

3.0 BENEFITS

3.0 INTRODUCTION

Benefits for the purposes of this paper are those monetary -and non-monetary amounts (safety clothing, medical equipment, prescriptions, home care, etc.) that fall outside the purview of the discussion of pensions or fatality benefits. (Pensions and fatality benefits are covered in discussion papers elsewhere.)

To facilitate discussion this topic has been further subdivided into eight areas sub-issues. These are as follows:

- adequacy of compensation for loss;
- methods by which the loss(es) is/are calculated;
- basis of paying out WCB benefits;
- waiting periods prior to collection of benefits;
- nature of the loss being compensated;
- stacking WCB benefits with other sources of income;
- legislative changes and retroactive benefits;
- minimum and/or maximum wage levels in calculating wcb benefits
- how much is covered?

The issue of benefits within the WCB system was given focused and diligent attention, particularly, by independent employers. In addition, injured workers expressed particularly strong concerns about two areas within the benefits area: 1) Whether the awards are realistic and adequate in compensating for the loss(es) they are designed to replace?; and 2) the method(s) by which the loss is calculated. For the first of these, for injured workers, virtually all (97/105) were rated as having moderate to high intensity reactions toward the question of the awards being realistic (or not). For the discussion on how awards are calculated, virtually all injured workers (31/34) were rated as having moderate to high intensity responses.

For independent employers, five areas were particularly focused upon. The adequacy of awards is the first area with three-quarters of responses rated as moderate in intensity, with none rated as high intensity. The second area of interest was the question of stacking versus integrating of WCB benefits. A majority of responses (23/35) were rated as moderate in intensity and none was rated as high in intensity. The third area was the discussion of whether benefits should be paid based on a gross or net percentage of pay. Again, virtually all responses (40/46) were rated as moderate in intensity, with none rated as high in intensity. The fourth issue, the method by which the loss(es) is/are calculated was split with about half of the independent employers' responses rated as moderate intensity and half rated as low intensity. Only a few respondents were rated as high intensity. The final area focused upon by independent employers was the notion of waiting periods prior to the WCB benefits commencing. Just over half of employers' responses were rated as moderate in intensity (24/39) about this issue with the remainder rated as low intensity (15/39).

Independent employers and injured workers comprised 70% of the responses on the issue of Benefits. There were groups who responded in small numbers. These groups were injured worker associations (2/577), advocacy groups (3/577), consultants (6/577), medical practitioners (10/577), members of the Legislative Assembly (1/577), municipal and government services (11/577), non-governmental associations (3/577), unions (22/577), union associations (16/577), and professional associations (18/577). Victims of criminal injuries did not respond to any aspect of this category.

3.1 ADEQUACY OF COMPENSATION FOR LOSS

This sub-issue addresses whether the benefits awarded are adequately compensate for the loss(es) they are designed to replace. That is, is there sufficient recognition of the true impact upon ancillary interests such as the family unit?

3.1.1. Overall Response

Of the Benefits sub-issues, this was the sub-issue with the largest number of responses (151). Over two-thirds of all responses (105/151) were from the injured workers interest group. Within the injured workers' responses, the ratio of responses rated as high to moderate intensity was two to one with only a few rated as low intensity.

About ten percent of responses (16/151) within this sub-category were from independent employers. The ratio of moderate to low intensity ratings of responses was three to one. None of the responses was rated as high intensity.

The third largest number of responses was from the general public (10/151). The ratio of moderate and low intensity responses was four to one. No responses were rated as high intensity.

The remaining ten percent, approximately, of responses were scattered among: advocates, all of whom were rated as moderate responses; consultants, with a ratio of moderate to low intensity responses of one to two with no high intensity responses; injured worker associations, all of whom responded moderately; medical practitioners, all of whom responded moderately; professional associations, all of whom responded moderately; union associations, all of whom responded moderately; and unions, who had their sole response at a high intensity.

3.1.2. Discussion

There was an issue regarding the perception of WCB's arbitrariness with regard to the organization's hiding behind the "legitimacy" of "objective statistics". For injured workers this use of numbers allowed the WCB to constantly shift its position with regard to particular benefits levels.

Injured workers raise, very strongly, the issue of stress within the family and the predominance of families of injured workers having to sell all their assets and the common occurrence of divorce and family break up as a result of the injury, the unpredictability of WCB benefits and how the WCB dealt with claimants. Injured workers also believe that the physical,

psychological, and emotional abuse caused by WCB's insensitivities while their claims are being handled should be compensated. This group alleges that 82% of claims that are initially denied, are later overturned and accepted at appeal.

Injured workers also ask whether there should be coverage if an injured worker commits suicide because of the stresses related to the injury including dealings with the WCB. What, if any, responsibility or compensation can be assessed in these situations?

Collateral benefits, or those benefits provided through one's employer and employment, such as health, dental, vacation pay, shift premiums, and so on are not part of the WCB's wage loss benefit coverage. Also, related to this, the WCB does not consider future pay increases or job promotions when benefits were calculated. Also, because WCB benefits are not taxable income, claimants state that they lose their RRSP contribution limits. A similar problem is that both CPP and EI contributions from both employees and employers are frozen while a worker is on WCB benefits. It is also said that the WCB interferes with doctor treatment plans by rejecting coverage for prescriptions, surgeries, medical treatments - both traditional and alternative medicine.

Some injured workers lose their pre-injury job and are forced to take lower paying positions, even though in many cases they have fully recovered from their injuries. This wage loss is not compensated for. Injured workers state that some do not receive any compensation for education when their injury does not allow them to continue in their pre-injury job. With regard to wage loss and efforts to becoming employable, claimants seem to be told to undergo a job hunt process or have their wage loss cut off. Yet, the costs associated with the job hunt - transportation/mileage, resume services/printing, postage, clothes, supplies, etc. were not currently covered.

When injured workers and their families are told they have to relocate to seek employment outside of their home town, some of the associated costs are not covered. In some cases, personal businesses might have to be closed or sold. Also, per diem and transportation costs related to travelling for medical and vocational rehabilitation purposes are cited as other costs not covered for some injured workers. These financial costs are in addition to the emotional turmoil of being told to leave surroundings they may have spent decades putting down roots.

Injured workers say that the legal and medical costs of fighting the WCB on appeal - for something they say should be automatically given to them as a matter of the historic compromise - should be reimbursed upon the winning of an appeal. They ask rhetorically how much money would be saved if there was easier access to benefits without taking the legal route, remembering the perceived 82% success rate of appeals? Injured workers state that these legal costs bring them to financial ruin.

Injured workers also comment that they receive no counselling for pain management, financial management or guidance on how to prepare themselves and their families, particularly, those who were permanently disabled in a profound way. In these cases the families have to find and pay for these services themselves. For example, many injured workers are forced to hire

outside people to look after their homes, do chores for them, look after their children, to babysit, and for home nursing care. These services are paid for out of their own pockets, unless they are at least 75% disabled.

Injured workers state the one big item they were not compensated for was their dignity. They state it is amazing at how quickly the system actively stripped workers of their sense of self-worth. This issue is raised throughout the submissions. Related to this is their perceived loss of lifestyle and quality of life. For example, work-related injuries might require workers to have to forego extracurricular activities such as amateur athletics or hobbies that contribute significantly to their quality of life. When they become injured these sources of life satisfaction may have to be foregone. The question as to how far the WCB should be forced to reach in making the worker "whole" is raised by injured workers.

Some injured workers have to seek medical treatments outside of Canada. These are treatments that are generally either not available or not recognized within Canada or by the WCB, yet the worker had to pay for these themselves. With other medical treatments, notably physiotherapy, there appears to be an arbitrary limit placed by the WCB upon the number of treatments allowed to be covered. Anything above this ceiling is paid for by the injured worker. Some workers have found specific treatments are the only sources of relief from chronic pain, however, if these treatments or the numbers of treatments go beyond the WCB protocol there is no coverage. It is also noted that chronic pain is not recognized by the WCB for payment of benefits; these prescriptions and treatments are paid for out by injured workers. Injured workers see this as a contradiction of section 34.50 of the "Manual".

Employers state that BC's wage loss benefits are currently unrealistically high to the point of being the highest within Canada. Benefits should only be paid to an injured worker until that worker is available for work, not until the worker has found work. Employers believe that when a worker becomes injured, their wage loss benefits become unreasonable in that many injured workers have private types of insurance which pay for mortgage payments, car loans, and credit card balances while injured. Injured workers claim in response that often as soon as a worker is placed on WCB benefits the employer fires them.

Employers question how wage loss benefits work in relation to retirement. Their understanding is that wage loss benefits continue after a worker voluntarily retires from the workforce. Employers point out that wage loss benefits are the single, largest form of benefits paid out by the WCB system. As the definition of wage loss has broadened, employers have become more concerned that the WCB's conceptual role of providing income replacement on a no-fault basis to compensate workers was becoming eroded.

Employees believe that they pay fully for the WCB system, yet injured workers see any move to cut costs demanded by employers as a form of cost sharing.

3.1.3. Recommendations

Injured workers recommend that wage loss continue until a final settlement is reached. Also, consideration of other family members should be mandatory when determining the amount of

compensation. WCB and employers should also have to compensate injured workers for losses incurred because of delays in processing claims. WCB should be required to pay for assistance for household chores that the injured worker is no longer able to do, as determined by the injured worker and/or their families.

Changes in quality of lifestyle and quality of life must be recognized for injured workers. If a worker is told to leave their home town, they and their family should be fully compensated for moving and emotional costs. If a worker is told that they either proceed with a job hunt or be cut off benefits then the worker should be compensated for all job hunt costs. Furthermore, compensation must consider the fact that work patterns are not necessarily regular.

All medications, medical aids, and services including those for spouses and dependents should be provided. All employer collateral benefits (i.e., dental, health, vacation coverage) should be included in the WCB wage loss or continued by either the employer or the WCB. Injured workers are looking to be able to maintain RRSP, CPP, EI and union due contributions while on WCB benefits - all of which are frozen while on WCB benefits. Wage loss benefits should take into account wage increases of workers' pre-injury peers and colleagues within their pre-injury workplace.

Chronic pain should be recognized and covered by WCB benefits.

WCB should consider the emotional, psychological, and financial effect on an injured worker's family when assessing benefits. This means moving away from supposed "objectivity" and "statistical" reliance and bringing in more subjectivity. All costs do not have a definable measurement. When a worker becomes injured, they should be represented by a Social Service worker and be automatically covered through the Ministry of Social Services with benefits based on the wage scale at the time of injury. Wage loss should not penalize a worker who has been on the job for a brief period. Compensation awards should reflect pain and suffering. Psychological assistance should be available for claimants undergoing stress during the appeal process.

Employers/employer associations want to make it clear that the "no-fault" aspect of the WCB program is for benefits only. Wage loss benefits should only be paid until the worker is available for work, not until the worker finds work. The payment of wage loss benefits as per section 34.50 of the Manual should be enforced; wage loss benefits should continue only as long as objective medical evidence substantiates the ongoing disability. Benefits should be aligned with those of other provinces. Statutory holidays need to be compensated by either the WCB or the employer but not both.

3.1.4. Quotes

- "If the other back claimants and spouses I have met through support groups are an indication of the frustrations to come dealing with WCB as a long term back claimant I'm not sure we have much of a future except fighting for our human rights in the WCB system." (INJ-088)

- “By the time you are finished a battle with WCB you are physically exhausted and stressed to the limit and your health is in worse shape that it was following your injury.” (INJ-048)
- “I would really like to stop looking over my shoulder and wondering what they (WCB) are going to come up with next and let me live a half decent life and half normal life for the time I have left.” (INJ-036)
- “What has often happened is the worker who is not seen is soon forgotten, and becomes lost in the bureaucratic jungle of the WCB, and eventually becomes a nobody, belonging nowhere, and losing his position in the community and eventually his self-worth and self-esteem.” (IEM-151)
- “Why does it take the Board only a split second to discontinue benefits and so long to reinstate.” (INJ-036)
- “It’s embarrassing to go on welfare because the WCB doesn’t look after you when you are incapable of working. I can’t live on \$166/month.” (INJ-514)
- “WCB said she did display some remorse at having to rely on her children for personal care, however, minimal remorse displayed with the loss of social or familial activities. This may indicate a presence of component of voluntary disability behaviour.” (INJ-233)
- “Is it irony that an injured worker’s energies must be focused on pain management, coping with everyday responsibilities of work and family, and repressing the memory of WCB (for sanity’s sake to survive the mental torment, degradation, the tunnel vision of a conscienceless organization) that they have no energy left to dare serve themselves as they take on the role of the tiniest David in an effort to slay the largest Goliath? Most people place human dignity above a few pennies - not the WCB.” (INJ-638)
- “The WCB gets off the hook by not paying benefits to the injured workers. And then he or she ends up on welfare where the BC government pays and the WCB looks good or they end up on Unemployment Benefits where the Federal Government pays and the WCB looks good again.” (INJ-501)
- “I would be glad to go to work! Who wants to sit at home all day and night; and you can’t do anything; and everything’s piling up; and there’s no money coming in; and that is the worst thing! How are you going to eat? How are you going to pay your bills? And you hate to sell everything, but Where Are You Going to Go?” (INJ-490)
- “In summation, since all this stated, I’ve gone from being a working person to a welfare case. I’ve had to sell my house, live in my car, go to the food bank, pawn my possessions, and contemplate suicide. I have tried everything to resolve this situation and you (the Royal Commission) are my last hope. I am so tired of fighting so hard for so long and getting nowhere.” (INJ-457)
- “Those workers need to be connected - they need to be connected in their workplace - they need to be connected with their employer, and they need to be connected with the community - that they serve in. I think a worker that has is a way from the workplace for too long and of course that happens because they get lost in the bureaucratic nightmare. And we’ve heard of some of those kinds of nightmares that have already happened. They just can’t seem to get things done for themselves. They don’t belong to anybody after a while. They lose their position in the community and pretty soon they lose their self-worth and self-esteem and this is not the things - not the kind of things we want our people of Williams Lake to have to look forward to so please let’s do something.” (IEM-151)

- “I believe much more money is wasted on confrontation than would be spent in honest compassionate aid to the injured.” (INJ-441)
- “With an aging workforce, many time and age related disabilities and systemic diseases are showing up on WCB statements as accident costs.” (IEM-143)
- “The 1996 Provincial Health Officer’s Report the number one recommendation is Positive and Supportive Living and Working Conditions in all our Communities. Rationale: the most important influences on our health are the conditions we experience in our day to day lives. Meaningful work, healthy and supportive workplaces, sufficient income, safe and well designed communities, supportive families and participation in social networks significantly enhance our health.” (GEN-169)
- “When an individual is injured at work the whole family is affected, i.e., emotional stress, uncertainty, and then despair, because as stated by all people interviewed it takes WCB forever to make a decision.” (ADV-004)
- “My injury has affected my whole family as the WCB’s commercials on television have recognized; but, they do not understand that their conduct of treatment also has negative effects to myself and my family. My wife now has to take stress and ulcer medication since I started at the WCB rehabilitation clinic. She had a hard time with my injury alone. Then came the stress of seeing me come home after a day at rehab.” (INJ-189)

3.2 METHODS BY WHICH THE LOSS(ES) IS/ARE CALCULATED

This sub-issue includes issues surrounding average earnings calculations, wage reviews, consumer price indexing, time value of money, and what items should be included as “income”.

3.2.1. Overall Response

Of the sub-issues within benefits, this had the second highest frequency of responses. The subject area appeared to be the focus of both employers and injured workers. These groups made up over 75% of total responses within this sub-issue.

The largest group, independent employers, made up just under 50% of all responses. The intensity of responses was split between rated moderate and low. Only a few of the responses were rated as high intensity.

The second largest group, injured workers, contributed about 33% of the responses. Of these over 75% of injured workers’ responses were rated as high intensity - this was of particular concern to this group. The remaining 25% of injured workers’ responses was split with a ratio between moderate and low of seven to three, respectively.

The third largest group of responses was from employer associations. Of this bloc of responses, just over half were rated as being of moderate intensity, with the remaining responses split fairly evenly between being of high and low intensity.

Just over 10% were scattered somewhat evenly among the following groups: advocates, consultants, the general public, medical practitioners, municipal and government services, non-governmental organizations, professional associations and union associations and unions.

Two groups were silent on this issue; injured workers' associations, and victims of criminal injury.

3.2.2. Discussion

One issue of concern is whether there should be a single method by which average earnings are calculated or whether several methods should be implemented. Those who support the single method want predictability in the system above all else. Those who support a plurality of methods are from industries, and occupations where there is an evident seasonality or cyclical attribute as can be found within forestry, hospitality, fishing, and construction (four of the biggest employers in BC). To have one method assumes that all workers' average earnings were of a similar composition and stability.

A second issue addresses inflation. Employers perceive using the Consumer Price Index twice a year to adjust wage loss earnings as unnecessarily costly. Workers say that when their average earnings were done historically over the past one to five years neither the time value of money, nor the consumer price index were taken into account, unnecessarily penalizing their wage loss benefits.

Employment Insurance versus the time associated while collecting Employment Insurance benefits is an issue with regard to calculating average earnings. Employers say that Employment Insurance is not income and so should be precluded from the average earnings calculation, however, the time associated with collecting Employment Insurance benefit is part of the average earnings calculations. Workers state that for many, particularly those where there is a seasonality or a cyclical nature to their work, Employment Insurance constitutes a portion of their expected earnings. Whether or not the work is seasonal, workers see the Employment Insurance benefits and the time associated with collected Employment Insurance benefits as inextricably tied together as one; they can not be separated for the purposes of reducing wage loss benefits.

Employers state that Section 33 of the WCB is too vague on how average earnings are to be determined. This they say creates an inconsistent benefits amount. This allows too much discretion when determining workers' average earnings.

Some injured workers state they are compensated based on the wage they were receiving at the time of their injury, others state that historically an average was used. They, too, think the WCB has too much discretion for calculating average earnings.

The issue of when a rate review is made after eight weeks where wage loss benefits are adjusted, usually downward, to "best reflect" long term earnings by the worker is raised. The variety of criteria the WCB used, particularly, around the eight week mark allowed for inconsistent application and unpredictable flows of benefits to the injured worker.

Injured workers, particularly, state that the WCB relies heavily upon "objectivity", "statistics" which they see as providing the WCB with an appearance of WCB employees "forcing" numbers to say what they wanted.

Employers state that WCB benefits should be based solely upon average wages earned. Workers say that there also has to be consideration for the degree of the worker's disability. Employers say that the WCB does this through the "book value" of disabilities, or "butcher's list" where each disability had a universal monetary value. The workers counter this with their perception that each worker is unique so the universality of a "book value" is not accurate, and blind dependence upon it could be destructive for a lot of injured workers.

With some seasonal, cyclical contract and piece workers, wages may not be relevant or appropriate for the calculation of average earnings because a contract price may be agreed to, however, there would not necessarily be a set number of hours associated with the contract so a wage rate could not be readily discernible.

Employers state that light or episodic, recurring-type injuries versus heavy, severe or one of a kind injuries have different cost factors attached to them. They question whether the WCB takes the nature/type of injury into account when the WCB calculating wage loss benefits.

Workers state that collateral benefits such as dental, health, disability, vacations, etc. are substantial components of their gross wage packages, yet these are not included in the average earnings calculation. They see the need either for these to be included in the average wage calculation or for benefits continuance to be maintained through their employers or through the WCB.

Some industries, such as construction, use the average worker wage for different occupations and set this as the minimum WCB wage loss rate. Employers state that this may work well for industries where there were few job categories, however, they also state that for most industries similar job categories may have vastly varying sets of job responsibilities and salaries. Workers counter that most union contracts set out wage rates and wage increments within the labour contracts. Yet, the employer groups say that union workplaces are in a very small minority in this province and with the non-unionized sector there are a variety of job roles, often one of a kind roles, where this practice would not be workable.

Some employers raise the idea that the aspect of a worker's age at the time of an injury may be a relevant factor when calculating WCB benefits.

Lastly, workers state that when a claim is re-opened, often years later, because of a "flare-up", the WCB, in calculating the average earnings rate or benefits, goes back to the original pre-injury income level of the original injury, not the income at the time of the flare-up. This dramatically reduces their contemporary wage loss benefits level.

3.2.3. Recommendations

Employers, and employer associations suggest either reducing wage loss percentages with the length of the claim or calculating average earnings on the past twelve months as opposed to at the time of injury or on future, potential earnings. If there is a period of illness or WCB is used during this time, two years should be applied. In any event, a single method should be used to determine the average earnings; benefits should be based on earnings reported to Revenue Canada.

Employment Insurance benefits that the worker has received during the year should not be included as employment income; employers wish that the time unemployed be included. Compensation levels should be based on a sliding scale whereby, with each subsequent WCB claim, the worker is paid a smaller percentage of their gross income.

When establishing a wage loss rate, WCB should take into account a claimant's bank insurance against car payments, mortgages, loans, and credit cards. Workers receiving WCB benefits should be required to undergo yearly medical exams and provide copies of their annual tax returns to support their ongoing wage loss claim.

Some employers and injured workers agree that wage loss should be based on rate of pay at time of the injury and not based upon an historical wage history.

In the year, however, workers/unions want both the Employment Insurance benefits and the time attached to these benefits both deducted from the average earnings calculation - or both included. Also, these groups want the WCB to factor in periods of unemployment and Employment Insurance benefits when they are characteristic of the employment cycle in the industry in which the worker is employed, and these benefits and time can be anticipated, and estimated on an annual basis.

Example Recommendations

- Index benefits once a year or not at all according to employers.
- Do away with the semi-annual indexing of WCB benefits.
- Take into account only the base wage, not collateral benefits such as dental, health, vacation pay, statutory holidays, shift premiums or overtime, when calculating yearly income, only the base salary rate.
- Award losses on a consistent basis, in that all injuries of a similar type be paid the same.
- Determine compensation on a case-by-case basis, based upon the specifics of each situation.
- Base the wage loss on the average for a particular job/occupation within a particular industry.
- Compensation rates should be based on the rates paid to the WCB for coverage; not on that reported within Income Tax returns.

- Rate of pay should be based upon regularly earned money, including Employment Insurance, strike pay, or any other source of income, and all collateral benefits, such as dental, health, disability, vacation, statutory holidays, etc.
- Whenever the eight week wage rate is calculated the intent of section 33.1 of the WCB Act should be applied and claimants be informed prior to a decision being made that they have the right to produce the most favourable long-term earnings evidence.
- When calculating average wages over a period greater than one year, the time value of money, as reflected by the consumer price index, should be used.
- Include some component of future, potential earnings particularly for youth who are injured on the job, or those adults who can demonstrate that they are in a recognized programme of courses leading toward a diploma, certificate, degree, or other credential at the time of their injury.

3.2.4. Quotes

- “The schedule used to determine compensation awards is clumsy and archaic as it is based on the revenue of the company, a previously defined level of risk assigned to the company’s operation, and the documented level of financial support provided by the worker to any dependents. Therefore, the schedule does not allow for flexibility around specific situations or variables not explicitly stated in the WCB Act itself. The compensation awards schedule is particularly unsatisfactory with regard to minors. In the absence of any legal dependents, compensation is based only on concrete proof of revenue that the worker was providing directly to the parents or other family members at the time of their injury or death. In the absence of any such proof, the worker’s life is considered worthless, and there is not compensation.” (GEN-160)
- “WCB inconsistently uses one, two, or three years of earnings history to calculate benefits. He states that Section 33 of the WCB Act does not provide adequate direction as to determining average earnings, and that the rate of review at eight weeks of time loss uses a variety of criteria resulting in inconsistent delivery of benefits.” (IEM-161)
- “In the hotel industry there is a variation because we are a seasonal business. If a worker gets injured in the summer, they could be a full time employee whereas that same employee may not be working in October since business slows down but they will be receiving full time wage loss. A yearly average will show what the employee makes in a year. Full time workers will get average wage based on yearly earnings but a part time on call employee who only makes \$10-\$12,000 per year will get disability based on that. That won’t be good during summer but it will be higher for winter. If you base that on a yearly basis it won’t make a difference but you may have an employee who injures themselves in September who was going to be laid off in October because the busy season has ended. They will be receiving the wage based on the rate they were receiving when working. It is beneficial for worker to stay on WCB rather than going on UI for being laid off. Those employees who work full time are always full time but part time may not see as many hours in some months as compared to others so may be fluctuation of \$1000 to \$2000.” (EMA-021)

3.3 BASIS OF PAYING OUT WCB BENEFITS

3.3.1. Overall Response

This sub-category was very much an employer issue. Independent employers and employer associations were first and second, respectively, in response frequency. These two groups comprised seventy-five percent of all responses within this sub-category.

The largest group of responses came from independent employers, with over half of the responses. The ratio of moderate to low intensity responses was approximately seven to one. There were no high intensity responses.

The second largest group of responses came from employer associations with over one-quarter of the sub-category responses. The ration of moderate to low intensity responses was four to one. There was a sole high intensity response.

Less than one-quarter of the responses within this category was scattered among: consultants, the general public, injured workers, municipal and government services, non-governmental organizations; professional associations and union associations.

Of all the sub-categories within the broader umbrella of benefits, this one ranked third in number of responses. The groups remaining silent within this sub-category were: advocates, injured worker associations, medical practitioners, and victims of criminal injuries.

3.3.2. Discussion

The current level of WCB benefits, 75% of a worker's gross wages, is seen by employers as being more money than a worker received while working. Employers see this as a disincentive for workers to get off WCB benefits. The assumption employers put forward is that there are fewer costs for an injured worker on WCB, benefits, than for an actively employed worker.

Employers state that because most other provinces have gone to a percentage of net pay, so should BC. Interestingly, employers say that they pay 100% of the WCB system, so they should assume 100% of the responsibility, and presumably, 100% of the control of the system. They suggest that workers should only receive a percentage of net pay. This would drop benefit levels, thereby dropping costs, which in turn, would drive down employer premiums. But, employers also say that by reducing benefits to a percentage of net they do not want to see families of injured workers suffering financial hardships. Employers argue that these families would not suffer because paying less than a worker's net pay provides an incentive to the worker to return to work (and full pay) sooner.

Workers believe that moving to a percentage of net pay is a way to apportion partial blame for the injury onto the worker within a supposed "no-fault" system. Employers say that workers should take some financial responsibility for their own workplace safety; a percentage of net was one way to accomplish this.

Employers say that workers receive more while on WCB than when working because of the taxation rate. When wage loss benefits were first brought into being and based upon a percentage of gross, the taxation rate of several decades in the past was close to this figure. However, as the decades receded into the past, the taxation rates continually climbed. To compound the situation, the WCB benefit rate moved in 1954 from 66 2/3% to 75% of gross, thus widening the gap between the WCB percentage of gross pay benefit and 100% of a worker's normal pay. Employers maintain that this gap is an incentive for injured workers to stay on WCB longer. Employers suggest that the WCB is an insurance program, not a social welfare safety net.

Injured workers see the movement to lessen benefits as a way of penalizing injured workers who are hurt during the course of their employment; compensation should be a system to relieve their financial burden during recovery from their injuries. They also refer to a WCB study that shows little correlation between compensation rates and the duration of disabilities. The duration of disabilities is more a function of age than benefit levels; the older the worker the longer the disability time.

Some employers state they had modified work programs for injured workers who received minor injuries.

Injured workers say that employers are the largest beneficiaries of the gross and tax free system because they do not have to withhold employee portions nor do they have to pay employer portions of either CPP, or EI while a worker collected WCB benefits.

In reading the submissions, a number of employers seem to draw upon the percentage of net pay rather blindly without fully understanding what they were advocating. This was illustrated in a number of Questions and Answer sessions between speakers and the Royal Commission. Often the employers would say that they wanted a percentage of net pay, yet when questioned many really meant 100% of net pay.

3.3.3. Recommendations

Employers and employer associations suggest that wage loss rates should be based on a worker's net earnings as opposed to gross. The suggested rate varies among submissions, ranging between 75-100% of net pay, with 80-90% of net pay being the most common. Where there is a serious injury or long term disability has occurred, it is suggested that an ascending scale should be created that goes to a maximum of after-tax pay that would take effect after six months to a year. For example, the WCB should set benefit levels at 80% of net earnings for the first 39 weeks and 85% of net thereafter.

Injured workers and municipal and government services suggest that wage loss rates should be based on a worker's gross earnings. Workers/injured workers want this percentage to remain at 75% of gross; the other interest groups responding within this sub-category want this pushed down to about 60% of gross.

3.3.4. Quotes

- “She feels that the bottom line of cost savings has replaced the original intent of the WCB. Ms. King feels that the bottom line must be justice for injured workers.” (GEN-045)
- “We are concerned that we see a trend to see the treatment of claimants by formula rather than as individuals. This seems to happen in particular with the over use type of injuries. Formulas for recoveries at times are frequently used without regard to the individual injury and the effect that the work has on the worker push to return to work too soon. This is the wrong direction. It indicates that the priority of the Board has shifted to cutting costs. In 1995's Annual Report from the WCB President, Dale Parker, makes the claim that the Board has turned the corner in achieving better results.” (UNA-006)
- “Concerned that there is no incentive for workers to return to work when workers are on a claim. Don't believe that fair means overcompensation. ...E.g. for someone earning \$30,000 their take home is \$22,498 for single workers, but on WCB they receive \$22,500.” (IEM-062)
- “Incentives need to be right - modified work centre has proven that the earlier you get a person back to work whether injured or sick the sooner they returned to good health and got back to work. 75% of pre-taxed gross earnings gives people more take home pay than if they were working - this is not an incentive.” (IEM-035)
- “Under the guise of giving the workers of giving the workers a fair wage, the Board pays the workers 75% of their gross wages and them makes up the difference by making the payments non-taxable.” (INJ-542)
- “By basing benefits on gross rather than net earnings, some BC workers receive more take-home pay while on WCB than while working. This problem will worsen in the future if taxation rates increase. BC - WCB should pay benefits based on net earnings, since it has no control over rate of taxation. This would remove the disincentive that now exists for injured employees to return to work.” (IEM-180)
- “Rate of compensation: the current rate of 75% of gross salary, tax-free, let's some worker make more on claim than when working. A 1994 paper by the Research and Evaluation Branch of the Ontario Workers Compensation Board found that duration of claims rises with amount of benefits. This finding is confirmed by a 1989 work by Greenough and Fraser, and by a 1995 BC - WCB paper by B. Jessup.” (IEM-124)

3.4 WAITING PERIODS PRIOR TO COLLECTION OF BENEFITS

3.4.1. Overall Response

The frequency of responses, overall, within this sub-category was about average for all the sub-categories within Benefits. This sub-category was of particular interest to independent employers, who formed the largest group with about half of all the responses. The intensity of responses from this group were rated as moderate to low in a ratio of about two to one.

The second largest group, employer associations, comprised about twenty percent of all sub-category responses. The ratio of responses between moderate to low intensity responses were nine to eight.

The third largest groups, injured workers, was far behind the first two grouped responses (10%). However, two-thirds of their responses were rated as being of high intensity. The remaining one-third of injured workers' responses were split between moderate and low intensity responses.

The remaining twenty percent of responses within this sub-category were scattered among: the general public; medical practitioners; municipal and government services; non-governmental organizations; professional associations; union associations; and unions.

The groups remaining silent on this issue were advocates, consultants, injured worker associations and victims of crime.

3.4.2. Discussion

Employers say that, statistically, it does not look good to have someone off for one day so they say there is a need for an incentive to keep workers at work. This, they say, is because the WCB is supposed to be an insurance program and not a social welfare safety net. Employers also state that because a WCB claim starts the day after an injury, this is an incentive to make a claim, as opposed to staying at work. Employers also state that the eastern Canadian provinces have a waiting period and therefore a waiting period in BC would bring this province in line with everyone else. Employers say that a fundamental aspect of an insurance plan is a deductible and that a waiting period for wage loss would act in the same way. Also, employers suggest that a waiting period would reduce the number of claims filed, in particular those concerned to be questionable and minor, or nuisance claims. This, in turn, would reduce administrative costs. Employers also comment that prior to 1972, BC did have a three-day waiting period. Employers believe that a waiting period would eliminate the need for the WCB staff's adjudication of minor claims, allowing them to focus on the seriously injured worker. They also state that in provinces that have introduced a short waiting period the number of claims were immediately reduced.

Workers, however, point out that a waiting period would create a large incentive for employers not to report injuries or claims so claims suppression and under-reporting of claims would be allowed to be practiced more openly.

3.4.3. Recommendations

Employer associations and independent employers suggest that there should be a waiting period the suggest length of which ranged from one to seven days - unless hospitalization occurs. Three days was the most common suggestion for the length of the proposed waiting period.

An alternative to waiting periods was raised - rather than a waiting period, have a planning/doctor day with the injured worker. This would involving taking the day or days off to see a doctor and then meet with the employer to explore short term, modified work for minor injuries.

Injured workers and a few employers suggest that perhaps there should be a short term waiting period which precludes WCB benefits, however, the employer should pay directly for these short term periods. If this is not possible then workers should be compensated for the first day of a time loss claim. Some injured workers maintained that the WCB should not introduce waiting periods for any WCB claim.

Example Recommendations

Have a short term waiting period of less than one week and if the worker remains unemployed for more than thirty days, then retroactively reimburse them for the initial short term waiting period.

Have waiting periods for those claims that are more “subjective” (such as soft tissue injuries, carpal tunnel, repetitive strains) and no waiting period for easily identifiable claims such as broken limbs.

3.4.4. Quotes

- “With respect to waiting periods, I think that there is no positive reason for have a three-day waiting period for a worker to get wage loss benefits. I think this a wage replacement system from the instant the worker cannot work and that the worker should be compensated for whatever time lost is lost as a result of an industrial injury.” (GEN-137)
- “I submit that the WCB’s mandate is to provide insurance benefits to injured workers which are meant to protect the injured worker and his her family against financial ruin, but surely not to the extent that he or she receiving disability benefits is financially better off while injured then when healthy and able to work.” (GEN-013)
- “This is a compensation service, not a welfare system.” (EMA-046)
- “Waiting Period - right now I believe if someone’s off - about the second day they’re off they start collecting benefits. I ‘m suggesting there should be a three day waiting period, and you might liken it to a deductible to an insurance policy. It would lower the cost in a sense by those one or two days but it would also be somewhat of a disincentive for some people, not all but some people, I think abuse the system to some degree - those two items alone I think would be an obvious cost saving and motivator to get back to work.” (IEM-098)
- “Waiting Periods - the purpose behind a waiting period is to eliminate the need for WCB to adjudicate minor claims and allow them to focus on injured workers who require income replacement. The association suggests a two day waiting period before wage loss benefits begin to eliminate adjudication on minor claims. One and two day time loss claims are expensive and a drain on the WCB resources, which would be better aimed at ensuring injured workers requiring income replacement receive it as quickly as possible.” (EMA-014)
- “Waiting Periods - Doctor days - Many jurisdictions have a doctor or planning day immediately following an accident . This allows for consultation with the employee both about modified duties, and about the accident. The employer pays the salary for the day, and medical insurance pays for any medical costs. This works in the case of minor accidents: the worker gets immediate emergency care the day of the accident, then takes the following day off to see his or her family physician, and to consult with the employer.”
(Source?)

3.5 NATURE OF THE LOSS BEING COMPENSATED

3.5.1. Overall Response

About half of the responses were from injured workers. Of injured workers' responses, two-thirds were rated as being moderate in intensity. The rest of the responses were split between ratings of high and low intensity. The next largest number of responses (33%) was from independent employers. The ratio of responses being rated as moderate or low intensity was one to two. The third largest bloc (10%) of responses were split between moderate and low intensities. The remaining quarter of the responses were spread among the following interest groups: consultants, employer associations, medical practitioners, professional associations, unions, and union associations. Responses were equally spread among high, medium, and low intensities.

3.5.2. Discussion

Injured workers point out that their workplace injuries, though work-related, affect all aspects of their lives. These effects include the pain, suffering, and lack of functionality that they experience. Coupled with these effects is the associated stress. Stress results from having their initial claim rejected only to have the denial eventually overturned and accepted as well as to the illness or injury. This is related to workers wanting compensation from when their WCB claim was filed.

There is considerable concern among employers and injured workers regarding delays - and costs - of claims processing.

There appears to be a lack of recognition and compensation for the stresses related to chronic pain that persists after the perceived statistically and arbitrarily imposed plateau date of 8 weeks.

3.5.3. Recommendations

The concept of compensation recommended by Employers is for the WCB to provide solely for the loss of earnings as a result of occupational illness, or injury. They suggest that benefits for all non-verifiable injuries (soft tissue, carpal tunnel, etc.) should be eliminated. Injured workers believe that this position should be modified to include the concept of compensation for the loss of enjoyment and quality of life as well. Also included here is the idea of basing compensation awards on potential, future earnings as well.

Wage loss benefits should be paid only until a worker is fit for work, not until the worker finds work, should the previous job no longer be either accessible or available to the worker. The loss being compensated should not exceed the amount that was earned when the person was working. Employers believe that it may be appropriate for the WCB to pay short term assistance but long-term assistance is better served through other programs such as CPP, EI, etc. There should be a limit on wage loss benefits for those workers seeking employment in a new field, outside of their pre-injury employment.

Injured workers believe that when an injured person is forced to take a lower paying job, WCB should top up the salary of the worker to the pre-injury level through wage loss benefits. Also, injured workers believe that if a claimant has to use her or his savings while an appeal is pending, these should be compensated. This should include when a home is lost.

Where a claim is in dispute, the WCB should continue to pay reasonable medical costs until the dispute is resolved. The individual circumstances of workers, especially their children, their other medical problems and the illnesses of family members should be considered. WCB should cover the costs of all medical equipment required by an injured worker - not just those the WCB deem appropriate, but those that specialists recommend. Also, some injured workers state that the WCB should take responsibility for helping people who become alcoholic or suicidal because of frustration or lack of self-esteem brought on by the incapacity of a disabling injury and the frustration of dealing with the WCB.

3.5.4. Quotes

- “The WCB closes its doors at 5 p.m. on Fridays, but human life and pain is 24 hours; they are too busy rubber stamping claims as cancelled.” (INJ-360)
- “Workplace injuries do not stay in the workplace. They go home with the injured worker.” (UNI-008)
- “At present, if a WCB claimant loses his hearing aids, WCB will not replace them. Under the old policy, if the claimant lost his hearing aids, he wrote a letter to WCB outlining the circumstances of the loss, and the hearing aids were usually replaced.” (MEP-015)
- “Far too much time is wasted in the beginning of the injury, before proper diagnosis and treatment, and by then the damage to the body is already irreversible, untreatable, and irreparable. The longer the treatment is delayed, the less the possibility that the body will be properly able to repair and heal. Patients are mentally harassed by WCB caseworkers.” (INJ-347)
- “It’s much easier than worker. And it really doesn’t both him that small companies pay through the nose to keep this person in a form of welfare.” (IEM-122)
- “Unfortunately, in the face of political pressure from advocacy groups the Board has not held to its fundamental principles and the line has become blurred between providing compensation for work caused conditions and expanding the social safety net.” (IEM-120)
- “Fair Compensation Benefits - there continues to be pressure from some interest groups to vastly increase the levels of compensation paid to injured workers.” (IEM-117)
- “When a worker is hurt the anxiousness and depression that goes along with it is hell. I wonder if I will end up on welfare. There is never a moment’s peace.” (INJ-548).

3.6 STACKING WCB BENEFITS WITH OTHER SOURCES OF INCOME

3.6.1. Overall Response

This sub-category of benefits was of particular interest to independent employers, though relative to other sub-categories within the broader umbrella of Benefits, this sub-category was of moderate importance. Over half of the responses made within this sub-category were from independent employers; virtually all of these responses were rated as being moderate in intensity.

The next largest number of responses within this sub-category was from employer associations. These groups' responses were about one-third the frequency of independent employers; of these the ratio of high to moderate intensity responses was one to three, with a sole response of a low intensity.

The remaining groups who responded made up less than twenty-five percent of the overall responses within this sub-category. The groups who responded were: injured workers, municipal and government services, professional associations and union associations.

The groups who remained silent on benefits stacking and integrating were: advocates, consultants; the general public; injured worker associations; medical practitioners; non-governmental organizations; and unions

3.6.2. Discussion

Stacking of benefits is where other sources of income are allowable to the worker while on WCB benefits, with no diminishing effect to the WCB benefits that the worker is entitled to. Employers focused particularly upon CPP disability benefits, which is when workers who receive full WCB benefits are also eligible to receive in full. However, employers generally advocate the prohibition of any type of what they label "double-dipping". This prohibition includes the receipt of any other form of income outside those benefits received by WCB or authorized by WCB while the worker was on an active WCB claim. Employers specifically exclude any insurance payments workers may have received for car/mortgage/credit card balance payments or private wage loss insurance payments. They also exclude any retraining allowances received from sources outside of the WCB system. Notably, some employers, as a result of labour negotiations, provide payment of statutory holiday pay for all injured workers receiving WCB benefits.

Injured workers believe that any and all benefits the employer provides while the employee is working, should continue while the employee is receiving WCB benefits. Workers believe that if they had the forethought to purchase private insurance to cover car, mortgage or credit card payments - these payments should be precluded from the double-dipping ban. Also, any provision of a labour contract, negotiated in good faith between an employer and a union should continue for the worker, whether actively working or collecting WCB benefits. If the WCB paid statutory benefits as well that was a cost the employer had to bear for negotiating that labour contract provision.

Topping up appears predominantly as a result of labour negotiations. For example, an employer agrees to pay a twenty five percent "top up" to bring the non-taxable 75% of gross WCB pays up to 100% of gross with 75% of that non-taxable. Employers state that these provisions, again negotiated in good faith, should be banned. Injured workers believe that this is unfair in that an employer furnished this benefit, in exchange for a labour concession, and then approached the Royal Commission to have this removed.

Two principles put forward by employers to put an end to benefit stacking and “topping up” were: 1) no worker on WCB should be able to make more than they would at work; and 2) the WCB should, generally, take into account and reduce their payments, any union contract provisions for payments while a worker is on disability.

3.6.3. Recommendations

Employers and employer associations state somewhat strongly that the legislation should be changed to prohibit stacking of benefits and topping up or that the WCB wage loss rate be adjusted downward where stacking of benefits or topping up occurs. Also, any benefits received from mortgage/loan/credit card companies, publicly and/or employer funded disability plans should be offset from WCB benefits. CPP should be first payer and WCB could be used to top up eligible wage loss after that.

Injured workers state just as strongly that if an employee has been receiving paid medical, dental, disability, vacation pay, statutory holidays, or any other benefit provided by their employer while working, paid for themselves outside of work, or is offered by the public sector, they must continue if an employee goes on WCB benefits. Where these benefits are provided by the employer while that employee worked they must continue to be covered either by the employer or the WCB.

3.6.4. Quotes

- “Basically we don’t want to see any additional benefits that encourage employees to stay at home or off the job.” (EMA-017)
- “Stacking of benefits like CPP Disability Pension and statutory holiday pay on top of WCB compensation acts like a disincentive for returning to work in a timely fashion.” (IEM-117)
- “...if the injured employee maintains his regular earnings, he should not receive any pension. The WCB should make up the difference in loss of earnings.” (IEM-138)
- “Some workers also have private insurance plans which pay their car or house payments while injured. There are cases where the worker on WCB makes 115% and even up to 200% of what the worker realized in take-home pay while working. Some workers also receive Canada Pension Plan benefits in addition to WCB disability benefits. Government workers receive top up in addition to compensation benefits so that these workers receive up to 140% of regular take home pay. The basic principle should be that no worker on WCB makes more than at work.”

3.7 LEGISLATIVE CHANGES AND RETROACTIVE PAYMENTS OF BENEFITS

3.7.1. Overall Response

This overall sub-category received relatively scant attention in comparison to the other sub-categories within the broad umbrella of benefits (20/577). Independent employers had the largest number of responses (35%) within this sub-category. The ratio of moderate to low intensity responses was five to two for this group.

With slightly fewer responses, with the next largest number of responses, were injured workers. The ratio of high to moderate intensity responses was two to three.

The third largest group, employer associations, with slightly fewer responses than injured workers (20%) had all moderate intensity responses.

The remaining twenty percent of responses were scattered evenly among: the general public, municipal and government services, professional associations, and union associations.

3.7.2. Discussion

This issue is raised predominantly by employers and employer associations. The rationale for preclusion of legislative amendments from current or past claims is that these changes often were not or could be anticipated by employers for budgeting. Also, in some cases when retroactive changes were made current employers may not have been in business so to go back would put an additional cost burden on newly developed employers and established employers alike. There was a mismatch between when the expense was incurred and when the cost was actually paid which distorted operational and profit statements.

Workers believe that employers have a responsibility to fund all costs associated with providing WCB benefits to injured workers, without limit. It is interesting to note that employers do not want retroactive benefits payments in the event of retroactive legislative changes but believe that the WCB's lack of collecting overpayments (a retroactive collection of monies) is a serious issue.

3.7.3. Recommendations

The recommendations were provided unilaterally by independent employers and employer associations so that the following notions were put forward: change the WCB Act to restrict all legislative and/or policy amendments to new claims only; preclude any policy or legislative change from affecting current or past claims; retroactive legislative and/or policy amendments should be funded by the Province's general revenues and not by the WCB; allow the WCB to collect overpayments of benefits in cases where there is evidence of fraud, misrepresentation, clerical error, and other specified conditions.

3.7.4. Quotes

- "Where new policy is applied retroactively to past claims the final resolution of many claims will never be achieved." (EMA-005)
- "Retroactive payments have also been a major source of cost increase to the system." (IEM-117)
- "Applying retroactivity to changing benefits is a major source of cost increase in the system. The recent legislative change to the compensation widows added 4 million to the WCB benefit - 400 million to the WCB debt - it also creates inequity for the employers in that many of them were not in business when the original injury or event occurred. Further, many of the employers or industries involved are no longer in business. A prior Royal Commission dealt with the situation by recommending that such a burden be funded out of general revenue and this was done." (EMA-020)

3.8 MINIMUM AND/OR MAXIMUM WAGE LEVELS IN CALCULATING WCB BENEFITS

3.8.1. Overall Response

Of all the sub-issues, this was the one with the fewest responses. The number of responses in this sub-issue was one-sixth of the number received by the sub-issue receiving the most responses (adequacy of compensation for loss).

Over half of the responses within this sub-category were from independent employers (35%), and employer associations (20%). The ratio of moderate to low intensity responses among independent employers was four to three. The second largest grouping of responses, from employer associations, had a moderate to low intensity response ratio of three to one, respectively.

The third largest grouping of responses was from unions (15%); this bloc had a ratio of moderate to low intensity responses of one to two, respectively. The remaining responses (30% of the total) were scattered among the general public, injured workers, professional associations and union associations. The groups remaining silent within this sub-category were: advocates, consultants, injured worker associations, medical practitioners, municipal and government services, non-governmental organizations, and victims of crime.

3.8.2. Discussion

One rationale provided by some employers for maintaining a cap on wage loss benefits is that WCB benefits is an insurance scheme and not a social welfare safety net. Because of this, the cap is considered to serve as an insurance deductible.

A minority of workers suggest that their basic living needs could be met by the \$55,800 wage cap and any money received above this level would be a bonus. Most workers, however, state that those who earn more than this maximum first lose their income above the cap, and then lose an additional 25% of their gross on the remaining \$55,800. Workers recognize that some of this loss is made up because the 75% of gross salary is not taxable. Even though workers do not, literally and physically, pay funds into the WCB system, their foregoing of benefits over \$55,800 is seen as a form of subsidy to the overall system. Also, employees state that this cap is a surreptitious way of shifting a portion of the blame, responsibility, and costs on to workers, away from employers. Employers see the cap as a way of cutting costs to the system, while at the same time raising the minimum payments to workers who are at the low end of the wage scale. They see this as an attribute of a no-fault system, generally.

3.8.3. Recommendations

Overwhelmingly, employers and independent employers suggest that there should be maximums in place so that benefits do not exceed the amount normally earned while working. At the same time these groups add that the statutory minimum should be increased to reflect the earnings of workers. A minimum compensation rate should be established to ensure an adequate standard of living for those at the lower end of the wage scale (minimum wage). Benefits should not depend upon a claimant's economic need but must be closely tied to the actual, total loss of income.

In contrast, injured workers, though fewer in number, put forward the notion that the WCB should ensure that all injured workers are entitled to maintain their income levels while on WCB benefits with their peer group regardless of income level. Adjustments should be made to the WCB system to provide for full coverage without the requirement of a ceiling on wage loss benefits.

3.8.4. Quotes

- “There is no rationale for a statutory maximum. High income earners are penalized by losing a greater percentage of their earnings than workers earning below the statutory maximum. The statutory minimum wage loss is unrealistic, in that it does not provide an adequate level of income.” (UNI-078)
- “Limits on the maximum amount of Compensation available: workers covered by the WCB system in BC have given up their right to sue employers for injury sustained in the course of employment; employers, who are protected from civil immunity, are obliged to pay assessments to WCB to fund the WCB scheme; problems and hardships arise when workers are entitled to earnings in excess of the current WCB maximums but are “forced” to accept compensation limited to 75% of the current maximum; full coverage should be provided without the requirement of a ceiling on wage loss benefits.” (PAS-008)

3.9 HOW MUCH IS COVERED?

3.9.1. Overall Response

There were a few responses which were identified as not belonging within any of the sub-categories found under the overarching umbrella grouping of Benefits. Of the total number of responses found here, about one-third were from injured workers (7/17). About half of the injured workers' responses were moderate or high. About one-quarter of the responses within this sub-category were from independent employers, with half of their responses being either moderate or high and the other half being of low intensity.

The other groups who had responses in this category, though of a minimal frequency, had either moderate or low intensity ratings, were medical practitioners, members of the Legislative Assembly, union associations, unions and professional associations.

3.9.2. Discussion

One of the issues focuses on the cyclical ups and downs faced by seasonal workers and those who do piecemeal work. The current system of WCB seems to work reasonably well for a traditional workforce where people have regular, full-time employment under a single employer and year-round. Those who fall outside this workforce seem to face problems with regard to benefits.

Employers claim that workers use the WCB during “slack” periods rather than go on UIC by making claims just before they are about to be laid off. They say this is one reason why the BC wage loss benefits provided by the WCB are the highest in Canada.

The unionists state that temporary and "casual" workers under the WCB of BC treat these workers as "lesser" categories of workers because they are considered to have a "weaker" attachment to the work force. The same is said of workers holding down two or three part time jobs. Workers injured while on one of their part time jobs they receive less than their "true" lost income.

Employers raised a reason for workers, of today, who earned more than their average earnings than was likely at the time benefits were initially brought into being - when the historic compromise was struck. After decades of rising tax rates and the increase in the level of benefits, workers now allegedly received more. In the early part of this century the tax rates were in line with the level of benefits paid out. As the tax rate increased, the gap between "normal" wages and WCB benefits also increased.

Employers also seem to preface their position by saying that we need to look at the worker's whole life and apportioning or reducing benefits because of lifestyle issues. Yet, when it comes to measuring the loss of a worker's lifestyle or quality of life the employers point out that this is irrelevant to the worker's employment and these losses should not be incorporated as part of the loss the worker experiences. The discussion within this topic seems to create a tension between "no-fault" insurance and apportioning blame. To what degree does "no-fault" reach into both the worker's and employer's own realms?

3.9.3. Recommendations

Injured workers state that wage losses resulting from legitimate refusals to work in unsafe conditions must be reimbursed. They also say that WCB should continue to provide benefits during the appeal process because the WCB should not be able to cut off benefits at their whim. They say this would have the added benefit of providing an incentive for the WCB to work more quickly. Furthermore, all responding injured workers are entitled to at least maintain income levels at the level of their first injury until full return to the workforce is completed.

Employers and employer associations state that all awards should be based upon "objective" findings determined by functional capacity tests and the results of medical testing.

3.9.4. Quotes

- "Paying wage loss without connecting it to expectations such as daily attendance in a formal treatment or rehabilitation program creates a stay at home mind set in injured workers." (IEM-137)
- "The current basis for benefits results in over compensation for some workers. Because the 75% WCB benefit is tax free, the worker can make more on compensation than at work. This anomaly has arisen because when the level of benefits was first increased from 66 2/3% to 75% in 1954, the Federal and Provincial tax structure was much lower. Now, after more than forty years of tax increases, workers earning between \$30,000 and \$50,000 make more money on WDB benefits. Some workers also have private insurance plans with pay their car or house payments while injured. There are cases where the worker on WCB makes and even up to 200% of what the worker realized in take home pay while working. Some workers also receive Canada Pension Plan benefits in additions to WCB disability

benefits. Government workers receive top-up in addition to compensation benefits so that these workers receive up to 140% of regular take home pay.” (E-PAS-007.1)

- “I am in one of those boats that if I was injured yesterday or tomorrow I would receive less benefits but I think we gage our income - our budget at some certain level. If I can make it more than that is a bonus and we put that into holidays. But all of us - if you are down to that level things start disappearing like your holidays. I’m sure everybody in this room is in that same boat where your basic needs are met at that \$55,800 - a lot of spend above their budget - I don’t think the cap should be removed.” (D-UNA-017)
- “Compensation is being used as a UIC substitute during slack periods. On being responsible for a new employee who has a history of previous injuries with other employers. I’m buying a lame horse, and now I’m feeding him back to health.” (IEM-244)
- “All injured workers are entitled to at least maintaining income levels at the level of their first injury until full return to the workforce is completed.” (INJ-040)

OVERALL SUMMARY

It is important to keep in mind the principles that have been put in place to guide the WCB system. The whole structure, including the payment of benefits, should support the fundamental principles of the overall system. If the benefits are not in line with these foundational concepts then the principles and benefits will be out of synchrony with one another; working at cross purposes with one another.

Why is the WCB in existence? If it is an income replacement system or a way to supplement income, then the questions, in both instances, become ones of kinds and degrees of income replacement or supplement.

In order to marry the principles with what the benefits should be to support and promote these beliefs, there needs to be an examination of what was intended in 1917 with the historic compromise and whether the assumptions and aims arrived at then hold true today.

The discussion of benefits raises the two often opposing positions between the worker and the employer. Worker groups want full compensation, which could be interpreted to mean they want the most they can get from the system. Employer groups, in the name of cost reduction, are interested in paying the least. This cost savings is, in turn in the name of “global competition”, even if their business is national or provincial in scope. Also, these potential gains in cost savings end up costing the system less and, presumably, employers less money.

Employers raise the idea that the WCB system should be an insurance system, not a social welfare net. As often as they repeat this, they also state that they are the only parties that pay and support the system so they should be 100% responsible (which could be interpreted to mean 100% of control).

To summarize the employer position - when one of their employees becomes injured they want to impose a three-day waiting period, followed by a 80-90% of net pay (net pay meaning only their base wage, stripped of anything that can be construed as a fringe or collateral benefit, nor

recognizing anything that could be seen as subjective pain and suffering) and base this percentage only up to a maximum wage cap. Employers also do not want legislated changes to the benefits structure to be retroactive, yet they wish to reach backwards and collect overpayments retroactively. Employers also want to reach into the personal finances of their employees who may have purchased, privately, insurance to protect their mortgages, cars, and credit cards. They want only one method to calculate average earnings, but not take into account the time value of money should longer than a year be used; when payments are being made they wish the consumer price index to be used not at all or once year. Employers allude to remaining competitive and high benefits raises premiums, and therefore costs. Yet, if the whole system the employers are functioning within is the same WCB system, the costs (if all other aspects of the system are working as they were designed to) for all employers will be similar. So is competition the issue, or is improving profits the focus?

The worker groups do not want any waiting period, want the current 75% of gross to remain and want the maximum wage cap removed. Included in the gross income amount they want all benefits (either paid or continued by the employer or the WCB) as well as some component taking into account their lost future earnings potential, and pain and suffering - including that of their families. Any private insurance a worker has paid for on their own is irrelevant to the WCB system. When average earnings are calculated workers want the time value of money incorporated in the calculations, and want the semi-annual consumer price adjustments to continue. Workers do not want a single method for calculating average earnings or a single "book value" for injuries; workers want the individual worker paid according to their individual circumstances.

A balance has to be struck between these two competing positions. Employers seem to take the position that workers have a tendency to take advantage of the "easy money" within the system and need motivation to return to work, otherwise they are prone to sitting at home. Workers state that all they want to do is get back to work as soon as possible and contribute to society and support their families. Much of what the worker groups are proposing is the maintenance of the status quo, while employers are suggesting some extensive cuts to the current benefit system. Both groups are looking out for themselves and not for the other. With this mind the discussion should be focused back to the original intent of the system.

What also needs to be considered is the volume of claims that flow through the system. With several thousand claims per year, the issue may not be the cost on a per claim basis but the very high rate of injuries within industry in BC. If there was a greater effort on reducing the rate of injury the cost to the system would be reduced. To reduce the cost to the system by reducing benefits to workers may have a short term, bottom line focus, but would it solve the problem of injury rates? The cost foregone by the WCB system through shrinking benefits rates will have to be picked up elsewhere. It may be worthwhile to look at what happened to welfare rates, when benefits under the Employment Insurance plan were eroded in recent years.