1.0 ENTITLEMENT

1.0 INTRODUCTION

Conceptually, entitlement can be described as “Who is covered?” This category has been further subdivided into four areas of interest: the notion of work-related versus non-work-related injuries; conduct which amounts to breach of coverage such as horseplay or being under the influence of alcohol/drugs; the issue of the Right to Sue (this includes discourses around tort, opting out, elections including the concepts of the worker-worker bar, worker-employer bar, subrogated claims, and other areas concerning employers, workers and the right to sue the Workers’ Compensation Board; and finally, specific categories of people covered such as students, volunteers, Aboriginal people, out workers, independent contractors, home-based business, homeowners, out-of-province injuries, and personal optional protection [P.O.P.]).

Generally, this area was paid relatively scant attention, as compared with other topic areas - of those who responded the injured workers expressed somewhat strong views about the notion of entitlement. Of the various stakeholder groups, the interest group with the most number of responses within the broader umbrella of Entitlement was that of Injured workers (60/154). Employers was the second largest group (39/154). The rest of the interest groups across all categories of entitlement had minimal responses ranging from one to four participants. This overall lack of response may be noteworthy. There was an absence of any response from Advocacy Groups. Also, the issue of entitlement was of minimal concern to medical professionals or victims of crime.

There are five sub-headings as follows:

- work-related versus non-work-related injuries
- coverage for groups
- the right to sue
- conduct which amounts to breach of coverage
- who is covered, generally

1.1 WORK RELATED VERSUS NON-WORK RELATED

1.1.1. Overall Response

Among the sub-issues of entitlement this was the one most responded to, particularly by injured workers. Half of all responses within this sub-issue were from Injured Workers. Almost all injured workers responding (90%) were considered to express moderate or strong views about this issue. The next largest percentage of responses came from independent employers with about one-third of the responses. Two-thirds of employer responses were rated as moderate while the rest were rated as low intensity. The remaining fifteen percent of responses were spread somewhat evenly over seven stakeholder groups: consultants, employer association, municipal government/services, unions, and victims of crime. The unions, union associations, and victims of crime had their respective responses equally split between ratings of high and moderate intensities. The remaining interest groups’ responses were rated as moderate.
1.1.2. **Discussion**

Employers raise the notion that those people who have a disability because of a degenerative issue are excluded from coverage and this is as it should be according to this group. Workers, counter by saying that this is discriminatory against older workers who are more prone to having injuries or illness as a result of their aging bodies in conjunction with their work. That the two conditions go together and that to preclude degenerative issues is unfair to older workers.

Workers raise the issue, generally of credibility or believability surrounding information surrounding claims. Employers state that they are the ones with the most accurate information and that injured workers have a conflict of interest because of their wanting to have their claim accepted so the WCB should rely upon employer information. This can unfairly disallow workers from having their claims rightfully accepted. Workers raise the often cited situation where as soon as a worker is injured and is attempting to file a WCB claim the employer will fire the employee.

Both employers and workers raise the problem surrounding car accidents and injuries surrounding these. There seems to be confusion as to when ICBC or WCB provides coverage. Workers state that often they are left somewhat between the two with both saying it is the other organization who is responsible; the end result is the worker receives no coverage or coverage after they could have used the medical help. The employers also find this situation difficult to navigate through.

Workers raise the idea of when are they at work and when are they considered not at work. For workers who are contract workers this becomes very strongly identified because if contractors have to go to a remote location and it is while they are travelling to that location they become injured the WCB appears to not cover them because they were not actually working, though they were on their way to work. This can become problematic when contract workers are working among various contracts simultaneously. In these instances it is hard to discern which employer is responsible and whether it was work related or not. Employers state that only in the act of performing actual work for the them should they be covered. Travel to and from work are not activities related to their work.

Workers identified those workers who have disabilities, either through birth or through an earlier accident. There appears to be some reliance by the WCB to deny claims because a person already has a disability. Employers stated that the worker has to show without a doubt that the pre-existing disability had nothing to do with their current injury. If that is so then the WCB should cover them, however, if there is any link to the pre-existing disability then that is something that is non-work related. This has ramifications, both workers and unions state for persons with disabilities within the workplace. Somewhat connected to this issue are workers who, as the result of a medical treatment to correct a work-related injury develop a new and different disability as a result of the medical treatment. Employers state that this is precluded because it is not directly work-related.
The last group raised, by injured workers, has to do with ethnic minorities, including First Nations. These groups have language and/or cultural barriers to accessing coverage. Employers state that the WCB does provide information in a number of informational formats and have multilingual assistance so that access to coverage is not an issue for most workers of an ethnic background.

1.1.3 Recommendations
Virtually all workers state the WCB, through their practice of excluding claims based upon natural degeneration, serves to preclude older workers; this practice should be not relied upon by WCB. Also, all workers state that employers should be responsible for all their employees, for all injuries and illnesses. Some workers state that if a worker, has a disability from birth or an earlier illness or injury, and becomes ill or injured unrelated to the worker’s ongoing disability, this worker should not have their WCB claim disallowed because of their prior disability.

Example Recommendations
• WCB should not exclude people based upon age, through their relying upon “natural degeneration”. Older people injure more easily and often but their age should not preclude them from compensation; that is a risk the employer has to bear.
• All workers while employed with a particular employer has to be protected by that employer for any accident which occurs while working for that employer.
• If a pre-existing health/disability issue within a worker is not part of the direct cause of an injury they suffer, that person with the pre-existing illness, injury, or disability should be covered and not used by the WCB as a way to preclude that worker from coverage.

1.1.4. Quotes
• “As the WCB expands to become part of the social net, and is compensating for lifestyle and aging situations, it puts the employer in a difficult position in hiring older workers.” (IEM-048)

• “I am just one of hundreds and hundreds of employers that have these frustrations and also the main thing is the over compensation; it seems to me awfully difficult to understand when a employee has a bad back, goes out and plays baseball on the weekend and because it’s not under compensation can come to work, all he has to do is pull a back muscle to be off for 6 weeks just doesn’t make sense. So if you don’t resolve that issue we’re not ever going to get anywhere on this issue.” (IEM-062)

• “Employers state compensation for injuries and occupational diseases should be reserved for work-caused conditions...these conditions must have arisen out of, and in the course of the worker’s employment”. (quoted by both MGS-006 and NGO-005).
1.2 COVERAGE FOR GROUPS

1.2.1. Overall Response
Within this category, over one-third of the responses were from Injured Workers, the largest block within the sub-issue, with virtually all participants being rated as responding with either moderate or high intensity. The next largest group, at approximately twenty percent of all responses, came from independent employers. The remaining forty percent was spread evenly over eight stakeholder groups: employers associations, the general public, injured worker associations, municipal government/services, non-government organizations, professional associations, unions, and union associations. All of the responses, save the general public which was split between ratings of low and high intensity, were rated either as responding at a high or moderate intensity.

1.2.2. Discussion
Employer groups were most concerned with issues of coverage as they related to covering employers and who is an employer. Coverage issues were raised by this group in relation short term, “fly-by-night” operations which exist for a few weeks, disappear and resurrect themselves somewhere else only to begin again. In order to have all employers covered, this group raised the issue of business licenses as a way to track who was an employer - including sole/self employers, those with employees, and those who purchase labour from a contractor. Related to employers was the issue of what happens when an employer becomes bankrupt and how this may affect coverage for the employer and any employees.

Workers raised a number of unique groups and the realities faced by them. The overarching concern raised was that there are increasing numbers of workers, unionized and non-unionized, which fall outside the “traditional workforce of several decades ago”, yet the WCB system of coverage and entitlement still reflects an old economic structure. Groups identified as being outside of the mainstream economy and requiring special attention to ensure they are not given a lesser form of coverage entitlement include contract labour, self-employed professionals, home care workers, foster home employees, seasonal workers and the volunteer workforce.

1.2.3 Recommendations
Workers, and a few employers point out more people are self-employed so that people employed in this way should be fully protected. A few owners of businesses state that everyone operating as proprietors should be required to be covered by WCB. First Nations people should be covered to the same degree as other workers. Contractors should only be responsible for their direct employees’ coverage. All employers must register with the Board and remove the personal option protection; making all employers accountable to the Board. Workers who are classified as “minor attachments” should not have their benefits denied because of this classification, i.e. casual, seasonal, temporary, and contract workers, as well as volunteers and others who may work for free. It should be mandatory that everyone be covered by WCB. Legal liabilities should be outlined to employers who are obligated to protect employees.
Youth also need to be covered and not considered more resilient, and therefore less needy of coverage, to injury because of their age; the opposite situation from those who are older workers.

**Example Recommendations**

- Admission of solitary contract workers, such as News Carriers, to qualify for Workers’ Compensation coverage.
- The WCB should take into consideration the needs of home based businesses as an emerging and increasingly important sector of the economy. Employers and employees engaged in this sector require protection.
- Everyone operating as proprietors should be required to be covered by WCB.
- On reservations, employees who receive benefits from WCB should be tax exempt.
- Contractors should not be responsible for the WCB assessments of sub-contractors who default on their payments.
- So all employers including labor contractors or independent contractors must register with the Board and remove the personal option protection; making all employers accountable to the Board.
- Drop the requirement that limited companies must have the same coverage for all employees, regardless of whether they work in an office or in the field.
- Workers who are classified as “minor attachments” should not have their benefits denied because of this classification. Casual workers should have the same coverage and be treated the same by WCB as full-time workers.
- It should be mandatory that everyone be covered by WCB.
- Entrepreneurial people should be automatically covered because they produce jobs and supply wages for people who work for them.
- If a person registers with the WCB, he should be told whether it is necessary or not. Legal liabilities should be outlined to employers who are obligated to protect employees.
- Proof of any injury should be sufficient to establish a claim.
- Youth also need to be covered and not considered more resilient, and therefore less needy of coverage, to injury because of their age; the opposite situation from those who are older workers.
- All employers operating in BC must register with the Board Policy Number 20:30:40 [on temporary employers] must be deleted and related policies must be reviewed to conform.
- There needs to be more equitable coverage between those who freely volunteer their time to the community and those who are forced to give time to it. This should be on par with those within the traditional paid workforce.

**1.2.4. Quotes**

- “We would certainly like to see this changed so that there is more equity between those who freely volunteer their time to the community and those who are forced to give time to it.” (NGO-002)

- “We’re having a real problem with competing with people who are doing exactly the same type of work that we are doing from their home with the same volumes who are not registered with the WCB whatsoever. All the people working in a business
should have a business license and if they have a business license they should be registered with WCB and some sort of accounting done through that.” (IEM-059)

- “It also needs to be recognized that improvements in these areas are needed to keep abreast of the times, to keep pace with more advanced thinking, to meet the needs of all our diverse groups.” (NGO-001)

1.3 THE RIGHT TO SUE

1.3.1. Overall Response
This section addresses issues surrounding notions of tort, opting out, elections including the concepts of worker-worker bar, worker-employer bar, subrogated claims and the right to sue the WCB itself. Within this sub-issue, half the responses were from injured workers. All of this group’s responses were either high or medium intensity (at a ratio of 2:1). The other half of responses within this category were spread over these six stakeholder groups: consultants; employer associations; the general public; independent employers; injured workers' associations; and unions. Of these groups’ responses, one-third were from consultants (split between moderate and low intensities) and one-third were from the general public (a ratio of 1:4 for moderate to low intensity). The other four groups had minimal responses split equally among high, medium and low intensities.

1.3.2. Discussion
Injured workers believe most strongly (11/30) that there is a need to be able to sue within particular circumstances that are not available to them. These include when a criminal injury arises - the worker believes they should be able to sue the WCB in these circumstances. Also, workers raise discuss that employers should be sued for forcing workers to suppress reporting claims to the WCB. At times, if a worker does file a claim and they are reprimanded in some way, the WCB has a role to intervene and either reinstate the employee or sue the employer. Injured workers point out that, despite claims suppression activity is illegal under the WCB Act there have been very few lawsuits brought by the WCB against employers. Injured workers’ perceptions is that with regard to the WCB system an injured worker is guilty until they prove themselves innocent, and even with expert evidence, they see themselves as not being believed so some believe the “objectivity” of a courtroom will allow them to be innocent before any, or no guilt is assigned. Injured workers’ perceptions is that it is a contract between the WCB and the employer, not the employee. Workers see themselves as incidental or a third part to the historic compromise.

Employers groups believe that the historic compromise must be maintained otherwise it is feared that premiums will rise by at least 30%. Workers counter that they do contribute financially to the system throughout with their giving up their right to sue for pain and suffering. Workers see the WCB taking advantage of this forgoing suing by intentionally manipulating the gathering, reporting and filing of information for the sole purpose of denying or reducing benefit levels.
Interestingly, both injured workers and employer groups believe that there may be an opportunity to develop an alternate dispute resolution after the initial claims decision where all key stakeholders meet and agree on next steps and eventual resolution.

1.3.3. Recommendations

There is general consensus, by far the most vocal being injured workers (10/30), that the WCB, itself, as well as employees of the Board should be open to prosecution; this would mean removing the Act of Privacy law that protects the WCB has to be removed. If an injury is the result of a criminal act, the WCB should compensate the victim and sue the person guilty of the criminal act. Likewise workers strongly agree that those workers receiving compensation benefits should gain the right to litigate against employers where evidence of negligence on the employer’s behalf can be shown to have caused the injury or is contravention of the Health and Safety Regulations. At the very least, workers feel that they should have the court system open as form of final redress. Employers, however, have a differing view. They believe that any litigation should be taken out of the court system and into some type of administrative panel, which must be reviewed in a timely fashion.

Workers, almost universally within the responses state that because the use of lawyers is so commonly required to work through the appeal processes, and if the court system is opened to them at some point that the WCB should provide some sort of access to funds to cover the costs associated with appeals and/or future litigation.

Example Recommendations

- The act of Private law that governs the WCB of BC must be removed because it affords the members of the Board with prosecutorial immunity; any and all employees of the Board must be open to prosecution, as well as the WCB, itself.
- Workers receiving compensation benefits should gain the right to litigate against employers where evidence of negligence on the employer’s behalf can be shown to have caused the injury.
- Take any litigation out of the court system and into some type of administrative panel, which must be reviewed in a timely fashion.
- Section 8.18 and 8.20 in the Industrial Health and Safety Regulations should be changed to reflect a legal responsibility and the right to civil suit if employers or supervisors send employees into an area which violates a regulation.
- The worker should be allowed to readdress a in court of law when everything else has failed; a last chance course of remedy.
- If an injury is the result of a criminal act, the WCB should compensate the victim and sue the person guilty of the criminal act.
- There should be set up an independent legal defense fund so that workers are able to get legal representation against the WCB/L.T.D. Companies/I.C.B.C., their Doctors, Physiotherapists, Rehabilitation Officers and medical services providers.

1.3.4. Quotes

- “The main problem I keep seeing is conflict of interest...The WCB is incorrectly named...It is not really the “Workers’ Compensation Board”, it is really the “Employers’ Liability Limitation Board .....To remove conflicts of interest, I suggest forming two separate boards to perform
the above mentioned tasks, workers’ compensation and limitation of employers’ liability...It is a simple solution, and should be easy to implement in a very short time”. (GEN-063)

• “Governments try and convince labour that the WCB is there to protect the workers; the WCB was put in by the rich companies so the workers could not sue them; in the private sector they can sue and there are awards of two or three million dollars but now with the WCB they can’t sue; it becomes a game they play; like a game of checkers.” (GEN-062)

• “I wish to discuss section 10 of the BC WCB Act. It is a discriminatory piece of legislature designed to protect and facilitate negligent employers, and obstruct the legal rights of the families of workers killed on the job. When circumstances dictate, employers must be held responsible for their actions. The recent television advertisement also illustrates the placement of responsibility on the worker, while the WCB usurps the family’s right to seek redress in a civil court of law”. [GGN076]

1.4 CONDUCT AMOUNTING TO BREACH OF COVERAGE

1.4.1. Overall Response
Over half the responses within this category came from employers; all of whom had moderate intensity responses. The remaining responses were scattered equally over the following interest groups: employer associations (who were evenly split with high, medium and low intensity responses); the general public with their low intensity; injured workers (equally split between moderate and low intensities); medical professionals with a moderate position; professional associations equally split with high and medium intensities; and finally union association with a moderate intensity for this category.

1.4.2. Discussion

Independent employers and employer associations raise the issue, within some industries, that employees are highly transitory so if workers are reprimanded for not following health and safety protocol, the can simply leave that employer and find another one and continue on. Workers state that often employers spend very little time on health and safety training so employers should remain totally responsible for health and safety in the workplace.

Employers respond that when they train, supervise and try to discipline an employee for breaching a health and safety regulation, and hat worker is unionized, the union immediately responds with a grievance. Terminating a worker after following the company’s progressive discipline policy also can result in a grievance from the union. Employers see it as the union(s) is/are lack of cooperation with employer efforts to discipline workers for not following safety procedures and so employers say that they just don’t do it. Workers respond by saying that it is the inconsistent way that discipline is carried out. Also workers state that the training is not held very often and not up to par with what is required so any discipline which flows from this is not fairly based and that is why workers grieve to their union representatives.
Employer representatives wonder how far their responsibility with respect to safety and health in the work context goes and where does a worker’s responsibility begin, particularly, in cases of negligence. At present, the perception the employer has is that they are totally responsible for work and health and safety no matter how much education, supervision and discipline is provided; the worker is perceived to be as reckless as they wish because they wear no responsibility. The union response is that the employer is the party that creates the workplace risk and that most employees have no ultimate control in that risk so employers must bear that risk, not the worker. There is a tension as to whether responsibility should be held by one party (the employer) or shared (employer/employee).

Employer groups state that they are afraid to deal with issues of drugs and alcohol use within the workplace because these issues are seen as complicated and personal. Drug abuse is seen as both a social and workplace problem which the WCB and other agencies need to deal with in collaboration with employers. In the event of injuries arising out of worker negligence some employers feel that their increased penalty rate should be lower than it otherwise would be so that neither employer/employee suffers unduly--in keeping with a no fault system. Perhaps the employer in negligence cases, should pay part of the difference between the employer’s reduced rate and what would have been the employer’s higher penalty rate.

1.4.3. Recommendations
Some employers believe that where employees are injured at work because the worker has decided not to follow procedure that worker should not be eligible for WCB benefits and should be brought up on charges. Some process or policy should be adopted for employers to recover increased premium costs if employee negligence is proven. Also, employers feel that they must be able to reprimand trained and experienced workers who knowingly violate safety rules. Employers must be free from lawsuits, complications by unions or sanctions from the Labor Board. Workers who repeatedly violate safety regulations would be given days off without pay or loss of job. An order or penalty should be against the worker, not the employer, when it is proven that the worker is properly trained and supervised and has still violated a Health and Safety regulation.

Some employers believe that compensation should be restricted, or disallowed for workers under the influence of illegal or legal mind, mood, or psychologically altering substances while on the job, and they injure themselves. Employers go further - that if these same intoxicated people injure someone else they should be brought up on charges of negligence. Workers who are taken to hospital for work-related injuries should have to undergo blood tests for substance abuse.

Example Recommendations
- Where employees are injured at work because the worker has decided not to follow procedure that worker should not be eligible for WCB benefits and should be brought up on charges.
- Employers must be able to reprimand trained and experienced workers who knowingly violate safety rules. Employers must be free from lawsuits, complications by unions or sanctions from the Labor Board. Workers who repeatedly violate safety regulations would be given days off without pay or loss of job.
• Compensation should be restricted, or disallowed for workers under the influence of illegal substances, alcohol, or legal substances which dullen the senses, while on the job, and they injury themselves.
• The no-fault system should be replaced by a fault-based system.
• An order or penalty should be against the worker, not the employer, when it is proven that the worker is properly trained and supervised and has still violated a Health and Safety regulation.
• Some process or policy should be adopted for employers to recover increased premium costs if employee negligence is proven.
• Workers who are taken to hospital for work-related injuries should have to undergo blood tests for substance abuse.

1.4.4. Quotes

• “A worker’s life is worth more than any business, large or small.” (IJA-011)

• “Good OH&S regulations cannot be negotiated; they must be based on sound scientific and engineering principles.” (IEM-219)

• “The WCB throughout their policies interprets a no fault benefit system as being a no responsibility and no accountability system for workers.” (UNA-003)

• “I ask, does not the WCB have a moral responsibility to report any findings that are entered into a person’s file that may be detrimental to his future and health?” (INJ-463)

• “Where negligence of another employer or employer’s worker result in claims costs there should be a provision to transfer those costs to the negligent employer’s WCB account. When the worker commits a serious violation or endangers another worker, the worker should be fined, as is done in Ontario.” (PAS-007)

• “The employee should not come to work when he is not capable of peak performance.” (IEM-030)

• “Safety should always be with the individual, constantly on mind, for self-protection and safety of others. Let’s put it into effect and give at least some of the responsibility to the worker.” (IEM-030)
1.5 ENTITLEMENT: Who Is Covered, generally?

1.5.1. Overall Response
There were a few responses which were identified as not belonging in any of the sub-categories within the overarching umbrella grouping of entitlement. Of the responses found here, all of the injured workers’ responses, or twenty percent, of the responses in this broad category were measured as having a high intensity. Forty percent of the responses within this broad category were from employers; all of the employer responses were of moderate intensity. The final two fifths of the respondents within this broad category were equally split between the general public and employer associations. All of the general public’s responses were at a high intensity, whereas the employers’ associations, like the employer group, were of moderate intensity.

1.5.2. Discussion
Both some from the general public as well as some injured workers describe that there are some regional disparities when it comes to entitlement to benefits. The perception is that proximity to the Lower Mainland unfairly puts those workers with similar WCB claims in the Interior and up north at a disadvantage as opposed to those workers close to or within the Lower Mainland.

Independent employers raise the issue that depending on the form of ownership will have varying requirements and entitlements for WCB coverage.

1.5.3 Recommendations
Injured workers believe that the WCB has a contract with workers and employers and if people cannot return to work they should be paid their wages. If injured from work then there should be reasonable entitlement provisions and some compensation or some means available to continue making a living for yourself and your family.

Example Recommendations
• Make presidents of small companies exempt from WCB, as proprietors currently are.
• Have reasonable entitlement rules.
• WCB has contract with workers and employers and if people cannot return to work they should be paid their wages. If injured from work then there should be some compensation or some means available to continue making a living for yourself and your family.
• WCB should consider the specific circumstances of home support service providers when making regulations.

1.5.4 Quotes
• “With an aging workforce, many time and age related disabilities and systemic diseases are showing up on WCB statements as accident costs.” (IEM-143)
• “WCB is a service centre and has customers. The customers are the employees and the employers. Deal with them accordingly.” (IEM-143)
• “If claims are not properly adjudicated and are accepted without adequate investigation, ongoing liability is created for employers.” (EMA-036)
1.6 OVERALL SUMMARY

There is a belief that all people who work, regardless of the nature of that work should be covered by the WCB system. This includes traditional employment, self-employment, volunteer work, housework, part time work - regardless of “attachment to the workforce”, contract employment, etc. Everyone should be covered. Also, children under the age of 18 who may not have statutory deductions should also be covered, the cases raised included newspaper carriers and baby sitters.

All employers, regardless of the nature of the employment should contribute to the system. This includes anyone who has employees or who does not have employees. Those who have employees are now covered, but it would bring in those people who work for themselves, regardless of the nature of work, to also contribute to the system. And this latter group should have their risk evaluated accordingly - a home worker versus a contract employee who works in the outdoors for example.

There seems to be some need to access the court system, on some level. The perception is that the agreement lies between employers and the WCB. With the worker being the third party with much less power. If, particularly the worker - and to a lesser extent the employer had access to the courts as final arbiter or in severe negligent cases then perhaps some of the perceived power imbalance could be levelled.

The issue of worker responsibility seems to be a large concern of employers; if they hire the right people, educate for safety and health, discipline where needed and constantly supervise they say that at some point workers need to be accountable for their actions - whether through fines, penalties or something. As it stands the big blockage they see is the lack of union cooperation in progressive discipline or termination in worker negligence situations.

People with disabilities within the workforce seem to have unique issues in that their situations seem to not get equal coverage as compared with the rest of the workforce.

There is a perception that those who work within the Lower Mainland receive greater access and coverage than say someone living in the far north or the interior of the province.

For workers who use drugs and alcohol on the job, there is a strong belief that those workers should be exempt for their own injuries and to a certain degree held personally responsible for injuries they cause others. The employers in these situations believe that they should not be penalized either through the raising of their penalty or assessment rates - the cost should be transferred to the offending employee.

Victims of crime on the job feel that they are not receiving any, or at best, minimal coverage from the WCB when they claim for coverage. There are several cases of that illustrated here.
There is also mention of secondary victims of crime and injury; for those who have to live and deal with the primary victim. How far should this extend?