11.0 LEGISLATION

11.0. OVERVIEW

Legislation refers to the relevant Acts, regulations and policies regarding Workers Compensation. The issue includes discussion about who creates policy, how and when Acts and regulations are reviewed, the objectives of the legislation, the connection to "Canadian" or stakeholder values and the evolution of the system. Comments on legislation overlap with a broad range of other topics since legislation is more of an "umbrella" theme than a substantive, issue-based theme.

This issue was characterized by an average frequency of discussion, with 361 respondents offering comments. Independent employers offered the most comments on this issue (less than half of all comments), injured workers remarked somewhat less frequently (less than a quarter), employer associations and unions each made a few statements and union associations, although giving less than 4% of the comments, made extensive recommendations. Neither federal nor municipal government stakeholders engaged in any discussion on legislation.

This paper includes five sub-issues:

- Review of Acts and regulations
- Legislative objectives
- Evolution of the system
- Who makes interprets and applies policy
- Connection to Canadian or stakeholder values

11.1 LEGISLATION: Review of Act and Regulations

11.1.1. Overview

The most popular of the legislation issues, 170 respondents commented on the review of Acts and regulations. A quarter of the input was from independent employers (though not with a high intensity), while four other groups - unions, injured workers, employer associations and the general public - each had a few responses. Two MLAs also remarked on this issue.

11.1.2. Discussion

The comments relating to the review of Acts and regulations were sharply divided along the lines of worker and employer interests. Independent employers comment on the need for simplifying regulations, legislating a consolidated appeal process and the unfairness of the current regulations where responsible companies subsidize irresponsible firms. They generally believe that the regulations are becoming too bloated, worker-biased and focused on less concrete or potentially non-work-related forms of injuries and illness.

Unions and union associations comment on the lack of acknowledgement of worker's rights in the current legislation, including the right to participate in decision-making (including the review
of legislation), the right to be informed of workplace hazards, the right to refuse unsafe work, and the right to protective reassignment. They also advocate an increased legislative focus on prevention, while warning that enforcement should not be sacrificed in favour of a hands-off approach. In contrast to independent employers, unions support a broadening of the regulations to include such things as new definitions of health, the family and occupational diseases. While some collective agreements already cover much of this increased scope, unions still advocate for change in order to cover non-union workers.

As far as the process of reviewing legislation is concerned, some advocate multi-party collaborative reviews, involving, at a minimum, workers and employers (and usually medical and financial professionals). Injured workers, the general public and employer associations offer recommendations on the review of Acts and regulations, but do not provide further comment. Also, some stakeholders from the mining industry warned against amalgamating safety regulations under the WCB Prevention division.

11.1.3. Recommendations

A total of 153 recommendations were made regarding the review of Acts and regulations. The most prominent recommendations are the desire to simplify regulations to make them more understandable (9), the need for new health and safety regulations (8), the need for regular review of regulations (7), the entrenchment of the right of workers to refuse unsafe work (7) and enshrining worker participation on health and safety committees (6). Few recommendations are held in common by both worker and employer interests. For instance, the latter three recommendations, as well as the need for new health and safety regulations, are shared primarily by unions and injured workers. In contrast, the simplification of regulations and the need for regular review of regulations are recommended primarily by employer associations and independent employers.

Harmonizing regulations across Canada and between departments, harmonizing deeming regulations specifically, including ergonomics regulations and creating bi-partite or tri-partite regulation review bodies are each recommended by five respondents. Four participants each advocate the deletion of Section 51 of the Act, making regulations performance-based rather than prescriptive, amending the regulations to conform with the Charter of Rights and Freedoms, granting the Occupational Health and Safety Committees the right to force compliance, protecting health care employees through regulation, reviewing the Occupational Health and Safety process to ensure fairness, stating clearly that workplace health and safety onus is on employers and including a "right to know" clause regarding workplace hazards.

Legislating fines for workers who violate safety rules, developing policy for the prevention of injury and disease in schools, focusing on education in legislation, focusing on prevention in legislation, recognizing the added occupational health and safety risks for pregnant workers, reviewing the regulations with the intent of lessening problems for business owners, amending the fall protection legislation and making wholesale general changes to the Act are each endorsed by three respondents. An additional fourteen recommendations were shared by two respondents each.
Example Recommendations

- New Health and Safety Regulations as well as updating policies need to be reviewed and updated to assist everyone involved. (INJ-631)
- A health and safety statute, covering all aspects, and with the stated purpose of promoting occupational health and safety, should be enacted by the provincial legislature. (UNI-011)
- That the WCB maintain strong employee rights to participate, to know, and to refuse, as essential components of WCB regulations. (UNI-026)
- The Right to Refuse unsafe work must be protected in the statutes, not only individually, but also collectively. (UNI-066)
- WCB regulations should not be allowed to remain for more than 20 years without review. [We] recommend a properly consultative annual regulatory review process be established. (EMA-048)
- Rewrite the regulations and policies in easier to understand formats and use common terminology throughout the system. (EMA-061)
- All regulations should be subjected to periodic tests of functionality, practicality, simplicity and economics. (EMA-048)
- The harmonization of regulations across Canada in a long term goal that should be incorporated where possible in any rewriting of regulations. The WCB should harmonize regulations between provincial departments. (EMA-047)
- WCB should adjust its regulations to conform to the Charter of Rights and Freedoms. (GEN-019)
- Ergonomic regulations should be enacted as soon as possible and not as a guideline [which would] just open it to abuse by employers. (UNI-052)
- I urge the Royal Commission to consider the Harmonization document and sector recognition for scientific divers in BC. (PAS-004)
- A mandated review of regulations must be enacted by a standing tri-partite consultative committee every 2 years to ensure the Board’s commitment to keep the regulations current and to address any necessary changes required. (UNI-010)
- WCB should enforce regulations and training in the health care industry. (UNI-023)
- Review changes to industrial health and safety regulations and board policy that would give health and safety committees the authority to have their recommendations binding for prevention. (UNI-052)
- Employer obligations - legislation should clearly state the employer’s responsibility to provide a safe work place and respond to workers health and safety concerns in a timely manner. (UNI-060)
- Legislation is needed to force the employer, WCB and other to disclose any hazards that will be faced by workers. (GEN-108)
- The association supports the deletion of section 51 regarding contractor liability, holding company officers and directors responsible for incurred liability. (EMA-036)
- Regulations should be performance-based rather than prescriptive. (EMA-043)
- Review the Occupational Safety and Health Penalty process to ensure fairness and consistency. (IEM-191)
- Workers should have the right to participate in decisions affecting their health and safety in their workplace. (UNI-010)
11.1.4. **Quotes**

- “The process used (for new regulations) has failed to produce the user-friendly, fit-in-your-shirt-pocket style of format that the WCB has used in the production of a number of helpful manuals. Instead, we have a reiteration of a twenty-year-old format which is unlikely to be any better read or understood.” (EMA-038)
- “The principle that the public gets the laws it deserves is as applicable at the WCB as any other public body.” (INJ-540)
- “Change without substantial reason is not supportable.” (CON-009)
- “The factor of age discrimination contained in Schedule C is...disgustingly blatant.” (GEN-123)
- “Legislation and Regulations set the minimum standards for all BC. [They need] to enact stronger and more comprehensive language on Health and Safety into the WCB Act.” (GEN-164)
- “We find ourselves spinning our wheels in trying to understand and comply with the Regulations. We hope that this public type of forum does not end here.” (IEM-190)
- “The WCB Act should be changed to acknowledge our societal gender roles as women.” (INJ-120)
- “We would like to see prevention become the mainstay of the WCB’s program with health care specific regulations coming into effect as well as stronger violence regulations and ergonomic regulations becoming mandated.” (MEP-004)
- “At present our Act is one of the most outdated in the country.” (UNA-001)
- “All employers must be assured of fair and equitable treatment for assessment, compliance, and sanctions. All workers must be guaranteed fair and equitable treatment and confidentiality for worker participation.” (UNA-011)
- “…employee participation and empowerment relate directly to improved health and safety performance. The right to participate should include establishment and regulation of Occupational Health and Safety Committees.” (UNA-013)
- “Most problems with WCB stem from poor management and a lack of legislative initiative.” (UNI-017)
- “[The] biggest problem with WCB reg’s is that they don’t keep up with the changing work place.” (UNI-021)
- “The regulations fail to allow for the unique environment in our schools; the employees are outnumbered 20 to 1 by students who are not considered employees but members of the general public.” (EMA-051)
- “WCB could save countless dollars in man-hours, legal fees etc. if it were to take the initiative to adjust the regulations in accordance with [the Charter of Rights and Freedoms] rather than drag its feet through the already over-burdened court system.” (GEN-019)
- “WCB is a system that is confrontational and that implies that the injured worker is out to scam the system and I think that the Act is part of the reason why that is.” (MLA-001)
11.2 LEGISLATION: Legislative Objectives

11.2.1. Overview
A total of 79 respondents mentioned specific legislative objectives. Independent employers, with just under half of the total number of responses, had the most to say (but generally at a low intensity). Injured workers comprised a quarter of the responses, but generally with a higher intensity of comments. In addition, unions and union associations each made a few comments.

11.2.2. Discussion
Specific legislative objectives commented on in the submissions focus largely on prevention as the prime goal of legislation. This opinion is shared by a broad range of interests. However, worker interests emphasize occupational health and safety as the cornerstone of prevention (within the purview of WCB), whereas some independent employers and employer association representatives see occupational health and safety as outside the mandate of WCB (preferring that the WCB be a straight insurance system only). Despite general agreement on the importance of prevention, there are two distinct views on how prevention should be undertaken. Unions and injured workers generally stress enforcement and inspection of workplaces, whereas employer interests are more apt to emphasize education and consultation. Related to this, many employers feel that the legislation must be performance-based (results-oriented and industry- or even worksite-specific) rather than prescriptive, as it becomes too cumbersome otherwise. This can be done, some believe, through opening up experience rating assessments.

Independent employers and employer associations also believe that legislation should be guided by the principles of cost effectiveness/fiscal responsibility, compensation for disease and injury clearly relating to the workplace only and "fair compensation" (which is meant to imply lower calculations of benefits for injured workers).

Injured workers and unions felt that the core legislative objective must be to serve and advocate for workers, which involves respecting and spelling out a bundle of worker rights (e.g. the right to refuse unsafe work, the right to participate, etc.) and respecting medical advice given from outside the WCB.

The issue of board accountability and representation and the central goal of injured workers returning to work were mentioned by a broad range of stakeholders. A few respondents also cautioned that the system must at the core remain "no fault" and that any legislative objectives must be consistent with other Acts and policies in British Columbia.

11.2.3. Recommendations
A total of 76 recommendations were offered regarding legislative objectives. Interestingly, all the major recommendations on this issue are shared by both worker and employer interests. The most frequently mentioned is a desired emphasis on prevention and disease (15), while a closely related recommendation - an emphasis on health and safety in the workplace - is mentioned by seven stakeholders. The two other major recommendations are the objective of getting injured workers back to work (8) and re-focusing on the Meredith Principles (the
founding principles relating to compensation for employment-related disease and injuries only) (7).

Stressing fairness in the system and helping injured workers are each mentioned four times. Three supporters each focus on quality vocational rehabilitation and emphasizing the insurance aspect of the system. Ten additional recommendations are each mentioned by two stakeholders.

Example Recommendations
- Prevention must be the primary goal of WCB. (IEM-141)
- The stated purpose of the Act should address the promotion of occupational health and safety and the prevention of occupational injury and disease. (UNA-001)
- The Royal Commission should state the WCB’s goals and objectives, beginning with the foundation laid by the Meredith Principles. (IEM-091)
- Look to the Alberta model for an effective way of providing fair compensation and supporting education and prevention. (IEM-100)
- Early return to suitable work should be a primary objective of the workers’ compensation system. (IEM0173)
- The legislation should include a general obligation on the Board to ensure that its regulations, policies, and services offer equitable protection to all workers. (UNA-013)
- The bottom line is that workers [must] get back to work. (INJ-264)
- WCB needs to remember why they were formed. (INJ-516)

11.2.4. Quotes
- “The job of Workers’ Compensation, to me, is to prevent accidents by teaching safety, to protect employees from potential injury and to always strive to find new ways to stop illness on the job.” (GEN-202)
- “Effective worker rehabilitation must be a hallmark of our province’s worker compensation system. Injured workers who are being rehabilitated must be encouraged to re-enter the workforce as soon and as safely as possible.” (IEM-039)
- “Workers Compensation reform should be guided by two principles, positive system incentives to reinforce a timely return to work, and a worker receiving compensation benefits should not receive more than s/he would receive from working.” (IEM-173)
- “The purpose of the WCB should be to secure safe and healthy workplaces, to encourage those who can create such environments, and to mandate and monitor the basic norms of safe work places.” (UNI-026)
- “There are two broad approaches to regulation - prescriptive and performance-based. A highly prescriptive or inflexible command-and-control model of regulation tends to suffer from a number of flaws.” (EMA-038)
- “The emphasis on consultation rather than enforcement has been a health and safety disaster. Violations are downplayed and hazards are not being corrected.” (UNI-085)
- “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)
• “The institution of fiscal responsibility and accountability within the system…and the enshrining of it within the Act will be the catalyst for true reform.” (IEM-061)
• “In prevention, the Act authorizes action by the Board; it does not compel it. A passive Right To Know is insufficient. One of the most fundamental questions the Commission must address is the objective of the WCB in its prevention efforts.” (UNA-013)
• “There is no mission statement or purpose clause [in the Act] to give direction.” (UNI-017)

11.3 LEGISLATION: Evolution of the WCB System

11.3.1. Overview
A total of 74 respondents commented on the evolution of the WCB system. Less than half of the comments were from injured workers, independent employers made slightly fewer comments and unions and the general public each made a few statements.

11.3.2. Discussion
The evolution of the WCB system is obviously a very broad category. Few presenters comment explicitly about evolution, although many inferred it through their comments. The comments for this issue generally mirror those topics commented on in the other legislation issues. For instance, all parties are in agreement over the principal of proactive safety and prevention guiding future policy. Similarly, the call for a future emphasis on returning the worker to work is broadly shared (with worker interests stressing investment in rehabilitation and employer interests advocating lowered benefits to achieve the same end). Also figuring prominently in the comments relating to system evolution are the need for greater cost control and fiscal responsibility, with many employers stressing the heavy financial burden of WCB costs for their firm, and the need for the system to be more responsive to injured workers. Two of the main frustrations underlying this latter need are the perceived totalitarian power of adjudicators (a concern shared by some employers) and the perceived rigidity of the WCB bureaucracy.

There are only a handful of comments regarding the past evolution of the system. The most prominent concerns, voiced by employers, are the drift away from the WCB's original mandate and the move toward compensating newly identified forms of workplace disease and injuries (such as ergonomics-related illness and stress). Visions of an evolved future WCB system include an emphasis on co-operative, non-adversarial decision making, performance-based measures for employers, greater accountability of governance (with some preferring a more public and less interest-based approach to governance), and a streamlined appeals system. Fewer stakeholders mention moving toward a fault-bearing system and increasing the role of physicians in legislation and policy making. There is disagreement over whether enforcement should be stepped up or scaled back in favour of education as the WCB evolves.

11.3.3. Recommendations
The 69 recommendations given regarding the evolution of the WCB system were more diverse than those given for the previous legislation issues. The major recommendations, offered exclusively by employee stakeholders, are re-designing the system to better protect the rights and welfare of workers (7), overhauling the WCB entirely (5) and introducing more flexibility in changing policy (4). Ensuring that the system remains publicly funded, improving fiscal
management, separating enforcement and inspection from education and prevention, ensuring that occupational health and safety is publicly funded and returning to the original values of the WCB are each recommended by three respondents (the latter four generally forwarded by employer interests). Another ten recommendations were each mentioned twice.

Example Recommendations
- WCB should be more interested in improving the health and safety of the workers rather than saving money. (INJ-638)
- The WCB should start over. (INJ-289)
- More flexibility to change policy [is needed] as we are in a changing workplace. (PAS-010)

11.3.4. Quotes
- “The purpose of the WCB should be to secure safe and healthy workplaces, to encourage those who can create such environments, and to mandate and monitor the basic norms of safe work places. (UNI-026)
- “Several of our members have commented on the fact that their safety records in their business have improved yet their assessments continue to climb. (EMA-019)
- “Our current WCB system is seen to be overwhelming, bureaucratic, ineffective and inefficient. The punitive basis on which the WCB has operated in the past is not effective and needs to be abandoned in favour of a more proactive cooperative model. (IEM-135)
- “WCB must become that legal guardian for the people. (UMA-001)
- “Society has evolved, and employers have adapted by being more flexible and competitive, likewise, the WCB needs to have the ability to adapt. (EMA-019)
- “…the sense of loss and reduced self worth are not only ignored but are compounded through the system's insensitivity. (INJ-317)
- “There is, without a doubt, some very fine people working for WCB who are trying to do their best for injured people. There are also those who are intoxicated with the power they wield and the lack of accountability they enjoy. (INJ-617)
- “Instead of Us and Them, it should be We. (IEM-120)

11.4 LEGISLATION: Who Makes, Interprets and Applies Policy?

11.4.1. Overview
The issue of who creates and determines policy was referred to by 31 respondents, with varying degrees of intensity. Slightly less than half of the respondents were injured workers. A few independent employers and employer association representatives also commented.

11.4.2. Discussion
Most of the discussion on this issue was peripheral to the creation, determination and interpretation of policy. Many of the comments relate to the inaccessibility of the WCB Act. The issue of policy interpretation, mentioned most often, is viewed in two distinct ways. Workers believe that adjudicators and the Review Board have too much room for interpretation, chiefly because the Act is not straightforward enough. This results, some argue, in inconsistencies (e.g. fall protection regulations). Employers, however, believe that there should be more allowance for flexible interpretation of the Act.
Although some believe that the Act is a fairly good foundation, some also state that it should focus more on prevention. A few are concerned over the application of Schedule B being counter to the intent of the Act. There is also opposition to WCB Bill 63, particularly the portion relating to mandatory coverage of medical staff.

The only comments relating to the process of how regulations are developed relate to the importance of community input and the need for broader industry-wide input (rather than narrow sub-committees or ineffective public hearings).

11.4.3. Recommendations
Most of the 29 recommendations regarding the creation and determination of policy were very specific, referring most commonly to either changes in procedure or changes to specific policies or pieces of legislation. Three respondents believe that workers need to be better informed about new legislation, through either simplifying the wording, informing workers or actively educating workplace parties. Two employer association representatives believe that legislation should not be changed unless a very compelling reason is given. Two independent employers want more flexibility in how legislation is interpreted. According to two injured workers, flexibility on time limits for appeals should be granted for those injured workers physically or mentally unable to launch an appeal.

11.4.4. Quotes
- “The Act requires a major overhaul; the term “user friendly” springs to mind but it must become understandable to the employers and workers.” (IJA-008)
- “Claimants should be informed of any policy change that would affect their claim.” (INJ-537)
- “Those who add new regulations or change present ones should be expected to put forward a compelling and reasoned justification before the change is adopted.” (EMA-005)
- “Regulation interpretation can not be black and white when there are gray areas.” (IEM-026)
- “Contractors are very frustrated with the WCB’s inconsistencies in application of their own rules.” (IEM-104)
- “Not only does [the Board] write and adopt its own regulations with the only requirement being a public hearing, it enforces those regulations and sits in judgement of perceived violators who have no realistic appeal to a court of law.” (EMA-005)
- “There should not be a requirement that appeals are filed within a specific time frame in order to be accepted. Many people would not be mentally capable of dealing with the political workings of the WCB for some time after an accident.” (INJ-406)

11.5 LEGISLATION: Connection to Canadian or Stakeholder Values

11.5.1. Overview
The least mentioned issue in the legislation theme with only 11 responses relates to stakeholder and Canadian values. These comments were spread out evenly between eight stakeholder groups.
11.5.2. Discussion
The comments relating to this issue were sparse and diverse. Overt references to "Canadian values" are absent and even subtle references are barely noticeable. For both worker and employer interests, the bureaucratization and inward focus of the WCB are seen to be counter to stakeholders' values. Also mentioned are the lack of commitment to the WCB's own mandate or original values, outmoded definitions of "family", insensitivity toward death and the bereaved and concerns over the WCB as a barrier to global competitiveness. Universality is only commented on in the context of employers wanting either privatization of parts or all of the WCB (a move unions and injured workers fear) or to pay differential rates - the "user pay" concept - based on their performance.

11.5.3. Recommendations
Of the 11 recommendations offered in this category, only one - the need for the WCB to live up to its stated or original mandate - is mentioned more than once. Also of note are disagreement on whether or not the system should be privatized and an appeal to 'higher' values (e.g. the Rule of Law and the 10 Commandments).

11.5.4. Quotes
• “The WCB is a vital part of our social system in BC and should not be replaced. However, the system should fulfill its mandate in a fair and equitable manner. The mandate of the WCB to help workers who have suffered personal injury or death must not be lost in the maze of bureaucracy and technicalities that faces us.” (UNI-009)
• “The WCB cannot be viewed as a claims center, nor as a means of alternate income. The WCB Super Tanker is out of control. It is taking on water faster than the pumps can handle.” (IEM-143)
• “Please return our dignity. All we have done is become injured in our line of employment.” (INJ-617)
• “As Canadians we are being asked to adapt to the global marketplace. Surely our workers need not accept third world labour standards. Privatizing WCB would be a breech of the original agreement and would be at the expense of injured workers.” (UNA-002)

11.6 OVERALL SUMMARY
A desired legislative emphasis on prevention was mentioned in four of the five sub-issues, making it the most prominent concern. A broad range of stakeholders agreed on the need for proactive safety measures in the workplace to take precedence over reactive legislation. There was sharp disagreement, however, on what form and specific emphasis this legislation should have. Injured workers and unions stated that greater enforcement was needed, while independent employers and employer associations strongly indicated that the solution was education and consultation.

Tied closely to the notion of prevention, employers also called for performance-based measures of safety and assessment rather than regulation per se. Workers called for greater health and safety regulations and a broadening of certain legislative definitions, whereas
employers wanted a decrease and simplification of regulations. Employers commented on the relationship between regulatory efficiency and cost control. It was broadly agreed that there needed to be more and better information regarding regulations, including a simplification of the Act’s language. Employers also wanted the interpretation and application of regulations to be more flexible.

Workers stated that legislation should be amended to entrench a set of rights, including the right to know of workplace hazards, the right to refuse unsafe work, and, in particular, the right to participate in decision-making (particularly on Occupational Health and Safety Committees). Some also recommended that the Act conform with the Charter of Rights and Freedoms.

Numerous stakeholders expressed concern that the WCB has drifted from its original mandate, arguing that the current legislation contradicts such foundations as the Meredith principles and the ideal of no-fault insurance. There was a range of perspectives on what these original principles were, most notably injured workers and unions believing that the system was set up to benefit the worker first and foremost and employers believing that the system was intended to deal with clearly causative workplace injuries only.

Many mentioned that the current legislation is unfair, but there were different perspectives on how it is unfair - i.e. whether the legislation is worker-biased or employer-biased.

There were frequent concerns regarding accountability and governance issues tied in with legislative comments. Many stakeholders stated that broader public input or multi-party input was vital in reviewing and establishing new policy and legislation.

A broad range of participants stated that the legislation needs to be based on the principle of returning injured workers back to work. Workers felt that greater investment in rehabilitation could accomplish this, whereas employers preferred the approach of trimming compensation benefits.