

REPORTER

Consumer Price Index Adjustments

Date: November 23, 1994

WHEREAS Section 25 of the *Workers Compensation Act* requires the Board to determine as of January 1, 1995, a ratio by comparing the Consumer Price Index for October 1994 with the Consumer Price Index for April 1994 and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the *Act*, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for October 1994 was 130.7 and for April 1994 was 130.2, giving a ratio of 1.00384025;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.00384025;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of January, 1995;

AND THAT the British Columbia Regulation numbered 170/94 be repealed as of the 1st day of January, 1995;

AND THAT all dollar amounts referred to in all sections of the *Act* described in Section 25(4) shall be adjusted as follows:

Section No.	July 1, 1994 Dollar Amount	Change to	January 1, 1995 New Dollar Amount
3(5)(c)	88.30		88.64
13(2)	17,660.39		17,728.21
	3,532.12		3,545.68
17(2)	2,119.19		2,127.33
	706.41		709.12
	706.41		709.12
17(3)(a)(ii)	229.51		230.39
17(3)(c)	741.61		744.46

Section No.	July 1, 1994 Dollar Amount	Change to	January 1, 1995 New Dollar Amount
17(3)(d)	35,320.60		35,456.24
	3,532.12		3,545.68
	31,788.49		31,910.57
7(3)(e)	741.61		744.46
17(3)(f)(iii)(B)	229.51		230.39
17(3)(g)	24,724.47		24,819.42
17(3)(h)(i)	406.17		407.73
17(3)(h)(ii)	406.17		407.73
17(3)(i)(ii)	406.17		407.73
17(13)	1,766.10		1,772.88
18(1)	307.32		308.50
	95.38		95.75
22(2)	1,147.99		1,152.40
29(2)	264.90		265.92
33(5)	1,147.99		1,152.40
35(5)	158.29		158.90
71(8)	17,660.39		17,728.21
73(2)	35,320.60		35,456.24
74(3)	176,603.17		177,281.37
75(2)	35,320.60		35,456.24
75(3)	3,532.12		3,545.68
77(2)	3,532.12		3,545.68
SCHEDULE C	741.61		744.46

AND pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

REPORTER

Consumer Price Index Adjustments

Date: **January 23, 1995**

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 governors have decided to adjust the amounts referred to in this decision on January 1 for each year in accordance with the Consumer Price Index ratios determined under Section 25 for this January 1 and the preceding July 1.

On January 9, 1995, the governors decided that, because of the minimal negative change in the Consumer Price Index, the Personal Care Allowances and the Independence and Home Maintenance Allowance should not be adjusted effective January 1, 1995.

As a result of the governors' decisions, the rates set out below will be effective as of January 1, 1995.

(The bracketed references are to the *Rehabilitation Services and Claims Manual*)

Disfigurements Maximums/Minimums (#43.20)

	Minimum Old Rate	New Rate	Maximum Old Rate	New Rate
Head and Neck				
1.	\$ 0		\$ 4,074.71	\$ 4,068.48
2.	4,074.71	\$ 4,068.48	8,149.42	8,136.97
3.	8,149.42	8,136.97	24,753.85	24,716.03
4.	24,753.85	24,716.03	41,256.42	41,193.39

	Minimum Old Rate	New Rate	Maximum Old Rate	New Rate
Each Hand				
1.	\$ 0		\$ 1,324.28	\$ 1,322.26
2.	1,324.28	\$ 1,322.26	2,750.43	2,746.23
3.	2,750.43	2,746.23	8,149.42	8,136.97
4.	8,149.42	8,136.97	13,752.14	13,731.13
Each Arm				
1.	\$ 0		\$ 1,018.68	\$ 1,017.12
2.	1,018.68	\$ 1,017.12	2,037.35	2,034.24
3.	2,037.35	2,034.24	6,213.93	6,204.44
4.	6,213.93	6,204.44	10,288.64	10,272.92
Each Leg				
1.	\$ 0		\$ 713.07	\$ 711.98
2.	713.07	\$ 711.98	1,324.28	1,322.26
3.	1,324.28	1,322.26	4,074.71	4,068.48
4.	4,074.71	4,068.48	6,825.14	6,814.71
Torso				
1.	\$ 0		\$ 713.07	\$ 711.98
2.	713.07	\$ 711.98	1,324.28	1,322.26
3.	1,324.28	1,322.26	4,074.71	4,068.48
4.	4,074.21	4,068.48	6,825.14	6,814.71

Personal Care Allowance (#80.20)

	Daily Old Rate	New Rate	Monthly Old Rate	New Rate
Level 1	\$11.61	\$11.61	\$ 349.40	\$ 349.40
Level 2	19.76	19.76	611.30	611.30
Level 3	29.42	29.42	882.93	882.93
Level 4	38.07	38.07	1,144.84	1,144.84
Level 5	46.97	46.97	1,407.01	1,407.01

Independence and Home Maintenance Allowance (#81.00)

The amount remains at \$184.69.

Kilometre Allowance (#82.20)

The amount remains at 26 cents per kilometre.

Meal Allowance (#83.20)

	Old Rate	New Rate
Breakfast	\$ 8.66	\$ 8.64
Lunch	10.69	10.67
Dinner	18.34	18.31
TOTAL	37.69	37.63

Subsistence Allowance for Workers Electing Not to Stay at the Board's Rehabilitation Residence (#83.20)

The amount will be decreased from \$15.28 to \$15.26.

Cost Shifting between Classes (#114.11)

The Board interprets the word “substantial” in Section 10(8) to mean a specific dollar amount.

The amount will be decreased from \$32,346.98 to \$32,297.56.

REPORTER

Memorandum

To: Board of Governors
From: Connie Munro, Chief Appeal Commissioner
Date: December 12, 1994
Subject: Appeal Division Community Feedback Report

In concluding the 1993 Appeal Division annual report, I committed to initiating a project during 1994 to elicit feedback from the community as to how well the Appeal Division is meeting its goals.

Since June, 1991, the Appeal Division has held 590 oral hearings, issued 6,426 decisions, and had 171 of its decisions published in the *Workers' Compensation Reporter*. We have gained experience in our efforts to render quality decisions within a 90-day time frame. Advocates in the workers' compensation community have, similarly, had three years' experience in dealing with the Appeal Division in individual cases, and in utilizing decisions of the Appeal Division published in the *Workers' Compensation Reporter*.

I considered it timely to hear from the community how well the Appeal Division is achieving its decision-making goals. I also sought feedback concerning the preliminary handling of appeals, and the conduct of hearings where an oral hearing has been held.

A two-part approach was taken in obtaining feedback from the community:

- **Community meetings**

During May and June, 1994, appeal commissioners met with 13 groups in the community representing worker and employer interests. This provided an opportunity for direct discussion and communication.

- **Questionnaire**

A questionnaire was sent out in mid-September, 1994, to all appellants (and their representatives) who had oral hearings before the Appeal Division during the previous 12 months. Input was sought concerning a number of specific aspects of the Appeal Division's functioning.

Feedback was also received in the form of letters and phone calls to the Appeal Division. In addition, I reviewed decisions rendered on applications for reconsideration of Appeal Division decisions.

While the primary purpose in undertaking this initiative was to seek specific improvements which the Appeal Division could undertake, this process also identified areas where the Appeal Division has achieved some measure of success. Where quality performance has been achieved, it should be identified and nurtured. Where I concluded that the Appeal Division should continue with an approach, despite expressed concerns, I believe it useful to address such concerns and explain the reasons for continuing with the current course of action.

The objective of this exercise was not to give the Appeal Division a “report card.” It was aimed at identifying and addressing specific topics of concern of the community relating to the Appeal Division. In this report, I set out the conclusions I have reached on these topics based upon all the input received, on the following terms:

- criticism voiced — action taken to achieve improvements; or, alternatively, explanation given for current course of action;
- approval voiced — acknowledged as reinforcing current efforts.

PART ONE: COMMUNITY FEEDBACK

Appeal commissioners were generally very well received in meetings in the community.

An exception to this was the meeting with the Employers’ Adviser’s Office. The employer-representative appeal commissioners who attended the meeting expressed concern that the director of the Employers’ Advisory Services appeared unduly adversarial in his approach. He described the Employers’ Adviser’s Office as a “watchdog” over the Appeal Division’s work. The representatives attending further expressed the view that this approach did not appear typical of all of the employers’ advisers, but was primarily the director’s. Another expression of dissatisfaction, at a meeting with the employers’ W.C.B. Claims Advisory group, was from a former Board employee now acting for employers in making applications for relief of claim costs under Section 39. He took exception to the Appeal Division’s initiative to invite feedback, in reference to the fact that I had previously asked him to desist writing directly to appeal commissioners concerning their decisions in particular cases.

Apart from these instances, the tone of meetings with both worker and employer groups was generally positive and supportive of the Appeal Division’s work. There was a high level of satisfaction with the conduct of oral hearings. The Appeal Division is seemingly perceived as open and fair in its decision-making. There was also praise for

the efficient and courteous work of appeal officers and other support staff, in the preliminary handling of appeals. Appeal Division decisions were described as generally consistent, understandable, well-reasoned and responsive to the issues posed.

Several specific topics arose, which I have addressed as follows:

1. Assessment Appeals

Appeal Division Decision No. 1 [“Practice and Procedure,” *Workers’ Compensation Reporter*, Vol. 7, p. 33], established the following practice for assessment appeals (at pages 49–50):

An appeal may be initiated within 30 days after a decision by a Manager or Director. An employer should exhaust all internal avenues of review within the Assessment Department prior to bringing an appeal to the Appeal Division.

Where written submissions are provided, a response may be obtained from the Assessment Department. *This will be done in all cases where the employer has not exhausted the avenues of review within the Assessment Department.* Any such response will be disclosed to the parties, who will have the opportunity to provide rebuttal or comment prior to the matter being considered by the Appeal Division.

This practice was intended to ensure that reasons were given for decisions by the Assessment Department, to provide employers with an explanation of the basis for the decision so they would be better able to respond. This was considered necessary as many assessment decisions, which are appealable directly to the Appeal Division, are “bare” notices (often computer generated), which contain no reasons or explanation for the decision.

This practice was criticized by some employers in cases where the assessment officer had already provided a decision letter which set out fully the reasons for the decision. Sending the employer’s submission to the Assessment Department for further comments was seen as inviting the department to critique the employer’s appeal submissions. This was seen as anomalous and unfair, as no comparable procedure is used in other types of appeals. There have, as well, been improvements in the provision of written reasons for decisions made by assessment officers, making it unnecessary in many cases to seek such reasons after the filing of an appeal.

On reviewing the matter, therefore, I find that the practice set out in Decision No. 1 should be modified in response to the employers’ concerns. Where an employer appeals an assessment decision to the Appeal Division, the appeal officer will not invite input from the Assessment Department on a preliminary basis in all cases. Such input will

only be invited if it is considered necessary to elicit reasons for the decision. It will, however, always be open to the Appeal Division panel considering an appeal to obtain additional input from the Assessment Department, should the panel find it necessary. Any input from the Board concerning an appeal will continue to be disclosed to the appellant, with an opportunity to reply.

2. Notice Issues

(a) Employers' Advisors

The employers' advisers complained that the actual practice of the Appeal Division did not conform to Appeal Division Decision No. 1 on *Practice and Procedure*. They were not being notified of appeals in situations where notice was being provided to industry associations. Appeal Division Decision No. 1 stated [at p. 42] that where an employer is no longer registered with the Board, the chief appeal commissioner may give notice of an appeal commenced by a worker to the relevant industry association *and the employers' advisers*. The failure to provide such notice resulted from an oversight in setting up our internal procedures.

Clarification has now been provided to Appeal Division staff that the employers' advisers should also be notified, whenever notice is given to an industry association. The feedback was useful in bringing to light a situation requiring correction.

(b) Union Participation in Employers' Penalty Appeals

(i) Direct Notice to Unions

Several unions requested more direct and timely notice of employer appeals concerning penalties levied by the Prevention Division for breaches of the *Industrial Health and Safety Regulations*.

Although the Appeal Division provides notice to the "worker representative," and the industrial health and safety committee (where one exists) it has generally not been practicable to provide notice directly to unions as their identity and mailing address are usually not included in the prevention file.

Section 72(4) of the *Workers Compensation Act* provides:

where there is a union, the workers' representative shall be selected by the union from among the members of the accident prevention committee, the shop stewards or other union officials, employed at the place of work being inspected.

Governors' policy provides, under No. 1.4.1-1 (revised July 1994) of the *Occupational Safety and Health Division Policy and Procedural Manual*:

Notice of the penalty assessment will be given to the trade union representing the workers affected and the Chair and Secretary of the Industrial Health and Safety Committee.

(emphasis added)

I am advised that prevention officers have been instructed to provide information in the inspection report as to the local union. I am further advised that under the computerized Accident and Injury Reporting System (A.I.R.S.) under development by Prevention, the employer will provide one report which will serve as both a Form 7 *Employer's Report of Injury* and an accident investigation report. This report will also include information regarding any certified bargaining unit.

Where information as to the union identity and address are provided in the prevention file, the Appeal Division will give notice directly to local unions of appeals from penalties levied under Section 73 of the *Act*.

(ii) Indirect Notice to Unions

An employer objected to the notice letter sent by the appeal officer to the workers' representative concerning the employer's penalty appeal, which requested that the worker representative "bring this matter to the attention of the relevant Trade Union." The employer complained that this wording presupposed workers' membership in a trade union, and that it showed a "callous disregard" for non-union firms.

For the reasons expressed in the previous section, the Appeal Division attempts to notify unions where they are present at the place of employment. I accepted, however, the employer's complaint concerning the wording of the notice letter. Where the Appeal Division has no information as to whether or not a union is present, notice to the worker's representative will state: "If workers at your place of employment are represented by a trade union, please bring this letter to the union's attention."

(d) Natural Justice

A reconsideration application was made on behalf of a worker, concerning an Appeal Division decision to deny his claim. He had appealed a Review Board finding that his claim was barred under Section 55 (i.e. an application for compen-

sation had not been filed within one year of the date of injury). The Appeal Division panel found that the requirements of Section 55 were met, but denied the worker's claim on the merits. His representative complained that the worker had no notice that the Appeal Division would be considering the merits of the worker's claim.

The appeal commissioner considering this application concluded that in the circumstances of this case there was no breach of natural justice. A published decision of the Appeal Division illustrates that the Appeal Division may, on an appeal concerning Section 55, proceed to consider whether compensation is payable. The reconsideration application was, therefore, denied.

On reviewing this matter, however, I recognize that even though there was no breach of natural justice the appellant was left with a sense of dissatisfaction as to the procedure followed.

The Appeal Division takes a broad remedial approach to its jurisdiction. This is essential to getting files off the appeal treadmill. An overly constrained single-issue approach to jurisdiction can result in multiple appeals, over several years, to the detriment of all concerned.

The Appeal Division is also subject to statutory requirements with respect to the 90-day time frame for decision-making, which makes it desirable for the Appeal Division panels to move quickly to a decision which resolves all the issues before it. The Appeal Division must, however, be mindful of the requirements of procedural fairness and natural justice. There is a risk that in exercising its remedial jurisdiction, the Appeal Division may move beyond the issues addressed in the submissions of the parties to the appeal. Governors' policy provides [Decision No. 1, *Workers' Compensation Reporter*, Vol. 7, p. 7] that:

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

The Appeal Division must be attentive to whether the parties have notice of the issues which will be addressed in its decision. Where, for example, an appeal concerning Section 55 (the time limits for filing an application for compensation) is allowed, an Appeal Division panel will, if it intends to proceed to address the merits, consider whether the parties have notice that the merits may be addressed in the Appeal Division decision. Where this issue has not been addressed in the submissions, the Appeal Division panel may advise the parties that they will consider the merits, and invite additional submissions prior to making a decision on the merits.

As stated in Appeal Division Decision No. 1 (at page 42):

All matters raised in the decision letter which was appealed to the Review Board, and in the Review Board finding, may be considered issues in the appeal.

Where an appeal is filed from a Review Board finding, parties will generally be assumed to have notice that all matters raised in the Board officer's letter, and in the Review Board finding, may be considered issues in the appeal.

3. Policy

Some employer representatives expressed concerns that the Appeal Division was engaging in "policy reviews." One example provided was the Appeal Division discussion paper on stress [*Psychological Disabilities and Workplace Stress, Workers' Compensation Reporter*, Vol. 10, p. 257]. It was alleged that the Appeal Division was infringing on the authority of the governors to make policy. I consider that this concern is based on an incomplete understanding of the duties of the Appeal Division. Some explanation may be helpful.

Clearly, responsibility under the *Act* for approving and superintending policy is vested in the Board of Governors. It would, however, be unlawful for the Appeal Division to apply policy blindly. The Appeal Division has the obligation to apply and interpret the *Act*, regulations and existing published policy of the governors, and to give its decision according to the merits and justice of the case. The Appeal Division must, in applying the policy of the governors, satisfy itself that the policy is lawful under the *Workers Compensation Act* and the *Charter*, and that there are no unusual or special circumstances in the particular case warranting a departure from the general policy. A failure to exercise such authority would justify intervention by the courts on a petition for judicial review of an Appeal Division decision.

An Appeal Division decision, that a policy of the governors is contrary to law, does not create a new policy. It remains open to the governors to consider the range of policy options open to them in making new policy under the *Act*.

The Appeal Division has rendered several decisions with significance to governors' policy. Twenty-one such decisions were listed on pages 36–43 of the *1993 Annual Report of the Appeal Division*. It should be recognized, however, that the Appeal Division has no control over the issues coming before it. The Appeal Division is obliged to address the issues properly raised by appeals within the requirements of the 90-day time frame. The volume of cases before the Appeal Division results in significant decisions issued on an ongoing basis. Key Appeal Division decisions are published in the *Workers' Compensation Reporter* to provide guidance on the interpretation of the *Act*, the Regulations and Board policies, practices and procedures.

These are decisions made in the context of individual cases. In developing general policies, which must cover a wide spectrum of situations, the governors must consider a broad range of factors including input from the community. Such consideration by the governors will normally, therefore, involve a longer time frame. In exercising the Appeal Division's more limited authority, to render lawful decisions in individual cases, and to bring to governors' attention decisions which have significance to governors' policy, the Appeal Division plays a supportive role to the governors. I am confident that, over time, a better understanding will develop in the community of the complementary roles of the Appeal Division and governors.

I would also note that the chief appeal commissioner specifically has a role to play in policy development as a non-voting governor. The governors have defined the *Functions of the Chief Appeal Commissioner* [*Workers' Compensation Reporter*, Vol. 7, p. 27] as including the specific responsibility to (at page 27):

Keep(s) Governors apprised of critical developments in terms of decisions on claims and trends in claims decisions.

With respect to *Planning and Policy*, I am charged to (at page 28):

Participate(s) in the development of policy as a non-voting Governor.

And, with respect to *Legislation*, I have a responsibility to (at page 29):

Recommend(s) changes or comment(s) on proposed changes in legislation, as they may affect injured workers and the Appeal Division process.

Part of the rationale for the chief appeal commissioner sitting as a non-voting governor is to facilitate such communication, which includes alerting the governors where their policies may require attention. That was the intention of the paper I prepared, "Psychological Disabilities and Workplace Stress." Any suggestion as to the direction policy development ought to take was distinctly avoided. Rather, I set out the relevant considerations regarding statutory interpretation which would impact policy development.

4. Outcomes

An employer representative requested that the Appeal Division annual report on disposition of appeals from Review Board findings provide information separated by worker appeals and employer appeals. He complained that the acceptance rate for appeals from Review Board findings had gone from about 15%, under the former commissioners, to about 35% by the Appeal Division. In response to this inquiry, the following information was compiled:

APPEALS FROM REVIEW BOARD FINDINGS
Decisions by former Commissioners, and
by the Appeal Division

YEAR	1988	1989	1990	1991	1992	1993
	%	%	%	%	%	%
By Worker or Dependant						
Allow	7	8	8	26	33	34
Deny	84	84	86	62	53	55
Partial	8	6	5	8	13	11
Misc.	1	2	1	4	1	0
By Employer						
Allow	24	36	53	21	16	16
Deny	67	54	33	76	75	83
Partial	7	8	14	0	7	1
Misc.	2	2	0	3	2	0
Worker/Dependant and Employer Appeals (in total)						
Allow	9	12	12	26	31	33
Deny	82	79	81	63	55	56
Partial	8	7	6	7	13	10
Misc.	1	2	1	4	1	1

Note: All figures are given in percentages, rounded off to total 100%. Percentages calculated from decisions only, not taking into account withdrawals or preliminary rejections.

There has been an increase in the percentage of appeals by workers/dependants from Review Board findings which have been allowed. The lower percentage of appeals allowed in the past, however, was primarily in respect of appeals by workers and their dependants. In 1990, for example, 8% of appeals by workers/dependants were allowed, while 53% of appeals by employers were allowed. Similarly, in 1989, 8% of appeals by workers/dependants were allowed, while 36% of appeals by employers were allowed.

During that time period, the Board was mired in protest, controversy, and judicial reviews. Several of the judicial reviews were successful. It was, in part, the criticism by the courts of the Board's claims handling at the highest levels which lead to the unanimous report of the Munroe committee and the structural changes to the Board contained in Bill 27. It would be surprising if such fundamental changes to the appeal structures did not have an effect on the nature of the decisions rendered.

From 1987 to 1991, there were 33 judicial reviews involving decisions of the former commissioners, of which 8 were successful. [Since 1991, there have been] nine decisions rendered on judicial review of Appeal Division decisions. To date, only one judicial review of an Appeal Division decision [was initially] successful. An appeal of that decision [was allowed by] the B.C. Court of Appeal in February, 1995.

With respect to the actual percentages of appeals allowed from Review Board findings, I would simply note that the Appeal Division makes its decisions on an individual basis and after weighing the evidence in each case. For that reason, I am not convinced that there is a great deal to be gained from this division of the figures. Nonetheless, in view of the interest expressed, the Appeal Division annual report for 1994 will include separate statistical information on appeals by workers and employers from Review Board findings.

Of interest, is that there have been 12 Medical Review Panel certificates issued on employer appeals from Appeal Division decisions. The Medical Review Panel Department advises that of those 12 cases, the Appeal Division decision was confirmed in seven cases, and partially confirmed in another. The Appeal Division decision was not confirmed in four cases. During the same period, there were 241 Medical Review Panel certificates issued on Medical Review Panel appeals by workers from Appeal Division decisions. Of these, 127 confirmed the Appeal Division decision, 8 partially confirmed, and 106 did not confirm the Appeal Division decision.

The greatest number of appeals to the Appeal Division, and from Appeal Division decisions, are made by workers rather than employers. In percentage terms, the Medical Review Panels allowed more appeals by workers (44%) than by employers (33%), from Appeal Division decisions. Current data shows that more workers than employers appeal Appeal Division decisions to Medical Review Panels, and that of those appeals, a higher percentage of workers than employers are successful in such further appeals.

Also of interest is the number of employers' appeals allowed concerning penalties levied by the O.S.H. or Prevention Division of the Board, since the creation of the Appeal Division. The allow rate of those appeals has also increased despite the fact that since 1991 the grounds for review/appeal have been narrowed by statutory change.

APPEALS FROM O.S.H. / PREVENTION PENALTIES
Decisions by former Commissioners, and
by the Appeal Division

YEAR	1988 %	1989 %	1990 %	1991 %	1992 %	1993 %
Allow	7	4	4	20	30	12
Deny	84	83	87	70	62	84
Partial	9	12	8	9	7	4
Misc.	0	1	1	1	1	0

I am reluctant to engage in any analysis of "allow" and "deny" rates which might be interpreted as an attempt to influence the independence of the decision-makers in the Appeal Division. As stated, all cases must be judged on their individual merits. Considering all of the foregoing data, however, there is nothing which would suggest that employers and workers are being dealt with other than fairly and impartially.

5. Appointments

(a) Terms

A representative for an employers' organization complained that the renewal terms for some of the appeal commissioner contracts were too long. In particular, he objected to the renewal of one contract for a six-year term.

Such contracts currently range from six months to six years. This information is published in the Appeal Division annual report, in addition to reports to the governors at the time of each new contract.

Under Section 81(3) of the *Act*, "a voting governor shall be appointed for a term of up to 6 years and is eligible for reappointment or extension of his appointment." There is no reference in the *Act*, however, to the length of terms for appeal commissioners.

The selection process for appeal commissioners has been in accordance with the policy of the governors set out in their Decision No. 2 [“Policy for Selection of Appeal Commissioners,” *Workers’ Compensation Reporter*, Vol. 7, p. 13]. I believe there is value in having staggered contract expiry dates, to provide a balance of flexibility and stability in the Appeal Division. It is certainly open to the governors to provide further direction as to the length of such contracts in relation to future appointments. I believe it important, however, in attracting and keeping qualified people to serve as appeal commissioners, that the chief appeal commissioner be able to enter into contracts of some duration. Appeal commissioners are, in my view, entitled to some security of employment. It is also important that we get away from the expectation that “political” change at the provincial level will lead to wholesale changes of personnel in the appeal structures. That kind of politicized environment is ultimately damaging to the credibility of the workers’ compensation system. Part of the goal of the 1989 Munroe report was to avoid those type of shifts.

(b) Backgrounds of Non-Representational Appeal Commissioners

A complaint was voiced that too many non-representational appeal commissioners have backgrounds as worker or union advocates. In fact, only three (including myself) of the 16 non-representational appeal commissioners appointed since June, 1991, have such backgrounds. The Appeal Division annual reports have provided information concerning the diverse backgrounds of the appeal commissioners [see *Workers’ Compensation Reporter*, Vol. 8, at page 644–646].

The primary consideration must be the selection of properly qualified individuals from the ranks of those interested in serving in this quasi-judicial capacity. The backgrounds of the “non-representational” appeal commissioners cannot be determinative in the appointment process. A non-representational appeal commissioner must, in any event, put aside any partisan identification in fulfilling their quasi-judicial responsibilities.

(c) Conflict of Interest

A concern was expressed as to the number of former Board employees acting as advocates or consultants on workers’ compensation claims. The question was raised as to whether there was any established code of ethics concerning ex-Board employees moving immediately to work as advocates in the workers’ compensation system.

All appeal commissioner contracts include “post employment restrictions.” Appeal commissioners have agreed, in their employment contracts, not to act as advocates in connection with workers’ compensation claims for a substantial period follow-

ing resignation or the expiry of their appointment. These restrictions are based on a formula of a six months' period for each year of service as an appeal commissioner, to a maximum of 18 months (after three or more years of service as an appeal commissioner). Appeal commissioners are not restricted from continuing in employment with the Board. These post employment restrictions have been respected by appeal commissioners whose contracts have expired.

PART II: QUESTIONNAIRE

On September 16, 1994, questionnaires were mailed to all appellants and their representatives who had oral hearings within the previous year. From September 1993 to August 1994, the Appeal Division held 155 oral hearings in the following categories:

• Claims issues (workers and employers)	129
• Prevention penalty appeals by employers	19
• Assessment appeals by employers	2
• Section 11 determinations for court actions	5
	155
TOTAL	155

One questionnaire was sent to each person, regardless of the number of hearings they attended (duplications were eliminated prior to mailing). 241 questionnaires were mailed out, of which 11 were returned due to address changes. Of the 230 actually distributed, 104 were completed and returned by October 18, 1994 (a response rate of 45%).

The questionnaire contained 26 questions, as well as space for respondents to add comments. Extensive comments were received.

Respondents were asked to complete the questionnaire anonymously, but to identify themselves by category (Question #1). Set out below are the numbers of questionnaires returned by respondents in each category:

Number	Category
42	Worker who appealed a Review Board finding to the Appeal Division
1	Dependant of a deceased worker who appealed a Review Board finding to the Appeal Division

Number	Category
10	Employer who appealed to the Appeal Division
37	A representative primarily or solely representing workers or their dependants, with one or more appeals to the Appeal Division
8	A representative primarily or solely representing (an) employer(s), with one or more appeals to the Appeal Division
1	A representative acting for both workers and employers, with one or more appeals to the Appeal Division
5	Other
—	
104	TOTAL

The meetings in the community provided direct feedback to the Appeal Division. The questionnaire was used to supplement this, to obtain additional input in a different form. Respondents were asked to complete the questionnaire on an anonymous basis, so they could feel free to make any criticisms which they might have felt uncomfortable in providing in face-to-face meetings in a group situation. The questionnaire also provided an opportunity for direct feedback from individual workers and employers.

The intent was to provide an additional opportunity for input which would be helpful to the Appeal Division, rather than to look for an “evaluation.” The analysis of the results, in terms of the percentage “approval ratings,” was used to identify “attention points,” as well as those areas where the Appeal Division is functioning well. It was not designed to provide a statistically meaningful evaluative report on the functioning of the Appeal Division. The number of questionnaires completed (by employers and employers representatives, in particular) involved a relatively small sample. As well, the written comments revealed that in some instances there was confusion between the actions of Board officers, the Review Board, and the Appeal Division. Some written comments clearly referred to the Board, or the Review Board, rather than the Appeal Division.

Notwithstanding these limitations, the questionnaire did provide useful feedback. The results are discussed in general terms below.

The final issue in the questionnaire was:

	<i>Very Satisfactory</i>	<i>Satisfactory</i>	<i>Not Satisfactory</i>
26. Overall, my assessment of the performance of the Appeal Division since June, 1991, is:	VS	S	NS

Representatives (of both workers and employers) expressed greater satisfaction with the performance of the Appeal Division than individual workers or employers. 100% (35/35) of worker representatives, and 86% (6/7) of employer representatives, described the performance of the Appeal Division since June, 1991, as very satisfactory or satisfactory. Paradoxically, 51% (19/37) of individual workers, and 40% (4/10) of individual employers, found the Appeal Division's performance to be *not* satisfactory.

Throughout the questionnaire, it was generally the case that worker and employer representatives expressed a higher level of satisfaction than individual workers and employers. This difference may be due to evaluations by individual workers or employers being more closely linked to the outcome of their particular cases, whereas representatives have a broader basis for arriving at an assessment. As well, representatives are in a better position to evaluate more objectively the performance of the Appeal Division, against their experience with other components of the workers' compensation system, the former commissioners, or other administrative agencies. As noted above, some of the comments also concerned the actions of Board officers or the Review Board, rather than the Appeal Division. That is not, however, to discount the value of the views expressed by individual workers and employers.

The second issue in the questionnaire concerned the number of oral hearings before the Appeal Division, which the person completing the questionnaire had personally participated in before the Appeal Division *since June, 1991*. The responses were:

Number of Oral Hearings	Number of Responses
0	14
1	26
2 to 3	32
4 to 5	10
6 to 9	9
10 or more	10
TOTAL	101

As the questionnaire was only sent to appellants who had oral hearings, and their representatives, it was surprising that 14 respondents stated they had never had an oral hearing. However, some representatives were shown on the interested parties list and thus received notice of the hearing, a copy of the decision, and subsequently a questionnaire, but did not actually attend the oral hearing with the appellant.

The questionnaire sought feedback on four general topics. The results are described in four sections below, together with selected quotations which illustrate the feedback received:

A. Preliminary Handling of Appeals

The questionnaire stated:

This refers to the procedures carried out by Appeal Division staff before the case was assigned to an Appeal Division panel. Please circle the response which best represents your opinion concerning your contacts with Appeal Division staff.

Question 3. Prompt replies to inquiries

100% (37/37) of worker representatives stated they found the promptness of replies by appeal officers to inquiries to be either very satisfactory or satisfactory. Significantly, 88% (7/8) of employer representatives found this to be *very* satisfactory. 82% (31/38) of workers, and 70% (7/10) of employers, expressed satisfaction (VS or S).

Question 4. Fair procedures

97% (36/37) of worker representatives, and 88% (7/8) of employer representatives, were very satisfied or satisfied. 72% (28/39) of workers expressed satisfaction (VS or S).

However, 60% (6/10) of individual employers stated they were *not* satisfied. The reasons for this dissatisfaction by individual employers are not clear, particularly in light of the satisfaction expressed by 88% (7/8) of employer representatives, of which 63% (5/8) were *very* satisfied.

Question 5. Courteous

95% (92/97) of all respondents found the degree of courtesy shown by Appeal Division staff to be very satisfactory or satisfactory. This question elicited the highest measure of responses in the “very satisfactory” category, amounting to 60% (58/97) of all respondents.

Question 6. Non-bureaucratic

97% (36/37) of worker representatives, and 75% (6/8) of employer representatives were very satisfied or satisfied. However, only 58% (21/36) of workers, and 50% (5/10) of employers, were very satisfied or satisfied.

Based on comments written in the questionnaires, complaints concerning the “bureaucratic” nature of procedures seemed largely to relate to matters such as refusals of requests for suspensions of appeals, oral hearings, or additional time for submissions.

Appeal Division Decision No. 12 (April 11, 1994), concerning the *90 Day Time Frame for Appeal Division Decision-Making*, is pending publication in the *Workers’ Compensation Reporter*. Issues relating to requests for suspensions of appeals, additional time for submissions, withdrawal of appeals pending adjudication, and the general practice of not providing reasons for preliminary decisions on oral hearing requests or on requests for additional time for submissions, are addressed in that decision. I expect that with publication of that decision in the *Reporter*, the Appeal Division practice in these areas will be better understood. I will not repeat here the contents of that decision — in essence, it addressed the legal and practical ramifications of implementing the 90-day time frame for decision-making required by the *Act*. That decision did provide for some additional flexibility with respect to the time frames for submissions.

Question 7. Clear letters

97% (36/37) of worker representatives, and 100% (8/8) of employer representatives, were very satisfied or satisfied. As well, 79% (31/39) of workers and 80% (8/10) of employers were very satisfied or satisfied with the clarity of letters from Appeal Division staff. These results indicate that the appeal officers’ letters are, for the most part, clear to the parties.

B. Oral Hearings**Question 8. Consultation in setting date**

93% (92/99) of all respondents expressed satisfaction with the process of consultation in setting a date for an oral hearing.

Question 9. Convenience of location

90% (90/100) of all respondents expressed satisfaction (VS or S) with the convenience of the location for the oral hearing held by the Appeal Division.

Question 10. Preparedness of panel

100% (37/37) of worker representatives, and 88% (7/8) of employer representatives, expressed satisfaction (VS or S) with the preparedness of Appeal Division panels for oral hearings. However, only 66% (25/38) of workers, and 44% (4/9) of employers, expressed satisfaction (VS or S).

Question 11. Courtesy to participants

Overall, 84% (83/99) of all respondents expressed satisfaction with the courtesy of appeal commissioners in oral hearing. This question received a high measure of responses in the “very satisfactory” category [55% (54/99) of all respondents]. For example, 60% (6/10) of employers stated that this was “very satisfactory,” and a further 20% (2/10) found this satisfactory.

The lowest level of satisfaction was by individual workers, of 68% (26/38 VS or S). However, this must be seen in light of the fact that 100% of worker representatives expressed satisfaction [78% (29/37) very satisfactory, and 22% (8/37) satisfactory]. 88% (7/8) of employer representatives, and 80% (8/10) of employers expressed satisfaction (VS or S).

Question 12. Clarity of explanations

100% (36/36) of worker representatives, and 88% (7/8) of employer representatives, expressed satisfaction (VS or S) with the clarity of explanations given by appeal commissioners in oral hearings. The level of satisfaction for workers was 71% (27/38, VS or S). Individual employers were evenly divided (5/5) between those who answered “Very Satisfactory,” and those who answered “Not Satisfactory.”

Question 13. Ability to really listen / attentiveness

100% (37/37) of worker representatives, and 75% (6/8) of employer representatives, expressed satisfaction with the attentiveness of panels in oral hearings. However, 41% (15/37) of individual workers, and 50% (5/10) of individual employers, said they were “not satisfied.”

Question 14. Even-handed treatment of parties

100% (37/37) of worker representatives, and 75% (6/8) of employer representatives, expressed satisfaction (VS or S). 63% (22/35) of workers, and 67% (6/9) of employers, expressed satisfaction (VS or S).

Question 15. Allowed adequate time for presentation of evidence and argument

100% of both the worker representatives (37/37) and employer representatives (8/8) expressed satisfaction. 79% (30/38) of workers, and 70% (7/10) of employers expressed satisfaction (VS or S).

C. Written Decisions

Question 16. Decision issued within 90 days of hearing

93% (96/103) of all respondents expressed satisfaction (VS or S) with the issuance of a decision within 90 days of the date of the oral hearing.

Question 17. Decision set out factual and medical evidence on which it was based

97% (35/36) of worker representatives, and 88% (7/8) of employer representatives, expressed satisfaction (VS or S) with the manner in which the Appeal Division decision set out the factual and medical evidence on which it was based. 55% (21/38) of workers, and 50% (5/10) of employers, expressed satisfaction (VS or S).

Question 18. Decision addressed all relevant issues

92% (33/36) of worker representatives expressed satisfaction (VS or S), as to whether the Appeal Division decision addressed all relevant issues. However, 51% (20/39) of individual workers, 80% (8/10) of individual employers, and 50% (4/8) of employer representatives, stated they were “not satisfied.”

Overall, 38% (38/99) of all respondents replied “not satisfactory” on this issue. This was the highest level of dissatisfaction shown on any issue.

The Appeal Division has sought to provide concise and clear reasons for its decisions. Not all arguments raised in submissions have necessarily been specifically addressed in written reasons provided for a decision, however. It seems that where reasons are not given concerning all of the arguments raised in the appeal, the unsuccessful party may feel that their arguments were not heard.

To respond to this concern would likely require Appeal Division panels to provide lengthier reasons for decisions, to explain both the reasons for their decision on the central matter in issue, and to explain their reasoning with respect to the each argument raised in the case. This could lead to a loss of clarity, focus, and readability in the decision.

Where it is reasonably feasible to do so, without unduly complicating the decision, it is generally desirable to explain both the basis on which the panel reached its conclusion, and the reasons as to why the unsuccessful party's arguments were not accepted.

Given these competing concerns, and in light of the independence of Appeal Division panels, I do not consider it appropriate to suggest to appeal commissioners specifically how they resolve this conflict. However, this is clearly an area of concern. In response to this finding, the Appeal Division will hold a session on decision-writing which will emphasize the importance of providing reasons which respond to all the issues raised in the appeal (and, particularly, to the arguments raised by the unsuccessful party). Consideration will also be given to encouraging a "plain language" format where feasible.

Question 19. Decision clearly analysed applicable law and policy

91% (31/34) of worker representatives expressed satisfaction (VS or S), as did 88% (7/8) of employer representatives, with the clarity of analysis of applicable law and policy in Appeal Division decisions. 53% (21/40) of individual workers and 60% (6/10) of individual employers, expressed satisfaction (VS or S).

Question 20. Overall readability

100% of both worker representatives (35/35) and employer representatives (8/8) expressed satisfaction (VS or S) with the overall readability of Appeal Division decisions. 71% (27/38) of workers, and 90% (9/10) of employers, expressed satisfaction (VS or S).

D. Published Decisions

Apart from the section of the questionnaire dealing with the published decisions of the Appeal Division, the response rate for each question averaged about 94% (of the 104 completed questionnaires). However, only 60% of those who completed the questionnaire replied to the three questions concerning the published decisions of the Appeal Division. Many workers commented that they could not answer these questions as they had not heard of the *Workers' Compensation Reporter*. They expressed concerns as to its lack of availability.

Of the 104 completed questionnaires, 54 respondents (52%) stated they had read at least one published Appeal Division decision.

Question 21. How many unpublished Appeal Division decisions have you read?

0	33
1	9
2 to 10	24
11 to 20	10
21 to 50	5
more than 50	5
	—
TOTAL	86

Question 22. How many Appeal Division decisions have you read published in Volumes 7 to 10 of the *Workers' Compensation Reporter*?

0	38
1 to 5	16
6 to 20	16
21 to 50	8
more than 50	14
	—
TOTAL	92

Question 23. Clarity of analysis of applicable law and policy

97% (33/34) of worker representatives, and 63% (5/8) of employer representatives, expressed satisfaction (VS or S) with the clarity of analysis of applicable law and policy in decisions of the Appeal Division published in the *Workers' Compensation Reporter*. 64% (9/14) of workers, and 86% (6/7) of employers, expressed satisfaction (VS or S).

Question 24. Overall readability

100% (34/34) of worker representatives, and 88% (7/8) of employer representatives, expressed satisfaction (VS or S) with the overall readability of published Appeal Division decisions. The level of satisfaction for individual workers was 69% (9/13), and 86% (6/7) for individual employers (VS or S).

Question 25. Usefulness as a source of guidance to the Board and the workers' compensation community

85% (53/62) of all respondents expressed satisfaction (VS or S) with the usefulness of Appeal Division decisions published in the *Workers' Compensation Reporter* as a source of guidance to the Board and the workers' compensation community. This was highest

among worker representatives (97%, 32/33) and workers (75%, 9/12). 71% (5/7) of individual employers expressed satisfaction (VS or S), while 63% (5/8) of employer representatives stated they were “satisfied.”

CONCLUSION

It is not possible to summarize in this report all of the feedback which was received and considered, and which contributed to this report. The various forms in which comments were provided were all productive. The initiative provided useful information concerning those areas requiring further attention, or on which specific changes were required. The feedback also confirmed that the Appeal Division has succeeded, in many concrete ways, in establishing itself as a credible appeal body for the workers’ compensation system.

It was, however, instructive to identify the dissatisfaction on the part of some *individual* workers and employers. While the worker and employer *representatives* who have the most involvement with the workers’ compensation system seem, in large measure, to approve of the methods of operation of the Appeal Division, this was less so with individual workers and employers. This points, in my view, to a need to improve communication with individual workers and employers.

Bearing in mind the historical background to the creation of the Appeal Division in June, 1991, the fact that it has in three years succeeded in establishing some measure of credibility is no small achievement. Clearly, however, the Appeal Division must continue to build on what has been accomplished. It might be argued that the unhappiness or distrust manifested in the comments from some workers and employers are inevitable in a system where a case before the Appeal Division has a “winner” and a “loser.” I believe, however, that better communication with the affected individuals, both workers and employers, can be achieved. The satisfaction expressed by both worker and employer representatives concerning many aspects of the Appeal Division’s functioning supports the conclusion that, where achieved and understood, quality service will be recognized and respected. This positive feedback is also useful, in conveying to those working within the Appeal Division that their efforts can make a difference. Overall, the feedback received reinforces our efforts towards building an Appeal Division which adjudicates fairly individual appeals, and in so doing, provides interpretive guidance to the workers’ compensation system.

[Note: A copy of this decision is located in the W.C.B. library, together with the following appendices:

1. *list of meetings with worker and employer groups, attended by appeal commissioners during May–June, 1994;*
2. *Appeal Division questionnaire;*
3. *summary of court decisions on petitions for judicial review of decisions by the B.C. Workers' Compensation Board;*
4. *transcript of comments provided in the comments sections of the 104 questionnaires returned by October 18, 1994.]*



REPORTER

Occupational Diseases Standing Committee Third Annual Report

Date: January 10, 1995

The mission of the Occupational Diseases Standing Committee (O.D.S.C.) is to review the occupational diseases policies of the Workers' Compensation Board and to make recommendations for change to the governors. It is one of only two permanent committees of the governors.

The O.D.S.C. Charter provides that "the Chair of the Committee shall make an annual report of accomplishments and works in progress to the Governors for each calendar year." The report is to review the Charter and make recommendations for any changes perceived necessary.

During the past year the O.D.S.C. Charter was amended:

1. To change the name of the committee from the "Industrial Diseases Standing Committee" to the "Occupational Diseases Standing Committee" and to substitute the more modern and descriptive term "occupational disease" in the place of the term "industrial disease" wherever it appeared in the Charter. Similar amendments were made in the statute.
2. To change the structure of the O.D.S.C. by adding the president/C.E.O. of the Board as an ex-officio non-voting member. This addition was made, in part, in recognition of the importance to the Board's operations of the matters that are within the mandate of the committee.

The O.D.S.C. Charter has served the O.D.S.C. and the governors well over the past year and no further changes are necessary. No issues of conflicts of interest or of any other ethical nature concerning O.D.S.C. members arose.

Committee Members

The governor members of the O.D.S.C. during 1994 and their terms of appointments to the committee are as follows:

Worker Representatives:

Leif Hansen	(to January, 1996)
Stanley J. Shewaga	(to December 3, 1996)

Employer Representatives:

Robert Hugh Buckley	(to December 3, 1994)
Horst Sander	(to December 6, 1996)

Public Interest Representative:

Bonnie Hayes	(to May 23, 1996)
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Chairman:

James E. Dorsey	(to December 16, 1994)
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Bylaws

The operating protocol set out in Bylaw No. 1 of the O.D.S.C. (published in the *Workers' Compensation Reporter*, Vol. 8: page 613) has served the O.D.S.C. and the governors well and no changes are considered necessary.

Summary of Public Hearing

In February 1994 the O.D.S.C., through its Secretariat, issued a "Summary of Public Hearing on Occupational Disease Policy" following the public hearing in December 1993 surrounding a redraft of Chapter 4 of the *Rehabilitation Services and Claims Manual* (the *Manual*). The summary document integrated many of the key points made in the submissions with a reproduction of the redrafted chapter. More than 400 copies of the summary document were sent to interested members of the compensation community. It serves as a useful index to the many detailed submissions which were made.

New Chapter 4 — Compensation for Occupational Disease

The main expression of the governors' published policy on compensation for occupational diseases is contained in Chapter 4 of the *Manual*. In 1992 the O.D.S.C. began a consultative process which had as its goal the upgrading of that policy statement. The public hearing held in December 1993 was a significant step in that consultative process.

To carry that process forward the O.D.S.C. established an Ad-Hoc Committee (A.H.C.) of:

- Suromitra Sanatani, director, Provincial Affairs for B.C. and the Yukon, Canadian Federation of Independent Business;
- John Weir, director, Occupational Health and Safety, B.C. Federation of Labour; and
- Dennis Campbell, co-ordinator of the O.D.S.C. Secretariat.

Mr. Grant McMillan, vice-president, O.S.H., Council of Construction Associations, participated in the A.H.C. in the place of Ms. Sanatani when she was unavailable. As such there was strong representation of the views of employers, workers, and of those within the compensation system who are responsible for administering the policy.

In April 1994 the A.H.C. began a process of reviewing the redraft of Chapter 4 in light of the input received from the public consultations, and of revising the text where improvements in language could be made or where specific concerns could be addressed. Although most changes to the text were aimed at clarifying the language of existing policy and practices, the A.H.C. also made recommendations which involved substantive changes. A.H.C. members presented their recommendations at regular meetings of the O.D.S.C. and, where necessary, received O.D.S.C. direction. Through this consultative process involving the members of the O.D.S.C., and after many hours of work, the A.H.C. had by October 4, 1994 made recommendations with respect to the entire chapter.

On October 4, 1994 the O.D.S.C. passed a unanimous resolution to recommend adoption of the rewritten chapter as governors' published policy. At the governors meeting held on November 7, 1994 that recommendation was unanimously approved, and a new Chapter 4 was adopted with an effective date of January 1, 1995.

The O.D.S.C. and the governors consider this to be a major accomplishment which will benefit all members of the compensation community. In addition to making occupational disease policy more understandable, the new chapter among other things:

- adds 15 diseases to the list of occupational diseases recognized by regulation, including a number of activity- or motion-related soft tissue disorders previously treated as personal injuries;

- articulates for the first time a framework for the adjudication of the diverse group of activity-related soft tissue disorders sometimes referred to as “R.S.I.”;
- removes several absolute bars to the consideration of certain disease claims.

The O.D.S.C. and governors are indebted to the members of the A.H.C. and the community who made representations for their candid and constructive participation in this process.

Schedule B Review

Since shortly after it was established, the O.D.S.C. has carried out a review of each of the items listed in Schedule B of the *Workers Compensation Act*. This review has included discussion of existing Board policies and practices in the administration of claims for each of the diseases listed. Consideration has been given to representations from the public, to the number of claims experienced, to the degree to which the schedule has been utilized, and to medical, scientific, and other information relative to each such item.

Based on this review, the O.D.S.C. recommended to the governors that, until otherwise recommended by the committee, Schedule B be retained in its present form, subject to a further process of assessment and review to be undertaken with respect to six items, namely:

Item #	Description of Disease (Current)
3A	Bilateral diffuse pleural thickening or fibrosis, over 5 mm thick and extending over more than a quarter of the chest wall.
5	Heart injury or disease including heart attack, cardiac arrest or arrhythmia, disease of the pericardium, heart muscle or coronary arteries.
8	Respiratory irritation.
12	Bursitis.
13	Tenosynovitis, tendinitis.
16	Vascular disturbances of the extremities.

That recommendation was approved by the governors along with the O.D.S.C.'s request for funding to obtain expert medical/scientific assessments with respect to each of these six items of Schedule B.

Arrangements were made to obtain expert medical/scientific assessments based on a review of current literature, and dealing with causative relationships between the scheduled disease and occupational activities, as follows:

Item #	Expert
3A and 8	Dr. Moira Yeung (respirologist, professor of medicine, Occupational and Environmental Lung Diseases Unit and Occupational Hygiene Program, U.B.C.)
5	Dr. Henry F. Mizgala (cardiologist, professor of medicine, U.B.C.)
12 and 13	Dr. William D. Regan (orthopaedic surgeon, Allan McGavin Sports Medicine Centre, U.B.C.)
16	Dr. Henry K. Litherland (vascular specialist)

Comprehensive reviews of those assessments, including independent peer reviews, will be undertaken in the near future. Further recommendations will be developed with respect to these six items following appropriate consultations and discussions, including, in some cases, representations from affected members of the compensation community.

Claims Information

With the support of the O.D.S.C., the Board initiated a claims statistics program commencing August 16, 1993. Attached as Table 1 is the Occupational Disease Services Claims Summary for the period January 1, 1994 to December 31, 1994, and as Table 2 is a summary of payments by disease category for the same period.

The O.D.S.C. has also reviewed information on the 25 employers producing the highest number of occupational disease claims where more than health care benefits were paid. Those 25 employers, listed in Table 3, accounted for 16 percent of all claims administered in O.D.S. in 1993.

Amendments to the *Workers Compensation Act*

The O.D.S.C. entered into discussions regarding possible amendments to:

1. Section 55 of the *Act*, which deals with time limits for making an application for compensation, as it relates to claims for occupational diseases; and
2. Section 7 of the *Act* in regards to transferring authority from the Legislature to the Board to make regulations to amend Schedule D of the *Act* (in terms of the ranges of hearing loss, methods or frequencies for measuring hearing loss, and percentages of disability).

On August 26, 1994, Bill 13 (*Workers' Compensation Amendment Act, 1994*) was proclaimed, effecting a number of amendments to the *Act* including amendments to Sections 7 and 55, and substituting the term "occupational disease" in the place of "industrial disease" wherever it appeared in the *Act*.

The committee will continue to discuss possible amendments to Section 6 of the *Act*.

Workplace Stress Claims

The O.D.S.C. and the governors have acknowledged that a comprehensively developed statement of policy on workplace stress claims is a matter of priority in order to assist all members of the compensation community and in particular those called upon to adjudicate such claims. At the same time, there is recognition that complex issues are involved which will require ongoing consultation with the community.

The O.D.S.C. has reviewed and discussed materials on the approach taken with respect to such claims in all Canadian jurisdictions and a number of U.S. jurisdictions, focusing on the policy development process undertaken in the province of Ontario. At the request of the O.D.S.C., the Board's Policy and Research Department is preparing materials dealing with the deficiencies and ambiguities of present policy in this area, and identifying options for policy development.

Prevention

Over the past year, the O.D.S.C. has continued to have the benefit of the participation of Dr. Neva Hilliard, director of Central Operations, Prevention Division. Her experienced counsel and expert advice were greatly appreciated and respected.

Vocational Rehabilitation

Dr. Christopher Cooke of the Board's Functional Evaluation Unit reported to the O.D.S.C. on the progress of the "R.S.I. — Early Intervention Pilot Project" being conducted in conjunction with O.D.S. Dr. Cooke will be compiling the results of the project in the early part of 1995 and will be presenting these results and his recommendations to the committee.

The O.D.S.C. also acknowledges the regular participation at its meetings of Len McNeely, vice-president, Compensation Services, Dick Hurst, director of Central Client Services, and Diane Gerwin, Client Services manager, Occupational Disease Services. Mr. Hurst and Mrs. Gerwin frequently report to the committee on initiatives and service outcomes in O.D.S. The O.D.S.C. also continues to monitor the new structure adopted by the Board for the administration of claims for pneumoconiosis.

Other Issues

The O.D.S.C. has over the past year considered materials on a variety of matters including gastric cancers, cancer among firefighters, silica and lung cancers, Meniere's disease, and the adjudication of claims for occupational asthma. Discussion of these and other issues will carry forward into 1995.

Independent Research

The O.D.S.C. did not commission any research or other work in 1994 requiring funding approval from the governors other than the expert medical/scientific assessments on the six items of Schedule B referred to earlier.

Secretariat

The activities of the O.D.S.C. continue to be supported by the O.D.S.C. Secretariat. Dennis Campbell (co-ordinator) and Sharon Slobodian (administrative/secretarial support) continued to staff the Secretariat throughout the past year. The Secretariat is attached to Occupational Disease Services and can be reached at:

O.D.S.C. Secretariat
Attention: D. Campbell
Workers' Compensation Board of B.C.
6951 Westminster Highway
Richmond BC V7C 1C6

Telephone: 604 279-8103 Fax: 276-3014

The O.D.S.C. is especially indebted to Dennis Campbell for the leadership he has taken in the Secretariat and in support of the committee's work, particularly in relation to the adoption of the new Chapter 4 of the *Manual*.

Priorities and Work in Progress

Much of the O.D.S.C.'s work in 1995 will focus on the six items of Schedule B identified earlier. Further priorities will include workplace stress and Schedule D (compensation for non-traumatic hearing loss). Consultation with the community will be an integral part of that work. The O.D.S.C. also looks forward to the participation of the Board's president/C.E.O., Mr. Dale Parker, as a new member of the committee.

Conclusion

In calendar year 1994, the O.D.S.C. met seven times and facilitated the work of its Ad-Hoc Committee; unanimously recommended the adoption of a new statement of policy on compensation for occupational diseases which was adopted by the governors (Chapter 4); formulated recommendations with respect to Schedule B and identified six items that required further assessment; took steps to obtain expert medical/scientific assessments with respect to those six items of Schedule B; continued discussions which contributed to several important amendments to the *Act* which impact occupational disease compensation; and generally continued to lay the foundations for the fulfilling of its ongoing mandate.

Table 1**O.D.S. CLAIMS SUMMARY — January 1, 1994 to December 30, 1994**

Disease Description	Total Claims	Disallow	Accept	Info Only	Reject	Suspend ¹	S/C'd Out	W/L Paid	H.C.B. Only
Allergy	113	26	41	0	5	39	2	28	13
Asthma	101	22	59	3	0	14	3	35	24
Bursitis	314	38	184	0	2	70	20	131	53
Cancer	16	12	0	0	0	3	1	0	0
Carpal Tunnel	1,063	230	582	1	11	156	83	360	222
Decompression	8	1	4	0	0	3	0	4	0
Dermatitis	453	22	300	0	1	119	11	169	131
Epicondylitis	1,085	119	709	3	6	148	100	354	355
Exposure	402	154	54	119	6	54	15	24	30
Ganglion	6	5	0	0	0	0	1	0	0
H.A.V.S.	44	6	23	0	0	13	2	3	20
Heart	53	33	7	0	0	13	0	6	1
Infectious Disease	61	21	30	1	1	6	2	25	5
Inhalation	118	13	74	1	1	26	3	38	36
Nerve Entrapment	32	14	13	0	0	1	4	7	6
Other	509	173	90	6	1	174	65	44	46
Plantar	95	48	22	1	1	8	15	18	4
Poisoning	17	5	8	1	0	2	1	7	1
Respiratory	124	38	63	2	0	16	5	29	34
R.S.I.	286	55	90	0	2	61	78	44	46
Scabies	31	5	13	1	0	9	3	10	3
Stress	322	290	2	0	3	13	14	2	0
Tendonitis	3,339	393	2,089	12	18	590	237	1,360	729
TOTALS	8,592	1,723	4,457	151	58	1,538	665	2,698	1,759
% Of All Claims		20.05%	51.87%	1.76%	0.68%	17.90%	7.74%	31.40%	20.47%

¹ September 1994 — Suspend category was separated to include: (a) No reply from client; (b) Client does not wish to claim; (c) other _____. Monthly reports from September 1994 include the new categories.

Table 2

O.D.S. CLAIMS SUMMARY — January 1, 1994 to December 30, 1994

Disease Description	Money Paid on A.W.L.
Allergy	\$ 22,061.46
Asthma	77,343.38
Bursitis	220,854.94
Cancer	0
C.T.S.	1,180,440.10
Decompression	11,296.69
Dermatitis	229,700.75
Epicondylitis	871,483.89
Exposure	9,963.74
Ganglion	0
H.A.V.S.	0
Heart	14,018.14
Infectious Disease	22,985.41
Inhalation	19,186.89
Nerve Entrapment	23,261.89
Other	64,664.13
Plantar Fasciitis	39,730.26
Poisoning	11,749.97
R.S.I.	55,284.93
Respiratory	22,263.87
Scabies	1,291.30
Stress	7,346.12
Tendonitis	1,958,250.20
TOTAL	\$4,863,178.06

Table 3**FIRMS PRODUCING THE 25 HIGHEST TOTAL
NUMBER OF O.D.S. CLAIMS IN 1993**

Top 25 Rank — O.D.S.	Top 25 Rank — Trauma	Firm Number	Firm Name	No. of O.D.S. Claims Accepted in 1993 ¹ (excludes H.C.O. claims)	O.D.S. Cost ²	O.D.S. Cost/ Claim
1	1	8467	Canada Safeway Ltd.	100	\$540,870	\$5,409
2	4	461892	Great Pacific Industries Inc./Overwaitea	45	\$233,576	\$5,191
3	3	4000	Provincial Government	38	\$152,578	\$4,015
4	5	103400	MacMillan Bloedel Ltd.	29	\$164,559	\$5,674
5	6	7016	Canadian Airlines International Ltd.	27	\$61,854	\$2,291
6	10	2580	Cominco Ltd.	26	\$170,198	\$6,546
7	-	336609	Lilydale Co-operative Ltd.	26	\$83,776	\$3,222
8	11	1299	B.C. Tel	24	\$49,552	\$2,065
9	8	5275	Vancouver General Hospital	24	\$37,853	\$1,577
10	-	22429	Prince Rupert Fishermen's Co-op Assn.	21	\$36,066	\$1,717
11	-	32268	Weldwood of Canada Ltd.	21	\$104,896	\$5,245
12	-	398303	Colander Restaurant Ltd.	18	\$6,386	\$355
13	2	1770	City of Vancouver	17	\$100,336	\$5,902
14	-	202512	Fleetwood Sausage Ltd.	17	\$75,923	\$4,466
15	7	355094	Greater Victoria Hospital Society	16	\$27,509	\$1,719
16	-	34725	Fletcher Challenge Canada Ltd.	15	\$89,009	\$5,934
17	-	137251	Green River Log Sales Ltd.	14	\$31,502	\$2,250
18	-	395721	Pacific Regeneration Technologies Inc.	14	\$14,232	\$1,017
19	15	9406	Liquor Distribution Branch	13	\$39,583	\$3,045
20	-	1290	B.C. Packers	12	\$12,639	\$1,053
21	22	5400	Government of Canada	12	\$76,074	\$6,339
22	-	114907	Weyerhaeuser Canada Ltd.	12	\$56,355	\$4,696
23	-	223098	B.C. Fruit Packers Co-operative	12	\$47,642	\$3,970
24	-	423074	Pacific National Group Ltd.	12	\$11,618	\$968
25	-	468606	J.D. Sweid Ltd./Hampton House	12	\$44,131	\$3,678
TOTAL				577	\$2,268,717	

¹ Includes only claims first paid in 1993. Also excludes all claims for hearing loss.

² Includes short-term disability benefits and any pension reserves or cash awards established on these claims in 1993. Costs do not include health care benefits or vocational rehabilitation payments.



1994 Annual Report of the Freedom of Information and Protection of Privacy Office at the Workers' Compensation Board

Date: February 10, 1995

A. Introduction

The *Freedom of Information and Protection of Privacy Act* ("F.I.P.P.") came into force on October 4, 1993. Thus 1994 was the first full year of operation under the new legislation for the W.C.B.'s Freedom of Information and Protection of Privacy ("F.I.P.P.") Office. As might be expected with any new legislation, the F.I.P.P. statute posed some interesting and unexpected challenges for the W.C.B.'s F.I.P.P. office. The F.I.P.P. office has experienced a highly productive year in what has been a tremendous learning experience. This report outlines the learning experience of the F.I.P.P. office during the last year, explains the achievements of the office, provides information, including statistics, about the types of requests and other work performed by the staff, and proposes goals for the future.

B. Legislative Framework

The purpose of the F.I.P.P. legislation is to make public bodies, such as the W.C.B. (the "Board") more accountable to the public by disclosing general records to the public and personal information to people to whom it pertains. The statute also has the purpose of protecting personal privacy and other privacy interests. Openness, accountability and privacy protection are central goals of F.I.P.P. The statute establishes rules for disclosure and related exceptions, as well as rules for collection, retention, security, and correction of personal information. F.I.P.P. confers on the heads of public bodies the duty of ensuring that public bodies comply with its requirements. Under F.I.P.P. legislation, it is the chair of the W.C.B. Board of Governors that is the head of the public body.

C. The W.C.B. F.I.P.P. System — The F.I.P.P. Contacts

Chair's Instruction Number 1, included as Appendix "A" to the 1993 *F.I.P.P. Annual Report*, establishes a F.I.P.P. system throughout the Board to facilitate compliance with

the F.I.P.P. legislation. Under Section 66 of F.I.P.P., the chair has delegated authority and specific tasks to the Freedom of Information coordinator, the Executive Committee, the vice-president of Prevention, and directors and managers throughout the Board.

The core of the F.I.P.P. system throughout the Board are “F.I.P.P. contacts” in each department who have the responsibility of responding to requests for records and information from the F.I.P.P. office. In this way, the F.I.P.P. office has the ability to comply with the statutory deadlines in responding to requests for records under the legislation. The F.I.P.P. office identifies the type of records it requires to satisfy the request made under the statute, requests those records from the F.I.P.P. contact in the appropriate department at the Board, and seeks advice from that person as to the manner in which the F.I.P.P. legislation might apply to the records in question.

The F.I.P.P. office has achieved success in responding to requests in a speedy and efficient manner; in large part this success is due to the efforts of the F.I.P.P. contacts.

However, particularly in the last several months of 1994, F.I.P.P. staff have noticed increasing difficulty with obtaining accurate and timely response to their requests for records from some departments in the Board. An increasing number of requests from the F.I.P.P. Department places a burden on the F.I.P.P. contacts throughout the Board. The burden on F.I.P.P. contacts is passed on to the F.I.P.P. staff, who must have complete and accurate records, in timely fashion, in order to respond to requests within the deadlines specified in the legislation.

As requesters gain experience with the legislation, they become increasingly sophisticated and learn to frame their requests in the broadest possible terms, thus increasing the potential number of records that must be searched and reviewed by both the F.I.P.P. contacts and the F.I.P.P. staff. It is management’s view that the most effective way to deal with the potentially unmanageable workload is to firmly apply the fee provisions of the statute wherever possible. To illustrate the added demands made on staff the workload in January 1995 alone is estimated to be in the 12 to 15 F.T.E. range.

The F.I.P.P. contact group is a valuable source of information and input into the development of policies and procedures with F.I.P.P. implications at the Board. There were two F.I.P.P. contact group meetings held in 1994. At the second meeting, the F.I.P.P. contacts participated in a review of a proposed “Information Asset Protection Policy,” offered information and suggestions regarding the implications to Board operations of social insurance numbers collected by health care bodies (included in the definition of public bodies under F.I.P.P. legislation in November of 1994), and provided information to assist in the development of protocol agreements with the Office of the Chief Coroner and the municipal police departments.

Given the critical connection between the F.I.P.P. contacts and the success of the F.I.P.P. Department, regular F.I.P.P. contact meetings are a necessity. The lack of a full-time F.O.I. coordinator for most of 1994 caused a hiatus in the regular meetings. The goal for 1995 is to schedule more F.I.P.P. contact meetings.

D. The F.I.P.P. Office — Change and Growth

The F.I.P.P. Department is part of the Board's Legal Services Division.

Before the F.I.P.P. legislation was proclaimed in October of 1993, it was not possible to predict the workload requirements which the new legislation would produce or to forecast accurately the staff requirements for the F.I.P.P. office.

In 1993, the office had five permanent staff who joined at various points during the year. That staff was comprised of: an F.O.I. coordinator, a records management officer, a training officer, a secretary and a clerk. The plan was to have the F.O.I. coordinator deal with most of the requests and also to develop freedom of information policies for Board departments, provide legal opinions to Board staff where required, conduct privacy audits, develop inter-agency protocol agreements, and so on. The records management officer and training officer were to focus on their respective specialties by developing and keeping up to date the public records index, directory of records and other records management requirements for the Board, and to train Board staff on the interpretation and application of F.I.P.P. legislation. The records management officer and training officer were also to act as analysts in assisting the F.O.I. coordinator to respond to F.O.I. requests.

The original F.O.I. coordinator, Greg Levine, left in January of 1994. The F.I.P.P. office was fortunate to obtain Mr. Mark Powers, a barrister and solicitor with the Board's Legal Services Division, as a part-time F.O.I. coordinator from February through August of 1994. Ms. Heather McDonald was appointed to the position in August 1994.

Early in 1994 it became apparent that the number and the nature of the requests far exceeded the forecast amount of time required to respond. The reality of the situation is that a typical request requires substantial time to acknowledge, locate and retrieve the records, analyze the records with the requirements of the legislation in mind, interpret and apply the legislation, make any required consultations with third parties, perform any necessary severing of information, and write a decision letter to the requester. While some requests may require only several hours to complete, other requests involving a large number of records may take several weeks, full-time, to complete. We have estimated that on average it takes seventeen hours of analyst time to respond to a request plus a yet undetermined amount of time by the designated F.I.P.P. contact.

The impact of the workload generated by the proclamation of the F.I.P.P. legislation in 1993 meant that in 1994, the F.O.I. coordinator and F.I.P.P. officers were required to devote virtually all of their time to responding to F.I.P.P. requests. This meant that very little time could be spent in meeting other demands such as policy development, training, privacy audits, and so on.

Confronted with this reality, steps have been taken to change the staffing complement of the F.I.P.P. Department. The job descriptions of the records management officer and training officer positions have been amalgamated into a "F.I.P.P. analyst" position. Susanne Lloyd and Susan Chew are the two analysts; their expertise and dedication have been instrumental to the success of the F.I.P.P. office. The F.I.P.P. office will continue to benefit from Ms. Lloyd's records management expertise and Ms. Chew's training skills.

The F.I.P.P. office is in the process of adding two analysts and a secretary. This should provide adequate staff to meet Board needs including the holding of training sessions, conducting privacy audits and participating in policy development.

E. F.I.P.P. Office Systems

The F.I.P.P. office continues to use its file classification system, file review system, request tracking system and a legal opinion collection. The office employs the provincial government's A.R.C.S. classification for records. The Senior Executive Committee has recently approved the establishment of a Records Management Committee to review the Board's records management as a whole. Ms. Lloyd of the F.I.P.P. Department is chair of that committee. The goal is to have a Board-wide records management system that will comply with provincial government legislative standards. This will, in the long term, make for more efficient and effective responses to F.I.P.P. requests for records.

The F.I.P.P. Department's computerized request tracking system is a sophisticated system which the F.I.P.P. office has found to be essential in tracking and responding to requests. There has been interest expressed by other public bodies and thus there is a potential for marketing it to other agencies.

Because of the workload requirements in 1994, no time could be spent on documenting office procedures in a written manual for the use of present and future F.I.P.P. staff. A goal for 1995 is to develop such a manual.

The budget/expenditures for the F.I.P.P. office in 1994 are set out in Table 1.

F. Initiatives in Respect of F.I.P.P. Compliance

The 1993 *F.I.P.P. Annual Report* pointed out that full compliance with F.I.P.P. legislation will take some years to achieve. It takes time for interpretation of the legislation to be developed and settled by the Office of the Information and Privacy Commissioner and the courts. It also takes time for the values embedded in the F.I.P.P. legislation to become part of the Board's corporate culture and for Board staff to become trained in and familiar with procedures regarding normal course of business disclosure, disclosure which should be dealt with by the F.I.P.P. office, and privacy protection. A brief summary of the areas of initiative to bring the Board into compliance with F.I.P.P. is now provided:

Policy Review and Development: The F.I.P.P. office participated in reviewing disclosure policies in the *Assessments Manual*, the *Rehabilitation Services and Claims Manual*, and the *Prevention Division Manuals*. The F.I.P.P. office also assisted in the development of a normal course of business disclosure policy for the Statistics Department.

Changes to the *Assessments Manual* disclosure policy may be necessary, depending on the outcome of a judicial review proceeding scheduled for March of 1995. Otherwise, the disclosure policy was considered to be working well.

The disclosure policy in the *Prevention Division Manual* was also considered to be working well. A need was identified for better communication between officers of the operating divisions and the F.I.P.P. office, so that F.I.P.P. requests could be responded to accurately and efficiently. In 1994, initiatives were taken to improve and those will continue in the coming year.

A committee of eight people, including the F.O.I. coordinator, met in November and December of 1994 to review and evaluate the disclosure policy in the *Rehabilitation Services and Claims Manual*. The committee concluded that only minor changes should be made to the disclosure policy itself, although it identified problems in applying the policy which could be cured through such measures as adequate training on F.I.P.P. issues. Its report to the Senior Executive Committee was delivered on January 11, 1995.

Administrative Procedure Review: On an ongoing basis, various departments throughout the Board routinely contact the F.I.P.P. office for advice on their administrative procedures and the impact of the F.I.P.P. legislation. The F.O.I. coordinator and analysts have met with department representatives, including those from Human Resources, Computer Security, Facilities, Compensation Services and the Appeal Division, to provide suggestions and advice on various policies and procedures.

The F.I.P.P. Policy Manual: The F.I.P.P. policy manual, developed in 1993, has been updated in 1994. It provides guidance in respect of F.I.P.P. procedures as well as an overview of the legislation. In 1993, it was made available to the Executive Committee and F.I.P.P. contacts. In 1994, the manual was provided to Workers' and Employers' Advisors and other members of the public on request. In 1995, the manual will be available through the Films and Posters department of the Board.

Information and Privacy Branch Policy and Procedure Manual: This two-volume manual is published by the Information and Privacy Branch of the Ministry of Government Services. It provides specific direction and advice on the interpretation and application of the F.I.P.P. legislation. It was updated in 1994. The advice in this manual is in no way binding on public bodies, but it is a valuable resource for the F.I.P.P. staff when responding to complicated or unusual requests. F.I.P.P. staff also regularly attend meetings with other public bodies held under the auspices of the Information and Privacy Branch. In this way, we can learn from the F.I.P.P. experiences of other public bodies.

Inter-agency agreements: The F.I.P.P. coordinator drafted a protocol to deal with the exchange of records between the Board and the coroner's office; each party recognizes the other's statutory authority to compel the production of information. The parties are working together to finalize the language in the protocol so that it can be signed and implemented in 1995.

As well, the F.I.P.P. coordinator arranged a meeting with representatives of the municipal police forces, which forces became public bodies under the F.I.P.P. legislation in November of 1994. A protocol between the Board and municipal police forces is in the draft stage.

Creation and Maintenance of the Directory of Records: The F.I.P.P. legislation requires the government to publish a directory of all of the records held by public bodies. Contents of the directory include: a generic list of administrative records which can be assumed to exist in all public bodies, lists of the specific operational records held by each public body (e.g. claim files, assessment firm files, first aid certification files, rehabilitation centre treatment files), lists of all the policy and procedure manuals used by each public body to organize its various functions, and lists of the Personal Information Banks maintained by each public body.

The Information and Privacy Branch is planning to issue a new edition of the Directory of Records in 1995.

F.I.P.P. Training: Board-wide training on F.I.P.P. issues commenced in April of 1993. It was intended to be a two-phase program, with Phase I training providing an overview of key concepts of the F.I.P.P. legislation. The main goal was to raise staff sensitivity to

the issues of access and privacy and F.I.P.P.'s potential impact on W.C.B. disclosure practices. Phase I training was completed in August of 1993. Phase II training is focused on a customized application of F.I.P.P. issues to specific records in a particular department or area of the Board. The curriculum deals with scenarios and severing exercises to familiarize staff with issues pertinent to their operating area.

While some training was undertaken in 1994 much remains to be completed in 1995.

Once the necessary staff is in place, refresher/enhancement training will be delivered to all areas of the Board, as well as training for new Board employees.

F.I.P.P. Communications Strategy: The F.I.P.P. Bulletin Board continues to provide a basic description of F.I.P.P. The F.O.I. coordinator also provided advice to update the pamphlet provided to workers, in the area of their rights to disclosure of their claim files.

Legal Opinions: The F.O.I. coordinator has provided numerous legal opinions to many Board departments, both by way of formal legal memoranda and verbal advice.

G. F.I.P.P. Activities

The F.I.P.P. legislation permits requests for records in the custody or control of a public body, allows researchers to seek access to personal information under research agreements, facilitates complaints concerning privacy protection and sets up a scheme under which people may seek review of decisions made by public bodies. In this regard, a summary is provided of the activities of the F.I.P.P. office in 1994:

F.O.I. Requests

In 1994, the F.I.P.P. office received 356 requests for disclosure of records. See Table 2. Most of the requests are in the following general categories: next-of-kin requesting claim files of or accident reports regarding their deceased relatives; requests for records of expense accounts and terms of employment (including severance arrangements) of Board officers and employees; requests for statistical information regarding injury rates and related information about employers; requests for assessment information about employers; claimants requesting their own claim records for purposes other than appeal when ordinary course of business disclosure would not provide them with all records; claimants requesting disclosure of their criminal injury files for purposes other than appeal; vendors requesting tender information; and community stakeholders requesting records related to Board activities.

The number and variety of requests in 1994 is in sharp contrast to the 1993 experience, in which there were only 82 requests after the legislation came into effect, with more than half of those requests being made by individuals for their own claim files. As predicted in the 1993 annual report, providing disclosure of claims information to claimants in the normal course of business by Compensation Services has meant that the F.I.P.P. office now focuses on requests for other types of Board records.

Table 4 provides a breakdown of the 356 requests and the type of disclosure (full disclosure, partial disclosure, etc.) provided by the F.I.P.P. office. It also indicates that for requests that did not require extensions as contemplated by Section 10 of the legislation (228 of the 356 requests) the F.I.P.P. office was able to respond to the requests, on average, within 22.3 days. This is only three days longer than the average response time for 1993 requests, and still well within the statutory deadline of 30 days. The 1994 requests were generally far more complex to deal with than the 1993 requests, and given the large number of requests, the requests were responded to within statutory deadlines at the expense of significant overtime.

Table 2 indicates that the trend appears to be toward a growing number of requests. For example, from August to December of 1994, the number of requests per month was markedly higher than in the first half of the year. In December of 1994, there were 62 requests, contrasted with 25 requests made in January of 1994.

Reviews

In 1994, the F.I.P.P. office received 33 review applications to the Office of the Information and Privacy Commissioner. Ten reviews are still pending, twenty-two were resolved through mediation, and one review was the subject of an oral hearing and formal written decision by the commissioner (Order #22 — September 1, 1994).

Order #22 of the Information and Privacy Commissioner

The F.I.P.P. office received a request from a third party for specific assessment information about certain employers. Some employers were public bodies under F.I.P.P., and in relation to such firms the information was released, as Section 21 of F.I.P.P. does not apply to public bodies. With respect to the other firms, the F.I.P.P. office did not release their experience-rated assessment rate, nor the total assessments charged and collected for them. The F.I.P.P. office was willing to disclose the total claims costs charged for assessment rating purposes for the firms. The requester objected about the refusal to disclose information, and an employers' organization objected about the decision to disclose the total claims costs for assessment rating purposes. A hearing was held on August 12, 1994. In his decision of September 1, 1994, the commissioner ordered the W.C.B. to disclose the specific assessments information which had not been disclosed.

Further, the commissioner upheld the decision to disclose the total claims costs charged for assessment ratings purposes.

In overturning the decision to refuse to disclose certain assessments information, the commissioner did not accept that W.C.B. assessments constituted “taxes” within the meaning of F.I.P.P., and did not accept the position of the employers’ organization that disclosure of the information in question would harm the business interests of the firms.

The employers’ organization has applied for judicial review of the commissioner’s decision and therefore, pursuant to Section 59 of F.I.P.P., the commissioner’s decision has no legal effect until a court otherwise orders. The judicial review hearing is scheduled for February 23, 1995.

Privacy Complaints

Seventeen privacy complaints were made in 1994. Nine of those complaints were initiated through the Office of the Information and Privacy Commissioner, the remaining complaints being dealt with by the F.I.P.P. office directly with the persons making the complaints. Most complaints were resolved through mediation or through direct response by the F.I.P.P. office. Five complaints were still outstanding at the end of 1994.

Six complaints dealt with the issue of appeals disclosure. The Office of the Information and Privacy Commissioner is involved in two of those complaints, and as part of its investigation requested a written submission from the F.I.P.P. office regarding the Board’s appeal disclosure policy and the application of F.I.P.P. The F.I.P.P. office provided a comprehensive written submission which in essence points out that under F.I.P.P. legislation, the commissioner lacks the jurisdiction to direct a change to the Board’s appeal disclosure policy. The commissioner has not yet responded to that written submission.

Of particular importance was a complaint made by a victim of sexual assault, whose home address and unlisted telephone number were inadvertently disclosed to the accident employer, who was also the alleged perpetrator of the assault. In response, the Board established the Sensitive Claims Area in the Disability Awards Section. In recognition of the sensitive nature of sexual assault claims, these files are held in the Sensitive Claims Area with special security precautions. Disclosure of these claim files for appeal and other purposes will not be dealt with by the Disclosure Department, but rather will be dealt with by a manager in the Sensitive Claims Area. The Office of the Information and Privacy Commissioner became involved in this particular complaint, and conducted an investigation of the situation and the Board’s response. No formal decision has been issued by the commissioner’s office, although the investigator stated that she was impressed by the Board’s response to the complaint.

Another complaint of interest involved an objection to the collection and use of social insurance numbers by the Board's Hearing Conservation Program. The Office of the Information and Privacy Commissioner conducted an investigation and the commissioner concluded, in a letter dated December 2, 1994, that the collection and use of social insurance numbers by the Hearing Conservation Program is not in accordance with F.I.P.P. and is not necessary for the operations of the program. The commissioner has asked the Board to begin taking steps to phase out, within a reasonable time frame, the collection and use of social insurance numbers for the purpose of verifying the identity of individuals participating in Hearing Conservation Program hearing tests. The Board is currently considering its response to the commissioner.

Of the several complaints in which the Board was in error, the F.I.P.P. office investigated the problem and took steps to educate staff to prevent future disclosure problems, as well as responding by way of explanation and apology to the individual making the complaint. These complaints involved matters such as direct disclosure of claimant information to third parties (without the proper written authorization from the claimant) and clerical errors such as sending claimant information to the wrong accident employer in an appeal situation.

Research Agreements

Under Section 35 of F.I.P.P., the Board may disclose personal information for a research purpose. One application was made in 1994 for information for research purposes. The application was made by a researcher from the University of British Columbia's Faculty of Medicine and was approved by the Senior Executive Committee of the Board.

Correction Requests

There were no correction requests received in 1994.

H. Cost/Impact Evaluation

Table 1 provides a breakdown of the costs to operate the F.I.P.P. office. Because the response system depends on the time and effort of F.I.P.P. contacts and their colleagues in departments throughout the Board, there is also a significant associated cost in that regard. Moreover, time spent by the F.I.P.P. staff in answering enquiries, training and developing policy, is also a cost associated with administering the F.I.P.P. legislation.

F.I.P.P. contacts are asked to keep track of the time they spend in responding to requests from the F.I.P.P. office. In due course a study of the overall impact on the F.I.P.P. legislation to the Board, with a special emphasis on costs, will be undertaken.

I. Future Directions

The introduction to this report indicates that 1994 was a highly productive and challenging year for the Board's F.I.P.P. office. The new demands created by the legislation meant that we responded to the unpredictably high number and the unpredictably complex nature of requests with the resources available, and were able to satisfy the legal requirements of responding within the framework of the legislation. However, this challenge hampered progress in policy development, training, records management, legal advice, inter-agency agreements and privacy audits — initiatives which are intended to increase the Board's efficiency in complying with F.I.P.P.

In 1995, the F.I.P.P. office will benefit from the addition of two analysts and a secretary, bringing our staff complement to one coordinator, four analysts and three secretaries. We will commence training for employees throughout the Board, so that there will be an educated awareness of the special issues raised by the F.I.P.P. legislation, and the impact of the legislation on Board operations. Further, we intend to undertake more initiatives in policy development throughout the Board.

Fees: An important step will be for the F.I.P.P. office to make requesters aware that under the F.I.P.P. legislation, fees may be charged for access to information that is not the requester's personal information. While the Board has a discretion to waive fees in certain circumstances, and will certainly do so in the appropriate cases, we must make requesters aware of the costs of freedom of information legislation, and in particular, of the significant labour expended by the Board in responding to freedom of information requests.

The goal in 1995 is to employ our resources productively, to both meet the immediate workload demand created by requests for records, and to undertake the demands that a long-range vision of F.I.P.P. compliance requires.

Table 1

SUMMARY OF EXPENDITURES — Cost Centre 11-04

For the period January 1, 1994, to December 31, 1994

Administration Costs	Actuals 1993	Forecast 1994³
Salaries and Payroll	\$176,306 ¹	\$255,861
Travel Expenses	10,536	12,367
Supplies and Stationery	3,554	2,965
Communications	2,100	4,027
Equipment Costs	42,391 ²	16,884
Other Costs	1,913	2,965
Miscellaneous Revenues	-30	-1,646
TOTAL EXPENDITURES	\$236,855	\$293,423

The 1994 Forecast includes actuals from January to November inclusive. The December actuals have not yet been released by Accounting.

¹ The F.I.P.P. office comprised of five employees in 1993 who assumed their positions throughout the year. The 1993 actuals did not reflect a full year's salary. The coordinator resigned his position in January of 1994 and a new coordinator did not join the office until August 1994. Accordingly, the 1994 actuals do not reflect a full year's salary.

² P.C. equipment was purchased in 1993 to open the F.I.P.P. office and additional P.C. equipment and furniture will be purchased in 1995 for the additional staff.

³ Expenditures include direct costs of F.I.P.P. office but does not cost occupancy, indirect or costs incurred by other areas of the Board who invested significant time in gathering requested information.

Table 2

REQUESTS, COMPLAINTS AND REVIEWS — 1994

Description	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Number of Requests	26	15	19	18	17	23	22	42	34	29	49	62
Number of Privacy Complaints	0	1	3	1	2	1	2	1	2	2	2	0
Number of Research Agmts.	0	0	0	0	0	0	0	0	0	0	1	0
Number of Correction Requests	0	0	0	0	0	0	0	0	0	0	0	
Number of I.P.C. Reviews	2	1	5	1	6	1	4	2	3	3	5	0
TOTAL ACTIVITIES	28	17	27	20	25	25	28	45	39	34	57	62

Table 3

REQUEST TYPES AND METHOD OF ACCESS FOR REQUESTS

Description	Number of Requests
Personal	213
General	143
Access to Copies of Records Requested	354
Access to Original Records Requested	2
TOTAL NUMBER OF CLOSED REQUESTS	356

Table 4

CHARACTER OF F.I.P.P. RESPONSES TO REQUESTS

Description	Number of Requests
Full Disclosure	120
Partial Disclosure	124
Access Denied	26
Records Do Not Exist	13
Refused to Confirm/Deny	1
Request Withdrawn	13
Request Abandoned	7
Request Cancelled	1
Undetermined (in progress)	51
Average Number of Response Days Excluding Extensions	22.3
Average Number of Response Days for Extensions	54.6



Governors' Financial Standing Committee 1994 Annual Report

Date: February 6, 1995

Mandate

The Governors' Financial Standing Committee has been formed in order to "... assist the Governors in fulfilling their oversight responsibilities relating to the insurance, investments, executive and management compensation, financial reporting, auditing and internal control of the Workers' Compensation Board, while recognizing that the primary responsibility for financial reporting, internal control and compliance with laws, regulations, and ethics by the Workers' Compensation Board rests with executive management, overseen by the Governors."

Background

On April 6, 1992, the G.F.S.C. was constituted by resolution of the governors pursuant to Section 82(b)(1) of the *Workers Compensation Act* and Section 8 of the governors' Bylaw No. 3 (Board of Governors' Procedural Bylaw) — *Workers' Compensation Reporter*, Vol. 7: p. 161. The G.F.S.C. Charter is published in the *Workers' Compensation Reporter*, Vol. 8: p. 131.

A basic requirement of the G.F.S.C. chair is to prepare an annual report of the committee's achievements and work in progress for the calendar year. This third report will include all activities of the Board for the 1994 calendar year.

Amendments to Charter

The committee Charter was revised to add management compensation to executive compensation as part of the committee's responsibilities. The Board of Governors deleted also from the Charter the committee's responsibility of discussing with the external auditor the impact of recent releases of the Canadian Institute of Chartered Accountants and the British Columbia Institute of Chartered Accountants and any significant changes made to the Workers' Compensation Board's accounting principles and practices. The committee concluded that this responsibility was no longer relevant.

G.F.S.C. Members

The following is a list of the governor members and the duration of their appointments to the G.F.S.C.:

	Governor Member	Duration of Appointment
Workers' Representative Governor	Maureen Whelan Colleen Jordan	To December 3, 1994 From December 5, 1994 to January 31, 1996
Employers' Representative Governor	Richard Baker	To December 3, 1996
Public Interest Governor (and chair of the G.F.S.C.)	Dr. Mark Thompson	To May 23, 1997
Chairman of the Governors (interim chair of the governors)	James E. Dorsey Claude Heywood	To December 16, 1994 From December 16, 1994

James E. Dorsey resigned as chairman of the governors on December 16, 1994.

Claude Heywood, deputy minister of Skills, Training and Labour, was appointed interim chairman and assumed his position as an ex officio member of the G.F.S.C.

In addition to the above G.F.S.C. members' attendance, the Board's president and chief executive officer also attends these meetings. Up until the November 14, 1994 appointment of Dale Parker as president and chief executive officer, James E. Dorsey attended as acting president and C.E.O. In addition, Sidney O. Fattedad, vice-president, Finance/Information Services Division, and Tom Hum, director of Internal Audit and Evaluation also attended on a regular basis throughout the year.

Meetings, Reports, and Records

During 1994, the G.F.S.C. met 8 times — February 7, March 7, April 11, June 6, August 8, October 3, December 5 and December 14. In accordance with the G.F.S.C. Charter, minutes were compiled for each of the above meetings and, once approved by the committee members, were distributed to the governors. In addition, the chair reported verbally to the Board of Governors on the work of the G.F.S.C.

Investments and Investment Performance

The Charter requires the G.F.S.C. to review the policies and activities of the Board's Investment Committee. The Board's Investment Committee determines, within the policy guidelines, the current deployment of investment capital to maximize long-run returns. Members include the president and chief executive officer, the vice-presidents of Finance/Information Services, Compensation Services, and Prevention, the actuary, the treasurer, and three external investment experts.

The Investment Committee meets quarterly and Ministry of Finance officials routinely attend. The minister of Finance approves all investment strategies, pursuant to Section 67(2) of the *Workers Compensation Act*. The G.F.S.C. receives minutes of all Investment Committee meetings. Rates of return on Board investments fell considerably. The third quarter year-to-date investment yield was 8.46 percent.

The committee approved a Protocol Agreement between the Board and the Ministry of Finance to cover W.C.B. participation in an Indexed Equity Fund. The purpose of this document is to formalize the terms and conditions of the Board's participation in investment pools managed by the provincial government. The Board committed 10 percent of its investment portfolio to the fund.

The committee also monitored the Investment Committee's diversification of 8 percent of the investment portfolio into U.S. equities beginning in March 1994. These assets are managed in cooperation with the Ministry of Finance. A study of further diversification is under way in cooperation with the Ministry of Finance.

Annual Report/Financial Statements

As required by its Charter, the G.F.S.C. reviewed the Board's 1993 annual financial statements including all significant issues relating to litigation, contingencies, claims and assessments, and all material accounting issues that require disclosure in the Board's financial statements. In addition, the committee reviewed the Management's Discussion and Analysis Section of the Board's Annual Report suggesting revisions where necessary. Since there were significant changes in accounting methods that occurred in 1993, the committee recommended highlighting these changes in the report.

Consulting Actuary Reports

The Board's consulting actuary, Jack Levi, of Eckler Partners Ltd. attended the August meeting to discuss the Actuarial Report Related to the Valuation as at December 31, 1993. His report identified several issues including the continued increase in the deficit,

the unusually high rates of return on investments in recent years and the declining injury rates. If current year trends continue unabated, Mr. Levi warned that the Board's use of a five-year average for estimating future costs may result in a significant understatement of the unfunded liability. Growth in unfinalled claims for long-term disability benefits also presents a risk of future increases in liabilities.

Revision of the mortality tables started in 1993 was to be complete by year end. This will permit the actuaries to make final adjustments to these tables.

As required in the Charter, the G.F.S.C. also reviewed the actuarial report on assessment rates for 1995. The report confirmed the Board's calculation of the pension liability as at December 31, 1993. In addition, the report pointed out that the actual rates adopted will result in a 2 percent funding deficiency.

The committee inquired about the appropriateness of a five-year amortization of unfunded subclass liabilities. Given the short life-span of companies in certain industries, a five-year amortization policy would result in the transfer of unfunded costs from one generation to another. The Board will address this issue for those subclasses considered to be in distress.

Budgetary Variances and Remuneration

In early 1994, the provincial government established the Public Sector Employers' Council (P.S.E.C.) and various sectoral employer associations to develop appropriate guidelines for compensation in the public sector for employees not covered by collective agreements. Mr. Ron Buchhorn, vice-president, H.R./Corporate Development advised that any future employment contract, including the new president's, would first have to be approved by the Council.

In preparation for collective agreement negotiations in 1995 and a review of salaries, Mr. Buchhorn presented a Collective Agreement Costing Report to the G.F.S.C. The report listed straight-time average wage rates for each permanent and temporary pay group under the collective agreement.

In December, a special meeting was held to discuss the proposed salary increase for management employees. A thorough analysis highlighted various issues including the historical relationship between management and unionized salary increases, the recent salary compression between management and bargaining union employees, recent P.S.E.C. approved salary increases for other Crown Corporations' management groups and external salary comparisons prepared by compensation consultants. The G.F.S.C. recommended an increase effective October 1, 1994, subject to approval of the P.S.E.C.

During the year, a management job evaluation steering committee was struck to supervise the review of the management job evaluation plan. The goal of this study was to confirm internal equity amongst management positions, to ensure that pay equity exists throughout all management jobs and to create broader salary ranges in order to better integrate performance management with pay practices. The plan is expected to be completed by the end of March 1995. Mr. Buchhorn kept the committee informed on progress of the job evaluation study.

Risk Management Committee

At the June/94 meeting, the G.F.S.C. moved that the Risk Management Committee be disbanded as their mandate was seen to be within the responsibility of the vice-presidents and Internal Audit.

Internal Audit and Evaluation

As required by the Charter, the G.F.S.C. reviewed the 1994 Internal Audit and Evaluation plan. A total of 27 audits were scheduled for 1994. The major objectives for Internal Audit in 1994 included a pilot Value for Money audit, the completion of the Board's first program evaluation study on Vocational Rehabilitation, and the audit of the nine regional Compensation Services service delivery locations.

These efforts marked the department's shift to its long-term goal of auditing the Board's operations based on efficiency, effectiveness and economy.

The G.F.S.C. has the responsibility to oversee the internal audit and evaluation function and receives audit reports, updates and status reports regularly.

External Auditor

As required by the Charter, the committee met with a representative of the provincial auditor general to discuss the 1993 audit of the annual report. In addition, the committee discussed the 1994 audit plan.

The 1993 auditor general's report noted few problems despite changes to accounting estimates and methods made. The A.G.'s office advised that the audit went smoothly and management was cooperative. Management has been following up on issues of concern brought up in the last few management letters including pursuing the possibility of performing quality control claim file reviews and setting in place controls in the automated wage-loss system to prevent duplicate payments.

For the 1994 audit plan, the A.G. has established an allowable risk of 2.5 percent and the magnitude of risk at 1 percent of net assets. These are very conservative parameters, given that industry uses between 5 percent and 10 percent allowable risk when performing an audit. There are plans to use the services of the Internal Audit and Evaluation Department once again to perform some of the audit testing. The audit will concentrate on compensation issues with a focus on health care costs. The auditor general's office expressed confidence in the work of the Board's external actuary.

Other Matters

A presentation was made summarizing the impact of reinstating the widows' pensions and the various options available to allocate the \$115 million cost to the subclasses. The G.F.S.C. forwarded a recommendation to the Board of Governors in support of the pooling method which most closely models what actually would have been had Section 19 of the *Workers Compensation Act* not existed.

The committee approved a new policy on land and building acquisition and disposal to ensure that the Board's interests are protected in real estate transactions. In addition various other policies were reviewed including the Standard of Conduct and Expense/Travel Policies. With the introduction of the Abbotsford office lease, there was concern as to whether the G.F.S.C. should be reviewing the matter before it went to the Board of Governors. This issue will be addressed in 1995.

Mr. Sid Fattedad, vice-president, Finance/I.S.D. briefed the committee on the future benefits of the direct deposit of pensions which is expected to generate savings of \$50,000 by way of reduced postage and other administration expenses.

The committee reviewed and recommended approval of the president's contract. This review is in keeping with the G.F.S.C.'s responsibility to review any major Board contracts.

On December 19, the Board of Governors instructed the G.F.S.C. to review the chief appeal commissioner's contract and expense payments to her on an expeditious basis. The internal auditor was seconded to the committee to assist in the review.

Conclusion

During the year, the G.F.S.C. reviewed a wide variety of matters in order to fulfill their responsibilities to the Board of Governors relating to financial and control issues of the Workers' Compensation Board. As is outlined in the report, the committee discussions included a review of the *1993 Annual Report* to ensure the external auditors were able to

complete their audit successfully and that full management cooperation was given both during the audit and subsequently to follow up issues that were outlined in the annual management letter provided by the auditors.

The Workers' Compensation Board continues in an unfunded position which is a concern to all stakeholders. However, the Board is attempting to address these concerns by focusing attention on cost waste in compensation payments, health care costs and vocational rehabilitation effectiveness. In addition, diversification of the investment portfolio is an attempt to optimize portfolio risk, improve returns and take advantage of investment opportunities not available in domestic markets. These undertakings all attempt to solidify the Board's financial position and to keep it one of the most financially strong workers' compensation boards in the country.



REPORTER

The 1994 Annual Report of the Medical Review Panel Department

Date: February 20, 1995

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Current M.R.P. Chairs and Dates of Appointment

Name	Date of Appointment
Dr. Nigel H. Clark	January 30, 1975
Dr. Stanley L. Sunshine	January 30, 1975
Dr. Victor Dirnfeld	July 13, 1978
Dr. Peter J. Banks	April 25, 1986
Dr. R. Cameron Harrison	April 25, 1986
Dr. Darryl G. Morris	April 25, 1986
Dr. Geoffrey L. Nanson	April 25, 1986
Dr. J. Trevor Sandy	April 25, 1986
Dr. Peter Allen	March 1, 1990
Dr. Beverley Barron	March 1, 1990
Dr. Ian D. Connell	March 1, 1990
Dr. Robert S. Purkis	March 1, 1990
Dr. John P. Sloan	March 1, 1990
Dr. John S. Smith	March 1, 1990
Dr. Leonard C. Jenkins	September 8, 1993

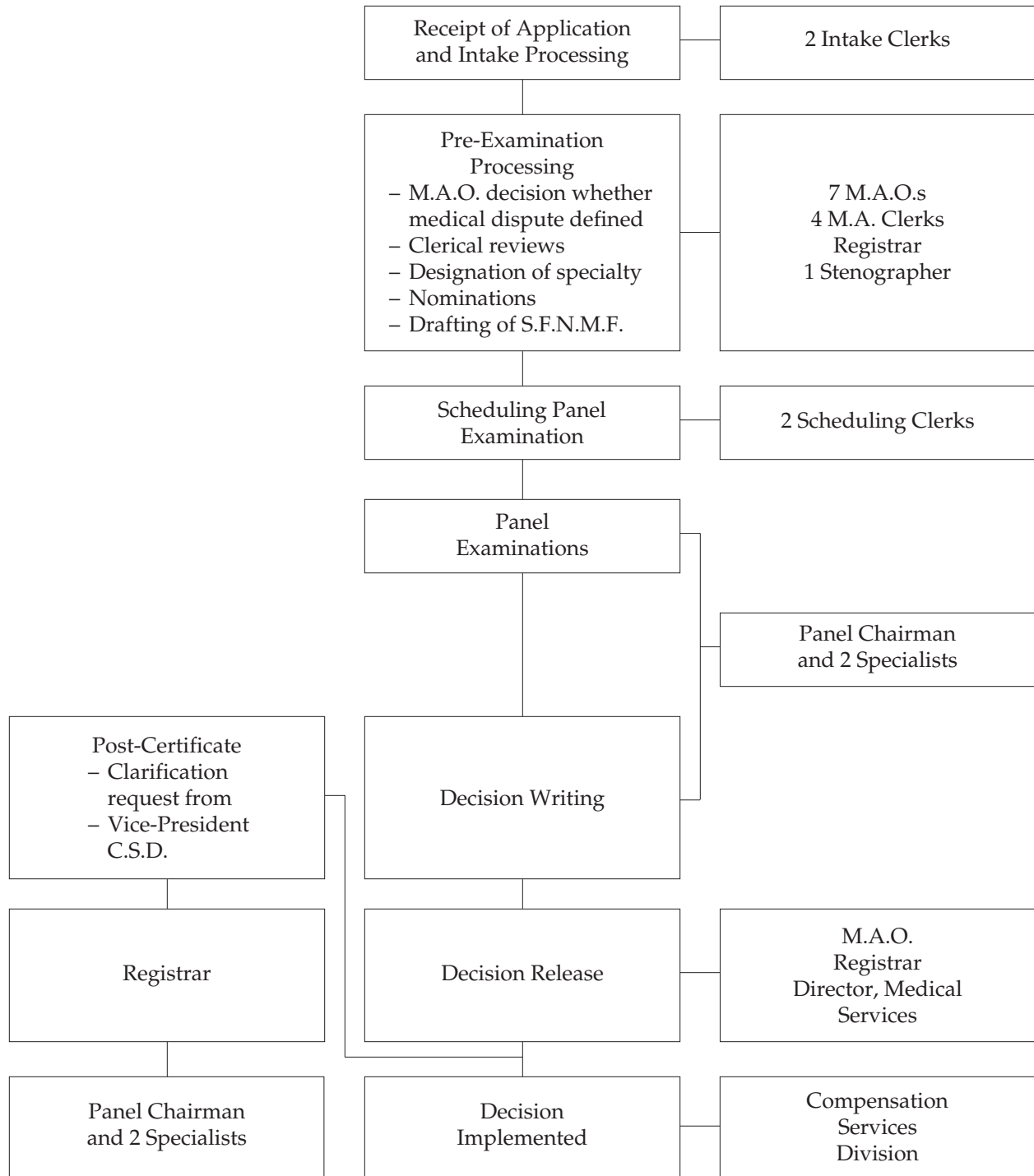
Chairs are appointed at pleasure by the lieutenant-governor-in-council.

These appointments are not fixed terms.

Current M.R.P. Department Staff and Position Descriptions

Name	Position	Date of Appointment (with M.R. Process)
BRAKE, Weldon	Registrar	July 11, 1994
OLSON, Judy	Senior Medical Appeals Officer	September 1, 1987
BRETT, Dianna	Medical Appeals Officer	April 1988
NEWMAN, Kristine	Medical Appeals Officer	April 1988
HARWOOD, Bev	Medical Appeals Officer	March 1990
CAMERON, Nora	Medical Appeals Officer	November 12, 1992
HUGHES, Gwenda	Medical Appeals Officer	Acting M.A.O. Dec. 1991 Permanent M.A.O. July 1992
SHEA, Margaret	Medical Appeals Officer	March 1, 1994
DICKSON, Lisa	Medical Appeals Clerk	August 6, 1986
CHARRON, Barb	Medical Appeals Clerk	April 1991
MYKYTIW, Faye	Medical Appeals Clerk	September 1991
UKRANITZ, Helen	Medical Appeals Clerk	January 9, 1992 Acting Appeals Officer 1991
TUASON, Ben	Medical Appeals Clerk	November 22, 1994
McCULLOUGH, Francine	Scheduling Clerk	April 1987
MEDFORD, Diane	Scheduling Clerk	February 27, 1995
GANNON, Christine	Secretary to the Registrar	October 18, 1994
INGRAM, Marjorie	Secretary	July 13, 1992
MANG, Ada	Clerk Steno	November 24, 1994
PERONI, Susan	Intake Clerk	December 22, 1994
VIJAYARATNAM, Vasuki	Intake Clerk	January 9, 1995
COOPER, Susan	Scheduling Clerk	February 13, 1995

The M.R.P. Appeal Process



MEDICAL REVIEW PANEL DEPARTMENT ANNUAL REPORT — 1994

Acknowledgments

Medical Review Panels have been favoured throughout their history with a complement of exceptionally talented and committed chairs, specialists, and staff. It is this, more than any other factor, which accounts for the Medical Review Panels' achievements.

A number of changes took place in the Medical Review Panel Department in 1994 and it is appropriate to recognize the special contribution of three particular individuals who have moved on to other responsibilities.

Dr. Leonard C. Jenkins was the Medical Review Panel Department's first part-time registrar. He was retained in September 1991 to conduct an independent study of the M.R.P. process. The results of this study were presented to the governors on August 17, 1992. Dr. Jenkins subsequently worked with the M.R.P. chairs and staff to implement his administrative recommendations.

After the appointment of a full-time registrar in mid-1994, Dr. Jenkins remained with the department as medical advisor to the registrar. This arrangement ceased at the end of 1994, and in 1995, Dr. Jenkins will assume his responsibilities as a Medical Review Panel chair.

Judy Olson, acting manager of the department, elected to return to her previous position as senior medical appeals officer in May 1994. As manager, Ms. Olson's special contributions included developing the new department, overseeing the M.R.P.'s interactions with the worker/employer communities, and building a constructive working relationship between the Medical Review Panels and the staff. Judy Olson continues to be a major positive influence in the administration of the Medical Review Panel process.

Dianna Brett, acting senior medical appeals officer, elected in 1994 to return to her previous position as medical appeals officer. As senior medical appeals officer, Ms. Brett was responsible for providing expert advice to other medical appeals officers. Her role as a significant resource person to the staff continues.

Introduction

The purpose of the Medical Review Panels is to resolve in a fair and impartial manner appeals from medical decisions of the Workers' Compensation Board or the Appeal Division, medical findings of the Review Board, and referrals by the Appeal Division or W.C.B. president. Each panel consists of three community-based physicians who are independent of the W.C.B.

In 1994, there were 14 part-time panel chairs and 208 specialists eligible to serve on panels. Forty-three of the specialists practise outside the Lower Mainland.

There are 24 specialties (listed in Table 1). The frequencies with which specialties were used in panels from 1992 to 1994 are depicted in Table 2.

The Medical Review Panel Department provides administrative support to the Medical Review Panels. In July 1994, the Board of Governors appointed A. Weldon Brake for a three-year term as the department's full-time registrar. As of the end of December 1994, the department consisted of 16 permanent staff and 3 temporary staff.

The department received 452 new applications in 1994, compared to 526 in 1993, and 574 in 1992. Of the 452 new applications, 61.28% were from Appeal Division decisions, 19.91% were from Board officer decisions, 16.15% were from Review Board findings, and 2.66% were referrals under Section 58(5) of the *Workers Compensation Act* (Table 3). 93.14% of new appeal applications in 1994 were initiated by workers and 4.20% were initiated by employers.

In 1994, the overall time for processing Medical Review Panel appeals continued to increase. The process — from filing the appeal to implementing the decision — took an average of 723 days compared to 637 in 1993 and 486 days in 1992. However, improvements were achieved in certain areas.

The registrar is pleased to report that, in 1994, the M.R.P.s achieved the year's goal of examining 300 workers. An average of 25 examinations were held each month, compared to 19 in 1993.

There were 289 M.R.P. certificates (decision outcomes) issued in 1994, compared to 236 in 1993, and 212 in 1992. On average, panel chairs completed certificates within six weeks of M.R.P. examinations. In 1994, the average release time for all decisions was 40 days, which represents a 50% improvement over the average of previous years.

The Compensation Services Division implemented 258 certificates in 1994, up from 228 in 1993 and 189 in 1992. Of the 258, 50% confirmed the decisions or findings, 47% did not, and 3% confirmed the decisions or findings in part. This is consistent with decision outcomes in previous years.

As a result of a 16.37% decrease in the number of applications and an increase in output during 1994, some progress was made in reducing the case backlog. As of the end of December 1994, 608 cases were in the system, compared to 715 at the end of 1993 and 649 at the end of 1992. The shortest time for processing an individual appeal in 1994 was 181 days. As of December 31, 1994, there were 40 M.R.P. applications held in abeyance pending further adjudication or consideration of an appeal to the Review Board or Appeal Division on a preliminary matter.

Further improvements must be made. Eighty-three percent of the time in the M.R.P. process is taken up by its initial stages, from receiving applications to scheduling the M.R.P. examination.

In 1994, the medical appeals officers successfully reduced the time in determining whether a bona fide medical dispute exists from 28 days in 1993 to 6 days. In statistical terms, the number of appeals awaiting this decision was reduced from 361 in 1992 to 20 in 1994. In 1992, the waiting period was over 12 months. Presently, the medical appeals officers are current in this area of responsibility.

However, other measures must be instituted in 1995. A priority is to reduce the time it takes to prepare Statements of Foundational Non-Medical Facts and schedule panel examinations. A three-year strategic plan and a quality assurance program for the department will be developed.

The registrar has developed a questionnaire to seek feedback from the community on the preliminary handling of appeals, scheduling of examinations, professional conduct of the M.R.P.s, and clarity of the certificates issued. The panel chairs and medical specialists have also been asked to provide input on how to eliminate the backlog and reduce delays in the process.

In response to concerns about both delays in the M.R.P. process and maintaining its adjudicative integrity, the registrar has continued to work with community representatives on general changes to modify the existing system. They include a new policy section on M.R.P.s for the W.C.B. *Rehabilitation Services and Claims Manual*, proposals for statutory amendments and regulations, and proposals to the lieutenant governor in council and the Joint Medical Committee about matters within their respective areas of responsibility.

The registrar has also contacted the British Columbia Medical Association to request additional specialists to serve on M.R.P.s.

A new computer system will be developed to facilitate the scheduling process, and M.R.P. examinations will be held throughout the province starting in 1995.

Time Phases Through the M.R.P. Process

Figure 1 illustrates the Medical Review Panel process and the time flows associated in days from initiation of the application to implementation of the M.R.P. certificate.

Figure 1 outlines the average time of 723 days to complete the process as follows:

- 8% – from receipt of the application to receipt of the Physician’s Enabling Certificate;
- 12% – from receipt of the Physician’s Enabling Certificate to decision on Bona Fide Medical Dispute;
- 53% – from Bona Fide Medical Dispute decision to scheduling of panel (includes drafting of Statement of Foundational Non-Medical Facts);
- 10% – from time panel scheduled until panel held;
- 6% – from time panel held until certificate received;
- 11% – for implementation of the certificate.

The initiation of an application and the provision of an enabling certificate are largely within the control of the appellant and the attending physician. To facilitate this process and educate workers and employers on what is to be expected at the panel examination, a pamphlet has been prepared and is currently being printed.

The implementation of Medical Review Panel certificates is not within the jurisdiction of the Medical Review Panels. It is a responsibility of the W.C.B. Compensation Services Division. Table 4 indicates significant improvement in this area since 1992.

If these two phases are not included in the total time, from initiation to implementation, the average time for the M.R.P. process decreases to 585 days.

Initiatives to Resolve Delays in the M.R.P. Process

(a) Intake Functions

The intake process was completely reviewed and staff responsibilities realigned to enable the creation of two new intake clerk positions. The transfer of the clerical review processes (e.g. requesting x-rays and medical reports) from the medical appeals officers to the medical appeals clerk positions was considered. A Case History format has been introduced to index and sort claim file documents for the Trial Project.

(b) Preparation of the Statement of Foundational Non-Medical Facts and Issues

In 1994, the medical appeals officers drafted 375 Statements of Foundational Non-Medical Facts, compared to 335 in 1993 and 208 in 1992. This is a 12% increase over 1993 and a 80% increase over 1992. Table 5 provides more detailed comparative statistics.

As of December 31, 1994, there were 193 applications awaiting drafting of the Statement. Medical appeals officers were working on Statements of Foundational Non-Medical Facts in cases where a decision as to bona fide medical dispute was defined as far back as November/December 1993.

The preparation of the Statement of Foundational Non-Medical Facts in the current format in all cases was an issue of considerable debate within the M.R.P. Department, the M.R.P. chairs and the community in 1994. Figure 1 indicates that 53% of the total time from initiation of an appeal to the implementation of a M.R.P. certificate is taken for preparation of the Statement, receiving medical reports, obtaining nominations and scheduling of the panels.

The Case History format, being implemented on a trial basis, will be used in conjunction with a modified Statement of Foundational Non-Medical Facts. The Advisory Committee, which consists of four chairs, will be involved with this trial project. Feedback will be obtained from these chairs to determine whether the proposed system or the current system is preferred.

Two senior medical appeals officers have been assigned the task of developing a process to reduce the number of applications awaiting Statements. The officers' first initiative was to review all of the applications in the M.R.P. process to determine which cases will require a modified Statement and which cases will require a detailed Statement. As part of this task, the officers have reviewed the complexity of the issues involved to obtain a complete picture of the backlog problem.

Further consideration will be given to the effect of the Statement preparation on the delay problem and possible solutions in 1995.

(c) Scheduling

Scheduling problems were given particular attention in 1994. The following measures were adopted or considered:

1. Realignment of staff responsibilities to enable the creation of a second scheduling clerk position.

-
2. Implementation of a more integrated scheduling approach, centralized in the scheduling clerk positions. Goals have been established for each participating group and will be monitored.
 3. Designation of specialty by the registrar at the beginning of the process as soon as the medical appeals officers decide that a bona fide medical dispute has been defined.
 4. Initiation of employer/worker nominations for specialists at the beginning of the process as soon as the designation is made. This will allow a sufficient lead time for specialists to be notified of a panel examination. Attempts will be made to have a four-month lead time for specialists in order to accommodate their schedules.
 5. Scheduling of the panel examination date as soon as the nominations have been completed.
 6. Holding panel examinations in other parts of the province where appropriate.
 7. Development of a new computer system to facilitate the scheduling process.
 8. Consultation with M.R.P. chairs, M.R.P. specialists and the community, via questionnaire, regarding scheduling improvements.
 9. Contact with the Joint Medical Committee and the B.C.M.A. to request additional specialists to serve on Medical Review Panels throughout the province.

(d) New Computer System

A Development Services Proposal for the new Medical Review Panel computer system was approved in November, 1994, with work to be completed in 1995.

This computer system will support daily operations and reporting, and replace a number of functions currently performed manually or with difficulty using the current outdated computer system. In particular, the new computer system will:

- track information relating to the overall M.R.P. process.
- track requests for examination by Medical Review Panels and their processing by Medical Review Panel staff.
- track specialist availability and frequency with which specific specialists are nominated.
- track assignment of appeals to Medical Review Panels, time spent and billings.

-
- enable identification of appeals that are exceeding their expected time in the process.
 - maintain a list of “contact parties.”
 - report M.R.P. information to the Board of Governors.

(e) Delays in Decision Writing

Delays in the decision-making process after the panel examination has been held is no longer a significant problem. Beginning in 1992, the M.R.P. chairs agreed to attempt to issue M.R.P. certificates, on average, within six weeks of the panel examinations. The average time in 1994 was 40 days — an improvement of 50% over the average for previous years.

The Chairs’ Advisory Committee

The Chairs’ Advisory Committee consists of four M.R.P. chairs and is chaired by the registrar. The committee is responsible for providing advice to the registrar and for approving and supervising practice and procedure developments in the M.R.P. chairs’ area of responsibility. Advisory Committee recommendations on practice/procedural matters are sent to the chairs as a group for final approval. There were four Advisory Committee Meetings held in 1994.

Education Day

The Fifth Medical Review Panel Education Day was held on May 12, 1994. The program was intended to assist in upgrading the knowledge of the Medical Review Panel chairs, specialists and Medical Review Panel Department staff in the field of occupational and environmental health. The primary topic of discussion was occupational diseases. Subjects discussed included:

- Occupational Diseases Overview
- Asthma and Reactive Airway Disease (R.A.D.)
- Environmental Air Quality
- Multiple Chemical Sensitivities (M.C.S.)
- Annual Report 1993 M.R.P. Process

The Sixth Medical Review Panel Education Day was held on November 24, 1994. The focus was occupational stress. Subjects discussed included:

- Perspectives on the Review Board from the Chair of the Review Board
- Occupational Stress Overview
- Occupational Stress: Perspective from the W.C.B.
- Occupational Stress: Perspective from the Community
- Chronic Fatigue Syndrome
- Forensic Psychiatry — Some Reflections on Violence in the Workplace

1994 Costs

The following chart sets out the 1994 Costs Per M.R.P. Panel Based on Number of Certificates Received:

**1994 Costs Per M.R.P. Panel
Based on Number of Certificates Received
(As of December 31, 1994)**

Budget Information M.R.P. Department	Totals	Cost Per Panel
Capital	\$18,090	\$63
Operating	\$1,066,810	\$3,691
1. Salaries Payroll	\$903,265	
2. Travel Expenses	4,625	
3. Supplies and Stationery	4,273	
4. Communications	15,700	
5. Furniture and Equipment	51,116	
6. Publications and Advertising	83	
7. Other	9,111	
8. Consulting Fees	73,870	
9. Building and Services	4,767	
Chair and Specialist Fees	\$838,415	\$2,901
TOTAL	\$1,923,315	\$6,655
M.R.P. Certificates Received	289	

The total cost of \$1,923,315 is up from \$1,218,779 in 1993. However, the cost per certificate has decreased from \$7,044 in 1993 to \$6,655 in 1994.

Challenges for 1995

A statement of purpose, goals and objectives was developed for the Medical Review Panel process in 1994:

- a) The purpose of the Medical Review Panels is to examine, determine and resolve in a fair, impartial and independent manner, appeals by workers and employers from medical decisions, referrals or findings of the Workers' Compensation Board, Review Board, or Appeal Division, in any matters or issues expressly conferred upon the Medical Review Panels by the *Act*.
- b) It is the objective of the Medical Review Panels to hear appeals or applications as expeditiously and efficiently as possible in order to ensure an appellant or applicant is given a decision without undue delay, while giving due consideration in each case to the need to identify the issues, prepare the non-medical facts, ensure the availability of necessary relevant medical and other evidence, and be bound by the non-medical facts and the decision of the Medical Review Panels.

The Medical Review Panel chairs and the staff of the Medical Review Panel Department are committed to improvements in the M.R.P. process.

Among the initiatives to be undertaken and challenges to be addressed in 1995 are:

1. Demonstrating that the Medical Review Panel chairs and the staff of the Medical Review Panel Department are capable of disposing of the backlog and remaining current in 1995;
2. Developing a three-year Strategic Plan and a Quality Assurance Program for the Medical Review Panel Department;
3. Installing a new computer system. This project will start in March 1995;
4. Reducing the time it takes to prepare the Statement of Foundational Non-Medical Facts;
5. Reducing the time it takes to schedule panel examinations;
6. Reducing the time it takes to issue a decision after the panel examination;
7. Providing panel examinations throughout the province.

The commitment to a high standard of quality continues to be challenged by the competing interests in efficiency and timeliness. The tension between these interests will continue to be the major influence in determining the agenda for further evolution of the Medical Review Panel Process in 1995.

APPENDIX

STATISTICAL INFORMATION

Table 1

SPECIALTIES AVAILABLE FOR MEDICAL REVIEW PANELS

Anaesthesia
Cardiology
Cardiovascular and Thoracic Surgery
Dermatology
General Practice
General Surgery
Gynaecology
Immunology / Allergy
Internal Medicine
Nephrology
Neurology
Neurosurgery
Pathology
Physical Medicine
Ophthalmology
Orthopaedic Surgery
Otolaryngology
Plastic Surgery
Psychiatry
Radiology
Respirology
Rheumatology
Urology
Vascular Surgery

Note: Total Number of Specialists = 208
Total Number outside Lower Mainland = 43

Table 2**FREQUENCY OF SPECIALTIES USED IN MEDICAL REVIEW PANELS
1992, 1993, AND 1994**

Specialty	1992		1993		1994	
	Nos.	%	Nos.	%	Nos.	%
Orthopaedic Surgery	161	72.5	153	66.2	201	67
Neurology	22	9.9	17	7.4	19	6.3
Rheumatology	6	2.7	10	4.3	9	3
Respiratory Disease	7	3.2	9	3.9	3	1
Psychiatry	3	1.3	8	3.5	12	4
Neurosurgery	0	0	8	3.5	14	4.7
Physical Medicine	0	0	6	2.7	15	5
Otolaryngology	4	1.8	5	2.2	6	2
Cardiology	3	1.3	4	1.7	0	0
Vascular Surgery	0	0	3	1.3	0	0
Ophthalmology	1	0.5	3	1.3	3	1
Immunology/Allergy	0	0	1	0.4	3	1
Internal Medicine	3	1.3	1	0.4	2	0.7
Plastic Surgery	3	1.3	1	0.4	2	0.7
Dermatology	1	0.5	1	0.4	1	0.3
General Surgery	0	0	1	0.4	6	2
Neurology and Neurosurgery	6	2.7	0	0	0	0
Psychiatry and Neurosurgery	0	0	0	0	0	0
Urology	1	0.5	0	0	2	0.7
Orthopaedic and Neurosurgery	1	0.5	0	0	0	0
Nephrology and Renal Disease	0	0	0	0	1	0.3
Orthopaedic Surgery and Psychiatry	0	0	0	0	1	0.3
TOTALS	222		231		300	

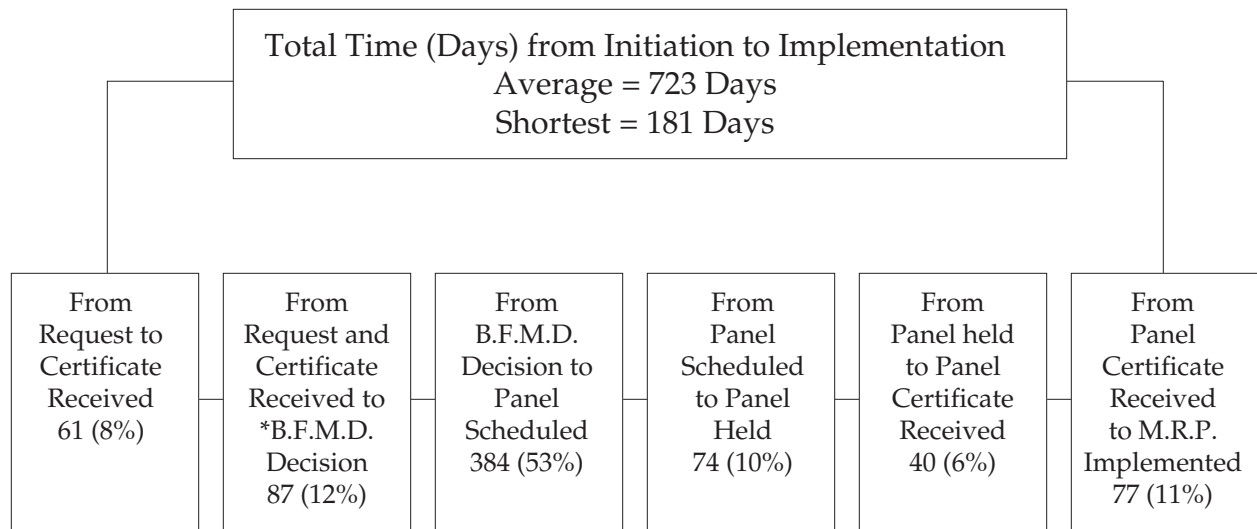
Table 3

**SOURCE PATTERNS FOR
NEW MEDICAL REVIEW PANEL APPLICATIONS
(FOR 1992, 1993, AND 1994)**

Decision Maker	1992	1993	1994
Board Officer	114 (19.9%)	86 (16.3%)	90 (19.91%)
Workers' Compensation Review Board	105 (18.3%)	102 (19.4%)	73 (16.15%)
Appeal Division Decision	340 (59.2%)	328 (62.4%)	277 (61.28%)
Referrals by Appeal Division	15 (2.6%)	8 (1.5%)	7 (1.55%)
Referrals by President	0	2 (0.4%)	5 (1.11%)
TOTALS	574 (100%)	526 (100%)	452 (100%)

Figure 1

**MEDICAL REVIEW PANELS — TIME FLOWS
1994 (JANUARY 1 TO NOVEMBER 30)**



* Bona Fide Medical Dispute