or family housing and support problems, etc.). Each of these facilities determine their own educational requirements for the staff and no special licensing is required.

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*It became clear that it would be difficult, if not impossible, to develop and maintain a policy in an industry such as this if it were based on the licensing and criteria as outlined above, hence the Committee's decision, which will become effective January 1, 1992 for firms registered prior to October 18, 1990. (emphasis added)*

As indicated earlier, by letter dated February 26, 1991, the Board informed the employer that its registration would be reclassified to class 062202 on a compulsory basis, effective January 1, 1992. The effect of this is a rate increase.

On March 27, 1991, the Board wrote to the employer, confirming reclassification of its account from class 140605 to class 062202 effective January 1, 1992. The Board stated in its letter that "the change is more equitable with other industrial undertakings doing the same kind of work."

On July 23, 1991, the employer wrote to the Board, expressing its intention to appeal the reclassification decision. The employer stressed that it is a social service society, licensed under the *Community Care Facilities Act* and funded by the Ministry of Social Services and Housing. The employer stated:

The *Act* does not indicate that because a social service agency provides overnight accommodations with or without physical assistance that this changes the nature of the operation so that it would fall under class 6 rather than class 14.

On October 1, 1991, the employer provided the Appeal Division with a written submission in support of its appeal. The gist of the employer's argument is that the Board's practice, as set out in the Minute, is inconsistent with Section 36 of the *Workers Compensation Act* (the "Act").

More specifically, the employer submits that:

A review of the classification policy statement (30:10:00) indicates that industries are not classified according to occupations. Classifications are assigned to accounts on the basis of the industry in which the employer is operating (30:20:10). Some of the factors that are considered are type of product or service that is being provided and the type of industry with which the employer is in competition. As we have already indicated, we are not in competition with apartment, boarding or lodging homes. Our prime function is social rehabilitation, family counselling and special education. Occupations of individual workers may be reviewed when assigning the classification but only as an indicator as to the type of

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industry being carried on by the firm. As we have noted above, the majority of our staff are people qualified to provide social rehabilitation, family counselling and special education services. *We are not in the service industry.* We are a non-profit social service agency.

*The Act does not indicate that, because a social service agency provides overnight accommodations with or without physical assistance, this then changes the nature of the operation so that it would fall under Class 6 rather than Class 14. We do not feel that it is equitable to be treating social service agencies (social rehabilitation centres) differently under separate classifications based on the criterion of whether they do or do not provide overnight accommodation. We do not understand the rationale for using this criterion in interpreting the wording of Section 36. (emphasis added)*

The issues arising in connection with this appeal are twofold:

- (1) Is the Board's practice, as expressed in the Minute, inconsistent with the provisions of the *Act*? and
- (2) Does the Board's practice offend any of the general principles of administrative law?

### **The Board's Practice and Section 36 of the Act**

Section 36 of the *Act* reads in part as follows:

36. For the purpose of assessment in order to create and maintain a fund, to be called the accident fund, for the payment of the compensation, outlays and expenses under this Part and for payment of expenses incurred in administering the *Workplace Act*, all industries within the scope of this Part shall, subject to section 37, be divided into the following classes:

...

Class 6. – light manufacturing, service and trade industries;

...

Class 14. – municipal corporations and agencies;

In *Commission of Inquiry Workmen's Compensation Act, 1966*, Mr. Justice Charles W. Tysoe stated that:

Section 30 of the Act (now Section 36) sets out the classes into which industry is divided for the purpose of assessment to maintain the Accident Fund. The Board is empowered to make and has made changes

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in such classes. Reference to the *Classification and Rate List, 1963*, (Exhibit 23A), shows that the various classes are divided again into subclasses ...

*The designation of subclasses is principally for the purpose of a more exact classification of industries according to risk.* (emphasis added)

(at 98)

In *Workers' Compensation in Canada*, Professor T.G. Ison explains that:

The classification system is by type of industry, not by occupation of each worker. The classification is intended *to reflect the output of the industry.* (emphasis added)

(at 262)

The *Assessment Policy Manual* states in Policy No. 30:10:00 that:

... classification by industry and forming a group large enough to be a valid insurance base, are the basis of the classification system.

The *Act* is silent on how the Board is to assign classifications to accounts.

Policy No. 30:20:10 in the *Assessment Policy Manual* provides that:

In assigning the classification, some of the factors considered are the type of product or service that is being provided and the type of industry with which the employer is in competition.

Policy No. 30:20:10 also notes that:

This manual does not contain the specific criteria for putting a firm in a particular classification, because of the immense number and detailed nature of these rules. However, these rules, along with copies of the Classification Committee Minutes (see Section 30:20:50), are available for viewing at any one of the Board's offices throughout the province. When applying these rules to specific situations or firms, *individual consideration will be given and variations from the policy will be implemented where the Board's judgement suggests that literal application may be inappropriate or inequitable.* (emphasis added)

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To the extent that the classification system under the *Act* is intended to reflect the output of an industry according to some notion of average accident risk, the Board's practice is consistent with this intention. It is a reasoned attempt at demarcating between the kinds of services provided in terms of the accident risks inherent in the nature of the service provided (overnight accommodation, physical assistance, etc.).

The employer suggests that the Board ought to make some allowances for the fact that they are a non-profit society. There are two possible arguments in support of this position. One argument is that, in averaging the risk over an industry, the Board ought to allocate more of the burden to profit-making institutions. In other words, it is more equitable to treat a non-profit society differently for assessment purposes. This is not, however, an argument addressing the issue of proper classification. Rather, it is an argument for differential treatment within a class. Nothing in the *Act* countenances that approach.

An alternative hypothesis is that the risk associated with profit-making institutions is necessarily higher than the risk associated with non-profit operations. This argument is based on the notion that, since by definition a profit-making institution tries to minimize costs, it will necessarily incur more risks. Although this argument has some appeal, I find it too sweeping to be persuasive.

I have considered the possible meanings of the word "agencies" under class 14 in Section 36 of the *Act*. Class 14 reads as follows:

Class 14 – municipal corporations and agencies;

The legislative evolution of this section reveals that class 14 was originally intended to include only municipal entities. Class 14 in Section 30 of the *Workmen's Compensation Act* R.S.B.C. 1960, c.413 read as follows:

Class 14 – Municipalities and municipal boards:

The *Workmen's Compensation Act* R.S.B.C. 1960, c.413 was repealed in 1968 and replaced by the *Workmen's Compensation Act*, S.B.C. 1968, c.59. Section 34 of the *Workmen's Compensation Act*, S.B.C. 1968, c.59 dealt with the classification of industries. Class 14 of Section 34 read as follows:

Class 14 – Municipal corporations and agencies:

The wording of class 14 has been unchanged since.

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It is worth noting that, historically, municipalities tended to fund social service agencies and that the Board created a subclass for social service agencies under class 14. This would suggest that the word “agencies” under class 14 should be read as including all social service agencies. The underlying assumption would be that, once municipalities stopped funding social service agencies, it might have seemed natural for the legislative drafters to keep social service agencies in the same class as municipal corporations, and the Board acted on this. On the other hand, a reading of the legislative provision dealing with class 14 may also suggest that the word “agencies” acquires meaning only with reference to the word “municipal” and should therefore be understood as “(municipal) agencies.”

In the absence of any evidence of the legislative intent behind the change in wording of class 14, I am unable to conclude that the word “agencies” should be interpreted to mean all “social service agencies.”

Neither a purposive nor a textual reading of the legislative provision dealing with class 14 persuades me to accept the employer’s argument that the Board’s practice is inconsistent with the *Act*. The Board’s practice may fail to address all the relevant factors that need to be taken into account in classifying operations according to risk. This is not, however, the same as saying that it is inconsistent with the *Act*.

### **The Board’s Practice and Fettering of Discretion**

A general principle in administrative law is that administrative bodies must not fetter their discretion. In other words, a body entrusted with a discretion must not disable itself from exercising its discretion in individual cases by adopting a fixed rule of policy. As summarized by Jones and de Villars in *Principles of Administrative Law* (Vancouver, 1985):

... the existence of discretion implies the absence of a rule dictating the result in each case; the essence of discretion is that it can be exercised differently in different cases.

(at p. 137)

Or, as stated by Lord Denning M.R., in *Padfield v. Minister of Agriculture, Fisheries and Food*, [1968] A.C. 997 at 1008 (H.L.), the Board ought not to make up its mind in advance.

This principle is, however, sensibly applied. It does not bar administrators from formulating policies in advance to guide their determination of particular types of application. Such policies may themselves engender administrative justice by ensuring greater consistency of decision-making. If properly announced, they may prove of great value to citizens planning their affairs.

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What this principle tries to prevent, however, is the failure to exercise discretion by the purely mechanical application of a general policy without any willingness to consider any special circumstances of the individual case that might warrant departure from the general policy.

In *British Oxygen Co. Ltd. v. Minister of Technology* [1971] A.C. 610 (H.L.), a leading decision of the House of Lords, Lord Reid stated explicitly at p. 625 that there can be no objection to the formulation of “a policy so precise that it could well be called a rule ... provided the authority is *always willing to listen to anyone with something new to say* ... (emphasis added).” The Supreme Court of Canada adopted a similar position in *Capital Cities Communication Inc. v. Canadian Radio-Television Commission* [1978] 2 S.C.R. 141. Both cases suggest that guidelines, policies and rules cannot be so rigid as to deny an affected party the opportunity to question them and their applicability to the individual case.

The case law on fettering of discretion provides numerous examples of courts striking down policies where there was never any inquiry into or consideration given to the situation of the person aggrieved by the official charged with discretionary powers. See, for instance, *Lloyd v. Superintendent of Motor Vehicles* (1971) 20 D.L.R. (3d) 181 (B.C.C.A.); *Lewis v. B.C. Supt. of Motor Vehicles* (1979) 18 B.C.L.R. 305 (S.C.); *Deptuck v. Law Society of Sask.* [1985] 2 W.W.R. 433 (Sask. C.A.).

Admittedly, in *Western Forest Products Ltd. v. Workers' Compensation Board* (1983) 8 Admin. L.R. 43, the B.C. Supreme Court upheld a general policy of the Workers' Compensation Board that an experience rating is not transferable if the ownership of the employer changes. This decision appears to relax considerably the judicial test for fettering. It is significant, however, that in rendering her decision, Madam Justice Proudfoot emphasized the existence of a privative clause in the legislative scheme. Her reasoning suggests that her conclusion on the issue of fettering of discretion was influenced by the fact that the impugned policy was within the protection of a privative clause.

It is also noteworthy that, in weighing the advantages of allowing administrative bodies to formulate policies, Madam Justice Proudfoot stated that:

The petitioner cannot successfully argue that the board had established a pre-existing policy and that was enough to fetter their discretion. It is far more beneficial for a tribunal to develop policy guidelines for the sake of consistency rather than dealing on an ad hoc basis, *providing the guidelines still allow flexibility and consideration of the merits*. For the case at Bar, the board considered the merits. (emphasis added)

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The Appeal Division need not adopt the test for fettering as formulated in the context of judicial reviews where the courts have had to give regard to the existence of a privative clause. The Appeal Division is not constrained by this consideration.

In light of the general principle against the fettering of discretion, I have come to the conclusion that the proper way to view a policy or rule such as the Board's practice is as a default rule. The Board must give parties affected by this default rule the opportunity to rebut it. Where there is some dispute as to the applicability of the default rule to a particular set of circumstances, there should be some investigation into the nature of the operation or the firm that is being assessed. The Board cannot "shut its ears" to a disagreement as to the applicability or fairness of the default rule in a particular case.

This approach is entirely consistent with the governors' published policy. Policy No. 30:20:10 of the *Assessment Policy Manual* states that:

... individual consideration will be given and variations from the policy will be implemented where the Board's judgement suggests that literal application may be inappropriate or inequitable.

The case before me suggests questions might be addressed such as the rate of utilization of beds, the qualifications of the workers employed, the worker/children ratio on the premises or the nature of the physical assistance being provided. These questions may be germane to predicting the accident risks associated with providing certain services. The evidence before me suggests that the Board never concerned itself with these questions. The evidence suggests that, once it decided upon the course of action outlined in the Minute, the Board refused to entertain any possible departure from this course and, in effect, "shut its ears" to the employer's disagreement.

Admittedly, the employer's arguments could have been stronger but the Board's response never allowed all of the relevant issues to be fully analyzed. In responding to the employer, the Board never went beyond invoking the general applicability of the Board's practice. The proper exercise of its discretionary powers required the Board to move from this general stance to the investigation of the particulars of the employer's operation and the specific type of risks involved in this operation. It required the Board to assess why the risk of the employer's operation is more comparable to one class than another. This the Board never did nor ever proposed to do. It, therefore, fettered its discretionary powers.

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The factors which the Board's practice takes into account (number of beds and physical assistance) may be strong indicators of the degree of risk inherent in providing certain services, but they are not conclusive. They may legitimately serve as the starting point but should not be the conclusion of the analysis. Under our workers' compensation legislation, the average accident risk associated with different types of industries is the guiding principle underlying the classification system for assessment purposes. The theory is that firms providing similar products or similar services will encounter roughly similar risks in producing the products or providing the services. The Board's practice goes only part way towards establishing classification criteria that are faithful to this principle. This is why rigid adherence to this practice is unacceptable and defeats the purpose of the Board's practice, namely classification according to the relative risks of producing certain products or providing certain services.

I note that, as set out in the Minute, the very wording of the Board's practice displays rigidity. No mitigating words such as "normally" or "generally" are used to qualify the Board's practice.

Both in its wording and in its implementation, the Board's practice in this instance was overly rigid. It confined the analysis for proper classification to an unjustifiably small number of variables. The Board thereby disabled itself from considering other variables which may be very relevant in assessing accident risks.

I, therefore, set aside the Board's reclassification of the employer's registration on the grounds of error of law. The Board must undertake an investigation that will allow it to assess the particulars of the employer's operation, in light of the objectives underlying Board practice.

*Editors' note: This decision has been edited for publication.*

## Decision of the Appeal Division

**Number:** 5  
**Date:** January 6, 1992  
**Panel:** Connie Munro, Chief Appeal Commissioner  
**Subject:** Practice and Procedure: Review of Decisions No. 1 and 4 of the Appeal Division

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### Introduction

The Appeal Division was created when Bill 27, the *Workers Compensation Amendment Act, 1989*, came into force on June 3, 1991. Decision 1 set out the practice and procedure to be followed by the Appeal Division generally, and Decision 4 set out the practice and procedure of the Appeal Division concerning appeals from decisions made under Section 39. At the time these decisions were issued, I indicated that they would be reviewed at a later date in light of further input from the workers' compensation community and the accumulated experience of the Appeal Division. In September 1991, letters were sent to a large number of individuals and groups inviting submissions. Decisions 1 and 4 have now been reviewed. Decisions 1 and 4 continue in effect except as revised below.

### DECISION NO. 1

#### 3.1 Commencement of Appeal

##### (d) Extension of Time to Appeal

A respondent will be given the opportunity to provide submissions on the preliminary issue as to whether an extension of time to appeal should be granted, if there has been more than a 30-day delay in appealing the Review Board finding to the Appeal Division. Applications for an extension of time to appeal of less than 30 days will be dealt with by the chief appeal commissioner on a discretionary basis without comments from the respondent being requested.

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The past practice, which was upheld on judicial review, was not to invite comments concerning a request for an extension of time to appeal in any case. The Appeal Division is not legally required to obtain such comments. The question may be posed as to why a change is being made, and why this change does not apply to all requests for an extension of time to appeal a Review Board finding.

The greater the lapse of time following the Review Board finding, the greater will be the expectation that the Review Board finding has settled the matter. Allowing a respondent the opportunity to comment on any request for an extension of time to appeal of more than 30 days strikes a reasonable balance between administrative efficiency and recognizing the significance to the respondent of this preliminary decision (which if granted places the merits of the Review Board finding in issue before the Appeal Division).

### **3.3 Submissions by Parties**

#### **(a) Written Submissions**

Where the appellant requests additional time for submissions or otherwise requests a delay in the proceedings, liberal consideration will be given to the reasons provided in support of the request. Consideration will also be given, however, to the effect of such delay on the respondent. A request for delay may be denied where the delay could unduly prejudice the respondent.

#### **(b) Oral Hearing Request**

The decision in respect of an oral hearing will normally be made by the chief appeal commissioner prior to the “commencement” of the appeal.

In scheduling a date for an oral hearing, the appeal coordinator will attempt to accommodate the parties involved. Once the date is set, however, no postponement of the hearing will be permitted unless there are exceptional circumstances necessitating an adjournment.

## **5.0 APPEALS PRIOR TO JUNE 3, 1991**

### **5.1 Backlog of Appeals**

The Appeal Division inherited 1,742 backlog appeals. A majority of these have been dealt with: as of January 6, 1992, 624 of the pre-June 3, 1991 appeals remain before the Appeal Division. A goal of the Appeal Division is to decide all of these appeals by

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June 3, 1992, while at the same time complying with the statutory requirement that the new appeals filed after June 3, 1991 be decided within 90 days of their commencement [or the further period designated under Section 91(3)].

It was previously indicated that parties whose appeals were part of the pre-June 3 backlog would be advised at monthly intervals of the designated time period in which they would receive a decision. This proved to be administratively impracticable. The Appeal Division has, instead, been proceeding with the backlog appeals in an order based generally on the date that submissions were completed.

## **6.0 RECONSIDERATIONS BY APPEAL DIVISION**

A respondent will be given the opportunity to provide submissions, prior to the chief appeal commissioner's consideration as to whether the "new evidence" requirements of Section 96.1 of the *Act* are met. The respondent's comments will be requested as to whether the requirements of Section 96.1 are met by the materials provided by the applicant, and, if so, whether the matter should be dealt with under Section 96.1(3)(c) or (d).

In the absence of a reply from the respondent, the Appeal Division may, if the requirements of Section 96.1 are met, proceed with consideration of the merits of the application without further notice.

## **7.0 OTHER EMPLOYER APPEALS**

### **(a) Occupational Safety and Health Appeals**

On an appeal from a decision of the Occupational Safety and Health Division, a copy of the notice of appeal will normally be sent to the individual whose name appears on the Inspection Report as the workers' representative. Where there is a union, and the identity of the union is shown on the Inspection Report or is shown in the Occupational Safety and Health file, a copy will be forwarded to the union. Copies will also be mailed to the attention of both the "chair" and the "secretary" of the Industrial Health and Safety Committee at the employer's address. For administrative convenience, this will be sent without a determination as to whether the employer is obliged to establish an Industrial Health and Safety Committee under Section 4 of the *Industrial Health and Safety Regulations*.

The involvement of the workers' representative and the union, if one exists, is in keeping with the legislative intention evident in Section 72(4) and (5) of the *Workers Compensation Act*.

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Prior to considering whether an extension of the 30-day time limit to appeal should be granted from a decision of the Occupational Safety and Health Division, the chief appeal commissioner will normally invite comments from the workers' representative and the union, if one exists, in the manner noted above. They will be given the opportunity to provide submissions on the preliminary issue as to whether an extension of time to appeal should be granted. Applications for an extension of time to appeal of less than 30 days will be dealt with by the chief appeal commissioner on a discretionary basis without comments being requested from the workers' representative or the union.

## 8.0 SECTION 11 CERTIFICATES

Section 11 of the *Workers Compensation Act* provides:

### *Certification to court*

11. Where an action based on a disability caused by industrial disease, personal injury or death is brought, the board shall, on request by the court or by any party to the action, determine any matter that is relevant to the action and within its competence under this Act and, without limiting the generality of the foregoing, may determine whether

- (a) a person was, at the time the cause of action arose, a worker within the meaning of this Part;
- (b) injury, disability or death of a worker arose out of, and in the course of, his employment;
- (c) an employer or his servant or agent was, at the time the cause of action arose, employed by another employer; and
- (d) an employer was, at the time the cause of action arose, engaged in an industry within the meaning of this Part,

and shall certify its determination to the court.

The Board of Governors' Decision No. 4 dated April 8, 1991, assigned to the chief appeal commissioner and the Appeal Division the W.C.B.'s obligation to issue certificates under Section 11. Section 85.2(6) of the *Workers Compensation Act* provides that:

A decision of the appeal division or of a panel shall be deemed to be a decision of the board.

Section 11 certificates are provided on request by the court, or on request by any party to a legal action. A request for a Section 11 certificate may be made at any time after the legal action has been commenced. Such a request should, however, be made well in advance of any trial date.

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A *minimum* period of 90 days should be allowed for obtaining a certificate from the Appeal Division. It is preferred that 90 days be allowed for the making of a decision by the Appeal Division following the completion of submissions. While the Appeal Division will endeavor to deal with Section 11 applications in a timely manner, with regard to any trial date which has been set, counsel should *not* delay in requesting a Section 11 determination until a short time before trial. If insufficient time is available for the Appeal Division's consideration, it may be necessary to adjourn the trial date. The time frames set out under No. 3.2 and No. 3.3 do not apply to the provision of Section 11 certificates.

A request for a Section 11 certificate shall be made in writing to the chief appeal commissioner. Copies should be provided of the Writ, Statement of Claim, and Statement of Defence. If transcripts are available from any Examination for Discovery, copies of these should also be submitted. In motor vehicle accident cases, copies of any statements provided to the Insurance Corporation of British Columbia should also be forwarded to the Appeal Division.

The parties to the legal action will be notified and given an opportunity to participate. In addition, other persons who might be adversely affected by the Section 11 determination may be given standing to participate, even though they are not a party in the legal action. This would include, for example, the putative employer of an individual who is alleged to have been a worker at the time of their injury.

The procedure to be followed is that counsel will be requested to provide submissions setting out the factual background, the evidence being relied on, and their submissions concerning the issues. It is helpful to the Appeal Division if counsel provide an *Agreed Statement of Facts*.

The matter will generally proceed by way of written submissions. If counsel wish to postpone the provision of submissions pending the completion of Discoveries, this will normally be approved by the Appeal Division. The party who initiated the request for a Section 11 determination will be requested to provide the first submissions. These submissions will be disclosed to the other party or parties, who will be asked to provide their submissions. Their response will be disclosed to the first party, who will be given an opportunity to provide rebuttal argument. Counsel will be requested to provide submissions in an expeditious fashion.

An oral hearing may be requested, in which case written reasons should be provided to explain why an oral hearing is necessary to the consideration of the matter. For example, an oral hearing may be granted if a significant issue of credibility is involved. A preliminary decision will be provided by the chief appeal commissioner concerning a request for an oral hearing.

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The matter will be assigned to a panel of the Appeal Division, which will issue a certificate to be filed in the legal action. Written reasons will be provided for the decision.

The Appeal Division will consider the issues raised in the Section 11 application anew, irrespective of any prior determination by a Board officer. In other words, a prior determination or decision letter issued by a claims adjudicator or other Board officer will not limit the Appeal Division's consideration of the issues before it.

Correspondence concerning Section 11 determinations should be directed to:

Connie Munro  
Chief Appeal Commissioner  
APPEAL DIVISION  
Workers' Compensation Board

Mailing Address:  
Box 5350  
Vancouver, B.C.  
V6B 5L5

Located at:  
6951 Westminster Highway  
Richmond, B.C.  
V7C 1C6

Telephone: 279-7510  
Toll-free within B.C.: 1-800-972-9972  
FAX: 279-7404 or 276-3349

The Appeal Division will deal only with the request for a certificate under Section 11. Inquiries concerning the filing of a claim for compensation should be made to the Compensation Services Division of the Board.

Inquiries as to the W.C.B.'s subrogated interest in a legal action under Section 10 of the *Workers Compensation Act* in claims made to the Board should be directed to the Legal Services Division of the Board (telephone 276-3121, FAX 279-7402).

Section 10(5) of the *Workers Compensation Act* provides that:

If after trial, or after settlement out of court with the written approval of the board, less is recovered and collected than the amount of the compensation to which the worker or dependant would be entitled under this Part, the worker or dependant is entitled to compensation under this Part to the extent of the amount of the difference.

A provisional application for compensation may be filed with the Board pending the outcome of a Section 11 determination or the legal action.

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## **DECISION NO. 4**

The primary objection received to Decision No. 4 concerns workers receiving notification of an appeal brought by their employer from a decision under Section 39, and being given the opportunity to provide input. The experience of the Appeal Division to date has been that it is relatively rare that workers choose to participate. I consider, however, that the avenue for such participation ought to remain intact.

No change has been made with respect to Decision No. 4.

Further practice directives will be developed and published from time to time as issues arise.



## Decision of the Appeal Division

**Number:** 91-0521  
**Date:** September 27, 1991  
**Panel:** Thomas Kemsley, Walter N. Peain, Alex S. Brokenshire  
**Subject:** Pregnancy

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This is an appeal by the worker from the findings of the Workers' Compensation Review Board dated March 9, 1989. The issue is entitlement to wage-loss benefits from November 30, 1987 to May 1, 1988.

The worker injured her low back on September 2, 1987 in the course of her employment as a health care worker. The injury occurred as she was squatting to help a resident tie up his shoelaces. The injury was diagnosed by her doctor as an acute low back strain. At the time, the worker was about four months pregnant. She had to stop working due to the injury. The Worker's Compensation Board terminated wage-loss benefits effective November 29, 1987 on the basis that the worker would have recovered from her low back strain as of that date, but for her pregnancy. That decision was communicated in a letter dated December 11, 1987.

The worker did not return to work after November 29, 1987. Her baby was born on February 12, 1988. She continued to experience low back pain. The claim was re-opened effective May 2, 1988 and terminated as of August 7, 1988 on the basis that she was fit to return to work on a graduated basis.

The worker appealed to the Review Board which denied the appeal from the decision of December 11, 1987.

The worker's wage-loss benefits were terminated, or interrupted, on November 29, 1987 as the claims adjudicator decided that she would have recovered and been able to return to work by that time if she had not been pregnant. This was based on the opinion of the Board medical advisor, Dr. J, and a report, dated November 9, 1987, from the attending physician, Dr. S. The Review Board found that the medical evidence established that the pregnancy "aggravated her compensable condition and delayed her recovery, so as to bring into play Paragraph No. 22.14 of the *[Rehabilitation Services and] Claims Manual.*" That section provides, in part:

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Where a worker has to undergo surgery, tests, or other treatment for a non-compensable condition or a non-compensable injury occurs prior to the worker's complete recovery from a compensable injury, and there is for that reason, a delay in his recovery or an aggravation of his condition, there are two possible methods for the Claims Adjudicator to deal with the situation.

The two methods that are then set out have the objective of paying benefits to the worker while she is disabled from the compensable condition but not for any extended period that recovery is delayed or prolonged by the effects of the non-compensable condition.

There is no reference to pregnancy in the *Workers Compensation Act* or the *Rehabilitation Services and Claims Manual* ("Manual"). Of course, at any time, a certain percentage of the work force is pregnant. Developments in the areas of human rights, under provincial human rights legislation, and constitutional rights, under the *Canadian Charter of Rights and Freedoms*, indicate that while pregnancy may often be treated in the employment context like an illness, it is not the same as illness and there is a limit to any analogy between the two. While both are common, pregnancy, like non-pregnancy, is a normal state while illness is not.

Since pregnancy receives no special mention in the *Act* or *Manual*, when it co-exists with a compensable condition it is analyzed under Section 22.14, or possibly 22.20, of the *Manual* as a "non-compensable condition" or "non-compensable injury." This must be done with great care as those words can cover illness, injury, pregnancy, and perhaps more. It will not always be appropriate to treat pregnancy as an illness or injury.

The Review Board applied Section 22.14 of the *Manual* as set out, in part, above. On November 29, 1987 the worker did not have to "undergo surgery, tests, or other treatment" for her pregnancy so it seems that the first part of Section 22.14 was not applicable. Thus, the Review Board must have considered that the worker's situation fit into the second part of Section 22.14 which reads, "or a non-compensable injury occurs prior to the worker's complete recovery from a compensable injury." This would seem to treat the worker's pregnancy as both subsequently occurring and an injury, even though it pre-existed her work injury and was not itself an injury.

Section 22.20 of the *Manual* addresses pre-existing conditions and says, in part;

Where a worker has a pre-existing non-compensable condition which is aggravated and rendered disabling by a work injury, the Board does not deny a claim for compensation just because the injury would have caused

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no significant problems if there had been no pre-existing condition. The Board accepts that it was the injury that rendered that condition disabling and pays compensation accordingly.

There is no reason why a pre-existing pregnancy, like any pre-existing non-compensable condition, cannot be aggravated by a subsequent work injury. If that happens, it is appropriate to apply Section 22.20 of the *Manual*, as set out above, rather than Section 22.14.

On October 29, 1987 Dr. J said this worker should be ready for work at the end of November. He did not see her again. In his report of November 9, 1987 Dr. S said she should be covered by the W.C.B. for three more weeks. Dr. S continued to see the worker and noted no improvement in her condition. In his report of December 1, 1987 he said she was not fit to return to work. In his letter of December 2, 1987 he confirmed that. In his letter of December 18, 1987 Dr. S disagreed with some of Dr. J's October 29, 1987 report and said that he erred in his own report of November 9, 1987 when he said that the worker should receive W.C.B. benefits for a further three weeks. Dr. S said he made that statement because Dr. J categorically told him that the worker would be cut off benefits at the end of November. A Board medical advisor, Dr. B, did not examine the worker but on December 9, 1987 he agreed with the decision to terminate benefits at the end of November on the basis that the back pain was not work related at that point. He, of course, could not say whether or not she was able to return to work at that time. His opinion was about causation. This opinion was later confirmed by the director of Medical Services, Dr. D, on January 7, 1988, who also did not examine the worker. Finally, Dr. P, Government Employee Health Services, examined the worker on November 19, 1987 and reported on November 23, 1987 that "it would be medically imprudent to return (the worker) to the workplace at this time in her own occupation in an unrestricted capacity."

Thus, from October to early December 1987, four doctors gave opinions. The most useful opinions are from the doctors who examined the worker closest to the end of November 1987. Dr. B did not examine the worker. Dr. J only saw her in October and speculated about her future return to work. His opinion could not take into account any change in her condition in November so was not current to the end of November 1987. Dr. P saw the worker on November 19, 1987 and Dr. S saw her on November 9, 24 and December 1, 1987. These are the opinions that are based on examinations closest to the relevant time. It is not clear from these opinions whether or not the worker could have returned to lighter duties at the end of November 1987. Both Dr. P and Dr. S said that she could not do her regular work but neither said explicitly that she could do other work. While they seem to have left open that possibility, there is no evidence that other lighter work was available or offered to the worker.

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This panel concludes that the worker was not able to return to work at the end of November 1987. This does not seem to have been seriously questioned by the claims adjudicator, who was mainly concerned about the cause of the worker's ongoing back problems.

As well, we are satisfied on the medical evidence that the worker's pre-existing pregnancy, on its own, would not have disabled her from work on November 29, 1987. This was over two months prior to her expected delivery date and the evidence of the worker and Dr. S was that she expected to work up until about two weeks prior to her delivery date. Thus, we are satisfied that her pre-existing pregnancy delayed her recovery from her work injury. On September 2, 1987 her work injury was disabling on its own. However, by November 29, when medical opinions indicated that the worker's work injury should have recovered, she was still disabled. We find that, at that time, she was disabled by her work injury in combination with her pre-existing pregnancy. Thus, the worker's wage-loss benefits should not have been terminated on November 29, 1987.

However, this panel does not find that the worker should have received wage-loss benefits throughout her pregnancy and post-birth period. There was a point at which her pregnancy, on its own, would have prevented her from working. She also had planned to be out of the work force for a certain period of time and was not disabled from working for that period of time. Thus, it is not appropriate to treat the entire period of pregnancy like a pre-existing condition under Section 22.20.

Since, generally, all pregnancies that result in the birth of a child will remove the mother from the work force for some period of time, it is useful to reconsider Section 22.14 of the *Manual*. The first part of Section 22.14 addresses the situation where a worker has to undergo treatment for a non-compensable condition. When a woman is confined to hospital to give birth to a child, she is undergoing a form of "treatment" for her pregnancy and this could be seen as a delay in her recovery for the purposes of Section 22.14. However, that section does not really fit cases like this worker's very well, where the worker eventually goes back on wage-loss benefits without any further aggravation of her compensable injury. It would be difficult in situations like that to say that the period in hospital *delayed* her recovery.

Another section of the *Manual* which is useful to consider here is Section 34.52. While pregnancy may have little to do with "Workers Undergoing Educational or Training Program" there is a useful analogy that can be drawn between Section 34.52, number 2 "Re-training or Educational Program Arranged Prior to Injury" and the later stages of pregnancy and post-birth period. Generally, when a worker is receiving wage-loss benefits, those benefits are not terminated just because the worker had a regularly scheduled vacation or the worker's place of employment is shut down or goes

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on strike. That is because, but for the compensable injury, the worker could still have worked elsewhere while he or she was on vacation or his or her place of employment was shut down or on strike. Thus the compensable injury has disabled the worker from the work force generally. However, workers who have arranged to undertake a re-training or educational course with respect to career development that will involve time off work, do not receive wage-loss benefits during this planned time off work if, after making these arrangements, they suffer a work injury that disables them from working during this period. The Board's policy as set out in Section 34.52, number 2, says that:

... the worker would be anticipating a period when he will receive no earnings ... (and) ... his financial position while taking the course is no worse because of the injury than if there had been no injury ... therefore, the Board considers that a worker is not disabled as a result of his compensable injury and no wage loss compensation is payable while he is undertaking a training or educational program arranged prior to his injury.

Pregnancy has some similarities to that situation. The worker was pregnant at the time she was injured and thus, necessarily, would have taken time away from the work force. As in Section 34.52, for that period of time she would not be disabled as a result of her compensable injury and her financial position during her planned period of maternity leave would be no worse because of the injury than if there had been no injury. It is not like a strike or vacation, where the worker could work elsewhere.

In the simplest case, where a worker's compensable injury occurred the day before the beginning of her planned maternity leave and she chose to remain on maternity leave for the full period which she had planned in advance, this would mean that wage-loss benefits would not be payable for that full period of maternity leave. This could be six months for some women but much less for others, with a doctor's approval.

However, most situations will not be that simple. In this worker's case, she had planned to take maternity leave beginning some time in January 1988 but she said she was pressured to start her maternity leave at the end of November 1987. She was told that her wage-loss benefits would be terminated at that point and she considered herself unable to return to work. As noted above, Dr. S and Dr. P supported her and Dr. B said nothing about her ability to work. Thus, the fact that she started maternity benefits at the end of November is not an accurate indication of when she planned to be away from work due to her pregnancy. The panel notes that she applied for maternity leave on December 16, 1987 after wage-loss benefits were terminated. Her wage-loss benefits should not have been terminated, in these circumstances, just because she went on maternity benefits at the end of November 1987. Rather, it is necessary to determine what period of time the worker would have taken off work due to her pregnancy, but for her compensable injury.

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Since both the worker and Dr. S said that she planned to work until two weeks before her expected date of confinement, and there is no evidence to suggest that but for the work injury she would not have been able to do that, we conclude that she would have worked until two weeks before her expected date of confinement. At that point she would have stopped working and thus would not have been disabled as a result of her compensable injury, and wage-loss benefits would be properly terminated at that point. The worker would then be eligible for wage-loss benefits again when her absence from work due to pregnancy had ended, provided she still had a compensable condition.

While the worker was entitled to six months of maternity leave, this does not mean that she would have taken or remained on maternity leave for that full period. Therefore, the gap in wage-loss benefits cannot necessarily just correspond with the maximum amount of maternity leave or benefits. In each case it is necessary to try and determine how long the woman would have remained on maternity leave. This will require consideration of the woman's evidence, her doctor's opinion and the maternity leave policy of the employer.

In this case the maximum maternity leave was six months; however, according to the May 2, 1988 letter of the employer, once on maternity leave, a woman could apply to have her maternity leave shortened. Thus, even if the worker had originally planned to take the full six months of maternity leave, that does not necessarily determine that she would have stayed on maternity leave for six months.

On April 26, 1988 the worker attempted in writing to rescind her maternity benefits back to March 26, 1988. She referred to having verbally expressed this in mid-March. This application was rejected, as outlined in the employer's letter. If the worker had made a formal application prior to March 26, 1988 to terminate her maternity leave, and provided proper notice and a medical clearance as required, then it might have been possible to determine that, but for her compensable injury, she would have returned to work on March 26, 1988 and thus wage-loss benefits should have been resumed. However, since the worker only formally applied to terminate her maternity benefits on April 26, 1988, and with no supporting medical evidence, it was appropriate here to consider that her maternity leave terminated on the planned date of May 1, 1988 and recommence wage-loss benefits as of May 2, 1988.

Therefore, the worker's appeal is allowed to the extent that wage-loss benefits are extended from November 30, 1987 until two weeks before her expected date of confinement, which, according to Dr. S's letter of January 25, 1988, was February 9, 1988.

*Editors' note: This decision has been edited for publication.*

# REPORTER

## Decision of the Appeal Division

**Number:** 92-0041  
**Date:** January 6, 1992  
**Panel:** Patrick L. Byrne  
**Subject:** Multiple Classifications

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This is an appeal of the June 12, 1991 decision of the director of the Assessment Department to reclassify Company A into the same classification as Company B. The director concluded that the two employers should be regarded as one firm for the purposes of classification and the classification would be 072509 (Steel Frame Erection or Repairs) effective January 1, 1992.

Both employers appeal on an error of fact and a contravention of a published policy of the governors. The issues are whether the firms should be regarded as one firm for the purposes of classification and what the proper classification(s) should be.

### Background

Company A was originally registered with the W.C.B. in 1966 as a machine shop for the fabricating of iron. The classification was 070701 (Metal Fabrication Shop or Metal Wholesale Supply, N.E.S.). The 1991 basic rate for this classification was \$3.36 per \$100.00 of assessable payroll. Following an audit by the W.C.B. Assessment Department it was discovered that this firm contracts to both supply and install structural steel and miscellaneous metals. Company A subcontracts to other firms for the erection portion of their contracts.

In January 1990 an associated firm was formed (Company B) with the principals of Company A owning 66⅔% of the new company. This new affiliated company installed the steel that was supplied by Company A. Company B was assigned classification 072509 (Steel Frame Erection or Repairs). The 1991 basic rate for this classification was set at \$18.00 per \$100.00 of assessable payroll.

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The manager of Assessment Audits informed the employers on January 16, 1991 that Company A was being reclassified into 072509 at a basic rate of \$18.00 per \$100.00 of assessable payroll on the following basis:

The key factor is that Company A's principal business activity is to enter into supply and install contracts. Where an employer undertakes to both supply – be it by manufacture or purchase – and install the same product, then the installation component is considered to be the predominant business for classification purposes. What this means is that Company A has been incorrectly classified, so the classification will be changed from fabrication to installation. As this means an increase in rates, the change will become effective January 1, 1992.

The director's June 12, 1991 decision letter states, in part:

When viewing Company A and Company B as one, which is done with respect to assigning classifications, it is our understanding that the revenue from installation plus the revenue from the product which is installed by you, Company B or a subcontractor employed by either one of you exceeds 25% of total revenue. You have provided no evidence to dispute this. Your classification is therefore correct.

## **Law and Policy**

Section 42 (Classification of Rates) of the *Workers Compensation Act* provides, in part:

The Board shall establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be considered just; ...

Assessment Policy 30:20:10 (Method of Assigning Classifications) provides in part:

Once a clear understanding of an employer's industrial activity has been reached, the appropriate classification is selected from the *Classification and Rate List* ....

This manual (policy) does not contain the specific criteria for putting a firm in a particular classification, because of the immense number and detailed nature of the rules. However, these rules, along with copies of the Classification Committee Minutes ... are available .... When applying these rules to specific situations or firms, individual consideration will be given and variations from the policy will be implemented where the Board's judgment suggests that literal application may be inappropriate or inequitable.

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If a firm's operations are an ancillary or extension or add-on phase (i.e. delivery) of other firms, the classification will be the same as the other firms if there is a degree of common ownership. *Even* if the firm is separately registered, the two firms will be regarded as one firm for the purposes of classification. After that is done, the policy of assigning multiple classifications (30:20:20) will be applied. Otherwise, the firm will be assigned the appropriate classification.

Assessment Policy 30:20:20 (Multiple Classifications) provides, in part:

For an operation to be considered a separate industry and classified separately, it must be separate and distinct. To meet this criterion, the following conditions must be satisfied:

1. The operation must be one which is formed by specific personnel as their sole function ....
2. The product or service must be offered to the public at large with the intent of producing revenue from sales to non-affiliated companies. The operation must not be an incidental, supportive, inescapable or ancillary part of the firm's main industry.
3. Generally, the operation must generate at least 25% of the firm's revenue. (The flexibility afforded by the term "generally" exists to allow discretion in this area. In addition to revenue, consideration will also be given to the operation's ability to stand alone as an independent business and/or physical separation of the operation and/or assessable annual payroll for the specific personnel mentioned in criterion 1 in excess of \$200,000.00. Discretion will be exercised to recognize that an operation of a firm which has a significant presence in a specific industry will be classified the same as its competitors.)

If a firm does not meet the criteria for separate classifications the unassigned operations will be assessed in one classification at one rate. That classification will be the industry classification with the highest assessment rate for the operations undertaken, provided the highest rated category represents at least 25% of the firm's operation. If this is not the case, the next highest classification will be assigned ....

## Evidence and Argument

The facts of this case which are not in dispute are as follows:

1. Company A and Company B are separately registered firms with the W.C.B.
2. The firms have separate physical plants, distinct assessable annual payrolls and separate and distinct labour forces.
3. In 1990 Company A's revenue from the sale of their product was \$4,992,661.00 (82.8%), and the revenue from installation of their product was \$1,036,098.00 (17.2%). The total revenue was \$6,028,759.00.
4. In 1990 Company B's revenue from installation of the product was \$938,610.00. All except \$4,700.00 was from the installation of product supplied by Company A.
5. In 1990 the combined firms' revenue was \$6,967,369.00. Of this amount 71.6% was revenue generated from manufacturing and supplying products, and 28.3% was from installation of the products. The 28.3% installation revenue was generated by Company B (13.5%) and Company A (14.8%).
6. In 1990 the combined firms' revenue was generated by Company B (13.5%) and Company A (86.5%).

The employers provided two basic arguments in support of their appeal. The first is that both firms should be under one classification and the classification should be 070701 (Metal Fabrication Shop or Metal Wholesale and Supply, N.E.S.). They argued that if the two firms do not meet the criteria for multiple classifications then one classification should be used. That classification should be 070701 since the revenue from Company B from installation only generates approximately 15% of the combined firms' revenue.

The employers' second argument is that they do meet the criteria for multiple classifications. That is, the operations are performed by specific personnel as their sole function and their product is offered to the public at large. Further, Company B generates about 15% of the combined revenue and the discretion provided for in Assessment Policy 30:20:20 (part 3) should be exercised in favour of multiple classifications. They argue that either firm could stand alone as an independent business, and both payrolls are in excess of \$200,000.00, and their competitors are afforded multiple classifications.

## Reasons and Findings

The director's decision of June 12, 1991 treats Company A and Company B as one firm for the purposes of assigning classifications. He concluded the installation and supply portion of their combined revenue exceeded 25% of total revenue and therefore the one classification should be installation or 072509 at \$18.00 per \$100.00 of assessable payroll for both firms.

The proper method of assigning classifications in this case is to apply Assessment Policy 30:20:10, then to apply Assessment Policy 30:20:20 (if required).

In applying Assessment Policy 30:20:10 the first consideration is the industrial undertakings of the two firms.

There is no dispute that Company B is involved in the erection of steel frames and this represents 100% of their business. Similarly, there is no dispute that Company A is involved in the manufacturing, supplying and erection of steel frames. The disputed aspect is the extent of involvement of Company A in manufacturing and supplying and erection of steel. The evidence shows that, as an individual firm, Company A generated 82.8% of its revenue from manufacturing and supplying and 17.2% from erection. The combined firms generated 71.6% from manufacturing and supplying and 28.3% from erection.

The panel reviewed the "rules and copies of the Classification Committee Minutes" referred to in Assessment Policy 30:20:10. The panel notes there are no rules; there are, however, over 370 decisions of the Committee. The panel did not find these decisions useful in adjudicating this appeal.

The second consideration is whether the two firms should be regarded as one firm for the purposes of classification. This will be done if it is found that the firm's operations are an ancillary or extension or add-on phase (i.e. delivery) of other firms. The *Concise Oxford Dictionary* defines ancillary as, "providing essential support to a central service or industry." The employer's evidence is that the two firms could operate as independent businesses. Further, the evidence shows other firms besides Company B had been contracted by Company A to install their product. The panel finds Company B does not provide an essential support to Company A. Company B does not provide a delivery service for Company A and therefore cannot be an add-on phase. Company B does provide the installation for some of the supply and install contracts undertaken by Company A, and therefore Company B is considered an extension of Company A. The panel finds that under Assessment Policy 30:20:10 Company B and Company A are considered one firm for the purposes of classification and Assessment Policy 30:20:20 is applied.

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There are three tests to be met with respect to whether the firms qualify for multiple classifications. The first test is whether the operation is one that is performed by specific personnel as their sole function and whether the labour costs of each operation are accounted for separately. The operation to be considered here is the installation or erection operation. The question is whether the labour costs of the erection or installation of the combined firms are accounted for separately. Revenue is accounted for separately by Company B and Company A. However, Company A also has revenue generated from installation which accounts for 17% of their total revenue. The difficulty in applying this section is that, while Company A generates revenue from installation, there are no labour costs for Company A associated with the revenue. The panel finds that the labour costs of installation associated with Company B are accounted for separately from the fabricating labour costs of Company A, and therefore the first test for multiple classifications is met.

The second test has two parts. The first is whether the product or service is offered to the public at large with the intent of producing revenue. Company A's evidence is that 82.8% of their revenue is from products supplied only to other firms. Company B's revenue for 1990 consisted of \$938,610.00, of which \$4,700.00 was generated from installation for firm(s) other than Company A. The policy states that the service must be offered to the public at large with the intent of producing revenue. While the relative amount is small the panel finds that Company B does offer its service to the public at large. The second part of this test is a determination of whether Company B is an incidental, supportive, inescapable or ancillary part of Company A's main industry.

Incidental is defined in Assessment Policy 30:20:20 as "Where an operation ... exists to service the prime industry of the firm." The example given is, "A machine shop will be classified as such if that is the industry in which the employer is doing business, but a machine shop ... which operates with a boat yard will be considered incidental and supportive to the boat yard operations." The panel finds that the installation service offered by Company B is not incidental or supportive of Company A's fabricating operations. Further, Company B's operation is not considered inescapable as Company B does offer its service to other firms and Company A does sell product to non-affiliated firms. The question of whether Company B is ancillary to Company A has been dealt with previously in this decision.

The panel finds that the second test (both parts) with respect to multiple classification has been met.

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The third test is whether Company B generates 25% of the combined firms' revenue. Company B generated 13.5% of the combined firms' revenue. The policy, however, allows discretion in this area. Considering that Company B could operate as an independent business, has a separate physical plant and an annual payroll in excess of \$200,000, the panel finds that the third test for multiple classifications has been met.

The policy also allows multiple classifications where an operation is a significant presence in a specific industry in order to ensure they are classified the same as their competitors. The employer requested a review of the classifications of their competitors, and it is unclear from the file that this was done.

The panel finds that the employers meet the tests for multiple classifications.

### **Conclusion**

There was a contravention of a published policy of the governors. The employers meet the criteria for multiple classifications.

Based on the 1990 data, Company A is properly classified as 070701 and Company B is properly classified as 072509.

The panel points out that this decision is based on the 1990 data. As the business of the two firms and their relationship may change over time the two employers may be reaudited and the proper policies applied.

THE APPEAL IS ALLOWED.

*Editors' note: This decision has been edited for publication.*



## Finding of the Review Board

**Number:** 902573-A  
**Date:** January 7, 1992  
**Panel:** Clinton W. Foote, Guy W. Downie, Kevin G. Johnson  
**Subject:** Media Application for Access to Review Board Hearings

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Pacific Press Ltd. applied for itself as a media component on behalf of the public to have access to a particular proceeding of the Review Board. The application was also intended to approve access to Review Board proceedings in general. The proceeding in which the application was made involves an appeal by a worker from a decision of the Workers' Compensation Board denying the worker suffered personal injury, including post-traumatic stress disorder, arising out of and in the course of his employment as a prison guard for the Province of British Columbia. The worker supported the application of Pacific Press. The employer opposed media or public access to the Review Board proceeding. At the time of the application the Review Board had a policy against its proceedings being open to the media or public, on the basis that Section 95 of the *Workers Compensation Act* requires confidentiality for the parties to the appeal. Pacific Press Ltd. alleged a *right* to access under the *Canadian Charter of Rights and Freedoms* or in the alternative a right that may be restricted only with justification in a particular case.

### Background

Fundamentally courts of law must conduct their proceedings openly. The court may hear matters in camera in certain narrowly defined instances where it appears justice cannot be administered otherwise. The Review Board is not a court [*Levey v. Friedman* (1983) 63 B.C.L.R. 229]. It is a quasijudicial body exercising a judicial function. The Review Board is an administrative tribunal deriving its authority from the *Workers Compensation Act* and must carry out its mandate in accordance with that *Act* and the general law.

At common law, tribunals such as the Review Board are generally regarded as masters of their own procedure, in the absence of statutory provision limiting this authority. The principle is embodied in Section 89(6) of the *Workers Compensation Act* stating:

Subject to any regulations made under subsection (5), the review board may conduct an appeal in the manner it considers necessary, and it is not required to hold an oral hearing.

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Implicit in this principle is the right of the tribunal to determine whether its proceedings will be open or closed (Re *Millward* [(1974) 49 D.L.R. (3d) 295]; Re *Penner* [(1974) 46 D.L.R. (3d) 222]; Re *Legal Professions Act* (B.C.) [[1945] 4 D.L.R. 702]. There is no statutory or regulatory provision limiting the Review Board authority to be master of its own procedure.

Review Board policy is only guidance to the panels hearing individual appeals. It is desirable for the Review Board to have policies and publish them for reasonable consistency, but the policies do not have the force of regulation or law and cannot fetter the discretion and responsibility of the panels to decide cases in accordance with law.

Section 95 of the *Workers Compensation Act* does not apply to prevent access of the media or public to Review Board proceedings.

Upon application, Review Board panels should in each case reasonably, honestly and fairly consider whether and if so to what extent the media or public may have access to the proceeding.

Anyone having an interest in the proceeding, including Pacific Press in this case, may apply to the panel for access in general or in particular.

Factors for the panel to consider on the issue of access include the interests of the worker for privacy, the interests of the employer for secrecy, the interests of third parties such as witnesses for privacy and the interests of the public for the attainment of justice.

The panel in exercising its authority must act in accordance with the general law, including the considerations of any legal principles and rights that may flow from the *Canadian Charter of Rights and Freedoms* (“*Charter*”).

Section 2(b) of the *Charter* states:

Everyone has the following fundamental freedoms: ... (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

Most of the court cases interpreting the *Charter* provision guaranteeing the right of freedom of the press and media deal with legislative provision limiting access to court proceedings and find these provisions unlawful as unconstitutional. Such cases resolve that:

- a) freedom of the press is included in the pre-existing right of the public to have access to the courts;

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- b) the right of the press to have access to the courts is not independent of, or greater than, the right of the public on which it is based;
  - c) the *Charter* reference to freedom of the press does not confer any right on the public to access to proceedings that it did not otherwise have.

These cases, dealing with statutory provisions limiting access of the press or public to the court, do not directly apply to the proceedings of the Review Board which is not a court and has no legislative provision providing or limiting access. In respect of the Review Board, there is no law to be struck down for contravention of the *Charter*.

In *Southam Inc. et al. v. Ministry of Employment and Immigration* [[1987] 3 F.C. 329] Justice Rouleau in the Federal Court ruled that an order of the chief of adjudicators under the *Canada Immigration Act*, forbidding media access to detention review hearings unless its migrant consented, offended the *Charter* freedoms of the media and was unlawful. Without referring to the contrary comment in the *Edmonton Journal* case [(1989) 64 D.L.R. (4th) 577], Justice Rouleau assumed that the rule of openness applicable to the courts should apply to administrative tribunals exercising judicial or quasijudicial function.

The panel chose not to follow Rouleau's reasoning. Before the *Charter* the law did not require for administrative tribunals the same openness as applied to courts, even though the administrative tribunal may exercise a judicial or quasijudicial function. The *Charter* does not afford the media or public any greater right than existed before the *Charter*. Therefore the right of the media or public to attend a Review Board hearing is at the discretion of the panel after weighing the relevant factors. The panel finds the evidence to date in this appeal does not warrant the proceedings being closed to Pacific Press Ltd. The panel finds nothing in the interests of the worker, the employer, third parties and the public to require the proceedings be closed to the media or public. It is in the interests of the public that the proceeding be open. As the proceeding progresses a case for closure in whole or in part may be made. When and if this arises, the panel will consider the matter again.

THE PANEL WILL ADMIT PACIFIC PRESS LTD. TO THE PROCEEDING.



# REPORTER

## Mission Statements

Date: December 9, 1991

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The governors have adopted the following Mission Statement:

### **WCB Mission Statement**

Workplace safety and health is our challenge.  
Quality rehabilitation and fair compensation is our commitment.  
World leadership is our goal.

The following Divisional/Departmental mission statements have been adopted by the Executive Committee:

### **Mission Statement by Division/Department**

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#### **COMPENSATION SERVICES**

##### **Board Mission Statement**

Workplace safety and health is our challenge.  
*Quality rehabilitation and fair compensation is our commitment.*  
World leadership is our goal.

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#### **OCCUPATIONAL SAFETY AND HEALTH**

##### **Board Mission Statement**

Workplace safety and health is our challenge.  
Quality rehabilitation and fair compensation is our commitment.  
World leadership is our goal.

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## MEDICAL SERVICES DIVISION

To provide quality medical, psychological, rehabilitative and evaluative services and education in support of fair and appropriate treatment of injured workers, as well as competent and objective advice for proper claims management.

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## LEGAL SERVICES DIVISION

To provide the Workers' Compensation Board of British Columbia the full range of legal services required by the *Workers Compensation Act* and *Criminal Injury Compensation Act* through an in-house legal department and/or the retention of outside counsel.

### Legal Services – General

To provide to the Workers' Compensation Board of British Columbia a highly efficient and competent in-house legal department of barristers, solicitors and support staff to act for the W.C.B. in regard to all legal matters, including litigation, arbitration and contractual matters.

### Legal Services – Criminal Injury Compensation

To implement and administer the *Criminal Injury Compensation Act of British Columbia* by providing the highest possible level of services in the adjudication of claims, the payment of compensation, the provision of medical care, counselling, rehabilitation and other related entitlements to victims of criminal offences and persons who provide services to them.

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## INFORMATION SYSTEMS DIVISION

Through creative partnership with our clients we will:

- provide an outstanding information and technology environment that facilitates change;
- extend the range and quality of services that the Board provides to its community.

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## **ADMINISTRATIVE SERVICES DIVISION**

### **Human Resources**

To assist management and staff in achieving department and corporate goals by maximizing employee potential through proactive, consistent and effective services as defined by the Corporate Strategic Plan.

### **Community Relations**

A dynamic communications agency dedicated to proactively promoting positive understanding of the mandate, policies and procedures of the Workers' Compensation Board and its Divisions to all internal and external stakeholders.

### **Facilities**

To provide our clients (W.C.B. staff) with the best tools (furniture and equipment) in the best environment (functional buildings) to do their best to serve the employers and workers of B.C.

