## Comparative Review of Workers’ Compensation Systems in Select Jurisdictions

### JURISDICTION: Yukon

<table>
<thead>
<tr>
<th><strong>ENVIRONMENT</strong></th>
<th><strong>Population Size</strong></th>
<th>33,586 (June, 1997)</th>
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</table>

### Demographic and Economic Indicators

The economy of the Yukon remains fairly strong. It is driven by the mineral and ore industry and is subject to cyclical fluctuations in that industry. Major employment sectors are public administration, accommodation/service industries, wholesale and retail trades, transportation and communications, and manufacturing and construction.

The population in the Yukon increased by 26.8% between the years 1985-1995, for an annual growth rate of 2.4%. The average weekly wage rate in the Yukon in 1997 was $702.09. The unemployment rate was 9.6% in 1996.
GOVERNANCE & ADMINISTRATION

Nature of System
An exclusive territorial fund.

Principles and Mandate
The Yukon system is based on

• a recognition of the historic principles of workers' compensation, namely, the collective liability of employers for workplace disabilities, guaranteed no fault compensation for disabled workers, and immunity of employers and workers from civil suits; and

• the need for an effective workers' compensation system that continues to meet the changing needs of workers and more adequately reflects the true costs, both in human and economic terms, of disabilities arising out of the workplace and enables a holistic approach to the rehabilitation of disabled workers (excerpts from preamble Workers' Compensation Act, 1993)¹.

Access to Litigation
Workers' compensation is an exclusive remedy in the Yukon.

The Act clarifies that there is a right of action against third parties by the board. The worker can not bring an action against a third party unless they have the board's permission. In this case the board is subrogated to any right of action open to the worker.

The Yukon Act also provides for a right of action by a worker not covered by the Act against an employer or person contracting with a contractor or subcontractor.

¹ These goals were established as the overriding principles of the new Workers' Compensation Act which came into effect in January 1993. The new Act was drafted in plain language and as well as reforming and increasing benefit levels for disabled workers, clarifying and expanding the scope of the Act and improving the appeal process and workers' access to information the new Act established a new governance structure through an expanded board of directors responsible for both workers' compensation and occupational health and safety.
Comparative Review

Yukon

Scope of System

Who is Covered? All employees are covered by the Yukon scheme, including part-time and casual employees and directors of a company (if a director is not actively involved in the company's business the director may apply to the board for an exemption), subject to certain exemptions. Domestic employees are covered by the Act, but only if they work on more than a casual basis. As well, outworkers, persons acting in a religious function, volunteers, sole proprietors, elected officials of municipalities, elected or approved officials of First Nations and employers are exempt from coverage. Exempt employments may apply to the Board for voluntary coverage.

Almost 100% of the Yukon workforce is covered by the workers' compensation scheme (1994 estimate). There were 2,340 registered employers in 1996.

What is Covered? Any personal injury (accident or illness) arising out of and in the course of employment is covered.

Occupational disease is considered a work related incapacity and therefore covered by the legislation. The legislation specifically provides that a disability includes "post-traumatic stress".

Self Insurance Not permitted2.

Organizational Framework The Workers' Compensation Act is administered by the Workers' Compensation, Health and Safety Board (the WCHSB).

The mission of the WCHSB is to assist "workers' and employers' to optimize the employability and productivity of the Yukon workforce by advancing safe, healthy, workplace practices and by reducing the effects of work-related disabilities".

The WCHSB has one central office located in Whitehorse. The Board has about 50 full time employees.

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2 As of 1993, the Yukon Territorial government is no longer self insured; a separate classification has been established for the Yukon territorial and municipal governments.
Comparative Review

Yukon

Governance Structure

The board of directors of the WCHSB is composed of seven members appointed by the Commissioner in Executive Council: an independent Chairperson, the President of the WCHSB (ex officio), an alternate chair, and two representatives of labour and two representatives of industry.

The President of the WCHSB, a non-voting member of the board of directors, is appointed by the Commissioner in Executive Council on the recommendation of the board of directors (the president can not be dismissed except by the Commissioner in Executive Council on recommendation of the board). He or she reports to the board of directors, but has the status of Deputy Minister in the Territorial public service.

Policy Development

There is a board policy regarding policy development and the application of policy. The general direction of this policy is that "all policies are developed under the direction of Board members to continue to bring life and meaning to the Workers' Compensation Act. Each year the Board approves what policies will be written, reviewed or rescinded".

Policies developed by staff, under the direction of the President, are presented to the Board through a Board Submission on Policy which includes a discussion of the issues, options for consideration, recommendations, cost and implementation rationale, who will benefit and how the benefit occurs, and the consequences of not taking the proposed action. All policies are binding on the staff, the president, the review committee and appeals panel.

There is a sunset clause in the Act, requiring that the minister direct a review of the legislation within 10 years following its proclamation and then again within 10 years after that review.
Accountability

Under the Yukon Act, responsibility for the Act is specifically assigned to a government minister. The board of directors reports to the minister and the minister has the power to direct the board to investigate any matter under its jurisdiction in the manner requested by the Minister. In 1994, the Board reviewed and updated its strategic plan. The plan "forms the basis for annual operational planning," but does not contain any key performance indicators or objectives.

Performance Assessment

The WCHSB, similar to other Canadian boards, collects and calculates a number of statistical measures intended to assist the board and the management of the board in the monitoring and operation of the system.

Claims Adjudication Process

Staff of the WCHSB are responsible for all functions related to claims processing, adjudication and management. The Board must give written notice of their determination to the worker, including, on request, reasons for the determination. To qualify for compensation, an injury or death must be reported to the WCHSB and a claim made within 12 months. An independent Workers' Advocate, in the Department of Justice, is available to assist workers with all aspects of the workers' compensation process.

Dispute Resolution

Mediation/Conciliation

There is no specific statutory provision relating to mediation/conciliation in the Yukon Act. The Worker's Advocate does, however, assist claimants in the

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3 In late 1995, the Minister initiated a public inquiry into the operations of the Workers' Compensation Health and Safety Board in response to criticisms from the public and the press "for the way the board was seen to be handling injured workers' claims and for alleged poor management practices" (page 3, The Report of Public Inquiry Respecting the Yukon Workers' Compensation Health and Safety Board: Executive Summary, Whitehorse, Yukon, June 1996). The report of the inquiry made a wide ranging series of recommendations on improvements and changes to the system. The Board was charged with implementing the accepted recommendations and in March 31, 1997, released a report on Phase 1 of its response to the report of the Public Inquiry.

4 The Board is currently reviewing its strategic plan and its policy development process. The Board has invited comment from the public on these issues.
Adjudication and appeal process.

**Appeals Process**

There is a two level internal appeal process available to workers for decisions of the WCHSB (claim, medical and rehabilitation decisions).

The first level is an internal review by three senior staff members. A documentary or oral hearing may be held upon the request of the worker or employer. The second level of internal appeal for workers and employers is to a panel made up of members of the board of directors, consisting of the Chairperson, or alternate chair, and one member representing labour and one representing industry. A matter must first have gone through the senior management review process in order for it to be heard by the panel of directors.

The appeal panel of the board also hears appeals from decision made in relation to the *Occupational Health and Safety Act*. Appeals under these circumstances go directly to the board appeal level.

There is no external or independent review process or mechanism. There is no right of appeal of a decision of the Board to the courts.
### ASSESSMENTS / FINANCING

**Assessment or Premium Setting Process**

Assessments are reviewed and set annually. Assessment rates per $100 payroll are calculated according to industry groupings and are based on the present and future accident costs of these rate groups (The Yukon system had 89 industries and 6 rate groups in 1996).

The Yukon board does not use experience rating.

**Assessment/Premium Rates**

The average assessment rate for 1997 was $1.97 with a low of $0.75 and a high of $3.25 (in 1996, the average rate was $1.40 with a low of $0.75 and a high of $2.50). The maximum assessable earnings rate for 1997 was $54,200 (for 1996 it was $51,400).

**Second Injury Funds / Disaster Funds**

The board has set aside a "Potential Liabilities and Asset Replacement Reserve" to cover claims disasters, unknown disabilities (occupational diseases and enhanced disabilities), capital asset replacement and rate stabilization. This Reserve is funded by an assessment on employers' annual payroll.
## COMPENSATION BENEFITS

**Claim Rate**
In 1996, 1,211 claims were made (based on 1,319 reported incidents), of which 501 were time-loss claims. There were four fatalities. There were three fatalities reported and two compensated.

**Medical Aid**

<table>
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<tr>
<th>Nature of Aid</th>
<th>The board pays all medical expenses associated with a work related disability. There is specific recognition in the Act of traditional aboriginal healing and acceptance of this as a reasonable cost of medical treatment.</th>
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<tbody>
<tr>
<td>Choice of Provider</td>
<td>The worker has the right to choose their physician</td>
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<tr>
<td>Medical Cost</td>
<td></td>
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<tr>
<td>Containment Initiatives</td>
<td>There is a set fee schedule for medical and hospital services.</td>
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</tbody>
</table>

**Rehabilitation**

| Physical/Occupational/Vocational | Rehabilitation assistance is provided at the discretion of the board. The goal of the system is to encourage rehabilitation and early return to work. In practice, a broad spectrum of rehabilitative services are provided by the board through its early intervention program, including counseling and vocational and physical rehabilitation, and job finding skills and assistance. Rehabilitation plans are developed by a rehabilitation team that includes the worker. |
| Social | Where appropriate, the WCHSB may provide academic assistance "to reduce or remove the effect of a handicap" resulting from a work related disability. |
| Rehabilitation Incentives | The board may provide financial assistance for workplace modifications "to promote the effective participation of employers in return to work plans". |
**Trends in Treatment of Subjective Complaints**

The board has a treatment policy dealing with the conditions that delay or hinder the recovery of a worker for a work related disability such as chronic pain (CS-01 Treatment).

**Disability Benefits**

<table>
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<tr>
<th>Short-Term Benefits - Temporary Disability</th>
<th>Weekly &quot;loss of earnings or wage loss&quot; compensation:</th>
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<tr>
<td>Rate: 75% of gross wage loss(^5) (maximum benefit 1997 was $781.73 per week)</td>
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<tr>
<td>Indexed: On anniversary of commencement of benefits, adjustment equal to the combination of: 2% to allow for any increases due to promotion or advancement and the percentage change between the average wage for the year and the immediately proceeding year.</td>
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<tr>
<td>Duration: Term of disability.</td>
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<tr>
<td>Taxable: No.</td>
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<tr>
<td>Employer’s Excess / Waiting Periods: The worker does not receive wages for the day of the injury.</td>
<td></td>
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</table>

\(^5\) A wage loss system was introduced January 1, 1983; this wage loss system was retained under the new Act, but at different benefit levels.
### Long-Term Benefits - Permanent Partial and Total Disability

"Loss of earnings or wage loss" awards or pensions:
- **Rate:** For PPD and PTD, 75% of gross wage loss, the difference between pre-accident earnings and post-accident earnings capacity (to a maximum of $54,200 in 1997).
- **Indexed:** As above.
- **Duration:** Age 65, when replaced by an annuity equal to 10% of all ongoing benefits for wage loss (after 24 consecutive months on wage loss benefits 10% is set aside to provide for annuity).
- **Taxable:** No
- **Offset Against Other Social Security Benefits:** No

**Award for permanent physical impairment:**
- **Periodic (pension or annuity):** None (unless worker requests that lump-sum payment be paid in form of an annuity).
- **Lump-sum:** For a worker who is 100% disabled at the age of 45, the payment is equal to $80,000 multiplied by the quotient of the average wage for the current year divided by the average wage for 1993 (in 1997 this number is 1.03) adjusted plus or minus 2% for every year the worker is under or over 45 years of age to a maximum of 40%.
- **Covers Disfigurement:** Disfigurement is specifically included in the impairment schedule.

**Impairment Schedule:** AMA Guidelines are used to determine the percentage of impairment, and the policy, CL-26 establishes the exposure criteria.

**Supplemental Awards:** Special allowances are also provided for personal care from between $7 and $24 day (five categories), and an independence allowance of $100 per year. There is also a clothing allowance of $178.15 per year for upper prosthesis and $363.42 for lower.

### Hearing Loss

No special provisions for hearing loss. The AMA Guidelines, Policy CL-26, establish exposure criteria for hearing loss.

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6 Supplementary benefits are also provided beyond age 65 where undue hardship is caused.
Death Benefits

Funeral Expense Benefits

*Funeral Costs:* Actual funeral costs are covered up to $4,000.00; the reasonable and actual costs related to transportation of the body will also be covered.

*Emergency Lump-sum:* Up to $2,000.00 is provided to cover additional expenses related to the death of the worker.

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<th>Survivor Category</th>
<th>Lump-sum</th>
<th>Pension</th>
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<tr>
<td>Dependent spouse, with or without children</td>
<td>None.</td>
<td>$1,693.75 per month for life (1997). Continues after remarriage</td>
</tr>
<tr>
<td>Dependent children</td>
<td>None.</td>
<td>$677.50 per month until age 19 or 21 if in school.</td>
</tr>
<tr>
<td>Other dependents</td>
<td>None.</td>
<td>At the discretion of the WCB, to cover pecuniary loss.</td>
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### HEALTH & SAFETY & PREVENTION

#### Organization Structure

<table>
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<tr>
<th>Agencies Responsible</th>
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<tr>
<td>The Board is responsible for occupational health and safety and the administration of the <em>Occupational Health and Safety Act</em> in the Yukon (responsibility for occupational health and safety was assigned to the board in May 1992, when the former Yukon Workers' Compensation Board was amalgamated with the Occupational Health and Safety Branch of the Department of Justice).</td>
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The key responsibilities of the Occupational Health and Safety branch of the board are work site inspections, accident investigations, occupational health surveys, education and training and hazard awareness, providing consultations regarding health and safety in the workplace to assist employers in prevention of workplace disabilities.

#### Source of Funding

Funding for OHS activities and programs in the Yukon, including the administration costs of the Occupational Health and Safety branch, is provided by employers' assessments and the workers' compensation fund and general government revenues.

#### Accident Reporting

All serious accidents which caused injury or death, or may have caused injury or death, must be reported immediately to the board. Employers are required to report all accidents and injuries to the board within three days of being notified of the accident or injury.

#### OHS Representatives & Committees

Any worksite with 20 or more employees is required to have an OHS committee; a worksite that has less than 20 employees, but which is considered "high hazard" is required to have a safety representative (Category A worksites, construction, mining quarries, must have a safety representative if there are five or more employees; Category B worksites must have a safety representative if there are ten or more employees and Category C worksites must have a safety representative if there are between 15 and 19 employees).
Offenses & Penalties

Contraventions of the Legislation

Types of Offenses and Maximum Fines:
Any person contravening the act or the regulations or failing to comply with an order is liable upon conviction for a first offense, to a fine of up to $150,000 and $15,000 for each day the offense continues AND/OR 12 months imprisonment; for a second or subsequent offense, to a fine of up to $300,000 and $25,000 for each day the offense continues AND/OR 24 months imprisonment.

Convictions:
1995 - 1 conviction (employer); total amount of fine $1,000.
1996 - none.

Administrative Penalties

As an alternative to prosecution, an OHS officer may levy an administrative penalty (section 47.1 of the Act). For a first offense the maximum amount of the administrative fine that can be imposed is $5,000 and $500 for each day the offense continues. For a second or subsequent offense the maximum administrative fine is $10,000 and $1,000 for each day the offense continues. There is the right of appeal to the board. Money collected through administrative fines is paid into the workers' compensation fund.

Though the provision to levy administrative fines has been in place since 1991, administrative penalties were not imposed until 1996. To date four administrative penalties, to a total of $8,000, have been levied against employers; one of these is in the process of being appealed.
There is no legislated review requirement for the OHS act or regulations. However, at present a formal process to review all the OHS regulations is underway. The review process is bipartite in nature; it is being lead by a working group composed of employer and employee representatives with support from board staff.

The board sponsors the Young Worker Safety Program, designed to educate young workers about workplace accident prevention. The board will also begin safety program evaluations in 1998.

Because the WCHSB has only a very few cases each year of suspected fraud it does not have a fraud prevention unit. The current practice is to have an adjudicator investigate cases of suspected fraud; if warranted a contract investigators will perform a more thorough examination.

In 1995, one investigation was conducted, but insufficient evidence was collected to lay a charge. The Chief Auditor will also examine payroll records of companies where workers are claiming benefits and working.