

## WORKERS' COMPENSATION REPORTER

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

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*Sections and excerpts from the Workers Compensation Act, Revised Statutes of British Columbia, Chapter 437 are provided for convenience and are to be used for informational purposes only.*

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- Blue — Governors' Decisions
- Green — Appeal Division Decisions
- Pink — Miscellaneous
- Purple — Review Board Findings
- Orange — Court Decisions



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## Decision of the Governors

**Number:** 43

**Date:** August 10, 1992

**Subject:** Amendment to Section 4(1) of the *Workplace Act*

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WHEREAS Section 71(1) of the *Workers Compensation Act* authorizes the Workers' Compensation Board to make regulations "for the prevention of injuries and industrial diseases in employment and places of employment";

AND WHEREAS Section 4(1) of the *Workplace Act* provides that the lieutenant governor in council may make regulations in respect of various matters, including the "protection of the health, safety and comfort of persons working in or contributing to the operation of a factory, office or shop";

AND WHEREAS the governors of the Workers' Compensation Board consider that it would be consistent with the Workers' Compensation Board's regulation-making authority under the *Workers Compensation Act* and more practicable over the longer term for the Workers' Compensation Board, rather than the lieutenant governor in council, to make the regulations under Section 4(1) of the *Workplace Act*:

NOW THEREFORE THE GOVERNORS RESOLVE THAT the chairman of the governors shall communicate with the minister of Labour and Consumer Services to request, on behalf of the governors, that Section 4(1) of the *Workplace Act* be amended to authorize the Workers' Compensation Board, rather than the lieutenant governor in council, to make regulations in respect of the matters specified in Section 4(1) of the *Workplace Act* in the same manner as it makes regulations pursuant to Section 71(1) of the *Workers Compensation Act*.



## Decision of the Governors

**Number:** 44  
**Date:** March 1, 1993  
**Subject:** Amendment to Section 23(1) of the *Criminal Injury Compensation Act*

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WHEREAS Section 23(1) of the *Criminal Injury Compensation Act* requires that the Workers' Compensation Board, on or before March 1 in each year, make a report to the lieutenant governor in council of its transactions under the *Act* during the preceding calendar year;

AND WHEREAS it is exceedingly difficult for the Criminal Injury Section to complete the report in sufficient time to enable the governors to review the report prior to it being forwarded to the attorney general on behalf of the lieutenant governor in council;

AND WHEREAS Section 69(1) of the *Workers Compensation Act* requires that the W.C.B., on or before March 25 in each year, make a report to the lieutenant governor in council of its transactions under that *Act* during the last preceding calendar;

AND WHEREAS the March 25 due date provides sufficient time for the governors to review the report under the *Workers Compensation Act* prior to it being forwarded to the minister of Labour on behalf of the lieutenant governor in council:

NOW THEREFORE THE GOVERNORS RESOLVE THAT the chairman of the governors shall communicate, on behalf of the governors, with the attorney general to request an amendment to Section 23(1) of the *Criminal Injury Compensation Act* to change "March 1 in each year" to "March 25 in each year."



## Decision of the Governors

**Number:** 45  
**Date:** July 19, 1993  
**Subject:** Amendment to Governors' Financial Standing Committee Charter

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WHEREAS, on April 6, 1992, the governors of the Workers' Compensation Board constituted the Governors' Financial Standing Committee (the "Committee"), pursuant to Section 82(b)(i) of the *Workers Compensation Act* and Section 8 of Bylaw No. 3 (Board of Governors Procedural Bylaw), and adopted the Governors' Financial Standing Committee Charter ("Charter");

AND WHEREAS the Charter provides that the Committee shall consist of one worker representative governor, one employer representative governor, one public interest representative governor, and, on an ex officio basis, the chairman of the governors, and that a quorum shall consist of the worker representative governor, the employer representative governor, and either the public interest representative governor or the chairman of the governors;

AND WHEREAS the Committee has found that the limited number of worker representative and employer representative governors appointed to the Committee impedes the conduct of the Committee's business because members of the Committee are, from time to time, unable to attend Committee meetings and the requirement for a quorum is not met:

NOW THEREFORE THE GOVERNORS RESOLVE THAT the Governors' Financial Standing Committee Charter shall be amended by adding the following paragraph after paragraph 3 under the heading *Structure*:

- 3A. The worker representative Governor or the employer representative Governor, appointed under paragraph 1, may designate an alternate Governor from the same representative group to attend a meeting that the worker representative Governor or the employer representative Governor is unable to attend; and the alternate Governor, if in attendance at that meeting, shall be counted as part of the quorum for the meeting.



## Decision of the Governors

**Number: 46**  
**Date: July 19, 1993**  
**Subject: Ratification of Medical Review Panel Fee Schedule  
Effective July 1, 1993**

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WHEREAS, at the governors' meeting on February 3, 1992, the governors of the Workers' Compensation Board resolved that:

... from June 3, 1991 until the Medical Review Panel Registrar has completed his review of the Medical Review Panel System and his recommendations have been considered, the authority for the final approval of Medical Review Panel fees shall be exercised by the Chairman of the Governors, subject to fee schedules being presented to the Governors for ratification at the next regular Governors' meeting after being adjusted;

AND WHEREAS the chairman of the governors has given final approval to the fee schedule for Medical Review Panels held on and after July 1, 1993, and has requested ratification by the governors of the fee schedule:

NOW THEREFORE THE GOVERNORS RESOLVE THAT they ratify the following fee schedule approved by the chairman of the governors for Medical Review Panels held on or after July 1, 1993:

The hourly rate payable to Chairmen of Medical Review Panels is \$136.99.

The flat fee payable to Panel members other than the Chairmen is \$456.95, with an additional fee of \$100.49 per hour when the time taken on an appeal (including travelling time) exceeds 3½ hours up to a maximum of a further 4½ hours.

The steno fee for each appeal is \$68.60.



## Decision of the Governors

**Number:** 47  
**Date:** July 19, 1993  
**Subject:** Referral of the Issue of Abusive and Harassing Behaviour  
in the Workplace

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WHEREAS on January 7, 1992 the governors of the Workers' Compensation Board embarked upon a complete review of the occupational safety and health regulations during which, with the involvement of the worker and employer communities in the province, they are reviewing the *Industrial Health and Safety Regulations*, including the *Workplace Hazardous Materials Information System Regulation*, the *First Aid Regulations* and the *Occupational Environment Regulations*;

AND WHEREAS the governors have constituted the Governors' Committee for Regulation Review consisting of two worker representative, two employer representative and one public interest governors and the chairman of the governors, to oversee the review;

AND WHEREAS the governors have also appointed a Regulation Advisory Committee consisting of the members of the Governors' Committee for Regulation Review, seven persons representative of workers, seven persons representative of employers, and the coordinator, Regulation Review, as an advisor, to assist in the review;

AND WHEREAS, as part of the review, Public Forums on occupational safety and health were held in eleven communities in British Columbia from April 7, 1992 to May 8, 1992 at which the issue of violence in the workplace was identified as a leading concern;

AND WHEREAS on July 19, 1993, pursuant to Section 71(1) of the *Workers Compensation Act*, the governors made regulations for the protection of workers from violence in the workplace, by way of amendment to the *Industrial Health and Safety Regulations*;

AND WHEREAS the regulations define "violence" as the attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that the worker is at risk of injury;

AND WHEREAS the Governors' Committee for Regulation Review considers that this definition of violence is consistent with the limits of the jurisdiction of the Workers' Compensation Board as prescribed by the *Workers Compensation Act*;

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AND WHEREAS the Governors' Committee for Regulation Review and the Regulation Advisory Committee have expressed concerns to the governors about the issue of abusive and harassing behaviour which can cause personal distress and other negative effects on workers, but is not potential or actual physical violence and therefore does not fall under the definition of violence in the regulations:

NOW THEREFORE THE GOVERNORS RESOLVE THAT the issue of abusive and harassing behaviour in the workplace, other than that addressed by the regulations for the protection of workers from violence in the workplace will be referred to the Ministry of Labour, the B.C. Council of Human Rights and the Ministry of Women's Equality for investigation and review;

AND THE GOVERNORS FURTHER RESOLVE THAT within one year from the date of this resolution the Workers' Compensation Board will review and evaluate in liaison with the Ministry of Labour, the B.C. Council of Human Rights and the Ministry of Women's Equality their capability and intentions to regulate and correct the matter referred.

## Decision of the Governors

**Number:** 48

**Date:** December 7, 1992

**Subject:** Repeal of Section 41 of the *Workers Compensation Act*

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WHEREAS on June 1, 1992, the governors of the Workers' Compensation Board resolved that the Silicosis Fund created under Section 41 of the *Workers Compensation Act* would be abolished effective the end of 1992;

AND WHEREAS, once the Silicosis Fund is abolished, Section 41 of the *Act* will become redundant;

AND WHEREAS the governors of the Workers' Compensation Board consider that Section 41 of the *Act* should be repealed:

NOW THEREFORE THE GOVERNORS RESOLVE THAT the chairman of the governors shall communicate with the minister of Labour and Consumer Services to request, on behalf of the governors, that the *Workers Compensation Act* be amended by repealing Section 41 and deleting the references to Section 41 and to the Silicosis Fund from Sections 82(a)(iv) and 96(6)(a).



## Decision of the Governors

**Number:** 49

**Date:** February 3, 1992

**Subject:** Amendment to Section 75(5) of the *Workers Compensation Act*

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WHEREAS Section 75(5) of the *Workers Compensation Act* provides that, in a prosecution for an offence under Section 75, the production of a certificate under, or purporting to be under, the seal of the Workers' Compensation Board and signed, or purporting to be signed by "the chairman and secretary of the board" shall be conclusive proof that the prosecution has been instituted with the leave of the Workers' Compensation Board;

AND WHEREAS the reference to "chairman" in Section 75(5) refers to the pre-June 3, 1991, chairman in his capacity as the chief administrative officer of the Workers' Compensation Board;

AND WHEREAS the president and chief executive officer is now the chief administrative officer of the Workers' Compensation Board;

AND WHEREAS the term "president" is currently defined by Section 79 of the *Act* for purposes of Division 6 (to which Section 75 does not belong):

NOW THEREFORE THE GOVERNORS RESOLVE THAT the chairman of the governors shall communicate with the minister of Labour and Consumer Services to request, on behalf of the governors, that Section 75(5) of the *Workers Compensation Act* be amended to delete the word "chairman" and replace it with the word "president" and that any necessary consequential change to the positioning of the definition of the term "president" in the *Act* be effected.



## Decision of the Governors

**Number:** 50

**Date:** June 7, 1993

**Subject:** Amendments to the *Workers Compensation Act*

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WHEREAS the Workers' Compensation Board has responsibilities relating to occupational safety and health, compensation and rehabilitation under the *Workers Compensation Act*;

AND WHEREAS the *Act* does not cover all industries in British Columbia or all individuals working in the industries that are covered by the *Act*, and some industries are covered by the *Act* for compensation and rehabilitation purposes, but not for occupational safety and health purposes;

AND WHEREAS the governors of the Workers' Compensation Board consider that coverage under the *Act* should be as broad and inclusive as public policy dictates;

AND WHEREAS the governors consider that the most effective and publicly accountable way to achieve this broad and inclusive coverage under the *Act* is for the minister of Labour and Consumer Services and his Ministry to take the initiative in developing and presenting amendments to the *Act* in the Legislative Assembly of the Province of British Columbia:

NOW THEREFORE THE GOVERNORS RESOLVE THAT the chairman of the governors shall communicate with the minister of Labour and Consumer Services to request, on behalf of the governors, that the minister and his Ministry take the initiative in developing and presenting in the Legislative Assembly of the Province of British Columbia amendments to the *Workers Compensation Act* which would extend coverage under the *Act* as broadly and inclusively as public policy dictate.



# REPORTER

## Memorandum of Appointment

**Date:** June 28, 1993  
**By:** The B.C. Federation of Agriculture  
The Canadian Farmworkers Union  
The Workers' Compensation Board of British Columbia (W.C.B.)

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Whereas on April 5, 1993, the governors of the Workers' Compensation Board of British Columbia approved the creation of the Farm and Ranch Safety and Health Agency (F.A.R.S.H.A.) to perform certain functions in relation to occupational safety and health in the agricultural industry;

AND WHEREAS F.A.R.S.H.A. is to be governed by a Board of Directors comprised of three employer representatives, three employee representatives and a neutral chair;

AND WHEREAS the neutral chair is to be chosen jointly by the B.C. Federation of Agriculture, the Canadian Farmworkers Union and the W.C.B.:

NOW THEREFORE the B.C. Federation of Agriculture, the Canadian Farmworkers Union and the W.C.B. appoint Mark Thompson as chair of the Board of Directors of F.A.R.S.H.A.



# REPORTER

## Notice of Delegation by the President

**Date:** February 22, 1993  
**Re:** Medical Negligence or Malpractice

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Section 84(4) of the *Workers Compensation Act* provides:

The president may delegate in writing any of his powers and duties to an officer of the board or other person subject to any terms and conditions set out in the delegation.

Pursuant to Section 84(4), I now delegate to the vice-president, Legal Services, or his nominee, the authority under policy #74.11 of the *Rehabilitation Services and Claims Policy Manual* to determine whether to proceed with a legal action as a result of alleged medical malpractice or negligence.

This delegation is effective immediately and is valid until further written notice.



# REPORTER

## Consumer Price Index Adjustment of Clothing Allowances

**Date:** June 7, 1993

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Section 25 of the *Workers Compensation Act* provides for most of the dollar figures in the *Act* to be adjusted by the Board every six months according to changes in the Consumer Price Index.

Apart from the figures in the *Act*, the policies of the governors contain various dollar allowances or amounts. The former practice was that these amounts would be adjusted on an "ad hoc" basis. The last "ad hoc" adjustment occurred on March 1, 1991.

On August 10, 1992, the governors decided to increase these amounts as of January 1, 1993 (July 1, 1993, for clothing allowances). In some cases, a new fixed amount was specified; with regard to clothing allowances and other amounts, the Consumer Price Index ratios that have been determined under Section 25 since March 1, 1991, were to be applied.

As a result of the governors' decision, the clothing allowance rates set out below will be effective as of July 1, 1993.

	Old Rate	New Rate
Single Upper Limb Amputee	207.00	221.86
Bilateral Upper Limb Amputee	415.00	444.78
Lower Limb Amputee or Requires a Leg Brace	415.00	444.78
Upper and Lower Limb Amputee	622.00	666.65

The governors' decision provides that the above amounts will in future be adjusted on July 1 of each year by the Consumer Price Index ratios determined for that July 1 and the previous January 1. The first such adjustment will be on July 1, 1994.



**Retroactive Adjudication Project Final Report****Date: August 1993****Executive Summary**

The Compensation Services Division submitted an estimate of the projected costs to the Board in support of their recommendation for retroactivity as a result of the Appeal Division Decision No. 91-0850 [as published in *Workers' Compensation Reporter*, Vol. 7(4): p. 173]. It was estimated that the project would review 18,300 overpayment files with the total amount being \$11.0 million and that \$3.1 million would be refunded (\$1.6 million in decisional errors and \$1.4 million in interest). A further \$1.1 million in unpaid decisional errors still owing to the Board would be cancelled by the project. These estimates relate to decisions to 1991 only. The project also included a review of 1992 overpayments.

The following are the statistical results of the project:

<b>Decisions Reviewed:</b>	<b>Number</b>	<b>%</b>	<b>Amount</b>
Administrative errors	21,901	84%	\$ 8,954,000
Decisional errors	4,103	16%	2,763,000
<b>Total:</b>	<u>26,004</u>	<u>100%</u>	<u>\$11,717,000</u>
Decisional errors refunded			\$ 1,281,000
Interest paid			1,015,000
Decisional \$ unpaid (workers not located)			161,000
<b>Subtotal:</b>			<u>\$ 2,457,000</u>
Decisional \$ cancelled*			<u>\$ 1,321,000</u>
<b>Total:</b>			<u>\$ 3,778,000</u>
<b>Administrative Costs of the Project:</b>			<b>Amount</b>
Salaries of project staff			\$ 516,000
Other administrative costs (office space, equipment, furniture rentals, postage, etc.)			71,400
<b>Total:</b>			<u>\$ 587,400</u>

\* These represent decisional errors where overpayments were declared but the amounts were still outstanding. These overpayments have now been cancelled by the project.

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## Background

### Fairness Issue

The fairness issues surrounding the Board's practice of declaring and collecting overpayments have existed for many years.

A Board of Review found in 1979 that the Workers' Compensation Board was not entitled to collect an overpayment where the injured worker had been totally honest in providing all the facts. It found that ". . . it would be contrary to fairness to allow retroactive application of a reconsidered decision where the claimant had acted in good faith throughout. . . . The financial consequences of repaying past benefits could cause a great deal of hardship for such claimants through no fault of their own."

In September 1981 the ombudsman sent to the Board his findings with respect to the general issue of the recovery of overpayments. The document, sent to the Board pursuant to the *Ombudsman Act*, included a memorandum of legal analysis that concluded, among other things, "There is no statutory authority in the *Workers Compensation Act* to enable the Board to recover overpayments." It went on to find that "aside from the legal arguments I have presented, there is strong argument to be made that non-culpable overpayments should not be recovered on grounds of fairness or equity."

The Board's Legal Services Division critiqued the report from the ombudsman and concluded that the legal conclusions of the ombudsman "are largely incorrect." It concluded that "the Board possesses an implied right under legislation to recover (at the very least by set off) compensation benefits paid in error." The report did not comment on the equity.

Various Review Boards in 1987 and 1988 determined the following:

- "In the absence of fraud, misrepresentation, concealment of evidence, or the like, the new decision cannot have retroactive effect to the extent that it creates a debt (called an overpayment) which did not exist prior to the re-adjudication."
- "That the Board has no authority to retrospectively overturn a prior decision."
- "That the Board requires express statutory authority to retroactively re-adjudicate."

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## Appeal Division Decision

When assuming responsibility on June 3, 1991, the Appeal Division had before it five Review Board findings all involving the Board's legal authority to declare and recover overpayments from workers. The Appeal Division's Decision No. 91-0850 on November 22, 1991 dealt with the issue of retroactive adjudication in the context of these five appeals.

The Appeal Division decision concluded that the following principles apply:

- The Board has the authority to declare and collect overpayments arising through administrative error.
- Generally, the Board does not have the authority to retroactively adjudicate a claim and thereby create a debt owed by a worker to the Board.
- The Board does have the authority to retroactively adjudicate and create a debt owed to the Board in situations of fraud or misrepresentation by the worker or where the decision under review was not one within the statutory authority of the Board.
- The Board must pay any additional benefits to a worker that are a result of retroactive adjudication.

## Board of Governor Resolutions

Prospective amendments to the *Rehabilitation Services and Claims Manual* were approved by the governors on March 2, 1992 to comply with the *Workers Compensation Act*, as interpreted by the Appeal Division Decision No. 91-0850.

The Executive Committee accepted the Appeal Division's right to make the determination that the Board's authority to retroactively adjudicate a claim and thereby declare an overpayment was wrong in law.

The Committee considered various options with respect to retroactive application of the new overpayment policy. There was no administrative framework in place to deal with the issue of retroactivity. Subsequently, a comprehensive Board-wide policy regarding Retroactivity of Policy Changes was adopted by the governors on March 1, 1993. Some of the relevant highlights are as follows:

- In deciding the effective change of a policy change necessitated by a finding by the courts, the Appeal Division or another administrative tribunal that Board policy under the

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*Workers Compensation Act, the Criminal Injury Compensation Act, the Workplace Act or other statute is unlawful, the Board will have regard to the needs of good public administration.*

- Good public administration involves a balance between fairness and the practicality of undoing prior transactions.
- In claims matters, regard must be had to the effect on workers in terms of benefits they may have lost or excess benefits they might have received which they might now be expected to repay. Regard must also be had to the effect on the employers in terms of possibly having to pay increased assessments or fund benefits which they should have paid in the past.
- The decision on retroactivity must be one which the Board is capable of properly administering without unduly increasing costs or affecting its general operation. The decision must not affect the Board's ability to properly fund the system.

The Executive Committee considered three primary criteria with respect to retroactivity. They were the moral, legal and administrative issues. After weighing these considerations, and bearing in mind the Board's lack of authority to create these overpayments in the past, the Committee selected January 1, 1980 as the date for retroactivity. As of January 1, 1980 computerized records of overpayments existed. Prior to that date, there were no overpayment records.

The governors' resolution of October 26, 1992 approved the retroactive implementation of changes in W.C.B. policy necessitated by the Appeal Division Decision No. 91-0850. The governors resolved that the policy amendments approved as of March 2, 1992 would apply as of January 1, 1980. As a result, the W.C.B. was, without application from workers and dependants, to refund all monies collected by the W.C.B. with respect to overpayments resulting from decisional errors where the decision declaring the overpayment was made on or after January 1, 1980.

## **Implementation of Governors' Decision**

### **Process**

Once the governors had approved the retroactive application of the new overpayment policy, an action plan was prepared by Compensation Services Division Management. From this plan the project was organized with the following considerations:

- 
- A master list detailing all overpayments declared since 1980 was prepared from the Claims Overpayment Transfer Advice (C.O.T.A.) records.
  - A computer data base was designed to provide record keeping for the project. The records included the following: the date the overpayment was declared, the amount, the reason for the overpayment, the employer firm code, whether the overpayment is still outstanding, how much has been paid back, whether it is a decisional or administrative error, date refunded, amount refunded, and the amount of interest.
  - Liaisons were maintained with the Accounting and Assessment Departments to ensure the project would not negatively impact the Board's normal business.
  - Accounting procedures were developed, in consultation with the Accounting and Assessment Departments, to ensure that the repayment of decisional errors would not affect the experience ratings of employers.
  - No overpayment was refunded without checking to see if there was an outstanding overpayment still owing on another claim. If so, then this claim was reviewed to determine whether the refund should first be applied to that debt still owed to the Board.
  - The Accounting Department verified, where there was any uncertainty about the correct amount, overpayments to be refunded.
  - No interest was paid with respect to refunds for periods where there was an unpaid debt owing to the Board on another overpayment for the same person. This was to avoid paying interest to an individual for the same period where there was an outstanding debt.
  - Injured workers were contacted prior to sending refunds to ensure cheques were to be mailed to the correct addresses and to explain the reason for the refunds.
  - A memo indicating the project had evaluated the overpayment was placed on every file reviewed.
  - Decision letters were sent to the injured workers, with copies to the employers, advising of the amounts and details of the refunds.
  - A conscious decision was made to notify only those injured workers whose overpayments were found to be decisional. The new policy guidelines were applied and where the possibilities were evenly balanced, the issue was resolved in favour of the worker (as provided by Section 99 of the *Workers Compensation Act*).

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## Staffing

The decision-makers selected to work on this project came from the following positions: claims adjudicator (as project leader and resource person), claims officer 1, case assistant, payment clerk, claims information assistant, and desk clerk. The selection was done on the basis of seniority and operational considerations. The selection was assisted by input from the Compensation Employees' Union (C.E.U.), in view of considerations with respect to the *Collective Agreement*.

The experience levels of Board decision-making staff involved in the project ranged from 5 to 26 years. This wealth of Claims-related experience enhanced the success of the project.

Operational considerations dictated that some of the decision-making positions be staffed by temporary workers hired specifically for the duration of the project. Five temporary claims officer 2's were hired for a seven-month duration. Four temporary claims officer 1 decision-makers were hired for 2.5 months to do an initial screening of files. The addition of these staff was required to streamline the process and increase the number of file reviews. This initiative greatly improved the efficiency of the process and shortened the duration of the project.

Most support staff who worked on the project were full-time employees who were transferred from their regular positions for a minimum of three months. Their replacements in the Claims Units were temporary employees hired by the project. The support positions in the project were file clerks, phone control clerks and stenographers.

All staff who worked on the project completed a questionnaire that provided valuable insight into the problems that gave rise to overpayments in the past and are applicable to preventing future administrative and decisional errors. Extracts from the questionnaires provided anecdotal information for this report.

The staffing costs were as follows:

Decision-making staff	\$378,900
Support staff	68,200
Microfilm staff	68,900
<b>Total</b>	<b>\$516,000</b>

Note: The staffing cost total does not include the salary of the project manager who spent approximately 25% of his time on the project.

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## Logistics

Never before has the Board undertaken a file review project of this magnitude. At the outset it was estimated that the number of files requiring review would be about 20,000 (including 1992 claims). The precise number could not be determined until the C.O.T.A. list had been examined and a master list prepared. The final number was 27,443, including 1,439 decisions where the overpayment was previously cancelled. This is not exactly equal to numbers of claims, as the project's accounting tracked decisions that were reviewed. There were cases where there were more than one overpayment decision on a claim file. Each error was listed separately and it could be either decisional or administrative.

All overpayment files were reviewed by the project staff, regardless of whether the claims originated in Richmond or the Area Offices. This required a massive movement of files, as approximately 45% of the preserved files were from the Area Offices and were sent via courier. Once reviewed, the Area Office files were returned.

As most files dating before 1988 are available only on microfilm, the only way to view the files and make decisions was to recreate the files. The Microfilm Department recreated relevant portions of 10,999 claim files which resulted in 251,515 pages of microfilm documents. The Microfilm Department did an excellent job responding to the demands of the project.

Locating some clients was extremely difficult. As the overpayments were declared up to 13 years ago, many clients had moved several times and some were deceased. The project staff used a variety of methods to track down "missing" clients, including:

- The Board's claims registration system to check for recent claims
- The Board's pension address system, if the client had an ongoing pension
- Telephone books covering the province
- The Lower Mainland criss-cross directory
- The most recent employer was contacted to determine if the client was still employed.
- The most recent Provincial voters list
- I.C.B.C.'s and the Motor Vehicle Branch's computer vehicle and license registration systems

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If all these failed, then a letter was sent to the last known address with the hope that there would be a forwarding address. Despite all these methods, at the end of the project there remained 519 refunds to be distributed with a total of \$161,000. The claims registration system has a flagging mechanism that will alert Board officers if and when one of these injured workers applies for compensation on a new claim or attempts to reopen an old claim. Through this method, a designated staff person will refund the undisbursed amounts.

### **Injured Worker Contact During the Project**

The project staff attempted personal contact with all recipients of refunds prior to sending out the funds. This was an opportunity to explain the reason for the refund and was a good public relations exercise. Personal contact also gave the injured worker a chance to express his or her feelings about the original overpayment and the project. There was quite a range of reactions, some quite unexpected.

The most common reaction was that the injured worker was pleased to be getting a refund of a decisional error and he or she thanked the officers for the consideration. Several expressed the view that they saw this as the Board doing something positive. Others expressed a shocked disbelief and a few were convinced it was a prank and would not believe it until they had their cheques. That reaction is indicative of a lack of trust.

One injured worker broke down and cried on learning of his \$1,200 refund. His overpayment amount had changed four times as his claim had been readjudicated by several different adjudicators. The worker said he had been totally frustrated by the Board's bureaucracy and felt he never was given a satisfactory explanation of why there was an overpayment.

For one injured worker the refund came at a particularly good time as she had not worked in a long time and money was very tight. She was so happy that she gave the claims officer a "big hug" through the phone.

Another injured worker received the refund at a time when he was unemployed and wondering where next month's rent money would be coming from.

Many injured workers said they had experienced a difficult time fighting the overpayment through the appeals system and expressed the problems caused by the financial hardship. They said that it was about time the Board realized that workers should not be punished for errors made by the Board. The feelings of anger and bitterness were not dissipated for some by the fact that the money was being refunded. One even suggested that he was considering suing the Board for his lawyer fees resulting from his appeal of the overpayment.

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From a public relations point of view, quite a few clients expressed an opinion that this project helped give a better view of the Board as an agency that is more approachable and fair.

### **Employer Contact During the Project**

The project staff had less contact with employers, though some did receive refunds as the overpayments were charged against the employers who maintained the injured worker on salary during the period of disability. As it was explained that the payment of refunds would not affect their assessment rates, they rarely expressed strong feelings either way.

Larger employers were concerned with the amount of administrative work and expenses involved with the project, especially the amount of trouble project staff went through to locate clients. Some questioned the appropriateness of making this new policy retroactive.

The employers were very helpful to the project staff, even though asking employers to check their old records was quite an imposition.

### **Lessons Learned**

From the project we realized the extent to which the Board's past method of declaring and recovering overpayments negatively affected our client group and ultimately the esteem to which the Board is held in the community.

The standard approach was done in a high-handed and less than courteous manner. Inadequate explanations were often given as to the cause of the overpayments. Poorly written letters were sent and they often did not provide many clues to the cause of the error and the decision seemed arbitrary. In many cases, overpayment amounts were revised numerous times, which lessened the injured worker's confidence that this was a carefully considered matter. The only clear message was that this amount had to be repaid. The issue of fairness was often lost in the process.

It is necessary for the Board to treat injured workers and employers with respect in all aspects of claim dealings, including overpayments.

The negative manner in which many clients described their dealings with the Board is not meant as an indictment of the Compensation Services staff. The staff were in most cases following standard Board practice in their method of dealing with overpayment issues. The work often was performed under difficult conditions due to high case loads. A large portion of the work was found to be of high quality and the staff are to be commended.

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## Observations

### Training and Quality Assurance Issues

Many conclusions have been formed following the project's review of the thousands of historical overpayments. These observations have been submitted to the Training and Education Department and to Compensation Services Management for a review of our current training programs and overpayment procedures.

The following are issues requiring consideration:

- The most common error is the payment of wage loss while the injured worker is back to work. This represented 54% of administrative errors and 46% of all errors. To reduce these errors, procedures should be in place to ensure close contact is maintained with the injured worker, the employer, and the doctor. The claims staff should not make assumptions about expected return-to-work dates without verification, as the large volume of these overpayments shows that this is the cause of the majority of overpayments. The employer needs to be contacted to corroborate the return to work rather than relying on the doctor's report, which indicates work fitness.
- Maintaining a close contact with the injured worker would also help avoid the situation where benefits are paid past the date of medical proof of disability, when there has not been a resumption of work. This is the largest category of decisional errors as it represents 47% of decisional errors and 7% of all errors.
- Increased training is required in rate setting for both initial rate setting as well as the eight-week rate change. There is currently a lack of consistency in the method of rate setting for self-employed workers.
- Increased use of provisional rates, with properly communicated decisions, to avoid setting arbitrary rates pending the receipt of additional wage information. This would avoid a decisional error when the wage rate is finalized.
- The standard letters for overpayments need to be revised with emphasis placed on plain language and more empathy. Currently, the same letter is sent to all injured workers regardless of the amount or the reason for the overpayment. Custom letters should be sent in cases of complex overpayments.
- Staff require additional training to ensure consistency of decision making regarding differentiating between decisional and administrative errors.

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Training recommendations for collection of future administrative errors:

- A phone call informing a client of an overpayment is advisable, where possible, both to provide a careful explanation as well as from a customer service viewpoint. This would, in all cases, be followed up by a decision letter that is clear in the reasons for the overpayment. The letter should be free of Board jargon.
- More careful follow-up on administrative overpayments including better liaisons with the Collections Department, Accounting Department, and the Legal Services Division. This is to avoid situations where the appropriate procedures are not being followed. An example is where the overpayment notifier is not being removed from the computer registration system after full restitution has been made. In some cases payments have been made and the overpayment not reduced accordingly. There have also been multiple claims paid without deducting an outstanding overpayment.
- Interest should not be mentioned in the overpayment letters if there is no intention to enforce an interest penalty.

### **General Recommendations**

The following recommendations have been forwarded to the vice-president Compensation Services for his consideration:

- Improved file management and control.
- Improved file documentation to clarify the reason for the overpayment.
- Overpayments checked by a co-worker for accuracy prior to notifying the client.
- Claims staff need to maintain more contact with injured workers, employers, and doctors.
- In each area, develop and maintain overpayment “experts” who can advise and assist staff to ensure consistency. This would be an excellent duty for the resource adjudicator.
- Consistency of rate setting between the wage-loss and pension rates.
- Reduction of case loads, which would foster a better relationship between the adjudicator and the client, rather than treating a client simply as a number.

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## **Recommendation for Closure on the Project**

As all historical overpayments dating from January 1, 1980 have been identified and dealt with, the Board's involvement with the project is for all intents and purposes over. The only exception is the outstanding decisional errors requiring disbursement to injured workers who the project team have been unable to locate. This matter has been dealt with by the identification of these claims on the registration system. Should these individuals have a claim in the future or re-open an old claim, the benefits due to them will be disbursed at that time.

Therefore, it is requested that closure be affected to this project immediately.

Report prepared by Jay Rowland, manager, on behalf of Len McNeely, vice-president Compensation Services Division.

## **Appendices**

- |                    |                                                     |
|--------------------|-----------------------------------------------------|
| <b>Appendix #1</b> | Statistical summary of the findings of the project  |
| <b>Appendix #2</b> | Frequency of errors (administrative and decisional) |
| <b>Appendix #3</b> | A study of overpayments by year declared            |
| <b>Appendix #4</b> | Sample overpayments                                 |

## Appendix 1 — Statistical Summary

### 1. Decisions Reviewed by the Project

		Percentage
Number of administrative errors	21,901	84%
Number of decisional errors	4,103	16%
	<b>Total</b>	<b>26,004</b>
		<b>100%</b>
Amount of administrative errors	\$ 8,954,000	76%
Amount of decisional errors	\$ 2,763,000	24%
	<b>Total</b>	<b>\$11,717,000</b>
		<b>100%</b>
Decisional errors refunded	\$ 1,281,000	
Interest paid on refunded decisional errors	\$ 1,015,000	
	<b>Subtotal</b>	<b>\$ 2,296,000</b>
Decisional (\$) cancelled by the project	\$ 1,321,000	
	<b>Total</b>	<b>\$ 3,617,000</b>
Number of refunds issued	2,263	
Average amount per refund	\$ 566	
Number of interest cheques issued	1,943	
Average amount per interest cheque	\$ 522	

### 2. Decisional Errors Where Injured Worker Not Located

Number of decisional errors (included above)	519	
Amount identified but not dispersed	\$ 161,000	

### 3. Miscellaneous Decisions Reviewed

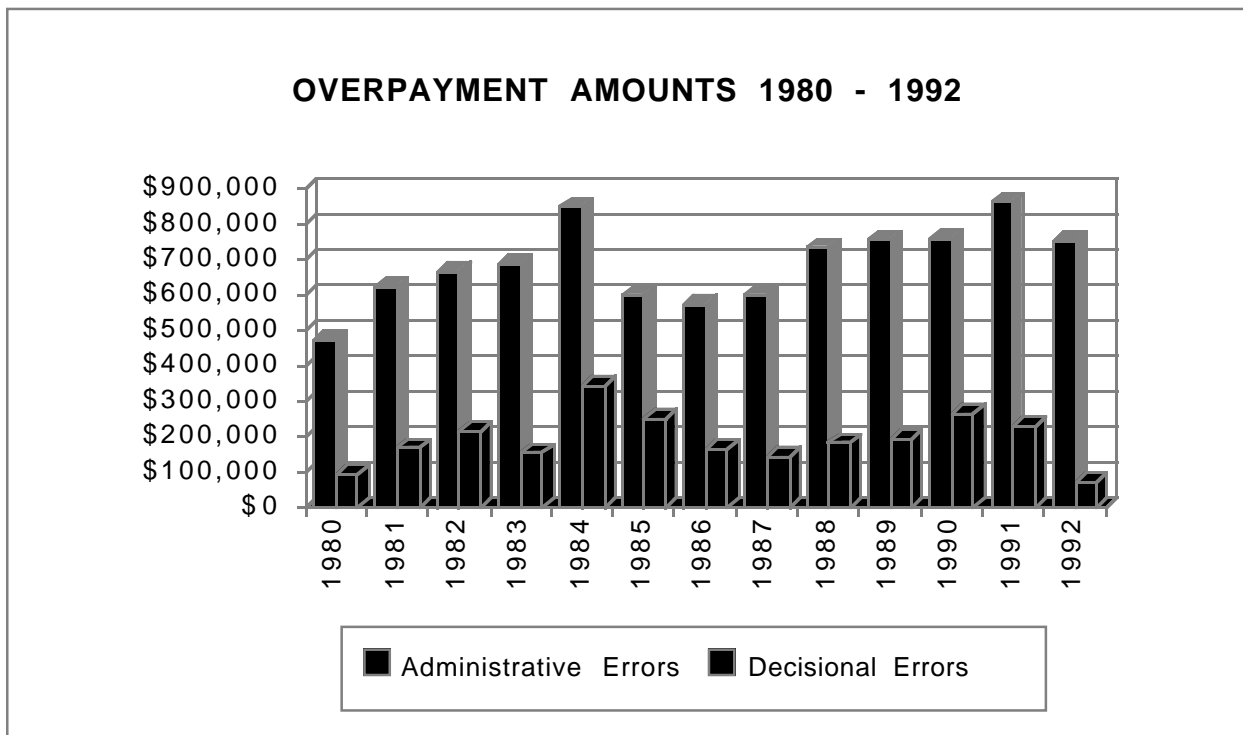
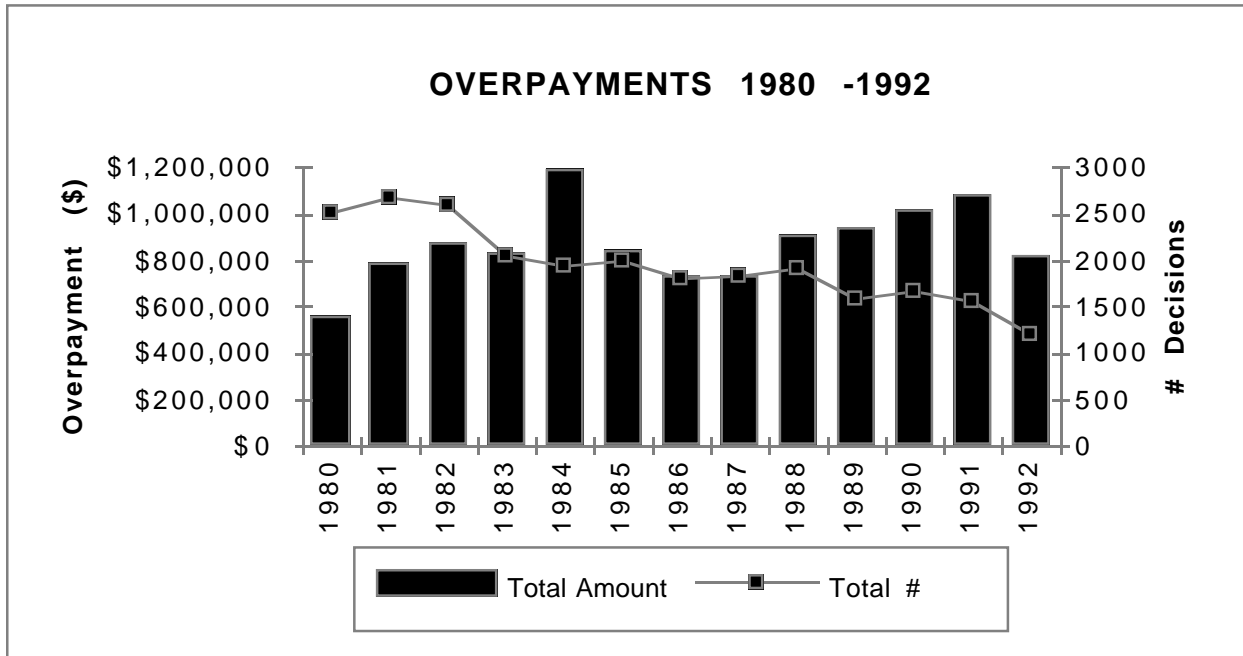
Number of previously cancelled overpayments	1,439	
Amount of previously cancelled overpayments	\$ 2,305,000	
Number of overpayments reviewed where the overpayment was declared before Jan. 1, 1980	1,623	

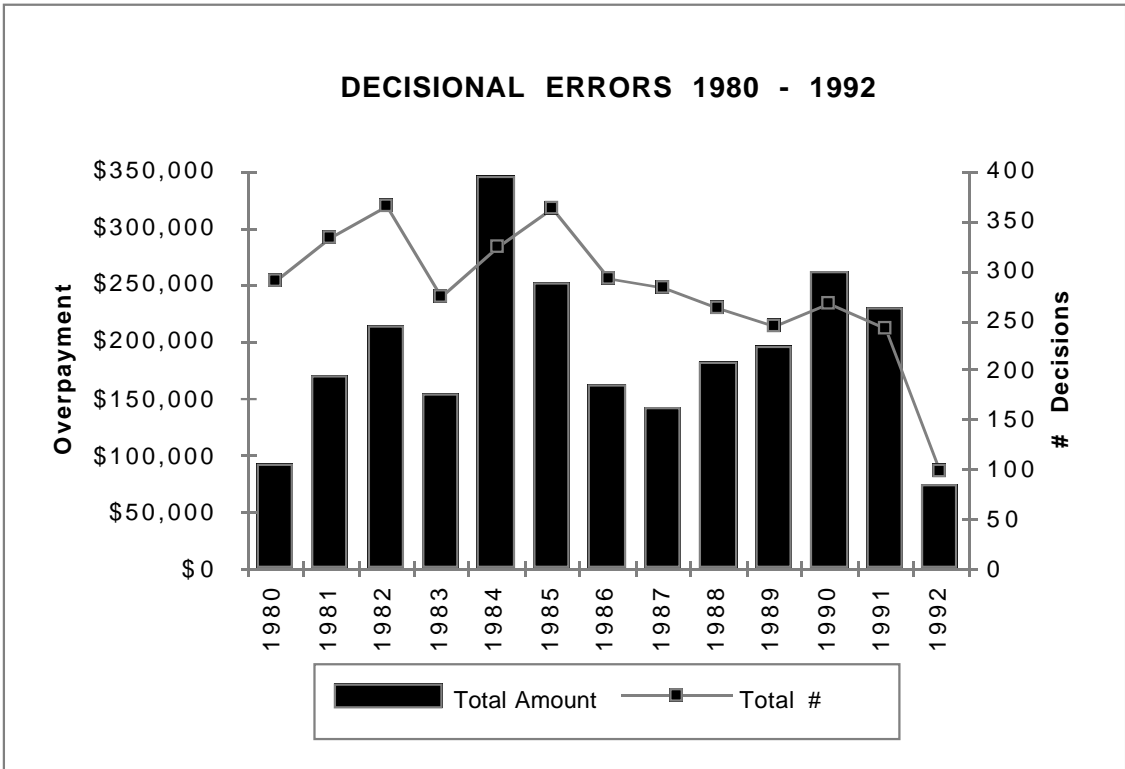
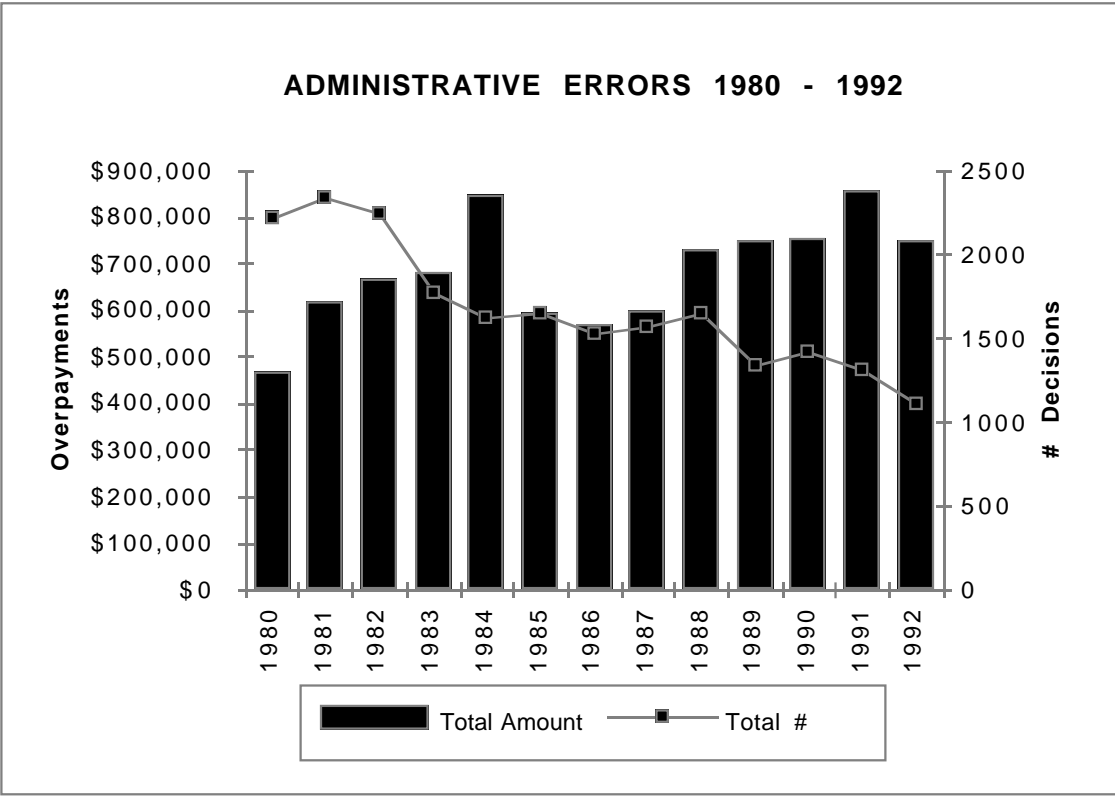
## Appendix 2

### Retroactive Adjudication Project — Frequency of Errors

	Administrative Errors	Number	% of Admin. Errors	% of All Errors	Amount
1	Benefits paid beyond the date of return to work	11,845	54%	46%	\$2,810,763
2	Injured worker paid more than once for the same period	1,165	5%	4%	\$561,903
3	Incorrect shift or return to work information from employer	1,149	5%	4%	\$231,852
4	Mathematical error in calculating the wage rate	1,113	5%	4%	\$500,552
5	Error paying benefits (wrong dates or amounts inputted)	1,044	5%	4%	\$435,254
6	Benefits paid to the wrong payee	958	4%	4%	\$661,586
7	Outside the statutory authority of the Board	937	4%	4%	\$198,090
8	Earnings while receiving benefits (not fraud)	749	3%	3%	\$580,235
9	Wage rate incorrect due to wrong information from employer	741	3%	3%	\$349,537
10	Fraud or misrepresentation	502	2%	2%	\$1,940,598
11	Health Care Benefits error	395	2%	2%	\$67,440
12	Claim paid on incorrect work week	319	1%	1%	\$52,638
13	Clerical error while implementing officer or Appellate decision	214	1%	1%	\$99,950
14	Other	770	4%	3%	\$463,535
	<b>TOTAL</b>	<b>21,901</b>	<b>100%</b>	<b>84%</b>	<b>\$8,953,933</b>
	Decisional Errors	Number	% of Decisional Errors	% of All Errors	Amount
1	Claim readjudicated based on medical report. Worker had not r.t.w.	1,921	47%	7%	\$354,754
2	Readjudication of the wage rate	631	15%	2%	\$890,891
3	Missed or late 8 or 13 week rate change	567	14%	2%	\$450,423
4	Readjudication of entitlement	284	7%	1%	\$505,811
5	Error in setting principal's wage rate	167	4%	1%	\$195,981
6	Initial wage rate set too high (no provisional rate set)	67	2%	0%	\$24,187
7	Other	466	11%	2%	\$340,810
	<b>TOTAL</b>	<b>4,103</b>	<b>100%</b>	<b>16%</b>	<b>\$2,762,857</b>

### Appendix 3





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## Appendix 4

### Sample Overpayments

#### 1. Largest Decisional Error

The largest decisional error identified was \$23,000 and was caused by a readjudication of the wage rate in 1985. The overpayment was recovered in full in 1989 from the injured worker's pension on another claim. The claimant has moved several times since 1985 and was located in Prince George. The amount of the interest payment was \$9,755.76.

#### 2. Example of Administrative Error

An injured worker cut his right hand on March 13, 1984. The first medical report did not indicate the length of total disability anticipated. The initial wage-loss cheque was processed on April 5, 1984 for the period March 14 to April 1 inclusive. The next cheque was processed April 16 for the period April 2 to April 15 inclusive. This cheque was issued after two phone calls to the employer had failed to confirm whether the injured worker had returned to work.

A call from the injured worker's mother on May 1 advised that the worker had returned to work April 10. This resulted in an overpayment of four days in the amount of \$256.68, as an injured worker cannot receive wage-loss while working. The overpayment was paid in full by the injured worker on May 15, 1984.

#### 3. Example of Decisional Error

A 53-year-old fisher injured his right knee in 1985 when he fell on his fishing boat. The wage rate was set on his claim using the earnings he made in the 109 days of the previous year when he was fishing. The remainder of that year the injured worker was disabled as a result of another work injury. A later decision by a claims adjudicator based the wage rate on the injured worker's earnings over five years. As a result of the readjudication of the wage rate, an overpayment of \$8,328.90 was declared. The injured worker had a pension arising out of the knee injury, and his pension was commuted to recover the overpayment.

As a result of the review by the project, \$8,328.90 was refunded with \$4,959.76 in interest.

