5.0 PENSIONS

5.0 INTRODUCTION

Pensions is an issue that drew a fairly uniformed response primarily from injured workers and unions. The loudest voice was that which pleaded for more pensions, larger payments and increased pension indexing. Pensions have been further divided into four sub-issues: functional versus loss of earnings pensions (a comparison of methods of calculating pensions); role of deeming in pension assessments (adjusting pensions according to the income expected after an injured worker is retrained); permanent disability ratings (the methods by which disabilities of workers are assessed and compensated); and adequacy of pensions.

As noted, the responses are largely dominated by injured workers concerned about the adequacy of pensions. Although pensions received a relatively small amount of responses, injured workers represent more than half (138/196). Independent employers are a distant second with only a few responses (21/196).

This paper presents four sub-issues including
- adequacy of pensions
- functional versus loss of earnings pensions
- permanent disability ratings
- role of deeming in pension assessments

5.1 ADEQUACY OF PENSIONS

5.1.1. Overall Response
Of the pension sub-issues, the largest number of responses addressed adequacy of pensions. In fact, more respondents comment on the adequacy of pensions than all others combined. It is the most commonly raised pension sub-issue for members of the general public and injured workers. In contrast, for independent employers, this is only the second most discussed.

Of the responses under the ‘adequacy of pensions’ sub-issue, a majority (73/93) of responses are from injured workers. A few are from independent employers, members of the general public, employers associations, injured workers’ associations and unions. Adequacy of pensions have elicited moderately strong responses. A majority of all responses are of high intensity.

5.1.2. Discussion
Respondents, most of whom are injured workers, are clearly concerned about three points of pension adequacy:
1. that too few pensions are being awarded to injured workers;
2. that the amount of pensions benefits awarded to the typical injured worker is insufficient;
3. and that the adjustments or indexing of pensions over time are insufficient.
Emotional expressions of poverty and misery indicate that injured workers would like pensions to be improved. ‘Stingy’, ‘suspicious’ and ‘mean-spirited’ are words that injured workers use to describe the WCB pension policy. Workers wonder why they are receiving $100 or $200 per month for a pension when they are unable to work at all. Commonly, they answer that WCB is for the employer. Workers are pleading for dignity: the right to collect a fair pension and the right not to be treated like a criminal.

In contrast, employers are tired of their premiums rising and they are tired of people who abuse the system. Employers generally agree that the ‘truly deserving’ should receive a pension but they warn that ‘cheaters’ all too often are willing to seize an ‘easy ride’. Employers would like able workers to return to the work place. Therefore a pension should take care of those unable to work and should provide incentive for the able to return to the work place.

5.1.3. Recommendations
More than half of the respondents (51/93) would like the WCB pensions to better compensate workers for the impact that the injury(s) has caused. There is concern that the WCB has no idea how much suffering is actually experienced by injured workers. The following are suggested as ways of improving the adequacy of pensions.

Theme: It should be easier for an injured worker to be awarded a pension through WCB.
More than half of the respondents insist that pensions should be more easily awarded to injured workers. In particular, it is suggested that pensions are awarded too slowly and too selectively. Also, the WCB should not be treating injured workers as though they are trying to cheat the system. It is suggested that the WCB should give the workers the benefit of the doubt, should listen to the advice of private doctors and should not favour the opinion of the employers.

In contrast, there are a few respondents that insist that too many pensions are being awarded. In fact, they suggest that minor injuries, such as the loss of part of a finger, should not compensated or awarded pensions. It is advised that pensions should be awarded only when there is an actual loss of working capacity on the part of the worker.

Theme: The amount of pension benefits paid to a typical pensioner should be increased.
More than half of the respondents insist that the pensions benefits must be increased. Present pensions benefits are said to be insufficient to afford injured workers dignified and adequate lives. It is reported that pensions should also be increased to cover costs including the following: vacation entitlements, medical costs not covered by employer or provincial health plans, recreational needs, lost earning potential, lifestyle changes, pain and suffering. It is also recommended that the WCB be more realistic when assessing disability. Respondents wonder why they are only receiving a partial pension when they are totally disabled. It is also recommended that when permanent disability ratings are increased the pension should be increased as well.

In contrast, a few respondents express concern that workers are receiving pensions when they are able to earn full incomes at the work place. This is said to be an unnecessary expense
which should be prevented through stricter controls. The controls would include random medical exams and income audits of injured workers.

*Theme: Pensions benefits should be indexed or adjusted to better reflect the needs of injured workers.*

There are concerns that the indexing or adjusting of pensions to the Cost of Living Index is insufficient. Respondents wonder why their pensions have increased by meager amounts while living costs to the injured worker have ballooned. It is recommended that pensions should be indexed according to wage increases in particular industries. For example, an injured mechanic should be compensated according to the incomes and benefits of working mechanics. Others suggest that a more realistic needs-assessment of the injured worker could guide the adjustments in the pensions.

In contrast, a few respondents insist that WCB pensions are fair and adequate. In fact, a few suggest that the pensions are too generous. It is recommended that pensioners should provide Revenue Canada statements of earnings and ongoing medical evaluations to ensure that only those truly-deserving receive pensions. There is concern that too many 'fakers' are able to obtain generous pensions. To prevent such abuse, it is recommended that subjective grounds for pensions, such as complaints of pain and emotional problems, be eliminated or restricted. Furthermore, more investigation should be done to ensure that injuries are the result of the work place.

5.1.4 *Quotes*

- “Pension awards should be more generous.” (GEN-008)
- “Disabled workers must be afforded a pension that will allow them to live in dignity.” (INJ-279).
- “I feel angry, betrayed and frustrated. I feel that I am being suspected of trying to abuse the system and that it is assumed that I am guilty until I can prove myself innocent. I feel that the system is set up to be adversarial rather than being proactive. I feel that I am being penalized because I have chosen to be honest.” (INJ-343)
- “If a person returns to full-time employment after being pensioned off the pension should be returned in part, depending on the case.” (IEM-155).
- “Loss of earnings pensions were originally intended only for exceptional circumstances and should now be scrutinized for overuse.” (IEM-156).
- “We don't see a problem with compensating people for injuries like a loss of hand but not for smaller injuries that don't affect their ability to do their pre-injury employment .” (IEM-137).
- “Regarding the pensions “debacle”, “We have injured workers and their families living in destitution whilst WCB staff are getting hundreds of thousands of dollars in perks, golden handshakes and buy-outs.” (INJ-008).
- “It is 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/mo.” (INJ-514).
- “When a disabled worker is granted a pension of only $600.00 per year, he has two choices--steal or go on welfare.” (INJ-279)
5.2 PENSIONS: FUNCTIONAL VERSUS LOSS OF EARNINGS

5.2.1. Overall Response
Of the sub-issues under pensions, the ‘loss of earnings versus functional pensions’ is the second most discussed. In fact, among employer associations (4/7), municipal government/services (3/5) and independent employers (9/21), this is the most commonly discussed sub-issue in pensions. In contrast, it is second among injured workers (19/138).

Of all the respondents in this sub-issue, a few (9/40) are from independent employers and less than half (19/40) are from injured workers. The amounts remaining (12/40) are from consultants, employer associations, municipal government/services, professional associations and unions. The functional versus loss of earnings sub-issue elicited moderately strong responses. A majority of responses are of medium intensity.

5.2.2. Discussion
At present, an injured worker who is eligible for a pension undergoes two evaluations: functional and loss of earnings. Each evaluation is designed to produce a dollar amount upon which the pension is based. The injured worker then receives the higher amount between the two evaluations.

Respondents differ about the nature of pensions, the way in which pensions are to be calculated and the amount to be paid by pensions. Usually independent employers do not favor the functional calculation. The functional calculation involves compensating an injured worker for actions, activities or functions that are not performable as a result of the workplace accident, injury or disease. Independent employers express concern, for example, that a worker could lose part of a finger, receive a pension and still earn full wages at the workplace. This is seen as an unnecessary cost for the WCB whose expenditures need to be reduced. Many employers do not dispute that injured workers should receive some form of pension but they claim that loss of earnings should be the rule. The employers express concern that the WCB is acting like a social safety net rather than a system of strict income replacement.

In contrast injured workers and union representatives insist that basing a pension on loss of earnings is not adequate. Instead they favor loss of function calculations. In fact other losses must be compensated including the following: emotional, stress of the injury upon the family and being unable to participate in recreational activities. Workers insist that theirs is the right to a pension that allows dignity and the participation in society. They contend that the loss of earnings pensions provide injured workers with meager and inadequate sums of money. The result is that workers are forced to retrain and reenter the work force.
5.2.3. **Recommendations**
A few of the respondents (8/40), who are independent employers and employers associations, insist that loss of earnings pensions are preferred. It is put forward that the criteria for the pensions must be based upon the original intent of WCB, and must be restricted to exceptional cases. It is suggested that too many pensions are being awarded and that loss of function pensions are inappropriate.

In contrast, a few respondents (6/40) offer conditional support for loss of earnings pensions. The qualifications suggested include the following:

1. Loss of earnings pensions should not be issued when functional loss is small;
2. Loss of earnings pensions must be based upon the physical disability and not upon the economic condition affecting a worker’s return to work;
3. Workers receiving loss of earnings pensions should be required to undergo yearly medical examinations and provide copies of their annual tax returns to support their ongoing disability status;
4. All loss of earnings pension awards should be reviewed on an ongoing basis to ensure that they accurately reflect wage loss and; if the injured employee maintains his regular earnings, he should not receive any pension.
5. Wage loss or loss of earnings pensions should not be paid beyond the date when an employment relationship would have ceased due to either voluntary retirement or mandatory retirement at age 65 (in accordance with the law).

In sharp contrast are less than half of respondents (11/40), who are injured workers and unions, who favour loss of function pensions. There is not unqualified support for this, however. There is concern, for example, that the permanent functional impairment assessments are cruel forms of assessment. There is support for a new method of assessment which would be more humane. It is also suggested that functional loss pensions should be amended to compensate for the following:

1. Non-monetary losses – such as pain, suffering and limitations on social activities and;
2. Presumed loss of earnings capacity – the prospect that there may be some loss of earning capacity notwithstanding the absence of any immediate measurable loss.

In contrast, a few (4/40) respondents insist that neither functional nor loss of earnings pensions are appropriate. Instead, it is stated that private insurance should be required to provide pensions.

5.2.4 **Quotes**
- “In BC, these workers often have limited education and often live in remote areas where both retraining and alternative job opportunities are few. It they become disabled late in their working life, they should have the right to a life of dignity from a reasonable disability pension.” (UNI-012)
- “The founding principle of Workers’ compensation is the workers’ entitlement to compensation benefits be it medical aid, wage loss or rehabilitation from an injury arising out of and in the course of employment. Unfortunately, in the face of political pressure from
advocacy groups the board has not held to this fundamental principle and the line has become blurred between providing compensation for work caused conditions and expanding the social safety net.” (IEM-090)

- “The issues of the wage loss pension as far as I can figure is attempting to resolve requires an analysis with several variables projected into the future which for the most part are unknowns. This is almost impossible to make this projection with any degree of consistency.” (Eliminate wage loss pensions therefore) (MGS-012)
- “Base Loss of Earnings pensions on the original intent of this benefit and limit pensions to exceptional cases.” (IEM-091)
- “The determination and calculation of Loss of Earning Pensions should be reviewed.” (IEM-274)
- “WCB should grant an award that is commensurate to the disability, which would include subjective matters reflecting the losses incurred.” (INJ-784)

5.3 PERMANENT DISABILITY RATINGS

5.3.1. Overall Response
Permanent disability ratings hold the third highest amount of responses in pensions. In fact, among injured workers, permanent disability ratings is the third most discussed sub-issue.

A majority of responses (19/23) in the permanent disability ratings sub-issue are from injured workers. A few responses are from advocacy groups (2/23) and independent employers (1/23). The permanent disability ratings elicited strong responses. A majority of the responses are of high intensity.

5.3.2. Discussion
Permanent disability ratings are a basis for determining pensions. The ratings represent the outcomes of evaluations on the injured worker. For example, the higher the level of disability, the higher the permanent disability rating for that worker. In turn, the ratings affect the pension size and eligibility of the injured worker.

Respondents generally want pensions to be based upon accurate assessments of disability. How to assess a disability remains a source of controversy.

On the one side, employers generally assert that the permanent disability ratings are too lax: Too many permanent disability pensions are being awarded. They want objective and adequate testing of functional capacity to determine the true nature of a disability. The concern is that present tests are too short and allow ‘fakers’ to get through. It is recommended that objective disability be determined by a functional capacity appraisal using measurable criteria and the monitoring of efficiency of effort. A concern is that too many pensions are being awarded and the costs of WCB are too high.

On the other side, a majority of respondents, mostly injured workers, assert that the permanent disability ratings are too tough: too few permanent disability pensions are being awarded. There is concern that the assessments of functional capacity are not job-related and are a
waste of time. The result is that pensions are being calculated and disallowed without satisfactory medical examinations of the injured worker. It is asserted that too many disabled workers are not receiving the pensions that they deserve because of the system of permanent disability ratings. It is suggested that the WCB is trying to cut costs by denying pensions and off-loading injured workers to other social programs such as CPP or Social Assistance. The following inconsistencies are offered as examples that permanent disability ratings are not acceptable:

1. There are large differences between the disability as assessed by the private doctor as compared to that assessed by WCB doctors.
2. There also appears to be discrepancies between the amount of disabilities assessed and the amount of pensions that are paid. (For example, concerns are raised that although the disability rate has been increased, the pension remains the same.)

5.3.3. Recommendations
A few (2/23) respondents insist that too many permanent disability pensions are being awarded because the ratings are not strict enough. In order to accurately award pensions and discourage ‘fakers’ from receiving pensions, it is recommended that functional capacity appraisals be used. The appraisals would ensure that sub-maximal efforts are not the standards by which the injuries are assessed. Furthermore, the appraisals are to be of sufficient duration that a true picture of the injury may be obtained. In addition, a few respondents suggest the following:

1. there should be periodic assessments for disabilities;
2. all awards should be based on objective findings determined by functional capacity tests and the results of objective medical testing and;
3. subjective complaints of pain should be eliminated as a basis for determining pensions.

In contrast, a majority of respondents (15/23) express concern that too few permanent disability pensions are being awarded because the ratings are too strict. It is recommended that the WCB do the following in order to achieve more accurate disability ratings on injured workers:

1. accept the diagnosis of private doctors;
2. examine the injured worker in person;
3. hire adjudicators with medical training;
4. provide incentives to adjudicators to be more compassionate rather than cost-cutting and;
5. provide easily understandable explanations for particular disability ratings to increase accountability.

5.3.4. Quotes
• “Disability awards should not be awarded if it is found that sub-maximal effort is being made.” (IEM-137)
• “We don’t see a problem with compensating people for injuries like a loss of hand but not for smaller injuries that don’t affect their ability to do their pre-injury employment.” (IEM-137).
• “WCB uses the word subjective to turn down medical and supportive evidence.” (INJ-103)
• “If an injury will never rehabilitate, then WCB should “settle” it with a pension so that there is a closure to the claim.” (INJ-588).

5.4 ROLE OF DEEMING IN PENSION ASSESSMENTS

5.4.1. Overall Response
Deeming is the least frequently discussed sub-issue in pensions. In fact, only injured workers, unions and union associations are the major respondents.

Among union associations, deeming is the most frequently discussed (2/10) issue in the pension category. In contrast, among injured workers, deeming is the least discussed (6/10) of the pension issues. The deeming sub-issue elicited a moderate response. A majority of the responses are of medium intensity.

5.4.2 Discussion
Deeming: A pension is deemed or adjusted if efforts can affect the income of that injured worker. For example, if the WCB anticipates that its retraining will significantly improve an injured worker’s income, then the pension for that worker will be reduced or deemed.

The controversies for respondents are that the deeming is either inappropriate or inaccurate. In the first instance, there are claims that deeming is inappropriate as injured workers should not be ‘penalized’ for retraining and reentering the work force. In the second instance, it is stated that reductions in pensions are often too much considering the abilities of retrained workers. For example, it is said to be unfair that pensions are still deemed when the retrained work remains unemployed or unable to secure the salary anticipated after retraining.

5.4.3 Recommendations
Approximately one half (4/11) state that the deeming of pensions should be discontinued. Respondents contend that it is unfair to reduce an injured worker’s actual pension based on projected earnings.

In contrast, about one half (6/11) of respondents insist that if deeming is to continue, then certain qualifications should exist. The following are listed qualifications:

1. if “deeming” remains enshrined in the Act, then “substantive rehabilitation assistance” should be provided to workers until the worker has found suitable employment and;
2. checks to ensure that the workers are actually earning the projected incomes after they have been retrained should be established.
5.4.4 Quotes

- “The practice of deeming be thrown out as a policy of the WCB.” (UNI-078)
- “Pension reviews should be mandatory and should provide for offsets and integration between forecast and actual earnings to provide a potential corresponding reduction or increase in pension based on objective figures.” (EMA-036).
- “If a pension is reduced by the amount of income expected after retraining, the WCB should be required to determine that the claimant is actually doing the job and is receiving the wage, instead of automatically reducing the pension as soon as the retraining is finished.” (INJ-239)
- “Discontinue the “deeming” of employment and instead make deductions from pension entitlement based on workers’ actual earnings.” (UNA-010)

5.5 PENSION SUMMARY

For pensions, the voice of the injured worker is by far the loudest. Too few pensions are awarded, they are too small and they do not increase with costs. A sizable minority, led by the independent employers, argues that pensions are too liberal allowing too many ‘a free ride’. It is argued that the disabled should be pensioned but the able should be encouraged to return to the work place.

Respondents are in general agreement that fair pensions should be awarded to deserving workers. The definition of a deserving worker is a little more problematic. The workers claim that there are too many injured workers who are left without pensions or with ‘poor’ pensions. In essence, there are too many unrecognized disabilities. In contrast, among employers there is concern that too many ‘fakers’ are receiving pensions. Furthermore, people are receiving pensions when they are fully capable of working. In this case, there is too much unrecognized capability.

Regarding the sub-issues specifically, more respondents favor functional pensions as compared to loss of earnings. More humane methods of assessing functional capacity, however, are needed. Respondents want the deeming of pensions to be improved with better rehabilitation efforts and checks to ensure that pensions are not deemed if actual income increases are not earned. Permanent disability ratings are not assessing the true nature of disability of the workers: there is too much unrecognized disability. The following recommendations are made regarding permanent disability ratings:

- input from private doctors;
- face to face meetings and examinations of the injured workers;
- adjudicators with medical training;
- an incentive to be more compassionate rather than cost cutting and;
- more explanations should be provided so that workers understand why they were assigned a particular rating.
It is also stated that more pensions should be awarded. The value or the payments of the pensions should be increased. The indexing or adjusting of pensions should better reflect increases in wages and costs.

In addition, respondents want more information. There is substantial concern that appears to be caused by poor communication. For example, some employers are concerned because they perceive the WCB is plagued with thousands of ‘fakers’ on pensions; and some workers are concerned that ‘all of a sudden’ all injuries are not compensable. Neither scenario is true. Better information sharing through case workers and through information sessions is recommended as a way of lowering mistrust, rumor, misunderstanding and suspicion.

In conclusion, all groups want better assessments of the injured worker and pensions. The injured workers want the opportunity to demonstrate how hurt they are and how much they need their pensions. Employers, however, want an opportunity for WCB to better assess disability. Better assessment would ensure that ‘cheaters’ are not ‘faking their way towards a free pension’. The workers want the word of the private doctor respected and case managers to meet the worker face to face with compassion; and the employers want the worker to submit to random tax audits and medical evaluations. Injured workers, the loudest voice, want more pensions, bigger payments and larger increases.