WORKERS' COMPENSATION
REPORTER

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

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

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

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Decision of the Governors

Number: 75
Date: December 1, 1994
Subject: Appeal Division Administration, Practice and Procedure

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

A. In Section 85(7)(b) that the Chief Appeal Commissioner shall implement the policies of the Governors with respect to the administration of the Appeal Division.

B. In Section 85.1 that the Chief Appeal Commissioner may determine the practice and procedure of the Appeal Division subject to any policies of the Governors.

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

1.0 Scope of Proceedings Before the Appeal Division

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

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

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

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

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

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

2.0 Representation Before the Appeal Division

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

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

3.0 Panels

Matters coming before the Appeal Division shall be determined by either a one-member panel or a three-member panel, as decided by the chief appeal commissioner. In cases where an oral hearing has been granted, the chief appeal commissioner shall consider any preference expressed by a party in making this decision.

A one-member panel shall consist of either the chief appeal commissioner or a non-representational appeal commissioner selected by the chief appeal commissioner.

A three-member panel shall generally consist of either the chief appeal commissioner or a non-representational appeal commissioner who shall preside over the panel and one appeal commissioner chosen from the worker representatives and one appeal commissioner chosen from the employer representatives.

The assignment of one or more appeal commissioners to a panel in a particular case shall be made by the chief appeal commissioner.

In matters under Sections 10(8) and 11 and in exceptional cases where the chief appeal commissioner considers that the issues warrant it, the chief appeal commissioner has the authority to constitute a panel consisting of three non-representational appeal commissioners, which may include the chief appeal commissioner.

4.0 Hearings

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

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

(a) there is significant new evidence to be presented which requires an oral hearing;

(b) the appeal raises a significant policy issue;

(c) there appears to be an error or confusion in the finding or decision under appeal;

(d) there is evidence to suggest there is an error of fact in the finding or decision under appeal;

(e) there is a significant issue of credibility involved.

An oral hearing may not be granted if:

(a) there are no reasons given as to how the finding or decision under appeal is in error;

(b) there are no reasons given for the request for an oral hearing;

(c) there was no request for an oral hearing before the Review Board;

(d) the issue is purely medical and the appeal can be determined on the basis of written expert medical opinions alone.

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

5.0 Application of Board Policy by the Appeal Division

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

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

6.0 Discretionary Authority

In matters which come before it, the Appeal Division has the authority to exercise the Board's discretion to refer a worker to a Medical Review Panel pursuant to Section 58(5) of the *Act* with or without the worker's consent.

The Appeal Division may exercise its discretion pursuant to Section 91(2) to direct the Review Board to reconsider in any case where the Appeal Division considers it appropriate.

The Appeal Division has specific authority to reconsider a decision of the Appeal Division under Section 96.1.

The Appeal Division shall exercise the authority of the Board under Section 96(2) to reopen, rehear and redetermine any decision made by the former commissioners prior to June 3, 1991, where the chief appeal commissioner finds that the decision was based upon an error of law or involved or involves an issue under the *Canadian Charter of Rights and Freedoms*.

The Appeal Division shall not otherwise exercise the Board's plenary independent power to reopen, rehear and redetermine matters under Section 96(2).

7.0 Authority of the Chief Appeal Commissioner to Delegate

Under Section 85(8) of the *Act*, the chief appeal commissioner may delegate in writing any of the chief appeal commissioner's powers and duties to an appeal commissioner subject to any terms and conditions set out in the delegation.

8.0 Decisions

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

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

9.0 Publication of Appeal Division Decisions

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

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

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

Selected decisions of the Appeal Division shall be published under the direction of the chairman with the assistance of the chief appeal commissioner to ensure that all key decisions are reported.

10.0 Governors' Decisions No. 1 and 8

This Decision replaces governors' Decision No. 1 dated April 11, 1991 (*Workers' Compensation Reporter*, Vol. 7: p. 7) and governors' Decision No. 8 dated January 6, 1992 (*Workers' Compensation Reporter*, Vol. 7: p. 171).

THIS POLICY IS EFFECTIVE DECEMBER 1, 1994.

Decision of the Governors

Number: 76
Date: November 16, 1994
Subject: Winding Up Ad Hoc Back Schedule Committee

WHEREAS:

A. Section 82(b)(i) of the *Workers Compensation Act* authorizes the governors of the Workers' Compensation Board to establish and give direction to committees;

B. on November 4, 1991, the governors established the Back Schedule Committee and directed the Committee to review W.C.B. policies with respect to the assessment of permanent spinal impairment and the alternative schedules that might be adopted;

C. the Back Schedule Committee has been inactive for approximately 18 months and its work has been suspended pending worker governor review of the scope of the issue and the definition of the concerns that gave rise to the establishment of the Committee; and

D. other mechanisms, for example the Loss of Earnings Pension Study currently being undertaken by the W.C.B., offer an opportunity address issues relating to the back schedule and the assessment of permanent spinal impairment:

NOW THEREFORE THE GOVERNORS RESOLVE THAT:

1. the Back Schedule Committee established by the governors on November 4, 1991 be wound up by this resolution, and

2. the issues around the back schedule and the assessment of permanent spinal impairment be:

   (a) referred to the director of Policy and Research for discussion with the Senior Executive Policy Committee as to approach and timing in the context of the other future policy issues to be decided by the governors, and

   (b) brought before the governors in due course for decision after appropriate policy analysis and public consultation.

Decision of the Governors

Number: 77
Date: November 7, 1994
Subject: Revised Chapter IV — Compensation for Occupational Disease — Occupational Disease Recognition

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WHEREAS:

A. the Workers' Compensation Board pays compensation to workers with occupational diseases due to employment, in accordance with the *Workers Compensation Act* and governor policy as set out in CHAPTER IV — COMPENSATION FOR INDUSTRIAL DISEASE of the *Rehabilitation Services and Claims Manual*;

B. after extensive public consultation with the worker and employer communities, including a public hearing in December, 1993, a completely revised CHAPTER IV has been drafted under the direction of the Governors' Occupational Diseases Standing Committee and presented to the governors for adoption;

C. the revised CHAPTER IV, now entitled COMPENSATION FOR OCCUPATIONAL DISEASE, incorporates the change in terminology from "industrial disease" and "industrial diseases" to "occupational disease" and "occupational diseases" provided by the *Workers Compensation Amendment Act*, 1994 (Bill 13) and this change in terminology should be implemented throughout the *Rehabilitation Services and Claims Manual*; and

D. the revised CHAPTER IV contemplates the addition of 15 diseases to the list of occupational diseases recognized by regulation of the Workers' Compensation Board under Section 1 of the *Act*:

NOW THEREFORE THE GOVERNORS RESOLVE THAT THEY:

1. adopt as governor policy new CHAPTER IV — COMPENSATION FOR OCCUPATIONAL DISEASE — of the *Rehabilitation Services and Claims Manual*, identified as manual amendment proposal CM049 in the meeting

binder for the November 7, 1994 meeting of the governors' of the Workers' Compensation Board, to replace existing CHAPTER IV — COMPENSATION FOR INDUSTRIAL DISEASE — of the *Manual*;

2. instruct the chairman of the governors to make, on their behalf, all non-substantive consequential changes to the *Rehabilitation Services and Claims Manual* required by the adoption of new CHAPTER IV as governor policy, including:

   (a) deleting #13.11 Epicondylitis (Tennis Elbow)/Carpal Tunnel Syndrome from CHAPTER III — COMPENSATION FOR PERSONAL INJURY,

   (b) incorporating the text appearing as #30.11 Assessment of Pensions for Raynaud's Phenomenon in former CHAPTER IV — COMPENSATION FOR INDUSTRIAL DISEASE — as #39.44 Assessment of Pensions for Raynaud's Phenomenon in Chapter VI — PERMANENT DISABILITY AWARDS,

   (c) striking out the last sentence of #39.40 Sensory Losses in CHAPTER VI — PERMANENT DISABILITY AWARDS ("Awards for Raynaud's Phenomenon and hearing loss are dealt with in #30.10 and #30.20 respectively.") and replacing it with "Awards for hearing loss are dealt with in #31.00."; and

   (d) striking out, adding or amending references to item #s to ensure correspondence with items #s in new CHAPTER IV — COMPENSATION FOR OCCUPATIONAL DISEASES;

3. strike out "industrial disease" and "industrial diseases" wherever they appear in the *Manual* and replace them with "occupational disease," and "occupational diseases," respectively, except where "industrial disease" or "industrial diseases" appears in text discussing Federal legislation such as the *Government Employees' Compensation Act*;

4. make, pursuant to Section 1 of the *Workers Compensation Act*, the attached Occupational Disease Recognition Regulation; and

5. instruct the chairman of the governors to execute and forward the Occupational Disease Recognition Regulation for deposit with the registrar of Regulations;

AND THE GOVERNORS FURTHER RESOLVE THAT the amendments to the *Rehabilitation Services and Claims Manual* resulting from this resolution and the attached Occupational Disease Recognition Regulation shall be effective January 1, 1995.

REGULATION OF THE WORKERS' COMPENSATION BOARD DATED NOVEMBER 7, 1994. OCCUPATIONAL DISEASE RECOGNITION REGULATION

1. Pursuant to Section 1 of the *Workers Compensation Act*, the Workers' Compensation Board recognizes the following diseases as occupational diseases:

Bronchitis
Campylobacteriosis (Diarrhea caused by Campylobacter)
Carpal Tunnel Syndrome
Chicken Pox
Cubital Tunnel Syndrome
Disablement from Vibrations
Emphysema
Epicondylitis (Lateral and Medial)
Food Poisoning
Giardia Lamblia Infestation
Head Lice (Pediculosis Capitis)
Herpes Simplex
Infectious Hepatitis
Legionellosis
Lyme Disease
Meningitis
Mononucleosis
Mumps
Plantar Fasciitis
Radial Tunnel Syndrome
Red Measles (Rubeola)
Ringworm
Rubella
Scabies
Serum Hepatitis
Shigellosis
Staphylococci Infections
Stenosing Tenovaginitis (Trigger Finger)
Streptococci Infections
Thoracic Outlet Syndrome
Toxoplasmosis
Typhoid
Whooping Cough
Yersiniosis

2. B.C. Regulation 61/75 as amended by B.C. Regulation 523/75 is repealed.

3. This regulation is effective January 1, 1995.

Decision of the Governors

Number: 78
Date: October 22, 1994
Subject: Winding Up of Ad Hoc Committees

WHEREAS:

A. Section 82(b)(i) of the *Workers Compensation Act* authorizes the governors of the Workers' Compensation Board to establish and give direction to committees;

B. in 1990 and 1991, the governors established and gave direction to a number of ad hoc committees, including the President/C.E.O. Search Committee, the Chief Appeal Commissioner Search Committee, the Appeal Division Committee, the Appeal Commissioner Criteria Committee, the Conduct/ Roles and Responsibilities Committee, the Bylaw Committee, the Referral and Interest Committee, the Back Schedule Committee, the Criminal Injury Policy Committee, the Schedule B Committee and the Silicosis and Coal Industry Surplus Committee, which completed their work and were wound up; and

C. in some cases, there is no record of the ad hoc committee having been formally wound up:

NOW THEREFORE THE GOVERNORS RESOLVE THAT:

all committees established by the governors in 1990 and 1991 are wound up by this resolution, except the following:

Back Schedule Committee, which shall continue in existence until wound up by the governors

Criminal Injury Policy Committee, which shall be wound up by separate resolution of the governors

Governors' Committee for Regulation Review, which shall continue in existence until wound up by the governors

Decision of the Governors

Number: 79
Date: October 22, 1994
Subject: Winding Up of Ad Hoc Criminal Injury Policy Committee

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WHEREAS:

A. Section 82(b)(i) of the *Workers Compensation Act* authorizes the governors of the Workers' Compensation Board to establish and give direction to committees;

B. on August 12, 1991, the governors established the Criminal Injury Policy Committee and directed the Committee to conduct a comprehensive study into the policies of the criminal injury compensation system in B.C.;

C. on April 13, 1992, the attorney general requested that the governors suspend their policy review pending a more general review of victim assistance programs by the Ministry of the Attorney General and the governors agreed;

D. the Ministry of the Attorney General has studied the criminal injury compensation system and is considering whether statutory amendments should be recommended to the *Criminal Injury Compensation Act* and policy changes made; and

E. the governors have concluded that, in view of the studies conducted by the Ministry of the Attorney General and of the Ministry's broader-based knowledge of victims assistance issues generally, the governors' policy initiatives are no longer required:

NOW THEREFORE THE GOVERNORS RESOLVE THAT:

the Criminal Injury Policy Committee established by the governors on August 12, 1991, be wound up by this resolution.

Decision of the Governors

Number: 80
Date: October 22, 1994
Subject: Winding Up of Ad Hoc Average Earnings Committee

WHEREAS:

A. Section 82(b)(i) of the *Workers Compensation Act* authorizes the governors of the Workers' Compensation Board to establish and give direction to committees;

B. on February 17, 1992, at the request of the president of the day, the governors established the Average Earnings Committee to address average earnings policy issues;

C. the Average Earnings Committee has been inactive for more than one year and it is doubtful that average earnings policy issues require priority commitment of governors' resources over other policy issues; and

D. the governors are scheduled to consider some Average Earnings issues later this year, and the W.C.B. Policy and Research Section, in conjunction with the Average Earnings Working Group, is evaluating the remaining issues and establishing a workplan to deal with them:

NOW THEREFORE THE GOVERNORS RESOLVE THAT:

the Average Earnings Committee established by the governors on February 17, 1992, be wound up by this resolution.

Decision of the Governors

Number: 81
Date: October 3, 1994
Subject: Approval of Interest Policy Under Section 19 of the *Workers Compensation Act*

WHEREAS:

A. effective August 19, 1993, the *Workers Compensation Amendment Act*, 1993 repealed Section 19(1) and (2) of the *Workers Compensation Act* and substituted new Section 19(1), (2) and (2.1) which provided for the reinstitution of monthly benefits for dependent spouses whose benefits had been terminated under Section 19(1) because of remarriage or formation of a common law relationship on or after April 17, 1985, and for payment of a retroactive lump sum, plus interest;

B. on September 7, 1993, the governors of the Workers' Compensation Board decided that "interest" for this purpose would be calculated at the rates and in the manner set out in #50.00 of the *Rehabilitation Services and Claims Manual*;

C. effective August 26, 1994, the *Workers Compensation Amendment Act*, 1994 repealed Section 19(4) of the *Workers Compensation Act* and amended Section 19(1) and (2) of the *Act* to also provide for reinstitution of monthly benefits for widows and former common law wives whose benefits had been terminated under Section 19(4) because of remarriage or formation of a common law relationship on or after April 17, 1985, and for payment of a retroactive lump sum, plus interest; and

D. the governors of the W.C.B. have concluded that the "interest" policy they approved on September 7, 1993 with respect to payment of the retroactive lump sum, plus interest, to the Section 19(1) dependent spouses should also apply with respect to payment of the retroactive lump sum, plus interest, to the Section 19(4) widows and former common law wives:

NOW THEREFORE THE GOVERNORS RESOLVE THAT:

"interest" for the purposes of Section 19 of the *Workers Compensation Act*, as amended on August 26, 1994 will be calculated at the rates and in the manner set out in #50.00 of the *Rehabilitation Services and Claims Manual*.

Decision of the Governors

Number: 82
Date: October 3, 1994
Subject: Approval of Grant Application

WHEREAS:

A. Section 71(4) of the *Workers Compensation Act* provides that the "board may engage in and carry on a general educational program for employers, employees and the general public in relation to the prevention of accidents and occupational diseases, first aid and the general operations and responsibilities of the board, and for that purpose may advertise, sponsor contests and award prizes, scholarships and other monetary awards, including rewards for bravery in rescuing or attempting to rescue a worker from serious injury or death, and may undertake or support research in matters relating to its responsibilities" under the *Act*;

B. on October 26, 1992 the governors of the Workers' Compensation Board approved the "WORKERS COMPENSATION BOARD OF BRITISH COLUMBIA GRANTS AND AWARDS POLICY" (the "Policy") for implementation;

C. the Policy requires that the governors approve grants and awards over $250,000 or payable over a period longer than one year; and

D. the president and Senior Executive Committee have presented to the governors for approval a request for a multi-year grant to an endowment fund set up by the Disabled Forestry Workers Foundation of Canada for the National Institute of Disability Management and Research:

NOW THEREFORE THE GOVERNORS RESOLVE THAT:

1. they approve a multi-year grant to the endowment fund set up by the Disabled Forestry Workers Foundation of Canada for the National Institute of Disability Management and Research to be based upon a principal of $300,000 and paid as follows:

1994 — "interest" on the principal of $300,000

1995 — "interest" on the principal of $300,000

1996 — "interest" on the principal of $300,000

1997 — the principal of $300,000 provided there is confirmation that the Institute's programs are utilized and the Institute is self-funding and there is positive program evaluation by the Workers' Compensation Board, and

2. the figure to be applied to the principal for purposes of calculating the amount to be paid in each of 1994, 1995 and 1996 will be the rate of return on the Board's investment portfolio for the immediately preceding calendar year.

Decision of the Governors

Number: 83
Date: October 3, 1994
Subject: Customs Brokers Reclassification Transfer of Industry from Class 9 to Class 33

WHEREAS:

A. for the purpose of assessment in order to create and maintain the accident fund for the payment of compensation, outlays and expenses under the *Workers Compensation Act* and the *Workplace Act*, Section 36 of the *Act* divides all industries within the scope of Part One into classes;

B. Section 37 of the *Act* empowers the W.C.B. to:

(a) create new classes in addition to those mentioned in Section 36,

(b) consolidate or rearrange any existing class, and

(c) withdraw from a class an industry or a part of a class or subclass included in it and transfer it wholly or in part to another class, or form it into a separate class,

and, in doing so, the W.C.B. may make the adjustment and disposition of the funds, reserves and accounts of the classes affected that is considered just and expedient;

C. a classification structure has been established under Sections 36 and 37 of the *Act* and is set out in the *Classification and Rate List* for each year;

D. customs brokers are currently classified in class 9, industry group 090900;

E. as a result of representations from the B.C. Division of the Canadian Society of Customs Brokers and investigation by the Assessment Department, the Employer Assessment Classification Committee is recommending that the classification of certain customs brokers for assessment purposes be changed; and

F. the Senior Executive Committee supports the recommendation of the Employer Assessment Classification Committee with respect to the reclassification of certain customs brokers for assessment purposes:

NOW THEREFORE THE GOVERNORS RESOLVE THAT THEY:

1. accept the recommendation of the Employer Assessment Classification Committee that customs brokers who are providing no trucking, freight forwarding or warehousing be reclassified,

2. transfer the industry of customs brokers who are providing no trucking, freight forwarding or warehousing from class 9 to class 33 as industry group 330103 to be described as "Customs Brokers (where no trucking, freight forwarding or warehousing),"

3. amend the "Description of Industry Group" for industry group 090900 in class 9 to "Customs Brokers, N.E.S., International Freight Forwarders, Marine Shipping Services N.E.S.,"

AND THE GOVERNORS FURTHER RESOLVE THAT:

4. no adjustment will be made to the funds, reserves and accounts of class 9 or class 33 consequential to the transfer of certain customs brokers from class 9 to class 33, and

5. this change to the classification structure is effective January 1, 1994.

Decision of the Governors

Number: 84
Date: October 3, 1994
Subject: Property Management Services Reclassification Transfer of Industry from Class 6 to Class 33

WHEREAS:

A. for the purpose of assessment in order to create and maintain the accident fund for the payment of compensation, outlays and expenses under the *Workers Compensation Act* and the *Workplace Act*, Section 36 of the *Act* divides all industries within the scope of Part One into classes;

B. Section 37 of the *Act* empowers the W.C.B. to:

(a) create new classes in addition to those mentioned in Section 36,

(b) consolidate or rearrange any existing class, and

(c) withdraw from a class an industry or a part of a class or subclass included in it and transfer it wholly or in part to another class, or form it into a separate class,

and, in doing so, the W.C.B. may make the adjustment and disposition of the funds, reserves and accounts of the classes affected that is considered just and expedient;

C. a classification structure has been established under Sections 36 and 37 of the *Act* and is set out in the *Classification and Rate List* for each year;

D. property management services are currently classified in class 6, industry group 062209;

E. as a result of representations from an employer engaged in property management services and investigation by the Assessment Department, the Employer Assessment Classification Committee is recommending that the

classification of property management services for assessment purposes be changed for property management firms who have no direct workers engaged in the physical maintenance of clients' properties and who do not undertake contracts with contractors to maintain their clients' properties; and

F. the Senior Executive Committee supports the recommendation of the Employer Assessment Classification Committee with respect to the reclassification of property management services for assessment purposes:

NOW THEREFORE THE GOVERNORS RESOLVE THAT THEY:

1. accept the recommendation of the Employer Assessment Classification Committee that property management firms who have no direct workers engaged in the physical maintenance of clients' properties and who do not undertake contracts with contractors to maintain their clients' properties be reclassified,

2. transfer the industry of property management services as described in paragraph 1 from class 6 to class 33 as part of industry group 330101,

3. amend the "Description of Industry Group" for industry group 330101 in class 33 to "Accountants Office, Bookkeeping Services, Income Tax Services, Property Management Services (no direct workers in physical maintenance/ no contracts to maintain clients' properties),"

AND THE GOVERNORS FURTHER RESOLVE THAT:

4. no adjustment will be made to the funds, reserves and accounts of class 6 or class 33 consequential to the transfer of property management services from class 6 to class 33, and

5. this change to the classification structure is effective January 1, 1994.

Decision of the Governors

Number: 85
Date: October 3, 1994
Subject: Approval of Restructuring of Subclass 0621

WHEREAS:

A. all industries with workers and employers covered by the *Workers Compensation Act* are divided into classes and subclasses for assessment purposes;

B. under Section 37 of the *Act*, the W.C.B. may create and rearrange classes and subclasses;

C. under Section 42 of the *Act*, the W.C.B. shall establish subclassifications, differentials and proportions in assessment rates as between the different kinds of employment in the same class as may be considered just; and

D. the governors have received a proposal from the president and Senior Executive Committee for the restructuring of subclass 0621 into two or more subclasses to reflect the differences among the retail employers currently classified in the subclass, in particular between very large food and other retailers and small retail employers:

NOW THEREFORE THE GOVERNORS RESOLVE THAT THEY:

1. approve in principle the restructuring of subclass 0621 into two or more subclasses to reflect the differences among the retail employers currently classified in the subclass;

2. instruct the president and Senior Executive Committee to present to them for approval a detailed recommendation as to the restructuring of subclass 0621 into two or more subclasses, including:

   (a) the industry groupings for each resulting subclass, with the appropriate description for each industry grouping,

(b) the appropriate adjustment and disposition of the funds, reserves and accounts of subclass 0621 among the resulting subclasses, and

(c) the 1995 assessment rate for each resulting subclass; and

3. authorize the interim publication of the 1995 *Classification and Rate List* with subclass 0621, shown as currently structured but with no assessment rate.

Decision of the Governors

Number: 86
Date: November 16, 1994
Subject: Bylaw No. 4 — Published Policy of the Governors

As made by the governors of the Workers' Compensation Board of British Columbia, a policy, resolution and bylaw relating to the published policy of the governors is made and enacted as follows:

1.0 Section 1 — Published Policies of the Governors

1.1 As of June 3, 1991, the published policies of the governors consist of the following:

(a) the *Assessment Policy Manual*,

(b) the *Occupational Safety and Health Division Policy and Procedure Manual*,

(c) the *Rehabilitation Services and Claims Manual*, and

(d) *Workers' Compensation Reporter* Decisions No. 1–423.

1.2 After June 3, 1991, the published policies of the governors consist of the documents listed in paragraph 1.1, amendments to the three policy manuals, any new or replacement manuals issued by the governors, any documents published by the Workers' Compensation Board that are adopted by the governors as published policies of the governors, and all decisions of the governors declared to be policy decisions.

1.3 As of January 10, 1994, the *Classification and Rate List*, as approved annually by the governors, constitutes published policy of the governors.

2.0 Section 2 — Application of Published Policy of the Governors

2.1 In the event of a conflict between the *Act* or Regulations and the published policies of the governors, the *Act* and Regulations are paramount.

2.2 In the event of a conflict between published policy in a Manual identified in Section 1.1 (a), (b), or (c) of this Bylaw, and published policy in *Workers' Compensation Reporter* Decisions No.1–423 identified in Section 1.1(d), published policy in the *Manual* is paramount.

2.3 In the event of any other conflict between published policies of the governors:

(a) if the policies were approved by the governors on the same date, the policy most consistent with the *Act* or Regulations is paramount.

(b) if the policies were approved by the governors on different dates, the most recently approved policy is paramount.

3.0 Section 3 — Records of Governor Decisions

3.1 Originals of governors' decisions with respect to their published policies shall be retained by the Office of the Board of Governors in the manner directed by the chairman.

4.0 Manner of Publication

4.1 The policies of the governors shall be published in print.

4.2 The policies of the governors may also be published through an accessible electronic medium or in some other fashion that allows the public easy access to the policies of the governors.

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

4.4 Appeal Division decisions do not become published policy of the governors by virtue of having been published in the *Workers' Compensation Reporter*. Appeal Division decisions are published in the *Reporter* to provide guidance on the interpretation of the *Act*, the Regulations and Board policies, practices and procedures.

5.0 Decision No. 3 and Effective Date

5.1 This policy, resolution and bylaw replaces Decision of the Governors No. 3 dated April 1, 1991 (*Workers' Compensation Reporter*, Vol. 7: p. 17) and comes into effect on December 1, 1994.

THIS POLICY, RESOLUTION AND BYLAW has been passed by the governors at a meeting of the governors duly called for that purpose on November 16, 1994.

Decision of the Appeal Division

Number: 94-1122
Date: September 15, 1994
Panel: Thomas Kemsley
Subject: Section 11: Assault — Aggressor

This is an application under Section 11 of the *Workers Compensation Act* (the "*Act*") in the above noted action. The legal action concerns an alleged assault by the defendant on the plaintiff, on April 3, 1991 in Burnaby. The plaintiff is suing the defendant for damages. The defendant raised Section 10(1) of the *Act* as a defence to the action.

The issues are whether, at the time of the alleged assault, the plaintiff was a worker within the *Act* and his injuries arose out of and in the course of his employment, the defendant was a worker under the *Act*, and the actions or conduct of the defendant which caused the alleged breach of duty arose out of and in the course of employment within the *Act*. Written submissions were received from counsel for the plaintiff and the defendant.

Section 11 of the *Act* obligates the Workers' Compensation Board (the "W.C.B." or "Board") to make determinations and provide a certificate to the court in certain matters which are relevant to a legal action. The governors of the W.C.B. assigned this function to the chief appeal commissioner and the Appeal Division. The role of the Appeal Division in these matters is to determine the status of the parties under the *Act*. It is for the court to determine the effect of the Section 11 certificate on the legal action.

Background

The plaintiff claims that, on April 3, 1991, the defendant struck him with a baseball bat and broke his arm. The statement of defence denies that the defendant struck the plaintiff with a baseball bat. On November 26, 1991 in the Provincial Court, the defendant pleaded guilty to assaulting the plaintiff contrary to Section 266 of the *Criminal Code* by striking him with a baseball bat and fracturing his arm on April 3, 1991. That incident is the same one which is the subject of the civil action.

The incident took place at the site of the plaintiff's employer, Wiggins Storage Depot. The defendant and his common-law wife operated a waste-disposal company — Pacific Coast Waste Systems Inc. This firm was registered with the Workers' Compensation

Board at the time. The defendant's common-law wife was the sole shareholder, president and secretary of the company, while the defendant was the operations manager. The business had two trucks and two drivers, one of whom was the defendant. Pacific Coast Waste Systems Inc. had done some business with Wiggins Storage Depot, but a dispute developed over payment. The dispute went unresolved and, on April 3, 1991, the defendant sent the company's other driver to remove their garbage containers which were at the Wiggins site. The other driver went to the site but the people there would not let him take the containers. He called the defendant, who arrived in the other company truck. He got out of his truck carrying a baseball bat. He got into an argument with two people on the site and shoved one of them to the ground with the baseball bat. The plaintiff then drove up in an excavator which he was using on the site. The defendant yelled at him and jumped up on the excavator and swung the bat at him. The plaintiff avoided that attack and the defendant fell back off the excavator. The plaintiff stopped the excavator and got down and started to walk away when the defendant rushed him, hit him with the bat and broke his arm near the elbow. The defendant and his other driver then loaded their containers and were leaving the site when the police arrived.

There is some dispute on the evidence regarding why the defendant struck the plaintiff. The defendant says that when he showed up at the Wiggins site he was surrounded by several Wiggins employees, who had already threatened his other driver. He said the plaintiff drove the excavator very close to his truck and he thought he might damage the truck with the excavator. As well, it appeared that the plaintiff was using the excavator to prevent the Pacific Coast Waste Systems Inc. trucks from leaving. The defendant said he acted in self-defence and it was an impulsive act, not premeditated. Other evidence suggests the defendant was much more of an aggressor in the altercation and was not being threatened when he struck the plaintiff.

There does not seem to be a dispute between the parties about the status of the plaintiff at the time. However, the plaintiff argues that the defendant was not in the course of his employment as he was the aggressor in the assault on the plaintiff. The defendant argues that the defendant's activities, including his assault on the plaintiff, were primarily employment related and, thus, he was acting out of and in the course of his employment at the time. The defendant points to the "no-fault" nature of the workers' compensation system. It is necessary to examine the *Act* and the published policy of the governors regarding the meaning and scope of the phrase "arising out of and in the course of employment." That phrase appears in both Sections 5(1) and 10(1) of the *Act*.

Act and Policy

The *Act* is based on the historic compromise in workers' compensation law by which workers gave up the right to sue employers (and other workers) under the *Act* in

exchange for "no-fault" entitlement to compensation benefits for work-related injuries or disease. Section 5(1) is the basic entitlement clause for compensation for injuries:

> **5.** (1) Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part shall be paid by the board out of the accident fund.

In accordance with the historic compromise, Section 5(1) makes no reference to any fault of the worker in causing the injury. However, Section 5(3) of the *Act* retains some element of fault:

> **5.** (3) Where the injury is attributable solely to the serious and wilful misconduct of the worker, compensation shall not be payable unless the injury results in death or serious or permanent disablement.

Thus, workers who are injured through their own carelessness or negligence are entitled to compensation benefits. However, those benefits will not be paid if the injuries resulted solely from the serious and wilful misconduct of the worker, unless there were serious injuries or death. Policy #16.60 in the *Rehabilitation Services and Claims Manual* (*Manual*) elaborates on Section 5(3) of the *Act*. The last paragraph of that policy provides:

> **#16.60 Serious and Wilful Misconduct**
>
> . . .
>
> Before Section 5(3) can be considered, it must have been determined under Section 5(1) that the injury arose out of and in the course of employment. The actions or conduct of the worker may induce the Board to conclude that the injury does not meet that requirement. If such a conclusion is reached, the claim will be denied even though the worker has suffered death or serious or permanent disablement.

This makes an important distinction between employment and the payment of compensation, and sets out the two tests. The first test is whether the injuries arose out of and in the course of employment — Section 5(1). If that test is satisfied, the claim is accepted. The next test is whether compensation will be denied because of serious and wilful misconduct — Section 5(3). Thus, Section 5(3) is an exception to Section 5(1). Compensation is denied under Section 5(3) because of serious and wilful misconduct — not because the injury did not arise out of and in the course of employment.

The importance of this distinction can be seen in Section 10(1) of the *Act*. That section sets up a bar against legal actions. It provides that a worker cannot sue another worker or an employer under the *Act* for injuries "arising out of and in the course of employment." Section 10(1) makes no reference to whether or not compensation was paid. Therefore, if a worker is injured and it is determined that the injuries did not arise out of and in the course of employment, the worker is not entitled to compensation benefits under Section 5(1) of the *Act* and the worker's legal action is not barred by Section 10(1) of the *Act*. However, if the worker's injuries did arise out of and in the course of employment but compensation is denied under Section 5(3), the worker receives no compensation but his legal action will be barred by Section 10(1) of the *Act*.

Therefore, the bar in Section 10(1) corresponds with the test in Section 5(1), not the test in Section 5(3). Further, while Section 5(3) of the *Act* provides that the "fault" of the worker can be relevant in some circumstances, that has only limited consequences. It can be used to deny compensation benefits to the worker, but it does not remove him from the course of his employment. That is, it does not introduce "fault" into Sections 5(1) and 10(1).

The effect of Section 5(3) and policy #16.60 in this case is that if the defendant was in the course of employment when he assaulted the plaintiff, he could be denied compensation for any injuries he suffered while committing the assault if his assault was "serious and wilful misconduct," but that would not remove him from the protection of Section 10(1) of the *Act*. He will only not be entitled to the protection of Section 10(1) of the *Act* if his assault did not arise "out of and in the course of employment."

As noted, Sections 5(1) and 10(1) use the test of "arising out of and in the course of employment." In any particular case, the determinations under Sections 5(1) and 10(1) will be the same for the same worker. That is, if a worker's injuries are determined to have arisen out of and in the course of his employment for entitlement to compensation under Section 5(1), then those injuries will also have arisen out of and in the course of employment for the purposes of the bar in Section 10(1) of the *Act*.

There are no other sections of the *Act* which are relevant in determining whether a worker who engages in a fight is acting in the course of his employment. There are several relevant policies of the governors set out in the *Manual*:

> **#16.00 UNAUTHORIZED ACTIVITIES**
>
> The mere fact that a worker's action which leads to an injury was in breach of a regulation or order of the employer or for some other reason unauthorized by the employer does not mean that the injury did not arise out of and in the course of the employment. On the other hand, there will be situations where the

unauthorized nature of the worker's conduct is sufficient to take the worker out of the course of employment or to prevent an injury from arising out of the employment.

#16.10 Intoxication or Other Substance Impairment

Since it is seldom possible to have blood alcohol level or other test data available in adjudicating such claims, other evidence is used to evaluate the existence and extent of any impairment.

Claims involving impairment should be classified under the following headings.

1. Workers Permitted to Drink

   There may be cases where drinking was part of the permitted activities of the employment. For example, bartenders or other kinds of sales representatives may have been encouraged or permitted by their employers to drink with customers. In that kind of case, any injury resulting from intoxication would generally be compensable. But there may well be exceptions, for example, where it is concluded that the worker had gone beyond the pursuit of the employer's interests to engage in a purely social event.

2. Workers Not Permitted to Drink

   Where drinking is not a permitted part of the employment, injuries resulting from intoxication or other substance impairment must be adjudicated as follows:

   (a) Employment causation

   If the injury arose in the course of the employment, and something in the employment relationship had causative significance in producing the injury, it is still one arising out of and in the course of employment notwithstanding the impairment. Examples are where an intoxicated sailor fell into the water while attempting to board a vessel, and where a forest industry worker was run over by a logging truck. In these kind of cases, if the injury results in death or serious or permanent disablement, it is compensable.

Once it is apparent that an injury is one arising out of and in the course of employment, it does not cease to be so merely because some other factor, extrinsic to the employment, also has causative significance. An industrial injury is often caused, for example, by inattentiveness due to nausea, depression, lack of sleep, or a variety of other factors. But it is still compensable.

(b) No employment causation

There may be cases where, although the injury occurred at work, impairment alone was the cause. Suppose, for example, a worker is walking over normal ground when, unable to maintain support as a result of impairment, stumbles to the ground and is injured in the fall. In that case, it might appear that nothing in the employment relationship had any causative significance in producing the injury. It would then not be an injury arising out of the employment and not compensable. Also, as indicated in #16.60, a worker's actions or conduct may induce the Board to conclude that the injury did not arise out of and in the course of the employment.

16.20 Horseplay

A worker who is injured through participation in horseplay is not for that reason alone denied compensation. The conduct of the claimant which caused the injury must be examined to determine whether it constituted a substantial deviation from the course of the employment. An insubstantial deviation does not prevent an injury from being held to have arisen in the course of employment.

No definite rules can be laid down as to what constitutes a substantial deviation. One factor to be considered is the degree of participation of the claimant. For instance, a claimant who instigates or provokes horseplay, or who has been involved in previous episodes of horseplay, will more likely be considered to have made substantial deviation than one who simply reacts to actions commenced or provoked by someone else.

The duration and seriousness of a claimant's horseplay is also of relevance in considering whether there has been a substantial deviation from the course of employment. For example, if a worker walks over to a co-employee to engage in a friendly word, and accompanies this with a playful jab in the ribs, this is a trivial incident which would probably be considered an insubstantial deviation. As Larson notes,

> "At the other extreme, there are cases in which the prankster undertakes a practical joke which necessitate the complete abandonment of the employment and the concentration of all his energies for a substantial part of his working time on the horseplay enterprise."

When this abandonment is sufficiently complete and extensive, it must be considered a substantial deviation from the course of employment.

It is also relevant to consider whether the "horseplay" involved the dropping of active duties calling for the claimant's attention as distinguished from the mere killing of time while the claimant had nothing to do. The duration and seriousness of a deviation from the course of employment which will be called substantial will be somewhat smaller when the deviation necessitates the dropping of active duties than when it does not.

#16.30 Assaults

In considering cases of assault, the first question is whether the claimant was the aggressor and therefore the agent which caused the injuries. The answer to this question is not always clear cut and may involve an evaluation of the degree to which a claimant is an aggressor in a given situation. However, the fact that a claimant is less than friendly with another employee and is at least equally responsible for ill feeling that may prevail between them is not, by itself, grounds for disallowing a claim for injury arising out of an assault by that other employee.

The second question is whether there is a connection between the employment and the subject matter of the dispute which led to the assault or whether it was a purely personal matter. In the latter case, the claim is not acceptable.

> Where an assault arises out of the worker's employment, no compensation is payable unless it also arises in the course of employment.
>
> The same principles apply if the assault is by someone other than a fellow employee.

The above policies all relate to the "no-fault" principle of the *Act*. That is, just because a worker was injured due to his own fault, does not mean his injuries did not arise out of and in the course of his employment. Only when his activities are significantly or substantially outside of his employment will it be determined that any injury he suffered did not arise out of and in the course of his employment.

Intoxication

Therefore, a worker who is intoxicated and injured at work will still have his claim accepted under Section 5(1) if something in the employment played a role in causing the injury. This will include cases where a worker is driving for his employer while intoxicated. That worker may still be in the course of his employment even though he is intoxicated, is committing the criminal offence of driving while intoxicated, and is driving carelessly or negligently as a result. That is the nature of the "no-fault" system. Of course, if the employment played no significant role in the injury, then the claim of the intoxicated worker will not be accepted.

Horseplay

Similarly, a certain amount of horseplay falls within employment, even though it has no employment purpose. The question is whether the worker substantially deviated from, or abandoned, his employment while engaging in the horseplay.

Assault

The policy on assaults is less clear. It provides — "the first question is whether the claimant was the aggressor and therefore the agent which caused the injuries." The policy does not say that compensation is denied to all aggressors. Perhaps by saying that an aggressor is "therefore the agent which caused the injuries," the policy means to say the employment was not the cause of the injuries and, therefore, the aggressor's injuries did not arise out of and in the course of employment. In that case, the aggressor would not meet the requirements of Section 5(1) or of Section 10(1) of the *Act*.

However, the policy does not explicitly say that all aggressors are acting outside of their employment. Rather, it goes on to the second question of "whether there is a connection between the employment and the subject matter of the dispute which led to the assault." The policy does not say that if the claimant is the aggressor there is no need to consider the second question. The policy does provide that if the dispute which led to the assault was purely personal, the claim is not acceptable. Thus, in those cases, it appears the second question is determinative. However, in all other cases, including cases where the dispute was employment related, both questions must be considered in determining whether the person was acting in the course of employment.

Further, it might be contrary to the *Act* if policy #16.30 stated that the Board denied the claims of all aggressors in fights. As set out above, with the exception of Section 5(3) of the *Act*, this is a "no-fault" system. That is, the fact that a worker is at fault is not sufficient on its own to remove the worker from the course of his employment. For example, in intoxication cases, a worker who is breaking the company rule by driving while intoxicated and who is also committing a criminal offence by driving while intoxicated, is not necessarily outside the scope of his employment. In that case, it is still necessary to decide if the employment played a role in causing any injury he suffered while driving in an intoxicated state.

Similarly, if one worker strikes another worker and, thereby, breaks a company rule or commits a criminal offence, it seems that fact alone should not remove him from the scope of his employment if he otherwise was acting within his employment. If it is determined that he was outside of his employment solely because he was the aggressor, then that introduces "fault" into Section 5(1) of the *Act*, which is contrary to the "no-fault" system. The question must be whether he substantially deviated from his employment or removed himself from his employment while assaulting another worker. The answer to that question would seem to depend not only on whether he was the aggressor, but also on how the assault was connected to the employment. If the assault arose directly from the employment and there was no personal dispute involved, and the assault was an impulsive reaction to a workplace dispute, then there is a good argument that the worker/aggressor was acting within his employment.

On the other hand, if a personal dispute is brought into the workplace and results in an assault, it is easier to see how it is not work-related. As well, if a workplace dispute becomes personal and results in an assault sometime later or in another place, it is easier to see why the claim should be denied. Once people have had time to cool off after a workplace dispute, they are likely not within their employment if they later decide to assault someone regarding the earlier dispute.

Counsel in this case made submissions on the "no-fault" system and whether an aggressor in a fight is acting in the course of employment. Counsel also submitted decisions from British Columbia and other jurisdictions, including the United States.

Some states in the United States make a distinction between negligence and intentional torts, and deny workers' compensation coverage for intentional torts. However, on my reading, the legislation in most of those jurisdictions is different from our *Act* and provides for a distinction between intentional and unintentional acts of a worker. On the other hand, it appears that in the majority of states which have legislation similar to our *Act*, the courts have said that a worker is not disentitled to compensation just because he was the aggressor in an assault. Rather, they also look at the connection between the assault and the employment.

Counsel also referred to Appeal Division Decision No. 92-1284 dated July 2, 1992. In that case, one worker assaulted another and the Appeal Division panel found that the aggressor was not acting in the course of his employment when he committed the assault. However, that panel did not base its finding solely on the fact that he was the aggressor. Rather, the panel found the worker was seeking revenge for an earlier act and was engaged in a personal act and, therefore, was not acting within the course of his employment. One factor considered there was that the assault arose from earlier damage to work materials, but occurred sometime later.

Counsel also referred to evidence from another file which indicated that the defendant had assaulted a co-worker on another occasion. However, the defendant's character is not the issue here and the "no-fault" system applies to all workers, even if they have more problems than the average worker with regard to carelessness, intoxication or aggressiveness.

In conclusion, I interpret policy #16.30 as posing two questions in all cases, except where the dispute was purely personal. Thus, even if a claimant was the aggressor in an assault, it is still necessary, and relevant, to consider the second question of the connection between the employment and the subject matter of the dispute which led to the assault. The final determination will involve a balancing of those two factors.

Reasons and Findings

Status of the Defendant

(a) Aggressor:

On reading all of the evidence and taking into account the defendant's plea of guilty to a criminal charge in relation to this incident, I am satisfied that the defendant was the aggressor in the assault which occurred on April 3, 1991. While there was a business dispute and Wiggins Storage Depot appeared to be holding his containers, he was quite upset when he arrived and was carrying a baseball bat. He said the baseball bat was in

his truck for protection against guard dogs. I do not accept that the bat was just a "child's" bat, as that is not consistent with the evidence of the witnesses. Further, there is no evidence that anyone touched the defendant or his other driver prior to the assault. It appears that the defendant was doing most of the shouting. The plaintiff may have driven his excavator close to the defendant's truck when the defendant first swung the bat at him, but when the defendant struck him and broke his arm, the plaintiff was no longer on the excavator. Thus, there was no evidence of any threat to person or property to which the defendant was responding at the time of the assault. Further, as noted, he pleaded guilty to assault. I find he was not acting in self-defence at the time. Therefore, I find he was the aggressor in striking the plaintiff.

(b) Connection between employment and the dispute:

However, that finding alone is not sufficient to remove the defendant from the course of his employment, if he was otherwise acting within his employment. There was no doubt that his purpose in going to the Wiggins site was to get the garbage containers back. The subject matter of the dispute which led to the assault was related to the defendant's employment with Pacific Coast Waste Systems Inc. He was the operations manager and responsible for the garbage containers. Apparently, Wiggins Storage Depot would not release some garbage containers to another employee of Pacific Coast Waste Systems Inc., and the defendant went to assist him in recovering the containers. This was clearly related to his employment. Once he struck the plaintiff and threatened the others, they backed away and the defendant and his other driver loaded the containers on their trucks and started to leave. Thus, he did not continue the assault once he was able to get his containers. Further, there was no evidence of any previous personal dispute between the defendant and the plaintiff. That is, there is no evidence that the defendant went to the Wiggins site looking to settle a dispute with the plaintiff by fighting. Thus, there was a connection between the defendant's employment and the subject matter of the dispute. It was not "a purely personal matter."

(c) Conclusion:

I am not clear why the defendant was so upset when he arrived at the Wiggins site. There had been a dispute between the two companies, but there is no evidence that it had been an ongoing heated dispute. It appears that the defendant's aggressive behaviour was not expected by the others at the site. His decision to carry a baseball bat and be very aggressive seems very excessive in relation to the nature of the business dispute between the parties. Further, when he struck the plaintiff, the defendant was not being physically threatened by anyone and the plaintiff had moved his excavator away from the defendant's truck and turned it off. It appears the parked excavator did not prevent the defendant and his other driver from loading their containers onto their trucks and driving away.

Thus, while the defendant was very upset, it is difficult to know why the circumstances caused him to be so upset and why he struck the plaintiff. In a statement to the police, the defendant said he thought the plaintiff was going to attack him, but that is not borne out by the statements of other witnesses who said the plaintiff was walking towards his co-workers.

In balancing the above two factors — that the defendant was the aggressor and the subject matter of the dispute was employment related, I find the defendant removed himself from the course of his employment when he attacked the plaintiff the second time. Until that point, although he was overreacting to the situation, I think the employment factors outweighed the personal/aggressor factors. That does not mean all the factors pointed to employment. When the defendant got out of his truck with a baseball bat, he was introducing a foreign object into a work-related dispute. While he said he had the bat in his truck to ward off guard dogs, there is no evidence that there were any guard dogs present. There is no evidence that anyone else had a stick or weapon of any kind. It seems the defendant brought out the bat that day to intimidate people and possibly harm someone. I find that is more a personal than employment-related factor.

Even when the defendant jumped up on the excavator and swung at the plaintiff the first time, the employment factors were still predominant. The plaintiff was driving the excavator close to the defendant's truck, and he perceived some risk of damage to his employer's property. His spontaneous reaction was still within the course of his employment.

However, when the defendant again attacked the plaintiff after the plaintiff had moved the excavator, turned it off, and was walking away from it, I find the personal factors became predominant. Neither the defendant nor his employer's property was being threatened. The plaintiff was not walking toward the defendant and was not carrying anything. He was only able to raise his arm in defence when the defendant attacked him. The defendant continued the assault for no apparent reason — other than personal aggressiveness. I cannot find his second attack on the plaintiff had an employment purpose. The plaintiff was not responsible for holding the garbage containers and the defendant's business dispute was not with the plaintiff. The plaintiff had ceased any threatening actions towards the defendant's truck. Therefore, even though the original dispute was employment-related, that factor is outweighed by the fact that the defendant was the aggressor in a continued assault on the plaintiff when the plaintiff was not actively involved in the business dispute. At that point, the defendant removed himself from the course of his employment.

I find that the defendant's actions in striking the plaintiff with the baseball bat and breaking his arm did not arise in the course of his employment. His actions arose out of his employment, but the *Act* and policy #16.30 note there are two parts to this test.

As Pacific Coast Waste Systems Inc. was registered with the Workers' Compensation Board at the time of the incident and the defendant was employed by that corporation, he was a worker under the *Act* at the time.

In conclusion, I find the defendant was a worker but his actions and conduct in assaulting the plaintiff did not arise in the course of his employment.

Status of the Plaintiff

There seems to be no dispute on this point between the parties. The plaintiff worked for Wiggins Storage Depot, a firm registered with the W.C.B. He was at work and engaged in his employment when the incident occurred. He was not the aggressor, nor did he assault anyone. He was acting in the course of his employment and did no more than try to defend himself. There is no evidence that he engaged in a fight with the defendant or had any ongoing personal dispute with the defendant. The plaintiff's application for workers' compensation benefits was accepted by the Board, without any protest from his employer.

Therefore, I find that the plaintiff was a worker within the *Act* and his injuries arose out of and in the course of his employment.

Conclusions

In conclusion, based on the evidence and submissions, I find that, at the time of the assault on April 3, 1991:

a) the plaintiff was a worker and his injuries arose out of and in the course of his employment within the *Act*;

b) the defendant was a worker within the *Act*;

c) the action or conduct of the defendant which allegedly caused the breach of duty arose out of his employment but did not arise in the course of his employment within the scope of Part 1 of the *Act*.

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

Decision of the Appeal Division

Number: 94-1304
Date: October 31, 1994
Panel: Thomas Kemsley
Subject: Indian Operations

This is an appeal by a worker from the findings of the Workers' Compensation Review Board dated May 16, 1994. The issue is whether the worker is entitled to compensation for injuries received while working for a native business which was operating on native lands.

The worker severed his left little finger while working as a cuberman on October 8, 1991. Initially, the Board accepted his claim and paid compensation. However, the Board then discovered that, even though his employer had registered with the Board, it had not paid its assessments. Under the *Workers Compensation Act* and the policy of the governors, workers in a compulsory industry are covered for compensation even if their employer has failed to pay assessments. Making shakes is a compulsory industry under the *Act*. However, this worker's employer was a native operation on Indian reserve lands. Policy #5.40 of the *Rehabilitation Services and Claims Manual* states that Indian operations on Indian reserves are not considered to be within the scope of the *Act*, regardless of the industry being undertaken. However, voluntary coverage may be obtained on application by the employer. Thus, people employed in Indian operations on Indian lands would only be covered for workers' compensation if their employer had registered with the Board. A lawyer in the Board's Legal Services Department gave an opinion in this case that, even though the worker's employer had registered, it had cancelled that registration through its failure to pay assessments. The Board then determined that the worker's claim should have been rejected, and cancelled his compensation benefits.

The Review Board denied the worker's appeal and stated that the Board's policy of not covering unregistered firms which carry out their work on Indian reserve land had been upheld by the courts.

After the Review Board decision, the Court of Appeal for British Columbia in *Isaac* v. *Workers' Compensation Board* [(1994) 9 W.W.R. 245] dealt with the workers' compensation claim of a widow whose husband had been killed while working on an Indian operation on Indian lands. The husband's employer was not registered under

the *Act*. The Board said the widow was not entitled to dependant's benefits. The Court of Appeal said there was no provision in the *Workers Compensation Act* which relieved the Board from its obligation to pay compensation just because the employer had failed to pay assessments. Further, it said the *Act* applies uniformly throughout the province. The court found Mrs. Isaac was entitled to dependant's benefits for the death of her husband.

Thus, the *Isaac* case provides that workers employed in native operations on Indian reserve land have the same workers' compensation coverage as all other workers in the province. If their employer is operating in a compulsory industry under the *Act*, they are covered for workers' compensation regardless of whether their employer has registered with the Board and/or paid assessments.

In light of the *Isaac* decision, this appeal is straightforward. This worker was working in a compulsory industry within British Columbia. He was injured in the course of his employment. He is entitled to compensation pursuant to Part 1 of the *Act* for the consequences of that injury.

THEREFORE, I ALLOW THE APPEAL.

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

Decision of the Appeal Division

Number: 94-0872
Date: July 7, 1994
Panel: Connie Munro, Thomas Kemsley, Patrick L. Byrne
Subject: Section 96(4) — Deduction of Assessments from Benefits

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This is a referral under Section 96(4) of the *Workers Compensation Act* (the *Act*). In December 1990 the claimant suffered a work injury while working for a limited company (referred to herein as the "business"). In March 1992, the Board paid the claimant a permanent partial disability award in a lump sum. From that amount, the Board deducted assessments owed by the business to the Board. The Board relied on policy #48.40 in the *Rehabilitation Services and Claims Manual* (the *Manual*), which allows the Board to deduct overdue assessments owed by a limited company from compensation payments made to a responsible principal of the limited company.

The Review Board found that the Board was not entitled to make the deduction and ordered that the amount deducted be paid to the claimant. The Review Board relied on Section 14 of the *Act*, which protects a worker from any liability his employer has incurred under the *Act*. They found the policy used by the Board was contrary to the *Act*.

This referral seeks a redetermination of the finding of the Review Board on the grounds that it is in contravention of the published policy of the governors. There is no dispute that the business owed assessments to the Board and the claimant was the responsible principal of the business. Thus, the Board correctly applied policy #48.40. The issue is whether policy #48.40 is contrary to the *Act*. If it is not contrary to the *Act*, then the Review Board finding is in contravention of that policy.

Facts

The claimant was a fifty percent shareholder/director of a kitchen and bathroom renovation company. The employer's registration form contained in the assessment file lists the claimant as president of the business but the company registry documents contained in the claim file list him as secretary. The claimant did not just hold an executive office; he also did manual (carpentry) work for the business. The other fifty percent shareholder, the claimant's father, did not work for the business. He is listed as secretary of the business on the employer's registration form, but as president in the company registry documents.

In February 1991, the claimant told the claims adjudicator that his business had been incorporated the previous year (1990). A title search presented in evidence at the Review Board shows an incorporation date of September 5, 1986. There is a letter on file from a contractor stating that they had contracted with the business in 1988 and 1989.

On May 9, 1990, a worker of the business reported to hospital with a cut from a pane of glass. The business was not registered with the Board at that time. The Board paid health care benefits to the worker, but did not pursue the business under Section 47(2) of the *Act* for the costs of the claim as the costs were less than one hundred dollars. The claimant then registered the business with the Board by telephone on May 25, 1990, and indicated that he was the president. The employer's registration form, completed by a Board staff member, shows the number of workers as two and that they were first employed January 1, 1990. Curiously, the declaration signed by the claimant/director on June 5, 1991 showed "nil" wages and salaries for workers during 1990. The claimant declared $45,800 as his earnings for 1990. The assessment due for that year on those earnings was $2,326.24, however, it was not paid.

On December 18, 1990, the claimant sustained a hand injury. He returned to work on January 7, 1991 and was paid wage-loss benefits of $1,664.66. He eventually received a 1.5% permanent partial disability award. The claimant gave evidence at the Review Board that after he returned to work he hired some help to complete his existing contracts. The claimant then started a new career in the financial field. For the year 1991, the claimant declared personal earnings from the business of $16,166 and workers' wages of $4,480.

On August 1, 1991, the Board cancelled the business' registration as it no longer had workers. The business had not paid its outstanding assessments. In July 1991 and November 1991, the Assessment Department advised the business in writing of its intention to proceed with legal action against it in order to satisfy its accounts, but received no reply. Two memos in the claim file (Memo #5 and Memo #8) note that the business declared bankruptcy. The assessment file makes no mention of bankruptcy. An insolvency search with the Superintendent of Bankruptcy (Ministry of Consumer and Corporate Affairs) did not disclose any bankruptcy proceeding in connection with the business. The reference to bankruptcy in Memos #5 and #8 seems to be unsubstantiated.

In March 1992, the outstanding assessments for the business of $3,672.09 were deducted from the claimant's lump sum disability award of $10,554.49.

Review Board Finding

In its findings dated August 4, 1993, the Review Board stated:

> We agree with the submissions of the worker's representative with respect to the Board being unable to pierce the corporate veil and claim monies owing by the company to be deducted from benefits owed to a worker even though the company and the worker may be one and the same person.
>
> Section 14 of the *Act* protects the worker from any liability the employer may have incurred under Part 1 of the *Act*. Section 15 of the *Act* simply does not give the Board authority to attach compensation benefits whether they be wage loss or pension entitlement. Therefore the *Assessment and Rehabilitation Services and Claims Policies* are contrary to section 15 of the *Act* and therefore have no application in this case.

Referral

Section 96(4) of the *Act* empowers the president of the Workers' Compensation Board to refer a finding of the Review Board to the Appeal Division for redetermination on grounds of error of law or contravention of a published policy of the governors.

Section 84(4) of the *Act* authorizes the president to delegate in writing any of his powers and duties to an officer of the Board or other person. The president delegated the Section 96(4) referral power to the vice-president, Compensation Services in a resolution dated August 3, 1993.

The vice-president of the Board referred the Review Board findings of August 4, 1993 to the Appeal Division for reconsideration in accordance with Section 96(4) of the *Act*.

Workers Compensation Act

> 14. (1) It is not lawful for an employer, either directly or indirectly, to deduct from the wages of his worker any part of a sum which the employer is or may become liable to pay into the accident fund or otherwise under this Part, or to require or to permit his worker to contribute in any manner toward indemnifying the employer against a liability which he has incurred or may incur under this Part.

> 15. A sum payable as compensation or by way of commutation of a periodic payment in respect of it shall not be capable of being assigned, charged or attached, nor shall it pass by operation of law except to a personal representative, nor shall any claim be set off against it, except for money advanced by way of financial or other social welfare assistance owing to the Province or to a municipality, or for money owing to the accident fund.
>
> 39. (1) For the purpose of creating and maintaining an adequate accident fund, the board shall every year assess and levy on and collect from independent operators and employers in each class, by assessment rated on the payroll, or by assessment rated on a unit of production, or in a manner the board considers proper, sufficient funds to
>
> (a) meet all amounts payable from the accident fund during the year; . . .

Thus, the Board collects assessments from all employers and independent operators under the *Act*, and an employer cannot deduct or collect those assessments from its workers. However, the Board can deduct "money owing to the accident fund" from "a sum payable as compensation."

Published Policy of the Governors

Policy #48.40 in the *Manual*, "Overpayments/Money Owed to the Board," provides:

> Section 15 provides an exception to its general prohibition of assignments, charges or attachments of compensation benefits in respect of "money owing to the accident fund". The Board may therefore deduct from compensation benefits the amount of money owed to it by the person entitled to receive them.
>
> A claimant or employer may owe money to the Board in several ways. They may be paid more compensation benefits than they are entitled to as a result of an administrative error, a decision outside the statutory authority of the Board, or fraud or misrepresentation. (See #48.41.) They may incur liability for the repair or replacement of Board property which they damage. An employer or independent operator may fail to pay assessments owed to the Board.

> Assessments owing by a limited company may be deducted from compensation payments made to the sole principal of that company or, where there is more than one principal, from payments made to a principal who is personally responsible for the non-payment of assessments. (2) This also applies to situations involving personal optional protection premiums owing.

Policy #70:20:80 of the *Assessment Policy Manual*, "W.C.B. Benefit Attachment," provides:

> Section 15 of the *Act* gives the Board the authority to attach a compensation payment for any amount owed to the Board by the recipient of that payment. If a proprietor or partner with Optional Protection coverage or a director of a limited company has sustained an injury or industrial disease in the course of the business and is entitled to wage-loss compensation or pension benefits, and the account with the Board is delinquent, the Board may attach all or a portion of those benefits.
>
> Before compensation payments may be attached, the employer must have been given an opportunity to pay the outstanding amount before the attachment occurs. The amount of the compensation payment to be attached is determined with consideration of such factors as the marital status of the employer, the number of dependants and the amount of compensation available for attachment.

Policy #7.50 of the *Manual*, "Corporations and Trusts," provides:

> Normally a corporation will be an independent contractor and employer required to register as an employer with the Board. The directors, shareholders, or other principals of the company who are active in its business, as well as its other employees, are considered as workers.

Policy #7.51 of the *Manual*, "Piercing the Corporate Veil," provides:

> In view of the ensuing practical and administrative difficulties, the Board hesitates to adopt a policy of piercing the corporate veil unless sound reasons for this can be demonstrated.

In one case, the significance of incorporation was considered in regard to the question whether a relationship was one of employment or between independent contractors. It was stated as follows:

> "One point that has been raised in discussion is the significance of incorporation. It is important to bear in mind here two separate questions.
>
> 1. Whether a person operating in an industry under the *Act* is a worker, or an independent contractor, in relation to the person or people for whom he works.
>
> 2. Whether an independent contractor is under the compulsory coverage provisions of the *Act*, or is covered only on application for personal optional protection.
>
>   Incorporation has crucial significance on the second question, but is only of evidentiary value on the first.
>
> If incorporation was treated as being critical on the first question, it would open the door to serious abuse. Any employer who could persuade a category of workers to incorporate could then engage the company on a contract for services and evade the obligations of an employer under the *Act*. Thus when we are considering the relationship of people to the person or company for whom they are working, the question of whether those people are workers, or whether the group is an independent contractor, must be determined independently of whether the group has incorporated.
>
> After a decision has been made that a business enterprise is an independent contractor, incorporation is then crucial on the nature of the coverage. If it is an incorporated business, all principals of the company are treated as employees of the company, and are therefore workers under the *Act*. But if it is unincorporated, the principal is treated as the employer and anyone that he hires is treated as a worker. The worker is covered by compulsory coverage, but the employer is only covered himself if he applies for and is granted personal optional protection."

> The board has reaffirmed this statement of principle but has concluded, as in the case of individual applicants, applications by corporations for registration as employers are usually made bona fide in respect of properly registrable businesses. Only in a minority of cases is incorporation used as a method of avoiding an employer's obligations under the *Act*. It is, therefore, reasonable for the Board to accept applications by corporations at face value unless there are circumstances which indicate that a full investigation should be made. In the latter case, the applicant's position will be determined by the principles outlined in this chapter of the manual rather than by virtue of its status as a corporation.
>
> Chapter 20:30:30 of the *Assessment Department Policy Manual* sets out certain situations when applications by corporations for registration as employers will not be accepted, but the employees of the corporation will be regarded as workers of the person for whom the corporation is working or the principal of the corporation.

Corporate Entity — Generally

The policies under consideration here involve limited companies — that is, companies which are incorporated. Generally, in law, when a business is not incorporated, there is no legal separation between the business and its owners. If the owner works in the business, he is self-employed. That is, he does not have an employer nor is he an employee. If the business also employs others, then the owner is an employer and his employees are his workers. If the business owes money, then the owners of the business are liable for that debt. It does not matter whether there is one owner (a sole proprietor) or more than one owner (partners). All the owners are personally responsible for the debts of the business. Thus, if an unincorporated business owes assessments to the W.C.B., its owners are responsible personally for those amounts.

However, in law, once a business is incorporated, there is a legal separation between the corporation (also called a limited company or the corporate entity) and its owners. The owners now become shareholders. They own shares in the corporation, but the corporation owns the business. The shareholders do not own the business. If the shareholders are employed by the corporation, they are no longer self-employed. They are employees and the corporation is their employer. As well, generally, the shareholders are not personally liable for the debts of the corporation. There are exceptions to this, especially for the wages of unpaid employees. However, at the outset, it would appear that the shareholders of a corporation would not be personally liable for assessments owed by the corporation to the W.C.B., unless an exception is made to the general principle. This approach is affirmed in policies #7.50 and #7.51.

All corporations must have at least one shareholder, and some have thousands of shareholders. In corporations with few shareholders, the owners/shareholders are usually closely involved in the corporation's business. They make decisions for the corporation, work for the corporation and are paid by the corporation. This is particularly so for corporations with only one shareholder. On the other hand, in corporations with many shareholders, quite often most of the shareholders have little or no involvement in the corporation's business. For example, people who own shares in a large public company probably think of themselves as investors, not owners, and have no involvement in the company's business.

The policies here also concern principals of limited companies or corporations. Generally, the principals of a corporation are the ones who control the company. They may or may not also be shareholders of the corporation. In a company with many shareholders, most of the shareholders are not principals of the corporation. The principals of those companies are the directors, president, vice-president, chief executive officer, and other people who are directly involved in controlling the business of the corporation. In corporations with only a few, or only one, shareholder, those shareholders are usually directly involved in running the company and hence are also the principals of the corporation. However, even in a small corporation, a shareholder could have absolutely no control over the business of the corporation and may not, in fact, be a principal of that corporation. Further, a person might not own any shares in the corporation, but if he or she is hired as a director of the company, then they would be a principal even though they were not a shareholder. It may be difficult in these situations to determine exactly who are the principals of the corporation.

Sometimes, a statute will make shareholders or principals of a corporation personally liable for obligations of the corporation in certain circumstances. For example, Section 52(1) and (2) of the *Act* allows the Board, in certain circumstances, to look to the property of a "director, manager or other principal of a corporation" to satisfy debts owed by the corporation to the Board.

Further, sometimes, in law, the legal separation between a corporation and its shareholders is ignored. This is referred to as piercing or lifting the corporate veil. Generally, this only occurs with corporations which have only a few, or one, shareholders and the shareholders are closely involved in the operations of the company. The result is that the shareholders become personally responsible for some or all of the corporation's debts or obligations. It is impracticable to attempt in this decision a brief and accurate summary of the complex area of piercing or lifting the corporate veil. However, often it involves some abuse of the corporate entity by the shareholders. For example, the sole shareholder may totally ignore the legal separation between himself and his incorporated business when it benefits him personally, but then try to rely on this legal separation when his business is in trouble. Policies #7.50 and #7.51 of the *Manual* indicate that the Board can pierce the corporate veil, or ignore the fact of incorporation, if sound reasons can be demonstrated.

Corporate Entity — This Case

In this case, the claimant and his father were the only two shareholders of the business, which was incorporated. His father was not active in the business and the claimant was the controlling person in the corporation. Thus, the claimant was a principal of the business, and probably the only active and responsible principal at the relevant time.

The claimant's argument in this case relied on the legal separation between himself and the corporation (the business). He claimed the business was his employer and he was a worker. The Board's policy ignores, in part, the legal separation between a principal and the corporation in the circumstances of this case. The policy recognizes that, if the corporation is registered with the Board, then the principal is a worker and the corporation is the employer. Thus, the Board will pay compensation benefits to the principal if he is injured in the course of his employment. To this extent, the policy respects the legal separation. However, when the corporation owes assessments to the Board and the principal who is claiming compensation benefits is the principal who was responsible for making the corporation pay those assessments, the policy then ignores the legal separation between the responsible principal and the corporation — and allows the overdue assessments to be deducted from the compensation payments to the principal.

That approach can be contrasted to two other approaches used by the Board. The Board will respect completely the corporate entity when the corporation is registered and all assessments are paid. In those cases, everyone who works for the corporation, including the responsible principals, are "workers" and the corporation is their "employer" for all purposes. On the other hand, when the corporation has failed to register with the Board, the Board totally ignores the corporate structure for the responsible principal. All other employees of the corporation are workers of the corporation even when it has failed to register. However, the governors' policy says, in those circumstances, the responsible principal is not a worker and the corporation is not his employer. Thus, unlike the case in issue here, the Board does not pay compensation benefits to the injured responsible principal when the corporation has failed to register. Thus, the issue of the deduction of overdue assessments owed by a corporation from compensation benefits payable to the responsible principal arises only where the corporation is registered with the W.C.B. but has not paid its assessments.

Assessments — Unregistered Firms or Firms in Default

Where a worker, who is not a responsible principal, is injured in his employment but his employer has failed to register with the W.C.B., the Board pays the worker's claim and collects overdue assessments from the employer. It bases the assessments on the past earnings of all of the company's employees, including its active principals. Section 47(2) of the *Act* also provides that an employer who has failed to register or pay assessments is responsible for the actual cost of the claim and not just the normal assessments.

As set out above, where a firm is unregistered and a responsible principal makes a claim for compensation, the Board does not accept the claim. However, it then collects overdue assessments from the company, based on the earnings of all of the employees of the firm, including the earnings of the other principals. It does not collect assessments on the earnings of the responsible principal who was injured, as it has refused his claim. However, it collects assessments on the earnings of the other principals, even though it would have denied their claims if they had been injured while the company was still unregistered.

Where the firm is registered but has failed to pay its assessments, the Board accepts and pays the claim of the responsible principal, but then deducts the company's overdue assessments from those compensation benefits. It appears that the Board deducts assessments for all of the company's workers from the responsible principal's claim.

Policy Development

The deduction of overdue assessments owed by an employer company from the compensation benefits paid to shareholders, directors or executive officers who work for the company is part of a broad set of policies initially aimed at small incorporated firms. It has evolved out of a series of decisions published in the *Workers' Compensation Reporter*, namely: Decision No. 106 *Re A One-Man Company* (1975) Vol. 2: p. 41; Decision No. 141 *Re A One-Man Company* (1975) Vol. 2: p.156; Decision No. 264 *Re Compensation Payable When Company Unregistered* (1977) Vol. 3: p. 182; and Decision No. 335 *Re Principals of Limited Companies* (1981) Vol. 5: p. 101. These decisions are governors' published policies. While Decision No. 335 was explicitly intended to supersede Decision Nos. 106, 141 and 264, it incorporated much of the reasoning of these earlier decisions.

Decision No. 106 laid the foundations of the approach used by the Board regarding the compensation of shareholders of small incorporated companies. According to this decision, the shareholder of an incorporated "one-man" company is not entitled to compensation under the *Act*, if he failed to register the company as an employer with the Board. The reason is that it would be unreasonable to give the shareholder the benefits of the *Act* when he avoided its costs.

Decision No. 141 reaffirmed the rule enunciated in Decision No. 106. It recognized that, in compulsory industries, the *Act* intends a worker's entitlement to be independent of the employer's compliance with statutory duties. But it viewed the *Act* as silent on the application of that general principle, where the person working for the company happens to be its managing director and sole shareholder. Therefore, as a matter of policy, the Board could make such a person's entitlement depend on the company's compliance with its statutory duties.

The effect of Decision Nos. 106 and 141 is to exclude shareholders of incorporated but unregistered "one-man" companies from the category of "workers" for compensation purposes.

Decision No. 264 went beyond the "one-man" company and applied the reasoning of Decision No. 106 and Decision No. 141 to small, family-owned and managed incorporated companies that are unregistered. The decision is based on the premise that the so-called "active principals" of these companies should be aware of the companies' obligations and should ensure that these obligations are met. So, except under unusual circumstances, a person who in reality is both a "worker" and an "employer" cannot be given the benefits due to a "worker" unless he has met his obligations under the *Act* as an "employer." Decision No. 264 mentioned the proliferation of small incorporated companies which fail to register and pay their assessments as a major policy concern for the Board. It did not define the term "active principal."

Decision No. 335 attempted to refine the approach formulated in Decision Nos. 106, 141 and 264. First, it clarified that the Board would not collect retroactive assessments from an unregistered company in respect of the earnings of an injured principal where the principal's claim had been denied. Secondly, it tried to narrow the circumstances under which a principal may be held responsible for the company's failure to comply with its statutory duties. Whether the principal could be held responsible would depend, amongst all factors, on whether he was a minority or majority shareholder, a controlling director or a manager of the company. Thus, not all the principals of incorporated unregistered companies will automatically be denied coverage under the *Act*. Thirdly, it added a new component to the approach, namely, the subject of this referral: the Board will honour claims from a responsible principal of an incorporated company which has registered with the Board but has overdue assessments. However, the Board will make a deduction from the principal's benefits to offset the company's debt. In sum, as a result of Decision No. 335, responsible active principals of incorporated companies become entitled to compensation benefits once the companies register with the Board, but these benefits are subject to adjustments, if the companies' assessments are overdue. It did not define "active principal."

Decision No. 335 states, in part

> . . . Furthermore, although the Board does generally treat principals as workers of the company, this is subject to its right to pierce the corporate veil in appropriate cases. The circumstances dealt with in *Decisions 106, 141 and 264* are felt to be appropriate for doing this since otherwise a person would be able to gain the benefits under the *Act* without meeting the corresponding obligations which the *Act* lays down. While

> technically the obligations may be on the company rather than the principal, the principal's control of the company means that, in reality, he is the one responsible. . . .

The commissioners who authored the decision drew a parallel between the responsible principals of incorporated companies and independent operators. Independent operators are people who are self-employed and do not have workers. They are not incorporated, so they do not have an employer. The decision explained:

> The *Act* does not envisage persons who are essentially independent operators obtaining the benefits of the *Act* without fulfilling the corresponding obligations.
>
> [Under the policy found in *Decisions 106, 141 and 264* the responsible principal of an unregistered, incorporated company] is, in fact, being treated exactly the same as any other independent operator who has failed to purchase coverage for himself.

The commissioners did not specify which provision in the *Act* authorizes the Board to deduct the assessments owed by an incorporated company from the compensation benefits payable to its principal. Their analysis suggests that these deductions are generally in keeping with the spirit of the *Act* and its treatment of independent operators.

The commissioners implied that responsible principals of registered companies which failed to pay any assessments remain entitled to compensation. They did not explain why these principals should be covered when the responsible principals of companies that failed to register are not covered.

Policy #48.40 in the *Manual* and policy #70:20:80 in the *Assessment Policy Manual* incorporate the effects of Decision No. 335. However, those policies specifically refer to Section 15 of the *Act* as authorizing the Board to deduct the assessments owed by an incorporated company from the compensation benefits payable to a responsible principal of that company.

We note that Bill 63 amended the *Act* effective January, 1994. The Review Board findings at issue here predate the amendments. However, the panel will also consider the effect of Bill 63.

The panel notes that, in the early 1980's, the ombudsman had requested the former commissioners to review the whole set of policies concerning the compensation of principals of incorporated companies. The correspondence pertaining to that request may be found in *Ombudsman of British Columbia Special Report No. 8 To The Legislative Assembly of British Columbia An Investigation by the Ombudsman Into Eleven Complaints*

About The Workers' Compensation Board vol. 2 (April 12, 1984) pp. 000098–000137. The former commissioners declined to make any changes to the policies formulated in Decision No. 335. They suggested that the question of how small incorporated companies should be treated under the *Act* would be subject to some long-term study with a view to eventual statutory amendments (see their January 28, 1983 letter to the ombudsman on p. 000137 of the *Special Report No. 8*). No specific statutory amendments have resulted from the correspondence between the ombudsman and the former commissioners.

Implications

The policies at issue affect compensation, assessments, and prevention matters, and possibly Section 11 determinations. For example, as set out above, the policies modify the Assessment Department's general practice regarding collecting overdue assessments. The Assessment Department will collect overdue assessments on the earnings of all workers of a firm, except if the injured worker is a responsible principal. It will collect assessments on other principals, even though it would not have paid compensation to them if they had been injured. Further, Section 47(2) of the *Act* would normally be used to recover the costs of a claim, but that section becomes inapplicable when the injured person was the responsible principal of an unregistered company.

Further, the reasoning in Decision No. 335 must be approached with caution where prevention (occupational health and safety) matters are concerned. Decision No. 335 draws a parallel between principals of unregistered companies and independent operators. The *Act* does not authorize the Board to inspect the businesses of independent operators who have not opted for personal coverage. It is doubtful that Decision No. 335 intended to question the Board's authority to inspect the premises of unregistered incorporated companies. Thus, while the analogy between the principals of unregistered companies and independent operators has some appeal, it also has its limitations.

Finally, Section 10(1) of the *Act* bars the legal actions of workers against other workers and employers. If an independent operator or employer takes out personal coverage under Section 3(3) of the *Act*, they become "workers" for the purposes of Section 10(1). However, when the corporate entity is ignored, this may leave some uncertainty about a person's status under the *Act*, depending on what approach is used. If the corporate entity is ignored for all purposes, then a responsible principal may not be a "worker" for the purposes of Section 10(1). However, as in this case, if benefits are initially paid to the responsible principal as a "worker," but then overdue assessments are deducted from his benefits, the question arises as to whether the person is a "worker" for the purposes of Section 10(1).

Definitional Issues

The *Act* uses the term "principal" without defining it. [See Section 51(3), 51(4), 52(2).] It appears to use the word in two different senses. It uses the word when it describes the relationship between firms contracting with one another. In that connection, the word "principal" would seem to refer to the main contractor. The *Act* also uses the word "principal" to refer to directors, managers and possibly shareholders and officers of incorporated companies. Policy #7.50 includes directors and shareholders as "principals" of a corporation. Section 52, which provides that the Board has a lien on the property of an employer for unpaid assessments, refers to "the property of any director, manager or other principal of the corporation." No distinction is drawn, however, between different kinds of principals in terms of their control over the corporation's affairs. Bill 63 has neither changed nor clarified the manner in which the *Act* uses the term "principal." Further, the *Assessment Manual* refers to the "director" of a limited company, while the *Rehabilitation Services and Claims Manual* refers to the "principal" of a limited company.

Unlike workers' compensation legislation in several other Canadian jurisdictions, the B.C. *Act* does not specifically include (or exclude) shareholders, directors or officers of corporations in its definitions of "worker" or "employer." The definitions of "worker" and "employer" provided in Section 1 of the *Act* are inclusive and very broad and have remained so after Bill 63. Section 1 does not define "independent operator."

Reasons

As stated above, the issue on this application is whether policy #48.40 is contrary to the *Act*. That policy pierces the corporate veil in the circumstances of this case, with the result that the claimant is, in effect, both a worker and the employer.

The Review Board said that Section 14 of the *Act* protects the worker from the employer's liability under the *Act*. They said the Board could not pierce the corporate veil to make the worker responsible for the employer's assessment. They gave no reasons why the Board could not pierce the corporate veil.

As set out above, Section 15 of the *Act* allows the Board to set off or deduct "money owing to the accident fund" from "a sum payable as compensation." Since only workers receive compensation, this section allows the Board to make deductions from payments made to workers. Thus, the issue becomes, was there "money owing to the accident fund" by the claimant. There is no doubt that the business owed money to the accident fund.

As set out above, generally, corporations are viewed as legally distinct from their shareholders, and their shareholders are not responsible for the debts of the corporation. However, that is not an absolute rule. In certain circumstances, courts have pierced the corporate veil and made shareholders liable for the obligations of the corporation. Thus, it is not contrary to law to pierce the corporate veil for specific purposes. Once that is done, the legal distinction between the shareholder and the corporation disappears for the particular purpose at hand.

Thus, if the Board pierces the corporate veil in the circumstances of this case, there no longer is a legal distinction between the claimant personally and the business. He is a worker and, at the same time, he is the employer. If he is the only worker of the business, then it may be more accurate under the *Act* to describe him as an independent operator rather than an employer. However, regardless of whether he is the sole worker of the business, once the corporate veil is pierced for the purposes of workers' compensation, the business and the worker become one and the same person. If the business as an employer owes money to the Board, the claimant then personally owes that money to the Board. If the Board pays him compensation, they can deduct this debt which he owes personally to the accident fund.

We find this is not contrary to Section 14 of the *Act*, which prohibits a worker from contributing to or indemnifying his employer for any liability the employer has incurred under the *Act*. It is reasonable to interpret that section as applying only when the employer and the worker are separate people. It does not make sense to say that a person can contribute to or indemnify himself. One can only contribute to or indemnify others.

Thus, if the corporate veil is not pierced, Section 14 would not allow overdue assessments owed by a corporation/employer to be deducted from compensation payments to a principal/worker. In that case, the employer and the worker are separate entities, and it would be contrary to Section 14 to make the worker contribute to the employer's liability. However, once the corporate veil is pierced, the employer and worker are merged. He cannot avoid his obligations as an employer just because he also is a worker. He is not two separate people. Thus, when money is deducted from his compensation benefits for money he owes to the accident fund, it is not a situation of a worker indemnifying or contributing to his employer's liability. To conclude otherwise, would ignore the effect of piercing the corporate veil.

This leaves the issue of whether the Board can pierce the corporate veil in this case. There are many common law cases on piercing the corporate veil. However, we find they have little relevance to the governors' policies here, other than to establish the general principle that the separate legal status of corporations is not interfered with lightly. The policy of the governors recognizes this when it states that "the Board hesitates to adopt a policy of piercing the corporate veil unless sound reasons for this

can be demonstrated." The policies then set out circumstances in which the corporate veil can be pierced for certain purposes. The policy relates these exceptions to significant policy concerns about employers avoiding their obligations under the *Act*. Policy #7.51 refers to the serious abuse which would result if an employer could evade its obligations as an "employer" by persuading its employees to incorporate. Policy #48.40 developed from decisions which expressed concern that an employer should not be able to gain the benefits of the *Act* without meeting the corresponding obligations. The policy allows the Board to pierce the corporate veil to avoid such abuse.

The governors are empowered to adopt policy consistent with the *Act*. There is nothing in the *Act* which prevents them from allowing the Board to pierce the corporate veil when there are sound policy reasons. It is not contrary to law. Further, the reasons for policy #48.40 appear sound and consistent with the *Act*. If a person runs a business and makes the business decisions, then it is a valid concern that he not be able to gain benefits under the *Act* as part of that business while not meeting the obligations of the business under the *Act*. If the device of incorporation is the only thing that allows a person to do that, then it is consistent with the *Act* for the governors' policy to allow the Board to look at the substance, and not merely the form, of the matter.

Conclusion

In conclusion, we find that policy #48.40 in the *Rehabilitation Services and Claims Manual* is not contrary to the *Act*. Thus, the finding of the Review Board which declined to apply that policy is in contravention of the published policies of the governors. As a result, we have redetermined the findings of the Review Board.

We have determined that assessments were owed by the business and the claimant was the responsible principal of the business. The business paid no assessments, yet the claimant personally received compensation benefits. There was no meaningful distinction between the claimant and the business. He was both worker and employer. Therefore, pursuant to Section 15 of the *Act* and policy #48.40, the Board was entitled to deduct the overdue assessments owed by the business from the compensation payments to the claimant.

Finally, as set out above, there are some unresolved matters which the governors may wish to address, regarding the status of principals of unregistered and registered firms. While these unresolved matters did not prevent us from making a decision in this case, there is a degree of uncertainty, and perhaps inconsistency, in this area. The *Act* and the governors' policy are not clear on who will be considered a principal or active principal of a corporation. Active principals appear to form a hybrid category — they can be workers or employers, or perhaps both, while also described as akin to independent operators. This has implications for the determination and collection of

overdue assessments and entitlement to compensation, as well as possible consequences for prevention and Section 10(1) matters. It is a complex area and some of the uncertainties have been pointed out above.

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

In the Supreme Court of British Columbia

Between: Slocan Forest Products Ltd., Plaintiff
And: Workers' Compensation Board of British Columbia, Respondent

Reasons for Judgment of The Honourable Mr. Justice E.R.A. Edwards

Counsel for the Plaintiff:	Alan D. Winter
Counsel for the Respondent:	Scott A. Nielsen
Date and Place of Hearing:	20 & 21 October, 1994 Vancouver, B.C.

This is an application for judicial review of a decision of the Appeal Division of the Workers' Compensation Board ("W.C.B."), upholding an additional or "penalty" assessment against the petitioner ("Slocan").

At issue is whether a forest service road was a "place of employment" under s. 71(1) of the *Workers Compensation Act* R.S.B.C. 1979 Ch. 437 ("the *Act*") at the relevant time.

If it wasn't, as Slocan submits, then Slocan says the W.C.B. had no jurisdiction to make regulations applicable to the road under s. 71(1), no jurisdiction to inspect the road pursuant to s. 71(3) and no jurisdiction to impose an additional assessment under s. 73(1) of the *Act*. Those subsections provide:

> 71. (1) *The board may make regulations*, whether of general or special application and *which may apply to employers*, workers and all other persons working in or contributing to the production of an industry within the scope of this Part, *for the prevention of injuries* and industrial diseases *in* employments and *places of employment*,
>
> . . . .
>
> (3) *An officer of the board* or a person authorized by the board *may* at all reasonable hours *inspect the place of employment of a worker* within the scope of this Part.
>
> . . . .

73. (1) *Where the board considers that*

(a) sufficient precautions are not taken by an employer for the prevention of injuries and industrial disease;

(b) the place of employment or working conditions are unsafe; or

(c) *the employer has not complied with regulations*, orders or directions *made under section 71*,

the board may assess and levy on the employer an additional assessment determined by the board and may collect the additional assessment in the same way as an assessment is collected. The powers conferred by this subsection may be exercised as often as the board considers necessary. The board, if satisfied the default was excusable, may relieve the employer in whole or in part from liability. [my emphasis]

. . . .

The relevant facts are as follows. In 26 January 1989 an Occupational Safety Officer of the W.C.B. prepared an inspection report which included this statement:

> THERE ARE SEVERAL DOZEN SNAGS ALONG ROADS NO 2 AND ROAD NO 39 EAST OF VAVENBY. THESE SNAGS ARE A HAZARD TO THE MANY WORKERS WHO TRAVEL THESE ROADS. THIS IS A *REPEAT* VIOLATION OF IH&S REG 60.232
>
> ALL SNAGS, DANGER TREES, LOOSE ROCKS, STUMPS, OR OTHER UNSTABLE MATERIAL SHALL BE REMOVED OR CLEARED FOR A SAFE DISTANCE BACK FROM ROADSIDES OR ROADSIDE BANKS WHEN THEY PRESENT A HAZARD TO USERS OF ROADWAYS.
>
> *THIS APPLIES TO ALL ROADS*

He recommended a sanction in the following terms by memo dated 30 January 1989:

> On 26 January, I travelled over Roads #2 and #39, east of Vavenby. These are both active haul roads. I was accompanied by Mr. Leverne Burnell, Woods Foreman. There are a large number of snags within a tree length of these two roads. Mr. Burnell's estimate was approximately 100 on each road.
>
> This order has been written 3 times at the Valemount Division and copies were reviewed by the Vavenby Division. They are

> well aware of the requirements, even though separate divisions of the same company.
>
> I feel a sanction is justified since there had been absolutely no effort made to do any snag falling on these two roads and the hauling started in December, 1988. The snags are not questionable and are all within striking distance of the roads. Photos 1–8 show these snags.

Slocan responded to the proposed assessment in a letter to the W.C.B. dated 20 March 1989, in part as follows:

> We have some serious concerns about the possible assessment for snags . . . which were noted by Roy Nesbitt during his inspection on January 23, 1989. We are definately [sic] not denying that the snags should have been removed to enhance safe travel of the roads. We are however concerned that our Company is the one which is having the assessment levied against it.
>
> Our Company did not operate in the Adams drainage from January of 1987 to December 1988, which is a period of approximately 1½ years.
>
> In conclusion, I feel that we have had an excellent record of maintaining safe work practices concerning snag-falling in the past and will continue in the future. We were at fault on Road #2 and Road #39 along with several other Industrial users as Road #2 is the main artery to the North Adams Valley from the North Thompson Valley. It is therefore unfair to charge our Company with full responsibility of the poor saftety [sic] practice on these two roads.

The additional assessment was imposed by letter from the W.C.B. to Slocan dated 6 November 1989 which included the following:

> . . . We conclude the violations outlined in our letter of 13 March 1989 occurred and a penalty assessment is warranted. A penalty of $15,000.00 will be assessed against your firm for this violation.

An appeal was denied by the W.C.B. commissioners on 23 March 1990.

The *Act* was subsequently amended to provide appeals to a new Appeal Division of the W.C.B. Slocan appealed again and the appeal was rejected by the Appeal Division in 17-page written decision dated 29 April 1993.

Counsel for Slocan acknowledged the road could be a place of employment in some circumstances, for example it would be a place of employment for those constructing or repairing it, while those workers were on the site. He submitted however, the definition of "place of employment" which the Appeal Division articulated is too broad. That definition states:

> . . . the concept of "places of employment" must be interpreted broadly to include:
>
> > every place where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is, directly or indirectly, employed by another for direct or indirect gain or profit.

Counsel for Slocan also acknowledged that so-called "captive" roads, those owned or operated exclusively by an employer, would be "places of employment" of the workers driving over them, but said as soon as they left such roads to travel a public highway on the same journey these workers left their "place of employment". He argued that the W.C.B.'s definition effectively made every public road or highway a place of employment for some employer, and specifically had that effect in this case for Slocan since the forest service road in question was a public road.

Counsel argued this must mean the W.C.B.'s definition of "place of employment" was too broad because it appropriated to the W.C.B. the authority to dictate safety standards on public roads and highways which is the jurisdiction of highway authorities. The Crown as the primary highway authority, whether through the Ministry of Transportation and Highways or Ministry of Forests, is also an "employer" under the *Act*, and would be subject to penalties for failing to meet W.C.B. regulated standards. This he argued resulted in a conflict and the safety regime imposed by the highway authority, not the W.C.B., should prevail since the Crown had direct responsibility for highway safety.

At one time the W.C.B. had imposed additional assessments on the Ministry of Forests for failure to meet W.C.B. regulations on forest service roads. The Ministry then designated forest service road licensees "principal contractors" for various portions of those roads. It was conceded Slocan was the principal contractor responsible to meet Ministry of Forests' maintenance requirements, including snag falling, on the road in this case. Under terms of Slocan's Road Permit the Ministry could have done the necessary work and collected the cost, but no added penalty if Slocan failed to meet permit requirements.

The Attorney General is served with all applications for judicial review. If the Crown was concerned the W.C.B. had, by misinterpreting the *Act*, usurped its power as a highway authority to set safety standards on public roads, I assume the Attorney General would have appeared to make submissions to that effect.

I reject the argument that the W.C.B. definition of "place of employment" must be wrong because it amounts to a usurpation of jurisdiction over highway safety standards. Even if that is the effect of the W.C.B.'s interpretation of the legislation, that does not mean it is wrong. The interpretation placed on the *Act* by the Appeal Division does not lead to an absurd result in the face of any provision of the *Highway Act*, the *Forest Act,* the *Highway (Industrial) Act* or any regulations under any of those Acts brought to my attention by counsel.

Slocan pointed to the possibility of inconsistency between the W.C.B. and Ministry jurisdictions, but not to any actual legislative or operational conflict. If such a conflict arose, the legislature could resolve it.

Counsel for Slocan also argued that the language of the *Act* itself compelled a narrower interpretation of "place of employment". Specifically, the fact that s. 71(3) requires the inspector of a "place of employment" to "cause to be posted in a conspicuous place, at or near the works, establishment or premises, a statement showing what portion of the works, establishment or premises has been inspected" was said to imply that a place of employment must be a work, establishment or premise over which the employer had effective control.

When the *Act* was amended in 1968 the words "place of employment" in that part of s. 71(3) which authorizes inspections replaced those in the pre-1968 equivalent, s. 59(3), which authorized inspection of "the establishment of any employer." The legislative intention must have been to authorize inspection of places of employment which were not the "work, establishment or premises" of an employer. The legislature may have inadvertently failed to extend the requirement to post a report to cover this wider scope of inspection, but its intention to widen that scope must be inferred from the 1968 amendment. It appears to have been widened to correspond with the words "places of employment" which were in ss. (1) before it became s. 60(1) in the 1968 amendment, i.e. to make the inspection power parallel the regulation-making power. While it might have been arguable before 1968 "places of employment" in ss. (1) corresponded to "the establishment of an employer" in ss. (3), that narrow interpretation of "places of employment" cannot now be supported in light of the amendment to ss. (3) [now s. 71(3)].

The Appeal Division recognized that it "cannot be allowed to make an error on a question upon which its very jurisdiction depends" and seems to have acknowledged in its reasons that the interpretation of "place of employment" which underlies the

W.C.B.'s jurisdiction to regulate, inspect and assess penalties is such a question. That being so, the Appeal Division's decision is not one which is insulated from judicial review by the privative provisions of the *Act*.

When reviewing the decision of a specialized and expert tribunal on a question which involves the interpretation of its constituent statue, the Court does not extend curial deference to the tribunal in respect of its interpretation of a provision conferring jurisdiction. However, according to recent decisions of the Court of Appeal interpreting the leading Supreme Court of Canada authorities, the Court should apply a "pragmatic and functional" or "purposive" approach and ". . . rise above technicalities of all kinds, particularly legal and drafting technicalities . . .". See: *I.A.M. Lodge 692 v. U.B.C. & J.A. et al* [1993] 87 B.C.L.R. (2d) 98 at 105 and *District of Metchosin v. Metchosin Board of Variance* [1993] 81 B.C.L.R. 156.

Applying that approach in this case, I am unable to conclude that the interpretation the Appeal Division placed on the term "place of employment" was wrong. Accordingly, the W.C.B. had the jurisdiction to regulate, inspect and impose the additional assessment on Slocan.

The petition is dismissed with costs on scale 3.

Workers' Compensation Board of British Columbia Grants and Awards Policy

Date: November 7, 1994

Introduction

Grants and Awards are specifically authorized in Section 71(4) of the *Workers Compensation Act* which provides for educational programs relating to the Board's general operations and responsibilities, and for that purpose the Board may provide rewards for bravery in rescuing or attempting to rescue a worker from serious injury or death. The Board may also undertake or support research in matters relating to the Board's responsibilities under the *Act.*

Without excluding rewards for bravery, the primary purpose of this program is to encourage the development of new ideas and proposals to prevent occupational injury and disease amongst workers in B.C. For those workers who sustain an occupational injury or disease, it will encourage the development of improved methods of treatment and rehabilitation.

The Board prefers, but is not limited to, the funding of research, education and training activities which have a direct influence on the health and safety of workers coming under its jurisdiction.

I Grants

A Purpose

Under the authority of Section 71(4) of the *Workers Compensation Act*, provide for funding of programs, projects or research activities in relation to occupational health and safety, rehabilitation, compensation or other matters related to the responsibilities under the *Act*.

Such programs/projects/research may include the following:

1) Educational programs

2) Training programs

3) Research projects

4) Specific programs/projects

Also under Section 71(4) prizes, scholarships and other monetary awards may, from time to time, be established by the Board.

B Eligibility

Any individual or group is eligible to apply for financial sponsorship as long as the purpose, methodology and outcome are consistent with the Board mission and priorities as established under the *Workers Compensation Act*. The product of the project/program has to remain in the public domain.

C Funding

The funds available for the administration of this policy are derived from the administration cost of the W.C.B. and are approved by the Board of Governors.

The funding to any project or program shall not exceed 25% of the Grants and Awards allotted budget per year. W.C.B. funding to projects greater than $100,000 approved by the Senior Executive Committee will be reported to the Board of Governors. Projects approved by the Senior Executive Committee of greater than $200,000 or funding longer than one year will be referred to the Board of Governors for final approval.

D Criteria

The Grants and Awards Advisory Committee will establish detailed criteria for funding of proposals. These criteria will be responsive to the needs analysis completed by the Committee members representing the employer and worker communities as well as the needs articulated by W.C.B. staff. The criteria shall ensure that funded proposals are consistent with the purposes defined in Section 71(4) of the *Act* and the current priorities of the Board.

The Committee will solicit proposals three times per year. The Committee may require clarification of the proposal and presentation by the applicant and may require peer review prior to Committee considerations. The Committee will evaluate and submit its recommendations to the Senior Executive Committee for approval approximately three months from the date these processes are complete.

E Communications

The Board views occupational health and safety, compensation for work-related injuries and disease and rehabilitation of injured workers as matters that concern both employers and workers. The Board wishes to promote safe and healthy working conditions, fair and appropriate compensation and successful rehabilitation of injured/ill workers through a co-operative/partnership role between the W.C.B., employers and workers within the province of British Columbia.

To that end, the Grants and Awards Advisory Committee will encourage community representatives to identify occupational health and safety risks, training and educational requirements or other areas requiring research.

The Grants and Awards Advisory Committee will priorize these identified needs and develop a communications strategy to solicit proposals.

The proposals accepted for funding will require interim and final reporting back to the Grants and Awards Advisory Committee. The Committee will ensure the evaluation of the outcome and communicate the results to the Board and the community.

The Grants and Awards Advisory Committee will consult with the community and representative groups on the need for identifying occupational health and safety risks, training and educational requirements or other areas requiring research. These identified needs from the community will be brought to the Grants and Awards Advisory Committee for priority setting and the results will be communicated back to the representative communities for future guidance of potential applicants.

II Bravery Awards

A Purpose

To provide public recognition for acts of bravery in which the rescuer risked his or her life or personal safety to save a person who is covered under the *Workers Compensation Act* from serious injury or death.

B Eligibility

1) Anyone is eligible for this award, except:

- The rescuer should not be the cause of the emergency
- The actions were voluntary

- The rescuer was not employed as a member of a rescue team

2) The rescue attempt does not have to be successful to be eligible.

3) The rescuer does not have to be a worker.

4) Nominations for the award must be made within one year of the act of bravery.

C Award Categories

Gold
Silver
Bronze

Each award in the "colour" designated is in the form of a medallion set in a small wooden stand and accompanied by a framed parchment award recording the date and brief description of the incident.

D Criteria for Deciding on the Level of Award are as Follows:

1) **Gold medallion** — "For exceptional service in alleviating severe suffering or for rescue activities; to include particular circumstances when the personal hazard was extreme and obvious, involving risk of serious personal injury or death; there could be no turning back, yet the provocation to abandon the attempt was obviously great."

2) **Silver medallion** — "For exemplary service in alleviating suffering or for rescue activities, at the risk of serious personal injury or death, under circumstances where, once the attempt was undertaken there was considerable hazard involved even though the attempt could be abandoned."

3) **Bronze medallion** — "For service beyond the call of duty, in alleviating suffering or for rescue activities, at the risk of serious injury, under circumstances where the attempt could be abandoned without undue risk."

E Nominations

1) Nominations for the award may be made by anyone.

2) Nominations should be accompanied by a completed copy of the "Bravery Award Report Form" — see Appendix A.

3) Nominations should be submitted to the vice-president, Prevention Division.

F Assessment and Approval

1) Following receipt of a nomination, the vice-president, Prevention Division will arrange for an investigation of the incident in question.

2) The director, Field Operations, Prevention Division will provide a recommendation to the committee described below on the level of award to be made.

3) Assessment and approval of awards will be made by a committee of three, appointed as follows:

   a) A worker member nominated by the B.C. Federation of Labour

   b) An employer member nominated by the Business Council of B.C.

   c) A W.C.B. member nominated by the president and chief executive officer of the W.C.B.

III Health and Safety Innovation Awards

A Purpose

The Health and Safety Innovation Awards Program is intended to recognize and encourage innovation in occupational health and safety, and also to have an educational value in the dissemination of ideas on the prevention of injuries and occupational diseases.

B Eligibility

1) The innovation may be any kind of invention, device, system, program or idea, which is original, or at least original in this province, or which involves a new or different use or modification.

2) The innovation should be likely to solve or alleviate a problem of occupational disease or injury in this province.

3) The innovation should be of a kind that is usable at places of employment other than the one at which it is originated.

4) The innovation should be available for copying, use or adaptation by others.

5) The first four conditions are the basic requirements. When those conditions are satisfied, the W.C.B. will consider whether an award should be made. In exercising this discretion, other factors may be considered.

6) An award might be made to an employer, a worker, or any other person or organization that develops the innovation. The person or organization must not be in the business of producing or distributing the particular kind of innovation, or having a commercial interest in its promotion.

7) Where an innovation emanates from a manufacturer or distributor of safety supplies, or emanates from an employer who has produced the innovation as a product in the ordinary course of business, that would not be covered by this awards program. In such cases the W.C.B. might consider whether it should assist in some other way in making the innovation known.

8) Members and employees of the W.C.B. and any other government agency concerned with occupational health and safety and members of their immediate families are not eligible.

C Type of Award

An award might be of a certificate and/or cash. A payment may be made if personal expense has been incurred in producing the innovation which cannot be recovered in other ways.

D Timing

Normally an award would be made after there has been successful use of the innovation.

E Nominations

1) The initiative in suggesting an award to the W.C.B. can come from any source. The person who has produced the innovation might wish to notify the W.C.B., or the W.C.B. might be notified by any employer, worker, trade union or employers' association; or the initiative may be taken by an officer of the W.C.B. who identifies the innovation.

2) Nominations should be submitted to the vice-president, Prevention Division.

F Assessment and Approval

1) Following receipt of a nomination, the vice-president, Prevention Division will arrange for such investigation of the nomination as deemed necessary.

2) Following investigation, the vice-president, Prevention Division will submit the nomination to the W.C.B.'s Senior Executive Committee with a recommendation for approval or disapproval of the nomination.

3) The Senior Executive Committee will make the final decision on the approval and the form of award to be made.

IV GOVERNOR APPROVAL

This policy document setting out the WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA GRANTS AND AWARDS POLICY was approved by the governors of the Workers' Compensation Board on October 26, 1992 and amended on November 7, 1994.

APPENDIX A — BRAVERY AWARD REPORT FORM

Date **October 26, 1992**

	Bravery Award Nominee	**Name of Rescued Worker**
Name (in full)		
Home Address		
Telephone	(Home) _____ (Work) _____	(Home) _____ (Work) _____
Occupation		
Employer (name and firm no.)		
Employer Address		
Union and Local (if any)		
W.C.B. Claim No. (if any)		

	Nominated By	**Witness**
Name		
Home Address		
Employer (name and firm no.)		
Occupation		
Telephone		

Employer Contact *(for arranging presentation)*

Name _____

Address _____

_____ Telephone _____

Position _____

Rescue Incident

Date of Incident _____ Time of Incident _____

Work Location _____

Location in Plant or Site _____

Narrative Report

On a supplementary page or pages, prepare a narrative report of the entire rescue incident. This report must be objective, concise but complete — and should, if appropriate — be accompanied by sketches and photographs.

The narrative report should include:

1. The events leading up to the rescue attempt
2. A description and assessment of the danger to which the rescued worker was exposed
3. A description and assessment of the danger to which the nominee was exposed
4. The specific actions taken by the nominee in the rescue or attempted rescue
5. Evidence to support the "YES" or "NO" answers given on this form
6. What other persons were involved in the rescue or attempted rescue
7. Which of the actions reported are supported by witnesses — give details
8. Whether or not the actions of the nominee could better be classified as rendering assistance rather than life saving

Prior to submitting this report, it is essential that the investigating officer check to ensure that the report is complete and accurate. Any observations which the investigating officer feels are relevant and any conclusions which are arrived at as a result of the investigation should be included in the narrative report.

Note:

Upon completion, the bravery award report form along with the narrative report are to be forwarded immediately to the vice-president, Prevention Division.

WORKERS' COMPENSATION
REPORTER

Regulation Advisory Committee Operating Protocol

Date: May 15, 1992

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1. General

The Regulation Advisory Committee is constituted by the governors of the Workers' Compensation Board of British Columbia as part of the governors' strategy for review and development of occupational safety and health regulations. The Committee's terms of reference and mandate are established in the governors' overall strategy "Review and Development of Occupational Safety and Health Regulations" adopted January 7, 1992.

The Committee's goal is to present to the governors a report and recommendation, including any dissent, in a form that may be publicized as the subject of public hearings under Section 71 of the *Workers Compensation Act*.

2. Role and Function

The Committee's role and function are set out in the governors' strategy document. The Committee as a whole, and each member of the Committee, is responsible for, and committed to, implementing the terms of reference and mandate of the Committee and thereby perform the Committee's role in the governors' successful completion of a comprehensive review and revision of occupational safety and health regulations within a reasonable time. The Committee will present its report and recommendations within 24 months of this date.

3. Meetings

The Committee shall schedule meetings not less than six months in advance or on fourteen days notice at the call of the chairman. The chairman shall call a meeting when requested to do so in writing by eight members of the Committee.

4. Postponement or Cancellation

Any meeting, except one called at the request of eight members, may be cancelled or postponed by the chairman.

5. Agenda

The agenda for each meeting shall be prepared by the coordinator of Regulation Review, after consultation with the chairman. The agenda and any supporting materials shall be delivered to each member of the Committee by the Secretariat not later than seven days prior to the date of the meeting.

6. Conduct of Meetings

The chairman, or another governor member of the Committee that the chairman designates, shall chair each meeting.

The preferred method of decision making is through consensus which is express concurrence by each member present. Consensus shall be established through clear statement of the matter being decided and confirmation by those in attendance that each of them agrees with the statement. Reasonable efforts shall be made to extend the consensus to those absent, without undue repetition or renewed debate on issues.

In the absence of consensus, closure shall be brought to discussion and debate on any subject through voting on resolutions duly moved, seconded and carried by a majority of the votes cast by those present. The Committee's success in attaining its goal depends upon as full and equal participation as possible by the representatives of workers and employers. In bringing matters to a conclusion at any meeting the chairman shall recognize the desirability of having equal representative participation where substantial consensus is not going to be achieved.

Neither the coordinator, the chairman nor any public interest representative governor shall have a vote. No Committee member may vote on behalf of another Committee member.

Any member of the Committee entitled to vote may state a dissent from the decision of the Committee in writing addressed to the coordinator and request that the dissent be recorded in the minutes of Committee meetings.

In the event of a tie vote the differing positions shall be recorded in the minutes.

7. Minutes

Minutes shall be recorded at each meeting of the Committee containing a record of the decisions, the various points of view expressed on any subject and, where appropriate, who expressed certain points of view or wished a dissent recorded.

Once approved by the Committee and signed by the chairman, minutes become a public document. Minutes of all meetings and copies of all supporting materials dealt with at meeting shall be retained by the Secretariat. They shall be preserved for future reference in a manner to be determined by the governors.

8. Working Groups

The Committee may establish Working Groups to carry out any mandate given to them by the Committee. Working Groups shall not have the authority to make decisions on behalf of the Committee. The role of Working Groups is to address issues referred by the Committee, compile and organize supporting data and information and provide options to be considered by the Committee.

The membership of a Working Group shall include an equal number of worker and employer representatives.

9. Specialty Subcommittees

Members of the Committee may serve as facilitators of any Specialty Subcommittees established by the Governors' Committee for Regulation Review under the governors' terms of reference for review and development of occupational safety and health regulations. Members of the Committee are ex officio members of any Specialty Subcommittee.

10. Conflicts of Interest

The governors have final decision making authority to make or recommend revisions to occupational safety and health regulations. While the Committee anticipates the governors will adopt all consensus decisions of the Committee, the governors cannot be bound by the Committee's consensus under Section 71 of the *Workers Compensation Act*.

For this reason, because of the representative nature of members of the Committee and because the Committee's role and function is part of a legislative process, it is the Committee's belief that individual members of the Committee are not in a conflict of interest position in the discharge of their responsibilities, regardless of their employment, business or involvement in any industry or organization.

11. Openness

The governors' terms of reference direct that the entire process of review and development of occupational safety and health regulations be open. The Committee shall conduct its affairs in a manner that facilitates a transparent regulation review and development process.

The publication and dissemination of some information related to the Committee's work may be restricted by statutory obligation to respect the privacy of individuals. The timing of the public discussion and dissemination of information about Committee activities may be determined in accordance with the governors' directive that: "All recommendations and reports related to the process will be presented to the Board of Governors prior to their publication," or by a decision of the Committee made to assist it reach consensus and operate efficiently.

12. Media Relations and Public Statements

Any member of the Committee may speak to any media as a representative of workers, employers or the public interest, but only the chairman is the official spokesperson for the Committee.

Members of the Committee will state their opinions on the affairs of the Committee to the Committee.

Members of the Committee will publicly support and explain any consensus or decision reached by the Committee in which they have joined.

13. Amendment

This Operating Protocol may be amended by decision of the Committee.

Freedom of Information and Protection of Privacy Policy and Procedure Manual

Date: October 4, 1993

Table of Contents

Appendices

1. INTRODUCTION

The *Freedom of Information and Protection of Privacy Act (F.I.P.P.)* was enacted in June, 1992 and is scheduled to come into force on October 1, 1993. The purpose of this legislation is to make public bodies more accountable to the public while protecting the personal privacy of individuals about whom public bodies hold information.

1.1. Workers' Compensation Board and *F.I.P.P.*

The Workers' Compensation Board (hereafter, the Board) is a public body covered by *F.I.P.P.* The Board is clearly bound by the requirements of *F.I.P.P.*

1.2. The Importance of Access and Privacy

The chair and the Board of Governors recognize the importance of access and privacy (see Chair's Instruction, page 878). Mindful of the obligation to protect privacy, the Board shall be as open as possible within the constraints of *F.I.P.P.* The Board shall strictly construe discretionary exceptions to disclosure contained in *F.I.P.P.* in order to allow maximum access to information. The Board shall take an expansive approach to releasing information in the public interest.

1.3. Purpose of Manual

This manual provides a guide to the Board's *F.I.P.P.* system and procedures related to it. Its purpose is to aid in the Board's compliance with *F.I.P.P.* and may be used in conjunction with the Information and Privacy Manual prepared by the Information and Privacy Branch of the Ministry of Government Services in Victoria. The manual should be seen as a "living document" which shall change and grow as new systems develop, as new policy questions arise, and as more understanding of *F.I.P.P.* is gained.

2. OVERVIEW OF *F.I.P.P.*

F.I.P.P. contains information rights and privacy obligations. It also provides for a method of access as well as for independent review of access decisions and of privacy practices.

2.1. Definitions

Schedule 1 of *F.I.P.P.* contains definitions through which the *Act* must be interpreted.

Of particular importance are the definitions of "personal information" and "record." These definitions provide an important prism through which the scope of *F.I.P.P.* may be appreciated.

The core of the definition of "personal information" is that it includes "recorded information about an identifiable individual." Hence information such as the individual's name, age, sex, marital status, blood type, health care history, education history, and other people's opinions about the individual is personal information.

The term "record" applies to anything which is recorded by any means. It includes books, photographs, tape recordings, and computerized databases. The term is critical because *F.I.P.P.*'s access rights focus on access to records. All of the Board's records, save certain notes made in the Appeal Division are covered by *F.I.P.P.* (subsection 3(1)).

2.2. Information Rights

F.I.P.P. embodies an attempt to make public bodies such as the Board more accountable by making some information available to everyone and some information only available to those to whom it pertains. Moreover, *F.I.P.P.* requires public bodies to disclose information to the public or pertinent groups or individuals where such disclosure is in the public interest.

Section 4 of *F.I.P.P.* incorporates two critical information rights. It includes a broad, public right of access to general information and a particular or specific right of access of individuals to personal information which pertains to individuals who make requests.

Section 25 requires disclosure of information where to do so is in the public interest. For the Board this requirement is potentially very important especially in situations of risk and urgency involving occupational safety and health. Section 25 overrides all other provisions of *F.I.P.P.* (subsection 25(2)).

2.3. Exceptions to Access

F.I.P.P., having established certain rights in Section 4, contains several exceptions to those rights. Some of the exceptions are mandatory, that is, they *require* the Board not to release information, while others are discretionary, that is, they *allow* the Board not to release information where it is prudent not to do so.

Among the mandatory exceptions are those related to cabinet confidences (Section 12), business interests of a third party (Section 21), and personal privacy (Section 22). The latter two are particularly important in light of the Board's information.

Section 21 prevents the release of business information that was supplied to or obtained by the Board under certain conditions. Subsection 21(1) provides that a public body such as the Board must not disclose a third party's trade secrets, commercial, financial, labour relations, scientific or technical information *if* that information is supplied in confidence *and* if some harm would result from the release. The harms are specified in subsection 21(1)(c) and include such things as harm to the competitive position of the third party who has supplied the information and undue financial loss or gain to any person or organization. Subsection 21(2) requires that a public body not release information obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax. Section 21 could have an impact on release of purchasing and assessment information gathered by the Board. The impact will depend on the precise circumstances in which information has been gathered.

Section 22 is a challenging and complex section the object of which is to ensure that public bodies do not release personal information if to do so would be an "unreasonable invasion of a third party's personal privacy." Subsections (2) to (4) of Section 22 outline the parameters which help to define what an unreasonable invasion of privacy is. Subsection 22(2) instructs the head of a public body to "consider all the relevant circumstances" and then lists some such circumstances including whether the disclosure is desirable for the purposes of subjecting a public body to public scrutiny, the disclosure is likely to promote public health and safety, and the personal information has been supplied in confidence. The list of factors in subsections 22(2)(a) to (h) is not exhaustive, rather it provides examples of the circumstances to be considered. Subsection 22(3) provides a list of disclosures of personal information which are presumed to be invasions of privacy. Among such disclosures are the release of medical, psychiatric or psychological histories, diagnoses, conditions, treatments or evaluation and the release of employment or educational histories. Subsection 22(4) outlines disclosures which are not invasions of privacy. Among these are disclosure of remuneration of employees of public bodies and disclosure of travel expenses of people travelling at the expense of public bodies.

Discretionary exceptions pertain to policy advice (Section 13), legal advice (Section 14), law enforcement (Section 15), intergovernmental relations or negotiations (Section 16), financial interests of a public body (Section 17), conservation of heritage sites (Section 18), disclosure harmful to individual or public safety (Section 19), and impending publication of records (Section 20). Of particular importance to the Board are the policy advice, legal advice, law enforcement and safety exceptions.

Policy advice and recommendations may be withheld from disclosure (Section 13). This may be particularly significant in respect of matters submitted to and/or considered by the Board of Governors and Executive Committee. It is important to understand that this exception pertains only to advice or recommendations and not to the factual

material upon which they may be based. Subsection 13(2) provides a lengthy list of all of the information which may not be withheld under this exception. The list includes public opinion polls, statistical surveys, appraisals and economic forecasts. Please note that it may be possible, however, to withhold some of these kinds of information under other exceptions. For example, real estate appraisals while disclosable under subsection 13(2) could potentially be withheld under Section 17 (the economic interest exception).

Section 14 allows the Board (and any public body) to refuse access to information that is subject to solicitor-client privilege. That privilege extends to both legal advice and materials created in contemplation of litigation. For example, a legal opinion on a claims matter could be withheld from disclosure.

Section 15 deals with law enforcement and permits withholding of information related to such enforcement. The term "law enforcement" includes investigations and proceedings "that lead or could lead to a penalty or sanction being imposed" (Schedule 1) and hence applies to certain Board activities such as claims investigations and accident investigations. Subsection 15(1), among other things, would allow the Board to protect the identity of confidential sources and to not reveal investigative techniques or procedures.

Section 17 permits a public body to refuse to disclose information which "could reasonably be expected to harm" its interests. Trade secrets, scientific information, management plans, proposals or projects, and information related to negotiations may be withheld. Such a section could be used to protect vital interests of the Board.

Section 19 allows a public body to refuse to disclose information if to do so would threaten anyone else's safety or public safety or if such disclosure might result "in immediate and grave harm" to a requester's safety or mental or physical health. The Board might invoke such a section in the event that release of psychological information, for example, might result in harm to the individual to whom it pertains.

2.4. Protection of Privacy

In addition to Section 22, *F.I.P.P.* sets out directives through which public bodies such as the Board must protect privacy. Part 3 of the *Act* deals with collection, protection, retention, use and disclosure of personal information.

Section 26 of *F.I.P.P.* provides that personal information may only be collected by a public body under certain circumstances. These circumstances include collection by or under statutory authorization, collection for law enforcement and collection where such is directly related to and necessary for an operating program. A public body *must not* collect personal information unless its collection falls within these circumstances. It is a

guard against collection of unnecessary information and the Board must be cognizant of it in all of its personal information collection (e.g. re. claims, employment, recruitment, accident investigations).

Section 27 regulates the manner in which personal information is collected. The core or basic rule is that personal information should be collected directly from the individual to whom it pertains (subsection 27(1)). Indirect collection is allowed if the individual permits it, if the commissioner authorizes it, if *F.I.P.P.* itself or another enactment permits or requires it, or if it is for the purpose of law enforcement, a proceeding, collecting a debt or determining suitability for an award. Indirect collection may be seen to be authorized by several sections of the *Workers Compensation Act* (e.g. Sections 71, 87 and 88) and hence would be permissible by virtue of subsection 27(1)(a)(iii). Subsection 27(2) contains a notice provision which must be followed in respect of collection of personal information. Except in certain limited circumstances (subsection 27(3)), individuals must be informed of the purpose for collecting personal information, the legal authority for collecting it and the name, title, address and phone number of an officer who can answer questions about the collection. How the notice is to be given is not stated, but it is prudent for the Board to have a written notice on many of its forms (see Chapter 5).

Section 28 requires that, where personal information is used to make a "decision that directly affects the individual," the public body must try to ensure that the information is accurate and complete. The term "decision" is not defined in *F.I.P.P.* but the Board should be prepared to act on a broad interpretation of the word.

Section 29 of *F.I.P.P.* permits people to request correction of his/her personal information where s/he believes there has been an error or omission in it (subsection 29(1)). The public body must correct the information or annotate the information with the requested correction if it is not made (subsection 29(2)).

Section 30 obligates public bodies such as the Board to make reasonable security arrangements to prevent unauthorized access, collection, use, disclosure or disposal of personal information.

Section 31 requires that personal information used in a decision concerning the individual must be retained for one year. This section applies to all personal information (e.g. for claims or employment).

Section 32 of *F.I.P.P.* provides that personal information may only be used for the purpose of which it was obtained or for a consistent purpose unless the individual to whom it pertains has consented or unless Sections 33 to 36 of *F.I.P.P.* apply.

Section 33 of *F.I.P.P.* outlines a variety of situations in which personal information may be disclosed. Especially important for the Board are subsections 33(d), (e), (f), (i)(i), (n), (o) and (p) which permit disclosure for the purpose of complying with other statutes; for the purpose of complying with subpoenas, warrants or orders; for the performance of duties by employees; for the purpose of collecting debts; for law enforcement; and for health or safety reasons.

Section 35 permits disclosure of personal information for research purposes under certain conditions. Those conditions protect the anonymity of the individuals to whom the information pertains; restrain the nature of record linkages involving the information; ensure general security and confidentiality; and require researchers to enter into research agreements. The Board holds much personal information of interest to researchers and hence Section 35 is an important instrument to promote social and other research while protecting individuals.

2.5. Access to Information and Protection of Privacy — Procedure

2.5.1. Access

Section 5 of *F.I.P.P.* indicates that, to obtain access to a record, a person or organization, termed "an applicant" must make a written request to the public body (subsection 5(1)). The applicant may ask for a copy or for access (subsection 5(2)). At the Board, such requests are made through the F.I.P.P. Office (see Chapter 4).

Sections 6 through 11 contain obligations for every public body including the Board to fulfill once a request has been received. Upon receiving a request, the Board must assist applicants and respond without delay to requests (subsection 6(1)). In addition, a public body must create records if they can be created from machine readable records using expertise and software it normally uses *and* if creating it would not unreasonably interfere with the public body's operations (subsection 6(2)). Requests must be responded to within 30 days unless there is an extension of time under Section 10 or a transfer under Section 11 (Section 7). Timeliness is important and extensions should only be claimed where a request is unclear, there is a large number of records involved, there is consultation with a third party or a third party asks for a Section 52 or a Section 62 review (Section 10). Section 8 indicates the contents of a public body's response to a request and includes telling the applicant if access is to be given, how it will be given , who may be contacted to discuss it and that the applicant may ask for a review by the information and privacy commissioner.

Fees recoverable under Section 75 (see 2.7.3 below) may be charged and collected prior to granting access.

2.5.2. Privacy

As noted above (see 2.4), Part 3 of *F.I.P.P.* contains many privacy obligations which public bodies must fulfill. *F.I.P.P.* has several mechanisms which help people scrutinize how information concerning them is held. Section 4 allows individuals access to their own records. Section 29 creates a method for people to try to correct information in the custody or control of public bodies. Section 52 allows a person to ask the information and privacy commissioner to review "any decision, act or failure to act" of the head of a public body. This is a very broad instrument which allows for review of all elements of privacy protection.

While *F.I.P.P.* does not directly provide for an internal privacy complaint process within public bodies, it does require that public bodies adhere to the Part 3 obligations. To do this, each public body must develop procedures to ensure privacy protection, one of which would be to allow for privacy complaints directly to the public body if the complainant so desired (for Board procedures see Chapter 5).

2.6. The Information and Privacy Commissioner

F.I.P.P. provides for the appointment of an independent information and privacy commissioner (I.P.C.) who has the power to review the decisions and acts of public bodies and to make orders respecting those decisions and acts. British Columbia's I.P.C. is David Flaherty and his offices are located at 4th floor, 1675 Douglas Street, Victoria, V8V 1X4.

Appointed by the lieutenant-governor-in-council on unanimous recommendations by a legislative committee for a term of six years, the I.P.C. is an officer of the Legislature (Section 37). The I.P.C. must report annually to the speaker of the legislative assembly on the work of the I.P.C. Office (subsection 51(1)(a)).

To carry out the duties of the I.P.C., *F.I.P.P.* conveys extensive powers to that officer. Section 42 gives the I.P.C. the power to conduct audits and investigations to make orders *whether or not* reviews have been requested, to inform the public about *F.I.P.P.*, to commission research, to comment on access and privacy implications of proposed programs of public bodies, to comment on implications for access and privacy protection of automated systems used for information collection, storage, analysis or transfer, to comment on privacy aspects of record linkage, to authorize indirect collection of personal information and to inform public bodies about failures to meet prescribed standards for assisting applicants. The I.P.C. may investigate and try to resolve complaints respecting any duty imposed by *F.I.P.P.*, time extensions, fees, corrections of personal information, or Part 3 obligations (subsection 42(2)). The I.P.C. has powers under Section 15 and 16 of the *Inquiry Act* and has the power to require records be produced (subsections 44(1) and (2)).

As noted above (Section 2.5), a person has the right to ask for reviews of decisions and acts of public bodies. In respect of this right, the I.P.C. has certain powers and obligations. For example, the I.P.C. *may* authorize mediation but *must* hold an inquiry if mediation does not occur or the matter is not settled under mediation (Section 55, 56). Inquiries under Section 56 may be held in private and may be conducted through oral or written representations. Inquiries must be completed within 90 days of a request for a review. After the inquiry the I.P.C. must make an order to dispose of the issues under review (Section 58). The order may confirm, reject or alter decisions or acts of the public body (subsections 58(2) and (3)). Public bodies must comply with orders of the I.P.C. within thirty days of receiving them.

2.7. Administration

2.7.1. Delegation

Section 66 allows the head of a public body to delegate his/her duties, powers and functions under *F.I.P.P.* to any person. The Board's delegations are described in Section 3 and Chair's Instruction Number 1 (see page 878).

2.7.2. Records Management

The very structure of *F.I.P.P.* requires that records be readily retrievable and it behooves any and every public body to ensure such retrievability (see Sections 3, 4 and 7). Beyond this general issue, *F.I.P.P.* requires the creation of a freedom of information directory and a public record index (Sections 69 and 72).

The publication of the directory and the public record index is the responsibility of the Ministry of Government Services and, more specifically, of the Information and Privacy Branch (I.P.B.), the director of which is Robert Botterell. The directory shall include descriptions of the public bodies, their functions, their general record sets and their personal information bank. The public record index shall include a list of all categories of records prescribed by the heads of public bodies as available to the public on demand under subsection 71(1). Public bodies such as the Board must provide information to the I.P.B. in order for it to publish the directory and index. Among the information collected by the I.P.B. are listings of all manuals, instructions or guidelines issued by public bodies since these are available to the public (Section 70).

2.7.3. Fees

Fees may be charged for copies of policy manuals, public records and records requested under Section 5. Fees for policy manuals and public records are charged pursuant to subsection 70(4) and subsection 71(2). Fees for records requested under Section 5 are levied under Section 75. All fees should be reasonable and are subject to review by the I.P.C.

Fees respecting records requested under Section 5 are restricted in several ways. Fees may be charged for locating, retrieving, producing, preparing, shipping, handling and copying records (subsection 75(1)). Fees may *not* be collected for the first three hours locating and retrieving a record or for severing information which is *not* to be disclosed to a requester. Fees may also *not* be charged to an applicant who is requesting his/her own personal information.

The Board's fee policy is described in Chapter 8.

2.8. Offences

It is an offence for any person to make a false statement to, mislead, obstruct, or fail to comply with an order from the I.P.C. (subsection 74(1)). Liability for such offences is a fine of up to $5,000 (subsection 74(2)).

2.9. *F.I.P.P.* and Other Statutes

For a period of two years after the proclamation of *F.I.P.P.*, other statutes' confidentiality provisions prevail. After that time, *F.I.P.P.* will prevail.

2.10. *F.I.P.P.* in Force

F.I.P.P. is in force as of October 1, 1993 and will affect all Board policy and procedure as of that date.

2.11. Conclusion of Overview

F.I.P.P. is an important addition to the statute law of British Columbia as it provides a framework for allowing access to information while protecting the privacy of individuals. While written in plain language, *F.I.P.P.* is both a complex and subtle statute. If you have any questions about interpretation, please do not hesitate to contact the Freedom of Information and Protection of Privacy Office at 279-8171.

3. THE BOARD'S *F.I.P.P.* SYSTEM

3.1. Introduction

In order for the Board to meet its access and privacy obligations under *F.I.P.P.*, a policy, procedure and response system has been created. The system involves all levels of the Board and is comprised of individuals or groups to whom the chair has delegated authority (see page 878). The chair maintains ultimate control of the system while delegating general authority to the F.I.P.P. Office to run the day-to-day operations of the system. Other delegations have been made to the Executive Committee, the vice-president of Prevention and directors of that division, the controller, and program managers. Moreover, several program directors and managers have been named as F.I.P.P. contacts whose role it is to ensure adequate response to divisional/departmental involvement in F.O.I. requests, privacy complaints, policy development, and creation of the Directory and Public Record Index all of which occur under the direction of the F.I.P.P. Office.

3.2. The Role of the Chair

Schedule 2 of *F.I.P.P.* indicates that the chair of the Board of Governors is the head of the Board for purposes of *F.I.P.P. F.I.P.P.*, therefore, creates a unique role for the chair. Unlike in workers' compensation matters where the Board of Governors sets policy direction for the Board, *F.I.P.P.* allocates this function to the chair alone.

3.2.1. Chair's Instructions

To fulfill the policy role as well as to allow for delegation of authority to enable the chair to carry out the access and privacy obligations, a new policy instrument, the Chair's Instruction has been created. The first of these instructions (see page 878) outlines the Board's *F.I.P.P.* system and related delegations. From time to time, as the chair deems appropriate, further instructions may be issued.

3.2.2. Ultimate Decision Maker — Chair's Arbitral Role

Concomitant with the delegation in Chair's Instruction No. 1, the chair retains a decision-making role in access requests and privacy complaints in the event that a head of a Board division (i.e. either the chief appeal commissioner or any vice-president) disagrees with a decision concerning release of information or privacy practices made by the freedom of information coordinator. To initiate a review by the chair of an access

or privacy decision made by the freedom of information coordinator the head of division must make a written request to the chair in a timely fashion. The chair shall evaluate information from both the head and the coordinator and make a final decision.

3.2.3. Public Interest Role

The chair retains the duty under Section 25 of *F.I.P.P.* of disclosing information, other than health and safety information, which it is in the public interest to disclose. To fulfill this obligation the chair shall consider whether disclosure of the information is of such necessity and urgency that it outweighs concerns for privacy and protection of third party's business interests.

3.3. The Freedom of Information and Protection of Privacy (F.I.P.P.) Office

Placed within the Legal Services Division and located on the fifth floor of the main administration building at 6951 Westminster Highway, Richmond, the F.I.P.P. Office is the focal point of the Board's *F.I.P.P.* system. Its function is to coordinate and supervise Board compliance with *F.I.P.P.* (see Chair's Instruction No. 1 on page 878). Access requests under *F.I.P.P.* and privacy complaints shall be made to this office. Policy and procedure development regarding the *F.I.P.P.* directory, public records, and privacy protection are part of the mandate of this office.

The staff of the office is comprised of a freedom of information coordinator, who provides legal and policy advice on *F.I.P.P.* matters to the Board and manages the F.I.P.P. Office and its staff; a records management officer, who provides records management advice in respect of *F.I.P.P.* compliance to the Board, oversees the *F.I.P.P.* directory process and aids in responding to access and privacy issues; a freedom of information and protection of privacy officer who provides F.O.I. training to Board staff, develops F.I.P.P. Office communication strategies, and assists in responding to access requests and privacy complaints; an administrative assistant/secretary who assists in the development of office systems, is involved in the budget process and provides secretarial support to the F.I.P.P. Office; and a F.O.I. clerk who maintains a tracking and file system in respect of access requests and privacy complaints and who assists requesters. The functions of the F.O.I. officials are described more fully in Chair's Instruction No. 1.

The F.I.P.P. Office undertakes several important functions as noted above. To accomplish these functions certain philosophies, practices and procedures must be followed.

3.3.1. Integrity and Independence

It is essential that the F.I.P.P. Office be respected in order to fulfill its functions. To gain that respect, its business must be conducted with integrity and independence. To ensure integrity, it must offer requesters and complainants confidentiality as befits their circumstances. Moreover, its officers must make every effort to provide forthright and independent work for and comment to the Board in order to ensure compliance with *F.I.P.P.* and to help the chair fulfill his duties.

3.3.2. Policy and Procedure Development

One of the roles of the F.O.I. coordinator as specified in Chair's Instruction Number 1 is to provide policy and procedure advice in respect of *F.I.P.P.* In developing *F.I.P.P.* policy and procedure the F.O.I. coordinator shall consult with the F.O.I. Contact Group (see 3.4 below) and with any other individual or group whom the chair names. All *F.I.P.P.* policy statements shall be approved by the chair.

3.3.3. Administration of F.O.I. Requests, Privacy Complaints and Related Reviews

The F.I.P.P. Office is charged with administration of F.O.I. requests and privacy complaints and the F.O.I. coordinator has responsibility for making decisions related to them. The nature, timing and form of F.O.I. requests and privacy complaints is more particularly described in Chapters 4 and 5.

To ensure accuracy, completeness and timeliness of responses and complaints as described in Section 2 above, the F.I.P.P. Office shall maintain a tracking system. Essentially this system shall outline relevant time limits including extensions sending of third party notices, and sending of responses in respect of requests, complaints, and reviews.

The F.O.I. clerk, under the direction of the coordinator, shall operate the tracking system on a day-to-day basis. Moreover, the clerk, as directed by the coordinator, shall assist requesters and complainants in making requests and complaints.

Evaluation of requests and complaints will be undertaken by the coordinator with the assistance of the records management officer and the F.I.P.P. officer.

3.3.4. Privacy Protection — Privacy Audits

The F.I.P.P. Office has the responsibility of advising on the Board's privacy protection practices and directing changes in respect of *F.I.P.P.* The nature and form of privacy protection and related audits is described in more detail in Chapter 5.

Every manager at the Board has an important role to play in ensuring that privacy protection as required in *F.I.P.P.* is achieved. Guidelines are provided in Chapter 5.

The F.I.P.P. Office, in particular the F.O.I. coordinator and records management officer shall conduct privacy audits in each division in consultation and cooperation with the managers of that division. The coordinator shall provide legal advice to the Board on all privacy matters.

The F.O.I. coordinator or the records management officer or F.I.P.P. officer under the coordinator's direction shall, whenever it is feasible, attend I.P.C. Audits and Investigations of Board offices (see Chapter 6).

3.3.5. Records Management

The F.I.P.P. Office shall provide advice on records management issues related to *F.I.P.P.* Moreover, the *F.I.P.P.* directory and public records index are maintained under the auspices of this office (see Chapter 7). The records management officer reporting to the coordinator has a pivotal role in this function.

3.3.6. Prescription of Public Records

The F.O.I. coordinator shall prescribe records as public records. Heads of offices and divisions may recommend such prescription. The F.O.I. coordinator will analyze the recommendation in terms of *F.I.P.P.* and then make a prescription or not as is appropriate. The records management officer will then put the records on the Public Records Index (see Chapter 7).

3.3.7. Training

To facilitate Board compliance an extensive two-stage training process comprising an initial set of introductions to *F.I.P.P.* and a more detailed problem-solving set of sessions have been undertaken. After the end of 1993, training will be less intense and less frequent. Questions about training and requests for training sessions should be directed to the freedom of information and protection of privacy officer.

The goal of F.O.I. training by the F.I.P.P. Office is to raise awareness about access and privacy issues and to create a corporate culture of openness in the context of respect for the confidentiality of personal information. Issue awareness is the ultimate key to Board compliance because it is through that sensitivity that problems will be *clearly* identified and solutions will be found.

3.3.8. Communications Strategy

In addition to training, the F.I.P.P. Office has initiated a communications strategy to convey information to the public and Board staff. For the public, a brochure entitled "Access to Information and Protection of Privacy at the W.C.B." is being developed. For Board staff, an electronic bulletin board which will contain *F.I.P.P.* information has been established. Questions about and suggestions regarding the F.O.I. communications strategy should be directed to the freedom of information and protection of privacy officer.

3.3.9. Impacts of *F.I.P.P.*

The F.I.P.P. Office shall evaluate the impacts of *F.I.P.P.* as outlined in Chapter 10. The coordinator shall prepare an annual report for the chair in addition to monthly reports on the activities of the F.I.P.P. Office.

3.4. Contacts

To ensure adequate and timely responses to F.O.I. requests, complaints and reviews and to encourage broad Board participation in *F.I.P.P.* policy development, a system of F.I.P.P. contacts has been developed throughout the Board (Chair's Instruction No. 1). Contacts are officials at a managerial level in the Board who have been designated by the chair, president, chief appeal commissioner or vice-president of a division to represent their office(s), department(s) or division(s).

3.4.1. Duties of Contacts in Respect of F.O.I. Requests, F.O.I. Reviews and Privacy Complaints

All offices, divisions, departments and sections must provide access to their records to the F.O.I. coordinator in order for the F.I.P.P. Office to ensure compliance with the requirements of F.I.P.P. *All Board staff should be aware that such access is* not *optional at their discretion.*

Contacts must facilitate F.I.P.P. Office access to Board records and make records available to that office (see 4.2.2.). Similarly, contacts must ensure appropriate staff participation and record access in the event of privacy complaints and F.O.I. reviews (see Chapters 5 and 6).

3.4.2. Representative Nature of the Role of Contacts

Contacts should inform their offices, divisions, departments and sections of *F.I.P.P.* policy and procedure. This will enable Boardwide participation in *F.I.P.P.* policy and procedure development as well as greater ease of Board adaptation to that policy and procedure.

3.5. Role of the Executive Committee

The Executive Committee has a general interest in the efficiency and effectiveness of the F.I.P.P. Office. It will be involved in monitoring costs and impacts of *F.I.P.P.* as described in Chapter 10.

The Executive Committee shall approve research access to personal information (see Chapter 9).

The Executive Committee shall approve fee waivers of $10,000 or more (see Chapter 8).

3.6. Vice-President of Prevention

The vice-president of Prevention and his directors have been delegated authority to disclose safety and health information to the public or affected groups or individuals where there is significant risk or harm (see Chair's Instruction No. 1). To carry out this duty under Section 25 of *F.I.P.P.*, the vice-president and/or his directors shall assess the risks in given health or safety situations, their volatility and the need of urgent, expedited disclosure to individuals, groups or the public at large.

3.7. The Controller

The controller has the responsibility for collection of fees (Chair's Instruction No. 1). Fee collection is outlined in Chapter 8.

3.8. Program Directors and Managers

All Board directors and managers have the responsibility of ensuring that privacy obligations in *F.I.P.P.* are dealt with by applying policies developed by the F.O.I. coordinator (Chair's Instruction No. 1). All offices, divisions, departments and sections should familiarize themselves with *F.I.P.P.* policy through use of their F.I.P.P. contacts, through use of instructions published by the chair, through information published by the F.I.P.P. Office, and through asking for and obtaining direction and advice from the F.I.P.P. Office.

Directors and managers must also ensure that information disclosure in the normal course of business is consistent with *F.I.P.P.* (see Chapter 4).

Some directors and managers also have the responsibility of being F.I.P.P. contacts and their duties are described above (see 3.4.). All staff should give the contacts their fullest cooperation in fulfilling their responsibilities.

3.9. *F.I.P.P.* System as a Whole

The Board *F.I.P.P.* system is designed to enable efficient, effective and equitable adaptation to and compliance with the requirements of *F.I.P.P.* Suggestions to facilitate change that will ensure adaptations and compliance are most welcome and should be directed to the F.O.I. coordinator.

4. DISCLOSURE OF INFORMATION AND ACCESS TO RECORDS THROUGH DISCLOSURE OF INFORMATION

Allowing access to records is a critical component of *F.I.P.P.* disclosure in this context means giving access to or communicating. The primary focus of the access part of *F.I.P.P.* is the *record* not information per se. However, the W.C.B. does provide *information* in the normal course of its business and this will continue under *F.I.P.P.* although disclosure of some information, especially personal information, will be affected by *F.I.P.P.*

4.1. Types of Disclosure

4.1.1. Normal Course of Business

Information and records are disclosed in the normal course of the Board's business. This is entirely appropriate as the Board must do this in order to function properly and effectively. What has changed with the coming into force of *F.I.P.P.* is that the condition(s) or circumstance(s) under which such disclosure may occur has changed.

There are several types of information and records disclosure which will be or continue to be carried out in the normal course of business. These include: disclosures allowed under the policy manuals for Assessments, Claims and Rehabilitation, and Occupational Safety and Health; Appeals Disclosure; Inter-Agency Disclosure; Personal Information Disclosure to Employees; Administrative Disclosure *within* the Board itself; Community Relations Disclosure; and Other Public Information Disclosure.

4.1.2. Freedom of Information (F.O.I.) Requests

Should a requester be unable to obtain information in the normal course of business, the operating division/department which has denied access must inform the requester of his/her right to make an F.O.I. request.

Section 4 of *F.I.P.P.* conveys right of access to records held by public bodies such as the Board. This section gives the core rights of access which permit F.O.I. requests.

Subsection 4(1) states:

> A person who makes a request under Section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

4.1.3. Public Interest Disclosure

Under Section 25 of *F.I.P.P.*, the chair of the Board is obligated to disclose to affected individuals, or groups or the public, "without delay," information concerning "significant harm" to health or safety or information which is "clearly in the public interest."

4.1.4. Research Access

Section 35 of *F.I.P.P.* allows disclosure of personal information "for a research purpose, including statistical research," under certain conditions.

4.2. Methods

Each of the types of disclosure noted in Section 4.1 involve different methods of access or disclosure. Each are dealt with in turn below.

4.2.1. Normal Course of Business

As noted above, the Board discloses both information and records in the normal course of business. Specific methods of access and disclosure will be discussed below. Before going on though, it is important to stress that *divisions and departments within them have responsibility for their own normal course of business disclosure*. Such disclosure must be undertaken within the constraints of *F.I.P.P.* policy and other Board policies (e.g. labour relations) but it is a divisional responsibility. Normal course of business requests for information are made to the divisions or departments involved and are handled pursuant to the policies/procedures adopted by the governors or the divisions depending on the policy/procedure in question.

All divisions, except the Appeal Division, must not give normal course of business access to documents (i.e. individual records) which require severing. Such documents should be accessed by means of a formal F.O.I. request. Whenever access to records is refused in the normal course of business requesters must be informed *that they have a right to make an F.O.I. request through the W.C.B.'s F.I.P.P. Office.*

4.2.1.1. Board of Governors' Disclosure Policies

The Board of Governors have approved disclosure policies which have been incorporated into the Assessments, Claims and Rehabilitation, and Occupational Safety and Health Manuals. These policies contain instructions as to what may be disclosed and, in some cases, methods of requesting access. Where access *methods* are unspecified in the governors' manuals, divisions must establish procedures for access and inform requesters of such.

4.2.1.2. Appeals Disclosure

Appeals disclosure occurs to enable parties to appeals before the Appeal Division and Workers' Compensation Review Board to have access to information pertinent to appeals involving themselves or their firms. The Appeal Division itself is created by Section 85 of the *Workers Compensation Act* and Section 85.1 allows the chief appeal commissioner to determine practice and procedure for the conduct of appeals. Subsection 3(2) of *F.I.P.P.* indicates that *F.I.P.P.* "does not limit the information available by law to a party to a proceeding." Nothing in *F.I.P.P.* alters this process. The Disclosures Section of the Legal Services Division provides copies of materials to be disclosed under the appeals process to parties to the appeals proceedings. This section does *not* provide all normal course of business disclosure of claims files but rather its focus is on the appeal process.

4.2.1.3. Inter-Agency Disclosure

From time to time, the Board must disclose personal and other information to other agencies. Personal information disclosure is a particularly important area because of the Privacy Protection provisions in *F.I.P.P.* Section 33 of *F.I.P.P.* permits disclosure of personal information in certain circumstances.

Several ways to disclose personal information included in Section 33 are particularly important to the W.C.B. in the inter-agency context. They are:

- Disclosure by consent of the individual to whom the information pertains (s. 33(b))
- Disclosure for a purpose consistent with the purpose for which the information was obtained (s. 33(c))
- Disclosure for the purpose of complying with a stature of B.C. or Canada (s. 33(d))

- Disclosure in order to comply with a subpoena, warrant or other court or tribunal order (s. 33(e))

- Disclosure for the purpose of collecting a debt (s. 33(i)(i))

- Disclosure to assist a law enforcement agency in Canada to assist in an investigation (s. 33(n))

The Board should not disclose personal information to outside agencies unless the foregoing conditions apply. Appropriate inter-agency disclosure may be carried out under the procedures in the Appendix [not available at press time]. If the situation is not covered in the inter-agency procedures in the Appendix, then Board staff should require that the agency requesting information send a written statement requesting the information, stating the statutory authority for the agency to obtain the information, and containing the signature of an official of the requesting agency who is authorized to collect the information. Prior to release of information, the written statement should be sent to the F.I.P.P. Office for approval of release.

4.2.1.4. Personal Information Disclosure to Employees

By virtue of Section 4 of *F.I.P.P.* employees have a general right of access to information concerning their own information and moreover Section 32 and 33 contain elements which imply such information will be disclosed to them. Certain exceptions may override the access (e.g. Section 15, the law enforcement exception).

Managers of all divisions must be prepared to give access to employee records which they retain and to do so under direction of the Human Resources Department, the Labour Relations Department and F.I.P.P. Office.

4.2.1.5. Administrative Disclosure Within the W.C.B.

In order to carry out its functions, the Board must allow and indeed facilitate interchange of information and records between its various divisions and departments. Under *F.I.P.P.* this is not an issue regarding general information but it is important respecting personal information because of the need for privacy protection.

Subsection 33(f) allows disclosure of personal information between officers and employees if access to the information is "necessary for the performance of the duties of . . ." the officer or employee. There can be access to disclosure of personal information on a need-to-know basis. Managers have the responsibility to ensure that inappropriate disclosure of personal information does not occur but may disclose personal information to other managers and employees if necessary.

4.2.1.6. Community Relations Disclosure

The Community Relations Department has the responsibility of providing information to the media as well as providing general information to the public. Subsection 2(2) of *F.I.P.P.* allows public bodies to continue current procedures for the release of general information and hence Community Relations publications and pamphlets of a general nature may be released in the normal course of business.

Any release of personal information by the Community Relations Department must be done within the parameters of *F.I.P.P.*

4.2.1.7. Other Public Information Disclosure

Public records held by divisions and departments are to be released by them in the normal course of their business. Public records must be prescribed as such by the chair (Section 71). All such records should be listed in the public record index required under Section 72 of *F.I.P.P.* As soon as public records are created and as is administratively feasible, division F.I.P.P. contacts should notify the records management officer of their availability.

Policy and procedure manuals are available to the public under Section 70 of *F.I.P.P.* divisional and departmental manuals must be made available by their creators. Governors' manuals are available through the Community Relations Department.

4.2.2. Freedom of Information Requests

Formal requests under *F.I.P.P.* are an avenue of last resort within the Board for gaining access to records. The Board shall endeavour to provide as much access to information as it can in the normal course of business. Nonetheless, it is apparent that there will be cases where Board staff are not able to disclose or grant access. In such cases, *requesters must always be informed that they have a right to make a formal F.O.I. request through the W.C.B. F.I.P.P. Office.*

Section 5 of *F.I.P.P.* requires that, in order to gain access to records, an "applicant" (requester) must made "a written request to the public body that the applicant believes has custody or control of the record." The *Act* does not require any specific form of written request but the Information and Privacy Branch of the Ministry of Government Services has provided a generic form which the Board has adopted. Forms shall be available at the main administration building in Richmond and area offices. Completed forms must be filed at the F.I.P.P. Office. Faxed requests will be accepted. Area offices must help requesters complete their forms and must do so within guidelines specified

by the F.I.P.P. Office. Please note that a requester may make a formal request by writing a letter and not using a form. *Therefore, if any employee receives a letter requesting information or records and cites F.I.P.P. or refers to access to or freedom of information in any way, the letter must be forwarded to the F.I.P.P. Office immediately.*

Once in receipt of a request the Board has 30 days to respond. The F.I.P.P. Office will evaluate the request, determine the possibility of transfer, request records and statements of concern and cost from the F.I.P.P. contacts and then make a determination as to access. Names of requesters will not be disclosed to F.I.P.P. contacts except on a "need to know" basis such as when a requester asks for his/her personal information. F.I.P.P. contacts must provide copies of records to the F.I.P.P. Office. The F.I.P.P. Office will respond to the requester and arrange for access to records/or have copies sent to the requester.

Requesters must pay any required fees prior to obtaining access (see Chapter 8).

If requesters are denied access, the F.I.P.P. Office will inform them of their right to reviews by the information and privacy commissioner (Section 52).

4.2.3. Public Interest Disclosure

4.2.3.1. Chair

The chair will order the disclosure of information if to do so is "clearly in the public interest." The reference here is to information which would not normally be available to the public but for reasons of urgency, public scrutiny, and the like should be disclosed.

4.2.3.2. O.S.H. Public Interest Disclosure

There may be times when disclosure of information concerning a risk of significant harm to the health and safety of the public or a group of people is necessary. The vice-president of Prevention and his or her directors have been delegated the responsibility to undertake this disclosure as necessary and they shall determine the necessity and form of disclosure.

4.2.4. Research Access

Research access may be obtained by application to the Executive Committee (Chapter 9). The procedure of the Executive Committee on receiving an application is described in Section 9. Once the Executive Committee approves an application, a formal agreement

must be concluded with the researcher. Once this agreement has been executed by the Board and the researcher and appropriate fees have been paid, the researcher shall be given access.

5. PRIVACY PROTECTION

5.1. Privacy Issues

As discussed in Section 2, *F.I.P.P.* contains privacy protection obligations for the Board. It sets rules for and parameters in which collection, retention, security, use and disclosure of personal information may take place. To ensure privacy protection, all managers in the Board must be sensitive to the requirements of *F.I.P.P.* and follow F.I.P.P. Office guidance on *F.I.P.P.* issues. Managers, in particular F.I.P.P. contacts, should aid in privacy policy development. All managers should encourage policy and procedure review in their own areas and seek F.I.P.P. Office assistance in them. Privacy audits and privacy complaints response will be directed by the F.I.P.P. Office. Document review in respect of *F.I.P.P.* notice requirements will be undertaken by the F.I.P.P. Office in consultation with Forms Review and program managers as appropriate.

5.2. Policy and Procedure Review and Practice

Any and all suggested creation of or changes to policy and procedure respecting collection, retention, disposal, use or disclosure of personal information must be reviewed by the F.O.I. coordinator. This kind of review will be an ongoing project. F.I.P.P. contacts are requested to ensure that their offices, divisions, departments and sections request F.I.P.P. Office involvement in personal information issues.

Section 26 of *F.I.P.P.* clearly indicates that personal information should not be collected unless the collection is authorized by or under a statute, the information collected is for law enforcement purposes, or the information relates directly to and is necessary for an operating program or activity of the Board. *Board staff shall not collect personal information which is unnecessary for the performance of their duties.*

Subsection 27(1) of *F.I.P.P.* establishes as a basic rule the practice of obtaining personal information directly from the person to whom it pertains. Exceptions to this rule include authorization/permission to collect indirectly being given by the individual involved, the I.P.C., or by a statute, and, collection for quasi-judicial or judicial proceedings, debt matters, or law enforcement. *Board management must ensure that personal information is collected indirectly only where it is necessary and justifiable to do so in the course of their duties.*

Subsection 27(2) requires that notices be given to an individual whenever personal information pertaining to that individual is collected. The notice must state why the information is being collected, the legal authority for the collection, and the name, title, address and phone number of an official who will answer questions about the collection. In some cases, such as law enforcement circumstances, notice need not be given (subsection 27(3)). *F.I.P.P.* does not specify how notice is to be given but as often as is practical, *written notice should be given* (see 5.6 for further information).

Sections 28 and 29 of *F.I.P.P.* pertain to accuracy of personal information. Section 28 creates an obligation for the Board in that it must take reasonable steps to ensure accuracy of personal information which it holds.

Section 29 conveys a right of individuals to request correction of personal information. As in the case of disclosure, correction includes normal course of business and F.O.I. approaches. Given the obligation in Section 28, management should strive to correct personal information where feasible in the normal course of business. If there is any question about the accuracy of the change or if managers refuse to make a change, those seeking a change must be informed of their right to make a request for correction under Section 29 and should be informed that they may do this through the F.I.P.P. Office. The formal request must be in writing.

Sections 30 and 31 deal with protection and retention of personal information. They raise important records management issues (see Chapter 7).

Section 32 deals with use of personal information. Personal information should be used for the purpose for which it was obtained or compiled or for a consistent purpose (Section 33(a)). Individuals may consent to other uses (subsection 33(b)) but *managers should attempt to ensure that the uses for which personal information was gathered are the ones followed and that different uses are prohibited.*

Section 33 allows the Board to disclose personal information in various contexts. Especially important are subsections 33(c), (d) and (i). Subsection 33(c) refers to disclosure for the purpose for which information was obtained (the discussion in the preceding paragraph should be referred to). Subsection 33(d) allows for disclosure pursuant to or under an enactment of Canada or B.C. (see Sections 4.2.1.3. and 4.2.1.5.).

All policy and procedure manuals should be created or changed in the context of privacy requirements noted above.

5.3. Privacy Audits

To help ensure that the Board complies with its obligations, the F.I.P.P. Office shall carry out privacy audits throughout the Board. The form of such audits shall follow a set of checklists (general and personnel). Audits/schedules shall be set out in consultation with the directors or managers of departments and/or at the direction of the chair. The F.O.I. coordinator and/or the records management officer shall carry out the audits. All directors/managers are encouraged to use the checklists to spot problems related to security, retention and the like.

5.4. Privacy Programs

All policies and procedures to protect privacy must be reviewed by the F.O.I. coordinator. The F.O.I. coordinator shall provide comment and shall determine whether or not to seek further comment from the information and privacy commissioner (F.I.P.P., subsections 42(1)(f) and (i)).

5.5. Privacy Complaints

Privacy complaints may be made through the information and privacy commissioner (see Chapter 6) or through the Board's F.I.P.P. Office. Upon receiving a complaint, the F.I.P.P. Office shall investigate and, if a problem is uncovered, try to effect a resolution with the department involved. The F.I.P.P. Office shall report to the complainant and inform the complainant of the option of going to the information and privacy commissioner for further investigation and for the possibility of obtaining an order if the complainant is dissatisfied with the Board's resolution. *Staff are urged to give their fullest cooperation to the F.I.P.P. Office in the resolution of privacy complaints initiated through the F.I.P.P. Office.*

5.6. Document Review

F.I.P.P. requires that notices be given to ensure that people are informed of the reason(s) for collecting their personal information, the legal authority for so doing, and the name of an official whom they may contact for further information concerning the collection itself. This means that many documents used throughout the Board should contain a notice. The form of the notice should be as follows:

> The personal information on this form is collected for the purpose of _____ under the authority of the _____ *Act*. _____ of the _____ Department may be contacted at _____(address)_____ (phone number).

Notice must be given whenever personal information is collected except in certain limited circumstances (e.g. law enforcement).

Questions concerning notices should be addressed to the F.O.I. coordinator.

6. EXTERNAL REVIEW PROCESS

The information and privacy commissioner (I.P.C.), created under Section 37 of *F.I.P.P.*, has the power to review any decision or act of the Board in respect of requests for information and in respect of any privacy matter in *F.I.P.P.* (subsection 52(1)).

Reviews are started through written requests to the I.P.C. (subsection 53(1)). Once a review is initiated the I.P.C. may authorize a mediator to investigate and settle a matter (Section 55). If a mediator is not called upon or the matter is not settled the I.P.C. must hold an inquiry (Section 56). As noted previously in Chapter 2, the I.P.C. has extensive powers to carry out his/her functions.

All staff are instructed to give their utmost cooperation to the I.P.C. in the event of reviews or complaints and to cooperate with the F.O.I. coordinator in his/her representation of the Board before the I.P.C. (Chair's Instruction Number 1).

6.1. F.O.I. Request Reviews

Upon being informed of a review by the I.P.C. and prior to appearing before or making written submissions to the I.P.C., the F.O.I. coordinator shall consult with officials in the office(s), division(s), department(s) and section(s) from which records were originally requested. Officials should provide comment and information as expeditiously as possible and be prepared to appear as witnesses as required.

6.2. Privacy Complaints

Upon being informed of a privacy complaint by the I.P.C., the F.I.P.P. Office shall inform the office(s), division(s), department(s), and section(s) involved and send a representative to attend at the site of an I.P.C. audit or investigation at the time of the audit or investigation. *All staff shall answer I.P.C. requests for information and give access to records as required.* The F.O.I. coordinator shall provide written responses to reports of the I.P.C. Upon an order being issued the office(s), division(s), department(s) and section(s) involved shall give effect to it within 30 days (subsection 59(1)) and report such to the F.I.P.P. Office. Should it be appropriate as determined by the chair, the Legal Services Department in consultation with the F.I.P.P. Office shall seek judicial review.

7. RECORDS MANAGEMENT

F.I.P.P., by its very nature, raises records management issues because it demands timely responses to requests for records and adequate protection of personal information. *F.I.P.P.* contains specific requirements regarding the creation of a directory and public records index; retrieval of information; and security and retention of personal information.

7.1 Records Management in General

Records management at the Board is a divisional and departmental responsibility. At the present time there is no comprehensive records management standard or program for all of the records of the Board as a whole. It is *not* the mandate of the F.I.P.P. Office to provide such a standard or program but the F.I.P.P. Office shall inventory records as required under *F.I.P.P.* and shall provide advice and direction regarding retrieval, security and retention in order to achieve compliance with *F.I.P.P.*

7.2 Directory of Records

The Ministry of Government Services must publish a directory "to assist in identifying and locating records" (*F.I.P.P.*, subsection 69(1)). The directory is to include descriptions of the mandate and functions of public bodies such as the Board and descriptions and lists of their records (subsection 69(2)). More detailed information concerning such things as authority and users is to be included for personal information records (subsection 69(3)). The Information and Privacy Branch (I.P.B.) of the Ministry has been given the task of compiling and publishing the province-wide directory which must be done at least every two years (subsection 69(5)). To fulfill its mandate the I.P.B. shall request input from the Board.

The F.I.P.P. Office shall ensure that the Board responds to I.P.B. requests for information. The records management officer, in particular, shall be involved in this process. *F.I.P.P. contacts shall respond to requests for directory information in a timely fashion.*

The F.I.P.P. Office shall provide an annual copy of the directory to the chair, the Executive Committee and to the F.I.P.P. contacts. A copy of the directory shall also be placed in the Board's library. Requests for changes to the directory should be sent to the records management officer.

7.3. Public Records Index

Section 71 of *F.I.P.P.* permits the chair of the Board to prescribe public records which are available without a formal request for access. The chair has delegated the duty of prescription to the F.O.I. coordinator (Chair's Instruction Number 1).

To have records prescribed as public records, heads of divisions should write to the F.O.I. coordinator indicating which records are to be prescribed and indicating officials to whom the coordinator may address questions. After evaluating the request, the coordinator shall prescribe the record(s) and ask the records management officer to put it (them) on the Board's Public Record Index or shall indicate in writing to the head of the division the reasons for not making the prescription.

The records management officer shall maintain the Board's Public Record Index and shall provide information concerning it to the I.P.B. as requested.

The F.I.P.P. Office shall provide an annual copy of the Index to the chair, the Executive Committee and the F.I.P.P. contacts. A copy of the index shall be placed in the Board's library. Questions concerning the index should be directed to the records management officer.

7.4. Policy Manuals

Policy and procedure manuals must be made available to the public without a formal request for access under *F.I.P.P.* (Section 70). The F.I.P.P. Office shall maintain a list of all Board Manuals. *F.I.P.P. contacts should inform the F.I.P.P. Office of new manuals once they are created*. Questions concerning the manuals list may be directed to the records management officer.

7.5. Retrieval of Records

The Board must respond to F.O.I. requests within 30 days (subsection 8(1)). To be able to meet the requirements of *F.I.P.P.* (i.e. to adequately assess records in light of mandatory and discretionary exceptions and to make a timely response) *Board offices, divisions, departments and sections must be able to retrieve (i.e. locate and copy) records within four days of a request to do so by the F.I.P.P. Office.* To be sure, exceptional cases where there are many records or the request is complex will arise but the basic rule is a four-day turnaround. To do this, all areas of the Board must ensure adequate records management in respect of the records they control.

7.6. Security of Personal Information

The Board must make "reasonable security arrangements" against unauthorized access, collection, use, disclosure or disposal of personal information (*F.I.P.P.*, Section 30). Because of divisional control of records, responsibility for security lies with divisions and their various departments and sections. The F.I.P.P. Office shall provide advice and

direction to help divisions meet this *F.I.P.P.* obligation, will keep divisions apprised of I.P.C. directives and I.P.B. guidelines, and will conduct privacy audits to help divisions comply (see Chapter 6).

7.7. Retention of Personal Information

Section 31 of *F.I.P.P.* requires that personal information used to make a decision concerning the individual to whom it pertains be retained by the Board for a period of one year. The Board has not established retention schedules throughout all of its divisions although some record sets such as claim files are retained permanently. All offices, divisions, departments and sections must ensure that personal information used to make decisions is retained for at least one year. The term "decision" should be read broadly to include employment-related actions.

The F.I.P.P. Office shall provide advice and direction in respect of F.O.I. aspects of retention and shall conduct privacy audits to help divisions comply (see Chapter 6). The short retention period in *F.I.P.P.* should not be used to set retention periods generally. It is a minimal requirement. Advice about other limitations and litigation requirements should be obtained from the Legal Services Department. Questions about retention and *F.I.P.P.* may be directed to the F.O.I. coordinator and the records management officer.

8. FEES

The collection of fees is permissible under certain circumstances outlined in *F.I.P.P.* Section 75 of *F.I.P.P.* allows collection of fees in respect of F.O.I. requests whereas subsections 70(4) and 71(2) permit such collection in relation to policy manuals and public records. It is the policy of the Board to collect fees for release of records when it is fair, feasible and reasonable to do so.

8.1. Collection of Fees — Role of Controller

The controller shall collect all fees related to release of all records. *No division, department, section, or office should release copies of records or grant access to records unless the appropriate fee has been paid in full to the controller.*

The controller shall assist divisions in the development of appropriate fees in respect of policy manuals and public records. The controller shall assist the F.I.P.P. Office in responding to the requirements of regulations in respect of F.O.I. requests and shall develop an appropriate internal fee schedule for those requests.

8.2. Policy Manuals

Policy manuals which include manuals, instructions or guidelines of the Board as well as policy statements, are to be made public (subsection 70(1)). Fees may be charged for copies of these manuals. The fees may reflect costs but should not be unreasonable. Fees for all manuals shall be set by the head of the office or division, which created them, in consultation with the controller.

8.3. Public Records

Various records may be made available to the public by departments. Subsection 2(2) of *F.I.P.P.* indicates that *F.I.P.P.* does not limit access to general information that is available to the public. Section 75 allows for charging of fees and will be the section used to charge fees for records that are routinely available but are not public records. Subsection 71(1) allows the chair of the Board to prescribe categories of records as public records and to make them available. Subsection 71(2) allows the Board to charge a fee for copies of public records.

Offices and divisions which seek to establish sets of records as public records must obtain the chair's approval and subsequent prescription. Fees will also be set with the chair's approval and in consultation with the controller. The process of prescription should be done in consultation with the F.I.P.P. Office (see 7.3). Records so prescribed will be put in an index of public records.

Setting of fees for normal course of business (routine) access to and release of copies of records which are not public records shall be done in accordance with Section 75 of *F.I.P.P.* and shall be done by the heads of offices and divisions in consultation with the controller and under the direction of the F.I.P.P. Office. The controller shall publish a set of basic charges permissible under *F.I.P.P.*

8.4. F.O.I. Requests

Any person may seek access to and copies of records of the Board by means of a formal F.O.I. request (*F.I.P.P.*, Section 4 and Section 5). Section 75 of *F.I.P.P.* permits the charging of fees in respect of F.O.I. requests.

Subsections 75 (1) and (2) state:

> 75. (1) The head of a public body may require an applicant who makes a request under section 5 to pay to the public body fees for the following services:

(a) Locating, retrieving and producing the record
(b) Preparing the record for disclosure
(c) Shipping and handling the record
(d) Providing a copy of the record

(2) An applicant must not be required under Subsection (1) to pay a fee for:

(a) The first three hours spent locating and retrieving a record, or
(b) Time spent severing information from a record

In the event of an F.O.I. request, the F.I.P.P. Office will require a fee estimate from the relevant department(s) involved and will ask for that estimate immediately upon receipt of the request. The controller shall provide a basic schedule of fees.

8.5. Personal Information

No person shall be charged for access to or copies of records pertaining to him/herself (*F.I.P.P.* subsection 75(3)).

8.6 Fee Limit

No person shall be charged for normal course of business access to records which are not policy manuals or public records or for F.O.I. requests if the fee to be charged is less than $200.

8.7. Waiver of Fees

Subsection 71(2) of *F.I.P.P.* is discretionary and subsection 75(5) allows a head to excuse payment of fees in relation to that section. Waiver of fees shall be done with the approval of the head of the office(s) or division(s) which created the records in question unless the amount is greater than $10,000. In the event that the amount is greater than $10,000, the Executive Committee must approve the waiver.

Subsection 75(5) of *F.I.P.P.* outlines the factors to be considered in a fee waiver. These include: inability of the applicant to pay, fairness, and the requested record is a matter of public interest (such as a public health and safety matter).

8.8. Cost/Impact Evaluation

All offices and departments are responsible for monitoring the costs and impacts of access to and release of copies of records and must do so in accordance with the *F.I.P.P.* Cost/Impact Evaluation Statement in Chapter 10.

9. RESEARCH

The Board holds a great deal of information about individuals, access to which could facilitate socially constructive research. Section 35 of *F.I.P.P.* permits access to such information for research and statistical purposes. Mindful of its obligations to promote health and safety, the Board supports and encourages research on accidents, treatments and any matter related to compensation services or occupational health and safety. Mindful of its obligations to protect privacy, the Board will only grant access to personal information in its custody under the conditions outlined in *F.I.P.P.*

9.1. Research Access — Application — The Role of the Executive Committee

Research access to Board information/records shall be approved by the Executive Committee (Chair's Instruction Number 1). Applicants shall submit the necessary form along with required supporting documentation and the Executive Committee shall evaluate the application. To do this, the Executive Committee shall establish a subcommittee comprised of the vice-president(s) whose records are requested and one other vice-president and that subcommittee shall gather further information as required, hear an oral presentation by the applicant if the subcommittee deems it appropriate, and make timely recommendations to the Executive Committee.

9.2. Research Access — Agreement — Role of Secretary to the Board of Governors

Once an application has been approved, the secretary to the Board of Governors will execute a formal agreement with the applicant/researcher. The secretary to the Board of Governors shall retain all such agreements on behalf of the Board.

9.3. Payment of Fees

Prior to obtaining access to records, the applicant/researcher must pay fees as required by the formal agreement referred to in par. 3 above. Fees are to be paid to the controller. Fees may be waived by the Executive Committee.

9.4. Access Conditions

Section 35 of *F.I.P.P.* specifies the conditions under which access will be granted to researchers. It states:

> Disclosure for research or statistical purposes
>
> 35. A public body may disclose personal information for a research purpose, including statistical research, only if
>
> (a) The research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form
>
> (b) Any record linkage is not harmful to the individuals that information is about and the benefits to be derived from the record linkage are clearly in the public interest
>
> (c) The head of the public body concerned has approved conditions relating to the following:
>
> (i) Security and confidentiality
>
> (ii) The removal or destruction of individual identifiers at the earliest reasonable time
>
> (iii) The prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of that public body, and
>
> (d) The person to whom that information is disclosed has signed an agreement to comply with the approved conditions, this *Act* and any of the public body's policies and procedures relating to the confidentiality of personal information

10. EVALUATION

The Board is committed to the principles embodied in *F.I.P.P.* and to the fulfillment of that legislation's requirements. Mindful of its obligations to the constituencies it serves, the Board is also committed to meeting its obligations with efficacy and efficiency. It is in that spirit of prudence that the Board requires monitoring of the costs and impacts of *F.I.P.P.* on its operations.

10.1. Impacts

The impacts of *F.I.P.P.* on the Board are potentially wide ranging and definitely have cost implications. The most visible impact is the creation of an F.I.P.P. Office, the hiring of its staff, and the supplying and equipping of it. Beyond this though, *F.I.P.P.* will have an impact on other Board staff as it will entail their involvement in responding to F.O.I. requests, and as a result of *F.I.P.P.*, Board staff will disclose information in the normal course of business on a scale unparalleled in Board history. Time of staff, equipment, and supplies will be effected. Costs will be incurred. There will be some cost recovery through fees but much of the cost will have to be absorbed by the Board.

10.1.1. Normal Course of Business Disclosure

All divisions will have some normal course of business disclosure and some will have a great deal. Most divisions, for example, have administrative and procedure manuals which will be accessible in the normal course of business. Some divisions will have operating records which will become routinely available (e.g. Compensation Services will routinely release claims files to the claimants to whom they pertain, and Prevention will release inspection reports in its normal course of business). To disclose records, divisions will have to expend resources.

10.1.2. F.O.I. Requests

All divisions will be involved in the response to F.O.I. requests from time to time. Time will be spent locating and copying records and providing disclosure recommendations and fee estimates. Again, this entails expenditure of resources.

10.2. Monitoring the Impacts

10.2.1. F.I.P.P. Office

The F.I.P.P. Office will report annually to the chair on its operations and expenditures. This report shall contain statements concerning personnel, equipment, supplies in addition to outlining the work of the office by providing statistics on F.O.I. requests, privacy complaints, F.O.I. reviews, timelines, and accuracy and providing descriptions of the directory process, training, and communications.

The F.I.P.P. Office will be audited by Internal Audit as required by the chair and the C.E.O. As part of the Legal Services Division, the office will also be part of audit and budget processes relevant to the whole division.

10.2.2. Divisions, Departments, Offices

Acquiring resources for both normal course of business disclosure and F.O.I. disclosure will no doubt become part of the Board's budget process. To help the Board assess the impacts of disclosure each division shall be required to monitor its disclosure in the normal course of business and its participation in F.O.I. requests/complaints (appended to this policy are forms which should be used in this effort).

10.3. Reporting on Impacts

The F.I.P.P. Office shall provide an annual report on disclosure of information to the chair. All offices, divisions, departments, and sections shall provide a summary statement to the F.I.P.P. Office no later than January 31 of each year and the F.I.P.P. Office shall report to the chair no later than March 31, 1993. All divisions, departments and offices should also be prepared to provide individual reports on their disclosure operations as may be required from time to time by the Board of Governors or the Executive Committee.

Delegation of Authority

Pursuant to Section 66 of the *Freedom of Information and Protection of Privacy Act*, the chair hereby delegates powers, duties, and functions under that *Act* as described in Chair's Instruction Number 1 to:

1. The official of the Workers' Compensation Board who is the freedom of information coordinator

2. The Senior Executive Committee

3. The president and chief executive officer

4. The general counsel

5. The vice-president, Prevention and his/her directors

6. The controller

7. Program directors and managers, and

8. Mark Powers, barrister and solicitor; Legal Services Division

Chair's Instruction

Number: 1

Date: January 19, 1995

Subject: Guiding Principles and Functions of the Freedom of Information and Protection of Privacy Office and Its Personnel and Establishment of a Freedom of Information and Protection of Privacy System

Whereas Schedule 2 of the *Freedom of Information and Protection of Privacy Act* designates the chair of the Board of Governors of the Workers' Compensation Board as head of the Board for purposes of the *Act*, the chair intends that the Board shall comply with the *Act* by striving at all times to fulfill both the spirit of open government and the desire to protect individual privacy embodied in the *Act*, and,

Whereas Section 66 of the *Freedom of Information and Protection of Privacy Act* permits the chair to delegate any duty, power or function of the head of the Board under the *Act* to any person, (except the power to delegate under section 66) and,

Whereas the chair shall maintain a role in release of information, privacy protection, issuance of policy instructions, and public interest disclosure, and,

Whereas the Board will create and maintain a Freedom of Information and Protection of Privacy System as described below.

Now therefore, while retaining full authority as head of the "public body" under the F.I.P.P. legislation and being the final authority at the Board on all matters arising under the F.I.P.P. legislation, the chair otherwise delegates responsibilities for the operation of the office and the system to the Board's freedom of information coordinator, the Senior Executive Committee, the president and chief executive officer, the general counsel, the vice-president, Prevention and his/her directors, the controller, W.C.B. program directors and managers, and Mark Powers, barrister and solicitor, Legal Services Division, whose tasks are more particularly detailed below.

Summary

The *Freedom of Information and Protection of Privacy Act* (*F.I.P.P.*) was enacted to make public bodies more accountable and to protect personal privacy. To accomplish this, such bodies including the Board must fulfill the spirit as well as the letter of the legislation. To fulfill that spirit, it is prudent to adopt basic philosophies or guides to help interpret and implement *F.I.P.P.* and fulfill the Board's commitment to openness as a fundamental value of a public agency.

The freedom of information coordinator through the Freedom of Information and Protection of Privacy Office of the Legal Services Division shall supervise the W.C.B.'s compliance with *F.I.P.P.* The freedom of information coordinator will develop and maintain an access and privacy response system, provide advice on records management in respect of the *Act* and provide policy advice and direction on access/privacy matters as required.

To ensure timely and forthright compliance with requests to access for information, with investigations of the information and privacy commissioner and with orders of that commissioner, the Board will establish a freedom of information and protection of privacy system. The core of such a system will be contacts throughout the Board who will work in close association with and respond to the direction of the freedom of information coordinator.

1.0 INTRODUCTION

F.I.P.P. received third reading on June 23, 1992 and was proclaimed on October 4, 1993. The purposes of this statute are to make public bodies such as the Workers' Compensation Board (the Board) more accountable to the public and to protect personal privacy of individuals about whom such bodies hold information (*F.I.P.P.*, Section 2). *F.I.P.P.* contains a broad right of access to general records, i.e., those that do not contain personal information, and a more narrow right of access for individuals about information concerning themselves (Section 4). *F.I.P.P.* also contains a set of derogations from those rights called exceptions, some of which are mandatory and others discretionary, and a set of rules for ensuring appropriate collection, use, disclosure and retention of personal information (Sections 11 to 22 and 26 to 36).

In order to ensure compliance with the rules set out in *F.I.P.P.*, the *Act* provides for the creation of an information and privacy commissioner (I.P.C.) (Section 37). The I.P.C. has the power to review access decisions of and privacy problems related to public bodies and she/he has the authority to conduct investigations and inquiries related to these matters (Sections 42 to 44 and 52).

The head of a public body is responsible for ensuring that her or his public body fulfills the obligations of *F.I.P.P. F.I.P.P.* designates the head of public bodies and, in the Board's case, the chair is designated (Schedule 2). In that capacity, the chair will, from time to time, issue instructions so as to guide the Board in fulfillment of its obligations under *F.I.P.P.*

F.I.P.P. also gives the head the ability to delegate his/her duties, powers and functions to someone else.

2.0 GUIDING PRINCIPLES

2.1 Openness Preferred

Mindful of the obligation to protect privacy, the Board should be as open as possible within the constraints imposed by legislation.

2.2 Strict Construction of Exceptions

Whereas *F.I.P.P.* allows discretionary exceptions to disclosure (Sections 14 to 20), the Board should seek to use such exceptions sparingly and should construe such exceptions narrowly or strictly in order to allow maximum access to information as is appropriate and prudent in the circumstances of each request.

2.3 Public Interest Paramount

Whereas Section 25 of *F.I.P.P.* requires that information be disclosed where the information is about public safety or health or where such disclosure is clearly in the public interest, the Board should remain vigilant about making expeditious disclosure to the public regarding all matters of public interest and matters relating to public safety or health. The Board should take an expansive approach to releasing information in the public interest.

3.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY OFFICE

The Freedom of Information and Protection of Privacy (F.I.P.P.) Office is a department of the Legal Services Division. It is located on the 5th Floor of the W.C.B. administration building at 6951 Westminster Highway in Richmond. The phone number is (604) 279-8171.

3.1 Function

The function of the F.I.P.P. Office is to both coordinate and supervise Board compliance with *F.I.P.P.* requests for access to information under the *Act* may be directed to this office as may complaints respecting invasion of privacy.

F.I.P.P. Office staff will:

- Assist requesters in formulating and clarifying requests
- In concert with other Board personnel, endeavour to ensure timely responses to requests

- Clarify privacy complaints
- In cooperation with other Board officials, seek to rectify privacy problems
- Endeavour to respond to requests from and investigations by the information and privacy commissioner in a timely fashion and with utmost good faith

3.2 Personnel

The staff in the F.I.P.P. Office will be a freedom of information coordinator, freedom of information analysts, and freedom of information secretaries.

3.2.a. Freedom of Information Coordinator

The freedom of information (F.O.I.) coordinator, who will be a member of the Law Society of B.C., manages the F.I.P.P. Office. The coordinator reports to the chair of the Board, the president and chief executive officer, and the general counsel respecting freedom of information and privacy matters. As well, the F.O.I. coordinator will report to the general counsel respecting administrative matters related to the F.I.P.P. Office. In the absence of the F.O.I. coordinator, the general counsel will undertake the obligations of that position. In the absence of both the F.O.I. coordinator and the general counsel, Mark Powers, barrister and solicitor, Legal Services Division, will undertake the obligations of the F.O.I. coordinator.

The F.O.I. coordinator will:

- Advise the Board on freedom of information and privacy matters
- Prepare policy statements on freedom of information and privacy matters
- Direct the Board's freedom of information and protection of privacy system (see 4.0 below) to ensure timely response to requests and privacy complaints
- Make decisions regarding access to information and privacy protection on a day-to-day basis
- Review privacy protection throughout the Board as well as record retention, retrieval and disposal and provide direction related thereto
- Oversee the development of forms and procedures necessary to operate the F.I.P.P. Office and the Board's freedom of information and protection of privacy system

- Oversee the prescription of public records
- Oversee the inventory of Board records in order to ensure compliance with *F.I.P.P.*
- Oversee the provision of reports to the I.P.C. and Ministry of Government Services as required
- Prepare responses to the I.P.C. as required, and
- Prepare an annual report for the chair which will be published in the *Workers' Compensation Reporter*

3.2.b. Freedom of Information Analysts

The freedom of information (F.O.I.) analysts report to the F.O.I. coordinator.

The analysts will:

- Review requests for information, reviews and privacy complaints received by the F.I.P.P. Office, analyze required information/records and prepare responses in a timely manner in accordance with legislation
- Review all current Board records management systems to ensure they comply with the B.C. F.I.P.P.A.; recommend changes as required
- Recommend approaches for the Board to the classification of records management and assist in the long-range planning of programs
- Liaise with I.S.D. to ensure that the records management systems and all systems development for client departments comply with the legislation
- Review current Board policies and procedures on records retrieval, retention and disposal systems, making recommendations for changes as required
- Develop and implement appropriate policies and procedures to comply with the legislation
- Be responsible for the "Directory of Records" and related information, updating data as required
- Develop communication plans and provide training programs and material targeted to the various needs of Board personnel, on sections of the *Freedom of Information and Protection of Privacy Act*

- Develop and deliver training related to records management procedures and information systems of Freedom of Information designated employees by determining user needs, preparing material in conjunction with other managers and scheduling and presenting sessions; amend training as required to reflect changes in the legislation

- Develop and deliver appropriate newsletters on updates to the legislation;

- Develop and present orientation sessions to managers and employees regarding the legislation, individual responsibilities, and Board policies and procedures; provide information and advice on interpretation of legislation, policies and procedures, and

- Perform other related duties as assigned

3.2.c. Freedom of Information Secretaries

The freedom of information (F.O.I.) secretaries report to the F.O.I. coordinator.

The F.O.I. secretaries will:

- Transcribe, organize, and type a variety of confidential reports, memos, minutes, and correspondence

- Receive telephone inquiries from internal and public sources and screen calls as appropriate

- Handle routine inquiries with respect to the *Freedom of Information and Protection of Privacy Act*

- Receive, sort, and distribute incoming mail and correspondence, maintain files and records

- Data enter information for request tracking system and generate pre-established reports

- Compile information and/or data from various sources from the Board as directed; maintain a diary system for meeting time limits under the *Act*

- Arrange appointments, meetings, and seminars as required; make all travel and accommodation arrangements as necessary

- Maintain and/or order office supplies and stationery as required, and

- Perform other related duties as assigned

4.0 Freedom of Information and Protection of Privacy System

In order to adequately implement access and privacy policy and to ensure timely and precise responses to requests for information, reviews before the information and privacy commissioner, privacy complaints and orders by the information and privacy commissioner, it is imperative to establish a system of contacts/liaisons throughout the Board. Therefore each vice-president and commissioner must designate divisional, departmental or sectional contacts to respond to directions of the F.O.I. coordinator. Similarly the chair of the governors, president, and chief appeal commissioner must designate contacts for their respective offices and for divisions and departments which report directly to them.

4.1 Responsibilities of Contacts

It is the responsibility of contacts to respond in a timely fashion to requests by the F.O.I. coordinator and F.O.I. analysts for information and for records.

It is the responsibility of contacts to assist in the implementation of policies related to access and privacy.

4.2 Freedom of Information Requests

All offices, divisions, departments, and sections must provide access to their records to the F.O.I. coordinator in order for the F.I.P.P. Office to ensure compliance with the requirements of F.I.P.P. All Board staff should be aware that such access is not optional at their discretion.

Freedom of Information (F.O.I.) requests will only be necessary if a requester has been refused access in the first instance by the office/division/department/section of the Board holding or being responsible for that information. Requesters of information should be encouraged first to seek information from that office/division/department/section. (Note, however, that nothing can prevent a requester from directly making a formal F.O.I. request. If a requester makes such a request to the office/division/department/section, the request should be sent immediately to the F.I.P.P. Office.)

If an office/division/department/section refuses access, it must inform the requester of his/her right to make a freedom of information request through the Board's F.I.P.P. Office.

F.O.I. requests should be made at the Board F.I.P.P. Office. F.O.I. requests must be made in writing (*F.I.P.P.*, Section 5). The F.I.P.P. Office will help requesters formulate requests (*F.I.P.P.*, Section 6).

Once a request comes into the F.I.P.P. Office, the F.O.I. analysts, the F.O.I. coordinator and/or office staff will notify the relevant contact to obtain copies of the record(s) being requested as well as concerns as to why the document or parts thereof should or should not be released; on the need to extend the time limit for responding; and on potential costs to the requester of fulfilling the request. Unless it is absolutely not practical, contacts must respond to direction from the F.I.P.P. Office within five working days. Timely response is necessary as there is a thirty-day time limit in *F.I.P.P.* (Section 7). While this can be extended (Section 10), extensions will be rare.

Once the F.O.I. analysts and coordinator receive the records in question and advice on release and/or extension of time limit for response, the F.O.I. coordinator will survey the records, evaluate the information and concerns thereto in light of *F.I.P.P.*, and make a decision regarding release of information. The F.I.P.P. Office will notify the section/department contact. If there is a serious question regarding this decision, the vice-president of the division or the president or chief appeal commissioner must ask the chair to review the F.O.I. coordinator's decision. Only in extraordinary circumstances should a review by the chair be necessary. divisions, departments, sections and offices are instructed to give their fullest cooperation to the coordinator.

Once a final decision is made, the F.O.I. coordinator will notify the requester as to that decision (*F.I.P.P.*, Section 8). Access and/or extension shall be carried out pursuant to Sections 9 and 10 of *F.I.P.P.* Further, requesters will be notified of their right to a review by the I.P.C. (Sections 8(1)(c)(iii), 53 and 63).

4.3 Freedom of Information Reviews

Requesters and third parties have the right to ask the I.P.C. to review access decisions made by the Board (*F.I.P.P.*, Section 52). They must do so within 30 days of the Board's decision and must do so in writing (*F.I.P.P.*, Section 53).

The I.P.C. has the power to authorize mediation before the formal review inquiry (*F.I.P.P.*, Section 55). In the event of either a mediation of a review, the I.P.C. will notify the Board's F.O.I. coordinator and request information and submissions. At that point, the coordinator will be in touch with the relevant F.O.I. contact. After gathering the relevant information, the F.O.I. coordinator will prepare and submit a response to the I.P.C.

4.4 Privacy Complaints

The I.P.C. has the power to review decisions made with respect to correction of personal information held by the Board and it has the power to investigate and make orders with respect to compliance with *F.I.P.P.* (Sections 42(1)(a), (b), 52(1) and 58(3)). One general area in which the I.P.C. may well be active is privacy protection.

The I.P.C. notifies the F.O.I. coordinator of privacy investigations. Upon such notification, the F.O.I. coordinator will attend at the relevant site with the I.P.C. investigator. Should any official of the Board be directly contacted by the I.P.C. respecting an investigation, that official must notify the F.O.I. coordinator. Once an I.P.C. investigation and order have been made, the F.O.I. coordinator will formulate an appropriate response.

5.0 Duties of Board Officers

In addition to the office and system established above, tasks related to F.I.P.P. will be carried out by other officials at the Board as described below.

5.1 The Senior Executive Committee

As the senior administrative body at the Board, the Senior Executive Committee has an interest in the efficient, effective and fair operation of the F.I.P.P. Office. Beyond that general interest, the Senior Executive Committee shall have the specific responsibilities of approving research agreements pursuant to Section 35 of *F.I.P.P.* and of approving fee waivers in excess of $10,000.

The President and Chief Executive Officer

The president and chief executive officer is the senior administrator of the Board and reports directly to the Board of Governors. As the senior administrator, the president and chief executive officer must be satisfied that Board operations as a whole are in compliance with F.I.P.P. legislation. Together with the general counsel and the F.O.I. coordinator, the president and chief executive officer has the same duties, powers or functions of the chair under the F.I.P.P. legislation, except the power to delegate under Section 66 of F.I.P.P. The final authority on all matters arising under the F.I.P.P. legislation remains with the chair. The day-to-day responsibility of managing the Board's F.I.P.P. Office and fulfilling the duties of the F.I.P.P. legislation will be undertaken by the F.I.P.P. coordinator. However, from time to time as required, the F.O.I. coordinator may consult with the chair, the president and chief executive officer, and/or the general counsel with respect to matters arising under the F.I.P.P. legislation.

5.3 The General Counsel

The general counsel of the Board is the principal legal advisor to the Board of Governors and all divisions of the Board. As the principal legal advisor to the organization, the general counsel must be satisfied that the organization meets the legal requirements of *F.I.P.P.* The general counsel of the Board, together with the president and chief executive officer, and the F.O.I. coordinator, has the same duties, power or functions as the chair under the F.I.P.P. legislation, except the power to delegate under Section 66 of *F.I.P.P.* The final authority on all matters arising under the F.I.P.P. legislation remains with the chair. The day-to-day responsibility of managing the Board's F.I.P.P. Office and fulfilling the duties of the F.I.P.P. legislation will be undertaken by the F.O.I. coordinator. However, from time to time as required, the F.O.I. coordinator may consult with the chair, the president and chief executive officer and/or the general counsel with respect to matters arising under the F.I.P.P. legislation. In particular, the F.O.I. coordinator will report to the general counsel respecting hearings before the information and privacy commissioner in which the Board is a participant and judicial reviews involving the Board. As well, the F.O.I. coordinator will report to the general counsel respecting administrative matters related to the Board's F.I.P.P. Office. The general counsel of the Board will also undertake the obligations of the position of the freedom of information coordinator in his or her absence.

5.4 Vice-President, Prevention

Section 25 of *F.I.P.P.* requires that public bodies disclose safety and health information to the public or affected groups or individuals where there is a situation of risk of significant harm. Since the Prevention Division is in the best position to assess such risks, it is appropriate that the vice-president and his/her directors shall have this responsibility.

5.5 The Controller

The Board has a centralized fee collection structure, the responsibility for which lies with the controller. This should continue in respect of *F.I.P.P.* and the controller shall oversee a fee collection system in respect of fees retrievable under *F.I.P.P.* and shall collect all such fees.

5.6 Program Directors and Managers

F.I.P.P. conditions the ways in which the Board may obtain and use information, particularly personal information. All Board directors and managers are charged with the responsibility of ensuring that the privacy obligations in *F.I.P.P.* are dealt with by

applying policies developed by the F.O.I. coordinator and with the responsibility of ensuring that information released in the normal course of business will be done within the constraints of *F.I.P.P.* and in accordance with policy development by and advice of the F.O.I. coordinator.

Terms of Reference for the Senior Executive Policy Committee

Date: **April 27, 1994**

These terms of reference state the mission, structure, and responsibilities of the "Senior Executive Policy Committee" of the Senior Executive Committee.

Mission Statement

The mission of the Senior Executive Policy Committee is to ensure strong senior executive involvement in the selection of policy alternatives, collection and analysis of stakeholder views and interests, and the selection and recommendation of alternatives to the governors by the Senior Executive Committee.

Structure

1. The Senior Executive Policy Committee (S.E.P.C.) will be chaired by the vice-president, Human Resources/Corporate Development. Other members will be appointed by Senior Executive Committee for specific terms or issues as determined by the Senior Executive Committee. The Board general counsel will be a permanent member of the S.E.P.C. The Board general counsel may delegate his/her authority to a Board officer. The president shall be an ex officio member of the Committee.

2. A quorum for a S.E.P.C. meeting shall consist of at least two members of the Senior Executive Committee and the general counsel or his or her delegate.

3. The S.E.P.C. shall meet no less than eight times per year. The agenda for the meeting will be circulated to the members at least one week in advance by the S.E.P.C. chair.

4. Minutes of the meetings, scheduling, materials, and other administrative issues will be the responsibility of the director of Policy and Research.

5. Copies of the minutes shall be forwarded to the Senior Executive Committee for information.

6. Any funds necessary to achieve the objectives of the S.E.P.C. shall be carried with the Policy and Research budget.

Responsibilities

1. The S.E.P.C. will assign priority to research and policy proposals.

2. The S.E.P.C. will review the research plans for specific policy items.

3. The S.E.P.C. is responsible for approving of contracts for external research or consultation on policy or research matters.

4. The S.E.P.C. shall in every case review in detail the policy implications of a given policy item. Such review shall include a review of the cost benefit analysis and the impact on the administration of the Workers' Compensation Board.

5. The S.E.P.C. may refer any policy document back for further research or public involvement to the Policy and Research Department.

6. The S.E.P.C. shall determine the scheduling of items for presentation to the Senior Executive Committee.

7. The S.E.P.C. shall make recommendations to the Senior Executive Committee regarding policy options or alternatives with respect to policy issues. In the event that the S.E.P.C. is unable to reach a conclusion or a unanimous recommendation with respect to a policy, the matter shall be referred to the Senior Executive Committee for further consideration.

8. An annual report of the S.E.P.C.'s activities shall be tabled with the S.E.C. on an annual basis by the end of October. The report will review the matters dealt with by the S.E.P.C. and contain a critical path listing of items currently in the policy development process.

Terms of Reference — Aircraft Operations Subcommittee

Date: December 14, 1993

These terms of reference state the mission, structure, protocol and responsibilities of the Aircraft Operations Subcommittee of the Governors' Committee for Regulation Review established by the governors of the Workers' Compensation Board of British Columbia.

Mission Statement

The mission of the Aircraft Operations Subcommittee is to assist the governors with the development of regulations for worker health and safety when working in proximity to aircraft operations.

The Subcommittee shall work within the context of and be guided by the document entitled, *Review and Development of Occupational Safety and Health Regulations* adopted by the governors on January 7, 1992.

The Subcommittee shall observe the principles of the regulation review process in carrying out its mission, for example:

- It shall be respectful of the interests of workers, employers, the community and the W.C.B.
- Its proceedings shall be open and participative
- It shall respect consensus and involve the parties with the most direct interest in outcomes

Structure

1. The Governors' Committee for Regulation Review shall appoint three persons representative of workers, three persons representative of employers, and two persons from W.C.B. staff seconded through the Secretariat who will provide advice, guidance and administrative support. The

Governors' Committee may seek participation of other seconded person(s) to assist the work of the Subcommittee. The Governors' Committee shall consult with worker and employer groups in the selection of worker and employer representatives.

2. The Subcommittee shall be chaired by one of the persons appointed from the W.C.B. staff. In that person's absence the second W.C.B. appointee shall serve as chair.

3. The Subcommittee shall report to the Governors' Committee for Regulation Review which, in consultation with the Regulation Advisory Committee, shall review any reports and recommendations issued by the Subcommittee.

4. The Subcommittee may request the presence at meetings of professional and expert persons considered necessary by the Subcommittee.

5. The Secretariat for Regulation Review shall provide administrative and advisory services to the Subcommittee. The chair of the Subcommittee shall consult with the coordinator of Regulation Review on matters which involve the expenditure of monies in Subcommittee activity; for example, arrangement of meetings at hotels, Subcommittee travel and persons whose presence is requested at meetings where that presence involves expenditure of monies.

Protocol

1. Where practicable, the agenda and any supporting materials shall be delivered to each member of the Subcommittee by the Secretariat for Regulation Review, not later than seven days prior to the date of the meeting.

2. The preferred method of decision making shall be through consensus.

3. Summaries shall be kept of each meeting of the Subcommittee and, after being signed and initialled by the chair of the Subcommittee for the meeting, shall be forwarded to the Secretariat for Regulation Review for retention.

4. The chairman of the governors and his designate are the official spokes-persons for the Subcommittee.

5. Members shall support any consensus or decision reached by the Subcommittee in which they have joined. Minority reports shall be included in any report of the Subcommittee at the request of any person(s) holding a minority opinion.

6. Persons seconded to the Secretariat for the purpose of participation on the subcommittee shall work within the terms of the document "Guidelines for Persons Seconded to the Secretariat."

7. The Subcommittee shall work within a time frame of March 1, 1994 to June 30, 1994.

Responsibilities

1. The Subcommittee shall develop regulatory proposals regarding the use of aircraft in occupational operations for submission to the Governors' Committee for Regulation Review.

2. The Subcommittee shall be guided by the perspective that effective regulations are those which:

   - Are achieved through participation and consensus
   - Clearly address workplace hazards
   - Define responsibilities and accountability
   - Clearly state the criteria for compliance
   - Are in plain language, technically competent, and easily understood
   - Provide a mechanism for ongoing review and update in areas subject to changing knowledge and technology
   - Affect workplace activity and conditions only to the extent necessary to address hazards
   - Address the diverse character of workplaces
   - Are compatible with, and do not overlap related regulations

3. The Subcommittee shall, in its deliberations, be cognizant of the documents:

   - *Industrial Health and Safety Regulations*
   - Public Forum on Health and Safety Regulation Review
   - *Occupational Safety and Health in British Columbia: An Administrative Inventory*

- Policy and Procedure Manual of the Prevention Division
- Relevant reports from other Subcommittees (for example the Agriculture Subcommittee and Equipment Safety Subcommittee)
- Coroner's recommendations relative to the Subcommittee's work
- Safety and design standards and codes currently in use
- Transport Canada statutes and regulations concerning aircraft

4. The Subcommittee shall ensure the following issues are addressed and reported on:

   - Regulations on the use of aircraft in Section 33 of the *Industrial Health and Safety Regulations*
   - Role of the various jurisdictions with authority over aircraft operations
   - Health and safety of workers in proximity to aircraft operations other than those who operate the aircraft and those whose work function is incidental to the operation of the aircraft (e.g. fuelling and loading/unloading)

5. Notwithstanding Clause 4, the Subcommittee may offer recommendations of a general nature on regulatory matters related to worker safety and health during the use of aircraft in occupational applications.

6. The final report of the Subcommittee shall provide proposals for regulations in as specific a manner as practicable, covering matters identified in Clauses 4 and 5. The drafting of actual regulations will be undertaken by the Secretariat at the direction of the Governors' Committee on Regulation Review. It is the intent of the process to provide the Subcommittee the opportunity for review of draft regulations and for comment to the Governors' Committee on Regulation Review prior to the draft regulations being released to the public.

7. In carrying out its mission and performing its responsibilities, the Subcommittee shall, at all times, be subject to the *Workers Compensation Act* and the bylaws and resolutions of the governors of the Workers' Compensation Board.

WORKERS' COMPENSATION
REPORTER

Terms of Reference — Firefighting and Emergency Rescue Subcommittee

Date: December 14, 1993

These terms of reference state the mission, structure, protocol and responsibilities of the Firefighting and Emergency Rescue Subcommittee of the Governors' Committee for Regulation Review established by the governors of the Workers' Compensation Board of British Columbia.

Mission Statement

The mission of the Firefighting and Emergency Rescue Subcommittee is to assist the governors with the development of regulations for worker safety and health during evacuation of workers, firefighting and emergency rescue of workers.

The Subcommittee shall work within the context of, and be guided by the document entitled, *Review and Development of Occupational Safety and Health Regulations* adopted by the governors on January 7, 1992.

The Subcommittee shall observe the principles of the regulation review process in carrying out its mission, for example:

- It shall be respectful of the interests of workers, employers, the community and the W.C.B.
- Its proceedings shall be open and participative
- It shall respect consensus and involve the parties with the most direct interest in outcomes

Structure

1. The Governors' Committee for Regulation Review shall appoint four persons representative of workers, four persons representative of employers, and two persons from W.C.B. staff seconded through the Secretariat

who will provide advice, guidance and administrative support. The Governors' Committee may seek participation of other seconded person(s) to assist the work of the Subcommittee. The Governors' Committee shall consult with worker and employer groups in the selection of worker and employer representatives.

2. The Subcommittee shall be chaired by one of the persons appointed from the W.C.B. staff. In that person's absence the second W.C.B. appointee shall serve as chair.

3. The Subcommittee shall report to the Governors' Committee for Regulation Review which, in consultation with the Regulation Advisory Committee, shall review any reports and recommendations issued by the Subcommittee.

4. The Subcommittee may request the presence at meetings of professional and expert persons considered necessary by the Subcommittee.

5. The Secretariat for Regulation Review shall provide administrative and advisory services to the Subcommittee. The chair of the Subcommittee shall consult with the coordinator of Regulation Review on matters which involve the expenditure of monies in Subcommittee activity; for example, arrangement of meetings at hotels, Subcommittee travel and persons whose presence is requested at meetings where that presence involves expenditure of moneys.

Protocol

1. Where practicable, the agenda and any supporting materials shall be delivered to each member of the Subcommittee by the Secretariat for Regulation Review, not later than seven days prior to the date of the meeting.

2. The preferred method of decision making shall be through consensus.

3. Summaries shall be kept of each meeting of the Subcommittee and, after being signed and initialed by the chair of the Subcommittee for the meeting, shall be forwarded to the Secretariat for Regulation Review for retention.

4. The chairman of the governors and his designate are the official spokes-persons for the Subcommittee.

5. Members shall support any consensus or decision reached by the Subcommittee in which they have joined. Minority reports shall be included in any report of the Subcommittee at the request of any person(s) holding a minority opinion.

6. Persons seconded to the Secretariat for the purpose of participation on the subcommittee shall work within the terms of the document "Guidelines for Persons Seconded to the Secretariat."

7. The Subcommittee shall work within a time frame of March 1, 1994 to July 31, 1994.

Responsibilities

1. The Subcommittee shall develop regulatory proposals on evacuation, firefighting, and emergency rescue for submission to the Governors' Committee for Regulation Review.

2. The Subcommittee shall be guided by the perspective that effective regulations are those which:

   - Are achieved through participation and consensus
   - Clearly address workplace hazards
   - Define responsibilities and accountability
   - Clearly state the criteria for compliance
   - Are in plain language, technically competent, and easily understood
   - Provide a mechanism for ongoing review and update in areas subject to changing knowledge and technology
   - Affect workplace activity and conditions only to the extent necessary to address hazards
   - Address the diverse character of workplaces
   - Are compatible with, and do not overlap related regulations

3. The Subcommittee shall, in its deliberations, be cognizant of the documents:

   - *Industrial Health and Safety Regulations*
   - Public Forum on Health and Safety Regulation Review
   - *Occupational Safety and Health in British Columbia: An Administrative Inventory*

- Policy and Procedure Manual of the Prevention Division
- Relevant reports from other Subcommittees (for example, the Occupational Hygiene Subcommittee and Equipment Safety Subcommittee)
- Mine rescue requirements in the Health, Safety and reclamation Code for Mines in B.C.
- Coroner's recommendations relative to the Subcommittee's work
- Safety and design standards and codes currently in use
- Summaries and other information available from the Working Group on General Conditions

4. The Subcommittee shall ensure the following issues are addressed and reported on:
   - Regulations on firefighting in Section 68 of the *Industrial Health and Safety Regulations*
   - Fire Protection, fire prevention, and emergency evacuation as covered by *Industrial Health and Safety Regulation* 8.84
   - High angle rescue
   - Fire/evacuation drills from the workplace
   - Physical fitness and training requirements for workers assigned to firefighting or emergency rescue duties

5. Notwithstanding Clause 4, the Subcommittee may offer recommendations of a general nature on regulatory matters related to worker safety and health during evacuation, firefighting and emergency rescue.

6. The final report of the Subcommittee shall provide proposals for regulations in as specific a manner as practicable, covering matters identified in Clauses 4 and 5. The drafting of actual regulations will be undertaken by the Secretariat at the direction of the Governors' Committee on Regulation Review. It is the intent of the process to provide the Subcommittee the opportunity for review of draft regulations and for comment to the Governors' Committee on Regulation Review.

7. In carrying out its mission and performing its responsibilities, the Subcommittee shall, at all times, be subject to the *Workers Compensation Act* and the bylaws and resolutions of the governors of the Workers' Compensation Board.

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Terms of Reference — Forestry Operations Subcommittee

Date: December 14, 1993

These terms of reference state the mission, structure, protocol and responsibilities of the Forestry Operations Subcommittee of the Governors' Committee for Regulation Review established by the governors of the Workers' Compensation Board of British Columbia.

Mission Statement

The mission of the Forestry Operations Subcommittee is to assist the governors with the development of regulations for worker safety and health during the cutting of trees and handling and transport of logs.

The Subcommittee shall work within the context of, and be guided by the document entitled, *Review and Development of Occupational Safety and Health Regulations* adopted by the governors on January 7, 1992.

The Subcommittee shall observe the principles of the regulation review process in carrying out its mission, for example:

- It shall be respectful of the interests of workers, employers, the community and the W.C.B.
- Its proceedings shall be open and participative
- It shall respect consensus and involve the parties with the most direct interest in outcomes

Structure

1. The Governors' Committee for Regulation Review shall appoint three persons representative of workers, three persons representative of employers, and two persons from W.C.B. staff seconded through the Secretariat who will provide advice, guidance and administrative support. The

Governors' Committee may seek participation of other seconded person(s) to assist the work of the Subcommittee. The Governors' Committee shall consult with worker and employer groups in the selection of worker and employer representatives.

2. The Subcommittee shall be chaired by one of the persons appointed from the W.C.B. staff. In that person's absence the second W.C.B. appointee shall serve as chair.

3. The Subcommittee shall report to the Governors' Committee for Regulation Review which, in consultation with the Regulation Advisory Committee, shall review any reports and recommendations issued by the Subcommittee.

4. The Subcommittee may request the presence at meetings of professional and expert persons considered necessary by the Subcommittee.

5. The Secretariat for Regulation Review shall provide administrative and advisory services to the Subcommittee. The chair of the Subcommittee shall consult with the coordinator of Regulation Review on matters which involve the expenditure of monies in Subcommittee activity; for example, arrangement of meetings at hotels, Subcommittee travel and persons whose presence is requested at meetings where that presence involves expenditure of monies.

Protocol

1. Where practicable, the agenda and any supporting materials shall be delivered to each member of the Subcommittee by the Secretariat for Regulation Review, not later than seven days prior to the date of the meeting.

2. The preferred method of decision making shall be through consensus.

3. Summaries shall be kept of each meeting of the Subcommittee and, after being signed and initialed by the chair of the Subcommittee for the meeting, shall be forwarded to the Secretariat for Regulation Review for retention.

4. The chairman of the governors and his designate are the official spokespersons for the Subcommittee.

5. Members shall support any consensus or decision reached by the Subcommittee in which they have joined. Minority reports shall be included in any report of the Subcommittee at the request of any person(s) holding a minority opinion.

6. Persons seconded to the Secretariat for the purpose of participation on the subcommittee shall work within the terms of the document "Guidelines for Persons Seconded to the Secretariat."

7. The Subcommittee shall work within a time frame of March 1, 1994 to July 31, 1994.

Responsibilities

1. The Subcommittee shall develop regulatory proposals for cutting trees and the handling and transport of logs for submission to the Governors' Committee for Regulation Review.

2. The Subcommittee shall be guided by the perspective that effective regulations are those which:

   - Are achieved through participation and consensus
   - Clearly address workplace hazards
   - Define responsibilities and accountability
   - Clearly state the criteria for compliance
   - Are in plain language, technically competent, and easily understood
   - Provide a mechanism for ongoing review and update in areas subject to changing knowledge and technology
   - Affect workplace activity and conditions only to the extent necessary to address hazards
   - Address the diverse character of workplaces
   - Are compatible with, and do not overlap related regulations

3. The Subcommittee shall, in its deliberations, be cognizant of the documents:

   - *Industrial Health and Safety Regulations*
   - Public Forum on Health and Safety Regulation Review
   - *Occupational Safety and Health in British Columbia: An Administrative Inventory*

- Policy and Procedure Manual of the Prevention Division
- Relevant reports from other Subcommittees (for example the Occupational Hygiene Subcommittee and Equipment Safety Subcommittee)
- Coroner's recommendations relative to the Subcommittee's work
- Safety and design standards and codes currently in use
- "Logging Safety: Strategies for Change," Logging Industry Safety Forum Steering Committee Report
- W.C.B. Response to "Logging Safety: Strategies for Change," September 1992

4. The Subcommittee shall ensure the following issues are addressed and reported on:

- Logging regulations in Section 60 of the *Industrial Health and Safety Regulations*
- Application of "logging" regulations to other occupational operations
- Slope limitations for use of logging equipment such as skidders and feller bunchers
- Workers riding on a skyline
- Guyline in standing timber (during thinning operations)
- Topping intermediate support trees
- Hot logging with grapple skidder
- Load limit on a log truck
- Faller training and certification program
- Leaving wildlife trees
- Alternate harvesting methods to clearcut
- Restrictions on public use of radio controlled forest roads

5. Notwithstanding Clause 4, the Subcommittee may offer recommendations of a general nature on regulatory matters related to worker safety and health during the cutting of trees, handling logs, logging and other forestry operations.

6. The final report of the Subcommittee shall provide proposals for regulations in as specific a manner as practicable, covering matters identified in Clauses 4 and 5. The drafting of actual regulations will be undertaken by the Secretariat at the direction of the Governors' Committee on Regulation Review.

   It is the intent of the process to provide the Subcommittee the opportunity for review of draft regulations and for comment to the Governors' Committee on Regulation Review prior to the draft regulations being released to the public.

7. In carrying out its mission and performing its responsibilities, the Subcommittee shall, at all times, be subject to the *Workers Compensation Act* and the bylaws and resolutions of the governors of the Workers' Compensation Board.

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Terms of Reference — Medical Programs Subcommittee

Date: December 14, 1993

These terms of reference state the mission, structure, protocol and responsibilities of the Medical Programs Subcommittee of the Governors' Committee for Regulation Review established by the governors of the Workers' Compensation Board of British Columbia.

Mission Statement

The mission of the Medical Programs Subcommittee is to assist the governors with the development of workplace regulations and programs related to the medical and rehabilitative aspects of worker health and safety.

The Subcommittee shall work within the context of, and be guided by the document entitled, *Review and Development of Occupational Safety and Health Regulations* adopted by the governors on January 7, 1992.

The Subcommittee shall observe the principles of the regulation review process in carrying out its mission, for example:

- It shall be respectful of the interests of workers, employers, the community and the W.C.B.
- Its proceedings shall be open and participative
- It shall respect consensus and involve the parties with the most direct interest in outcomes

Structure

1. The Governors' Committee for Regulation Review shall appoint four persons representative of workers, four persons representative of employers, and two persons from W.C.B. staff seconded through the Secretariat who will provide advice, guidance and administrative support. The

Governors' Committee may seek participation of other seconded person(s) to assist the work of the Subcommittee. The Governors' Committee shall consult with worker and employer groups in the selection of worker and employer representatives. In addition, the Governors' Committee shall ask for representatives of the Employment Standards Branch, the Human Rights Council and the Ministry of Women's Equality to act as advisers in the deliberations of the Subcommittee which are related to the roles of these other agencies.

2. The Subcommittee shall be chaired by one of the persons appointed from the W.C.B. staff. In that person's absence a second W.C.B. appointee shall serve as chair.

3. The Subcommittee shall report to the Governors' Committee for Regulation Review which, in consultation with the Regulation Advisory Committee, shall review any reports and recommendations issued by the Subcommittee.

4. The Subcommittee may request the presence at meetings of professional and expert persons considered necessary by the Subcommittee.

5. The Secretariat for Regulation Review shall provide administrative and advisory services to the Subcommittee. The chair of the Subcommittee shall consult with the coordinator of Regulation Review on matters which involve the expenditure of monies in Subcommittee activity; for example, arrangement of meetings at hotels, Subcommittee travel and persons whose presence is requested at meetings where that presence involves expenditure of monies.

Protocol

1. Where practicable, the agenda and any supporting materials shall be delivered to each member of the Subcommittee by the Secretariat for Regulation Review, not later than seven days prior to the date of the meeting.

2. The preferred method of decision making shall be through consensus.

3. Summaries shall be kept of each meeting of the Subcommittee and, after being signed and initialed by the chair of the Subcommittee for the meeting, shall be forwarded to the Secretariat for Regulation Review for retention.

4. The chairman of the governors and his designate are the official spokes-persons for the Subcommittee.

5. Members shall support any consensus or decision reached by the Subcommittee in which they have joined. Minority reports shall be included in any report of the Subcommittee at the request of any person(s) holding a minority opinion.

6. Persons seconded to the Secretariat for the purpose of participation on the subcommittee shall work within the terms of the document "Guidelines for Persons Seconded to the Secretariat."

7. The Subcommittee shall work within a time frame of March 1, 1994 to July 31, 1994.

Responsibilities

1. The Subcommittee shall develop regulatory and program proposals on medical and rehabilitative aspects of worker health and safety for submission to the Governors' Committee for Regulation Review.

2. The Subcommittee shall be guided by the perspective that effective regulations are those which:

   - Are achieved through participation and consensus
   - Clearly address workplace hazards
   - Define responsibilities and accountability
   - Clearly state the criteria for compliance
   - Are in plain language, technically competent, and easily understood
   - Provide a mechanism for ongoing review and update in areas subject to changing knowledge and technology
   - Affect workplace activity and conditions only to the extent necessary to address hazards
   - Address the diverse character of workplaces
   - Are compatible with, and do not overlap related regulations

3. The Subcommittee shall, in its deliberations, be cognizant of the documents:

   - *Industrial Health and Safety Regulations*

- The *Occupational First Aid Regulations*
- Public Forum on Health and Safety Regulation Review
- *Occupational Safety and Health in British Columbia: An Administrative Inventory*
- Policy and Procedure Manual of the Prevention Division
- Relevant reports from other Subcommittees (for example, the Occupational Hygiene Subcommittee)
- Coroner's recommendations relative to the Subcommittee's work
- Relevant standards, regulations and legislation
- Agreements of the R.A.C. Working Group on Responsibilities related to the mandate of the Subcommittee
- *Report on the Task Force on Alcohol and Drug Abuse in the Workplace, 1987*

4. The Subcommittee shall ensure the following issues are addressed and reported on:

- The role of medical monitoring of workers with respect to physical, chemical, and biological hazards and the establishment of biological exposure indices
- Section 78, Medical Programs and Investigations, published with the *Industrial Health and Safety Regulations*
- Safeguards for a worker's right to privacy
- The role of records of exposure in the workplace (both environmental records such as air contaminants and biological monitoring)
- The role of medical professionals in the workplace, including occupational health nurses and physicians
- The matter of protective reassignment and precautionary leave of workers
- Regulatory and program proposals related to impairment from alcohol or other substance abuse (*Industrial Health and Safety Regulations* 8.28 and 8.30 refer)

- The matter of shift length and its impact on safety in various circumstances of work

- Post trauma counselling

5. Notwithstanding Clause 4, the Subcommittee may offer recommendations of a general nature on medical or rehabilitative aspects of worker health and safety regulations and programs.

6. The final report of the Subcommittee shall provide proposals for regulations and programs in as specific a manner as practicable, covering matters identified in Clauses 4 and 5. The drafting of actual regulations will be undertaken by the Secretariat at the direction of the Governors' Committee on Regulation Review. It is the intent of the process to provide the Subcommittee the opportunity for review of draft regulations and for comment to the Governors' Committee on Regulation Review.

7. In carrying out its mission and performing its responsibilities, the Subcommittee shall, at all times, be subject to the *Workers Compensation Act* and the bylaws and resolutions of the governors of the Workers' Compensation Board.

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Terms of Reference — Oil and Gas Subcommittee

Date: December 14, 1993

These terms of reference state the mission, structure, protocol and responsibilities of the Oil and Gas Subcommittee of the Governors' Committee for Regulation Review established by the governors of the Workers' Compensation Board of British Columbia.

Mission Statement

The mission of the Oil and Gas Subcommittee is to assist the governors with the development of regulations for worker safety and health during the exploration, drilling, producing, servicing, refining, and distributing of oil and natural gas, including pipeline distribution.

The Subcommittee shall work within the context of and be guided by the document entitled, *Review and Development of Occupational Safety and Health Regulations* adopted by the governors on January 7, 1992.

The Subcommittee shall observe the principles of the regulation review process in carrying out its mission for example:

- It shall be respectful of the interests of workers, employers, the community and the W.C.B.
- Its proceedings shall be open and participative
- It shall respect consensus and involve the parties with the most direct interest in outcomes

Structure

1. The Governors' Committee for Regulation Review shall appoint three persons representative of workers, three persons representative of employers, and two persons from W.C.B. staff seconded through the Secretariat

who will provide advice, guidance and administrative support. The Governors' Committee may seek participation of other seconded person(s) to assist the work of the Subcommittee. The Governors' Committee shall consult with worker and employer groups in the selection of worker and employer representatives.

2. The Subcommittee shall be chaired by one of the persons appointed from the W.C.B. staff. In that person's absence the second W.C.B. appointee shall serve as chair.

3. The Subcommittee shall report to the Governors' Committee for Regulation Review which, in consultation with the Regulation Advisory Committee, shall review any reports and recommendations issued by the Subcommittee.

4. The Subcommittee may request the presence at meetings of professional and expert persons considered necessary by the Subcommittee.

5. The Secretariat for Regulation Review shall provide administrative and advisory services to the Subcommittee. The chair of the Subcommittee shall consult with the coordinator of Regulation Review on matters which involve the expenditure of monies in Subcommittee activity for example, arrangement of meetings at hotels, Subcommittee travel and persons whose presence is requested at meetings where that presence involves expenditure of monies.

Protocol

1. Where practicable, the agenda and any supporting materials for an upcoming meeting shall be delivered to each member of the Subcommittee by the Secretariat for Regulation Review, not later than seven days prior to the date of the meeting.

2. The preferred method of decision making shall be through consensus.

3. Summaries shall be kept of each meeting of the Subcommittee and, after being signed and initialed by the chair of the Subcommittee for the meeting, shall be forwarded to the Secretariat for Regulation Review for retention.

4. The chairman of the governors and his designate are the official spokes-persons for the Subcommittee.

5. Members shall support any consensus or decision reached by the Subcommittee in which they have joined. Minority reports shall be included in any report of the Subcommittee at the request of any person(s) holding a minority opinion.

6. Persons seconded to the Secretariat for the purpose of participation on the subcommittee shall work within the terms of the document "Guidelines for Persons Seconded to the Secretariat".

7. The Subcommittee shall work within a time frame of March 1, 1994 to July 31, 1994.

Responsibilities

1. The Subcommittee shall develop regulatory proposals on exploration, drilling, producing, servicing, refining and distributing of oil and natural gas, and related products, for submission to the Governors' Committee for Regulation Review.

2. The Subcommittee shall be guided by the perspective that effective regulations are those which:

   - Are achieved through participation and consensus
   - Clearly address workplace hazards
   - Define responsibilities and accountability
   - Clearly state the criteria for compliance
   - Are in plain language, technically competent, and easily understood
   - Provide a mechanism for ongoing review and update in areas subject to changing knowledge and technology
   - Affect workplace activity and conditions only to the extent necessary to address hazards
   - Address the diverse character of workplaces
   - Are compatible with, and do not overlap related regulations

3. The Subcommittee shall, in its deliberations, be cognizant of the documents:

   - *Industrial Health and Safety Regulations*
   - Public Forum on Health and Safety Regulation Review

- *Occupational Safety and Health in British Columbia: An Administrative Inventory*
- Policy and Procedure Manual of the Prevention Division
- Relevant reports from other Subcommittees (for example the Occupational Hygiene Subcommittee and Equipment Safety Subcommittee)
- Coroner's recommendations relative to the Subcommittee's work
- Safety and design standards and codes currently in use

4. The Subcommittee shall ensure the following issues are addressed and reported on:

   - Regulations on the petroleum and natural gas exploration, drilling, production and servicing industry in Section 72 of the *Industrial Health and Safety Regulations*
   - The rigging up, operation, tear down, and transport of drilling and servicing equipment
   - Requiring an inspection and/or certification of a drill rig after each move
   - Requiring hydraulic tools to replace spinning chains and air tuggers on drill rigs
   - Requirements under the *Gas Act* to be referenced in W.C.B. regulation
   - Responsibility on multi-employer worksites; for example, in pipeline distribution systems
   - Role of the various jurisdictions with authority over oil and gas industry operations

5. Notwithstanding Clause 4, the Subcommittee may offer recommendations of a general nature on regulatory matters related to worker safety and health in the oil and gas industry.

6. The final report of the Subcommittee shall provide proposals for regulations in as specific a manner as practicable, covering matters identified in Clauses 4 and 5. The drafting of actual regulations will be undertaken by the Secretariat at the direction of the Governors' Committee on Regulation

Review. It is the intent of the process to provide the Subcommittee the opportunity for review of draft regulations and for comment to the Governors' Committee on Regulation Review.

7. In carrying out its mission and performing its responsibilities, the Subcommittee shall, at all times, be subject to the *Workers Compensation Act* and the bylaws and resolutions of the governors of the Workers' Compensation Board.

Terms of Reference — Personal Protective Equipment Subcommittee

Date: December 14, 1993

These terms of reference state the mission, structure, protocol and responsibilities of the Personal Protective Equipment Subcommittee of the Governors' Committee for Regulation Review established by the governors of the Workers' Compensation Board of British Columbia.

Mission Statement

The mission of the Personal Protective Equipment Subcommittee is to assist the governors with the development of regulations related to the selection, use and maintenance of personal protective equipment.

The Subcommittee shall work within the context and be guided by the document entitled, *Review and Development of Occupational Safety and Health Regulations* adopted by the governors on January 7, 1992.

The Subcommittee shall observe the principles of the regulation review process in carrying out its mission, for example:

- It shall be respectful of the interests of workers, employers, the community and the W.C.B.
- Its proceedings shall be open and participative
- It shall respect consensus and involve the parties with the most direct interest in outcomes

Structure

1. The Governors' Committee for Regulation Review shall appoint three persons representative of workers, three persons representative of employers, and two persons from W.C.B. staff seconded through the Secretariat

who will provide advice, guidance and administrative support. The Governors' Committee shall consult with worker and employer groups in the selection of worker and employer representatives.

2. The Subcommittee shall be chaired by one of the persons appointed from the W.C.B. staff. In that person's absence the second W.C.B. appointee shall serve as chair.

3. The Subcommittee shall report to the Governors' Committee for Regulation Review which, in consultation with the Regulation Advisory Committee, shall review any reports and recommendations issued by the Subcommittee.

4. The Subcommittee may request the presence at meetings of professional and expert persons considered necessary by the Subcommittee.

5. The Secretariat for Regulation Review shall provide administrative and advisory services to the Subcommittee. The chair of the Subcommittee shall consult with the coordinator of Regulation Review on matters which involve the expenditure of monies in Subcommittee activity; for example, arrangement of meetings at hotels, Subcommittee travel and persons whose presence is requested at meetings where that presence involves expenditure of monies.

Protocol

1. Where practicable, the agenda and any supporting materials shall be delivered to each member of the Subcommittee by the Secretariat for Regulation Review, not later than seven days prior to the date of the meeting.

2. The preferred method of decision making shall be through consensus.

3. Summaries shall be kept of each meeting of the Subcommittee and, after being signed and initialed by the chair of the Subcommittee for the meeting, shall be forwarded to the Secretariat for Regulation Review for retention.

4. The chairman of the governors and his designate are the official spokes-persons for the Subcommittee.

5. Members shall support any consensus or decision reached by the Subcommittee in which they have joined. Minority reports shall be included in any report of the Subcommittee at the request of any person(s) holding a minority opinion.

6. Persons seconded to the Secretariat for the purpose of participation on the subcommittee shall work within the terms of the document "Guidelines for Persons Seconded to the Secretariat."

7. The Subcommittee shall work within a time frame of March 1, 1994 to June 30, 1994.

Responsibilities

1. The Subcommittee shall develop regulatory proposals on the selection, use and maintenance of personal protective equipment for submission to the Governors' Committee for Regulation Review.

2. The Subcommittee shall be guided by the perspective that effective regulations are those which:

   - Are achieved through participation and consensus
   - Clearly address workplace hazards
   - Define responsibilities and accountability
   - Clearly state the criteria for compliance
   - Are in plain language, technically competent, and easily understood
   - Provide a mechanism for ongoing review and update in areas subject to changing knowledge and technology
   - Affect workplace activity and conditions only to the extent necessary to address hazards
   - Address the diverse character of workplaces
   - Are compatible with, and do not overlap related regulations

3. The Subcommittee shall, in its deliberations, be cognizant of the documents:

   - *Industrial Health and Safety Regulations*
   - *Agricultural Operations Regulations*
   - *Fishing Operations Regulations*

- Public Forum on Health and Safety Regulation Review
- *Occupational Safety and Health in British Columbia: An Administrative Inventory*
- Policy and Procedure Manual of the Prevention Division
- Relevant reports from other Subcommittees (for example the Occupational Hygiene Subcommittee and Equipment Safety Subcommittee)
- Coroner's recommendations relative to the Subcommittee's work
- Safety and design standards and codes currently in use

4. The Subcommittee shall ensure the following issues are addressed and reported on:

   - Regulations on personal protective equipment in Section 14 of the *Industrial Health and Safety Regulations*, particularly with respect to worker safety, for example:
     - Requirements for head and foot protection
     - Criteria for selecting foot, head, and eye protection
     - Limitations on wearing contact lenses
     - Requirements for high visibility clothing
     - Buoyancy equipment
   - Provision and use of clothing and protective equipment in *Industrial Health and Safety Regulation* 8.14
   - The safety and human rights issues with respect to personal protective equipment

   Note: The Occupational Hygiene Subcommittee has reviewed personal protective equipment requirements with respect to respirators, hearing protectors, and other means of protecting worker health. The Working Group on Responsibilities has a mandate to develop final recommendations on matters of responsibilities for provision and use of clothing and personal protective equipment.

5. Notwithstanding Clause 4, the Subcommittee may offer recommendations of a general nature on regulatory matters related to personal protective equipment.

6. The final report of the Subcommittee shall provide proposals for regulations in as specific a manner as practicable, covering matters identified in Clauses 4 and 5. The drafting of actual regulations will be undertaken by the Secretariat at the direction of the Governors' Committee on Regulation Review. It is the intent of the process to provide the Subcommittee the opportunity for review of draft regulations and for comment to the Governors' Committee on Regulation Review.

7. In carrying out its mission and performing its responsibilities, the Subcommittee shall, at all times, be subject to the *Workers Compensation Act* and the bylaws and resolutions of the governors of the Workers' Compensation Board.

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Terms of Reference — Wood Products Manufacturing Subcommittee

Date: December 14, 1993

These terms of reference state the mission, structure, protocol and responsibilities of the Wood Products Manufacturing Subcommittee of the Governors' Committee for Regulation Review established by the governors of the Workers' Compensation Board of British Columbia.

Mission Statement

The mission of the Wood Products Manufacturing Subcommittee is to assist the governors with the development of regulations for worker health and safety during the processing of logs and other raw wood into value-added products.

The Subcommittee shall work within the context of and be guided by the document entitled, *Review and Development of Occupational Safety and Health Regulations* adopted by the governors on January 7, 1992.

The Subcommittee shall observe the principles of the regulation review process in carrying out its mission; for example:

- It shall be respectful of the interests of workers, employers, the community and the W.C.B.
- Its proceedings shall be open and participative
- It shall respect consensus and involve the parties with the most direct interest in outcomes

Structure

1. The Governors' Committee for Regulation Review shall appoint three persons representative of workers, three persons representative of employers, and two persons from W.C.B. staff seconded through the Secretariat

who will provide advice, guidance and administrative support. The Governors' Committee may seek participation of other seconded person(s) to assist the work of the Subcommittee. The Governors' Committee shall consult with worker and employer groups in the selection of worker and employer representatives.

2. The Subcommittee shall be chaired by one of the persons appointed from the W.C.B. staff. In that person's absence the second W.C.B. appointee shall serve as chair.

3. The Subcommittee shall report to the Governors' Committee for Regulation Review which, in consultation with the Regulation Advisory Committee, shall review any reports and recommendations issued by the Subcommittee.

4. The Subcommittee may request the presence at meetings of professional and expert persons considered necessary by the Subcommittee.

5. The Secretariat for Regulation Review shall provide administrative and advisory services to the Subcommittee. The chair of the Subcommittee shall consult with the coordinator of Regulation Review on matters which involve the expenditure of monies in Subcommittee activity; for example, arrangement of meetings at hotels, Subcommittee travel and persons whose presence is requested at meetings where that presence involves expenditure of monies.

Protocol

1. Where practicable, the agenda and any supporting materials shall be delivered to each member of the Subcommittee by the Secretariat for Regulation Review, not later than seven days prior to the date of the meeting.

2. The preferred method of decision making shall be through consensus.

3. Summaries shall be kept of each meeting of the Subcommittee and, after being signed and initialed by the chair of the Subcommittee for the meeting, shall be forwarded to the Secretariat for Regulation Review for retention.

4. The chairman of the governors and his designate are the official spokes-persons for the Subcommittee.

5. Members shall support any consensus or decision reached by the Subcommittee in which they have joined. Minority reports shall be included in any report of the Subcommittee at the request of any person(s) holding a minority opinion.

6. Persons seconded to the Secretariat for the purpose of participation on the subcommittee shall work within the terms of the document "Guidelines for Persons Seconded to the Secretariat."

7. The Subcommittee shall work within a time frame of March 1, 1994 to July 31, 1994.

Responsibilities

1. The Subcommittee shall develop regulatory proposals for worker health and safety in wood products manufacturing for submission to the Governors' Committee for Regulation Review.

2. The Subcommittee shall be guided by the perspective that effective regulations are those which:

   - Are achieved through participation and consensus
   - Clearly address workplace hazards
   - Define responsibilities and accountability
   - Clearly state the criteria for compliance
   - Are in plain language, technically competent, and easily understood
   - Provide a mechanism for ongoing review and update in areas subject to changing knowledge and technology
   - Affect workplace activity and conditions only to the extent necessary to address hazards
   - Address the diverse character of workplaces
   - Are compatible with, and do not overlap related regulations

3. The Subcommittee shall, in its deliberations, be cognizant of the documents:

   - *Industrial Health and Safety Regulations*
   - Public Forum on Health and Safety Regulation Review
   - *Occupational Safety and Health in British Columbia: An Administrative Inventory*

- Policy and Procedure Manual of the Prevention Division
- Relevant reports from other Subcommittees (for example the Electrical Safety Subcommittee and Equipment Safety Subcommittee)
- Coroner's recommendations relative to the Subcommittee's work
- Safety and design standards and codes currently in use

4. The Subcommittee shall ensure the following issues are addressed and reported on:

   - Regulations on sawmill, shinglemill, and woodworking manufacturing and processing in Sections 62, 64 and 66 of the *Industrial Health and Safety Regulations*

5. Notwithstanding Clause 4, the Subcommittee may offer recommendations of a general nature on regulatory matters related to worker safety in wood products manufacturing.

6. The final report of the Subcommittee shall provide proposals for regulations in as specific a manner as practicable, covering matters identified in Clauses 4 and 5. The drafting of actual regulations will be undertaken by the Secretariat at the direction of the Governors' Committee on Regulation Review. It is the intent of the process to provide the opportunity for review of draft regulations and for comment to the Governors' Committee on Regulation Review.

7. In carrying out its mission and performing its responsibilities, the Subcommittee shall, at all times, be subject to the *Workers Compensation Act* and the bylaws and resolutions of the governors of the Workers' Compensation Board.