

**WORKERS' COMPENSATION BOARD**  
**PANEL OF ADMINISTRATORS' MANUAL**

**January 1997**



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# Chapter 1

## Statement of the Duties of the Panel of Administrators

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### 1. PREAMBLE

The Workers' Compensation Board of British Columbia is a unique organization. Charged with the administration of the *Workers Compensation Act*, the *Workplace Act* and the *Criminal Injury Compensation Act*, its operations impact on most British Columbians in some way.

Created by statute, the Workers' Compensation Board's purposes are determined by the people of British Columbia acting through the Provincial Legislative Assembly. These purposes are unusually broad and embrace three distinctively different areas:

- (a) administrative,
- (b) appellate, and
- (c) policy and regulation making.

On June 3, 1991 the *Workers Compensation Act* was amended to provide for a new governing body for the WCB. This body, the "Board of Governors," was made responsible for approving and superintending the policies and direction of the WCB and planning for its future.

The Panel of Administrators has now been entrusted with stewardship of the Workers' Compensation Board. It has overall responsibility for ensuring that the organization fulfills the purposes for which it was created. In doing so, it accepts, subject to the statutory enactments of the Legislative Assembly, complete and final responsibility for the policies, direction and future of the provincial worker's compensation system.

### 2. INTRODUCTION

The interests of workers — the beneficiaries of the compensation, rehabilitation and prevention principles fundamental to the workers' compensation system, and the interests of employers — who fund the system, are recognized through the composition

of the Board. It is appropriate that both workers and employers participate in the initiation, development and approval of the strategies, policies, programs and procedures of the Workers' Compensation Board.

In addition, the *Workers Compensation Act*, the *Workplace Act* and the *Criminal Injury Compensation Act* reflect important social policies of interest to society as a whole. The public interest is also recognized through the composition of the Board.

To enable the Panel of Administrators to function effectively, individual Administrators must see their primary responsibility as acting in the best interests of the organization and all its stakeholders. Administrators are selected because of their particular knowledge, experience and background and are expected to utilize these perspectives when undertaking their responsibilities. However, this does not diminish their primary responsibility as Administrators to act in the best interests of the organization and the stakeholders generally.

Administrators must appropriately balance the resources and time the Panel of Administrators allocates to its roles, as specified in the legislation, in the three major areas — administrative, appellate and policy and regulation making — for which they have overall responsibility.

### **3. ADMINISTRATORS' DUTIES**

Specific responsibility of the Administrators are outlined in the following three Appendices:

- (a) Appendix A — Duties in relation to WCB administration
- (b) Appendix B — Duties in relation to the appellate systems, and
- (c) Appendix C — Duties in relation to policy and regulation making.

In general, Administrators must, in making their decisions, assume the following duties:

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

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

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

#### **4. CONFLICTS OF INTEREST**

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

Conflicts of interest, for this purpose, are defined below:

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

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

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

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

In the case of a difference over the presence of a Real, Potential or Apparent Conflict of Interest, the Chair shall determine where such a Conflict of Interest exists. In the case of the Chair, a majority of the Administrators present at the meeting shall decide.

## **5. OTHER ETHICAL CONSIDERATIONS**

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

- (a) interfering with the President's day-to-day administration of the WCB by contacting individual WCB officers and employees in order to influence their conduct, decisions, etc., with respect to individual matters or otherwise.
- (b) interfering with the exercise of the quasi-judicial decision-making authority of the WCB, by contacting the Chief Appeal Commissioner or individual Appeal Commissioners to influence their decisions or personally making representations to the appeal division or an officer of the WCB.
- (c) accepting transfers of economic benefits, except compensation authorized by law, that are connected directly or indirectly with the performance of an Administrator's duties and responsibilities as a Administrator, other than customary hospitality or other benefits normally and legitimately received as an incident of the protocol or social obligations accompanying those duties and responsibilities.
- (d) stepping out of an Administrator's role as an Administrator to assist private entities or persons in their dealings with the WCB where this would result in preferential treatment to any person.
- (e) knowingly benefiting from information that is obtained in the course of an Administrator's duties and responsibilities as an Administrator and that is not generally available to the public.

- (f) disclosing any matter or thing that comes to an Administrator's knowledge by reason of his or her appointment which the Board of Administrators has decided should remain confidential.
- (g) disclosing information contained in individual claim files or pertaining to the claim of an injured or disabled worker, except as authorized by law.
- (h) using an Administrator's office as Administrator to seek to influence a decision, to be made by another person, to further his or her private interest.
- (i) engaging in personal conduct which exploits for personal gain a Administrator's position of authority.
- (j) remaining an Administrator after having been elected as a member of the House of Commons or of the Legislative Assembly of the Province of British Columbia.

## 6. POST APPOINTMENT CONDUCT

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

An Administrator shall not, for a period of six months for each year of appointment as an Administrator to a maximum of eighteen months after ceasing to be an Administrator, directly or through any other person or persons communicate with an Administrator, voting or non-voting, or with an officer or employee of the WCB for the purpose of influencing, for personal gain, the Panel of Administrators or the WCB on any matter that was part of the Administrator's duties and responsibilities or is part of the duties and responsibilities of an Administrator.

This prohibition does not, however, extend to a former Administrator acting in the course of his or her responsibilities and duties as an official of a recognized worker or employer organization, or as an official of the Government of the Province of British Columbia, or of Canada, or of a government body under one of them.

For the same period of time, the Administrators shall not conduct official business with a former Administrator acting on behalf of himself or herself, or on behalf of another person or entity, except as an official of a recognized worker or employer organization, or as an official of the Government of the Province of British Columbia, or of Canada, or of a government body under them.

Except in extraordinary cases or in emergencies and then only as an interim measure, an Administrator shall not serve as an employee of, or enter into a contract for services with, the WCB for a period of 3 months following the end of his or her appointment as Administrator. Nor shall an Administrator seek employment with, or enter into negotiations for a contract for services with, the WCB during that period.

## 7. IMPLEMENTATION

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

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

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

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

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

## **APPENDIX A**

### **DUTIES OF THE ADMINISTRATORS IN RELATION TO WCB ADMINISTRATION**

#### **1. The President and WCB Management**

- (a) appoint the President
- (b) select and define the functions of the President
- (c) monitor the President's performance and provide advice and counsel in the execution of the President's duties
- (d) approve the appointment and remuneration of all senior executive officers, acting on the advice of the President
- (e) ensure that adequate provision has been made for management succession

#### **2. General Administration of the Board**

- (a) monitor the WCB's progress in fulfilling its purposes under the legislation and alter its direction through management if necessary
- (b) participate with management directly, or through its committees, in developing and approving the strategies by which the WCB will fulfill its purposes
- (c) approve and monitor compliance with all policies and all significant procedures by which the WCB is operated

#### **3. Specific Administrative Duties**

##### **A. Financial**

- (a) approve:
  - operating and capital budgets
  - major programs and expenditures
  - property purchases and disposition

- establishment and maintenance of an accounting system satisfactory to the Minister of Finance
- adequate funding of the accident fund
- certain grants and awards
- budget variances in excess of \$1,000,000

## B. Arrangements and Agreements

### (a) approve:

- interjurisdictional agreements under Section 8.1 or otherwise with other workers' compensation authorities
- contracts under Section 21(6) with physicians, nurses and other persons authorized to treat human ailments and with hospitals and other institutions, for the provision of health care
- arrangements under Section 71(9) with the Government of Canada or of any other province or territory whereby their inspectors carry out duties of OSH/prevention inspectors under BC's *Workers Compensation Act* or B.C. OSH/prevention inspectors carry out duties of their inspectors under any of their *Acts*
- establishment and maintenance of a WCB Superannuation Plan under Section 86(3) or arrangements with the Lieutenant Governor in Council under Section 86(5) that the *Pension (Public Service) Act* apply to WCB employees
- the collective agreement between the WCB and the Compensation Employees' Union

## C. Annual Reports

- (a) approve annual reports under the *Workers Compensation Act*, *Workplace Act* and *Criminal Injury Compensation Act*.

## D. Plan for the future of the Board

## E. Duties in relation to the Panel of Administrators

- (a) Enact bylaws for the conduct of the business and functions of the Administrators including the quorum for a meeting and the manner in which policies shall be published.
- (b) Establish and give direction to committees

## **APPENDIX B DUTIES OF THE ADMINISTRATORS IN RELATION TO THE APPELLATE SYSTEMS**

### **APPEAL DIVISION**

#### **1. Introduction**

The legislation indicates that the Administrators may not interfere with the quasi-judicial decision-making authority of the Appeal Division on individual matters. However, the Administrators are responsible for ensuring that the Appeal Division is properly administered.

#### **2. Chief Appeal Commissioner**

- (a) appoint the Chief Appeal Commissioner
- (b) select and define the functions of the Chief Appeal Commissioner
- (c) monitor the Chief Appeal Commissioner's performance in the administration of the Appeal Division and provide advice and counsel on the execution of those duties
- (d) ensure that adequate provision has been made for succession

#### **3. Administration of the Appeal Division**

- (a) set policies on selecting Appeal Commissioners
- (b) approve the appointment of part time or temporary Appeal Commissioners
- (c) set policies on administering the Appeal Division

### **MEDICAL REVIEW PANELS**

#### **1. Medical Review Panel Department**

- (a) ensure effective administration of the Medical Review Panel process through the Medical Review Panel Department
- (b) ratify semi-annual changes in Medical Review Panel fees

## APPENDIX C

### DUTIES OF THE ADMINISTRATORS IN RELATION TO POLICY AND REGULATION MAKING

#### 1. Compensation and Rehabilitation

- (a) determine all policy concerning compensation and rehabilitation matters including:
  - approval of all amendments to the *Rehabilitation Services and Claims Manual*
  - additions or deletions of occupational diseases to or from Schedule B
  - amendments to the Permanent Disability Evaluation Schedule
  - payment of interest on retroactive compensation under Section 92(3)(a)
  - payment of interest under Section 96(7) on refund of employer assessments and penalties on appeal
  - payment of interest on retroactive spousal benefits under Section 19

#### 2. Assessments

- (a) determine all policy concerning assessment matters including:
  - approval of all amendments to the *Assessment Policy Manual*
  - setting of assessment rates
  - creation and rearrangement of classes and subclasses
  - approval of changes to the Classification and Rate List
  - adoption of experience rating system
  - making of exemption policies for the application of Section 2(1) and of orders exempting employers or workers from the application of the *Act*

### 3. Occupational Safety and Health/Prevention

- (a) determine all policy concerning occupational safety and health/prevention matters including:
- approval of all amendments to the *Occupational Safety and Health Division Policy and Procedure Manual*
  - the making of occupational safety and health/prevention regulations, including:
  - industrial health and safety regulations, regulations for agricultural operations, fishing operations regulations, WHMIS regulations and first aid regulations under the *Workers Compensation Act*
  - regulations for the health, safety and comfort of persons in factories, offices and shops, for WHMIS regulations and for the enforcement of decisions, orders or rulings made and of penalties imposed, and for appeals from them, under the *Workplace Act*

### 4. Criminal Injury Compensation

- (a) Determine all policy concerning criminal injury compensation matters.

### 5. Regulations

Exercise the Board's authority to make regulations under the following sections of the *Workers Compensation Act*.

Section 1	recognizing an occupational disease for general application
Section 4(1), (2) (and S. 15 of Fishing Regs.)	for commercial fishing
Section 7	for amending Schedule D in respect of ranges of hearing loss, percentages of disability and methods or frequencies to be used to measure hearing loss

Section 21(1)	for furnishing health care to injured workers and for payment of it
Section 24(1)	for the application of Section 24 (reconsidering "old" claims for compensation to determine whether the pension fairly reflects the worker's loss of earnings)
Section 38(1)	for the timing of filing of payroll information
Section 38(2)	for penalties imposed for failure to provide payroll information
Section 40(2)	for penalties imposed for failure to pay assessments
Section 47(1)	for penalties imposed for failure to pay assessments on time.
Section 53(3)	for the form of report of injury or occupational disease by the worker to the employer
Section 54(4)	for the form of employer's report of injury
Section 54(6)	for defining and prescribing a category of minor injuries not required to be reported and the time at which the obligation to report commences
Section 55(1)	for the form of the application for compensation
Section 56(1)	for the form of the physician's report of injury
Section 70	for occupational first aid requirements
Section 71(1) and (1.1)	for occupational safety and health/prevention regulations, including WHMIS regulations
Section 72(9)	for conferring rights on union officials or other workers with respect to worker representation on inspections

- Section 72(10) for abridging the rights conferred by Section 72 where an inspection visit exceeds one day
- Section 75(1) for the due administration and carrying out of the *Act* and prescribing of the form and use of pay-rolls, records, reports, certificates, declarations and documents that may be necessary
- Section 75(3) for the fine for failure to comply with a regulation or order made under any section except Section 71

Exercise the Board's authority to make regulations under the following sections of the *Workplace Act*:

- Section 4(1) for the protection of the health, safety and comfort of persons in factories, offices and shops; for medical examinations of these persons and fees for those examinations; for WHMIS regulations; for fees and charges for services and functions provided and performed by the Board under the *Workplace Act*; for the enforcement of decisions, orders or rulings made, or penalties imposed, under the *Workplace Act* and for appeals from them; for the administration of the *Workplace Act*

### **Statutory Amendment**

Make recommendations to the Minister of Labour with respect to the amendment of the *Workers Compensation Act* and the *Workplace Act* and recommendations to the Attorney General with respect to the amendment of the *Criminal Injury Compensation Act*.



## Chapter 2

# Panel of Administrators' Procedural Bylaw

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### SECTION 1 — INTERPRETATION

1.1 *Definitions* — In this Bylaw, unless the context otherwise requires:

- (a) “Act” means the *Workers Compensation Act*, R.S.B.C. 1979, c. 437, as amended;
- (b) “Panel of Administrators” means the Administrators;
- (c) “Chair” means the Administrator appointed under Section 83.1(4) of the *Act*;
- (d) “Administrator” means any one of the individuals appointed by the Lieutenant Governor in Council under Section 83.1 of the *Act*, the President appointed under Section 84(1) and the Chief Appeal Commissioner appointed under Section 85(1)(a);
- (e) “this Bylaw” means this Panel of Administrators’ Procedural Bylaw;
- (f) “Conflict of Interest” means any one of a Real Conflict of Interest, a Potential Conflict of Interest or an Apparent Conflict of Interest, all as described and defined in the Statement of Duties of the Administrators of the Workers’ Compensation Board.

1.2 *Definitions in Act to apply* — Unless otherwise indicated, all terms contained in this Bylaw which are defined in the *Act* shall have the meanings given to such terms in the *Act*.

## SECTION 2 — MEETINGS OF THE PANEL OF ADMINISTRATORS

2.1 *Regular meetings* — Regular meetings of the Panel of Administrators shall be held not less than ten (10) times in each calendar year, at the call of the Chair, at any place in British Columbia that the Chair decides after consultation with the Administrators, except that in no case shall more than two (2) months elapse between regular meetings.

2.2 *Annual meeting* — One (1) of the regular meetings each year shall be designated the Annual Meeting and shall be held on such day in February or March of the year that the Chair decides after consultation with the Administrators. The Annual Meeting shall deal with, among other matters which may be presented, the review and approval of the annual report (including the annual financial statements) which is required to be made by March 25 each year.

2.3 *Notice of regular meetings* — To ensure the availability of the Administrators, the Chair shall, at least seven (7) days prior to each regular meeting, deliver a copy of the agenda for the meeting to each Administrator. The agenda so delivered shall constitute notice of the meeting, except that failure to deliver the agenda within the time specified shall not invalidate the meeting provided the agenda is delivered at least forty-eight (48) hours prior to the meeting.

2.4 *Agenda* — The agenda for a regular meeting shall, subject to Section 2.5, be set by the Chair, and:

- (a) shall describe the date, time and place of the regular meeting;
- (b) shall be sufficiently descriptive of the matters to be decided that the Administrators will be able to identify the matters without disclosing any information which, for reasons of confidentiality, is not to be disclosed to persons other than the Administrators;
- (c) shall include reports from the President and Chief Appeal Commissioner concerning their respective areas of responsibility and events affecting those areas since the previous Administrators' meeting;
- (d) shall be accompanied by supporting materials in a standard format, with an executive summary, relating to the matters set out in the agenda whenever possible; and
- (e) shall contain the proposed schedule of regular meetings for the following six (6) months.

2.5 *Request of Administrators* — Upon the written request of at least two (2) Administrators received at least seven (7) days prior to a regular meeting, the Chair shall place a matter on the agenda for the regular meeting.

2.6 *Distribution of supporting materials* — If it has not been possible to distribute all of the supporting materials with an agenda for a regular meeting, all such supporting materials shall be distributed to each Administrator at least twenty-four (24) hours prior to the regular meeting unless all Administrators present at such meeting consent to the distribution of particular material at the meeting.

2.7 *Special meetings* — The Chair may call a special meeting of the Panel of Administrators at any place in British Columbia that the Chair decides, by delivering written notice to each Administrator at least twenty-four (24) hours prior to the special meeting; and the written notice shall include the date, time, place and purpose of the special meeting.

2.8 *Request of Administrators* — Upon the written request of at least two (2) Administrators, the Chair shall forthwith call a special meeting at any place in British Columbia that the Chair decides, by delivering written notice to each Administrator at least seven (7) days prior to the special meeting; and the notice shall include the date, time, place and purpose of the special meeting.

2.9 *Postponement or cancellation* — Subject to Section 2.1, the Chair may, after consultation with the Administrators, postpone or cancel a meeting of the Panel of Administrators, except a special meeting called under Section 2.8, by delivering written notice to each Administrator of the postponement or cancellation at least twenty-four (24) hours prior to the scheduled time for the meeting.

### **SECTION 3 — QUORUM**

3.1 *Quorum* — A majority of the Administrators then in office shall constitute a quorum at a meeting of the Panel of Administrators and no business shall be conducted unless a quorum is present in the meeting.

3.2 *Participation by telephone* — An Administrator may participate in a meeting of the Panel of Administrators by means of such telephone or other communications facilities as permit all persons participating in the meeting to hear each other, and an Administrator participating in a meeting by such means is deemed to be present at the meeting and shall be counted in the quorum.

3.3 *Telephone meeting* — At the discretion of the Chair, a meeting of the Panel of Administrators may be held with respect to an urgent matter by such telephone or other

communications facilities as permit all persons participating the meeting to hear each other, and each Administrator participating by such means shall be counted in the quorum. All decisions made at telephone meetings shall be presented for ratification at the next regular or special meeting.

#### **SECTION 4 — CONDUCT OF MEETINGS**

4.1 *Chair to preside* — The Chair shall preside at all meetings of the Panel of Administrators and, subject to this Bylaw, shall decide the procedure to be followed, with due regard for the views of the other Administrators.

4.2 *Robert's Rules of Order* — The Chair may, in resolving procedural disputes, if necessary, refer to Robert's Rules of Order, 1990 Edition which shall govern where applicable and not inconsistent with the *Act* or this Bylaw. The Chair's decision on the interpretation of such Rules of Order shall govern.

4.3 *Matters to be decided* — Unless otherwise agreed by all Administrators present, only matters set out in the agenda for a regular meeting shall be decided at that regular meeting and only matters set out in the notice for a special meeting shall be decided at that special meeting.

4.4 *New business* — An Administrator may raise, as "new business," a matter not set out in the agenda for a regular meeting, and the Chair shall place the matter on the agenda for the next or a subsequent regular meeting.

#### **SECTION 5 — CONSENSUS AND DECISION-MAKING BY THE ADMINISTRATORS**

5.1 *How matters are to be decided* — The goal of the Administrators is to achieve consensus on all substantive matters associated with the mandate of the Panel of Administrators.

5.2 *Meaning of Consensus* — Consensus means that all Administrators have reached a general agreement on an issue or set of issues before them. General agreement means that there is no substantive disagreement and that there will be no public expression of dissent by any Administrator.

5.3 *Administrative Matters* — In putting the consensus principles into practice, it is recognized that many administrative matters (e.g. location and timing of meetings, etc.) and other matters which are not central to the substantive purpose of the Panel of Administrators will be handled by the Chair.

## 5.4 Principles of Consensus

- (a) Each Administrator has an obligation to express their point of view, listen to proposals and build agreement by proposing alternatives.
- (b) Each Administrator has the right to expect:
  - (i) adequate time to become informed and discuss issues in relation to the relative complexity and importance;
  - (ii) a clear and accurate expression of areas of agreement and disagreement, if any;
  - (iii) an opportunity for reconsideration on the basis of new evidence which is substantial and material to the decision.
- (c) When unable to support a consensus, an Administrator has an obligation to:
  - (i) demonstrate that the item at issue is a substantive issue;
  - (ii) demonstrate it justifies further consideration; and
  - (iii) propose alternatives or options for consideration and a time frame for decision.
- (d) The Administrators have an obligation to:
  - (i) *Act* in the best interests of the Workers' Compensation Board and all its stakeholders;
  - (ii) address proposals pertinent to the mandate of the Panel of Administrators when presented by any Administrator
  - (iii) creatively seek solutions where disagreement occur;
  - (iv) balance the views of each Administrator while weighing the collective public interest of matters before them.
- (e) The Administrators recognize that consensus seeking is facilitated by:
  - (i) careful listening and respect for everyone's views;
  - (ii) patience with requirements for fair process;

- (iii) sincere attempts to identify alternatives that promote agreement;
- (iv) understanding the need to make decisions in a timely manner;
- (v) willingness to submit items of controversy to objective analysis;
- (vi) respect for colleagues

## 5.5 Decision Making

- (a) In the event an Administrator requires more time, the matter is set aside to enable the Chair and the Administrators to formulate an approach acceptable to the other Administrators.
- (b) Where consensus cannot be reached, and where each person who wishes to speak has been heard and where the Administrators have invested time in seeking consensus, the Chair is granted the discretion to take one of the following steps:
  - (i) continue the discussion in the current meeting;
  - (ii) table the item for further discussion in a future meeting;
  - (iii) refer the item to committee or staff for further discussion and formulation of recommendations, or other arena for resolution; or
- (c) Where the step described in Section 5.5(b) above has been taken and there is still no consensus, the Administrators may vote to have the issue decided by the Chair.

5.6 *Role of the Chair* — The Chair facilitates consensus. The Chair is expected to offer relevant information, clarify views, help define common ground, and suggest options.

5.7 *Reconsideration of Decisions* — An Administrator can raise through the Chair a request to have the Administrators reconsider a decision on the basis of new evidence which is substantial and material to the decision.

5.8 *Criticism by Individual Administrators* — Disagreement becomes destructive if it is projected outside of the Panel of Administrators as a way of discrediting the process and/or participants. The Administrators agree to raise criticisms of the process or the emerging decisions as agenda items for resolution rather than “take them to the street.”

5.9 *Common Front* — The Administrators will present a common front externally when a decision has been taken. The objective of this consensus model is to ensure a thorough and thoughtful examination of issues before the Administrators, but to ensure a position of unity once the decision has been made.

## **SECTION 6 — COMMUNICATIONS**

6.1 *Chair to be Spokesperson* — The Chair or the Chair's designate is the chief spokesperson regarding the operations and decision so the Panel of Administrators.

6.2 *Public Expressions of Opinions* — In public discussions about any matters, other Administrators will make it clear that they are expressing their personal opinions and not those of the Panel of Administrators.

## **SECTION 7 — CONFLICTS OF INTEREST**

7.1 *Conflict of Interest of an Administrator* — Where an Administrator considers that he or she has a Conflict of Interest with respect to a particular matter, that Administrator shall advise the Chair prior to discussion or decision on the matter by the Administrators and shall withdraw from the meeting during the discussion and decision on the matter.

7.2 *Possible Conflict of Interest of another Administrator* — An Administrator who identifies a possible Conflict of Interest on the part of another Administrator with respect to a particular matter shall advise the Chair and the Administrator perceived as having the Conflict of Interest immediately, and, except in the case described in Section 7.3, if the Administrator perceived as having the Conflict of Interest agrees or, in the case of a disagreement, if the Chair decides that there is a Conflict of Interest, the Administrator perceived as having the Conflict of Interest shall withdraw from the meeting during the discussion and decision on the matter.

7.3 *Conflict of Interest of the Chairman* — In case of a difference over the presence of a Conflict of Interest on the part of the Chair, a majority of the Administrators present at the meeting shall decide whether such a Conflict of Interest exists. If it is decided that a Conflict of Interest exists, the Chair shall designate an acting chair under Section 10.1 for, and shall withdraw from the meeting during, discussion and decision on the matter. The acting chair may vote on the matter.

## **SECTION 8 — MINUTES**

8.1 *Minutes to be taken* — Minutes shall be recorded of each meeting of the Panel of Administrators evidencing the decisions taken and shall be presented for the approval of the Administrators at the next or a subsequent meeting.

8.2 *Signature of Chair* — Upon approval by the Administrators with or without amendment, the minutes shall be signed by the Chair and the minutes, if purported to be signed by the Chair, shall be evidence of the proceedings which were taken at the meeting.

8.3 *Effect of Chair's signature* — Where minutes of a meeting have been entered and signed in accordance with Sections 8.1 and 8.2, the meeting shall be deemed to have been duly held and convened and all proceedings at the meeting shall be deemed to have been duly taken until the contrary is proved.

8.4 *Preservation of minutes* — Minutes of all meetings of the Panel of Administrators and copies of all supporting materials relating to the matters dealt with at the meetings shall be retained by the Office of the Panel of Administrators in the manner directed by the Chair.

## **SECTION 9 — COMMITTEES**

9.1 *Committees* — The Panel of Administrators may, from time to time by resolution, constitute, dissolve or reconstitute standing committees and special committees consisting of such Administrators and having such procedures as the Panel of Administrators may decide, provided that:

- (a) the Chair shall be an ex officio member of all committees;
- (b) the Panel of Administrators may appoint a chair of each committee; and
- (c) minutes shall be taken of all meetings of standing committees, with original copies of the minutes retained by the Office of the Panel of Administrators in the manner directed by the Chair and photocopies of the minutes sent to all Administrators.

9.2 *Authority of committees* — Every committee so constituted shall have the authorities, powers and discretions which are delegated to it by resolution of the Panel of Administrators and shall *Act* in accordance with the directions, including the procedures to be followed, which the Panel of Administrators imposes on it.

## **SECTION 10 — CHAIR DESIGNATE**

10.1 *Chair may designate* — The Chair may designate an Administrator representative of the public interest to *Act* in the Chair's place during the Chair's temporary absence, and while so *Acting* the designated Administrator shall have the power and authority of the Chair.

## **SECTION 11 — DELIVERY**

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

## **SECTION 12 — REMUNERATION OF THE ADMINISTRATORS**

12.1 *Administrators' remuneration* — In consideration of carrying out their responsibilities under the *Act*, the Administrators shall be paid out of the accident fund:

- (a) remuneration in an amount determined by the Lieutenant Governor in Council, and
- (b) reasonable and *Actual* traveling and out of pocket expenses necessarily incurred by them in discharging their duties.

12.2 *Calculation of per diem* — Where the remuneration determined by the Lieutenant Governor in Council is in whole or in part a per diem rate, then, unless otherwise fixed by the Lieutenant Governor in Council, the amount to be paid in respect of the per diem rate to an Administrator shall be calculated as follows:

- (a) for less than four (4) hours of work in a day, an Administrator shall be entitled to one-half of the per diem rate;
- (b) for more than four (4) hours of work in a day, an Administrator shall be entitled to the full per diem rate;
- (c) only one full per diem payment shall be made to an Administrator for each twenty-four (24) hour day;

- (d) preparation time of up to one (1) day per regular meeting, special meeting, committee meeting or other meeting of the Panel of Administrators shall be remunerated; and
- (e) reasonable travel time shall be included in qualifying time.

12.3 *Time for claiming* — An Administrator shall only be paid remuneration under Section 12.1(a) or be reimbursed for expenses under Section 12.1(b) where the Administrator has submitted a claim for such remuneration or expenses within three (3) months of the meeting of the Panel of Administrators in respect of which the remuneration is to be paid or the expenses were incurred.

### **SECTION 13 — ANNUAL REVIEW**

13.1 *Annual review* — This Panel of Administrators Procedural Bylaw shall be reviewed by the Panel of Administrators within one (1) year of being made and thereafter annually or when a new Administrator is appointed.

## Chapter 3

### Panel of Administrators Forward Agenda

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Agenda Item	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>A. Panel</b>												
1. Annual Meeting			✓									
2. Performance Review:												
(a) CEO		✓										
(b) Chief Appeal Commissioner		✓										
(c) Director General		✓										
(d) Registrar, Medical Panel		✓										
3. Panel Performance Review						✓						
<b>B. Financial</b>												
1. Quarterly Results				✓			✓			✓		
2. Year End Results		✓										
3. Audit Committee Report		✓		✓			✓			✓		

Agenda Item	Jan	Feb	Mar	Apr	May	Ju	Jul	Aug	Sep	Oct	Nov	Dec
<b>C. Plans and Strategies</b>												
1. Strategic Plan												
(a) Preliminary Panel Review & Approval									✓	✓		
(b) Consultation with Stakeholders											✓	✓
(c) Final Panel Approval		✓										
2. Business Plan, Capital Budgets												
(a) Preliminary Panel Approval												✓
(b) Final Panel Approval		✓										
3. Policy Agenda							✓					
4. Succession Plan						✓						
5. Compensation Plans										✓		
<b>D. Operations</b>												
1. CEO Report	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
2. Chief Appeal Commissioner Report	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

## Chapter 4

# Terms of Reference for the Chair

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### I. INTRODUCTION

- A. The Panel of Administrators has been entrusted with the stewardship of the Workers' Compensation Board. Critical to this stewardship are the relationships between the Panel and management, stakeholders, and the people of British Columbia.
- B. The Chair, as the presiding Panel member, must ensure that these relationships are effective, efficient and further the best interests of the Workers' Compensation Board. In performing this role, the Chair works with the CEO, the Chief Appeal Commissioner, the Director General, Policy Bureau and the Registrar, Medical Review Panel. The Chair manages the affairs of the Panel, and together with the CEO ensures effective relations with Panel members, other stakeholders and the public.

### II. WORKING WITH MANAGEMENT

The Chair has the responsibility:

- A. to act as the principal sounding board, counselor and confidant for the CEO, the Chief Appeal Commissioner, and the Director General, Policy Bureau; including helping to review strategies, define issues, maintain accountability, and build relationships;
- B. to ensure the CEO, the Chief Appeal Commissioner, and the Director General, Policy Bureau are aware of concerns of the Board, stakeholders and the public;
- C. to ensure the Panel monitors and evaluates the performance of the CEO, the Chief Appeal Commissioner, and the Director General, Policy Bureau;
- D. to ensure implementation of management succession and development plans by the CEO, the Chief Appeal Commissioner, and the Director General, Policy Bureau;
- E. to work closely with the CEO to ensure that management strategies, plans and performance are appropriately represented to the Board and stakeholders; and

- F. to directly monitor the performance and activities of the Registrar, Medical Review Board.

### **III. MANAGING THE BOARD**

The Chair has the responsibility:

- A. to ensure that the Panel has full governance of the business and affairs of the Workers' Compensation Board;
- B. to ensure that the Panel is alert to its obligations pursuant to law;
- C. to provide leadership to the Panel and to assist the Panel in reviewing and monitoring the aims, strategies, policies and directions of the Workers' Compensation Board;
- D. to communicate with the Panel to keep it up to date on all major developments, including avoiding surprises through timely discussion of potential developments;
- E. to ensure the Panel has sufficient knowledge to permit it to comfortably and properly make major decisions when such decisions are required;
- F. to establish the frequency of the Panel meetings and review such frequency from time to time, as considered appropriate or as requested by the Panel;
- G. to ensure the co-ordination of the agenda, information packages and related events for Panel meetings in conjunction with the CEO and the Corporate Secretary;
- H. to chair Panel meetings;
- I. to recommend the committees of the Panel and their composition, review the need for, and the performance and suitability of, those committees and make such adjustments as are deemed necessary from time to time, all in conjunction with the Priorities and Board Governance Committee;
- J. to attend committee meetings where appropriate; and
- K. to ensure that Panel and committee meetings are conducted in an efficient, effective and focused manner.

#### **IV. RELATIONS WITH STAKEHOLDERS AND THE PUBLIC**

The Chair has the responsibility:

- A. to ensure, in conjunction with the CEO and relevant committees, that the Workers' Compensation Board's management and, where applicable, the Panel are appropriately represented at official functions and stakeholder meetings;
- B. to undertake speaking and/or other public engagements in connection with the Workers' Compensation Board's activities; and
- C. to represent the Workers' Compensation Board in its interface with Government, regulatory bodies and other stakeholders.



## Chapter 5

# Terms of Reference for the President and Chief Executive Officer

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### I. FUNCTION

- A. The President and Chief Executive Officer is responsible for the leadership and management of the Workers' Compensation Board (the "WCB") (except Appeal Division, the Policy Bureau and the Medical Review Panel Department) in accordance with the strategies, plans and policies approved by the Panel.
- B. The President and Chief Executive Officer reports to the Panel of Administrators.
- C. The President and Chief Executive Officer attends meetings of the Panel of Administrators and designated committees *ex officio*.

### II. RESPONSIBILITIES

#### A. PLANNING

The President and Chief Executive Officer has the responsibility to:

- (i) lead the development of:
  - (a) the vision or mission for the WCB;
  - (b) the strategic plan; and
  - (c) annual business plans including operating and capital budgets for the Workers' Compensation Board of British Columbia, in consultation with the Panel of Administrators and ultimately for the approval by the Panel.

These plans include the identification of the needs of the communities the Workers' Compensation Board of British Columbia (WCB) serve and a future vision of the role the WCB will play in meeting those needs. The plan identifies the critical issues that must be addressed in order to realize the future vision;

- (ii) submit to the Panel quarterly reports regarding the progress in achieving objectives, setting out the rationale for variances and recommending modifications to the plan for the remainder of the year;
- (iii) at the beginning of each year, and in conjunction with the Panel, establish an annual list of personal objectives to be achieved in the forthcoming year; and
- (iv) successfully implement the strategies and plans approved by the Panel.

## B. ORGANIZATION

The President and Chief Executive Officer shall:

- (i) develop an organizational structure that is in keeping with the values and the strategic directions of the organization;
- (ii) effectively lead, organize and manage staff and develop an effective functioning executive team; and
- (iii) set benchmarks to measure Vice Presidents' performance.

## C. HUMAN RESOURCE LEADERSHIP

The President and Chief Executive Officer shall:

- (i) consult with the Panel relative to decisions on the selection, promotion, utilization and retention of executive staff; and
- (ii) develop and maintain an annual Board approved plan for the development and succession of senior management.

## D. QUALITY MANAGEMENT / QUALITY SERVICE

The President and Chief Executive Officer shall:

- (i) within the context of the Workers' Compensation Board's Strategic Plan, recommend new and revised policies and programs to the Panel in order to meet the changing needs of the community and to recognize new developments in workplace safety and injury prevention; and

- (ii) lead the re-engineering and culture change of the organization with the objective of delivering services that are aligned to customer and stakeholder expectations.

#### E. COMPLIANCE WITH ESTABLISHED POLICY & REGULATION

The President and Chief Executive Officer shall:

- (i) ensure development of administrative policy and standards;
- (ii) provide input to public policy and regulations;
- (iii) monitor the decisions of the Review Board to ensure decisions conform with the law and with Board policy; and
- (iv) refer Review Board decisions to the Appeal division in the event that decisions contravene the law or Board policy.

#### F. COMMUNICATION AND PROMOTION OF THE BOARD

The President and Chief Executive Officer shall:

- (i) establish and maintain an effective communications process to ensure the decisions of the Administrators are conveyed to the WCB staff, workers, employers, client groups and other interested parties;
- (ii) prepare the annual report on behalf of the Panel;
- (iii) ensure the WCB is appropriately involved with the community and foster confidence among the various publics; and
- (iv) develop a good working relationship and regular communication pattern with the Chief Appeal Commissioner, the Director General of the Policy Bureau and the Registrar, Medical Review Panels to ensure the overall objectives of the Board are fulfilled in an efficient manner.

## G. SUPPORT TO THE PANEL OF ADMINISTRATORS

The President and Chief Executive Officer shall:

- (i) provide effective support and information to the Panel to allow it to fulfill its governance responsibilities;
- (ii) report to the Panel on a monthly basis regarding significant activities of the Workers' Compensation Board and on a quarterly basis regarding performance against plans and budgets;
- (iii) act as an effective conduit for information between the organization and the Panel. This involves effective reporting to the Panel on the activities and health of the organization and clear articulation and support of the Panel's policies, objectives and values to the organization; and
- (iv) upon the appointment of each new Panel member, coordinate a program which will provide new members with background information on the Workers' Compensation Board of British Columbia, the role of a Panel member and the general issues facing the Workers' Compensation Board at that time.

## III. REPORTING RELATIONSHIPS

The President and Chief Executive Officer shall:

- (i) report to the Panel of Administrators through the Chair of the Panel; and
- (ii) have a day to day working relationship with the Chair and the Committees of the Panel.

## Chapter 6

# Terms of Reference for Chief Appeal Commissioner

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### I. FUNCTION

- A. The Chief Appeal Commissioner is responsible to the Panel for the leadership and operation of the Appeal Division (the “division”).
- B. The Chief Appeal Commissioner is responsible for the operation of a credible, effective appeal process while working with the Panel and within the parameters of the legislation.
- C. The Chief Appeal Commissioner exercises independent judgment in the adjudication of individual claims. At the same time, it is expected these decisions will be consistent with the policies of the Panel.
- D. The Chief Appeal Commissioner presides at hearings or meetings of the Appeal Division.
- E. The Chief Appeal Commissioner chairs or participates in hearings, reviews material and precedents in preparation for appeal hearings, and makes or participates in making decisions.

### II. RESPONSIBILITIES

#### A. LEADERSHIP AND ADMINISTRATION

The Chief Appeal Commissioner shall:

- (i) provide visible leadership to the Appeal Division and promote the image of the division to the public;
- (ii) assess the future demands of the division, and develop plans for the approval of the Panel which meet these demands and fulfill the Appeal Division’s obligations under the *Act*;
- (iii) develop operating and capital budgets for approval of the Panel;

- (iv) assume responsibility for the overall direction of the division and its staff which includes managing the day-to-day operations of the division, the Appeal Commissioners, and staff; building collegiality among commissioners; and assigning files and monitoring case loads;
- (v) coordinate the activities of the Appeal Commissioners and panels;
- (vi) evaluate the performance of the Appeal Commissioners and division staff, and recommend appropriate action to the Panel; and
- (vii) develop and maintain an effective organization structure in order to carry out the work of the Appeal Division.

## B. COMMUNICATIONS

The Chief Appeal Commissioner shall:

- (i) attend meetings of the Panel and designated committees of the Panel, *ex officio*;
- (ii) keep the Panel apprised of critical developments with respect to decisions on claims and trends in claims decisions;
- (iii) advise the Panel on policy issues arising out of decisions of the Appeal Division;
- (iv) participate in the development of policy as a non-voting Panel member;
- (v) communicate with a wide range of groups and individuals, including workers, employers, the Ombudsman's Office, the executive of the WCB, and the Panel, etc.; and
- (vi) liaise with the President and Chief Executive Officer on a regular basis.

## C. APPOINTMENTS

The Chief Appeal Commissioner shall:

- (i) select and appoint Appeal Commissioners for an agreed term in accordance with the policies established by the Panel;
- (ii) subject to the approval of the Panel, appoint part-time or temporary Appeal Commissioners;

- (iii) establish panels of the Appeal Division;
- (iv) as required, terminate a designation to a panel and may fill any vacancy on a panel;  
and
- (v) as required, recommend to the Panel the removal of an Appeal Commissioner for cause.

#### D. QUASI-JUDICIAL

The Chief Appeal Commissioner shall:

- (i) exercise jurisdiction under the *Workers Compensation Act* and *Criminal Injury Compensation Act*;
- (ii) subject to the policies of the Panel, the Bylaws enacted or the resolutions passed, determine the practice and procedure for the conduct of appeals by the Appeal Division;
- (iii) chair appeals, especially those of major importance – that is, act as chair, conduct hearings, determine issues, determine procedure, resolve disputes and encourage participation;
- (iv) render his/her decision in writing in a clear, concise fashion explaining the reasons for the decision and citing legislation, regulation, policy, precedent, or extenuating circumstances;
- (v) review and analyze appeal decisions for quality, adherence to policies, procedures and practices, consistency and timeliness; and take corrective action as necessary;  
and
- (vi) monitor the time within which decisions must be made and ensure the timeliness of decisions.

#### E. LEGISLATION

The Chief Appeal Commissioner shall recommend changes or provide comments on proposed changes in legislation, as they may affect injured workers and the Appeal Division process.

### III. REPORTING RELATIONSHIPS AND ACCOUNTABILITIES

The Chief Appeal Commissioner reports to the Panel of Administrators.

#### A. INDEPENDENCE OF ACTION

- (i) The Chief Appeal Commissioner shall undertake the following without reference to the Panel:
  - (a) quasi-judicial decisions as provided for in the Legislation;
  - (b) interprets and implements policies and plans; and
  - (c) day-to-day management decisions.
- (ii) The Chief Appeal Commissioner shall consult with or seek the approval of the Panel regarding:
  - (a) the determination of the practice and procedures for the conduct of the appeals, by the Appeal Division;
  - (b) the employment of part-time or temporary Appeal Commissioners;
  - (c) the annual budgets and plans; and
  - (d) the removal of Appeal Commissioners.

#### B. PERFORMANCE AND RESULTS

Results will be measured in the following ways:

- (i) public confidence in and the credibility of the Appeal Division, e.g., feedback from the Ombudsman's Office;
- (ii) quantitative measures of volume of work produced on a timely basis, including the number of appeals;
- (iii) the quality of decisions made as a quasi-judicial tribunal;
- (iv) quality of advice given to the Panel; and
- (v) appeal decisions made on a timely basis.

## **Chapter 7**

# **Terms of Reference for the Director General, Policy Bureau**

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### **I. FUNCTION**

- A. The Director General is responsible for the leadership and management of the Workers Compensation Board's Policy Bureau.
- B. The Policy Bureau's mandate is to ensure that the Panel is provided with thoroughly researched "public interest" policy and regulatory alternatives and options which incorporate the views of the major constituents (workers, their unions, employers and the WCB administrative operating divisions).
- C. The Director General will, from time to time, lead projects which require direct involvement in undertaking analysis, developing alternatives and presenting options and recommendations in support of the Panel's policy and regulatory priorities.
- D. The Director General is a member of the Priorities Committee of the Panel.

### **II. RESPONSIBILITIES**

The Director General, Policy Bureau shall:

- A. lead and manage the Bureau within parameters established by the Panel;
- B. recommend annual plans and objectives to the Panel for approval;
- C. direct and monitor the activities of the Bureau in a manner that ensures that plans and objectives approved by the Panel are met;
- D. recommend the Bureau's operating and capital budgets for approval by the Panel and monitor achievement of established operating plans;

- E. develop and recommend to the Panel the overall Bureau organizational structure and staffing including hiring and evaluating the performance of Policy Bureau Directors;
- F. develop and maintain an annual Panel approved plan for the development and succession of senior staff;
- G. function as a dynamic, contributory member of the Panel's Priorities Committee through responsible participation in the development and ranking of policy and regulatory initiatives;
- H. ensure thoroughly analyzed and fully developed policy, regulatory and legislative amendment options are presented to the Panel;
- I. undertake extensive consultation with WCB constituents and establish consultative mechanisms appropriate to the issues being considered including the holding of public hearings;
- J. work closely with WCB Senior Executive Committee to ensure the impact of any proposed policy or regulatory changes on the corporate side of the WCB are clearly understood before options are presented;
- K. analyze the impact of any proposed policy, regulatory or legislative change to the safety or health of workers, the compensation and rehabilitation of injured workers and the cost benefit to employees;
- L. establish committee and subcommittees as required for ongoing Occupational Safety and Health Regulatory Review and amendments to Occupational Diseases compensation policy using secondment from the operating division and representatives from the worker and employer communities; and
- M. manage sensitive situations and resolve them.

### **III. REPORTING RELATIONSHIPS**

The Director General, Policy Bureau shall:

- A. report to the Panel of Administrators through the Chair of the Panel; and
- B. have a dotted line reporting relationship to the President and CEO to ensure the administration's priorities are considered and that the impact of policy and regulatory options are fully developed.

## Chapter 8

# Terms of Reference for the Registrar, Medical Review Panel

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### I. FUNCTION

- A. The Registrar, Medical Review Panels is responsible to the Chair of the Panel of Administrators for the leadership and administration of the Medical Review Panel Department (MRP)
- B. The Registrar, MRP manages and directs the operation of the MRP Department, liaises with individual workers, employers and their representatives and with MRP and specialist members, and interacts with the workers' compensation community to identify general client service issues around the MRP process and ensures their prompt resolution.

### II. RESPONSIBILITIES

The Registrar, Medical Review Panels shall:

- A. provide visible leadership to the MRP department and effectively contribute to improving service delivery objectives;
- B. develop and present annual administrative and capital budgets for approval by the Chair of the Panel;
- C. evaluate and recommend resource requirements, including administrative budgets, staffing levels and facilities, needed to provide the support function for the Medical Review Panels;
- D. review quarterly variance reports with the Chair of the Panel;
- E. monitor service performance of operations against plans and objectives and take prompt and appropriate action when necessary;
- F. hire, appraise, train, discipline and terminate MRP staff as appropriate;

- G. monitor MRP staff's career and development progression and ensure individual performance plans are in place and match departmental goals;
- H. ensure all statutory requirements for a MRP appeal are met and that all procedures and processes are duly executed in accordance with the *Workers Compensation Act*, Panel of Administrator policies and departmental practices;
- I. establish quality assurance mechanisms for the MRP Department and review complaints and evaluate community concerns;
- J. monitor and recommend amendments to MRP processes, policies and procedures;
- K. handle grievances at the appropriate level;
- L. conduct review of Medical Appeal Officer decisions upon request; review MRP certificates and narratives; act as conduit of requests for clarification of MRP certificates;
- M. develop and maintain database of MRP appeals, including issues, decisions appealed and end results; prepare statistical reports for the Panel; prepare annual report;
- N. act as chair to the MRP Chair's Advisory Committee and, in conjunction with the Committee, liaise with MRP Chairs and specialists, conduct business meetings, coordinate biannual education programs for Chairs, specialists and the MRP Department, coordinate Chair's concerns regarding the appointment, reappointment or termination of and code of conduct for MRP chairs, and work with College of Physician and Surgeons to deal with matters of impropriety;
- O. consult and liaise regularly with the President and CEO, the Director General, Policy Bureau and the Vice President, Compensation Services to resolve matters of mutual concern;
- P. undertake special projects which may include research into selected areas, preparation/revision of procedures and methods;
- Q. ensure a safe and secure working environment is maintained in accordance with WCB policies and practices and relevant legislation;

- R. keep informed of changes in MRP and other workers' compensation issues by reading appropriate literature, attending meetings and conferences, consulting with stakeholder groups and other activities as appropriate; and
- S. promote the image of the MRP to the public.

### **III. REPORTING RELATIONSHIPS**

The Registrar and the MRP Department reports to the Chair of the Panel of Administrators of the WCB.



## Chapter 9

# General Terms of Reference for Committees

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### I. COMMITTEE RESPONSIBILITIES

- A. Committees analyze in depth, policies and strategies usually developed by management, which are consistent with their terms of reference. They examine proposals and where appropriate make recommendations to the full Panel.
- B. Committees do not take action or make decisions on behalf of the Panel unless specifically mandated to do so.

### II. NEW COMMITTEES AND TERMS OF REFERENCE

- A. There will be occasions when the Panel may want to form a new standing committee or disband a current committee.
- B. The Panel may appoint an ad hoc committee to study a particular issue. Ad hoc committees will have very specific terms of reference and will be appointed for a specific period of time.
- C. Each committee will undertake a comprehensive annual review of its terms of reference.
- D. The Priorities and Board Governance Committee, at the beginning of each, year shall:
  - (I) review the terms of reference of all committees to ensure that together they meet the needs of the WCB;
  - (ii) recommend any new or additional committees if appropriate.

- E. Committee Terms of Reference will be developed following the format that includes at least the following sections:
  - (i) Purpose
  - (ii) Composition and Term of Office
  - (iii) Duties and Responsibilities
  - (iv) Accountability
  - (v) Committee Timetable

### **III. LEADERSHIP AND MEMBERSHIP**

- A. The Chair, with consideration of the desires of individual Panel members and in consultation with the Priorities and Board Governance Committee, is responsible for appointing Panel members to the committees.
- B. Consideration will be given to rotating committee members periodically but the Panel does not feel that such a rotation should be mandated as a policy since there may be reasons at a given point in time to maintain an individual Panel members committee membership.
- C. The Chair, in consultation with the Priorities and Board Governance Committee, is responsible for appointing all committee Chairs.
- D. The Chair of a committee presides at all meetings of the committee and is responsible to see that the work of the committee is well organized and proceeds in a timely fashion.

### **IV. COMMITTEE MEETINGS AND AGENDAS**

- A. The committee Chair, in consultation with committee members, will determine the frequency and length of the meetings of the committee. The Chair of the committee and the members of the committee, in consultation with the President and CEO or the designated management liaison, will develop the committee's agenda.

- B. A committee may, from time to time, request the assistance of advisors to research, investigate and report on matters within a committee's terms of reference. This request should be approved by the Panel and coordinated through the Chairman and President and CEO.

**V. REPORTING**

Each committee has the duty to report to the full Panel all matters which it considers to be important for full Panel consideration. All minutes of the committees should be attached to the Panel minutes and forwarded to the Panel together with material for the subsequent Panel meeting.

**VI. COMMITTEE TIMETABLE**

Each committee will develop a committee timetable as part of its terms of reference. The timetable will identify when the Committee undertakes its major responsibilities throughout the year. A sample timetable is outlined below:

<b>Sample Committee Timetable</b>												
<b>Agenda Items</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>Aug</b>	<b>Sept</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>



## Chapter 10

# Terms of Reference for the Audit Committee

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### I. PURPOSE

- A. The purpose of the Audit Committee (the “Committee”) is to assist the Panel of Administrators in fulfilling its fiduciary and oversight responsibilities to ensure that:
- (i) the financial statements are prepared in accordance with GAAP;
  - (ii) the assets of the Board are adequately protected with appropriate internal control procedures and practices;
  - (iii) the investments which form the majority of the assets of the Board are managed prudently and provide returns commensurate with the approved risk levels;
  - (iv) the liabilities of the Board are properly recorded and that they do not impair the Board’s financial health (i.e. full funding);
  - (v) capital and operating expenditure practices adhere to established internal control and evaluation guidelines;
  - (vi) there is sufficient control over the reporting of and management of contingent and other legal liabilities which otherwise may affect the Board’s financial position.

The Committee will make recommendations to the Panel for its consideration

### II. COMPOSITION AND TERM OF OFFICE

- A. The Committee shall consist of at least one, and not more than three, of the Administrators of the Panel. The President and CEO will be an *ex-officio* member of the Committee.
- B. One of the Panel members, appointed by the Chair of the Panel of Administrators, shall be the Chair of the Committee. The Committee shall serve as a standing committee of the Panel.

- C. Members of the Committee are eligible for re-appointment at the will of the Panel. One member constitutes a quorum of the Committee.
- D. The Committee shall meet at least four times per year:
  - (i) February — approval of audited financial statements and receipt of auditor’s report; review of capital expenditures;
  - (ii) May — review of first quarter financials and capital expenditures;
  - (iii) August — review of first half financials and capital expenditures; and
  - (iv) November — review of third quarter financials, capital expenditures and audit plan for following year.

### **III. DUTIES AND RESPONSIBILITIES**

Subject to the powers and duties of the Panel of Administrators, the Panel hereby delegates to the Committee the following powers and duties:

- A. The Committee shall review and annually make recommendations to the Panel with respect to updating its terms of reference, and the Panel will provide stakeholders with access to such terms of reference.
- B. The WCB’s independent audit is undertaken by the Auditor General. However, the Committee, through its independent status, shall review and recommend to the Panel the nomination or discharge of the independent actuary, the proposed fees in consultation with management and the acceptance of scope and general extent of the engagement. The Committee shall also review and concur with the Chief Executive Officer regarding the appointment, replacement, reassignment, or dismissal of the internal audit director.
- C. The Committee shall ensure that effective lines of communication are maintained with the Auditor General, internal auditors, financial management, and the Panel.
- D. The Committee shall review with the Auditor General, internal auditors, and the actuary, the relationships existing between them to ensure an effective liaison in the

coordination of audit effort regarding completeness of coverage, avoidance of redundant efforts, and the effective use of audit resources.

- E. The Committee shall review, discuss and consider with the Auditor General, internal auditors, and the actuary, their approach to risk assessment, scope and plan of their audits. The review may include:
  - (i) an annual assessment of areas of greatest risk to the WCB and steps taken to address those risks;
  - (ii) the annual audit plan and overall audit universe;
  - (iii) changes made from time to time in the audit universe and reasons therefor;
  - (iv) methods employed by the internal auditors to assess risk and to prioritize the various audit proposals identified in the annual plan as well as unscheduled audit proposals; and
  - (v) any unusual occurrence affecting the internal audit department which may preclude the completion of the audit plan.
- F. The Committee shall consider and review with the Auditor General and the internal audit director:
  - (i) the adequacy of the WCB's internal controls and their enforcement;
  - (ii) recommendations for the improvement of the WCB's accounting procedures and internal controls; and
  - (iii) any related significant findings and recommendations together with management's responses thereto.
- G. The Committee shall review the annual consolidated financial statements which are to be submitted to the Panel of Administrators, including Management's Discussion and Analysis. The review may include:
  - (i) reports from the Auditor General as to the results of his examination to date and advice on any problems regarding financial reporting in the annual report, including any disagreements that may have arisen between the auditors and management in any area;
  - (ii) meeting(s) with the senior financial executives who shall outline any problems as to financial policies, financial reporting or matters relating to internal control and any matters in contention with or under consideration by the Auditor General or internal auditors;

- (iii) the appropriateness of existing accounting principles being employed and any change in accounting policy or practice to which the Auditor General may refer in his report;
  - (iv) any proposed changes in financial statement presentation or footnote the Auditor General may recommend; and
  - (v) other matters related to the conduct of the audit which are to be communicated to the Committee under generally accepted auditing standards.
- H. The Committee shall review with management, the Auditor General and the internal audit director the quarterly interim financial report before it is released.
- I. The Committee shall consider and review with management and the internal audit director:
  - (i) any difficulties encountered in the course of their audits, including any changes to or restrictions on the scope of their work or access to required information;
  - (ii) the internal audit department budget and staffing; and
  - (iii) the internal audit department charter.
- J. The Committee shall review with the internal audit director and the Auditor General the results of their review of the WCB's monitoring compliance with the WCB's codes of ethical conduct.
- K. The Committee shall review legal, regulatory, tax and social matters that may have a material impact on the financial statements, related WCB compliance policies and programs and reports prepared to manage and monitor WCB compliance policies. The Committee shall receive reports concerning the WCB's environmental management program at least once per year, and review ongoing environmental compliance issues.
- L. The Committee shall review the overall reasonableness of expenses incurred and claimed by the Chair of the POA, President & CEO, Chief Appeal Commissioner and Panel Administrators.
- M. The Committee shall meet with management to review financial events and transactions that could have a material or image impact on the WCB.

- N. The Committee shall confirm and assure the independence of the internal auditors and the Auditor General, including a review of management consulting services and related fees provided by the Auditor General.
- O. The Committee shall meet with the internal audit director and the Auditor General in separate executive sessions to discuss any matters that the Committee or these groups believe should be discussed with the Audit Committee.
- P. The Committee shall have the power to conduct or authorize investigations into any matters within the Committee's scope of responsibilities. The Committee shall be empowered to retain independent counsel, accountants, or others to assist it in the conduct of any investigation.
- Q. With respect to the investment fund, the Committee shall:
  - (i) review the investment fund policy and make appropriate recommendations;
  - (ii) review nominations of independent members of the Investment Committee;
  - (iii) review, semi-annually, the performance of the Investment Committee; and
  - (iv) ensure that the Investment Committee and Minister of Finance are satisfied that the investment fund is being managed within established policy.
- R. The Committee shall review the annual business plan and budget, including the annual capital budget.
- S. The Committee shall perform such other functions as assigned by law or the Panel of Administrators, and may review other items of an internal control or risk management nature which may from time to time be brought before the Committee.

#### **IV. ACCOUNTABILITY**

- A. The Committee shall report to the Panel of Administrators on a regular basis all such action it has taken since the previous report. In addition, the Audit Committee shall report its findings and observations with respect to the WCB's audited financial statements and, if appropriate, recommend approval by the Panel of Administrators.
- B. The Audit Committee shall also report its findings relative to the adequacy of financial systems and controls and its observations from in-camera discussion with the Auditor General and internal auditors and where appropriate, shall liaise with

the Human Resources and Compensation Committee on the performance of senior officers as they relate to fiscal responsibility and management.

- C. In the absence of express authority from the Panel of Administrators, the Audit Committee does not have the responsibility or authority for altering the financial statements or the accounting procedure of the WCB.

## V. COMMITTEE TIMETABLE

The major annual activities of the Committee are outlined in the schedule following:

*Audit Committee Timetable*

Agenda Items	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Review and update its terms of reference. III(A)							—					
Review the nomination or discharge of the independent actuary. III(C)		—										
Review the appointment, replacement, reassignment, or dismissal of the internal audit director. III (C)		—										
Review the relationship existing between them and the Auditor General, the internal auditors and the actuary. III(D/E)				—								

Agenda Items	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Review their approach to risk assessment, scope and plan of their audits. III(F)										–		
Review the internal controls. III(G)		–										
Review the annual financial statements. III(B/H)		–										
Review the quarterly financial statements. III(B/I)		–			–			–			–	
Review difficulties with their audits, budget, staffing and internal charter. III(J)	–											
Review the results of their review of the Board's monitoring compliance of the codes of ethical conduct. III(K)				–								
Review legal, regulatory , tax, environmental and social matters. III(L)											–	
Review expenses for Chair, POA, CAC, CEO III(M)			–							–		

Agenda Items	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Review financial events/transactions having material impact III(N)			–									
Review of management consulting services and related fees. III(O)			–									
Meet the audit director and Auditor General on private matters. III(P)			–									
Conduct or authorize investigations within their scope. III(Q)			–									
Review the Investment Fund Policy and the performance of the Investment Fund. III(R)										–		
Review annual business plan and budget. III(S)												–

# Chapter 11

## Terms of Reference for the Human Resources and Compensation Committee

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### I. PURPOSE

A. The purpose of the Human Resources and Compensation Committee (the “Committee”) is to provide a conduit through which the Panel can examine significant issues related to human resources and employee compensation, and to assist in ensuring that:

- (i) human resources management and employee compensation policies are consistent with the goals of the organization and the practices of other comparable Crown Agencies;
- (ii) human resources management and employee compensation policies meet the test of public scrutiny;
- (iii) the Panel has the necessary information to make appropriate decisions with respect to human resources management and employee compensation issues; and
- (iv) the proper analysis has been done before human resources management and compensation issues are forwarded to the Panel for approval.

### II. DEFINITIONS

A. Where used herein, the following expressions have the respective meanings attributed to them unless modified by the context:

- (i) “Bargaining Unit Staff” includes, separately, those employees covered by the Collective Agreement between the Board and the Compensation Employees’ Union, and those physicians covered by the Administrative Policy between the Board and the Salaried Physicians;

- (ii) “Directly Reporting Employees” means the President and CEO, the Chief Appeal Commissioner, The Director General of the Policy Bureau, and the Registrar of the Medical Review Panel;
- (iii) “Executive Management” means all directly reporting employees, the Vice Presidents and the General Counsel and Secretary to the Panel;
- (iv) “Management” means directors, managers and professional employees of the Board who are not Executive Management; and
- (v) “Exempt Support Staff,” means employees who are not members of a bargaining unit but who are in union equivalent positions.

### **III. COMPOSITION AND TERM OF OFFICE**

A. The Committee shall consist of at least one, and not more than three, of the Panel members. The President and CEO will be an ex-officio member of the Committee. From time to time it will be important for the Chief Appeal Commissioner and/or the Director General of the Policy and Regulation Bureau to attend.

B. One of the Panel members, who shall be appointed by the Chair of the Panel of Administrators, shall be the Chair of the Committee. The Committee shall serve as a standing committee of the Panel.

C. Members of the Committee are eligible for re-appointment at the will of the Panel. One member constitutes a quorum of the Committee.

D. The Committee shall meet not less than four times per year.

### **IV. DUTIES AND RESPONSIBILITIES**

A. Subject to the powers and duties of the Panel of Administrators, the Panel hereby assigns to the Committee the following powers and duties and responsibilities as they pertain to the WCB administrative organization led by the President and the CEO, the Appeal Division led by the Chief Appeal Commissioner, the Policy and Regulation Development Bureau organization led by the Director General and the Medical Review Panel led by the Registrar.

## B. HUMAN RESOURCES PLAN

The Committee shall annually review the WCB's Human Resources Business Plan. This plan should articulate the WCB's Human Resources activities, priorities, objectives, key action plans, the milestones and measurement. It should represent the Human Resources components of the WCB's overall strategy and business plan.

## C. COMPENSATION MANAGEMENT

- (i) The Committee shall review the compensation plans, salary increase budgets, and benefit plan structures for Management and Exempt employees, and make recommendations to the Panel for its approval.
- (ii) The Committee shall review the total compensation proposals for each member of Executive Management and make recommendations to the Panel for its approval.
- (iii) The Committee shall review the criteria and the signing authority under which exception to policy may be made with respect to an individual employee's coverage under the terms of the WCB Superannuation Plan or any other employee benefit plan, and shall make recommendations to the Panel for its approval.

## D. CORPORATE HUMAN RESOURCES POLICY AND GUIDELINES

The Committee shall review all policies and guidelines pertaining to the payment or reimbursement of expenses to Executive Management, Management, Exempt Support Staff, and, to the extent that such expenses are not granted under a Collective Agreement, Bargaining Unit employees, and make recommendations to the Panel for its approval. Such policies shall include but not be limited to business travel and expense reimbursement, relocation assistance and executive vehicles.

## E. ORGANIZATION AND STRUCTURE

The Committee shall review the organization structure of the WCB on a periodic basis, and shall inform the Panel of planned significant organizational changes.

## F. PERFORMANCE MANAGEMENT

Within the limitations outlined in the *Workers Compensation Act*, the Panel shall annually establish performance agreements with Directly Reporting Employees, and the Committee shall facilitate these performance agreements and annual performance evaluations.

## G. SUCCESSION PLANNING

- (i) The Committee shall annually review the WCB's training and development plan to staff operations with highly qualified and committed team members. The Plan will include details of intended training and development together with results of the prior year.
- (ii) The Committee shall annually review the President's succession plans for Executive Management, including specific development plans and career planning for potential successors to Executive Management positions.
- (iii) The Committee shall review all appointments at the Senior Executive level before they are made.

## H. COLLECTIVE BARGAINING

The Committee shall:

- (i) review the mandate within which the WCB will negotiate an agreement with Bargaining Unit Staff, and recommend to the Panel for its approval;
- (ii) receive regular reports on progress during negotiations; and
- (iii) jointly review the settlement recommended by the President and CEO with the Chair, and jointly submit to the Panel for its approval.

## V. ACCOUNTABILITY

A. A copy of the approved Minutes of each meeting of the Committee shall be included for information with the agenda items for the next meeting of the Panel of Administrators, and the inclusion of these minutes will be deemed to be the Committee's advice to the Panel with respect to its activities.

B. Any activities of the Committee which require action or approval on the part of the Panel will be separately included on the agenda of the next regular meeting of the Panel.

## VI. COMMITTEE TIMETABLE

The major annual activities of the Committee are outlined in the schedule on the following page. This schedule will be updated annually in anticipation of the following year's activities.

Human Resources and Compensation Committee Timetable

Agenda Items	Jan	Feb.	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Review HR business plan. IV (B)		✓										
Review compensation plan for management employees. IV (C)(i)		✓										
Review criteria for exceptions to benefit plans. IV(C)(iii)						✓						
Review compensation proposals for Executive Management. IV(C)(ii)										✓		
Review all policies and guidelines on expenses. IV(D)									✓			
Review organization structure. IV(E)						✓						

Agenda Items	Jan	Feb.	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Facilitate performance evaluations and agreements. IV(F)			✓									
Review training and development plan, and succession plans for Exec. Management. IV(G)(i)(ii)										✓		
Review collective bargaining mandate. IV(H)												

<b>VI. Human Resources and Compensation Committee Timetable</b>												
Agenda Items	Jan	Feb.	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Review HR business plan. IV (B)		✓										
Review compensation plan for management employees. IV (C)(i)		✓										

Agenda Items	Jan	Feb.	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Review criteria for exceptions to benefit plans. IV(C)(iii)						✓						
Review compensation proposals for Executive Management. IV(C)(ii)										✓		
Review all policies and guidelines on expenses. IV(D)									✓			
Review organization structure. IV(E)						✓						
Facilitate performance evaluations and agreements. IV(F)			✓									
Review training and development plan, and succession plans for Exec. Management. IV(G)(i)(ii)										✓		
Review collective bargaining mandate. IV(H)												



## Chapter 12

# Terms of Reference for the Priorities and Board Governance Committee

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### I. PURPOSE

- A. The purpose of the Priorities and Board Governance Committee (the “Committee”) is to provide a focus on governance that will enhance the organization’s performance. The Committee’s purpose is to develop and recommend the priorities for the Panel of Administrators. In developing the priorities, the Committee shall take into consideration the mandate of the Panel, the needs of the organization, the views of the stakeholders and the time available for Panel deliberation.
- B. The Committee's purpose includes recommending operating guidelines and procedures for the Panel, assessing and making recommendations regarding the Panel’s effectiveness, and establishing a process for recommending the criteria for new Panel members to the Government.
- C. While stakeholder views in all these areas will be a significant factor in formulating Committee recommendations, the Committee will act in the best interests of the organization and all stakeholders in advising the Panel. In each case, the final decision will rest with the Panel.

### II. COMPOSITION AND TERM OF OFFICE

- A. The Committee shall consist of at least the Chair of the Panel of the Administrators. The President and CEO and the Director General of the Policy and Regulation Development Bureau will be *ex-officio* members of the Committee.
- B. The Chair of the Panel of Administrators shall be the Chair of the Committee. The Committee shall serve as a standing committee of the Panel.
- C. Members of the Committee are eligible for re-appointment at the will of the Panel. The Chair constitutes a quorum of the Committee.
- D. The Committee shall meet not less than four times per year.

### **III. DUTIES AND RESPONSIBILITIES**

- A. Develop and recommend the priorities for the Panel on a quarterly basis. This includes integrating the priorities of the WCB administrative organization, the Appeal Division and the Policy and Regulation Development Bureau. A plan and time frame for addressing the priorities should be presented to the Panel each quarter.
- B. Organize two meetings per year between the Committee and the major stakeholder groups to receive their thoughts and ideas regarding the priorities the Panel might be addressing.
- C. Develop and recommend an Annual Board Forward Agenda.
- D. Develop, and annually review, terms of reference for the Panel of Administrators, the President and CEO of the WCB, the Chief Appeal Commissioner, the Director General of the Policy and Regulation Development Bureau and the Registrar, Medical Review Panel for approval by the Panel of Administrators.
- E. Develop, and annually review, terms of reference for committees of the Panel for approval by the Panel of Administrators.
- F. Draft, and annually review, for Panel approval, a *Governance Policy Manual* that outlines the operating policies and procedures by which the Panel will operate and includes terms of reference for the Panel, the major leadership positions and the committees.
- G. Annually develop, and update criteria for the potential new Administrators that take into consideration the current strengths, skills and experience on the Panel, terms and the strategic direction of the WCB, for approval by the Panel.
- H. Recommend to the Panel, and implement on an annual basis, an appropriate evaluation process for the Panel as a whole and Panel members individually.
- I. Review, monitor and make recommendations regarding the orientation and ongoing development of Panel members

### **IV. ACCOUNTABILITY**

The Committee shall report to the Panel at its next regular meeting all such action it has taken since the previous report.

### **V. COMMITTEE TIMETABLE**

The major annual activities of the Committee are outlined in the schedule on the following page.

## V. PRIORITIES AND BOARD GOVERNANCE COMMITTEE

Agenda Items	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Recommend priorities III(A)	✓			✓			✓			✓		
Stakeholder meetings. III(B)					✓						✓	
Develop Annual Board Agenda. III(C)	✓			✓			✓			✓		
Review terms of reference for the Panel of Administrators, CEO, Chief Appeal Commissioner and Director of the Policy & Development Bureau and MRP Registrar. III(D)	✓											
Review terms of reference of Committees of the Panel. III(E)				✓								
Review a Governance Policy Manual III(F)							✓					
Review long term composition of the Panel. III(G)										✓		
Undertake Panel evaluation process .III(H)							✓					
Review the orientation and ongoing development of Panel members. III(I)				✓								



## **Chapter 13**

# **Performance Evaluation Process for the President and Chief Executive Officer**

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### **I. BENCHMARKS**

The following constitute the benchmarks against which the review takes place:

- A. A written statement of goals or primary objectives for the year under review. These goals have been agreed to by the President and CEO and the Panel of Administrators the year before.
- B. Achievement of the objectives established in the strategic and annual business plans.
- C. Comparison with the results of other Workers' Compensation Boards in Canada.
- D. Panel of Administrators approved terms of reference for the President and CEO.

### **II. THE PRESIDENT AND CEO'S SELF-APPRAISAL**

- A. The Panel is best equipped to undertake their assessment if they know how the President and CEO evaluates his/her performance against the agreed upon objectives of the previous year and what the President and CEO sees as the goals and priorities for the coming year.
- B. This self-appraisal is in written form.
- C. The self-appraisal is discussed by the President and CEO with the Panel in advance of its ensuing evaluation of the President and CEO.

### **III. PANEL INVOLVEMENT**

- A. Each member of the Panel sets down his/her written assessment for the President and CEO's performance.
- B. These individual assessments are then consolidated by the Chair of the Panel of Administrators and the Chair of the HRCC into a coherent, prioritized statement from the Panel of Administrators to the President and CEO.
- C. The Chairs of the Panel of Administrators and HRCC discuss their summary with the Panel of Administrators prior to their meeting with the President and CEO.
- D. The Chairs of the Panel of Administrators and HRCC discuss the statement with the President and CEO.

### **IV. PRESIDENT AND CEO FEEDBACK**

The President and CEO will provide a written response to the review to the Chairs of the Panel of Administrators and HRCC.

## V. TIMING AND RESPONSIBILITIES

Activity	Who	When
(a) The President and CEO develops a set of goals and objectives which are approved by the Panel.	- President/CEO	January
(b) President and CEO writes self-appraisal and submits to the HRCC.	- President/CEO	December
(c) President and CEO discusses self-appraisal with the Panel.	- President/CEO - Panel	December
(d) Panel members submit their written assessments of the President and CEO to the Panel and HRCC Chairs.	- HRCC - Panel	January
(e) Input from the HRCC is summarized.	- Panel Chair - HRCC Chair	January
(f) Consolidated input is discussed with the outside Panel members and then finalized.	- Panel Chair - HRCC Chair - Panel	January
(g) President and CEO Review.	- President/CEO - Panel Chair - HRCC Chair	February
(h) President and CEO written response to the Chairs of the Panel and HRCC	- President/CEO	February



# Chapter 14

## Performance Evaluation Process for the Chief Appeal Commissioner

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### I. INTRODUCTION

The Chief Appeal Commissioner's responsibility is the leadership and operation of the Appeal Division.

All aspects of the Chief Appeal Commissioner's performance are reviewed on an annual basis except the quasi-judicial decision-making function of adjudicating individual claims. In the performance of that function, the Chief Appeal Commissioner is without accountability to the Panel.

### II. BENCHMARKS

The following constitute the benchmarks against which the review takes place:

- A. A written statement of goals or primary objectives for the year under review. These goals have been agreed to the year before by the Chief Appeal Commissioner and the Panel of Administrators.
- B. Panel of Administrators approved terms of reference for the position of Chief Appeal Commissioner.
- C. Quantitative measures of volume of work produced on a timely basis, including the number of appeals.
- D. Public confidence in and the credibility of the Appeal Division as expressed in feedback from sources such as the Ombudsman's office.
- E. The quality of decisions made as a quasi-judicial tribunal. "Quality" in this context means the degree or grade of excellence of the decisions. The Panel will review decisions with respect to the following questions:
  - (i) Are they well written?
  - (ii) Understandable by the use of plain language?

- (iii) Express cogent and coherent reasons for conclusions reached?
- (iv) Show respect for the policies of the Board?
- (v) Delivered in a timely manner?

F. Quality of advice given to the Panel.

### **III. THE CHIEF APPEAL COMMISSIONER'S SELF-APPRAISAL**

- A. The Human Resources and Compensation Committee (HRCC) is best equipped to undertake their assessment if they know how the Chief Appeal Commissioner evaluates her/his performance against the agreed upon objectives of the previous year and what the Chief Appeal Commissioner sees as the goals and priorities for the coming year.
- B. This self-appraisal is in written form and is presented to the HRCC.
- C. The self-appraisal is discussed by the Chief Appeal Commissioner with the HRCC in advance of their ensuing evaluation of the Chief Appeal Commissioner.

### **IV. PANEL OF ADMINISTRATORS INVOLVEMENT**

- A. Each member of the Panel sets down his/her own written assessment of the Chief Appeal Commissioner 's performance.
- B. These individual assessments are then consolidated by the Chair of the Panel of Administrators and the Chair of the HRCC into a coherent, prioritized statement from the Panel of Administrators to the Chief Appeal Commissioner.
- C. The Chairs of the Panel and HRCC discuss their summary with the full Panel of Administrators prior to their meeting with the Chief Appeal Commissioner.
- D. The Chairs of the Panel of Administrators and HRCC present and discuss the evaluation with the Chief Appeal Commissioner.

### **V. CHIEF APPEAL COMMISSIONER FEEDBACK**

The Chief Appeal Commissioner may provide a written response of the review to the Chairs of the Panel of Administrators and HRCC.

## VI. TIMING AND RESPONSIBILITIES

The foregoing responsibilities will be carried out annually on the following basis:

Activity	Who	When
(a) The Chief Appeal Commissioner develops a set of goals and objectives which are approved by the Panel of Administrators	- Chief Appeal Commissioner - Panel	January (Year A)
(b) Chief Appeal Commissioner writes self-appraisal and submits to the HRCC.	- Chief Appeal Commissioner	December (Year A)
(c) Chief Appeal Commissioner discusses self-appraisal with the Panel.	- Chief Appeal Commissioner - Panel	December (Year A)
(d) The Panel submit their written assessments of the Chief Appeal Commissioner to the Panel and HRCC Chairs.	- Panel	January (Year B)
(e) Input from the Panel is summarized.	- Panel Chair - HRCC Chair	January (Year B)
(f) Consolidated input is discussed with the outside Panel of Administrators and then finalized.	- Panel - Panel Chair - HRCC Chair	January (Year B)
(g) Chief Appeal Commissioner Review.	- Chief Appeal Commissioner - Panel Chair - HRCC Chair	February (Year B)
(h) Chief Appeal Commissioner written response to the Chairs of the Panel and HRCC.	- CEO	February (Year B)



## **Chapter 15**

# **Performance Evaluation Process for the Director General, Policy Bureau**

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### **I. BENCHMARKS**

The following constitute the benchmarks against which the review takes place:

- A. A written statement of goals or primary objectives for the year under review. These goals have been agreed to by the Director General, Policy Bureau and the Panel of Administrators the year before.
- B. Significant achievements of the Bureau.
- C. Performance of the Bureau against capital and operating budgets.
- D. Panel of Administrators approved terms of reference for the Director General, Policy Bureau.

### **II. THE DIRECTOR GENERAL, POLICY BUREAU'S SELF-APPRAISAL**

- A. The Panel is best equipped to undertake their assessment if they know how the Director General, Policy Bureau evaluates his/her performance against the agreed upon objectives of the previous year and what the Director General, Policy Bureau sees as the goals and priorities for the coming year.
- B. This self-appraisal is in written form.
- C. The self-appraisal is discussed by the Director General, Policy Bureau with the Panel in advance of their ensuing evaluation of the Director General, Policy Bureau.

### **III. ADMINISTRATOR INVOLVEMENT**

- A. Each member of the Panel provides his/her written assessment for the Director General, Policy Bureau 's performance.
- B. These individual assessments are then consolidated by the Chair of the Panel of Administrators and the Chair of the HRCC into a coherent, prioritized statement from the Panel of Administrators to the Director General, Policy Bureau.
- C. The Chairs of the Panel of Administrators and HRCC discuss their summary with the full Panel of Administrators prior to their meeting with the Director General, Policy Bureau.
- D. The Chairs of the Panel of Administrators and HRCC discuss the statement with the Director General, Policy Bureau.

### **IV. DIRECTOR GENERAL, POLICY BUREAU FEEDBACK**

The Director General, Policy Bureau will provide a written response to the performance review to the Chairs of the Panel of Administrators and HRCC.

## V. TIMING AND RESPONSIBILITIES

Activity	Who	When
(a) The Director General develops a set of goals and objectives which are approved by the Panel of Administrators.	- Director General	January
(b) Director General writes self-appraisal and submits to the Panel.	- Director General	December
(c) Director General discusses self-appraisal with the Panel.	- Director General - Panel	December
(d) Panel members submit their written assessments of the Director General to the Panel and HRCC Chairs.	- Panel	January
(e) Input from the Panel is summarized.	- Panel Chair - HRCC Chair	January
(f) Consolidated input is discussed with the Panel members and then finalized.	- Panel Chair - HRCC Chair - Panel	January
(g) Director General, Policy Bureau Review.	- Director General - Panel Chair - HRCC Chair	February
(h) Director General written response to the Chairs of the Panel and HRCC.	- Director General	February



## **Chapter 16**

# **Performance Evaluation Process for the Registrar, Medical Review Panel**

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### **I. BENCHMARKS**

The following constitute the benchmarks against which the review takes place:

- A. A written statement of goals or primary objectives for the year under review. These goals have been agreed to the year before by the Registrar, Medical Review Panels (the “Registrar”) and Chair of the Panel of Administrators.
- B. Panel of Administrators approved terms of reference for the Registrar.
- C. Performance against the objectives set for the Medical Review Panel at the beginning of the period.
- D. Performance of the MRP department against operating and capital plans and budgets.
- E. Quantitative measures of volume of work produced on a timely basis, including the number of appeals.

### **II. THE REGISTRAR, MEDICAL REVIEW PANEL’S SELF-APPRAISAL**

- A. The Chair of the Panel is best equipped to undertake his/her assessment if he/she knows how the Registrar evaluates his/her performance against the agreed upon objectives of the previous year and what the Registrar sees as the goals and priorities for the coming year.
- B. This self-appraisal is in written form.
- C. The self-appraisal is discussed by the Registrar with the HRCC in advance of their ensuring evaluation of the Registrar, Medical Review Panel.

### III. ADMINISTRATOR INVOLVEMENT

- A. The Chair of the Panel sets down his/her written assessment of the Registrar's performance.
- B. The Chair of the Panel discusses his/her assessment with the full Panel of Administrators prior to his/her meeting with the Registrar.
- C. The Chair of the Panel of Administrators discusses the statement with the Registrar.

### IV. REGISTRAR FEEDBACK

The Registrar will provide a written response to the review to the Chair of the Panel of Administrators.

### V. TIMING AND RESPONSIBILITIES

ACTIVITY	WHO	WHEN
(a) The Registrar develops a set of goals and objectives which are approved by the Chair of the Panel of Administrators.	- Registrar	January
(b) Registrar writes self-appraisal and submits to the Panel Chair.	- Registrar	December
(c) Registrar discusses self-appraisal with the Panel Chair.	- Registrar - Panel Chair	December
(d) The Panel Chair develops his/her own assessment.	-Panel Chair	January
(e) The Panel Chair reviews his/her assessment with the outside Panel members.	- Panel Chair - Panel	January
(f) Registrar Review.	- Registrar - Panel Chair	January
(g) Registrar written response to the Chair of the Panel.	- Registrar	February

## Chapter 17

# Panel of Administrators and Chair Review Process

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### I. INTRODUCTION

- A. The Panel Review process is designed to provide the Panel of Administrators with an opportunity once each year to evaluate the Panel's operation and performance and to make suggestions for its improvement.
- B. This is not an individual Administrator assessment. Although there is a section which seeks the Administrators view regarding the performance of the Chair, it is primarily designed to provide constructive input for the improvement of the Panel "as a whole or as a unit."
- C. The review document analyzes Panel organization and the performance of the Panel against the description of the Panel of Administrators duties and responsibilities.

### II. PROCESS

- A. In April, each Administrator will be asked to comment on whether the Panel has fulfilled its objectives. Utilizing the attached questionnaire, Administrators are asked to comment on the performance of the Panel as a whole.
- B. The Chairs of the Panel of Administrators and the Priorities and Board Governance Committee summarize the input of all Administrators on an anonymous basis and the Panel Chair reports to the full panel at the June Panel of Administrators meeting. Time will be set aside at that meeting for a full and comprehensive discussion of Panel performance.
- C. Administrators are encouraged not to be limited by the questionnaire and to comment broadly on any issues regarding Panel performance.



**B. Panel Committees**

(i) Does the Panel have the appropriate committees?      yes  no

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(ii) Should there be:  
additional committees? If yes, please specify.      yes  no

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or

fewer committees? If yes, please specify.      yes  no

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(iii) Are meetings of committees organized properly in number, timing and location?      yes  no

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(iv) Is the process for appointing committee members and chairs satisfactory?      yes  no

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**C. Panel Meetings**

(i) Are meetings of the Panel organized properly in number, timing and location?      yes  no

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(ii) Do Panel members have the opportunity to provide input to the meeting agendas?      yes  no

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(iii) Are there agenda items that should appear on a regular basis that are not currently being included?      yes  no

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(iv) Is the time at Panel meetings utilized effectively?      yes  no

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(v) Do Panel meetings allow sufficient time for interaction with management?      yes  no

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(vi) Are oral presentations to the Panel of the appropriate length and content?      yes  no

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(vii) Are meetings sufficiently focused on important matters of concern to the Panel?      yes  no

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(viii) Do the Panel members receive appropriate material for Panel meetings?      yes  no

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(ix) Is the Panel material distributed far enough in advance to allow adequate preparation?      yes  no

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(x) Does the Panel have the necessary information to resolve issues promptly and confidently?      yes  no

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(xi) Are the appropriate issues presented in a timely fashion?      yes  no

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(xii) Do the issues presented by management reflect the current priorities of the Panel?      yes  no

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(xiii) Are Panel members apprised sufficiently of significant issues, changes and/or problems which affect the WCB's operations? yes  no

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(xiv) Is enough time at Panel meetings spent on general discussion? yes  no

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(xv) Do you feel the opinions of individual Administrators are satisfactorily encouraged and valued? yes  no

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(xvi) Do you feel in camera (without the CEO and the Chief Appeal Commissioner) sessions of the Panel are useful? yes  no

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(xvii) In what ways do you feel we could improve Panel meetings?

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**D. Terms of Reference and Development**

(i) Are you satisfied that the current statement of duties accurately reflect the responsibilities of the Panel of Administrators? yes  no

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(ii) Are you satisfied that the current terms of reference accurately reflect the responsibilities of:

The Chair of the Panel of Administrators?                      yes  no

The President and CEO?    yes  no

The Chief Appeal Commissioner?    yes  no

The Director General, Policy Bureau?    yes  no

The Registrar, Medical Review Panels?    yes  no

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(iii) Is the orientation process for new Administrators satisfactory?

yes  no

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(iv) Is there adequate industry education and professional development for Administrators?

yes  no

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(v) Are you satisfied with the process of reviewing management succession? yes  no

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(vi) Does the Board have sufficient exposure to and knowledge of high potential employees in the WCB? yes  no

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**B. General Administration of the WCB**

(i) Does the Panel monitor the WCB's progress in fulfilling its purposes under the legislation and alter its direction through management in light of changing circumstances? yes  no

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(ii) Does management adequately develop strategic, operating and capital plans for the Panel's consideration and review? yes  no

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(iii) Are you satisfied with the strategy development process? yes  no

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(iv) Are you satisfied there is an opportunity for the Panel to provide advice and input into the WCB's strategic plan?      yes  no

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(v) Does the Panel approve and monitor compliance with all policies and significant procedures of the WCB?      yes  no

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(vi) Is the Panel prepared to take appropriate action when circumstances so warrant action?      yes  no

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**C. Financial**

(i) Does the Panel approve the following:

(a) operating and capital budgets?      yes  no

(b) major programs and expenditures?      yes  no

(c) property purchases and disposition?      yes  no

(d) the establishment and maintenance of an accounting system satisfactory to the Minister of Finance?      yes  no

(e) adequate funding of the accident fund?      yes  no

(f) the investment of the accident fund?      yes  no

(g) designated grants and awards?      yes  no

(h) budget variances in excess of \$1,000,000?      yes  no

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**D. Arrangements and Agreements**

- (i) Does the Panel approve the following:
- (a) interjurisdictional agreements under Section 8.1 or otherwise with other workers' compensation authorities?      yes  no
  - (b) contracts under Section 21(6) with physicians, nurses and other persons authorized to treat human ailments and with hospitals and other institutions, for the provision of health care?      yes  no
  - (c) arrangements under Section 71(9) with the Government of Canada or of any other province or territory whereby their inspectors carry out duties of OSH/prevention inspectors under *BC Workers Compensation Act* or BC OSH/prevention inspectors carry out duties of their inspectors under any of their *Acts*?      yes  no
  - (d) establishment and maintenance of a WCB Superannuation Plan under Section 86(3) or arrangements with the Lieutenant Governor in Council under Section 86(5) that the *Pension (Public Service) Act* apply to WCB employees?      yes  no
  - (e) the collective agreement between the WCB and the Compensation Employees' Union?      yes  no

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- (iii) Does the Panel, approve annual reports under the *Workers Compensation Act*, *Workplace Act* and *Criminal Injury Compensation Act*?      yes  no

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- (iv) Does the Panel plan for the future of the Board?      yes  no

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**E. Other**

(i) Does the Panel direct management to ensure that the WCB operates at all times within applicable laws and regulations and to the highest ethical and moral standards?      yes  no

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(ii) Does the Panel ensure that the financial performance of the WCB is adequately reported to stakeholders on a timely and regular basis?      yes  no

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(iii) Does the Panel ensure that the financial results are reported fairly and in accordance with generally accepted accounting principles?      yes  no

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(iv) Does the Panel ensure the timely reporting of any other developments that have a significant and material impact on the value of the WCB?      yes  no

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(v) Does the WCB have in place a policy to enable the WCB to communicate effectively with its stakeholders and the public generally?      yes  no

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**Appendix “B” — Duties in Relation to the Appellate Systems**

**A. Appeal Division**

(i) Are you satisfied with the process of appointing the Chief Appeal Commissioner?      yes  no

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(ii) Are you satisfied that the Chief Appeal Commissioner terms of reference are clear and appropriate?      yes  no

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(iii) Could the Chief Appeal Commissioner performance evaluation process be improved?      yes  no

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(iv) Are you satisfied with the process of providing for management succession within the Appeal Division?      yes  no

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(v) Are you satisfied with the policies regarding the process of selecting the full or part time Chief Appeal Commissioner?      yes  no

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(vi) Are you satisfied with the policies on the administration of the Appeal Division?      yes  no

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**B. Medical Review Panels**

(i) Are you satisfied with the process to ensure effective administration of the Medical Review Panel?      yes  no

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(ii) Are you satisfied that the semi-annual changes in the Medical Review Panel fees are appropriate?      yes  no

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**Appendix “C” — Duties in Relation to Policy and Regulation Making**

**A. Compensation and Rehabilitation**

- (i) Does the Panel determine all policy concerning compensation and rehabilitation matters including:
  - (a) approval of all amendments to the *Rehabilitation Services and Claims Manual*?      yes  no
  - (b) additions or deletions of occupational diseases to or from Schedule B?      yes  no
  - (c) amendments to the Permanent Disability Evaluation Schedule?      yes  no
  - (d) payment of interest on retroactive compensation under Section 92(3)(a)?      yes  no
  - (e) payment of interest under Section 96(7) on refund of employer assessments and penalties on appeal?      yes  no

- (f) payment of interest on retroactive spousal benefits under Section 19?      yes  no
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**B. Assessments**

- (i) Does the Panel determine all policy concerning assessment matters including:      yes  no
- (a) approval of all amendments to the *Assessment Policy Manual*?      yes  no
- (b) setting of assessment rates?      yes  no
- (c) creation and rearrangement of classes and subclasses?      yes  no
- (d) approval of changes to the Classification and Rate List?      yes  no
- (e) adoption of experience rating system?      yes  no
- (f) making of exemption policies for the application of Section 2(1) and of orders exempting employers or workers from the application of the *Act*?      yes  no
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**C. Occupational Safety and Health/Prevention**

- (i) Does the Panel determine all policy concerning occupational safety and health/prevention matters including:
- (a) approval of all amendments to the *Occupational Safety and Health Division Policy and Procedure Manual*?      yes  no

(b) the making of occupational safety and health/prevention regulations, including: yes  no

• industrial health and safety regulations, regulations for agricultural operations, fishing operations regulations, WHMIS regulations and first aid regulations under the *Workers Compensation Act*? yes  no

• regulations for the health, safety and comfort of persons in factories, offices and shops, for WHMIS regulations and for the enforcement of decisions, orders or rulings made and of penalties imposed, and for appeals from them, under the *Workplace Act*? yes  no

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**D. Criminal Injury Compensation**

Does the Panel determine all policy concerning criminal injury compensation matters? yes  no

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**E. Regulations**

Does the Panel exercise it's authority to make regulations under the designated sections of the *Workers Compensation Act*? yes  no

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**F. Statutory Amendments**

Does the Panel make recommendations to the Minister of Labour with respect to the amendment of the *Workers Compensation Act* and the *Workplace Act* and recommendations to the Attorney General with respect to the amendments of the *Criminal Injury Compensation Act*?

yes  no

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**III. PERFORMANCE OF THE CHAIR**

A. Are you satisfied with the leadership the Chair is providing to the Board?

yes  no

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B. What recommendations would you make to the Chair to assist him/her to fulfill his/her responsibilities more effectively?

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**IV. SUMMARY**

On a scale of 1 to 10, using your own personal criteria, please rate the Panel performance for the past year.

Rating \_\_\_\_\_

*Note: 1 is unacceptable, 10 excellent*

Are there ways of enhancing Panel performance?

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## Chapter 18

# Panel of Administrators' Liability

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- I. Among its duties, the Panel of Administrators performs the functions of a "Board of Directors" in a Corporation.
  
- II. Part A of this chapter consists of a MEMORANDUM OF ISSUES CONCERNING GOVERNORS' LIABILITY which was prepared in late 1991 by Kenneth M. Bagshaw, Q.C., a senior solicitor at Ladner Downs. The Document sets out the common law duties of directors, areas of potential liability and the preventive or protective measures an Administrator can take to avoid or shield himself or herself from the impact of liability.
  
- III. Part B of this chapter consists of the CROWN INDEMNITY granted by the Provincial Government to Lieutenant Governor in Council appointees who perform the functions of a director, together with a note of explanation as to the coverage.

**Part A – MEMORANDUM OF ISSUES  
CONCERNING GOVERNORS' LIABILITY  
LADNER DOWNS NOVEMBER – 1991**

**PREFACE**

This memorandum has been prepared at the request of the Chairman to provide the Governors with an overview of the legal issues concerning liability currently confronting boards of directors.

The statements which follow concerning the legal principles and their application are quite generalized in order to highlight the basic propositions. The detailed analysis and subtle qualifications which would appear in a legal opinion or memorandum of law have been avoided deliberately. We hoped that this approach will assist the Board of Governors in identifying any issues which concern them and in formulating a strategy for managing the risks of liability.

November 14, 1991

**TO: The Board of Governors, Workers' Compensation Board  
Memorandum on Issues Concerning Governors' Liability**

## **1. WHAT IS THE WORKERS' COMPENSATION BOARD?**

It is strictly a creature of statute.

It has virtually no powers except as set out in the *Workers Compensation Act*, the *Criminal Injury Compensation Act* and the *Workplace Act*.

All actions of the WCB must be expressly or implied within its powers.

The WCB is not expressly an agent of the Crown and, having regard for its independence in funding and its policy-making powers, it is unlikely to be found an agent of the Crown by implication.

The WCB is a "government corporation" for the purposes of the *Financial Administration Act* and is thereby bound by the provisions of the *Financial Administration Act* concerning government corporations including restrictions on granting of indemnities.

By Section 80 of the *Act*, the WCB is constituted as a corporation and consequently will be found to have the usual attributes of a corporation.

None of the provisions of the statutory corporate law of British Columbia, found in the *B.C. Company Act*, applies to the WCB.

## **2. WHAT IS THE LEGAL STATUS OF THE BOARD OF GOVERNORS AND ITS MEMBERS?**

Because of the corporate nature of the WCB and the role played by the Board of Governors, the Governors, collectively and individually, are "directors" at law (and will be referred to interchangeably as "Governors" or "directors" in this memorandum).

While the general statutory codification of directors' duties under the *Company Act* does not apply to the Governors, the common law principles upon which statutory duties are based do apply.

### **3. WHAT ARE THE GENERAL COMMON LAW DUTIES OF DIRECTORS?**

#### Duty of loyalty

- undivided loyalty to the WCB
- avoid conflict with personal interests
- to not profit personally from the position of director

Duty to act in the best interests of the WCB.

Duty of honesty.

Duty of care and skill

- act prudently based on common sense
- act prudently based on experience
- keep informed as to the policies, business and affairs of the WCB

Duty of diligence

- make such enquiries as would be expected from a reasonably prudent person
- recognize and investigate suspicious circumstances
- ensure that reliance on management is reasonable
- be diligent concerning attendance at meetings
- faithfully adhere to the Statement of Roles and Responsibilities previously adopted by the Governors

### **4. AREAS OF POTENTIAL LIABILITY**

#### Civil liabilities

Generally the acts of the Governors, particularly collective acts, are the acts of the WCB based on the principle that the WCB is a separate legal entity and the Governors act on its behalf.

It is possible but quite unlikely for Governors to attract liability for the WCB's breaches of contract.

It is similarly unlikely a Governor to attract liability for torts (i.e. civil wrongs or injuries other than breach of contract) committed by the WCB unless the Governor is “off on his own frolic,” e.g. actions for assault, trespass, libel and slander, etc.

In rare cases, directors or senior officers have been held liable with or apart from their corporation where malice is shown or where a person in a position to prevent or eliminate a physically dangerous situation has failed to do so.

### Criminal and Quasi-criminal Liabilities

There are well over a hundred federal and provincial offences under which fines, and in some cases imprisonment, may be imposed.

As a general principle, liability is imposed on those who actively participated in or aided and abetted the offence.

In the corporate context, the corporation itself is usually the prime offender but governors could attract liability:

- if the offence occurs with their knowledge, direction, acquiescence, authority or participation
- if the failure to act to prevent the occurrence was wanton, reckless or grossly negligent

Many of the offences occurred in areas of activity which are inapplicable to the WCB:

- corporate and securities laws
- competition laws
- business practices laws
- taxing laws
- financial liability to employees imposed by statute in case of insolvency

Other regulatory offences which could apply to the WCB include.

- environmental laws
- occupational health and safety.

Appendices A and B to this Memorandum sets out an extensive (but likely not exhaustive) list of legislation creating offences of this nature segregated to identify those likely applicable to, and those likely not applicable to, the WCB. Examples of possible offences are attached as Appendix C to illustrate legislation which extends liability to directors.

In the vast majority of the offences which might be applicable to the WCB, liability for a Governor would usually depend on proof that the Governor authorized, directed, permitted, assented to, acquiesced in or participated in the commission of the offence (the wording varies somewhat from statute to statute).

In general, liability would require a degree of knowledge of the facts (which may be implied if it appears that the circumstances were deliberately ignored) coupled with a power to alter the offensive conduct and a failure to exercise that power. Generally speaking, despite the rather intimidating language of the statutes, it is likely in practice that individuals would only be prosecuted where there is some gross, reckless or willful behaviour by the individual or where there is an ongoing series of violations of which the individuals are aware and over which they can, or should, exercise control.

Certain of the regulatory statutes can impose civil liability to both the Crown and to third parties. For example, civil liability to the Crown can arise under abatement or clean-up orders pursuant to the *Waste Management Act*, the *Fisheries Act* or the *Canadian Environmental Protection Act* and civil liability to third parties can arise under the *Canadian Environmental Protection Act*. Some degree of participation in the offensive conduct would be necessary.

It would be imprudent to assume that the statement of the exclusive jurisdiction of the WCB under Section 96 of the *Workers Compensation Act* would afford a defense to the civil, criminal and quasi-criminal offences discussed in this memorandum.

## **5. WHAT PREVENTATIVE OR PROTECTIVE STEPS CAN BE TAKEN?**

### Individual conduct

comply with the Statement of Roles and Responsibilities;

fulfill the common law duties of directors as outlined in Section 3 above and in the Statement;

recognize that, in respect of regulatory offences requiring knowledge or intent, "willful blindness" may well be construed to constitute knowledge.

## Collective conduct

Ensure that for issues or actions brought to the Governors for approval, confirmation is provided, preferably from the WCB's legal counsel, that the contemplated action is within the powers of the WCB and its Governors.

Establish a process of due diligence within the WCB through an organizational and process-oriented approach. For example, in areas of greatest risk — environmental liability, occupational health and safety, operation of the rehabilitation centre and testing laboratory, management of corporate funds - require the establishment of systems and processes designed to foster compliance with statutory obligations and convey the WCB's expectation that employees will act affirmatively to this end.

Have the WCB's adoption of these systems and processes evidenced in the Board of Governors' minutes.

Require regular reviews or “audits” of the effectiveness of the compliance systems with such reviews being reported to the Board of Governors and reflected in the minutes.

Require regular, at least annual, reports to the Board of Governors on the WCB's insurance program and loss experience.

Ensure that, on the occurrence of any violation by the WCB of any regulatory obligation, a comprehensive report is prepared for the Governors and appropriate steps taken in the systems or procedures to minimize the risk of repetition.

## Indemnification by the WCB

Because it is not governed by general corporate legislation, the WCB does not have access to the indemnification authority granted by statute to commercial corporations.

While the legal position is not entirely clear, it is probable that the WCB has power to grant indemnification to the Governors to the extent permitted by common law.

At common law, an agreement to indemnify:

- can cover liabilities and expenses incurred in the course of the Governors' duties including liabilities for negligence;
- likely can cover legal expenses incurred in defending statutory offences for which actual fault or knowledge is irrelevant in which liability is imposed without regard to fault (i.e. absolute liability offences).

- probably does not cover offences where there was a degree of knowledge or participation by the directors or an absence of reasonable care or due diligence;
- is unlikely to cover willful default or to intentionally wrongful acts such as intentional torts, e.g.; trespass, deceit, assaults and other deliberate civil wrongs causing injury;
- is unlikely to cover costs of defending proceedings unless the proceedings arise out of lawful activities of the individuals as directors;
- clearly would not cover *true* criminal offences — ones in which a prohibited act was committed intentionally or recklessly or with willful blindness;
- will not cover dishonesty, bad faith or failure to act in the best interests of the WCB.

#### Purchase of Directors and Officers Liability Insurance (“D&O Insurance”)

Prior to enactment of corporate legislation authorizing corporations to purchase such insurance, there were doubts, never settled by judicial decisions, whether corporations had authority to purchase such insurance.

For commercial corporations, the issue was resolved through statutory authorization under corporate legislation which is not applicable to the WCB.

In the result, the authority of the WCB to purchase such insurance is questionable but not clearly prohibited.

Insurance might provide marginally broader protection than the common law indemnity but as the policies typically exclude coverage for:

- fines and penalties (breaches of laws and regulations)
- claims due to dishonesty
- pollution claims

among other exclusions, insurance may be of doubtful benefit in the areas of greatest potential exposure (e.g. regulatory offences) for the Governors.

## Crown Indemnification

The Province has a standard form indemnity agreement available to directors of Crown corporations which likely could be made available to the Governors.

Used in conjunction with an indemnity from the WCB, the Crown indemnity may provide slightly broader coverage than the common law permits the WCB for:

- defence costs on a fully successful defence of a criminal charge
- coverage for intentional torts if the director has not breached the common law duties to the WCB

## 6. RECOMMENDED COURSE

Proceed with the WCB indemnity but modified to harmonize with common law limitations and to be approved under the *Financial Administration Act*.

Forgo D&O insurance pending determination of the availability of an acceptable Crown indemnity.

Recognize that certain risks:

liability (i.e. fines, penalties or imprisonment) for regulatory offences based on intent or knowledge (actual or imputed through willful blindness)  
civil liability flowing from regulatory offences;  
civil liability in contract or tort for personal actions taken as a Governor;  
breach of common law duties to the WCB  
actions taken in excess of the authority of the WCB

must, for all practical purposes, be dealt with through the rigorous application of the principles of individual and collective conduct described above.

Pursue legislative changes

to clarify the WCB's authority to provide indemnification and to define its scope and application;  
to expressly authorize the WCB to purchase D&O Insurance.

## Appendix A

### FEDERAL STATUTES

#### **PART 1 — FEDERAL STATUTES IMPOSING LIABILITY ON DIRECTORS OF CORPORATIONS LIKELY NOT APPLICABLE TO THE ACTIVITIES OF THE WCB**

*Advance Payments for Crops Act*, R.S.C. 1985, c.C-49

*Agricultural Stabilization Act*, R.S.C. 1985, c.A-8

*Agricultural Products Board Act*, R.S.C. 1985, c.A-4

*Animal Pedigree Act*, R.S.C. 1985, c.8 (4th Supp.) [also R.S.C. 1985 loose-leaf c.A-11.2]

*Atomic Energy Control Act*, R.S.C. 1985, c.A-16

*Bank Act*, R.S.C. 1985, c.B-1

*Bank of Canada Act*, R.S.C. 1985, c.B-2

*Bankruptcy Act*, R.S.C. 1985, c.B-3

*Canada Business Corporations Act*, R.S.C. 1985, c.C-44

*Canada Labour Code*, R.S.C. 1985, c.L-2

*Canada Cooperatives Associations Act*, R.S.C. 1985, c.C-40

*Canada Deposit Insurance Corporation Act*, R.S.C. 1985, c.C-3

*Canadian Wheat Board Act*, R.S.C. 1985, c.C-24

*Canadian and British Insurance Companies Act*, R.S.C. 1985, 1-12

*Canadian National Railways Act*, R.S.C. 1985, c. C-19

*Canadian Ownership and Control Determination Act*, R.S.C. 1985, c.C-20

*Canadian Exploration and Development Incentive Program Act*, R.S.C. 1985, c.15 (3rd Supp.) [also R.S.C. 1985 loose-leaf c.C-15.5]

*Competition Act*, R.S.C. 1985, c.C-34

*Consumer Packaging and Labeling Act*, R.S.C. 1985, c.C-38

*Cooperative Credit Associations Act*, R.S.C. 1985, c.C-41

*Corporations and Labour Unions Returns Act*, R.S.C. 1985, c.C-43

*Customs Tariffs*, R.S.C. 1985, c.41 (3rd Supp.) [also R.S.C. 1985 loose-leaf c.C-54.01]

*Customs Act*, R.S.C. 1985, c.1 (2nd Supp.) [also R.S.C. 1985 loose-leaf c.C-52.6]

*Defence Production Act*, R.S.C. 1985, c.D-1

*Energy Administration Act*, R.S.C. 1985, c.E-6

*Energy Monitoring Act*, R.S.C. 1985, c.E-8

*Energy Administration Act*, R.S.C. 1985, c.E-6

*Export and Import Permits Act*, R.S.C. 1985, c.E-19

*Federal Business Development Bank Act*, R.S.C. 1985, c.F-6

*Feeds Act*, R.S.C. 1985, c.F-9

*Financial Administration Act*, R.S.C. 1985, c.F-11

*International Centre for Human Rights and Democratic Development Act*, R.S.C. 1985, c.54 (4th Supp.) [also R.S.C. 1985 loose-leaf c.[-17.3]

*Investment Companies Act*, R.S.C. 1985, c.[-22

*Livestock Feed Assistance Act*, R.S.C. 1985, c.L-10

*Loan Companies Act*, R.S.C. 1985, c.L-12

*Meat Inspection Act*, R.S.C. 1985, c.25 (1st Supp.) [also R.S.C. 1985 loose-leaf c.M-3.2]

*Motor Vehicle Fuel Consumption Standards Act*, R.S.C. 1985, c.M-9

*National Transportation Act, (1987)*, R.S.C. 1985, c.28 (3rd Supp.) [also R.S.C. 1985 loose-leaf c.N-20.01]

*National Energy Board Act*, R.S.C. 1985, c.N-7

*Northern Pipeline Act*, R.S.C. 1985, c.N-26

*Pension Benefits Standards Act*, R.S.C. 1985, c.32 (2nd supp.) [also R.S.C. 1985 loose-leaf c.P-7.01]

*Petroleum Incentives Program Act*, R.S.C. 1985, c.P-13

*Petroleum and Gas Revenue Tax Act*, R.S.C. 1985, c.P-12

*Radiocommunication Act*, R.S.C. 1985, c.R-2

*Railway Safety Act*, R.S.C. 1985, c.32 (4th Supp.) [also R.S.C. 1985 loose-leaf c.R-4.2]

*Railway Act*, R.S.C. 1985, c.R-3

*Softwood Lumber Products Export Charge Act*, R.S.C. 1985, c.12 (3rd Supp.)

[also R.S.C. 1985 loose-leaf c.S-12.5]

*Telesat Canada Act*, R.S.C. 1985, c.T-6

*Trust Companies Act*, R.S.C. 1985, c.T-20

*Veterans' Land Act*, R.S.C. 1970, c.V4

*Winding-up Act*, R.S.C. 1985, c.W-11

*Weather Modification Information Act*, R.S.C. 1985, c.W-5

**PART 2 — FEDERAL STATUTES IMPOSING LIABILITY ON DIRECTORS  
OF CORPORATIONS LIKELY RELEVANT TO THE ACTIVITIES  
OF THE WCB**

*Absolute Liability Offences*

*Canada Pension Plan*, R.S.C. 1985, c.C-8, s.21.1(1) “failure to deduct”

*Strict Liability Offences*

“directed, authorized, assented to, acquiesced in or participated in”

UNLIKELY TO APPLY —

Various offences such as failure to comply with orders, giving false information or making a false representation, exporting cultural property without a license, failure to pay or remit taxes, etc.

*Agricultural Stabilization Act*, R.S.C. 1985, c. A-8, s.17

*Canada Agricultural Products Act*, R.S.C. 1985, c.20 (4th Supp.) [also R.S.C. 1985 loose-leaf c. C-0.4], s.36

*Cultural Property Export and Import Act*, R.S.C. 1985, c.C-51, s.46

*Excise Tax Act*, R.S.C. 1985, c.E-15, s.96(3)

*Fishing and Recreational Harbours Act*, R.S.C. 1985, c.F-24, s.21

*Hazardous Products Act*, R.S.C. 1985, c.H-3, s.28(2)

*Income Tax Act*, S.C. 1970-71-72, c. 63

*Livestock Feed Assistance Act*, R.S.C. 1985, c.L-10, s.20(2)

*Transportation of Dangerous Goods Act*, R.S.C. 1985, c.T-19, s.11

## OF POSSIBLE APPLICATION

*Canada Pension Plan*, R.S.C. 1985, c.C-8, s.103(2)

*Canadian Environmental Protection Act*, R.S.C. 1985, c.16 (4th Supp.) [also  
R.S.C. 1985 loose-leaf c.C-15.3], s.122

*Citizenship Act*, R.S.C. 1985, c.C-29, s.36(2)

*Electricity and Gas Inspection Act*, R.S.C. 1985, c.E-4, s.35(2)

*Immigration Act*, R.S.C. 1985, c.1-2, s.99(1)

*Unemployment Insurance Act*, R.S.C. 1985, c.U-1, ss.74 and s.93(17)

*Weights and Measures Act*, R.S.C. 1985, c.W-6, s.35(3)

Assumption: No import and export trade activities.

Note: Section 21 of the Criminal Code includes, as a party to an offence, anyone who aids or abets the commission of the offence.

**PART 2 — PROVINCIAL STATUTES IMPOSING LIABILITY ON  
DIRECTORS OF CORPORATIONS LIKELY RELEVANT TO THE  
ACTIVITIES OF THE WCB**

*Absolute Liability Offences*

*Railway Act*, R.S.B.C. 1979, c.354, s.294 “done or omitted to be done constituting an offence”

*Liquor Control and Licensing Act*, R.S.B.C. 1979, c.237, s.76 “offence by officer in charge of 'establishment'...is deemed to be a party”

*Strict Liability Offences*

“directed, authorized, assented to, acquiesced in or participated in”

UNLIKELY TO APPLY —

Various offences such as making false and misleading statements, failure to comply with direction, decision, ruling or order, failure to furnish information, failure to provide notice, failure to collect and remit taxes, prohibited practices, failure to cooperate in inspection, etc.

*Commodity Contract Act*, R.S.B.C. 1979, c.56, s.47(3)

*Consumer Protection Act*, R.S.B.C. 1979 c.65, s.58(3)

*Income Tax Act*, R.S.B.C. 1979, c.190

*International Financial Business (Tax Refund) Act*, S.B.C. 1988, c.17, Index Ch. 205.8, s.22(2)

*Motor Vehicle (All Terrain) Act*, R.S.B.C. 1979, c.289, s.8(4)

*Multilevel Marketing Regulation Act*, R.S.B.C. 1979, c.351, s.12

*Real Estate Act*, R.S.B.C. 1979, c.356, s.59

*Social Services Tax Act*, R.S.B.C. 1979, c.388, s.31

*Trade Practice Act*, R.S.B.C. 1979, c.406, s.25(4)

*Wage (Public Construction) Act*, R.S.B.C. 1979, c.426, s.9(2)

## OF POSSIBLE APPLICATION

*Building Safety Standards Act*, S.B.C. 1981, c.11, Index Ch. 40.5., s.739(2)

*Civil Rights Protection Act*, S.B.C. 1981, c.12, Index Ch. 50.5, s.1(3)

*Credit Reporting Act*, R.S.B.C. 1979, c.78, s.25

*Elevating Devices Safety Act*, S.B.C. 1985, c.6, Index Ch. 104.5, s.29(2)

*Employment Standards Act*, S.B.C. 1980, c.10, Index Ch. 107.1, s.19(1)

*Environment Management Act*, S.B.C. 1981, c.14, Index Ch. 110.5, s.14(4)

*Pharmacists Act*, R.S.B.C. 1979, c.326, s.61(3)

*Power Engineers and Boiler and Pressure Vessel Safety Act*, S.B.C. 1981, c.25,  
Index Ch 332.5, s.36(3)

*Property Purchase Tax Act*, S.B.C. 1987, c.15, Index Ch. 340.5, s.23(3)

*Transport of Dangerous Goods Act*, S.B.C. 1985, c.17, Index ch. 408.7, s.19

*Waste Management Act*, S.B.C. 1982, C.41, Index Ch. 428.5, s.34(10)

“Knowingly assent to or acquiesce”

*Builders Lien Act*, R.S.B.C. 1979, c.40, s.2(2)

“Consent or connivance of or facilitated by neglect”

*Workers Compensation Act*, R.S.B.C. 1979, c.437, s.77

## **FOREWORD TO APPENDIX C**

Appendix C sets out extracts from certain Federal and Provincial statutes to illustrate some of the types of provisions which apply or extend liability to directors and officers. The offences listed below are only samples of offences under each act and are by no means exhaustive.

### **1. EXTRACT FROM *CANADA PENSION PLAN***

Every employer under subsection 21(1) has the obligation to deduct an amount from its employees' wages for each employee's contribution towards the plan and to remit the amount to the Receiver General. If an employer fails to comply with subsection 21(1), two offences may arise. Under subsection 21.1(1), if the employer who fails to comply with subsection 21(1) is a corporation, the persons who were directors at the time of the failure are jointly and severally liable for the amount and interest. This is an absolute liability offence. A failure to comply with subsection 21(1) is also an offence on the part of the corporation pursuant to subsection 41(1). Where a corporation commits any offence, then under subsection 103(2), an officer, director and agent of the corporation may attract liability, whether or not the corporation has been prosecuted or convicted.

### **2. EXTRACTS FROM *CANADIAN ENVIRONMENTAL PROTECTION ACT***

An offence arises under Section 111 if a person fails to give all reasonable assistance to an inspector or to provide an inspector with information as required under the *Act*. Where a corporation commits any offence, an officer, director or agent of the corporation may attract liability under Section 122, whether or not the corporation was prosecuted or convicted. If held liable, the officer, director or agent is a party to and guilty of the offence.

### **3. EXTRACT FROM THE *EMPLOYMENT STANDARDS ACT***

Section 19 imposes personal liability on a person who was a director or officer of a corporation at the time the wages should have been paid. The liability is for the unpaid wages not exceeding two months' wages for each employee affected. This is another example of absolute liability.

#### **4. EXTRACT FROM THE *WASTE MANAGEMENT ACT***

Section 34 contains a list of offences. For example, if a person who fails to comply with the requirements of an issued permit to introduce waste into the environment under subsection 34(5.1) is a corporation then an employee, officer, director or agent of the corporation may attract liability under subsection 34(10) in the circumstances described in that subsection. The employee, officer, director or agent can be held to have committed the offence notwithstanding that the corporation is convicted.

## APPENDIX C

### 1. EXTRACT FROM *CANADA PENSION PLAN, R.S.C. 1985, C.C-8*

Amount to be deducted and remitted by employer

21. (1) Every employer paying remuneration to an employee employed by him at any time in pensionable employment shall deduct from that remuneration as or on account of the employee's contribution for the year in which the remuneration for the pensionable employment is paid to the employee such amount as is determined in accordance with prescribed rules and shall remit that amount together with such amount as is prescribed with respect to the contribution required to be made by the employer under this *Act*, to the Receiver General at such time as is prescribed.

21.1 (1) Where an employer who fails to deduct or remit an amount as and when required under subsection 21(1) is a corporation, the persons who were the directors of the corporation at the time when the failure occurred are jointly and severally liable, together with the corporation, to pay to Her Majesty that amount and any interest or penalties relating thereto.

Application of *Income Tax Act* provisions

(2) Subsections 227.1(2) to (7) of the *Income Tax Act* apply, with such modifications as the circumstances require. in respect of a director of a corporation referred to in subsection (1).

Offences

Offence and punishment

41. (1) Every employer who fails to comply with subsection 21(1) or 23(3) is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(a) a fine not exceeding five thousand dollars; or

(b) both the fine described in paragraph (a) and imprisonment for a term not exceeding six months.

Limitation period

103. (1) A prosecution for an offence under this *Act* may be commenced at any time within, but no later than, five years after the time when the subject-matter of the prosecution arose.

Officers, etc. of corporation

(2) Where a corporation commits an offence under this *Act*, every officer, director or agent of the Corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Assessment provisions applicable to directors

(3) The provisions of this *Act* respecting the assessment of an employer for an amount payable by the employer under this *Act* and respecting the rights and obligations of an employer so assessed apply in respect of a director of a corporation in respect or an amount payable by the director under subsection (1) in the same manner and to the same extent as if the director were the employer referred to in those provisions.

RS.,1985,c.6(1st Supp.).s.2.

Information or complaint

(3) Subsection 41(6) applies with respect to any information or complaint under any of the provisions of this *Act* other than Part 1, as though for the reference therein to the Department of National Revenue and the Minister thereof there were substituted a reference to the Department of National Health and Welfare and the Minister.

RS, c.C-5,s. 106.

**2. EXTRACT FROM *CANADIAN ENVIRONMENTAL PROTECTION ACT*, R.S.C. 1985, C.16 (4TH SUPP) [ALSO R.S.C. 1985 LOOSE-LEAF C.C- 15.3]**

Offences and Punishment

Inspectors

111. Every person who

(a) fails to give an inspector all reasonable assistance or to provide the inspector with information as required under Section 102, or

(b) contravenes Section 103 is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both.

Liability of directors

122. Where a corporation commits an offence under this *Act*, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

**3. EXTRACT FROM *EMPLOYMENT STANDARDS ACT*, S.B.C. 1980, C.10, INDEX CH.107.1**

Corporate Officer Liability

19.

- (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation should have been paid is personally liable for the unpaid wages in an amount not exceeding 2 months' wages for each employee affected, and this *Act* applies to the recovery of the unpaid wages from that person
- (2) Notwithstanding subsection (1), where a corporation is in receivership, bankruptcy or is subject to action under Section 178 of the *Bank Act* (Canada), a person who is a director or officer of the corporation is not personally liable for severance pay.

1980-10-19: 1983-16-12. effective December 1, 1983 (B.C. Reg. 409:83).

**4. EXTRACT FROM WASTE MANAGEMENT ACT, S.B.C. 1982,  
c.41, INDEX CH. 428.5**

Offence and penalties

34.

- (1) A person who contravenes Section 6 or 7 commits an offence and is liable to a penalty not exceeding \$2,000.
- (2) A person who contravenes Section 4(3), 5(1) or (2), 10(5) or Section 31(1) commits an offence and is liable to a penalty not exceeding \$200,000.
- (3) A person who contravenes Section 3(1.1), (1.2) or (2), 3.1(1) or (2), 3.2 or Section 4(1) or (4) commits an offence and is liable to a penalty not exceeding \$1,000,000.
- (4) A person who inserts in a manifest required by Section 5 information that he knows to be untrue or misleading information commits an offence and is liable to a penalty not exceeding \$200,000.
- (4.1) A person who obstructs or resists an officer who is exercising duties under Section 21.1 or fails to comply with a requirement of an officer under that section commits an offence and is liable to a penalty not exceeding \$200,000.
- (5) A person who, holding a permit or approval issued to him under this *Act* to introduce waste into the environment, introduces waste into the environment without having complied with the requirements of the permit or approval, commits an offence and is liable to a penalty not exceeding \$1,000,000.
- (5.1) A person who, holding a permit or approval issued under this *Act* to introduce waste into the environment, fails to comply with the requirements of the permit or approval commits an offence and is liable to a penalty not exceeding \$300,000.
- (6) A person who, holding a permit or approval issued to him under this *Act* to store a special waste, stores the special waste without having complied with the requirements of the permit or approval commits an offence and is liable to a penalty not exceeding \$1,000,000.

- (7) A person who contravenes Section 5(3) commits an offence and is liable,
- (a) where the contravention arises from a failure to comply with the requirement in Section 5(3) (a) or (b), to a penalty not exceeding \$200,000, or
  - (b) where the contravention arises from a failure to comply with the requirement in Section 5(3)(c), to a penalty not exceeding \$300,000.
- (8) A person who contravenes an order or requirement (other than an order under Section 4(3)) given, made or imposed under this *Act* by a sewage control manager, a manager, a district director, the director, the minister or the appeal board commits an offence and is liable to a penalty not exceeding \$300,000, but an order or requirement is not contravened unless it
- (a) was given in writing, and
  - (b) specified a reasonable period of time for compliance and that period has expired.
- (9) A municipality that contravenes a waste management plan approved by the minister commits an offence and is liable to a fine not exceeding \$300,000.
- (10) Where a corporation commits an offence under this *Act*, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence notwithstanding that the corporation is convicted.
- (11) In a prosecution for an offence under or arising out of a contravention of Section 4(1) or 5(1) or (3), or of a regulation made with respect to special wastes, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent or that he exercised all due diligence to prevent its commission
- (12) Sections 4 and 5 of the *Offence Act* do not apply in respect of
- (a) this *Act*, or
  - (b) the regulations.
- (13) Where an offence under this section continues for more than one day, separate fines, each not exceeding the maximum fine for that offence, may be imposed for each day the offence continues.

- (14) Any information for or in respect of any offence against this *Act* or the regulations shall be laid before the expiration of one year from the time of the happening of the offence.
- (15) A person who contravenes a requirement of the regulations respecting special wastes commits an offence and is liable to a penalty of \$1,000,000.
- (15.1) A person who contravenes a requirement of a regulation that specifies the quantity or characteristics of waste that may be introduced into the environment commits an offence and is liable to a penalty not exceeding \$1,000,000.
- (16) A person who is liable to a monetary penalty specified in this section is also liable to imprisonment for not more than 6 months.

1982-41-34; 1985-52-97 effective October 11, 1985 (B.C. Reg. 335/85) - 1987-51-14; 1989-62-9; 1990-74-12.

## Part B – CROWN INDEMNITY

Subject to certain exceptions, this INDEMNITY covers:

- (a) any claim that may be made against an Administrator arising out of or in any way connected with the management, operation, activities or existence of the Workers' Compensation Board, and (b) any liabilities, losses, damages, costs, charges and expenses that an Administrator may incur in consequence of acting as an Administrator

The INDEMNITY does not cover claims, liabilities, expenses, etc.:

- (a) arising from an Administrator's failure to act honestly or in good faith or in the best interests of the WCB;
- (b) arising from acts, errors or omissions that are outside the course of the Administrator's duties as an Administrator;
- (c) arising from the Administrator's failure to disclose an interest or conflict as required under Sections 144, 147 and 161 of the *Company Act*;
- (d) for fines or penalties imposed on an Administrator by law; or
- (e) incurred in defending an Administrator in criminal proceedings if the defence is not fully successful.

If defence under the INDEMNITY should become necessary, the Province will, after consultation with the Administrator select legal counsel. The Province will conduct the defence and may, with the Administrator's consent, negotiate and pay a settlement. If the Administrator does not consent to the settlement, the Administrator may continue with the defence. However, the Province will only be responsible for legal fees and costs up to the date the Administrator refuses consent

Copies of Sections 144, 147 and 161 of the *Company Act*, mentioned in exception (c) above, are attached. These sections place certain disclosure obligations on directors and officers of companies in relation to conflicts of interest. Since the Workers' Compensation Board is not a "company" under the *Company Act*, these provisions do not technically apply to the Administrators.

Administrators do, however, have a fiduciary obligation to the Workers' Compensation Board. Part of that fiduciary obligation is to arrange the Administrator's private affairs in a manner that will prevent real, potential or

apparent conflicts of interest from arising. If such a conflict arises between the Administrator's private interests and the Administrator's duties and responsibilities to the WCB, the Administrator is obliged to resolve that conflict in favour of the Administrator's duties and responsibilities to the WCB.

The Conflict of Interest section of the Statement of Duties approved on August 3, 1995 reflects the same public policy basis as Sections 144, 147 and 161 of the *Company Act*. If an Administrator complies with the conflict of interest requirements in the Statement and arranges the Administrator's affairs in a manner that prevents real, potential or apparent conflict of interest from arising, the Administrator should avoid any situations where the Province would seek to invoke the exception in paragraph (c).

## Director to disclose his interest

144.(1) Every director of a company who is, in any way, directly or indirectly, interested in a proposed contract or transaction with the company shall disclose the nature and extent of his interest at a meeting of the directors.

- (2) The disclosure required by subsection (1) shall be made
  - (a) at the meeting at which a proposed contract or transaction is first considered;
  - (b) if the director was not, at the time of the meeting referred to in paragraph (a), interested in a proposed contract or transaction, at the first meeting after he becomes interested; or
  - (c) at the first meeting after the relevant facts come to his knowledge.
- (3) For the purpose of this section, a general notice in writing given by a director of a company to the other directors of the company to the effect that he is a member, director or officer of a specified corporation, or that he is a partner in, or owner of, a specified firm, and that he has an interest in a specified corporation or firm, is a sufficient disclosure of interest to comply with this section.
- (4) A director of a company shall be deemed not to be interested or not to have been interested at any time in a proposed contract or transaction by reason only,
  - (a) where the proposed contract or transaction relates to a loan to the company, that he or a specified corporation or specified firm in which he has an interest has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan;
  - (b) where the proposed contract or transaction has been or will be made with or for the benefit of an affiliated corporation, that he is a director or officer of that corporation;
  - (c) that the proposed contract or transaction relates to an indemnity under Section 152 or to insurance under Section 152; or
  - (d) that the proposed contract or transaction relates to the remuneration of director in his capacity as a director.

## Disclosure of conflict of office or property

147.(1) Every director of a company who holds any office, or possesses any property, whereby, whether directly or indirectly, a duty or interest might be created in conflict with his duty or interest as a director of the company, shall declare at a meeting of the directors of the company the fact, and the nature and extent of the conflict.

(2) The declaration shall be made by a director referred to in subsection (1) at the first meeting of the directors held

(a) after he becomes a director; or

(b) if he is already a director, after he commenced to hold the office or possess the property.

## Duty to disclose

161. Every officer of a company who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as an officer of the company shall, in writing disclose to the president the fact and the nature and extent of the conflict.

## INDEMNITY

GRANTED BY: HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF BRITISH COLUMBIA .  
as represented by the Minister of  
Finance and Corporate Relations.

(the "Province")

## WHEREAS:

- A. The Province has agreed to grant this Indemnity to all persons described in Schedule "A" who are appointed by the Lieutenant Governor in Council or by a minister of the Province as a Governor (collectively the "Governors" and individually a "Governor") of the Workers' Compensation Board described in Schedule "IA" hereto (the "Board"), on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS INDEMNITY WITNESSES that in consideration of the Governors serving in the capacity of Governors of the Board and other good and valuable consideration (the receipt and sufficiency whereof is hereby acknowledged) the parties hereto covenant and agree as follows:

## COMMENCEMENT

1. Notwithstanding the actual date of execution and delivery of this Indemnity, the term of this Indemnity will, in respect of each Governor, be conclusively deemed to commence December 3, 1993 and will end on the effective date of termination pursuant to the provisions of paragraph 6. Provided however, this Indemnity will remain in full force and effect in respect of all acts or omissions of Governors covered hereunder occurring before the date of termination.

## INDEMNITY

2. Subject to paragraphs 3, 4, 6, 9, 12 and 13, the Province will indemnify and save harmless each of the Governors from and against:
  - (a) any and all claims of every nature and kind whatsoever which may be made against him, in consequence of his being a Governor of the Board, by any person, firm, corporation, government, or by any governmental department, body, com-

mission, board, bureau, agency or instrumentality, arising out of or in any way connected

#### TERMINATION

6. This Indemnity may be terminated in respect of any or all Governors by the Province delivering a notice in writing to such Governor or Governors, such termination to be effective commencing the date next following the date such notice is deemed received pursuant to paragraph 16. In any event, this Indemnity will terminate in respect of a Governor on the day next following the date upon which such Governor ceases to be a Governor of the Board.

#### RESIGNATION

7. Nothing in this Indemnity will prevent a Governor from resigning as a Governor at any time.

#### INVALIDITY

8. If any provision of this Indemnity is held to be invalid or contrary to law, the remainder of this Indemnity will nevertheless be and be deemed to be valid and binding upon the parties hereto.

#### DEFENCE

9. With respect to this Indemnity, the Province will defend, at its expense, any suit, action or proceeding of any kind whatsoever, against a Governor that, if successful, would result in a liability contemplated by paragraph 2 (except in respect of criminal proceedings and in respect of any liability for which the Governor is entitled to be indemnified pursuant to any valid and collectible policy of insurance), even if any of the allegations of the suit, action or proceeding are groundless, false or fraudulent; but the Province may make such investigation, conduct such negotiations towards settlement and, with the written consent of the Governor, make such settlement of any such suit, action or proceeding as it deems expedient, provided, however, that the Governor will not be required to admit liability as part of any proposed settlement and further provided that if within five days after notice by the Province the Governor fails to give his consent to such a settlement of any such suit, action or proceeding acceptable to the Province and the claimant, the Province may require the Governor to negotiate or defend such suit, action or proceeding independently of the Province and further provided any amount recovered by such claimant in excess of the amount for which settlement could have been made by the Province, will not be recoverable under this Indemnity, it being further agreed by the parties that the Province will only be responsible for legal fees and costs up to the date that the Province gives notice to the Governor of such proposed settlement.

by number is a reference to the appropriate paragraph in this Indemnity.

16. Any notice, statement, other document or payment that either party may be required or may desire to give or deliver to the other will be conclusively deemed validly given or delivered to and received by the addressee, if delivered personally, on the date of such personal delivery or, if mailed, on the fifth business day after the mailing of the same in British Columbia by prepaid post addressed, if to the Province or the Minister:

Director, Risk Management Branch  
Ministry of Finance and Corporate Relations  
4th Floor, 716 Courtney Street  
Victoria, BC  
V8V 1X4

and if to a Governor; At the address of the Governor as set out in the records of the Board.

17. The Province, the Board or any of the Governors may, from time to time, advise the others by notice in writing of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified will, for purposes of this paragraph, be conclusively deemed to be the address of the party giving such notice.
18. Time will be of the essence of this Indemnity.
19. The headings or captions in this Indemnity are inserted for ease of reference only and will have no effect on the construction or interpretation of this Indemnity.
20. This Indemnity shall be construed in accordance with and be governed by the laws of the Province of British Columbia.
21. This Indemnity shall enure to the benefit of and be binding upon the parties hereto and the executors, administrators and legal personal representatives of the Governors.
22. The recitals to this Indemnity and the schedules to this Indemnity, namely A and B, are an integral part of this Indemnity.

#### EXECUTION

23. Each of the Governors of the Board, from time to time, may execute this Indemnity in the form attached hereto as Schedule "B" either after execution by the Province or upon their appointment by the Province as a Governor and after such execution a Governor will be deemed to be a party hereto.

SCHEDULE "B"

FORM OF EXECUTION BY ADMINISTRATORS

The undersigned, \_\_\_\_\_, of  
(print name)

\_\_\_\_\_  
(address)

being an Administrator of \_\_\_\_\_  
(insert name of board)

hereby agrees to the terms of the Indemnity, a copy of which is attached hereto, which Her Majesty the Queen in Right of the Province of British Columbia (the "Province") has granted to the undersigned.

The undersigned represents and warrants to the Province that, to the best of the undersigned's knowledge, there are no actions, suits or proceedings pending or threatened that could lead to a claim, liability, loss, damage, cost, charge or expense described in paragraph 2 of the attached Indemnity except:

(insert "none" or description)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
(witness) print name & address

\_\_\_\_\_  
(administrator)

A COPY OF THIS FORM, WHEN EXECUTED, SHOULD BE SENT TO THE PROVINCE AT THE ADDRESS IN PARAGRAPH 16.

## Chapter 19

# ***Freedom of Information and Protection of Privacy Act***

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- I The *Freedom of Information and Protection of Privacy Act (FIPPA)* came into force on October 1, 1993. The purpose of the statute is to make public bodies more accountable while protecting the personal privacy of individuals about whom public bodies hold information.
- II *FIPPA* applies to the Workers' Compensation Board. The Chair of the Panel is considered "head" of the organization for purposes of ensuring compliance. The day-to-day administration of *FIPPA* is conducted by the Freedom of Information and Protection of Privacy Coordinator who reports to the Chair, as well as to the President and CEO and the General Counsel under authority delegated from the Chair.
- III It is possible, although extremely unlikely, that someone may send a *FIPPA* request to an Administrator, rather than to the WCB. If that occurs, the Administrator should FAX the request to the Panel Office as soon as possible (FAX- 270-7492). The Panel Office will contact the Freedom of Information and Protection of Privacy Coordinator on behalf of the Administrator. It is important that the request be FAXED right away because a public body has 30 days in which to reply to a request, either by providing the information in question or refusing access.
- IV A copy of the brochure prepared by the WCB Freedom of Information and Protection of Privacy Office is available through the WCB's Films and Posters section. The brochure notes that there are situations where information must not be released. The WCB (including the Administrators) must not disclose information if:
  - (i) it reveals cabinet confidences (unless the information has been in existence for at least 15 years);
  - (ii) disclosure is harmful to business interests of a third party (such as trade secrets);
  - (iii) disclosure is harmful to personal privacy.

It may be difficult for an Administrator to determine whether particular information falls within the scope of these prohibitions. The most prudent course of action would be *not* to disclose information received from the WCB without first seeking advice from the Panel Officer (279-7594). If an Administrator has any other questions about *FIPPA*, they should also be directed to the Panel Office. If unable to assist, the Panel Office will contact the Freedom to Information and Protection of Privacy Coordinator.

## Chapter 20

# Remuneration and Expenses

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### I. REMUNERATION

The *Act* provides in Section 83.1(6)(a) that the Administrators shall be paid “remuneration in an amount determined by the Lieutenant Governor in Council.”

### II. PER DIEMS

Where the Order in Council appointing an Administrator specifies a per diem, the per diem is calculated as follows:

- (i) For less than 4 hours of work in a day, an Administrator is entitled to one-half of the per diem rate.
- (ii) For more than 4 hours of work in a day, an Administrator is entitled to the full per diem rate.
- (iii) Only one full per diem payment is made to an Administrator for each twenty-four (24) hour day.
- (iv) Preparation time of up to 1 day per regular meeting, special meeting, committee meeting or other meeting of the Panel of Administrators is remunerated.
- (v) Reasonable travel time is included in qualifying time.

### III. EXPENSES

Administrators are entitled to “reasonable and actual traveling and out of pocket expenses necessarily incurred by them in discharging their duties” (Section 83.1(6)(b) of the *Act*).

Administrators who use their own vehicles to attend a Panel meeting will be reimbursed mileage at the rate in effect for WCB employees. The rate is currently 37 cents per kilometer.

#### **IV. SUBMITTING CLAIMS FOR PER DIEMS AND EXPENSES**

A sample per diem and expenses form appears at this chapter. To ensure prompt payment of per diems and reimbursement of expenses, the following points should be noted:

- (i) Per diem and expense forms, with receipts, should be submitted directly to Sue Dean.
- (ii) The form must bear the original signature of the Administrator in the space marked “ Administrator signature” or it will not be accepted by the WCB Accounting Department. (Photocopies or FAXES are not accepted.)
- (iii) Original receipts (not copies) must be submitted.
- (iv) Forms for payment of per diem and reimbursement of expenses should be submitted as soon as possible after each meeting.

#### **V. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

The Workers’ Compensation Board is a public body to which the *Freedom of Information and Protection of Privacy Act* applies. Any person may obtain copies of WCB records with respect to the remuneration and expenses for each Administrator by making a request under the *Act*.

**PANEL OF ADMINISTRATORS  
Workers' Compensation Board  
6951 Westminster Highway  
Richmond BC V7C 1C6**

PAYABLE TO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

DEPARTMENT NO: 14-00

<b>PER DIEM (if applicable)</b> **PAYROLL USE ONLY**		
DATE	RATE/DAY	TOTAL
<b>TOTAL PER DIEM</b> (paid thru Human Resources)		\$

<b>EXPENSES</b> **ACCOUNTING USE ONLY** (Please attach receipts)						
DATE	MILEAGE @.37/KM	PARKING	TAXI/ TRAVEL	PHONE CHARGES	MISC.	TOTAL
<b>TOTAL EXPENSES</b> (paid thru Accounting)						\$

Date Submitted: \_\_\_\_\_ For the Month of: \_\_\_\_\_

Administrator Signature: \_\_\_\_\_

Approval: \_\_\_\_\_

Vince Collins, Chair, Panel of Administrators



## Chapter 21

# Legislation

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- I. In 1991, the *Workers Compensation Act* was amended to provide for a new governing structure.
- II. The Governors of the Workers' Compensation Board were to consist of thirteen voting Governors — five representative of workers, five representative of employers, two representative of the public interest and a neutral chair.
- III. The Governors were to appoint a President and CEO and a Chief Appeal Commissioner who were non-voting Governors by virtue of their office.
- IV. This governing structure was in place until July, 1995. At that time, the *Act* was amended to provide for the appointment of a Panel of Administrators to discharge the powers, duties and functions of the Governors.
- V. Upon the appointment of the Panel of Administrators, the Governors ceased to hold office.

*Editor's Note: This chapter has been edited for publication.*

