Royal Commission on Workers’ Compensation in BC

Compensation Services (Part 3)

Final Report

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by

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INTRODUCTION

The Terms of Reference for the Royal Commission on Workers’ Compensation in BC direct it to examine the statutory framework, mandate, structure, organization, governance and administration of the British Columbia workers’ compensation system in order to meet the needs of the people of British Columbia for a high quality public system that is equitable, effective and efficient in the context of changing workplaces, and consistent with the underlying principles of workers’ compensation in British Columbia, namely:

(a) accident prevention
(b) no fault compensation
(c) collective employer liability
(d) industry funding
(e) universal coverage, and
(f) administrative adjudication

This report examines the administration of the Compensation Services Division of the Workers’ Compensation Board of BC (the Board). It is the final part in a three-part series of reports for the Royal Commission on Compensation Services and benefits. The first part provides a program overview, and the second part addresses specific issues such as benefit adequacy and equity.

This report addresses several concerns raised in submissions to the Royal Commission. Its conclusions are based on reviews of Compensation Services Division documents including policy and procedure manuals, planning documents, audits, internal and external research studies, administrative inventories, and analyses of data on activities and outcomes provided by the Compensation Services Division on the request of the commission. Presentations by Board personnel to the Royal Commission, and personal interviews with Board personnel, also provided useful information. Information on workers compensation programs from other jurisdictions is also considered where relevant.
The Rehabilitation Services section of the Rehabilitation and Compensation Services Division is addressed in a separate report.

The structure for the analyses conducted for this report was derived from two primary sources:

- the Auditor General of British Columbia’s Accountability Framework\(^1\)
- the Twelve Attributes of Effectiveness developed by the Canadian Comprehensive Auditing Foundation\(^2\)

Conclusions are summarized according to the twelve effectiveness attributes.

At the time of the Royal Commission the Board was undergoing tremendous change. All Divisions had introduced a series of new initiatives, but the Compensation Services Division was probably the division undergoing the greatest transformation. Virtually every job in the division was changing. A number of functions were being contracted out.

The Royal Commission was informed of the problems that the Board had had that led up to this change. The past was described in terms of a “service failure”, prior to the new administration and the Strategic Plan of 1996. Examples of problems clients had had in the past with the Board were described by Board management, including multiple handoffs, long waits for payment and pension decisions, delays in treatment and failure of return-to-work interventions. Complaints heard in submissions to the Royal Commission were attributed by the Board, in large part, to these troubled times.

In the midst of this kind of change, the Board could only provide reassurance that the new strategies and processes would eventually pay off, by showing that the changes were well conceived, and in some cases by showing that similar strategies were in place with some success in other jurisdictions. It was really too early for the Board’s Key Performance Indicators and evaluations to show the kinds of positive impacts expected


from the new strategies. Furthermore, some of the new strategies, like Case Management, were still in the pilot phase and had not yet been rolled out across the whole organization. Also, over the course of the Royal Commission, the Board continued to test and modify its strategies.

Responses from labour and employer groups to the new initiatives ranged from favourable, to “cautiously optimistic”, to oppositional, with warnings about the potential unwelcome side-effects of the change. For example, Alan Winter, representative for the Employers’ Coordinating Group, stated that employers were very much in support of the various initiatives that the Board has in place with respect to external service providers and expedited services -- visiting specialists clinics, expedited consultations, expedited surgical access, direct access initiatives for diagnostics, and free standing surgical facilities\(^3\). Nevertheless, based on their experiences in the past, stakeholders had some difficulty accepting that the changes were going to truly transform the Board. For example, John Steeves, BC Federation of Labour, stated in his presentation to the Royal Commission\(^4\) that:

> The Board purports to be in transition to a new Case Management Model of adjudication. There is the promise of increased service to workers and they are certainly in favour of that possibility. However, for workers there is an issue of whether this is a new model with solutions to the old problems or whether it is really a continuation of the old problems but given a new name.

Similarly, Jim Sayre, Community Legal Assistance Society,\(^5\) stated, in his presentation on behalf of injured workers for the Royal Commission:

> We are cautiously optimistic about the case management proposal that the Board relied upon so heavily during its presentations as an answer to workers’ complaints. As the process was described by the Board’s speakers, the injured workers will (or should) become much more a partner in the process of managing

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\(^3\) Presentation by Alan Winter, Employers’ Coordinating Group, to the Royal Commission, April 8, 1998.

\(^4\) Presentation by John Steeves, BC Federation of Labour, to the Royal Commission, April 8, 1998.

\(^5\) Royal Commission on Workers’ Compensation. Presentation on Behalf of Injured Workers. Workers’ Compensation For the 21\(^{st}\) Century. (no date; prepared for presentations to the Royal Commission in April, 1998) (p.18-19)
his claim, treatment, and rehabilitation, and there should be less reason for serious dispute over the compensation decisions that will occur along the way. The best indication that this is true (or otherwise) will be the trend in appeal rates over the next few years as the process is implemented across B.C. and becomes settled.

The Commission cannot, of course, wait that long, nor should it do so. We ask that many of the positive promises made by the Board during the presentations be adopted by the Commission, not as simply an acceptable policy or practice, but as principles of conduct to be contained in the new legislation.

Therefore, it is difficult to conclude at this stage whether or not the strategies are effective or how they will eventually evolve. It is possible to comment, however, on whether or not they seem to address the right issues, in particular, the issues raised by stakeholders over the years with respect to the functioning of the system. As well, some of the changes were inevitable and long overdue, such as electronic claim filing. It is also possible to address the extent to which the strategies are being monitored effectively, and where some concerns might continue to exist.

1.0 Clear Objectives

1.1 Management Direction

Definition: The extent to which the objectives of an organization, its component programs or lines of business, and its employees, are clear, well-integrated and understood, and appropriately reflected in the organization’s plans, structure, delegations of authority and decision-making processes.

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6 Definitions of the CCAF 12 Effectiveness Attributes are taken from p.15-16 of Putting Theory Into Practice, referenced above.
Findings:

Fair Compensation

The Board has been relatively consistent in its focus upon “fair compensation” as the primary objective of Compensation Services. The key objective of Compensation Services appears to be to provide fair (equitable) compensation, as illustrated by the WCB’s statements below.

Fair compensation could have a number of components including:

- adequacy (in terms of level and duration);
- timeliness (such that income continuity is maintained);
- horizontal equity (across workers/dependents with similar circumstances); and,
- vertical equity (across workers/dependents in different circumstances).

The first two components provide for “income security”, the latter two relate more to “consistency” in service delivery.

The objective of “fair compensation” has been in place at the Board at least since the early 1990s. For example, the WCB’s Mission Statement adopted by the Board of Governors in 1991 was (italics added):

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

Subsequently, in January 1995, the Compensation Services Division’s\(^7\) Mission Statement was (p.1):

\(^7\) At this time, the division included Vocational Rehabilitation and Medical Services, but not the Rehabilitation Centre.
Together with workers and employers, the Compensation Services Division is committed to determining appropriate compensation and facilitating early and safe return to work.

More recently, the WCB’s 1997 Annual Report states that one of the goals the WCB is currently pursuing is (p.1):

*Fair compensation* for workers suffering from an occupational injury or illness.

Fair compensation in terms of income security or income continuity is a key element of the WCB’s current Mission Statement, as outlined in its Strategic Plan, as well as in the Rehabilitation and Compensation Services Division’s 1997 and 1998 Business Plans (p.2):

To strengthen the trust of workers and employers in the mutual insurance of safe workplaces with *income security* and safe return to work for injured workers.

(italics added)

Similarly, the WCB’s 1996 Annual Report states that Compensation Services (p.21):

...seeks to provide *uninterrupted income* for injured workers by processing compensation benefits quickly and fairly.

Equitable compensation is one of the “critical factors” outlined in the WCB’s Strategic Plan for the Board as a whole, which also include:

- superior service to injured workers and their families; and,
- a fully funded financial status.

Thus, while fairness is critical, so is client service as well as the organization’s financial stability. These critical factors can compete against each other. For example, improved service to workers in terms of faster decision-making has the potential to affect the quality and consistency (equity) of the decisions being made and the resource levels required to fund them.
These critical factors are further evidenced in the business principles which underlie the WCB’s current Strategic Plan, and thus the division, that the WCB be:

- service driven
- results focused
- cost effective
- prudent

Recently, the values which underlie the Board’s delivery of services have also been documented in the WCB’s 1997 Annual Report, as:

- service - client focused
- people - respectful, collaborative, supportive
- business - ethical, professional, prudent
- development - future-oriented, improvement-oriented, learning-oriented

The WCB’s 1997 Annual Report also outlines the Board’s strategic goals, along with their definitions and targets for the first time. These are operational goals which include an element of change (increase or decrease). Strategic goals to which Compensation Services may contribute include the Board’s intent to:

- reduce average total claim duration;
- improve timeliness of entitlement decisions to within 17 days of disablement;
- achieve income continuity for 90% of entitled claims;
- raise injured workers’ service satisfaction level;
- achieve an accident fund balance, including reserves, in the range of 110% to 115%;
- improve the work climate by 50% from current measurement; and,
- achieve a 90% accreditation level for professional officer staff.

It appears, therefore, that there is some clarity with respect to the primary objectives of the division.
Benefit Adequacy and Equity

As is clear from the above discussion, the Board’s definition of “fair compensation” focuses primarily on service delivery attributes rather than benefit levels. Board interviews also confirmed the notion that, although “fair compensation” is the primary objective of the division, fairness is defined in terms of timely payment, income continuity, and access to early and effective treatment. The division’s senior executive views the Board as responsible and accountable for service delivery, with benefit levels under the jurisdiction and control of the legislation. Fair compensation is defined in the legislation, and is then delivered by the Board.

While the Board cannot independently alter the legislation with respect to benefit levels (such as maximums and minimums, percentage of gross income, stacking or integration of benefits, etc.), the Board can take responsibility for monitoring the extent to which these benefits are adequate and equitable for injured workers. The Board can also take responsibility for assessing the extent to which its own internal policies and practices, such as policies and practices around setting average earnings, allocating vocational rehabilitation benefits and services, deeming and terminating wage-loss benefits, and establishing levels of functional impairment and percent disability, contribute to more or less adequate and equitable benefits for injured workers.

One interviewee commented that if the Board tried to take forward its view of what was equitable in terms of benefits, it would get rejected by one stakeholder group or the other. Employers would reject recommended increases, and the labour community would reject suggestions that the Board is overcompensating in one way or another.

Organizational Culture and Values

Decisions with respect to eligibility, equity and adequacy may be affected by organizational culture and values. Without clarity in the legislation, Board policy, and public documents with respect to fundamental principles such as these, decisions are more likely to reflect individual values and belief systems.
In 1997, at the request of the Board, the Office of the Auditor General of BC conducted an assessment of the accountability information that the Board provides to the Panel of Administrators and to external stakeholders through the Annual Report. The Auditor General's *Accountability Reporting Review*\(^8\) argued that the WCB’s mission, vision, and values represent management’s interpretation of its mandate, and that these are important for stakeholders to know. They also observed that the values and culture within the WCB are very important to stakeholders and that these can drive decision-making in important ways.

Policies and strategies should flow from the accepted higher-level values. For example, adequate compensation might be defined in terms of:

- income continuity - including not only coverage from the time of injury to time of first payment, but coverage from the time of injury through to return to work or pension determination (i.e., this would require policy clearly ensuring that there is no break in benefits between the time of plateau and the time of pension determination); currently, the interpretation of the legislation in terms of benefits “payable only so long as the disability lasts” can result in termination of benefits at the time of medical plateau and before a pension determination is made\(^9\)
- earning capacity - defined in terms of what the worker could reasonably expect to receive in the months (or years) following the injury, had it not been for the injury; unemployment insurance is currently not included in calculating past earnings because the Board does not interpret these as “earnings”\(^10\) (although the period of time in which these benefits are received is included in the calculations)
- accuracy of pension calculation – with clear evidence of comparable income pre- and post-injury (through work, a combination of work and pension, or pension exclusively), and clear evidence of accurately estimated earnings loss (for example, at the two-year review)

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\(^10\) WCB of BC. *Royal Commission Briefing Paper. Average Earnings.*
The Auditor General’s *Accountability Reporting Review*\(^{11}\) also stated that (p.25):

Many of the people we interviewed for this review expressed an interest in receiving assurance about the quality of the adjudication process. We believe that the quality of adjudication is the result of many factors, including:

- WCB policies;
- corporate direction regarding values;
- corporate traditions and culture;
- quality assurance processes; and
- the skill base and training of staff handling claims.

There is increasing evidence that many decisions made in organizations are more strongly influenced by so-called “soft” factors than by formal written policies and organizational structures. Our understanding from our interviews with WCB stakeholders is that adjudication patterns seem to reflect influences that are not formally recorded or even recognized.

For example, in his submission to the Royal Commission, Mr. Jim Sayre, Community Legal Assistance Society\(^{12}\) argues that one of the fundamental principles for a “just” compensation system is that “workers are entitled to be treated with dignity, and that their right to autonomy and privacy should not be forfeited simply because they have suffered a work-related injury or disease” (p.6). However, one of the common complaints from workers in submissions to the Royal Commission was that, in their interactions with the Board, they felt that they were treated as though they were “lying” or “malingering”. In his submission Mr. Sayre\(^{13}\) notes that (p.2, 18):


\(^{12}\) Royal Commission on Workers’ Compensation. Presentation on Behalf of Injured Workers. Workers’ Compensation For the 21st Century. (no date; prepared for presentations to the Royal Commission in April, 1998)

\(^{13}\) Royal Commission on Workers’ Compensation. Presentation on Behalf of Injured Workers. Workers’ Compensation For the 21st Century. (no date; prepared for presentations to the Royal Commission in April, 1998)
Injured workers are responsible, hard-working adults who have had the misfortune to suffer a work-related injury or disease. They are not children or criminals. …Workers understand that the system is not able to turn over large sums of money to every claimant. They do not, however, understand why the Board seems to assume that they are lying, or why it will not accept the evidence of their own doctors, who know far better than some WCB medical adviser what their condition is.

The division has developed a number of new initiatives in recent years aimed at better achieving its objectives, as well as measuring the extent to which they are achieved. These initiatives are discussed in more detail under “Program Design”. With respect to the new directions of the division, the Compensation Employees Union (CEU) argued that (p.18-19):

As part of its overall “Strategic Plan”, management has advanced the notion that computerization, automation, and technological intervention will be the panacea for the malaise of the compensation system. We come from a different perspective. Technological advances will address some process inefficiencies within the system but the essence of the malfunctioning of the Board is ideological not technological. The belief by management that technological change will solve the fundamental problems of the Compensation Board is predicated on a basic lack of understanding of the nature of the business. Fixing the problem lies first and foremost with a review of the Act, the development of clear and consistently applied policies, procedures and practices at all levels of adjudication, including appellate bodies, and an accountable management philosophy in keeping with the core societal values upon which the Workers’ Compensation Board is founded.

Unclear Legislation and Policy

A lack of clarity in the legislation, as well as inconsistent and unclear policy, at times create difficulties for Compensation staff.
Compensation Services staff expressed concern to the Royal Commission about a lack of clear direction. The Compensation Employees Union (CEU), in their January 29, 1998 submission to the Royal Commission, argued that adjudicator’s ability to deliver services to injured workers is impeded by a lack of clarity in the legislation and policy, and failures in Board leadership. The CEU expressed concerns about:

- “ambiguous, contradictory, and seemingly discriminatory provisions” in the Act, including:
  - lack of definitional clarity around key concepts like disability; different provisions for injuries versus diseases; contradiction around benefit payments within Section 29 versus Section 33

- “contradictory and vague policy coupled with lack of definition and administrative direction”, including:
  - lack of definitional clarity in Board policy around key concepts like disability, causative significance, and earnings capacity
  - no consistency of decision making around the issue of “natural body movement” as opposed to “work required motion”
  - the absence of bridging provision in policy so that there can be continuity of benefit payments from medical plateau and commencement of pension benefits
  - ambiguous policies regarding subjective complaints; unresolved policy and inconsistency between the Board and the Appeal Division regarding loss of earnings pensions
  - deeming process that is open to numerous interpretations and viewed as fundamentally unfair
  - no policy direction on stress claims
  - practice directives regarding Case Management and the Continuum of Care that contradict published Board policy

As will be discussed in greater detail below, Board policy is not always formally established and approved, and some important adjudicative decisions are guided by informal memos and practice directives.
Changes in Board Leadership.

The Board has experienced considerable turnover in recent years at higher management levels and at the level of Board governance. This kind of change makes it difficult to ensure continuity and clarity of objectives.

One Board interviewee speculated that the increase in the disallow rate in recent years may have been due to the departure of the former Chair of the Board of Governors, with a subsequent swing back to the natural tendency at the Board for greater scrutiny of claims; the current approach is a return to the way it was with the former Chair, with eligibility decisions made faster and with less deliberation. Another interviewee reported that before this same Chair’s tenure, there was less of an expectation that claims adjudicators deal directly and openly with workers – by calling workers and talking with them personally.

The CEU discussed problems with current leadership, as follows (p.13-14):

In the past, the Board lacked clear, concise direction and leadership. While the present leadership has changed that situation, it remains the case that there is a tendency to be reactive. They appear to acquiesce to pressure by influential representatives and vociferous parties to alter decisions regardless of the merits of the claim or the requirements of law and policy. …Stakeholders soon come to recognize the “squeaky wheel” syndrome: the more and louder you scream, the better the service you receive.

…In the last few years, the majority of managers hired have no compensation background and, therefore, no comprehension of the nature of the business. This basic lack of understanding causes inconsistency within the system as decisions are overturned simply on the basis of complaints and without consideration of their implications.

…Board policy is so vague it is possible for management to alter it on an informal basis by verbally suggesting staff should or should not be providing certain types of benefits or assistance. Take, for example, the current overall vocational
rehabilitation budget which has been dramatically reduced by millions of dollars with no evidence of a policy directive. Rather, rehabilitation consultants have been advised to “draft their budgets carefully”. Thus, the shift occurs subtly by innuendo instead of a policy directive.

In their submission to the Royal Commission, the CEU also complained about “Management by Reaction”, an example of which, they argued, was the 1996 decision to decentralize ASTD (Activity Related Soft Tissue Disorder) claims (p.16-17):

Work related causes of ASTDs were brought to public attention through the Ergonomics Review and the Occupational Disease Standing Committee in 1994. This increased public awareness resulted in an influx of repetitive strain injury claims. That in turn led to a backlog of claims and pressure on management to do something to expedite decision making and bring down the backlog. Decentralization was the “something”.

Adjudicators pointed out that the same decision, to decentralize ASTD’s, had been tried in 1985, failed, and resulted in the ASTD claims being re-centralized. The reasons for the historic failure was inconsistency of adjudicative practices and medical opinions in dealing with ASTDs. Recently, statistical data on the handling of ASTD claims across the province revealed a significant variation in disallow rates, ranging from 4.4% to 59.5% across Service Delivery Locations and Area Offices. The inconsistent handling of these often difficult claims speaks volumes about the lack of proper training around an inherently complex subject matter prior to roll out and in follow up. …adjudicators were provided with one week’s training on the handling of ASTD claims which was clearly inadequate.

2.0 Effective Strategies

2.1 Relevance

Definition: The extent to which a program or line of business continues to make sense in regard to the problems or conditions to which it is intended to respond.
Findings:

The WCB is *legislatively mandated* to provide compensation. Compensation payments are made to persons affected by a *work-related personal injury* or *occupational disease*. This may include *workers* or *their dependents*.

The legislative mandate for claims administration derives primarily from the following sections of the *Workers’ Compensation Act*:

- Sections 1, 2 and 17 which identify workers, employers and dependents covered by the Act;

- Sections, 5, 6 (and 7) which specify the personal injury and occupational diseases covered by the Act;

- Sections 21, 22, 23, 29 and 30 which describe the types of benefits covered by the Act; and,

- Sections 53 to 56 which cover the reporting of claims.

Compensation for personal injury (including a fatal injury) or occupational disease is mandatory. Several sub-sections of the *Workers’ Compensation Act* specify that the compensation provided by the Act *must be paid*. These include sub-sections stipulating that:

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 *must be paid* by the board out of the accident fund. (italics added)

6 (1) Where
(a) a worker suffers from an occupational disease and is thereby disabled from earning full wages at the work at which the worker was employed or the death of a worker is caused by an occupational disease; and

(b) the disease is due to the nature of any employment in which the worker was employed, whether under one or more employments,

compensation is payable under this Part as if the disease were a personal injury arising out of and in the course of that employment... (italics added)

The Act specifically covers mandatory payment of compensation to dependents of workers as a result of a death in a sub-section which states that:

17 (3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows... (italics added)

Further, Section 13 of the Act specifically covers the fact that compensation cannot be waived:

13 (1) A worker may not agree with his or her employer to waive or forego any benefit to which the worker or the worker’s dependants are or may become entitled under this Part and every agreement to that end is void. (italics added)

The Board’s mandate for claims administration is clear, and derives directly from the legislation. The problems and conditions to which it is intended to respond (i.e., occupational injuries and disease) continue to exist today, and will no doubt continue to exist into the next century, so that the mandate continues to be relevant.

However, establishing causality is becoming more difficult as the types of injuries and types of workers are changing, for example, from traumatic injuries of permanent full-time employees to repetitive strain and stress injuries, and increasing proportions of part-time, casual, and self-employed. For example, disallow rates are higher for claims
involving repetitive strain (ASTD’s, which are considered occupational diseases) than they are for other types of injuries.

The Board conducts “environmental scans” as part of its strategic planning process. Continued relevance might be better assured through proactive identification of trends in workplace injuries and diseases. Additionally, as issues underlying causality of injuries and disease are better understood, conflicts between the Board and stakeholders with respect to what constitutes a “work-related” injury or disease would be reduced.

In terms of assessing program relevance, the Auditor General’s Accountability Reporting Review recommends that (p.13):

We believe that the relevance of WCB programs and regulations should be periodically assessed by management and appropriately reported.

To measure relevance, management must track program activity levels and key client trends that may affect the continued relevance of the programs.

…We found that the WCB does track some key trends and has, on occasion, used this information to assess the relevance of its programs. However, it is not clear whether this level of assessment is conducted on a regular basis or reported to the Panel or the external stakeholders.

…We recommend that management provide periodic assurance on the continued relevance of WCB programs, such as prevention, rehabilitation, assessment, and compensation. To assess program relevance, management should track and report on key worker, employer, and environmental factors and compare these trends to WCB program activity types and levels to assess the relevance of WCB programs in light of this information.

One of the difficulties that the Board has is that in order to address relevant concerns of one stakeholder group, it may mean a loss in what is relevant to another stakeholder group. For example, working to provide what is relevant to employers (e.g., lower
costs) may mean that workers lose what is relevant to them (e.g., adequate coverage for duration of disability), and vice versa; thus, relevance needs to be balanced.

Whether or not the division’s priorities are the same priorities of workers and employers is not clear. The division does not conduct ongoing needs assessments of employers and workers to establish these priorities and assess whether or not current strategies and services are relevant, although there are various other mechanisms that it does use to assess stakeholder concerns. Clearly, while several important issues have been addressed by the new strategies (e.g., timeliness of payment, early intervention, increasing costs), others have not been addressed (e.g., average earnings, deeming, pension adequacy). These issues will be discussed further below.

2.2 Appropriateness

*Definition:* The extent to which the design of a program or its major components, and the level of effort being made, are logical given the specific objectives to be achieved.

*Findings:*

The Compensation Services Division has been criticized in the past for a vast number of service problems. With respect to initial adjudication, determination of wage-loss benefit levels, determination of eligibility for vocational rehabilitation and other services, and pension determination, there have been complaints from workers and employers regarding poor service, unreasonable delays and inefficiencies, handoffs, inconsistency, and unfair treatment.

The current Vice President of the Rehabilitation and Compensation Services Division, Mr. Ron Buchhorn, in his April 14, 1997 presentation to the Royal Commission, described the following problems that preceded the new strategic directions, based on findings from the Administrative Inventories, worker surveys and focus groups, staff issues and analysis of administrative data:
Service Delivery and Performance Issues

- adjudication delays
- hand-offs in the system and linear case processing
- rising average duration of injury
- rising medical costs
- deteriorating income continuity
- rising administration costs
- low ratings on overall quality of service, skill and professionalism of staff, the level of communication between the client and the WCB, and the care and concern shown by WCB staff
- lengthy queues in terms of some services
- deterioration in the staff to claims ratio
- no management information system or system strategies

Staff Development/Labour Relations Issues

- insufficient use of staff performance reviews
- need for more staff development
- problems in the collective bargaining relationship between the internal union, the Compensation Employees’ Union, and management
- complaints of overwork
- many labour relations issues and grievances
- demoralized management group

Mr. Buchhorn described the comments recorded in focus groups of injured workers at that time:

… We had as part of this initiative most of our management staff attend focus groups behind one-way glass where they were able to hear comments made by injured workers about the service that they were receiving. They weren’t very flattering.
They don’t have customer service, they have customer harassment. Give the average worker a clear and consistent layman’s description of the services provided. The WCB was not there to help the worker. Any opportunity, we were looking for a way to terminate the claim. We could be more courteous. We could reduce the amount of time that we investigate the claim and get on with the initial payment. We shouldn’t be passing claims back and forth between different officer level staff because there’s no continuity then of service. We should listen to the worker more. When workers called we had difficulty getting information from the file. Somebody should have contacted me rather than writing me letters, so they wanted a more personalized service. They wanted longer hours of service in order to communicate with the adjudicator… They thought we should be phoning the worker to see how the worker was doing. They thought we should return our phone calls. And the last comment is: The only thing I really noticed is that everything seems to be on paper, not on computer.

Additional observations and recommendations in the 1996 *Administrative Inventory*, not specifically noted above, were:

- an underlying theme that characterizes nearly all of the system performance issues addressed is a lack of adequate analysis about causes and consequences
  - efforts should be made to analyze and better understand the reasons for the trends in pensions, duration, etc.
  - a review should be conducted on the adequacy and equity of the workers’ compensation benefit structure in British Columbia
- overemphasis on rules and handbooks, and underemphasis on general policy guidance and employee empowerment
• need for research and evaluation, including policy-supportive research, quantitative analysis, and research that asks the critical policy questions/the “why” questions

The Compensation Services Division has implemented a vast number of new initiatives since the 1996 Strategic Plan, to the extent that virtually every job in this division has changed or will eventually change. These new initiatives are aimed at improving timeliness, coordination of services, and improved treatment effectiveness.

New Initiatives

The 1998 Rehabilitation and Compensation Services, 1998 Business Plan (DRAFT) outlines 34 initiatives that are ongoing or planned under five divisional “strategies”:

• Client Service
• Case Management
• Operational Effectiveness
• Refine Policy and Training
• Diversity

Among these new initiatives are:

• E-File
• the Call Centre
• MSP Teleplan
• Case Management
• ARCON

Most of the 34 initiatives are the responsibility of the Compensation Services Division as addressed in this report (14 are the responsibility of Vocational Rehabilitation, the Rehabilitation Centre, Medical Services or Psychology staff, which are addressed in other Royal Commission reports).
In 1998, a Claims Adjudicator in the Lower Mainland could expect to be directly affected by at least 10 of the initiatives, and indirectly by many more. Most of the 1998 initiatives have existed in some form or other for at least the last three years.

Generally, the initiatives are intended to improve the timeliness and efficiency and/or quality and effectiveness of claims administration at the WCB throughout the claims process.

For example, new initiatives which affect:

- entitlement decisions on all claims - are intended to speed up decision time (without affecting quality).

- administration of health care benefits - are intended to speed up decision and payment processing times. Some new initiatives are also aimed at improving service quality (in terms of the appropriateness of the health care/benefits provided).

- administration of short term disability benefits on routine claims - are intended to speed up decision and payment processing times (without affecting quality).

- administration of complex claims - are intended to improve both service quality and speed. In particular, they are expected to result in earlier and more comprehensive service interventions, characterized by fewer staff “hand offs” and be less adversarial than previously. In addition, some initiatives are specifically aimed at improving the quality and timeliness of the administration of pensions and occupational disease claims.

New initiatives are also being undertaken in areas which support the administration of claims in terms of:

- training and policy; and,
- performance management.
The new initiatives always affect practices and may affect policy (if they are significant enough), but never affect the legislation. All new initiatives operate within the WCB’s given legislative mandate. For example, there is no experimentation with “pilot” benefit levels (of 90% of net income or benefit stacking).

Most of the new initiatives include technology changes or are changes in business processes supported by new technologies. Very few do not include or are not influenced by new technologies at all.

The E-File project, whereby worker claim files will eventually be filed electronically rather than in paper form as they currently are, and the Call Centre, whereby workers can call and register claims over the phone (and which, for simple claims, can be paid in a matter of days) should assist in ensuring that workers are paid faster. Among the intended benefits of ARCON, the computerized system for assessing functional impairment, are that it will be more efficient and reduce the delay between plateau and establishment of pension entitlement, and it will provide a more objective assessment of worker’s functional limitations so that similar workers will be treated more similarly, and different workers differently.

Case Management is intended to provide more effective service to claimants with complex claims. Theoretically, with the Case Management approach, the claimant, and everyone who is involved with his/her claim, including the WCB staff responsible for determining entitlement and eligibility for services, doctors and other treatment providers, vocational rehabilitation consultants, and the employer, will be involved and interacting early on and throughout the course of the claim. Among the potential advantages of this approach are that:

- the claimant will receive the most appropriate treatment course in the most timely manner, so that the likelihood of an expeditious and effective recovery is enhanced
- along with recovery facilitated by this treatment, re-employment will be facilitated because of ongoing employer involvement
- rather than being a passive recipient of services determined by the Board, the claimant becomes an active participant in his/her recovery program
• there are fewer handoffs

Employer and worker representatives appear to be in favour of this model, because it offers benefits for both parties. Workers receive better service and better treatment, they take less time to recovery, they are more likely to return to work, and the overall costs of the claim are reduced.

The following observations were made with respect to these new initiatives in an earlier Royal Commission report on Compensation Services:\textsuperscript{14}:

• \textit{In 1997, Compensation Services piloted an Interactive Voice Response (IVR) automated telephone service enabling workers to phone the WCB to find out whether or not their claim has been accepted and/or the date and amount of their most recent compensation payment. Expansion of IVR across the province is planned for 1998.} (1997 Annual Report, p. 18)

• \textit{The WCB's Assured Service initiative would ensure workers receive a phone call if their claims are not adjudicated for short term disability benefits within 17 days.}

• \textit{Health Care Services' Program 2000 is to standardize some elements of these services through the use of standard protocols, drug benefits lists, standard allowances and preferred provider contracts.}

• \textit{The MSP/Teleplan initiative is expected to expedite the payment of health care invoices.}

• \textit{Under Case Management, the short term disability benefit claims process is expected to change such that, for complex claims, workers, their attending physicians and WCB team members are more actively involved in the claims process, and from an earlier date (e.g., before six months).}

• Under Case Management this claims process is expected to change such that the pension assessment process, for complex claims, should begin more quickly and take less time to complete because of the earlier and ongoing involvement of vocational rehabilitation staff and those making pension award decisions – resulting in more timely pension awards being made.

• The ARCON initiative is also expected to improve the timeliness and consistency of pension awards for some functional impairments.

• As a result of Case Management and EIPS re-openings one would expect re-openings to be reduced.

As discussed above, the CEU, in their January 29, 1998 submission to the Royal Commission, expressed the view that the Board’s current focus on technological change to increase efficiency overlooks more fundamental problems with the system. The CEU argues that in addition to legislative changes that are needed, the Board should aim to develop more clear and consistently applied policies, procedures and practices at all levels of adjudication, and an accountable management philosophy.

Some of the ongoing issues raised in various documents, presentations, interviews and submissions over the course of the Royal Commission, that continue to exist despite the new initiatives, are discussed below.

Determining Eligibility

There continue to be unresolved issues with respect to the adjudication of certain types of claims such as stress claims, psychological disorders, and claims involving “normal body motion” at work. There has also been some controversy with respect to the adjudication of occupational diseases. Relative to injury claims, occupational diseases have a comparatively high disallow rate, which may be largely attributable to the complexity of determining causality in these types of cases. Some have argued that occupational cancers are underrepresented in the claims accepted by the Board. Unfortunately, when the Royal Commission asked the Board for allow and disallow rates
by the nature of injury or disease, the Board reported that this information was not available\textsuperscript{15}. In their submission, the BC Federation of Labour\textsuperscript{16} noted that:

- occupational cancers represent from 4\% to 38\% of all cancers in the United States, with perhaps a figure of 10\% as most realistic
- in 1995 and 1994 there were about 16,400 cases of all cancers in B.C.
- in 1995 the Board accepted 15 cases of occupational cancers -- less than 0.1\% of all cancers in the province.
- these figures suggest that cancers are under compensated by a factor of at least 100, and that there should have been about 1,600 cases of cancer accepted by the Board in 1995

Among the BC Federation of Labour’s recommendations were that “the Act be amended to provide for an independent panel, appointed by the Minister of Labour, with the mandate to investigate causal relationships between diseases and occupation, to consider the recognition of new diseases (by regulation or schedule), to monitor the status of currently recognized diseases, to develop prevention options for occupational diseases and to make regular public reports on these matters.”

\textit{Determining Wage Entitlement}

There are a number of issues that have been raised over the course of the Royal Commission, and over the past several years, about the Board’s policy with respect to determining “average earnings”.

The Board provided the following explanation\textsuperscript{17} of how “Average Earnings” are calculated for casual, seasonal, and “regular” workers:

- For “casual” workers (no regular attachment) average earnings is usually based having regard to earnings over a longer period of time than just the

\textsuperscript{15} WCB of BC. Rehabilitation and Compensation Services Division. Response to Royal Commission Request dated February 9, 1998, Response to Question 2 (3) and follow-up to Question 2 (3).
\textsuperscript{16} BC Federation of Labour submission to the Royal Commission.
\textsuperscript{17} WCB of BC. Rehabilitation and Compensation Services Division. Response to Royal Commission Request dated February 9, 1998, Response to Question 4 (Intro).
day of injury rate of pay (typically one year). This rate usually becomes both the STD and the LTD average earnings.

- For “seasonal” workers average earnings is usually the rate of pay at the time of injury for the length of the season or the first eight weeks of benefits, whichever comes first, and a rate review is then conducted.

- For “regular” workers (those with a regular attachment or not classified as a casual or seasonal worker) the average earnings is usually based on the rate of pay at the time of injury for the first eight weeks of benefits and a rate review then conducted.

The Board also said that for seasonal and regular workers the review is usually based on one year’s prior earnings, but use of 3 or 5 years is possible.

Some of the issues with respect to current average earnings calculations are as follows:
  - for some workers it appears that “Average Earnings” are calculated before 8 weeks; in particular, according to Board policy and the response above, they may be calculated at the date of injury for casual workers, and at the end of the season for seasonal workers (if this occurs before 8 weeks)
  - if a worker is casual at the time of injury, he/she may not have been casual two or three years prior, and may not, but for the accident, be casual in the future; the Board’s Average Earnings calculations do not account for these alternative contingencies
  - if a worker is casual or seasonal, the calculation of average earnings appears to typically result in a reduction from the earnings at the time of injury; the Board has no data on the proportion of casual or seasonal workers who account for claims, but interviews with Board personnel suggest that it is these types of workers who experience the reductions, and, based on the policy and practice discussed above, this would appear to be likely.

However, workers who are casual or seasonal at the time of their injury may not, necessarily, earn less some time down the road were it not for the accident. They may take on other casual work, or other part-time or full-time work. They may obtain unemployment insurance. The Average Earnings
calculations seem to assume that the future will mirror the very recent past, and this typically means a reduction for workers. Furthermore, if the worker was receiving unemployment insurance benefits for part of the time in the past year (or period of time under review), this is not considered income – but this has been part of what the worker has relied on and has built his/her expenses around

Data provided by the Board to the Royal Commission\(^\text{18}\) shows that about one in five (between 21% and 23% of claimants from 1995, 1996 and 1997) STD claimants receive more than 8 weeks of STD, and thus are subject to the Average Earnings rate review (note – some may have it sooner, as discussed above). For these claimants who remain on benefits past 8 weeks, about 60% receive no rate change as a result of the 8-week review, 27% to 29% experience a decrease, and 12% to 13% experience an increase. (Assuming that some get the reduction sooner, the total percent of claimants who experience a reduction from their wages at the time of injury may be higher; other data provided in the Board’s Discussion Paper on the 8-week review\(^\text{19}\) indicated that 40% of claimants experience a reduction).

Just over half of those who experience a decrease fall 20% or more from their earnings at the time of injury. On the other hand, most of the increases are below 10%. So, for example, in 1997, of the total of 14,693 claimants who were still on STD at 8 weeks, 1,761 experienced an increase after rate review, with 1,047 receiving an increase of less than 10%, 347 receiving an increase of between 10% and 20%, and 367 claimants receiving an increase of 20% or more. In contrast, 4,106 claimants experienced a decrease, with 1,200 receiving a decrease of less than 10%, 743 receiving a decrease of between 10% and 20%, and 2,163 claimants receiving a decrease of 20% or more.

Average earnings have been the subject of extensive review and consultation for some time, yet the process continues to exist relatively unchanged. As discussed in the 1996 *Administrative Inventory*\(^\text{20}\) (p.98):

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In the 1992 Annual Report, the Chair of the Board of Governors indicated that an objective in 1993 was to carry out a “complete review and development of a revised average earnings policy.” In the 1993 Annual report, that objective was shown as having been partially met. In the midyear report of the Compensation Services Division of 1994, there was an indication that a working group, consisting of Board staff, was considering external submissions, and that proposals were to be made to the Board on those changes that were supported by both the worker and employer communities. In October 1994, the working group recommended that a number of proposals, regarded as the non-contentious ones, be brought to the Governors.

A decision by the Board Chair, however, was that a complete package should be taken to the Governors, not simply the part where there was no difference of opinion. It was decided that a comprehensive paper would be prepared on the issues relating to changes in the average earnings policy. As of the summer of 1995, that paper is not yet available. The message with regard to policy on average earnings may reflect generally on the Board’s ability to change its policies and practices. First, on certain core issues relating to compensation, finding consensus can be a very slow process, and one that may not lead to change. And when change can be accomplished it may be limited by the reluctance to move in areas where one interest or the other will be discontent.

Most recently, it was recommended that the average earnings calculations be moved to 13 weeks from 8 weeks. Part of the reason for this change was that the drop in benefits for workers in the Continuum of Care as a result of the 8 week average earnings review served as a disincentive to working with the Board. However, another rationale identified through Board interviews was simply that the move from 13 weeks to 8 weeks in the 1980’s was made for economic reasons with “no analysis, no consultation, it was boom, the system’s underfunded and here’s one area where we can save money”, so that the move back to 13 weeks now that the system is fully funded seemed justifiable. Additionally, it was noted that most other Canadian jurisdictions use 13 weeks.
Labour representatives are in favour of moving the 8 week review to 13 weeks. They are also in favour of a number of changes to the way average earnings are calculated, such as the inclusion of fringe benefits and unemployment insurance, and the use of a “typical” period of time in the worker’s work history rather a continuous period ending with the injury.

Employers are generally not in favour of moving average earnings calculations to 13 weeks. Their preference, in fact, would be to move it ahead of 8 weeks rather back. The costs of moving to 13 weeks are not entirely known, however it is clear that because more workers experience a reduction after the 8 week review than experience an increase, the wage-loss costs would be less if the Board moved the review to 13 weeks. Employers are also generally in favour of using past earnings to calculate wage-loss benefits, rather than future earning capacity, except perhaps in unusual circumstances (e.g., where a young, highly educated worker is seriously injured and is awarded a loss-of-earnings pension). The employer community is also in favour of using one year (rather than two, three or five) as the standard, and at obtaining verification through T4 slips. The employer community is not in favour of including fringe benefits and unemployment insurance in the calculations.

Multiple Handoffs

The Case Management approach is expected to significantly improve the problem of multiple hand-offs. However, the Call Centre/CSR/Entitlement Unit/Case Management approach still has the worker filtered through various staff levels with the potential for multiple hand-offs. Eventually, the Case Manager will be responsible for coordinating all aspects of service, through to pension determination, although currently this final stage is still dealt with through Disability Awards. In some cases, however, the worker will continue to be referred to the Entitlement Unit before proceeding to a Case Manager.

Deeming

Through the practice of “deeming”, the Board makes the judgment that the worker is capable of performing a particular job or occupation, and that the job is reasonably available to the worker. Deeming can allow workers who choose not to return to work,
because they are near retirement or for other personal reasons, to receive a pension and to withdraw from ongoing intervention on the part of the WCB.

The practice of deeming has generated considerable controversy, not only in BC but in other jurisdictions where this practice is in place. A claimant can be “deemed” ready to return-to-work even though he/she has not actually returned to work. A claimant can also be “deemed” capable of earning a particular income, even though he/she may actually be earning less than that. In these cases, decisions are made about the eligibility for continued compensation for economic loss, and about the amount of compensation that should be provided, based on presumed options and expected future states.

In the presentation on Pensions provided by the Board to the Royal Commission on March 5, 1998, an overhead entitled Deeming listed four conditions under which deeming could occur:

a) the worker does not have a job but is considered employable
b) the worker has a job but it does not maximize long-term earnings
c) the worker for personal reasons, decides to withdraw from the labour force
d) the worker fails to cooperate with the Vocational Rehabilitation Consultant

At the Board’s March 5, 1998 presentation, statistics were provided that showed that from 1993 through 1997, between 554 and 700 LOEs were granted per year, and between 39% and 59% of these awards were “deemed”. There appeared to be a steady increase from 1993 to 1996 (41.1%, 41.6%, 55.6%, 59.4%), with a drop in 1997 to 39%.

Deeming is used in many jurisdictions across Canada. The Board’s Briefing Paper entitled Permanent Disability Pensions states that “All other provinces that grant pensions for earnings loss have some kind of process for deeming earnings where the worker is found not to be earning as much as he could” (p.12).

Deeming is used to make decisions regarding the termination of wage loss benefits and regarding the size of loss-of-earnings pension awards. The Board has been asked to provide information on how often deeming is being used and in what ways; the Board
has indicated that it can provide data with respect to LTD claims only, and not with respect to STD claims. The termination of wage loss benefits and, as discussed above, the size of pension awards, are among the top reasons for worker appeals of Board decisions\textsuperscript{21}.

In 1983, the Board’s Task Force report on Compensation for Permanent Disability\textsuperscript{22} reported that, with respect to “deeming” (p.X-1):

This is one of the most controversial areas involved in the loss-of-earnings concept. Decision #160 of the Reporter Series sets out the policy used to determine whether a disabled worker is capable of doing suitable work, whether that work is available and whether the worker has unreasonably refused available work. In practice, this applies to workers who have failed to return to work when it is believed they can, and workers who are not maximizing their earnings potential.

According to the Board’s Briefing Paper on Permanent Disability Pensions, workers contend that the Board uses jobs that are not suitable or available in order to avoid costs, and employers contend that the Board shows too much consideration for workers’ preferences.

The Compensation Employees’ Union, in its January, 1998 submission to the Royal Commission, stated that (p.9-10):

Current loss of earnings policy uses two key factors in considering loss of earnings: (1) jobs must be “suitable” and “reasonably available” to the worker, and (2) that job would “maximize” the worker’s earnings capacity in the long term.

Under the provisions of current policy, the worker does not have to be in the actual job. The Board can “deem” that certain jobs are “suitable” and would be “reasonably available”. The “deeming” process is extremely judgmental and

\textsuperscript{21} WCB of BC. Rehabilitation and Compensation Services Division. Response to Royal Commission Request dated February 9, 1998, Response to Question 12 (1). Data provided by the Workers’ Compensation Review Board and by the Appeal Division.

open to numerous interpretations. Additionally, workers constantly complain vociferously about this policy – they regard it as fundamentally unfair.

The primary advantage of deeming is that closure can be obtained for those workers who choose to retire early, or to work at a reduced rate. In those cases where workers would choose to stay off work and collect compensation benefits, compensation does not serve as a disincentive to return-to-work. The primary disadvantage of deeming is that workers who would choose to return to work or take a higher paying job, but are unable to do so for various reasons, do not receive compensation to cover their economic loss. In some cases these reasons may have to do with a mix of choice and opportunity.

Employers argue that deeming is necessary in system where loss of earnings pensions are awarded – as a last resort when the worker just refuses to cooperate or get involved with the system. The Board also stated explicitly, at its March 5, 1998 presentation to the Royal Commission, that deeming was to be used as a “last resort”, although the statistics provided by the Board on the use of deeming suggest otherwise. In particular, as discussed above between 39% and 59% of LOE awards are “deemed.” Deeming is used in other situations as well, although the Board is unable to provide statistics on the extent of use in these other situations.

According to interviewees, appeals of deeming decisions have been launched when:

- a worker is not back to work (or is back at a reduced income) but a decision is made that the worker is not eligible for a pension, because it has been deemed that there is no permanent disability and will be no loss of earnings
- a worker is not back to work (or is back at a reduced income) but is deemed to not have a loss of earnings, and thus only be eligible for a functional pension award
- a worker is not back to work (or is back at a reduced income) and is deemed able to earn at a particular rate in order to establish the size of the loss of earnings pension
- a worker whose pension is reviewed after two years is subsequently deemed to not have a loss of earnings
In interviews for the royal commission, it was argued that there should be more rigor and very strong guidelines around how these deeming decisions are to be made, as well as more information on how often and under what circumstances deeming is being used.

Jim Sayre, in his presentation on behalf of injured workers, argued that:

In reality, when deemed employability rather than a real return to work becomes the standard for assessing the loss of earnings pension and the need for rehabilitation, the only winners are the Board and the employer. The worker loses a substantial part of the pre-injury earnings without compensation. We propose that decisions based on deemed employability in both the rehabilitation and pension contexts be restricted to very limited circumstances in which it is clearly the only alternative. Injured workers oppose deeming except in circumstances where it is impossible to provide the worker with effective rehabilitation leading to an actual job, or where the worker has made a deliberate choice not to pursue reemployment.

Medical Advisors and Discretionary Issues

A broader range of health care services appear to be available than are accessible. Generally, whether or not a health care benefit is “reasonably necessary” is first decided upon by an attending physician or other health care practitioner chosen by the worker. The Board may then exercise its control at its discretion (if it chooses to do so). For example, a WCB Medical Advisor may examine the worker and offer an opinion on whether or not a treatment is required (or whether or not the worker is ready to return to work). Approximately 10,000 medical exams and 46,000 medical opinions were provided by WCB Medical Advisors in 1997.

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23 Royal Commission on Workers’ Compensation. Presentation on Behalf of Injured Workers. Workers’ Compensation For the 21st Century. (no date; prepared for presentations to the Royal Commission in April, 1998) (p.33, 38)

24 WCB of BC. Rehabilitation and compensation Services Division. 1998 Business Plan (Draft, February 2, 1998, p.33). Forecast statistics for Medical Services for 1997: 10,500 examinations and 46,000 opinions. Medical opinions may be provided without a Medical Advisor seeing the worker.
Labour representatives are opposed to the Board’s preference of a Medical Advisor’s opinion over that of the worker’s own doctor, or a private specialist. This is particularly an issue when the Board’s Medical Advisor makes a judgment that a worker is fit to return to work, when the worker and the worker’s physician disagree. As argued by Jim Sayre on behalf of injured workers:\(^{25}\):

…the Board should not override the opinion of the treating physician based on the opinion on its own staff. …In situations like that if there is a need for more medical evidence than the worker’s own physicians are providing or if the Board after looking at that evidence in a bona fide sense feels that the treating physician is wrong the process should be that the Board defers that matter to an outside specialist who hasn’t been previously involved for an objective third opinion. If that objective opinion disagrees with the treating physician then the Board will have to weigh the two and come to a conclusion or perhaps come to a third one if it comes down to that. But in any event at no time in our submission should the Board in dealing with a medical issue such as whether the worker’s disability arose out of employment have in front of it evidence from the treating physician that says yes it did the claim should be accepted and then to have it rejected because the Board medical advisor says I don’t think the treating physician is right; no it didn’t.

The employer community supports the continued use of Board Medical Advisors. As noted by Alan Winter, representative for the Employers Coordinating Group, “…we view personal physicians with a little more skepticism. …I think that it is human nature again and I know what my doctor is like - their best interest is my best interest.” The Board Medical Advisor is seen as a “safeguard” to counterbalance the opinions of the worker’s personal physician.

\(^{25}\) Presentation by Jim Sayre on behalf of injured workers, to the Royal Commission, April 8, 1998.
Bridging Benefits

Temporary disability benefits are incurred during medical recovery (to plateau/stabilization).\(^26\) Thus, they are not to be incurred:

- during rehabilitation (from medically stable to active at a functional level);
- for long term maintenance (to maintain or support a claimant with a loss of wages/earnings in the long term) (pensions);
- for administrative reasons/requirements (e.g., adjudication investigations, pension assessments, long-term claim case management).

Benefits which “bridge” the time between the termination of short term disability benefits and the start of long term disability benefits are a controversial issue which is addressed further in the Royal Commission paper on vocational rehabilitation.

Determining Pension Entitlement

Permanent functional impairment pension awards are determined on the basis of physical condition, and may include consideration of subjective complaints. They may be scheduled or non-scheduled. Scheduled permanent functional impairment awards may be decreased or increased using age adaptability factors, enhancement factors and evaluations. Disability Award adjudicators have discretion over some factors which may or may not be considered in the assessment of pension awards, such as the variables to be used relating to the degree of physical impairment and the consideration of subjective complaints.

Projected loss of earnings pension awards are determined using employability assessments. As discussed above, permanent disability benefits may be calculated using “deemed” earnings (from suitable or reasonably available occupations), rather than actual earnings. Some of the factors that may affect the level at which loss of earnings pensions are calculated include workers’ efforts to maximize their earnings, their potential for future progress, their medical fitness, the long term availability of

positions identified and the distance of jobs from the worker’s home. In addition, a worker’s age may be used to adjust the duration of the loss of earnings pension awarded.

A review of the Board’s pension system was conducted in 1983, and although there were a number of recommendations put forth with respect to changes to the system, few of these were implemented. Interviewees suggest that the same issues identified in 1983 continue to exist today. A study to assess pension adequacy and equity was recommended by the 1996 Administrative Inventory but has yet to be conducted. Interviewees suggest that several policy recommendations have been submitted with respect to disability pensions that have never proceeded beyond recommendations.

Employers are concerned that the Board uses LOE pensions too often. They are particularly concerned when the worker receives a substantial LOE pension, while at the same time their functional impairment rating is low. As argued by Alan Winter for the Employers’ Coordinating Group, LOE pensions were originally intended to be used in "exceptional cases", but have moved from less than 0.2% of all pension awards in the 1970’s, to 12% and 13.5% in 1996 and 1997. Also noted was the Board’s lack of understanding of the reasons for these trends, and the arbitrary nature of the schedule used to assess functional impairment:

Unless the case is made that more serious injuries and illnesses have been developing it seems reasonable to argue that the standards for gaining a pension have been lowered over time especially for loss of earnings pensions …the administrative inventory indicated that it was imperative for the Board to try and understand this trend and recommended that they do some research into it. If you recall, in the Board’s briefing paper on permanent disability pensions they noted in November 1994 that the governors actually approved the idea of a study and authorized the process to define its scope and how it should be done and then little further action had been taken. We are talking 4 years later and we still have no more answers then what we had.

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27 Presentation by Alan Winter, Employers’ Coordinating Group, to the Royal Commission, April 14, 1998.
Employers and labour have differing opinions in terms of how loss of earnings should be determined. Employers believe factors such as age and language skills should be irrelevant in determining loss of earnings, whereas labour feels these factors interact with a functional loss in some cases to preclude or limit employment opportunities, and are therefore relevant.

Labour representatives are in favour of more timely decisions being made on pension benefits. They have also argued for a review of the schedule used for determining functional disability, and for more regular reviews in the future. Approaches to assessing earning loss, which fail to account for income capacity over the long-term, and the use of deeming to select a higher post-injury rate than is actually available, are also of concern to workers.

Policy states that loss of earnings pensions are to be reviewed two years after they are established. The purpose of these reviews is to determine whether or not the assumptions made with respect to project loss of earnings still stand. Some of the concerns with respect to these reviews are that they are not carried out consistently, and that there is no independent verification of earnings information sought by the Board (e.g., T4s). Data provided by the Board to the Royal Commission indicates that declaration forms are sent out to most LOE recipients after two years, but only a small percentage of these respond with earnings information. Ultimately, only a fraction of these pensions are changed as a result of the two-year review. Board audits have recommended greater diligence in terms of following up on non-respondents. Both the employer and labour representatives at the Royal Commission hearings in 1998 reported that they had never come across evidence of these reviews in the claim files they had seen.

**Benefit Termination**

Issues that have been expressed in submissions over the course of the Royal Commission with respect to benefit termination include:

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28 WCB of BC. Rehabilitation and Compensation Services Division. Response to Royal Commission Request dated February 9, 1998, Response to Question 6 (13) and 6 (14).
• concerns that workers may be cut off benefits too soon, before they are ready to return to work
• concerns that workers are expected to take on jobs that they are deemed capable of working at though they may be very different than their pre-injury jobs, and that they may lose their benefits otherwise
• concerns that the Board’s medical advisors are less capable of judging the worker’s condition than are the workers’ own physicians

Quality Control Issues

Consistency with respect to service delivery is being assessed by the Board in a number of ways, through monitoring of allow and disallow rates by region, appeal rates, and file reviews of decisions.

Observations and interviews with Board personnel suggest that there could be more emphasis placed on quality control by the Board. Particularly with the new initiatives, it would be important for the Board to monitor the extent to which quality is changing – improving, staying the same, or deteriorating – as a result of the new initiatives. Board interviewees suggested that while a quality control template had been developed, the division had not yet implemented it. The present focus of the division’s quality control activities is on building quality management into its new processes. While this transition takes place, line managers bear primary responsibility for ensuring that claims are being administered well. In addition, individual managers with an interest in monitoring specific issues were reportedly doing so at their own initiative.

There have been concerns with respect to a lack of consistency, whereby claimants in similar situations are treated very differently depending upon the Board staff they deal with. Examples of these kinds of inconsistencies are pointed out by the CEU, with respect to Code R payments:

In canvassing three VRC’s from one work area, there were different methods of applying Code R. …Some are paying full Code R benefits until the pension is implemented. Others are attempting to calculate an amount they believe represents the eventual pension, and are applying this as the Code R rate.
Since the VRS Department was reinstated in 1995, the department has been applauded for great reductions in Code R costs. The two draft procedures noted above would be instrumental in that achievement but at an unfair cost to injured workers who are waiting for their pensions: workers who are among the most vulnerable and disadvantaged of our clients. (p.30-31)

The Office of the Auditor General of BC’s assessment of the Board’s accountability information examined reporting on “quality” in terms of “quality of adjudication” and “service quality”. With respect to quality of adjudication, the report recommended that (Recommendations 22 and 23):

…management report on the benefit entitlement/adjudication process in a way that would provide assurance to the Panel and in the annual report on the quality of the adjudication process. Indicators, such as allow/disallow rates and appeal rates, would be included. As noted in recommendation four, each of the factors that affect this quality, including corporate culture, direction, policies, quality assurance processes, and the skill base of the staff handling claims, should also be included in this assurance. We acknowledge the difficulty of this assessment and suggest that the WCB explore appropriate methods.

…the Panel and the external stakeholders receive information on the number of appeals and the outcome of these appeals for all the appellant bodies, including the Appeal Division and the Medical Review Department. The annual report should also include the number of claims allowed, disallowed, or rejected, and the overall disallow rate for all types of claims.

The Accountability Reporting Review also recommended that the Board provide more information on “Service Quality”, defined in terms of timeliness of client service, stakeholder satisfaction, and fairness and ease of access to Board services. Recommended enhancements to the Board’s reporting on these indicators included: more timeliness information, through the life-cycle of the claim), ranges and frequency distributions rather than just averages, satisfaction amongst stakeholders in addition to injured workers (e.g., all workers, employers, MLA’s, medical community), defining and reporting on fairness” in relation to access to service.
Overall Issues with Respect to Board Policy

The Compensation Services Division has had difficulty proceeding with a number of important research studies and policy changes. Often, it appears to be because these changes are rejected by one stakeholder community.

Current Board policy with respect to Compensation Services is at times difficult to define, in that it is distributed in various manuals, practice directives and internal memos. There have been several cases brought forward to the Royal Commission where the Appeal Division has determined that Board policy is unlawful, and the division as continued to adjudicate on the basis of existing policy.

The BC Federation of Labour, in its submission to the Royal Commission, stated that:

In our view one of the most important features of the evidence you have heard over the past three months has been the control of policy and the development of policy into practises and procedures.

We have heard how a "practise directive", prepared by management, on "Decisional Milestones" is "not intended to be a mere guideline" and adjudicators are expected to follow it. Then this specific directive is used to override Board policy to deny a referral to Disability Awards (Tabs 4,5 of the BCFL binder). We have heard there is a maximum pension of 2.5% for subjective complaints which is "policy" when actual policy is the reverse. We have heard how changes to Code R were made by changes to procedures that were not even available to the public (Tab 6). We have heard how Decision 255 has been given an unreasonable interpretation and this interpretation is called "policy". We have heard how relationships between diseases and work processes established by Board policy and described in Schedule B are overturned by Board medical staff (Tab 18).

In our view all of these matters point to a serious issue involving who controls Board policy.
...We recommend that the Commission confirm that the initiation and control of Board policy lies with the governing body of the Board. Specifically, confirmation is needed that the governing body and not management has the authority and responsibility for policy approval and control. Further, this control means that the Policy Bureau must report directly to the governing body of the Board.

Other Issues

There are several other issues of concern with respect to program design. Compensation is intended to be available “after all else fails”, after the prevention of injuries and rehabilitation of workers, but the Compensation Services Division consumes by far the greatest proportion of the Board’s resources. The division has been structured to deal with claimants according to the type of payment made (e.g., STD, LTD) rather than dealing with the whole worker from the start to the end of his/her claim (although Case Management is expected to be an improvement). The division has gone through and continues to go through a series of restructurings; some of these have been more successful than others. Finally, staff sometimes do not appear to have the training and support needed to make the kinds of decisions they are required to make (discussed in greater detail below).

2.3 Responsiveness

Definition: An organization’s ability to adapt to changes in such factors as markets, competition, available funding or technology.

Findings:

As discussed, the Compensation Services Division was criticized in the past for service delays, multiple hand-offs, and spiraling costs. It has implemented a number of new strategies and initiatives in recent years. These new strategies were developed after analyses of issues and concerns raised by stakeholders and identified through the Administrative Inventories, worker surveys and focus groups, as well as other processes (discussed below), and as such, appear to address a number of the relevant
concerns of stakeholders; as discussed, some outstanding issues remain. Many of these new initiatives appear to offer a number of potential benefits. It will be important for the division to provide the support and ongoing monitoring necessary to ensure the greatest likelihood of success for these new initiatives.

While the Board does perform some environmental scanning, this could be enhanced. There is a need to monitor changes in industries in BC and changing workforce – increase in service jobs, decrease in resource jobs, aging of the workforce, and at-home workers. What kinds of implications does the aging of the workforce have for multiple claims, pensions, and fatality benefits? How are changes in human rights codes likely to affect the Board’s policies and practices with respect to the role of personal factors such as age in benefit entitlement? The Board offers low assessment rates and high claim payments (i.e., high maximum statutory wage rate), and the current administration has done a good job of balancing the budget, but is the Board sacrificing adequate pensions by charging these low rates? Are employers really paying for the true cost of the injuries sustained by their workers? These kinds of issues need to be monitored.

The Board has tended to group claimant into categories by the nature of their benefit payments – health care only, STD, LTD, Fatal. Analysis of distributions by age, occupation, gender, work history, type of injury, and other relevant factors are less common, and in some cases, this information is unavailable. Services are provided according to payment type or claim complexity, but there is no further segmentation. Differences between those with simple, straightforward claims and those with complex claims are recognized. It might be useful for the Board to try to understand its claimant population better by conducting “market segmentation” using variables known to be relevant to injury and disease claims.

The 1996 Administrative Inventory\textsuperscript{29} showed changes in employment, claims patterns and claim costs through the 1980’s and 1990’s and stated that (p.202-203):

(Graphic depiction of the pattern of wage loss claims first paid over time in BC) shows what appears to be a complex mix of secular, cyclical, and policy trends.

The secular trend of employment by sector is leading to declining exposures to traditional risks of injury in the workplace. But cyclical labour market conditions hide much of the secular decline. Policy variables also intervene. The decline in claims through the mid 1980s was partly a result of policy changes at the WCB for example. Plus there is likely a long-term trend to reduction in claims incidence resulting from Prevention Division efforts and private sector initiatives. Unfortunately, none of these influences can be identified separately from these aggregate data.

3.0 Aligned Management Systems

3.1 Protection of Assets

*Definition:* The extent to which important assets – such as sources of supply, valuable property, key personnel, agreements, and important records or information – are safeguarded so that the organization is protected from the danger of losses that could threaten its success, credibility, continuity and, perhaps, its very existence.

*(NOTE: This criteria was not assessed for the Compensation Services Division).*

3.2 Financial Results

*Definition:* The matching of, and the accounting for, revenues and costs and the accounting for and valuation of assets, liabilities and equity.

*Findings:*

The Board has been criticized in recent years for increasing claims and administrative costs.

Until recently, the Compensation Services Division used limited technology to enhance the efficiency of its work processes; it has made major advances recently with its electronic filing of claims files, the tremendous benefits of which are likely going to be
seen for years to come. The division has also tried out various means to increase the timeliness of service delivery, reduce claim duration, improve return-to-work outcomes and thus reduce long-term wage loss and pension costs.

As discussed elsewhere in this report, the effectiveness of the various strategies might be enhanced by a more extensive analysis of the factors that are causing the increases in costs. For example, to the extent that some policies remain unclear, decision making with respect to eligibility is becoming more and more complex, and adjudicators are expected to maintain more direct contact with workers and employers (including work site visits), it may be that caseloads have exceeded reasonable capacity. There may be a variety of factors, including administrative factors, labour market trends and changes in the industrial mix, changes in reporting practices, and changes in the nature of workplace injuries and diseases, that account for increases in duration and claims costs.

The Board has not always been as diligent as it could be in collecting overpayments and in ensuring that policies and procedures are in place so as to minimize overexpenditures. For example, employers can fail to file Form 7’s without penalty, so that adjudicators have to get on the phone and track down information, or delay making decisions on claims until the forms arrive. Workers who fail to complete their declaration of earnings at the two-year pension review continue, for the most part, to receive pensions at the level determined initially without any further investigation or follow-up. Additionally, judgments with respect to Board policy have resulted in retroactive benefit reinstatements and cost adjustments that have proven to be a substantial drain on current resources (for example, the Board is now paying out about $400 million (between one-third and one-half of its annual budget) to widows because of the policy to end pensions upon their remarriage. The Board might be well advised to examine its other policies at this time with respect to provisions based on “personal” characteristics that determine the level of benefit entitlement. Tangentially related has been the problem of relief-of-costs; since adjudicators did not routinely assess eligibility for relief-of-costs on claims, as dictated by policy, employers could request that the Board consider relief-of-costs on claims dating back twenty years.

A final point should be made regarding records of costs produced by the Board. The Royal Commission has found a considerable amount of inconsistency in numbers and
cost figures provided by the Board, including pension numbers and costs. These kinds of data errors may make it difficult to accurately track costs over time and to effectively predict future costs. Hopefully these kinds of problems will be improved with changes to planned changes to the management information systems.

3.3 Costs and Productivity

Definition: The relationships among costs, inputs and outputs.

Findings:

The 1991 Administrative Inventory\(^{30}\) reported that between 1985 and 1990, total staff had risen by 46.2%, and substantial growth continued into 1991. However, it was also reported that in view of the volume of claims, the Board has actually kept costs in check (p.143). At that time, a typical claims unit in Richmond handled nearly 15,000 wage loss claims per year, not including reopenings, and on average each claims adjudicator or claims officer was adjudicating over 1,300 claims per year, over 100 per month, and over 5 per working day (p.29).

Similarly, the 1996 Administrative Inventory\(^{31}\) found that a typical SDL in Richmond handles 15,000 wage-loss claims and another 1,500 re-openings, with the workload spread between 10 or 12 Claims Adjudicators and Claims Officers, and with most decision makers adjudicating 1,300 claims per year, more than 100 per month, and about 5 per working day. (p.42).

The 1991 Administrative Inventory reported that staff felt "crushed by the continuous flow of cases onto their desks". The Board has reported to the Royal Commission that prior to the


new strategic direction the staff submitted a petition complaining of overwork\textsuperscript{32}. The CEU have argued that workloads have only gotten worse in recent years (p.2-3)\textsuperscript{33}:

The environment in which sympathetic and benevolent justice will flourish requires nurturing. High volume, stress-laden workplaces have, as their inevitable consequence, the bureaucratization which so many presenters have lamented: form letters, delays in returning calls, abrupt encounters, voice mail. …As positions are left unfilled after retirement or resignation, those who are left have to shoulder increasing responsibilities. In such circumstances, it is the details of attention to the individuality of each claimant that will suffer.

Separating positions by function, with those expected to have more extensive interaction with workers (and others involved with the claim) having lower caseloads than those required only to collect the initial information to make entitlement decisions, may help to reduce the burden on some staff. It will be important that the new expectations – for personal contact, on-site visits, and case coordination – are not simply added on to existing caseloads and work requirements.

Claims administration is the most expensive of the WCB’s core functions, and is performed by the largest proportion of its staff. It consumes about 30% of the WCB’s total administrative expenses and employs about 40% of its staff\textsuperscript{34}.

In 1997, the WCB’s total administrative costs were forecast at approximately $200 million, of which $60 million were to be incurred by Compensation Services functions (e.g., including Central Services, but excluding Vocational Rehabilitation). Similarly, in 1997, the WCB had a forecasted total staff complement of approximately 2,500 full-time equivalents, of which 977 were working in Compensation Services functions.

The largest components of administrative expenses are staff wages and benefits.

\textsuperscript{32} Royal Commission on Workers’ Compensation Board in BC. Presentation by the Workers’ Compensation Board of BC. April 14, 1997.
\textsuperscript{34} Sources and analyses for this entire section are presented in Compensation Services Part 1 Report entitled \textit{Compensation Services Program Overview for the Royal Commission on Workers’ Compensation in BC}, September 10, 1998.
• In 1997, 4% of full-time equivalent staff (40.4) and 4% of total administrative expenses ($2.1 million) were incurred to administer Health Care Services. 1998 projections indicate that a similar proportion and number of FTEs (4% and 38.0 respectively) and total administrative expenses (3% and $2.1 million) will be used by this function.

• In 1997, 74% of full-time equivalent staff (720.2) and 72% of total administrative expenditures ($43.5 million) were incurred primarily to administer Short Term Disability functions. Projections for 1998 indicate that both the proportion and numbers of total Compensation Services FTEs devoted to Short Term Disability functions are expected to remain quite similar – at 71% and 707.6 FTEs respectively. The proportion of administrative expenses devoted to Short Term Disability functions is also estimated at 71%, while expenditures should increase by $.9 million to $44.4 million.

• In 1997, 10% of Compensation Services’ full-time equivalents (96.8) and 10% of its administrative expenses ($6 million) were incurred primarily for Long Term Disability claims administration. Similarly, in 1998, projections are that 9% of total FTEs (93.7) and 10% of total administrative expenses ($5.9 million) will be spent on this function.

• In 1997, 8% of full-time equivalent staff (73.3) and 6% of total administrative expenses ($3.5 million) were incurred by Operations. 1998 projections indicate that a similar proportion but larger number of FTEs (10% and 98.4) and total administrative expenses (7% and $4.3 million) will be used by this sub-function.

• In 1997, 2% of Compensation Services’ full-time equivalents (17.7) and 2% of administrative expenses ($1.4 million) were incurred by Field Services. Similarly, in 1998, projections are that 2% of total FTEs (18.0) and 2% of total administrative expenses ($1.4 million) will be spent on this unit.

• In 1997, 2% of full-time equivalent staff (14.8) and 2% of total administrative expenditures ($1.1 million) were used on Central Services’ activities. Projections for 1998 indicate that the proportion of total Compensation Services FTEs and
administrative expenses devoted to Central Services is expected to remain quite similar while the number of FTEs and administrative expenditures will rise slightly – at 2% of total FTEs (18) and 2% of total administrative expenditures ($1.4 million) respectively.

- In 1997, 1% of full-time equivalent staff (11.6) and 3% of total administrative expenses ($1.6 million) were incurred by the Divisional Controller. 1998 projections indicate that a similar proportion but higher number of FTEs (1% and 14) and total administrative expenses (3% and $2.2 million) are allocated to this function.

Similar values can be seen for the past five years (1993 to 1997). The proportions of full-time equivalents and total administrative expenses consumed by functions have remained relatively similar over this time (within 3% across all categories). For example, Long Term Disability administrative expenses have comprised between 10% (1997) and 13% (1995) of total administrative expenses each year from 1993 to 1997. Similarly, Long Term Disability FTEs have ranged between 10% (1997) and 13% (1993) during these years.

However, the dollar amount of a function’s administrative expenses may have varied quite substantially from year to year. As well, FTE counts in some areas indicate significant decreases during this five year period. For example, in real dollars, Long Term Disability administrative expenses have ranged between $5.6 million (1993) and $7.5 million (1995) each year – a $1.9 million difference. Over the same five years, Long Term Disability FTEs have decreased from 164.7 (1993) to 87.6 (1997). Other areas with large FTE decreases are Operations (from 124.2 FTEs in 1993 to 64.4 in 1997) and Health Care Services (from 68.1 FTEs in 1993 to 41.0 in 1997).

In addition to administrative expenses, claim administration functions incur benefit payments or claim costs. In 1997, these functions incurred a total of $675.7 million in

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35 Except in 1993 and 1994, during which one of the now Inactive Service Centres accounts for a larger proportion and short term disability costs account for a smaller proportion of total administrative expenses and full-time equivalents.

36 These FTE counts are those taken as of December 31st each year. They are different from those included in annual budgets/forecasts for the year as a whole (presented in Part I Report’s Exhibit 2).
claim costs. Projections for 1998 are that a total of $676.8 million will be paid on similar
benefits. In 1997:

- 22% ($150.1 million) of these claim costs were incurred for health care benefits.
  These benefits may be administered by health care or short term disability staff\(^\text{37}\);

- 38% ($255.0 million) are short term disability benefits which are primarily
  administered by short term disability staff (who also determine claims’ entitlements to
  benefits);

- 33% are long term disability benefits and 7% are survivor benefits which are primarily
  administered by long term disability staff.

3.4 Working Environment

Definition: The extent to which the organization provides an appropriate work
atmosphere for its employees, provides appropriate opportunities for development and
achievement, and promotes commitment, initiative and safety.

Findings:

The 1996 Administrative Inventory\(^\text{38}\) stated that (p.261):

The WCB has a tremendous reservoir of talent among its staff. Unfortunately,
that talent is neither encouraged nor consciously developed as a regular part of
doing business at the WCB. Staff development seems to be treated as an add-
on; but service-oriented businesses cannot afford to put staff development last
on the priority list. The closing of the TEC (Training and Education Centre) was
just the most obvious manifestation of a failure in the commitment to adequately
develop staff talent and creativity.

\(^\text{37}\) As well as Rehabilitation staff including those in the Rehabilitation Centre.
As discussed above, staff have complained about excessive caseloads and overwork.

In 1997, the Board contracted with Wilson Banwell to conduct employee surveys to assess:

- Job Satisfaction: the extent to which employees enjoy their jobs and are proud of their association with the WCB
- Certainty and Optimism: the extent to which employees understand and support the direction and feel positive about the future of the organization
- Sense of Contribution: the extent to which employees feel a sense of personal value and contribution
- Work Demand: the extent to which employees believe their work load is something they can manage
- Manager Support: the extent to which employees feel their managers provide support
- Group Support: the extent to which employees feel their fellow employees provide support
- Encouragement and Recognition: the extent to which employees feel recognized for their contribution and their effort is encouraged

The researchers received an excellent response rate of 80% to the surveys. A total of 362 Lower Mainland Compensation employees, and 282 Area Office Compensation employees, completed the surveys.

Scores were on a scale from 1 to 5, with “3” neutral, and lower scores indicating less favourable responses. Results for Compensation Services employees from the Lower Mainland and overall WCB employees will be discussed below, based on the survey report for the Compensation Services Lower Mainland\(^{39}\). In general, Compensation Services employees in the Lower Mainland scored lower than Compensation Services employees in Area Offices, and lower than WCB employees overall. The scores of

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\(^{39}\) WCB of BC. Employee Survey Results: Compensation (Lower Mainland), September, 1997. Prepared by Wilson Banwell, November 1997; Summary Factor Scores presented *in Employee Survey Results*.
Compensation Services employees in Area Offices were more similar to those of WCB employees as a whole, although the former group were slightly lower than the mean on some factors.

The main findings included the following:

- the highest scores for Compensation employees and for WCB employees in general were on the factors “job satisfaction” (LM Compensation employees mean = 3.49; AO Compensation employees mean = 3.69; overall WCB employees mean = 3.73) and “group support” (LM Compensation employees mean = 3.51; AO Compensation employees mean = 3.59; overall WCB employees mean = 3.54)
- the lowest scores for Compensation employees and for WCB employees in general were on the factors “certainty and optimism” (LM Compensation employees mean = 2.61; AO Compensation employees mean = 2.66; overall WCB employees mean = 2.76) and “encouragement and recognition” (LM Compensation employees mean = 2.47; AO Compensation employees mean = 2.84; overall WCB employees mean = 2.83)
- while job satisfaction scores were among the highest of the factors, for both Compensation employees and WCB employees as a whole, they were lower than the BC norm

Individual items with the highest scores for Compensation employees in the Lower Mainland were:

- My job is challenging
- I would be happy to be still working for the WCB in three years

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Meeting Leaders Guide for Managers. (Compensation Services Lower Mainland and Compensation Services Area Offices)

40 Factor scores taken from “Meeting Leader’s Guides”: Employee Survey Results, Meeting Leaders Guide for Managers, Compensation Services – Area Offices; Employee Survey Results, Meeting Leaders Guide for Managers, Compensation Services – Lower Mainland.

41 Wilson Banwell provided BC norms for some of the items. The BC norm was 4.0 for the item “I’m glad I took my job and would take it again”; and 3.8 for the item “I would recommend the WCB to other people as a good place to work”; LM Compensation employees showed means of 3.64 and 3.21 on these items, and AO Compensation Employees showed means of 3.94 and 3.30.
• Employees in my area support each other
• I’m glad I took my job and would take it again
• My manager treats me fairly if I make a mistake

Individual items with the lowest scores for Compensation employees in the Lower Mainland were:

• The WCB has improved as an organization over the last two years
• I receive praise for a job well-done
• I have a clear picture of where my division is headed
• I am usually consulted about decisions that will affect my job
• I receive meaningful personal recognition for my contributions and extra effort

Individual items with the highest scores for Compensation employees in the Area Offices were:

• I would be happy to be still working for the WCB in three years
• I’m glad I took my job and would take it again
• I feel prepared to meet the demands of my job
• I am trusted to achieve results
• I enjoy my job

Individual items with the lowest scores for Compensation employees in Area Offices were:

• I am well-informed about changes here
• I feel my future employment with the WCB is secure
• The WCB Executive have a clear vision for the future
• I receive meaningful personal recognition for my contributions and extra effort
• I have a clear picture of where my division is headed

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As noted in the Wilson Banwell reports, during this time of change for the Board (p.3):

It is conceivable that the probability of attaining poor results might be higher now than at any other time. Right now, for example, labour negotiations are pending, a Royal Commission evaluating the WCB is well under way, the organization is less than a third of the way into implementation of its strategic plan. The very existence of a Royal Commission must raise the specter of, as yet, unknown change. Strategic plan implementation also produces turmoil as the organization slowly adjusts to new principles and practices. Thus, this is a time of change in which the organization’s environment is in upheaval and uncertainty is likely at a peak.

It is also noted, however, that the timing may never be right for the first application, and that an organization needs to conduct such an assessment perhaps several times until norms can be determined.

The impact of the vast number of new initiatives can be seen in employees’ responses. It appears that employees are uncertain about what the new strategic direction and initiatives mean, and that they feel they have not had sufficient consultation with respect to the new initiatives and directions. With respect to the low scores on “Certainty and Optimism”, Wilson Banwell stated (p.9, both LC and AO reports):

Certainty and optimism are low in most respects and likely reflect the real uncertainty associated with current change and the threat of change. Results for Lower Mainland (and Area Office) Compensation employees are quite low, like the rest of the organization, and even lower in some instances. In particular, Compensation employees feel less secure about the future and a majority feel things have not improved for the WCB organization. (Area Offices Compensation employees are somewhat less clear about where the Division is headed and less optimistic and secure about the future). This kind of uncertainty is at a level that if sustained could jeopardize the health of the organization. (italics ours, inserted from AO report)
Lower Mainland Compensation and Area Office employees also showed scores below the “neutral” level, and below the BC norm, on items that dealt with sufficiency of resources (“I have sufficient resources to do my job”; LM mean = 2.71; AO mean = 2.87; BC norm = 3.3) and workload (“My workload is generally reasonable”; LM mean = 2.53; AO mean = 2.65; BC norm = 3.1). Additionally, there was a perception of limited opportunity for learning and development (“There are opportunities for me to learn and develop my skills at the WCB”; LM mean = 2.87; AO mean = 3.17). Scores were relatively higher, however, on a number of other items that dealt with the sense of being prepared for the job (for example, “I can usually get the information I need to do my job”; LM mean = 3.21 and AO mean = 3.36; “I feel prepared to meet the demands of my job”; LM mean = 3.50 and AO mean = 3.72). With respect to support from management, the survey showed broad variation which the researchers interpreted to suggest a lack of consistency within Compensation Division’s Lower Mainland and Area Offices (p.11).

Finally, with respect to “Encouragement and Recognition”, the researchers concluded that (p.12-13):

Encouragement and recognition are significantly low. Like the rest of the organization Lower Mainland Compensation (and Area Office) employees do not receive much encouragement on the job either through being consulted or through direct encouragement of achievement. Some of these areas are dramatically lower than the norm and suggest a strong cultural difference between the WCB and other organizations. That is, its hypothesized that the WCB has a ‘recognition-poor’ organization culture which is also represented in the Compensation Division’s Lower Mainland. Here there is substantial room for improvement. (italics ours, inserted from AO report)

With respect to education, training and professional development, the CEU contended in their submission to the Royal Commission that (p.14):

There is inconsistent and poor quality training of Board staff, especially in the area of adjudication. Adjudicators receive an initial period of training. After initial training, no ongoing training is forthcoming and there is virtually no professional development.
Traditionally the training of adjudicators was carried out in two phases: initial and second phase. Initial training was carried out in the Training and Education Centre (disbanded in 1994) thus guaranteeing some consistency. Second phase training, on the other hand, took (and continues to take) place with a mentor. The quality of the Second Phase training is dependent upon the skill level of the mentor with whom the trainee is paired. There is no evaluation of the Second phase training process; hence, the skill the newly trained adjudicator brings to a caseload is solely dependent upon the skills of the mentor. There are no objective criteria against which the trainee can measure his/her knowledge, skills, and abilities.

Areas of training needed by adjudicators, according to the CEU, include (p.14-15):

- basics around occupational health and safety, so that when adjudicators make site visits they can better address safety issues
- principles of the Act and Board policy
- responsibilities of each Board officer, and how decisions in different parts of the Board affect other parts
- the mechanics of adjudication, including how to obtain evidence, how to sift through relevant and irrelevant evidence, and how to apply law and policy to the evidence obtained

The Compensation Services Division has recently established a new section specifically concerned with the development and implementation of training for Compensation Services (and Rehabilitation) staff. The unit is concerned with identifying training needs, coordinating the division’s responses to these needs and job mapping/career planning. It includes a Learning Centre where division staff are able to pursue training on their own. It also covers the Business Process Office which is mapping ASIS business processes as a basis for making changes in the future. Its current priorities are: training to support new initiatives, “soft skills” training and technical/line operations training.

The BC Federation of Labour argued, in their submission to the Royal Commission:

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44 BC Federation of Labour submission to the Royal Commission.
Workers value competent, well trained staff because there is generally a correlation between competency and the ability to make fair decisions. Training includes initial as well as continuing training.

...Board staff tell us that they are not given the opportunity or the time to be trained for new assignments and on a continuing basis.

The reason we were given for shutting down the Centre was that there was a "service crisis at the time" and so "every available trained adjudicator" was put on the floor and was given case loads. The result is that training is done by means of a "mentoring" program. A person who starts work in Occupational Diseases for the first time goes through this kind of training. When asked if there was any formal and structured training including a curriculum on occupational diseases and on the Act and Board policy the answer was that the Board would be surprised if that didn't exist.

The current Learning Centre offers only voluntary course in areas such as improving computer skills and things such as "exceeding your customer's expectations" or "thinking creatively". The centre does not have any courses on the Act or Board policy.

4.0 Performance Measurement and Reporting

4.1 Monitoring and Reporting

*Definition:* The extent to which key matters pertaining to performance and organizational strength are identified, reported, and carefully monitored.

*Findings:*

Performance monitoring typically involves tracking of pre-specified indicators on a regular basis. Monitoring activities tend to address issues of:
• Objectives Achievement; and,
• Impacts & Effects.

Monitoring of performance can include:

• Activity/transaction monitoring;
• Outcome monitoring;
• Financial monitoring; and,
• Compliance monitoring.

The WCB has recently begun to report on its performance using a set of “Key Performance Indicators”. The Compensation Services Division is primarily monitoring its activities/transactions (e.g., claim volumes) and financial measures (e.g., claim costs). In terms of outcome monitoring it focuses on timeliness and client satisfaction. Some compliance monitoring may be conducted (e.g., by managers), but is not being reported at aggregate levels.

Monitoring information on claims administration is being reported by the WCB in many ways including:

• Monthly through Compensation Services performance reports and client survey reports.

• Quarterly through operating reports submitted to the Panel of Administrators.

• Annually through the WCB’s annual reports (outcomes and financial) and business plans (“performance measures” and outcomes).

• Periodically through the administrative inventories and potentially through strategic plan updates (e.g., on progress towards “client service objectives”). The strategic plan set targets, but did not report baseline values for these targets.
Evaluative research typically includes analysis of “why” indicators are at the level they are and to what extent they can be attributed to programs. It tends to be backward looking as well as “point in time”, and usually involves primary data collection methods such as in person interviews as well as secondary data methods. It can also involve more in-depth analyses that are not regularly repeated. Evaluation activities address issues of:

- Rationale;
- Objectives Achievement;
- Impacts & Effects; and,
- Alternatives.

Evaluative research on WCB claims administration has included:

- the Program Evaluation and Research Unit evaluation studies (to the extent that they cover claims administration as well as rehabilitation activities and outcomes);
- “special backgrounders” prepared by Angus Reid on specific issues or areas of interest;
- special research studies on specific issues (e.g., an analysis of rising health care costs conducted in 1994); and,
- evaluations of new initiatives or pilot projects, such as E-File and Case Management.

The 1996 Administrative Inventory\(^{45}\) observed that (p.253, 254, 264):

The WCB of 1995 is vastly more open and responsive than it was four years ago. More information is available and greater access is provided. Still, while a great deal of effort has gone into improving access for stakeholders at the WCB since 1991, the yield has been disappointing. …Attitudes of suspicion and distrust are all too prevalent, particularly between employer groups and worker groups. Neither trusts the motives of the other side when dealing with policy issues.

Many times the WCB gets caught in the middle and ends up earning the enmity of both sides.

…Externally, the WCB needs to build credibility with stakeholder interests and with governmental authority. Over time, this can be done only if the WCB becomes the source of truthful, authoritative analysis that informs stakeholder opinion. Internally, the WCB is in desperate need of the analytical capacity to explain its own performance. Ultimately the WCB cannot take control of its destiny unless it can define its own problem areas and ways to resolve them.

As discussed in the Royal Commission report on Performance Indicators, the Board’s KPI’s are a step in the right direction. Issues to address include:

- some important outcomes are not currently being monitored (e.g., benefit adequacy and equity)
- the meaning of some of the measures is nebulous – don’t provide a clear indication of how the division is doing
- not enough reporting in Annual Report in past – data reported provides little information to stakeholders

As discussed above, there is a certain degree of distrust within the workers’ compensation system which might be traced to any number of factors. The Board clearly acknowledges the problem with lack of stakeholder trust46. Stakeholder presentations to the Royal Commission also indicate a lack of trust.47

In the past the Board has tended to provide limited information with respect to its activities and outcomes, and at times, information that is inaccurate or misleading (Note: See further discussion in the Royal Commission’s report on Performance Measures).

46 See for example, Board presentation to the Royal Commission, February 20, 1998 “Stakeholder trust of the Board has never been high”.
47 See for example, Board presentation to the Royal Commission, February 20, 1998 “The problem is that workers don’t trust board doctors because they are board doctors”; April 9, 1998, “we can’t trust the Board with Blind faith”.
Expend ing sufficient resources to ensure that staff are adequately trained to deal with the new roles they are given; having processes in place to monitor the quality of decision-making and the effectiveness of new programs and initiatives; anticipating, monitoring and openly reporting on secondary impacts or unintended consequences of new programs and initiatives; all would go a long way toward reassuring stakeholders that the Board is committed to improving its services.

In a submission to the Royal Commission by Jim Sayre, Community Legal Assistance Society48 refers to the Accountability Reporting Review conducted by the Office of the Auditor General of BC, and states that (p.20-21):

Many of the Auditor-General’s recommendations are useful, but (three) in particular stand out because they are brilliant in their simple, yet direct focus on the Board's three most important purposes – preventing injuries, compensating injured workers, and providing rehabilitation that restores their earning capacity:

…that the Board examine the causes of serious injuries, including factors that may influence worker or employer behaviour, and report on this to the governing body.

…that the Board assess the adequacy of the compensation it pays by comparing workers’ pre-injury and post-injury incomes.

…that the Board assess and report on the effectiveness of its rehabilitation services by analyzing the return to work results …to determine whether workers have really returned to work at the pre-injury income levels, and remained employed on a durable basis.

Perhaps this should not seem so profound and revolutionary. What more obvious way to determine how well the Board is doing than to examine the impact of its decisions on injured workers, who are the subject of its mandate and the reason for its existence? Whether the suggestions should have seemed
obvious or not, what is important is that the Board simply doesn’t do it that way.
And that is a major reason for the wide dissatisfaction with its decisions.

Employers are particularly concerned about understanding and addressing rising administration and claims costs. The trends that employer are concerned about are increases in injury duration, and increases in claims costs and administration costs that are occurring at the same time that injury rates and numbers of claims are going down. Also of concern is the fact that the Board cannot explain the reasons for these trends⁴⁹.

5.0 Real Consequences

5.1 Achievement of Intended Results

Definition: The extent to which goals and objectives have been realized.

Findings:

As discussed above, the Compensation Services Division has established a number of specific goals which it is monitoring on a regular basis.

Paylag

Paylag is one of these goals. The Compensation Services Division aims to improve timeliness of entitlement decisions to within 17 days of disablement, an objective that has been in place for some time.

It is important that the Board monitor what paylag really means in terms of its performance. Is timely payment within the control of staff, keeping in mind delays in the filing of claims? Do timely payment decisions mean good decisions (for example,

⁴⁸ Royal Commission on Workers’ Compensation. Presentation on Behalf of Injured Workers. Workers’ Compensation For the 21st Century. (no date; prepared for presentations to the Royal Commission in April, 1998)
⁴⁹ Presentation by Alan Winter, Employers’ Coordinating group, to the Royal Commission, April 8, 1998.
pressure for quick decisions could result in either too many allows or too many disallows)? The 1991 *Administrative Inventory*⁵⁰ points out that (p.149-150):

(Paylag) is an appropriate standard, but when it is the foremost one utilized, it creates certain difficulties. Since it is measured from the day following the date of injury, and not based on the date reported to the WCB, some claims could never be paid within 17 days. How can a unit’s performance be assessed on a matter over which it lacked any control? Excessive emphasis on the paylag could conceivably lead units to postpone work on a claim where the 17 days had already elapsed, and concentrate instead on claims where the standard could be met. An undue emphasis on timeliness may lead to some sacrifice in quality as well. …The issue raised here is not that the paylag standard is inappropriate. Instead, it is that additional criteria for evaluation are needed. For example, how quickly are first payments made from the date of notice to the WCB of an injury or disease? How often are there errors in the adjudicator’s determination of the claimant’s average earnings? How frequently are adjudicator’s findings remanded or reversed at the manager’s review? What is the appeal rate to the Review Board? What is the reversal rate?

Similarly, the 1996 *Administrative Inventory*⁵¹ suggested that (p.263):

..the encouragement of quick decisions by initial adjudicators (i.e., the CSRs) clearly creates a subtle bias in favour of granting benefits. No one will complain if the initial adjudicator just says yes, but eventually some one will have to deal with the expectations that have been created.

The timeliness of short term disability payment decisions has been improving. In 1997, almost twice as many workers had short term disability payments first made on their claims up to fourteen days after their injury/disablement than five years earlier⁵². In 1997, 47% of workers’ first short term disability payments were made during this time.

In 1995, this proportion was 32%, while in 1993 it was only 25%. In contrast, the proportion of workers with short term disability payments first made on their claims between twenty-one and sixty days after their injury/disablement decreased to 25% in 1997, from 41% in 1993.53

The timeliness of the decisions made on other claim types, however, varies. Information on the average length of time it takes to reject or disallow new claims is not available. Information on the timeliness of health care claims was requested from the Board; however, these payments are generally made to health care practitioners or vendors, rather than to workers. On fatal claims, survivor benefits are typically paid for the first time within ninety days of a worker’s fatality. Over the last five years, between 48% and 64% of survivor benefits were first paid within ninety days (other than on reinstated pensions in 1996 and 1997)54. The BC Federation of Labour55 has recommended that the Act be amended to require all decisions by the Board on initial entitlement to be made within 45 days of receipt of either the Form 6, the Form 8 or the Form 7, decisions on pensions to be made within 60 days of the date of plateau, and that there be a statutory time period of 20 days for the Board to fully implement appeal decisions (other than pension decisions, which should take 60 days).

Interviews with Board executives and managers suggested that while the decisions are made faster today, the delays in the past were often unnecessary. In some cases, decisions to accept the claim are now made with less information, but interviewees felt that these decisions were likely just as good as they would have been had the adjudicator waited until all the facts were in. On the other hand, the CEU reported56 that (p.15-16):

55 BC Federation of Labour submission to the Royal Commission.
A prime example of interdepartmental goal conflict within Compensation Services centers on management’s current emphasis on statistics such as paylag (the length of time from date of injury to first payment processed) and duration (the length of time the worker remains on short term disability benefits) rather than quality decision making. Such an emphasis forces adjudicators to make quick decisions based on limited evidence to meet paylag statistics and to terminate benefits as quickly as possible to meet duration statistics. Pressure to meet “paylag” statistics means claims are routinely being accepted unless the employer has “protested”. If this is what is wanted by the system, then the change should be the result of proper public legislative and policy amendments, not management’s need to demonstrate impressive but extremely selective and misleading statistics.

The Board is not collecting information on the quality of decisions with respect to initial entitlement, so it is impossible to determine at this point which of these views is most accurate. The BC Federation of Labour has argued that:

As we see it the need is for a coherent system of making decisions within the Board in order to ensure the best quality possible. The performance standards have to be clear, they have to be consistently applied over time and there cannot be undue pressure on decision makers. We are somewhat concerned, for example, about the creation of the position of "Expediter" who has the responsibility to make sure files tagged as 17 day files do on fact get decisions made within 17 days. We all want decisions in 17 days but this technique must fast track the relatively simple decisions and give them priority over more complicated matters. …We recommend that the Board develop meaningful performance standards to measure the quality of decision making (not just speed or volume).

It is also noteworthy that part of the delay in deciding on the eligibility of a claim is due to the fact that the forms required by workers and employers are not always forthcoming. Worker forms may be justifiably delayed for reasons related to the injury itself (i.e., hospitalization, death), however employers are required by statute, under Section 54 (1), to submit their form 7’s within 3 days of the occurrence of the injury.
As argued in a submission by the BC Federation of Labour:\footnote{BC Federation of Labour submission to the Royal Commission.}

We know from the Board's presentation that there is a "high volume of claims" where the Form 7 is not filed on time. In 1997 employers complied with section 54 and filed a Form 7 within 3 days in only 15% of all claims. In approximately 50% of claims employers filed within 10 days and with the balance of 35% employers filed beyond 10 days or did not file a Form 7 at all.

Overall, we have a situation where employers are in breach of the Act in 85% of claims. In 1997 there were approximately 185,000 claims filed with the Board so employers were in breach of section 54 more than 150,000 times in 1997. Information provided by the Board is that there is no direct connection between claims adjudicators and the legal department of the Board to report late filing by employers.

Delays in filing Form 7s are not simply a technicality with few or no consequences. Section 94.14 of the Manual states, "An employer is always given an adequate opportunity to submit a F7 employer's report before a claim is adjudicated in its absence" so employer delinquency on the requirements of section 54 causes delay in workers obtaining compensation and giving employers an "adequate opportunity" increases the cost of claims. We also know that the second most frequent way that the Board initiates claims is upon receipt of the Form 7 from the employer (the most common is receipt of the Form 8 from the physician). The delay and added cost as a result of violations of section 54 occurs in about 85% of all claims.

Section 54(5) and (7) provide for penalties for late reporting by employers. Section 94.15 describes the policy for enforcing section 54 and this involves 6-month reviews and two warning letters to employers. The ineffectiveness of two warning letters over a year is demonstrated by the chronic breach of section 54 by employers. Ontario has an automatic administrative penalty of $250 for late filing by employers of their equivalent of our Form 7s.
The BC Federation of Labour recommended an automatic fine of $250.00 for late filing; John Steeves, of the BC Federation of Labour, subsequently suggested this be a “consideration” of a fine rather than an automatic fine.\textsuperscript{58}

It is important to note that the paylag measure is considered to reflect “income continuity”. It is no doubt important from a service expectation standpoint, but equally important in terms of worker financial need may be income continuity at other stages of the claim process – for example, between the ending of STD payments and the start of LTD payments. Most workers will be back at work before receiving their first wage loss payment; many workers will wait for months between STD closure and the determination of their pension (although some will receive discretionary bridging benefits over this period).

Workers can expect to receive their first pension award within three years of their date of injury/disablement. For example, in 1997, 68% of the functional awards which were the first awards made on a claim were activated within about 3 years (1080 days) after the date of injury/disablement. Where loss of earnings awards were the first made on a claim, 32% were activated within 1080 days after the date of injury/disablement in 1997.\textsuperscript{59}

Pension assessment referrals may be made either before or after short term disability benefits are terminated. Workers can expect to wait several months to receive their pension award after their claims have been referred for assessment. Functional pension awards averaged 8.3 months to determine in 1996 and 7.1 months in 1997. Pensions with a loss of earnings component took an average of 11.3 months in 1996 and 12.5 months in 1997\textsuperscript{60}.

According to WCB data, more than one-half (52%) of those receiving functional pension awards in 1997 were awarded their pensions more than one year after it became

\textsuperscript{58} Presentation by John Steeves, BC Federation of Labour, to the Royal Commission, April 8, 1998.
effective (e.g., after their short term disability benefits ended\(^6\)). Similarly, more than three quarters (78%) of those receiving loss of earning pension awards in 1997 received their awards more than one year after they became effective.\(^6\)

The issue of income continuity with respect to the period between wage loss termination and pension determination was addressed in submissions to the Royal Commission, in the 1991 *Administrative Inventory\(^6\),* as follows (p.155):

A problem of income maintenance may exist for some workers in the time period between the ending of temporary wage loss benefit payments and the establishment of the permanent disability pension. In some instances, the Vocational Rehabilitation Consultant may recommend that continuing income replacement be provide to bridge the gap. Since the payment is discretionary, it is not difficult to imagine that the plight of some workers may escape the attention of the Vocational Rehabilitation Consultant and his/her needs will be unmet. Unemployment insurance, union benefits, or welfare may serve as a bridge. The use of income continuity benefits needs to be assessed and possibly revised. Even after that is done the WCB should give attention to shortening the time gap between cessation of temporary benefits and the beginning of permanent disability benefits.

*Duration*

The Board is also aiming to reduce the duration of wage-loss claims.

On average, workers received 28 days of short term disability benefits on new claims in 1997 – though for workers with complex claims (C claims) the average was longer than this\(^6\).

\(^6\) WCB of BC. Rehabilitation and Compensation Services Division. Response to Royal Commission Request dated February 9, 1998, Response to Question 5 (11); For claims which received no short term disability benefits (e.g., hearing loss claims) the date of injury/disablement has been used.


Workers may receive short term disability benefits on new claims for several months. For example, 7% of those with short term disability claims first closed in 1997, were paid short term disability benefits for 91 days or more. Short term refers to the fact that the disability is considered to be “temporary” (is not medically stable) at this time, rather than a specific period of days, weeks or months.65

During this time, the worker receives cheques from the WCB for wage loss, separately from any cheques they receive for health care expenses.

On average, the duration of short term disability claim re-openings is longer than the duration of all new claims (67 days as compared to 28 days for new short term disability claims). Total claim duration (new and re-openings) was 42 days in 1997 (“total year duration”).66

Duration appeared to decrease after the new initiatives, but has recently begun to increase. The Board is uncertain why duration is increasing, but attributes it to multiple factors. For example, interviews with Board personnel (executives and managers) suggested that one factor which may be contributing to this increase are delays in the Continuum of Care, whereby workers wait at each stage before receiving the next levels of service, rather than proceeding in an uninterrupted fashion through the stages. Other Board interviewees have referred to backlogs in the Entitlement Unit.

Costs

Reporting on costs is discussed above.

Client Satisfaction

Reporting on client satisfaction is discussed below.

**Appeals**

As noted in the 1991 *Administrative Inventory*, it is difficult to determine the appropriate base with which to calculate an appeal rate – the total number of claims reported, the total number of rejected and disallowed claims, or some other figure? If one compares the total number of claims appealed (estimated in 1991 to be 5,500) to the total number of injuries reported (217,152), the inventory states, the appeal rate would be 2.5%, but if one compared the total number of appealed claims to the number of rejected and disallowed claims (9,900) the rate would be 55%.

The appeal bodies do have statistics on the number of appeals by issue, although there are several limitations in this data; if an approximate number of decisions made on each issue could be determined, then a more accurate appeal rate could be determined. For example, pension decisions are made for about 4,500 clients per year, so appeals with respect to pension awards could be considered with respect to this base. About 4% to 5% of claims are disallowed each year, or about 8,000 to 9,000 claims; appeals of eligibility decisions might be considered with respect to this base (Note: employers also appeal eligibility decisions in the reverse manner, so that employer appeals and worker appeals might best be considered separately).

As reported by the Board, appeals at the Workers Compensation Review Board have recently begun to decline. WCRB appeals initiated by workers have recently been in the 10,000 range annually (1995 at 10,802; 1996 at 12,473; 1997 at 10,221), however appeals are sometimes withdrawn before the process is completed, so the number of

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*68 The Appeal Division and the Workers’ Compensation Review Board noted that each appeal can involve several issues, although the data provided do not reflect this. The Appeal Division codes the appeal on one issue only. The issue coded in the decision is a clerical notation, and it is only the “first issue” in the decision. According to the division, it “does not necessarily reflect the only issue in the decision, or even the main issue in the decision.” The coding system has the capacity to register only one issue code. The Appeal Division stated that this code is the only means of determining what issues are considered, short of reviewing each of the Appeal Division decisions.*

decisions on worker appeals each year is lower. The Appeal Division shows that while appeals initiated by workers and dependents were down in 1994, they have increased somewhat since that time (1994 at 1,150; 1995 at 1,596; 1996 at 1,574; 1997 at 1,719). The issues most likely to be appealed by workers and dependents at Review Board and the Appeal Division are issues with respect to the initial adjudication of injury claims, issues with respect to permanent disability awards, issues with respect to temporary wage-loss benefits, and issues with respect to the adjudication of reopenings.

New Initiatives

It is impossible to say at this early stage whether or not the new initiatives – like Case Management, E-File, the Continuum of Care, and so on – are effective.

It is important that the Board carefully assess the new initiatives. For example, electronic claim filing was inevitable, but is E-file set up to capture, retain and disseminate information in a way that will meet the needs of the Board and its stakeholders? Is the right information included in the electronic version? Can people get at the information they need faster than before? Are the risks being taken care of appropriately (e.g., throwing out the paper files).

Other Impacts and Outcomes

The Board established its set of performance indicators based on its strategic objectives. There are some gaps in the areas being assessed. These may be the same priorities for workers, employers, and the public/government, but they are not necessarily the same priorities.

The Compensation Services Division makes decisions on:

- eligibility, which are complicated by difficulties in the assessment of injury and disease causation
• benefit entitlement, which are complicated by difficulties in the assessment of earning loss and earning capacity
• treatment service entitlement, including medical, rehabilitation, and vocational rehabilitation services, each with its own legislative and discretionary criteria
• closure and pension entitlement, which are complicated by difficulties in the assessment of medical versus other factors impeding rehabilitation and return to work, by difficulties in the assessment of functional loss, and by difficulties in the assessment of earning loss and future earning capacity

The legislation provides guidance on some of the basic aspects of eligibility and entitlement – in some cases with greater clarity than others – such as who is a worker, the maximum benefit level, and the percentage of gross income. However, the more complicated aspects of eligibility and entitlement are left to policy. Policies around determining eligibility (e.g., whether or not claims that involve natural body movement can be compensated; whether or not claims due to allergies and sensitivities should be pensionable), benefit entitlement (e.g., determining average earnings), and closure and pension entitlement (e.g., deeming; assessing long-term earnings loss) appear to create major controversy.

There are currently no indicators for adequacy and equity of benefits. There are few measures of the effectiveness of decisions, including the extent to which eligibility decisions turn out to be right or wrong (i.e., on the basis of appeals and fraud investigations), and why they turn out to have been right or wrong. There are also few clear indicators of consistency in decision making.

5.2 Acceptance

Definition: The extent to which the constituencies or customers for whom a program or line of business is designed judge it to be satisfactory.
Findings:

The Rehabilitation and Compensation Services Division has used Angus Reid surveys to track claimant satisfaction since 1996. As yet, there are no surveys of employers regarding satisfaction with Compensation Services.

The worker surveys have shown an increase on several dimensions from the start of the first wave to the most recent wave. For example, satisfaction with overall service appears to have increased, and satisfaction with specific dimensions of service, such as perceived helpfulness, patience, and ability to provide required information, appear to have increased. Some of the sample sizes were small, and should be interpreted with caution. Additionally, as discussed in the Royal Commission’s report on Performance Measures, there some problems with the way total satisfaction levels are being reported by the Board.

Clients with complex claims are less satisfied than clients with more simple claims. It is for these clients where difficult decisions on eligibility, termination of wage loss, average earnings, and pension entitlement are made, and these kinds of decision cause grief. As noted in the 1991 Administrative Inventory, there is general agreement within workers’ compensation circles that “the major disability cases are undercompensated and the minor disability cases are overcompensated, relative to lifetime earnings losses” (p.156) Furthermore, the inventory notes that “(t)he major disputes arising during the duration of the claim are likely to be over the level of the wage-loss benefit (especially where this is reevaluated at eight week duration), the appropriate rehabilitative treatment of the condition, the capacity of the injured worker to return to work, and the level of permanent pension entitlement, if any” (p.31).

As discussed above, workers and employers have expressed a number of concerns about the Compensation Services Division over the years. Very often they have diametrically opposed views on how the division should proceed, and efforts to satisfy one constituency group will often result in the dissatisfaction of the other. Whether or not the major issues of concerns for workers are being captured with the Angus Reid

surveys is not clear. The Auditor General’s Accountability Reporting Review recommended the following:

That overall satisfaction with the performance of the WCB and attitudes towards it, be periodically measured and reported to the Panel and in the annual report for the following stakeholder groups:

- workers (i.e., not just injured workers)
- employers
- MLAs
- the medical community

These are broad categories, and we believe some work should be done to segment the “market” into meaningful groups, to enable the WCB to pinpoint areas of concern, both by WCB program, and by stakeholder type. Measurement of satisfaction should include issues of how WCB communicates with clients and the complexity of the process as experienced by claimants.

5.3 Secondary Impacts

*Definition:* The extent to which other significant consequences, either intended or unintended and either positive or negative, have occurred.

*Findings:*

The Board is not currently monitoring secondary impacts. Secondary impacts that might occur as a result of Compensation Services activities might include, for example:

- reduced incidence of re-injury or multiple claims for workers who are involved in Case Management
- reduced injuries for other workers who are involved in work processes that change as a result of Case Management interventions for a fellow injured worker
- increased reopenings as a result of closure decisions made too early in the claim
The kinds of issues that Compensation Services could be monitoring include:

- potential secondary impacts related to quality/nature of eligibility decisions (e.g. Are allow/disallow rates going up or down? What are the rates for the various units -- overall/ CSR/Entitlement Unit/Case Management? What are the rates for different types of claims, including occupational diseases? Is there any change in the frequency of appeals with respect to eligibility decisions – by workers? by employers? Is there any change in the percentage of these decisions that get overturned on appeal?)

- potential secondary impacts of closure/termination decisions (e.g., How many claims are being reopened? Why? For what types of injuries? How soon after the claim is closed? On what basis was the claim closed?)

- potential costs not covered (e.g., What costs are incurred by the health care system for work-related injuries not covered by WCB? What costs are being paid for by workers over time?)

The Auditor General’s report\(^\text{71}\) addressed the need to assess secondary impacts, as follows (p.31):

Most, if not all, public sector programs have secondary impacts associated with them. These can be positive or negative. Critics of public sector programs often cite such secondary impacts as dependency creation and perverse behavior. It is likely that the WCB’s programs do have significant side effects. Some people have suggested that the psychological well being of long-term claimants is at risk in certain cases. Others have suggested that some employers ignore safety practices because they feel that the consequences of non-compliance are low compared to the cost of compliance.

Currently, to our knowledge, WCB management does not identify significant secondary impacts of its programs or report on their status to the Panel.

…We recommend that the WCB identify potential secondary impacts and assess which ones are worthy of investigation and reporting. Those identified should be reported to both the Panel and the external stakeholders.