10.0 PREVENTION

10.0 Introduction

“Prevention” is the largest area of consideration in the WCB. Since the basic aim of the WCB is prevention of accidents, this area encompasses all aspects of the workplace. All aspects must work in concert for an effective accident prevention program.

This paper will examine the submissions under ten sub-issues. These are:

- Rights and duties of workplace parties
- Enforcement versus education
- Reliable measure of safety
- Consolidation of regulatory jurisdiction
- Separate or same agency
- Medical surveillance
- Impact of the Experience Rating Assessment (ERA) and other financial incentives
- Protective re-assignment
- Cost benefit analysis
- Regulatory versus financial incentives/relative merits

10.1 RIGHTS AND DUTIES OF WORKPLACE PARTIES

10.1.1. Overall Response

The issue of Rights and Duties generated the largest number of responses in the area of Prevention. The majority were from employers, employer associations, injured workers, injured worker associations, unions, and union associations. The responses were evenly split between employer-oriented groups and worker-oriented groups. In the worker and employer submissions, 60% of responses were rated as high or medium in intensity. The issues were clearly distinguishable as Workers Rights and Duties and Employers Rights and Duties.

10.1.2. Discussion

While the Rights and Duties of Workplace Parties are specified in some labour agreements, most respondents believe they should be spelled out and included in WCB regulations and policies. The issue is clearly important to both workers and employers. In general, two themes emerge:

1. Employers have a right to manage, a duty to provide a safe workplace, and a responsibility to comply with WCB orders.
2. Properly-trained and supervised workers have the right to a safe work environment, to refuse unsafe work, to know the hazards, to participate in their own safety programmes, and to be held accountable for violating safety rules.
Theme: Employer’s Right To Manage
Employer generally believe that their right to manage is under attack from several fronts. The first of these is the adversarial approach to collective agreements in which unions are seen to be seeking to wrest control from employers. Employers state that this attitude threatens their right to manage.

Safety and Prevention are two other fronts of concern for employers. Employers believe that the more demands made by unions regarding the implementation, operation, and involvement in safety programmes, the more their right to manage is infringed. Employers, generally, recognize that involvement in safety programmes by unions and workers is essential. The issue is the extent of the involvement. Some employers believe the union’s objective is to have exclusive domain over all safety issues, leaving the employer to pay for whatever is decided.

Employers are very clear about the issue of rights and duties regarding prevention. They recognize that employers have the duty to provide a safe working environment, including the proper training of all employees. However, they state strongly that properly-trained workers who violate safety rules are being overlooked by the WCB. In most cases, the WCB cites the employer for a violation if an employee is found ignoring safety rules. Employers are concerned that, even if they take all precautions, train workers properly, and supply a safe workplace, they are still being penalized financially by workers who violate safety rules. Most employers recommend that the WCB impose the same penalties on irresponsible workers as it imposes on employers.

One component of the employer’s right to manage is the right to expect that workers will comply with safety rules and to deal effectively with those who don’t comply. At present, employers believe that the unions set up obstacles to discipline and that the WCB ignores worker infractions.

Theme: Workers’ Rights
In general, the rights of workers in Prevention focus on the following three “R’s”: The Right to Know, The Right to Participate, and the Right To Refuse Unsafe Work.

Many union and worker presentations state that toxic gases and chemicals can exist in the workplace without the worker’s knowledge. It was pointed out that of the thousands of chemicals in use in Canadian workplaces, only relatively few are listed in the BC Health and Safety Regulations. In addition, workers who deal with toxic chemicals are not always able to find out what they are because of manufacturer’s product secrecy. In other words, to keep ingredients from the competition, manufacturers are allowed, by law, to refuse disclosure of a products contents. Many feel that the right of a worker to know all the hazards should override the manufacturer’s product secrecy clause.

Because it is the responsibility of the employer to establish an effective safety programme, many submissions express concern that workers are not being given full participation in the safety of their worksites. Instead they are limited to recommending changes. Full participation includes the right to be represented on an Occupational Health & Safety Committee, the right to
participate in safety education programmes, the right to be included in WCB inspections, and the right to monitor and ensure compliance with WCB orders. Unions and workers also state that they should be given time off work, with pay, to attend updates and conferences on Occupational Health & Safety issues. It was felt that this type of education promotes prevention better than discipline.

The Right To Refuse Unsafe Work is mentioned exclusively by workers and unions. While many labour agreements have a right-to-refuse unsafe work clause it does not extend to non-union workers. Also, while section 8.24 of the Act includes the three-R’s, they are seen by the WCB as an individual, case-by-case issue. Those who discuss the three R’s recommend that they be enshrined in legislation and made universal to all workers—union or non-union.

Coupled with the three R’s is the issue of the right to refuse or report unsafe condition without fear of discrimination or discipline. While it is of significant importance that the three Rs be enshrined in legislation, many submitters felt they were of little value without protection from discipline or discriminatory treatment for exercising workers’ rights or reporting unsafe conditions.

10.1.3. Recommendations
Employers and unions had a number of recommendations designed to articulate the rights and responsibilities of those involved in the workplace. While most were from a particular viewpoint, those outlined by the BC Federation of Labour submission appeared to be the most evenly-balanced. A sample of these is listed below.

Sample Recommendations

- Apply the same conditions to properly-trained and supervised workers who violate safety regulations as are applied to employers.
- Workers must be responsible to
  - take all reasonable precautions to protect the health and safety of themselves and of other workers;
  - use the equipment, protective devices, or clothing required to protect their health and safety;
  - carry out all assigned work in accordance with established safe work procedures;
  - report conditions considered to be unsafe to the supervisor, employer, or a member of the OHSC as soon as possible, and not engage in unsafe work until hazards have been effectively controlled;
  - carry out only work for which they are qualified;
  - not engage in horseplay or similar conduct which may endanger any person, and;
  - ensure his or her ability to perform the job is not impaired by alcohol, drugs, or other causes.
• Employers must be responsible to
  • protect and promote the occupational health, safety, and well-being of workers as far as is practicable, notwithstanding the absence of a regulation, order, or direction from the Board or any other agency;
  • ensure that work is adequately planned so that all steps are prepared to eliminate or effectively control the risks of adverse health effects to workers, including planning for emergencies and disasters;
  • cooperate with the Occupational Health and Safety Committee, and involve it in planning;
  • provide for first aid treatment and other necessary medical services for workers;
  • ensure all hazards at a workplace, which could result in occupational injury or disease, are identified;
  • ensure preventive measures are developed and implemented to eliminate or effectively control the hazards;
  • ensure each worker is provided with adequate direction and instruction in the safe performance of assigned duties, and is instructed and trained in all procedures required by the regulations, and preventive measures, required to control hazards associated with the assigned work;
  • ensure each supervisor is qualified to perform his or her assigned duties, and workers are adequately supervised to ensure that their work is carried out in such a manner that all reasonable precautions are taken to prevent occupational injury or disease;
  • ensure that each worker is qualified to perform assigned duties or is working under the direct supervision of a qualified person; and
  • ensure coordination of safe work with any other employers at a worksite
• Legislation should articulate the additional employer responsibility to
  • take immediate steps to eliminate or effectively control the worker’s exposure to the hazard through proper engineering controls;
  • implement protective measures, including safe work procedures as a means to control a worker’s exposure to the danger, where engineering controls, including substitution of non-hazardous substances, are not sufficient or practicable to eliminate or minimize the risk; and
  • provide for the use of personal protective equipment, at no cost to the worker, where engineering or administrative controls are not sufficient to eliminate the risk.

• The right to refuse unsafe work should be recognized in legislation
• Legislation should require a supervisor to advise any other assigned worker about an unresolved work refusal, and the reasons given by the worker who considered the work to be unsafe.

10.1.4. Quotes
• “[T]here is an amazing lack of accountability of workers—almost as if workers were not even participants let alone partners.” (EMA-048)
• “There is not a single other health and safety regulatory agency that puts less focus on individual responsibility and accountability than the WCB. We cannot personally supervise every worker, every minute of the work day.” (IEM-104)
• “The attempts by employers to fine workers for unsafe acts must not compromise the employers’ responsibility to provide a safe workplace.” (UNI-021)

10.2 ENFORCEMENT VERSUS EDUCATION

10.2.1. Overall Response
Of the responses to the issue of enforcement versus education, slightly more than half came from employers. In addition, of those that were rated as high in intensity, three-quarters also came from employers. Approximately one-third of the responses came from workers and unions.

10.2.2. Discussion
Enforcement versus education ultimately comes down to the relationship between the employer and the WCB inspector. Employers, in general, believe that inspectors are too quick to write violation orders, rather than take a consultative, educational approach to workplace safety. Workers and unions, on the other hand, believe that enforcement is not aggressive enough and penalties are too lenient.

Theme: Employers’ Views
Employers state emphatically that the Prevention Division should move from an enforcement and penalty approach to a consultative, educational approach. At present, employers are reluctant to ask the WCB for advice on programmes or potential hazards. On many occasions, such requests result in violation orders. Several employers see the dual roles of the inspector as a conflict of interest. For this reason, they believe that the inspectors can not act as educators and consultants on one hand, and enforcers on the other. Some employers state that the role of inspectors should be to promote compliance.

Theme: Workers’ and Unions’ Views
In general, workers and unions state as emphatically that the opposite approach should be taken. Those who responded to this issue see the most important aspect of prevention to be the employer’s responsibility in providing a safe workplace and complying with WCB orders. The submissions from worker-oriented groups imply a mistrust and even collusion regarding the relationship between employers and the inspectors. It is clear from the many submissions that inspections are announced ahead of time.

Members of Occupational Health & Safety Committees express frustration with employers who are repeatedly in non-compliance with WCB orders. The problem, according to them, is the WCB’s shift toward a more educational, consultative approach to inspections.
10.2.3. **Recommendations**
The recommendations tended to be split along worker-employer lines. The employers recommended a more consultative/educational approach to workplace safety, while the workers saw greater enforcement as the key to safety.

**Sample Recommendations**

- The WCB should adopt an educational and consultative approach to inspections.
- Employers should be able to invite the inspector on site when there is a problem that the employer is concerned about. Employers don’t always know exactly how to handle a certain workplace problem. The WCB has immense knowledge that can be shared.
- The WCB should re-focus its emphasis toward penalties and enforcement and away from education and consultation.
- The WCB should re-evaluate its penalty structure. The present tendency toward “three strikes and you’re out” is too lenient toward employers who are constantly in non-compliance.

10.2.4. **Quotes**

- “Enforcement simply encourages employers to avoid asking the WCB for assistance.” (EMA-021)
- “Workers must have the protection of Occupational Health & Safety regulations; employers must be required to comply with them; and the WCB must enforce them.” (UNA-013)
- “The Act should spell out the importance of the Board’s role as a monitoring and enforcement agency, and make education and consultation a secondary mandate. Workers must have the protection of health and safety regulations; employers must be required to comply with them; and the WCB must enforce them.” (UNA-001)

10.3 **RELIABLE MEASURE OF SAFETY**

10.3.1. **Overall Response**
The stance of the submitter (worker or employer) tended to reflect the opinion of what constitutes a reliable measure of safety.

The bulk of responses came from two groups—employers/employer associations; and injured workers and unions. The group with the highest rated intensity level about this issue was the employers. Other groups, such as worker advocates, consultants, general public, the medical profession, municipal governments, and professional associations also commented on this issue, their combined responses made up approximately one/third of the total. The intensity of these responses ranged from low to medium, with about one-quarter of them rated as high.

10.3.2. **Discussion**
In general, all groups see a reliable measure of safety as being the accident frequency per person-hour worked. This, however, is the only area of agreement. Some employers believe the numbers are being skewed by overzealous inspectors who concentrate more on
enforcement than on consultation and by WCB regulations and policies that result in financial incentives for workers to be on compensation rather than at work.

Employers also believe that the quality and frequency of inspections do not accurately reflect the level of safety in industry. Several of the employers responding to this issue complain that inspectors spend an inordinate amount of time on convenient and high-profile sites, while neglecting out-of-the-way sites. One submitter suggested that if every worksite in BC was inspected once a year, with no follow-up inspections, using all available inspectors, it would take nine years for repeat inspections.

In addition to the quality and frequency of inspections, employers believe that inspections are mainly punitive and one-sided. Many violation orders are written without the opportunity to consult ahead of time. Also, many flagrant violations by properly-trained and supervised workers are overlooked by WCB inspectors, or are charged against the employer. One employer cites the statistic that over 67,000 violation orders were written against employers, while only 121 observation reports were written against workers. Employers state that this one-sided approach to inspection and orders is not an accurate reflection of the employers’ concern for a safe workplace.

On the other hand, many injured workers and unions do not trust the connection between the employer and the WCB. A number of submissions mention that employers are notified ahead of time that a WCB inspection is scheduled. A quick cleanup and safety check could then be done before the inspection.

Without exception, injured workers and unions believe that the penalty structure of the WCB is too lenient. In many cases, it is cheaper for the employer to pay fines for non-compliance than it is to fix an unsafe condition. Unions point to the delay tactics by employers in implementing the draft ergonomic regulations. Workers and unions suspect that the implementation delay results from the projected costs of the new regulations.

Another reliable measure of safety mentioned by both workers and employers is the issue of Experience Rating Assessment (ERA). This, too, receives mixed reviews. Employers believe that the limit of 33.3% on the increase or decrease of assessments is too narrow. Companies who are serious about implementing effective Occupational Health and Safety programmes and reducing accidents are at a disadvantage. Some companies would rather pay the 33.3% increase than fund an adequate safety programme. Employers recommend that the range of merit and demerit be increased.

From the union point of view the ERA system, based on claims costs, does not accurately reflect the injury rate for some employers. The system encourages employers to hire consultants in order to “manage claims.”

ERA, then, is not seen by all as a clear or reliable measure of safety, although it may be seen this way by the WCB.
10.3.3. Recommendations
The objectives of the recommendations in this section depended on whether they were submitted by worker-oriented or employer-oriented groups. Workers state that the reliable measures of safety—accident rate and WCB assessments—are being skewed by “claims management” and a misleading assessment based on claims costs, rather than the true accident rate. Employers, on the other hand, believe that frivolous claims, disincentives to return to work, an unfair Experience Rating Assessment system, and a failure of the WCB to recognize the worker accountability in safety violations contribute to an inaccurate picture of many industries safety efforts.

Sample Recommendations

- Shift the emphasis of the Prevention Division from enforcement and penalties to consultation and education.
- Make workers who knowingly violate safety regulations more accountable. Issue the same level of fines and penalties as is issued against employers.
- Increase the range of merit/demerit assessment in the ERA.
- Increase the level of fines and penalties to employers who are in non-compliance of WCB orders.
- Reverse the shift toward education and consultation and put more emphasis on unannounced inspections and stiffer penalties.
- Base the employer assessment rate on the true accident rate per man hours worked instead of on claims cost.

10.3.4. Quotes

- “It’s obvious. The more claims you discourage, get denied, or successfully appealed, the lower your ERA costs.” (INJ-238)
- “We are reluctant to ask the WCB for advice. We usually get advice in the form of violation orders.” (EMA-021)

10.4 CONSOLIDATION OF REGULATORY JURISDICTIONS

10.4.1. Overall Response
The responses to this issue represented two opposing viewpoints. Approximately 55% of the responses urged the Commission to maintain jurisdiction for mines inspection separate from the WCB. The remainder (45%) of those responding recommended that all inspections and regulations for all worksites should be gathered under the WCB. Only one submission was rated as being high in intensity. Two-thirds were rated medium, while one-quarter was rated low.

10.4.2. Discussion
The worker- and union-oriented responses suggest that the mining industry, the railroad industry, and all federal jurisdictions within BC be brought under the umbrella of the WCB. The argument is that the WCB is responsible for compensation payments in the event of claims, but
has no jurisdiction in setting the safety regulations or in conducting inspections. This, in turn, creates inconsistent approaches to workplace safety.

On the other hand, those involved in the mining industry urge the Commission to keep the inspection of mines under the jurisdiction of the Department of Mines. According to the mining inspectors, the WCB does not have enough qualified inspectors to do the job properly. They argue that all mining inspectors have extensive backgrounds exclusively within the mining industry. WCB inspectors, they contend, can come from any background and inspect industries with which they may be unfamiliar.

Unions argue that, in the case of the rail industry and other federal jurisdictions, there is unnecessary duplication of services and conflicting regulations where there is overlapping jurisdiction. This can result in delays for injured workers and conflicts over the reporting of accidents.

Workers have a concern about being outside the enforcement jurisdiction of the WCB. There is an appearance of conflict of interest when combining the responsibility of the promotion of an industry with the responsibility of protecting the workers in that industry. The Westray Mine disaster highlights the potential conflict between the responsibility for economic development and the protection of employees. Unions contend that, in the rail and mining industries, few inspectors inspect few workplaces.

There is also concern among workers about the issue of federal/provincial jurisdiction regarding enforcement. This is especially true in view of cut-backs and diminishing resources for federal enforcement. Other jurisdictions are also disputed. These include industrial camp health standards and enforcement. One submission asks the question, “Is heli-loging a federal or provincial jurisdiction?”

10.4.3. Recommendations
As outlined in the discussion section, the recommendations for keeping regulatory jurisdictions separate came from the inspectors in the mining industry. Those who recommended that all worksites be under the consolidated under the jurisdiction of the WCB cited mining, railroads, industrial camp health and safety standards, and all federal worksite jurisdictions in BC.

Sample Recommendations

- The WCB should be given authority for industrial camp health standards and enforcement, and inspection for radiation hazards.
- Legislation should specifically empower the Board to regulate, in all worksites, the hours of work for the purpose of health and safety.
- Consolidate all worksite inspections and regulatory jurisdiction in BC under the WCB.
- Leave the inspections of mines and regulatory jurisdiction in BC under the jurisdiction of the Department of Mines.
10.4.4. Quotes

- “In the mining and rail industries, few inspectors do few inspections.” (UNI-032)
- “The Prevention department cannot act as educator and enforcer at the same time.” (IEM-109)

10.5 SEPARATE OR SAME AGENCY

10.5.1. Overall Response

Although the responses were fewer than those for Enforcement versus Education, the issue was roughly the same. Over one-half of the responses came from employers or employer groups. Slightly less than one-third came from injured workers and unions. The responses from the worker factions were judged either low or medium in intensity, while the employer groups’ responses were judged either medium or high.

10.5.2. Discussion

As with the issue of Enforcement versus Education, employers respond that the Prevention division cannot act as both educator and enforcer at the same time. They see value in the WCB’s trend toward consultation and education in formulating effective accident prevention programmes. They also see a conflict, in that the inspectors whose advice and consultation is sought, are the same inspectors who are responsible for issuing violation orders. Many employers express reluctance to ask for consultation, since many of these requests end with orders being written. For this reason, they believe that separating the enforcement and the consultation functions into separate agencies would further the goal of accident prevention and workplace safety.

Employers are split on how this separation should take place. Some believe that the Prevention Division should have two separate departments—one for consultation and education, and one for enforcement. Others, however, state this is impractical, since there is no way to guarantee complete separation or prevent the sharing of information regarding specific worksites. These employers believe that the education and consultation functions should remain within the Prevention Division, while the enforcement arm should be under the Ministry of Labour. Of the employers who discuss this issue, all are very concerned that the functions be separate.

While the worker-oriented responses were fewer in number, they are united on the issue of enforcement rather than consultation. Unions, advocates, injured workers, and injured workers’ associations all see the trend toward more consultation and education as a step backward. They contend that the WCB is “letting the employers off the hook” by not being more aggressive during inspections and imposing fines. Unions and injured workers point to the fact that the maximum penalty for an employer in the case of a worker’s death is $7500. They believe that this is not a deterrent and that employers would sooner pay the fine than spend money on upgrading the safety of the workplace. In general, the worker submissions ask that the WCB reverse its trend toward education and consultation, and focus its attention on enforcement and penalties.
10.5.3. **Recommendations**

Employers recommended that the enforcement and educational aspects of prevention be separated. Some believe it should remain in the Prevention Division, but be separate sections. Other employers state the enforcement section should be entirely outside the WCB and be placed in the Ministry of Labour.

Workers and unions recommended that all aspects of prevention remain with the Prevention Division and that the main focus should be on enforcement rather than on consultation.

**Sample Recommendations**

- Separate the education/consultation function of the Prevention Division from the enforcement function. Move the enforcement function to the Ministry of Labour and keep the education/consultation function in the WCB.
- Adopt a similar policy to that of OSHA in California, where the consultation and enforcement aspects are separate and have a legislated “no contact” regulation.
- Abolish the education/consultation aspect of the Prevention Division and concentrate on enforcement and penalties.
- Require the WCB to introduce much stiffer penalties and enforce the present policy on non-compliance.

10.5.4. **Quotes**

- “The Prevention Division cannot act as enforcer and educator at the same time.” (IEM-109)
- “OSOs should be highly visible on high-risk sites.” (CON-008)
- “The Prevention Division should impose much harsher penalties on employers found in violation of safety regulations.” (UNA-013)
- “Occupational Safety Officers must show the regulatory stick and be prepared to use it” (INJ-343)

**10.6 MEDICAL SURVEILLANCE**

10.6.1. **Overall Response**

While there were very few responses to the issue of medical surveillance, the opinions were split between worker groups and employer groups. They were also split on points of view. In addition almost half the responses were rated high in intensity.

10.6.2. **Discussion**

The issue regarding medical surveillance, for workers, is one of confidentiality; for employers it is one of information. Workers and unions are concerned that a programme of medical surveillance could compromise the privacy of injured workers. There are submissions that stating that confidential and irrelevant medical information ends up in the hands of employers and can be used in dispute appeals. Unions believe that medical surveillance programmes could be useful in tracking the recovery of injured workers and assisting in their return to work.
They insist, however, on strict guidelines that would protect the privacy of claimants and allow workers the choice of whether or not to participate in such programmes.

Employers, on the other hand, state that medical surveillance programmes are essential in planning for return to work of injured workers and in predicting budgets for safety programmes. Employers also echo unions’ concerns about confidentiality and protection of privacy. They are interested only in relevant information in dealing with claims.

Other aspects of medical surveillance are considered important by worker and union submissions. These are considered essential in detecting workplace hazards and dangerous environments. For example, the BC Federation of Labour states that effective strategies are required to measure the success of initiatives in preventing workplace injuries. In the past, there have been efforts to suppress health effect information. The submission points out that the effects of asbestos were known for years before the public became aware. They contend that relatively little health status information is gathered by the WCB and that it relies on insurance claims information.” Many factors, other than insurance claims, affect this statistic.

The WCB Act and Regulations authorize the use of medical surveillance. Medical surveillance can be of value in promoting occupational health, provided it is used appropriately. There are concerns about constitutionality, ethics, privacy, and economic sanctions because of the availability of medical information.

10.6.3. Recommendations
The recommendations regarding medical surveillance encompassed the areas of confidentiality and data about workplace hazards. Unions were concerned about medical surveillance programmes which make confidential information available to employers. The submissions also discussed the fact that the WCB does not have a research programme in operation to identify, publicize, and combat present or potential workplace hazardous materials. As an example, the BC Fed submission cites the fact that the hazards of asbestos were known for years before it became public knowledge.

Sample Recommendations

- The WCB should be authorized to require provision of health services to workers. These health services should be organized according to guidelines developed by the Board and workers’ representatives. Workers affected must have the freedom to choose to participate or to refuse.
- It is necessary to protect confidentiality and workers’ rights to privacy when they are involved in medical surveillance programmes. Workers must be able to attend the doctor of their choice. All medical records must remain confidential, with results provided only to the worker. Records must be maintained by a physician of the worker’s choice, and be released to the employer only at the worker’s request.
- The Act should provide the following protections in order to maintain confidentiality:
  - Workers must be able to attend a qualified physician of his/her choice for all medical examinations.
• All medical records must remain confidential, with results provided only to the worker.  
• Records must be maintained by the physician of the worker’s choice and be released to the employer only at the worker’s request.  
• The Board may collect results so it can monitor population health, but its disclosure of information to an employer should be limited to information essential to prevention and the protection of worker health (p. 88).

• The WCB should produce an annual report regarding health effect information, similar to the Vital Statistics Report of the Ministry of Health, the bi-annual “B.C. Objectives and Indicators for Public Health Protection,” and the information in the annual report of the Ministry of Transportation and Highways.

10.6.4. Quotes  
• “Very little health information is gathered by the WCB. Instead of health status information, the WCB relies on insurance claims information.” (UNA-013).
• [I]t was shocking...when WCB CEO and President, Dale Parker, explained to the Commission that the Board’s goals for injury reduction were set on the basis of ‘gut feeling.’” (UNA-013)

10.7 IMPACT OF EXPERIENCE RATING AND OTHER FINANCIAL INCENTIVES

10.7.1. Overall Response  
Relatively few submissions addressed this issue. However, of those who did, one-third had responses that were rated as being high in intensity, one-third were rated as being medium in intensity, and one-third were rated as being low in intensity.

10.7.2. Discussion  
While the WCB uses the Experience Rating Assessment (ERA) as a measure of the success of safety programmes, both employers and workers have misgivings about this use.

Employers, in general, do not believe the ERA is an accurate reflection of the company’s safety programme. Since the merit/demerit range is set at 33.3%, employers who are serious about setting up an effective safety programme are at a disadvantage. For example, regardless of how bad a company’s safety record may be, the maximum increase in the ERA is 33.3%. Conversely, regardless of how much a safety record has improved, the maximum decrease in assessment is also 33.3%. Employers argue that this is not enough of an incentive to fund the cost of a truly effective programme. On the other hand, they argue that companies that have no intention of improving their safety programmes will gladly pay the 33.3% increase to avoid the cost of effective workplace safety. Employers would like to see the ERA merit/demerit range increased.

Workers believe that the ERA system encourages employers to manage claims. In other words, companies are spending money on consultants whose job it is to discourage workers from filing claims, arranging for alternate work to keep them off WCB files, contesting claims, and appealing decisions. To those opposed to the present method of calculation, the ERA should be based on accident rate, not claims costs.
10.7.3. **Recommendations**
Both worker and employer groups believe the ERA system needs amending. From the worker point of view, the ERA, based on claims costs, leaves too much room for employer manipulation through “managing claims.” Employers, on the other hand, believe the underlying philosophy of the ERA (assessments based on claims costs) is fair. They recommend that the system be improved by increasing the merit/demerit range.

**Sample Recommendations**

- Increase the range of the merit/demerit calculations.
- Calculate ERA on accident rate, not claims accepted.

10.7.4. **Quotes**
- “It’s obvious. The more claims you can discourage, get denied, or successfully appealed, the lower your ERA.” (INJ-149)
- “Some employers would rather pay the 33.3% increase than fund an effective safety programme.” (INJ-149)

10.8 **PROTECTIVE REASSIGNMENT**

10.8.1. **Overall Response**
Protective Reassignment was a topic of discussion mainly from injured workers and unions. The topic was not mentioned in employer submissions. The ratings of intensity of the issue were evenly distributed among low, medium, and high.

10.8.2. **Discussion**
The issue of Protective Reassignment focuses on two main areas: hazardous exposure of workers during pregnancy and exposure to conditions likely to cause harm. It is pointed out that no provisions are presently made for Protective Reassignment in BC legislation.

The issue of pregnant workers concerns the health of the fetus during exposure to chemicals, vapours, and other hazardous conditions. Workers and unions recommend that the Protective Reassignment be at no loss of pay.

The other area of concern for workers is prolonged exposure that is likely to result in impairment of function during the life of the worker.

10.8.3. **Recommendations**
There were no recommendations from employers groups since, according to the matrix, there were no “hits” from employer-oriented groups. The recommendations from the BC Federation of Labour captured the essence of labour’s concerns regarding protective reassignment. These are listed below.
Sample Recommendations

- Protective reassignment, at no loss of pay, should be required
  - prior to the occurrence of disability, where the exposure to a workplace hazard has adversely effected the health of a worker, and continued exposure to the hazard is likely to result in material impairment of function during the life of the worker;
  - after the occurrence of disability, and renewed exposure is likely to cause a recurrence of material function impairment; and
  - where continued exposure to the workplace hazard presents a risk to a fetus, or a nursing infant. (UNA-013)

10.8.4. Quotes

- “In Prevention, the Act authorizes action [for protective reassignment] by the Board, but does not compel it.” (UNA-013)

10.9 COST-BENEFIT ANALYSIS

10.9.1. Overall Response
This issue did not receive much comment. While there was a 50-50 split between employer and worker groups, the issue was rated as being higher in intensity among employers. Worker group responses, generally, were rated as being low or medium intensity.

10.9.2. Discussion
From the point of view of worker groups’, prevention of injury and compliance with WCB orders should not be sacrificed because of cost. Worker groups do not believe that the WCB is aggressive enough in introducing new measures to protect workers. The delay in implementing the new ergonomic policy is a case in point. The same belief holds true when the WCB is lax in enforcing compliance where the cost to the company is high. Workers and unions believe only lip service is being paid by employers.

Employers, on the other hand, believe that a cost-benefit analysis is not done when new policies or regulations are being considered. The result is very expensive programmes with very little benefit. Employers generally believe that the WCB or unions have little stake in cost-benefit analyses, since they are not required to fund the implementation of such programmes. The issuing of violation orders without consideration of the cost involved is also a concern.

10.9.3. Recommendations
As with other issues, the Cost-Benefit one was split between workers and employers. Workers groups believe that the safety cannot be costed. Employers criticize the WCB for not doing any cost-benefit analysis on proposed programmes.
Sample Recommendations

- Do not implement the proposed ergonomic regulations. There are already enough ergonomics guidelines on the books. They need only to be enforced.
- The WCB should be required to publish a cost-benefit analysis on all proposed policies.
- Cost should not be a consideration when safety and workers’ lives are at stake.
- If the WCB caves in to employers’ demands for cost-benefit analysis of programmes, the WCB should be required to do a cost-benefit analysis on the death of a worker.

10.9.4. Quotes

- “[I]t appears that WB is like-minded as many employers Safety First unless it costs them money.” (INJ-308)
- “Sure, they do a little here and a little there, but when it comes to dealing with anything important, there’s no money.” (INJ-117)
- “Some companies weigh profits more than safety. To be more safety conscious often means having to spend more time and money, thus reducing profits.” (INJ-297)
- “If I could summarize in a word what we are all seeking, it is “value.” Value for the time, effort, and dollars that go into our occupational safety compensation program and systems - a more reinvigorated board focused tightly on its mandate seeking new and better ways of doing things is what we are all hoping for as the result of your recommendations and the board’s commitment and determination to change.” (IEM-156)
- “Businesses will be unable to afford remaining in BC if the WCB maintains its current direction.” (IEM-216)
- “Does it make sense to spend over a million dollars redesigning every staircase in the plant just so one worker doesn’t stub his toe again?” (EMA-113)

10.10 REGULATORY VERSUS FINANCIAL INCENTIVES: RELATIVE MERITS

10.10.1. Overall Response
There were very few responses to this sub-issue, but one-third of them were rated as high in intensity. A few responses came from employer groups, the general public, and injured workers.

10.10.2. Discussion
The main issues regarding regulatory versus financial incentives revolves around enforcement. Workers and unions believe that the WCB is not enforcing its own regulations. They contend that employers who are regularly in non-compliance are not subject to penalties strong enough to force compliance.

Employers, on the other hand, believe that fines and penalties are handed out indiscriminately and excessively. They believe that financial incentives for companies with excellent safety records would encourage employers to invest in effective programmes.
10.10.3. Recommendations
The concerns raised in this section were similar to those in the section on education versus enforcement. Both discussed the issues of offering financial incentives through direct rebates, adjustments in the ERA calculations, or other WCB assessments.

Sample Recommendations

- The WCB should enforce its own regulations and increase penalties.
- The WCB should offer financial incentives to companies who have good safety records. These should be in the form of increasing the merit/demerit range in the ERA system and increasing the number subclasses in the classification system.

10.10.4. Quotes

OVERALL SUMMARY
The major issues related to prevention can be summarized as follows:

- Rights and duties of workplace parties
- Enforcement versus education
- Reliable measure of safety
- Consolidation of regulatory jurisdiction
- Separate or same agency
- Medical surveillance
- Impact of the Experience Rating Assessment (ERA) and other financial incentives
- Protective re-assignment
- Cost benefit analysis
- Regulatory versus financial incentives/relative merits

The Prevention Division accounts for the largest portion of WCB resources. For this reason, prevention embodies all areas of the WCB domain. Clarifying the rights and duties of workplace parties with a view to preventing accidents is one of the important areas. As noted in this paper, the definition of rights and duties depends on whether the submissions come from worker groups or employer groups.

The same opposing views are true regarding enforcement versus education. Worker groups want more enforcement and penalties; employer groups want more education and consultation.

In all areas discussed in this paper, there were few in which the two main groups (workers and employers) agreed. Even in areas of agreement, such as reliable measures of safety, divergence was evident after acknowledging that accident rates were at the base of the measurement. Employers felt that accident rates should be measured by claims costs and assessed accordingly. Workers, on the other hand, saw the only reliable measure of safety as accidents per man hours—whether or not a claim is accepted.
Some areas were of concern only to one group. For example, protective re-assignment was not raised by any employer groups, while medical surveillance was mainly raised by employer groups, with the exception of workers who were concerned about confidentiality.