15.0 REVENUE GENERATION (FUNDING)

INTRODUCTION

This theme deals with issues related to how the Worker’s Compensation Board is funded. The discussion and recommendations for this theme are divided into eight topics. These are listed below in order of the frequency with which they were addressed by submitters from greatest to least:

- the classification system and rate setting
- equity between employers, including ERA
- fraud and re-collection of over-payment
- sources of funding
- self-insurance
- transfer or subsidization of costs
- competitiveness concerns
- cost-benefit analysis

15.1 CLASSIFICATION SYSTEM AND RATE SETTING

The assessment classification system provides the basis for setting the rates at which companies are billed for Worker’s Compensation coverage for their employees. Businesses are grouped according to industry and subclass type and each subclass is then assigned a rate. Each business in that subclass must then pay premiums based on this rate which is multiplied by their total payroll divided by $100.

15.1.1. Overall Response

Of all eight subheadings under revenue, this one received the highest number of comments. Over half of these came from independent employers and another fifth came from employer associations. The remainder was scattered among consultants, the general public, injured workers, and their associations, municipal governments, non-government associations, professional associations, union associations and union members. Except for fraud, the discussion throughout most topics in this theme had a firm tone and was moderate in intensity. The topic of fraud generated the most intense comments in this theme.

15.8.2. Discussion

Employers concerns regarding assessment classification are that they do not accurately reflect their workplace or safety performance. Many employers say that they have been unjustly lumped into an industry classification for assessment with other employers who do not provide as safe of a work environment. When other employers have accidents, the costs for the whole subclass goes up. The good performers are convinced that they are subsidizing the poor safety performance of their competitors. Several complained that while their safety records have improved, their assessments continue to climb. Others insist that they are wrongly classified.
Small business and union submissions indicate that at times there is a lack of awareness on the part of business operators about the importance of making sure that they obtain the proper coverage and classification, and that they understand the implications of being classified incorrectly. The complicated registration process also causes confusion.

There were a number of employers groups who spoke out about what they see as unfair assessment in the fishing industry. They emphasize that the Workers’ Compensation Board has no jurisdiction over matters concerning the safe operation of fishing vessels at sea because it is a federal jurisdiction. Consequently, responsibility for premium payment and remittance currently rests with the commercial fish buyers. They claim that the assessment levels for fish buyers has gone up 140% since 1990. In spite of these increases, they argue that as fish buyers they have no control over safety procedures on fishing vessels and because fish boat owners don’t pay the premiums they have no incentive to reduce claims or improve safety. In addition, fishermen often sell fish to the United States, or to cash buyers, placing the burden of all fish-related compensation costs on BC buyers of fish.

15.1.3. Recommendations
There is overwhelming support across all stakeholder groups for the expansion of the number of classification categories. Most agree that the present categories are too few in number, do not reflect the reality of today’s workplace, and place workers of disparate type and risk into the same category. A significant number also recommend that companies with different types of workers be allowed to insure them at different rates depending on the nature and level of their work hazard. For example, they do not see why secretarial staff should be insured at the same rate as factory or mill laborers just because they work in the same company. Health care representatives complain that health care workers are scattered across about ten different classification groups and indicate that they would like to see them grouped together. Several recommendations ask that legally constituted BC employment associations be able to represent a collective group of employers in a sub-class and that this should be enshrined in legislation.

One union association agrees that assessment rates are too high and recommends that a two-year freeze be imposed. They also recommend that the legislation should be changed so that employers are able to apply for relief from being held liable for an injury regardless of their sub-class. Another union recommended that all prospective employers be told what their classification will be and what the criteria are for the various classifications. In cases where a particular industry is shrinking as a result of a declining workforce, or by a major employer leaving, it is recommended that a review of the sub-class be undertaken and its members contacted so that they are aware of the impact this will have on their premiums, and to discuss merging with another sub-class. Further, it is important to one presenter that a WCB representative visits the company when conflicts about assessment arise rather than making decisions over the telephone.

One employer association also complains about the high level of assessment surpluses in some subclass accounts. They recommend that when fund surpluses reach 50% of annual assessment revenue, the employers should then be credited with the entire amount. They also complain that to date the WCB has failed to acknowledge their questions and concerns on this
issue and would like them addressed. They say that policy changes are required to allow the Board to introduce to return large proportional surpluses to employers as a matter of routine.

Small business owners would like to see a different basis for assessment rating because they say their payroll fluctuates if a company owner takes money out of his company for personal use. Several request that, the WCB follow the example of most other insurance companies and allow those with good standing to have a certain amount of claims cost relief with no increase in assessment ratings. Another asks that the system of payment be changed so that payment is made during a quarter, not after a quarter and that it be based on an estimation of yearly payroll averaged out quarterly and adjusted once a year.

Some unions would prefer that assessments be based on total hours of work since union payrolls tend to be higher than non-union ones. In their view, this means that union employers are discriminated against because they pay higher wages and benefits. Others said that they should be based on the actual number of claims, not the cost value. It is also recommended that WCB rates should be higher for companies that use antiquated equipment.

In regards to the fishing industry, some submissions insist that vessel owners who own the licenses, and who are responsible for safety onboard their vessels, should be required to pay the WCB premiums. This could be done according to type of fishing activity, risk associated with that activity, accident record in that activity, length and tonnage of the vessel, time of year for the fishing, and distance offshore for the fishing. They also express anger that in spite of their protests, the WCB has paid no attention to their concerns and has not answered any of their questions.

One fisherman stated that according to Bill 43 fishermen are considered workers and not independent businessmen. He says that fishermen should not be responsible for WCB premiums because this would not only contravene this Act, but it would be an unfair financial burden. He argued that fishermen already bear most of the financial costs in the industry and the fish buyers are keeping an ever increasing share of the profits. He contends that if fishermen have to pay the premium costs some will end up not being covered because they cannot afford them. He insists that safety is his number one concern and disagrees with having different rates of coverage for various gear types. Other fishermen agreed, arguing that most small fishing boats cannot handle the additional paper burden of WCB collections and should not be made to do so. If they are, it could result in lay-offs in the industry.

Several employer groups also ask that WCB assessments clearly indicate the proportion of the rate increases assessed to eliminate the unfunded liability and the proportion assessed to cover new costs. They ask that the WCB consider a process distinct from the usual assessment process for eliminating the unfunded liability in any subclass. However, if unfunded liabilities must be accepted, they would like a reasonable time to repay the amount of the claims rather than seeing their rates increase over 30% with no idea of how long they would last. Others argue that control of unfunded liability should be done by controlling claims cost, not by raising the assessment rates. A few say that the WCB should not be allowed to operate
in an unfunded position at all, while another thought that assessments should be set so that the Board can achieve a percentage point or two above or below a fully funded position.

A business owner also recommends that Section 39 of the Act be amended to provide a rate stabilization reserve fund. This fund would meet costs arising from extraordinary events that might unfairly burden employers in the short term, jeopardize benefits to injured workers, or prevent full funding of the accident fund. A union association disagreed. They insist that assessment rates be maintained as necessary to sustain the accident fund.

Example Recommendations
• We recommend that assessment costs be based on hours worked as opposed to payroll amounts to eliminate the advantage that non-union contractors derive from lower labour costs. (UNA-006)
• So instead of the current assessment system which paints all employees with the same brush, we urge the Commission to support a significant expansion of the number of subclasses in BC. (EMA-019)
• There is an urgent need to improve the fairness within the classification system so that subclasses are more homogeneous. (NGO-005)
• There should be different sub classification for the office workers as compared to the people that work in the shops. (IEM-278)
• Legally-constituted BC employer associations should be able to represent a collective group of employers in a subclass and Section 90 (2) should be changed to reflect this. (IEM-180)
• Make WCB rates for small businesses affordable. Rates should reflect the minimal risks of home-based businesses. (IEM-041)
• Safety is, and should remain, the responsibility of vessel owners, masters and crew members. Following through from the basic principles of insurance, those responsible for safety should also pay the costs of assessments and reap any benefits from reduced assessments due to better safety records. (IEM-027)

15.1.4. Quotes
• “The added burden of tabulating and keeping track of, as well as collecting and submitting payments to Workers’ Comp is one more bloody bureaucratic nuisance boat owners in this marginal industry cannot and will not put up with. Paperwork is not a strong point among fishermen and is highly resented. The wheelhouse of a small fish boat most often contains two tired men trying to operate in conditions that resemble a medium sized war more than anything else.” (IEM-055)
• "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 [Pg 2]
• "The current system is unfair because fish landed in the U.S. and unknown amount of sales to cash buyers who do not remit, place the burden for all fishing related workers compensation costs on registered B.C. buyers of fish." EMA-024 [Pg 2]
15.2. EQUITY BETWEEN EMPLOYERS, INCLUDING ERA

The Experience Rating Assessment system (ERA) was designed to offer a financial incentive to employers for creating a safer workplace. It is calculated on the number of claims and the cost of claims incurred by the employer. To prevent wide swings in yearly assessments there is a maximum merit/demerit percentage of 33.3%. This means that no matter how poorly, or how well, a company does their assessment cannot fluctuate by more than one-third from a base percentage level. The ERA compares the actual claims costs of one company to the same costs of other companies within the same sub-class. Small businesses are affected by the ERA differently than larger ones.

15.2.1. Overall Response
This issue received the second highest number of total comments from those with concerns about WCB revenue. Half of these were made by independent employers and an additional one quarter were made by employer associations. Consultants, the general public, injured workers, municipal governments, professional associations and union members also raised concerns. It was also the topic of greatest concern to victims of crime.

15.2.2. Discussion
The majority of those who addressed this topic firmly declare that the ERA system is unfair and is not achieving its purpose. A significant number express a belief in the principle of the ERA but want to see changes made so the system will be more equitable. A very few declare that the ERA should be scrapped altogether because it is adversarial, negative and fundamentally flawed. A number of submitters are reserving their recommendations until the whole system can be reviewed.

Unions and some injured workers express concern that experience rating provides a strong incentive for business owners to cover up accidents and sabotage claims in order to keep their assessments down. They insist that employers sometimes try to persuade workers not to report WCB claims or try to persuade workers off on a WCB claim to come back to work early. They accuse employers of sometimes trying to get workers to see company doctors who will use information gathered at the examination against the worker’s claim, or phone workers’ doctors to try to persuade them the injury was not work related. As well, they sometimes try to get doctors to release the worker to return to work early. Alternatively they may phone or write the WCB to try to persuade them not to accept the worker’s claim or appeal legitimate worker’s claims which have been accepted by the WCB. Employers have also begun to employ full-time claims control staff or are hiring consultants and lawyers to engage in claims control. The result, they say, is a system that focuses on claim control rather than on accident prevention and protection, and it is adversarial rather than co-operative.

For their part, large companies with large numbers of employees and payrolls frequently complain that they end up paying more in increased assessment fees than if they would have paid for the cost of the claim that was the cause of their assessment increase in the first place. Even a small percentage rate increase for these companies means thousands of dollars. These companies indicate that this is the way ERA works- 10% of $1 million is going to be higher than
10% of $1,000 which means that if a claim costs $13,000 it would be cheaper for the large company to pay it out as they recommend later.

Small businesses insist that the ERA system was designed for large companies. They say that the system places them in a position where they can never get out of a demerit position no matter how safe they are because even one accident will put them into a maximum demerit position. Others would like to remind the Commission that the structure of the workplace has changed to more contract work by individuals who must bear a greater risk of injury without having the resources of a large company behind them. They argue that WCB rates can cripple small businesses, even bankrupt them.

Other companies complain that the ERA system forces them to subsidize companies with poor safety investment and performance. They point out that they spend a great deal of money on safety programs in addition to paying their premiums. Because they have very few accidents they end up paying out much more money in premiums than their employees ever claim, even if they have no demerits. Meanwhile their competitors, who have poorer safety performance and don't pay for good safety programs, consider their somewhat higher premiums simply as a cost of doing business. In addition, they insist that companies with poorer safety performance end up driving up the base rate for all companies in the same assessment category essentially making everyone pay for their lack of performance.

It is also argued that the current assessment system is unfair because it does not take into account a long enough history. On one hand there are those who say they see years without WCB claims going unrewarded. If one claim is made the premium jumps without regard for the past years of payment that would have more than covered the cost of the claim. On the other hand, companies with bad records are seen to benefit by the lack of historical accountability. First of all, large disability settlements, which are the most costly to the system, often end up being absorbed by the subclass because they take years to settle. Secondly, it is argued that businesses that go bankrupt, or who change their name, are being allowed to walk away from a bad rating even though they are fundamentally the same operation.

There were also a number of presentations and briefs expressing opposition to the way in which the WCB deals with the fishing industry. They claim that the WCB does not apply an experience-based assessment method to the fishing industry because it considers the industry too volatile and because of a gap in legislation caused by the fact that the federal government has jurisdiction over open waters. Consequently, they claim that the cost of WCB coverage in the fishing industry is completely born by fish buyers. They think this is unfair.

15.2.3. Recommendations
A significant number of those who would like to see the ERA system changed offer suggestions as to how the formula could be changed to make it fairer. Most commonly it was recommended that the formula be expanded or adjusted. Some suggest a merit/demerit system of 1% for every 2% deviation from average cost/assessment ratios to a maximum of 50%. Others would like to see the demerit percentage made much higher than the merit percentage as a way of weighting the system in favour of good performance. Recommendations in this regard go as
high as 80% merit/200% demerit. Alternatively, it is recommended that the merit/demerit formula be shrunk to 16.6% for small businesses. There was also one recommendation that ERA formulas be redesigned to accommodate a pro-rate system for new businesses.

Another group of recommendations approach change in the ERA by asking that it take into account factors other than claims cost and number of claims. Some would like to see the ERA combined with risk assessment in determining premiums. This would increase the reward to companies with good safety programs and give those with poor safety programs more incentive to improve. Others ask that there be some form of fault determination to remove experience rating penalties in circumstances, such as car accidents, where the employer has no control over the factors that brought about an injury. It is also thought that some variations in injury rates within ratings classifications may be attributable to differences in injury reporting criteria and procedures and these should be looked into.

A number insist that experience ratings should be based only on individual performance rather than on comparison to other companies in the same subclass. This idea is opposed by one injured worker who said that big businesses with fewer claims should not get lower assessment rates. Others ask that a system similar that used in New Zealand be implemented where large companies be given the opportunity to pay out small claims and handle them internally under the supervision of the WCB.

Those few who want the ERA system entirely scrapped recommend several alternatives. It is suggested that it be replaced by a flat rate system, or by a system of penalties for unsafe or unhealthy workplaces. Some unions who spoke to this issue would like the WCB to remain as a system based only on collective liability with no experience rating. One union would like to see the ERA replaced by a merit-based program that would reward companies with good safety programs and who have a record of strong co-operation with safety committees rather than being focused on penalties. Several business representatives recommend that the WCB give a premium reduction, or rebate, to those companies that participate in the Diamond program.

There are also a number of recommendations to increase the present term for establishing claims cost to five years to better reflect true performance. It is also requested that the Commission take steps to prevent companies from evading their bad rating by closing the company and opening under a new name or declaring bankruptcy.

Small business recommendations fall into two main groups. There are those who are asking for a complete review of how all WCB regulations and policies should be applied to small business. The remainder recommend that small employers be allowed an exemption of one or two claims before their ERA is affected.

Those with concerns about WCB coverage for workers in the fishing industry recommend that vessel masters be made responsible for WCB coverage and that an experience-rated assessment system be established with rates by vessel or by fishery according to their claims record. They say it is the vessel masters who control the workplace and who should be responsible for worker safety, not fish buyers.
Example Recommendations

• The maximum merit/demerit calculation of 33% should be at least 50% in order to properly recognize performance. This formula should be changed to 1% for every 2% deviation from base ratio to a maximum of 50%. The two year term is too short to capture true claims costs for the ratio formula. This further “waters down” the financial benefits of good accident performance...A five year calculation period would be more fair. This would mean firms would end up paying more for injuries occurring in their worksites rather than the sub class being left with higher assessments. (IEM-116)

• The experience rating system should be rejected as it promotes an adversarial approach to claims adjudication. Instead, impose financial penalties on employers who have unsafe or unhealthy workplaces in order to prevent injuries and diseases from occurring in the first place. (UNI-012)

• The ERA system can be influenced by conditions beyond the control of the employer (e.g. failure of WCB to properly manage claims). (UNA-020)

• Claims cost should not be the only factor for establishing an employer’s assessment rate. (EMA-036)

• One size doesn’t fit all and small businesses cannot be treated like smaller versions of larger businesses. (EMA-013)

• Address the problem of “fly-by-night” operators who open, have high cost claims, close and then re-open as a new company at base rate. (PAS-007)

15.2.4. Quotes

• “We believe that the current super competitive state of the construction industry, the insecurity of the workers, and the tying of assessment rates to the cost of compensation claims is encouraging the suppression of workers reporting injuries and making compensation claims.” (UNA-006)

• “If there were any chance we could have paid the total cost of the claim we would have strongly considered it rather than have to pay such an excessive increase. Now we find we have to pay the total cost of the claim and then some!!!” (IEM-107)

• “Clean safety records should not be tied to a demerit system. What merit is there in being measured by demerits?” (EMA-008)

• “The ERA only reflects deviations (credits and debits) from the standard or average rating for the rating classification rather than the immediate cost of risk for a particular employer. Therefore this tends to create inadvertent subsidies for employers with especially poor claims records.” (CON-023)

• “In 1996 Highland Copper paid out $7.37 for every $1 of cost that WCB incurred on our behalf. Over the last half a dozen years our safety performance has improved by a factor of 3 or 4 from where it was. The number of dollars that WCB has put out on our behalf has increased 23% and our assessments have gone up over 40%. We are paying far far more for far far less and the value just isn't there. Assessment should be based on individual employer's risk experience and their cost to the WCB.” (IEM-035)
15.3 FRAUD AND RE-COLLECTION OF OVER-PAYMENT

This topic reflected a focus on areas where the WCB is losing money through overpayment of benefits, dishonesty on the part of employers and workers, and through mismanagement or oversight on the part of the WCB. Submitters put forward many recommendations on what should be done to reduce fraud.

15.3.1. Overall Response
The issue of fraud received the third highest total number of comments and recommendations from all stakeholder groups. It was the most frequently addressed topic of injured workers and their associations, municipal governments, union members and the public. For employers and their associations, it was the third highest issue. Compared to the rest of the topics in this theme, the responses were rated as expressing a high level of intensity.

15.3.2. Discussion
Fundamentally, this issue received the attention and emotion it did because it is about justice and fairness. Fraud deprives injured workers of needed compensation and costs employers money. It occurs when employees make false claims, or when they erroneously receive overpayments and do not return the money. They are sometimes assisted knowingly by employers who lie for them, or fail to report discrepancies. Employers can also defraud workers if they falsify information to sabotage a worker’s claim or are negligent in filling out claim information.

For their part, business owners experience fraud by having to pay higher premiums to cover overpayments and higher rates if they have a higher number of claims. A number of respondents also said that the WCB is guilty of fraudulent activity in its unfair treatment of workers, mismanagement of resources and lack of accountability.

Several workers point out that in their view the WCB sides with business because they perceive employers to be the ones paying the tab. They insist that claimants are often treated like criminals and have to prove their injury repeatedly. Several injured workers accused the WCB of lying and manipulating file information in order to defraud workers. They argue that too many workers end up losing everything they own and end up on welfare due to a system that is ponderously slow and unfair. They insist that they deserve to be treated with respect and should receive just compensation for their injuries. One union organization accuses the Board of alleging fraud on claims as a means to deny them.

There are also a few questions about why the WCB is allowed to invest money in stocks, how those investment decisions are made, and who is held accountable for those decisions. The implication was that the WCB is taking irresponsible risks with money that belongs to employers and workers. There are also questions about where the profits made from worker rehabilitation projects, such as woodworking and furniture refinishing goes. It is thought that this money belongs to the workers but is at least indirectly being pocketed by WCB staff members who were getting their furniture refinished for free.
15.3.3. Recommendations

The recommendations that are made on how to deal with fraud reflect a diversity of opinion on the seriousness of the problem. The majority views it as a significant problem requiring stronger measures than are currently in place. The most frequent request is to change the legislation so that the WCB can collect overpayments from employees that were made in error or as a result of misrepresentation on the part of the employee. There are also those who would like to see fraudulent employers and employees charged under the Criminal Code. A few think that fraudulent employees who are unable to repay an overpayment should be flagged so that if they have any future claims their benefits could be garnisheed.

One respondent recommends that the details of a fraudulent case should be made public, including the name of the person or persons involved. They are convinced that this would act as a deterrent to others who might consider making a false claim. For employers who falsify statements in order to ensure that a claim is denied it is recommended that the legislation be changed to require them to be criminally charged and be made to pay all claim expenses. It is also argued that corporations should not have the ability to circumvent the ‘WCB statistical gathering section’ in order to influence assessment rates. There are also several calls to have claim numbers and benefits tracked to identify frequent claimants who may be fraudulent and to ensure that equipment and services paid by the WCB are actually going where they are supposed to.

One respondent insists that wheelchairs and other types of equipment are frequently billed to the fund but are never delivered or allocated to the client. Similarly it is also reported that in some cases families who are receiving long-term home care are paying home-care workers $3.00-$5.00 below what was being billed to the WCB. Family members have also been known to continue to bill for services while the claimant was in hospital.

Those with strong views about mismanagement as a source of defrauding workers and employers insist that the WCB should be required to undergo a complete and public financial audit and that new legislation should require the Board to be accountable for their spending. A few respondents also insist that individuals within the WCB should also be held personally responsible for unfair practices and poor decisions that result in financial costs to employers or workers. Most frequently, they recommend that this be done through loss of their jobs.

One municipality argues that the Board’s current practice of increased billing of employers for money lost through overpayments is unfair and unacceptable. They demand that the practice end and that either it should be collected back from the one who received it, or from another source. A number of business owners would like the WCB to consider the possibility that a high number of claims in a particular company may not be a reflection of poor safety but rather could be an indicator of employee fraud. It is pointed out that some employees repeatedly make injury claims just before a seasonal lay-off or as a way to prevent being terminated. It is also recommended that there be a better pre-hiring medical screening process to detect medical problems that are not work-related but which will be used by employees to collect benefits once they are hired.
Another group of recommendations focuses on suggestions to make fraud detection more efficient and less expensive. Several advocate that a fraud ‘hotline’ be set up to make it easier for anyone to report fraud. A few suggest that callers should be allowed to remain anonymous. It is also recommended that there be greater co-operation between provinces in tracking abusers of the system. One respondent suggests that the Board consider privatizing fraud detection and prosecution if it would be more cost effective.

A minority of those who speak to this issue stress that fraud is something only committed by a small number of employers and employees. Therefore, they insist that the problem should not be over emphasized and measures to detect it should not be overly heavy handed. It is not considered advisable to “spend $10 chasing a nickel back.” In one case it is argued that fraud was so minor as to be irrelevant to the discussion of the WCB. It is also recommended that if and when the WCB begins to collect overpayments from claimants there should be a reasonable time limit placed on their recovery.

Example Recommendations

- Work histories of injured workers should be taken into account. There are some who have a history of repeatedly being injured the day before lay-offs in seasonal work. INJ-133
- WCB also has to be the focus of continuing fraud investigation and motivation to lie, cheat and steal money from injured workers. WCB conspires to misrepresent claims, lies to claimants, funds and controls bogus poles from Angus Reid offering tainted samples and corrupted results. WCB with current mindset should be first target for fraud investigation. (IJA-005)
- The city recommends further that where benefits are paid to workers as a result of admin or other errors that these funds be retrieved from the worker…to ask all employers to bear the costs of board administrators and or other errors is quite frankly ridiculous. (MGS-013)
- WCB must take a hard line on investigating and prosecuting fraud on the part of employers and employees. The association suggests the installation of a “fraud-tips” telephone line. (EMA-014)
- WCB should recognize that a high claims ratio could mean fraudulent claims and not a disregard for safety on the part of the company. (IEM-071)
- Change the legislation to allow for the collection of benefit overpayments when there is evidence of fraud, misrepresentation and other similar conditions…Publish the details of fraud cases, including the names of those involved, as a deterrent. (IEM-091)

15.3.4. Quotes

- “WCB of B.C. have used every crooked and unorthodox method in discouraging injured workers to give up on their claims, and in turn, create a lack log of paper work in dealing with these claims.” (INJ-247)
- “The WCB would rather see workers bent, broken, and fighting mad, than run the risk of being taken by one ‘sandbagger.’” (INJ-564)
- “We need to get all the interested parties together and either come to a “Clean Up” on the wrong doings within the business and the way some claims have been paid…And for some
of us “truly” injured people who have lost more than “money can buy” and have not gotten any or very little help from the WCB...I hope the changes to the WCB will start looking for all the dishonest people who I know have been paid on “fraud” and “lies” by Employer-Employee scamming. (GEN-016)

- “The evidence of abuse to the present system, which to say in the least, is very abusable, only serves to enrage the small business person who struggles to stay alive in today’s economy…We’re paying the bill and we want our money spent wisely.” (IEM-095)

### 15.4 FUNDING SOURCES

This topic addressed issues about who pays for the costs of the WCB and who should be paying for it.

#### 15.4.1. Overall Response

Overall this topic was addressed by the fourth number of responses concerned with revenue generation. Sixty percent of these submissions were from independent employers and employer associations, injured workers, and unions. Injured workers and unions accounted for 23% and the remainder came from the public, consultants, members of the legislative assembly, and non-government organizations. Along with fraud, it was the topic most frequently raised by unions.

#### 15.4.2. Discussion

Submissions that address this topic focus considerable attention on power issues arising out of the present employer-funded structure. Most employers and employer organizations complain that they are being forced to pay for an organization over which they have no control and that caters completely to employees. They claim that they have little or no control over how much they are required to pay, they have no control over how the money is spent and want to know why costs are escalating in spite of reductions in the number of claims and increased safety on their part. Union members and their representatives also complain about escalating costs. They say that they are having to spend more time, money and other resources on fighting employer appeals because employers are so focused on trying to reduce their costs.

Injured workers and their associations on the other hand argue that the WCB is heavily biased in favour of the employers because it is the employer that pays the premiums. They say that the system "is in conflict with itself" because it is intended to serve employees but is paid for by employers. They insist that employees are routinely treated without respect and suspected of fraud or of being ‘freeloaders’ because of this funding structure.

All of these stakeholder groups point to numerous ways by which they directly or indirectly fund the WCB. Employers argue that they not only pay the direct costs of the WCB, they also pay for the administration costs of filing claims and premiums, and they pay for safety programs. Workers argue that they pay because they are the ones who get injured and as a result they often lose their health, their livelihood, even their homes and families. Members of the public also insist that they indirectly pay for the WCB through their tax dollars. This is because of
health care costs associated with workplace injuries, and through welfare paid to workers no longer able to work because of work related injuries or health problems. Union representatives also argue that workers contribute to the cost of WCB because employee wage benefits (taken off a worker’s paycheck) are often allocated to disability credits that subsidize WCB payments, and through the loss of pension plan coverage when a worker goes on WCB.

15.4.3. Recommendations
The strongest recommendation coming from the business community is for better, more efficient management on the part of the WCB. Many support the WCB’s intention to eliminate their unfunded liability. There are also some who would like to see more emphasis on a user-pay system. For example, it is recommended that the WCB should start to charge for their safety training and expertise as a means to pay for itself. It is also recommended that larger companies be allowed to handle routine, relatively predictable claims and expenses internally under the supervision of the WCB. Only large, serious claims and those made by small businesses that do not have the resources or expertise, would be handled by the WCB.

Unions assert that funding problems need to be resolved by changing the focus from claims costs to injury prevention. They argue that although business cannot control the cost of claims they can control the cause of accidents and that if accidents are reduced it will ultimately result in lower costs.

There are a few ideas about how the funding structure should change. A significant number of workers and members of the public recommend that employees should have to contribute to the cost of the WCB premiums and have WCB employee accounts. They say that this would give employees representation on the Board and would give them more clout. It would also give them a stronger incentive to prevent accidents because there would be a more direct relationship between their safety performance and their paycheck.

One injured worker suggests that a surcharge be levied on monthly medical plan fees to reflect the sources of respiratory diseases. This surcharge would be 56% for industries generating pollutants, and 34% for the general populace. The same worker also insists that employers should be required to pay for the results of the injuries they create, rather than “fobbing them off” on the WCB and the medical system. Presumably, the WCB funds would then be used only for accidental injuries. Meanwhile, a business owner states that a consumption tax or revenue tax should be instituted to supplement payroll taxes.

Lastly, a number of small self-employed business owners argue that they should not have to pay into the WCB system at all since they have no employees other than themselves and would never collect anything from it. They would like WCB coverage to be optional for this group as it is in Alberta.

Example Recommendations
• One of the foundations of the WCB is the notion of employer liability. Employer community is saying that they are liable but don’t like cost. The focus is on the cost of claims and administration while the cause and mechanism of injury or disease is ignored. To ignore
cause and complain about effect especially when you are the one who is in control is ludicrous. Industry should continue to fund the compensation system. (UNI-017)

- The employer should not be the only party bearing the cost of WCB. Currently, many employers are being rendered to the verge of bankruptcy by the assessments. This is causing a rift between employers and workers. A contribution should be borne by the worker as well. This would give the workers entitlement to representation at the Board. This does not mean Union Representation but worker representation as the majority of workers are non-unionized. (IJA-008)

- Incentive for the employees to work safe perhaps should be part of their wage structure coming through incentives from the WCB perhaps some sort of bonus situation should arise so that work safe employees or companies should be compensated for that rather than being if you have an injury your compensation charges go up. I think you should give an incentive to the workers to work safe and it should be part of their wages. (INJ-227)

15.4.4. Quotes

- “WCB protects the wealthy corporations and businesses not the workers. I hear WCB is paid by employers but it is the tax payers who pay indirectly into it…Tax payers pay for medical care, living expenses, welfare for injured families so tax payers contribute to WCB.” (GEN-016)

- “I don't see the logic of buying into a plan that says I have to protect myself from myself.” (IEM-014)

- “Since the WCB system is 100% employer supported, it is essential that the system never becomes so onerous that it in fact threatens to kill the golden goose.” (EMA-019)

- “WCB as well as all the other social systems are eroding the profit structure of small business by demanding more and more from industries, leaving them with little say as to how the dollars are spent.” (EMA-041)

15.5 SELF- INSURANCE

Self-insurance refers to an employer who chooses, where permitted, to pay employee claims directly. This can include contracting with an insurer to only administer claims, or include the purchase of excess insurance or reinsurance to limit the risk accepted by the employer. Within the WCB context, it does not allow the employer to stop paying for WCB coverage. However, many of the submissions that spoke to this issue ask that private coverage be offered as a complete alternative to the WCB.

15.5.1. Overall Response

This issue received less attention that others, being the fifth lowest in numbers of responses. Independent employers and injured workers accounted for just over half of those who had something to say about it. Employers associations and members of the public accounted for about one-third, and unions, medical professionals and consultants for the remainder.
15.5.2. Discussion
The majority of those speaking to this issue argue in favour of self-insurance to some degree. The reasons for supporting private or self-insurance vary. Business owners generally like the idea because they say it would give them the opportunity to choose the coverage most suitable to their operation. Some insist that allowing private insurers into the market would make insurance more competitive and cost effective.

Injured workers who favour self-insurance generally do so out of dissatisfaction with the WCB. The WCB is branded as offering poor service, inadequate coverage, and not having enough options.

Of the minority who are against self-insurance in any form, most are unions. They insist that privatization of worker disability insurance will result in increased costs and poorer coverage since private insurance companies are only committed to profit. They say that the privatized system in the US provides on average, half the level of benefits with twice the cost to employers. In the California system, more money goes to lawyers than to injured workers.

15.5.3. Recommendations
A number of submitters say that the province should consider moving toward a no-fault compensation system. One example that is recommended is the New Zealand Accredited Employer Programme (ACC). Under the supervision of ACC (New Zealand’s equivalent of WCB), organizations with more than 200 employees have the option of taking responsibility for all claims and related costs for the first twelve months of a disability. Employers must meet ACC’s standards and are subject to annual audits of claims management practices. In return, employers may earn a rebate of 28% of their annual ACC levy. Employers must demonstrate sufficient financial strength and claims management capability to be allowed in the program. ACC remains accountable for long-term disability and other costs which extend beyond twelve months, and is responsible for employer deficiencies in making claim payments. Under this program, the longer someone is off work, the more it costs the employer. Therefore there is incentive on the employer to increase health and safety measures or in the event of an injury, have the employee return to work as soon as possible.

Self-employed business owners adamantly declare that since they do not employ anyone they should not be forced to pay for worker’s compensation coverage if they do not want to. Other business owners say that they should be allowed to pay-out small claims to avoid incurring assessment increases.

Example Recommendations
• It is important to offer employers and workers a real choice of coverage options and service providers by creating a competitive open market for workers’ compensation insurance. (EMA-071)
• We do not need a privatized system with little or no controls on insurance carriers to ensure justice, and a profit margin to be the only criteria in assessments. The bottom line of the WCB must be re-defined as the injured workers whose lives depend on this system. The WCB should no longer favour cost savings of employers’ groups. (GEN-045)
• Workers’ Compensation should not be compulsory for individual business operators. (GEN-064)
• Give companies an option to pay the initial claim costs themselves as a way to prevent future rate increases. (IEM-107)
• If the above recommendations do not materialize, then dismantle the WCB and require mandatory private coverage. (INJ-474)

15.5.4. Quotes
• “An element of competition would encourage the WCB to improve service to employers and workers alike. Consideration should be given to the benefits of letting the private sector manage certain aspects of WCB, such as, the provision of health services and certain aspects of administration and support services.” (IEM-039)
• “When it comes down to industry funding on large jobs with unions I think the union and myself included should have paid for a personal insurance policy because there is no way WCB could ever support my children.” (INJ-245)
• “....the present system is not working for the injured worker and should be scrapped and re-written, or each employer should have a choice of insurance for the worker and also the worker should have a choice of the quality of insurance he or she would want.” (INJ-247)
• “The WCB is very efficient in collecting your premiums and if you are a day late they tag on 5% but this does not apply when they have to pay out. Why is that you don't have trouble with a private insurance company. They accept the doctors report and you are paid within a few weeks, I never had a private insurance company question my doctor’s diagnosis.” GEN-071 [Pg 1]

15.6 TRANSFER OF COSTS

This topic deals with how WCB premiums and injury claims are handled when there is more than one employer involved at a work site, or in a worker claim.

15.6.1. Overall Response
This topic was sixth highest in order of number of responses. Seventy-five percent of those with concerns about it were independent employers. Injured workers, professional associations, employer associations and consultants accounted for the remainder.

15.6.2. Discussion
Employers, including professional associations and consultants are strongly opposed to current WCB policy on transfer of costs between employers. Problems arise in a number of ways.

At some work sites, such as construction areas, there can be workers employed by several different employers. If an employee of one company injures an employee of another company, the claim is automatically placed under the injured worker’s employer account. The only way it can be transferred to the employer of the worker responsible for the injury is if the claim is over $33,000 and if it can be shown that there was a serious breach of duty of care on the part of the
employer of that worker. Violation of WCB regulations is not sufficient proof. WCB will also not allow a claim cost transfer if the other employer shares the same assessment sub-class.

Employers argue that the transfer of cost is only available when the breach of duty of care consists of acts or omission by management personnel, who can be identified as the employer. It is not available where the breach of duty is related to acts or omissions of other workers. They insist that it is impossible for them to prove that another employer, not their worker, breached their duty. Consequently, the possibility of transfer exists only on paper.

In other instances general contractors argue strongly against the portion of the WCB legislation that holds them accountable for the unpaid premiums of subcontractors. They insist that this not only adds a lot of paperwork for them in having to constantly check every subcontractors account but is “patently unfair.” In their mind, the WCB is making them into a collection agency and they do not like it.

15.6.3. Recommendations
In these cases, the majority recommend that WCB legislation be changed to hold employers responsible only for their own accounts and their own employees. There are several suggestions on how the WCB could rectify the problem of uninsured businesses and workers. It is suggested that the WCB tie in with the corporate registry department. This would automatically notify them about new businesses and would allow them to contact these new businesses about establishing an account. It is also recommended that the WCB do a better job of tracking delinquent accounts within their own system. One professional association recommends that if a subcontractor does not have WCB coverage and a worker is injured then the worker should be covered by WCB itself. They contend that the WCB should have some responsibility for uninsured workers as well. Another suggestion is to establish a reserve fund to protect employers against costs incurred by subcontractors who do not pay their premiums.

Lastly, the issue of cost transfer sometimes arises when an employee with a particular history of injury changes employers and re-injures him/herself. In these cases, business owners and employers do not think that the new employer should have to ‘foot the entire bill.’

Example Recommendations
• Where negligence of another employer or employer’s worker result in claims costs there should be a provision to transfer those costs to the negligent employer’s WCB account. This would be required to institute an equivalent of a section 89 to transfer of costs from one employer to another. That mechanism doesn’t exist at this time. (PAS-007)
• As a general contractor I don’t think that we should be responsible for all our sub-trades…We can have a person work in a job site but when we go to do a check on him he can be paid up for that term, but he works in the next term and we get an audit a year later and we find out all of a sudden he hasn’t made his payments and we’ve become responsible. (IEM-005)
• General Contractors shouldn’t be held accountable for the unpaid WCB debts of Sub Contractors. (IEM-005)
• The current restrictions on transferring costs are too limited and should be expanded. For example, when the worker of Employer B is responsible for injuring Employer A's worker, then the claim cost should go the Employer B. The legislation should be changed so that no employer is charged by the WCB for the debt of another employer. (IEM-039)

• The legislation should be changed so that no employer is charged by the WCB for the debt of another employer. The current situation at the university requires additional administrative processes to prevent this from occurring before they begin work NGO-005 [Pg 1]

15.6.4. Quotes
• “The employer, who is properly remitting his WCB costs possibly passed on from subcontractors who do not remit or not properly register with the WCB.” IEM-243 [Pg 2]
• “We do not like to be put in the position of conflict with subtrades, nor do we feel that we should be bookkeeping for others or a collection agency for WCB.” IEM-072 [Pg 1]
• I feel that Workers’ Compensation should not be compulsory for individual business operators.” GEN-064 [Pg 1]

15.7 COMPETITIVENESS CONCERNS

Within the WCB context competitiveness refers to the type of worker’s compensation system that exists in the United States where worker’s compensation is written by the state in competition with private insurance companies. Often, but not always, the state insurer is the insurer of “last resort.” In this sense, this topic is very closely tied to the topic of self-insurance. Although there was some reference in the discussion to the competitiveness of the WCB, the perception and approach taken by submitters placed greater importance on how the WCB affects the ability of BC businesses to compete.

15.7.1. Overall Response
In terms of numbers of responses, this topic was the second least important to submitters. Ninety percent of the comments and recommendations came from independent employers and the remainder came from employer associations and consultants. This gave the discussion a distinctly business emphasis.

15.7.2. Discussion
The primary focus of employers and their associations in this topic is their ability to compete. They argue that high WCB assessments and over-regulation are bogging them down with paperwork and raising their costs to the point that they are not able to compete in the present global marketplace. Some also claim that costs related to WCB coverage have risen to a level where they may be forced out of business altogether.

Some submissions also express the view that the WCB is not competitive in its rates and service.
15.7.3. **Recommendations**

Employers groups recommend that the WCB reduce their premium costs by increasing efficiency, preventing accidents, reducing fraud and the number of regulations that businesses are forced to comply with. They also insist that the WCB must be more customer oriented and competitive even if that means introducing competition from the private sector.

In spite of the lack of comment from non-business stakeholders in this topic, it is reasonable to take comments they make addressing other topics and apply them to this context. Unions, some members of the public, and many injured workers caution that the push to make the WCB competitive and reduce employer costs is causing claimants to be treated by formula with little regard to their individuality. Further, many argue that the bottom line must be justice for injured workers. Although cost savings are important, they should not be pursued at the expense of worker health, safety and care.

**Example Recommendations**

- Perhaps some competitive element should be incorporated to encourage better performance. The construction industry performs quite well in this environment, and the "customer" usually gets what he asked and paid for, or otherwise, they are soon no longer in business. IEM-151 [Pg 1]
- Regulations and legislation should be reviewed with the aim of making it easier for smaller and larger business to compete with business in other areas EMA-013 [Pg 1]
- The assessments and premiums charged on small businesses should be lowered IEM-110 [Pg 2]
- The high costs of WCB are passed on the employers and are making business for many very difficult IEM-112 [Pg 2]
- Promote competitive assessment rates. IEM-143 [Pg 1]

15.7.4. **Quotes**

- “The escalating costs and inefficiencies of WCB are a major factor in the viability of Toko’s operations…Claims costs have doubled while injury rates have declined…Employers and Workers are complaining of deteriorating service…World wide competition is forcing over regulated, cost burdened employers to relocate.” (IEM-143)
- “The WCB is a service to workers and employers but it does not act like it.” (CON-007)
- "Since the WCB system is 100% employer supported, it is essential that the system never becomes so onerous that it in fact threatens to kill the golden goose." EMA-019 [Pg 4]
- “Fiscal responsibility is their battle cry. What about their responsibility to the injured and disabled?” IJA-005 [Pg 4]
- “Economists often note that regulations have many of the same economic consequences as taxes: they depress employment and economic activity, raise costs, and retard productivity growth.” EMA-038 [Pg 1]
- "Good occupational health and safety is an investment in our workers, our businesses, and our competitiveness as a province." EMA-021 [Pg 1]
15.8 COST-BENEFIT ANALYSIS

Although a cost-benefit analysis does not generate revenue it is important to the theme of revenue generation because it is one method of helping to ensure the effective and efficient allocation of resources. The process involves weighing the benefits of a particular course of action against the costs to decide whether it is worthwhile. Ensuring that dollars are spent effectively will reduce the need to generate new ones.

15.8.1. Overall Response
This issue received the least number of responses in relation to revenue generation. Almost four-fifths of those who expressed interest in it were independent employers or employer associations. The remaining twenty percent of the comments and recommendations came from consultants, members of the medical profession, municipal government and union associations.

15.8.2. Discussion
All stakeholder groups that spoke to this issue expressed the need for the WCB to spend time thinking about priorities and impacts before implementing new policies and regulations. They point out that new regulations will have different impacts on different types of businesses and on different sizes of businesses. They insist that cost effectiveness is critical, as is the effectiveness of the proposed regulation. At times a regulation may be effective but the cost of implementing it, to the employer, to the worker, to the taxpayer and/or the WCB, far outweighs the benefits it generates.

There was no discussion about whether or not costs and benefits that cannot be measured in dollars and cents could, or should, be included in the analysis.

15.8.3. Recommendations
Many business owners say that the WCB is over regulated and that these regulations are driving up costs to the point where they threaten their fiscal viability. They would like steps to be taken to prevent regulatory overlap, regulatory incompatibility and a streamlining of services to maximize efficiency. The WCB is also urged to look for creative solutions in cost effectiveness and to give employers more flexibility to concentrate scarce resources where real problems exist, rather than dispersing their efforts and resources to areas where accident experience suggests there are relatively fewer problems.

Several submissions cite advertising as a wasteful expenditure of funds by the WCB and one injured worker recommends that grants to research organizations be stopped until the WCB’s investment portfolio has recovered. Some also ask that pilot testing of new proposed regulations be implemented.

Example Recommendations
• Stop wasting WCB money on television commercials. (INJ-625E)
• Cost Benefit Analysis - all proposals should be subject to a thorough cost-benefit analysis and should include an assessment of compliance costs at the firm level along with consideration of the expected benefits. Regulatory Efficiency Analysis - assessing whether
a regulatory measure has been duplicated by the same or another regulatory authority. The objective is to ensure that the measure is delivered on an efficient “one-window” manner. (EMA-038)

- Consider cost effectiveness in issuing compliance orders. Use creative and alternate solutions. (CON-016)
- A cost-benefit analysis should be conducted on all new regulations before implementation only those regulation that prove clear benefits, which exceed the public and private costs of compliance, should be adopted. (EMA-022)
- As the RCWC considers each proposed recommendation the following question should be asked: How will this proposed recommendation impact the employer and the employees in that small enterprise in Abbotsford as they try to maximize safety, to comply fully with the Workers’ Compensation regulations, and to provide prosperity for themselves and their families? (EMA-054)
- Further implementation of new or revised regulations should be delayed until a cost benefit analysis can be conducted, and until a process for providing more consistent reviews of OH&S regulations, to ensure ongoing relevance, can be developed. (UNA-020)

15.8.4. Quotes
- “Occupational Safety and Health regulations should act as “guideposts.” They should provide sufficient flexibility for employers to concentrate scarce resources where real problems exist, rather than dispersing their efforts and resources to areas where accident experience suggests there are relatively fewer problems.” (EMA-038)
- “If we spend it over here; we can’t spend it over there.” (IEM-140)

15.8 SUMMARY

Discussion of revenue generation was clearly dominated by business stakeholders. This is due in no small part to the fact that the WCB is fully funded by employers and they therefore have a high level of interest in the subject. The issue of greatest concern to employers and business groups was the classification system on which their assessment rates are based, and the ERA (experienced rating assessment) system which adjusts a business’s premiums upward or downward based on claim experience. In both cases employers insisted that premium costs are too high and need to be brought down because they are threatening the competitiveness and financial viability of many business owners, particularly small businesses and those who are in highly competitive industries.

The main reason for high costs according to this group is WCB mismanagement and over-regulation. These stakeholders demanded that the WCB be audited and its operation streamlined, and that in future a system of cost-benefit analysis be used before new regulations are imposed to ensure they are necessary, do not overlap with other regulations, and their public and private costs do not outweigh the benefits. They insisted that there be a much greater financial accountability by the WCB in the future. They also would like the WCB to update its thinking and its regulation and assessment classification to more accurately reflect today’s workplace. WCB needs to recognize that not all businesses can be treated the same
way and that regulations and classifications must adapt to the growth in small business and to recent business restructuring in a service-based economy. Some think that removing the WCB monopoly by allowing private insurance will make the WCB more competitive and employers with more coverage options.

Business owners also say that businesses with good safety performance and programs need greater financial recognition by the system and object to the way they say the system penalizes honest employers by making them pay for those employers who don’t care about safety or fail to pay their premiums, and for workers who receive over-payments.

Fraud was the number one revenue issue raised by non-business stakeholders. It was agreed that some employers, workers and the WCB are guilty of defrauding the system in various ways. It was also agreed that concrete steps need to be taken to reduce fraud at all levels although there were cautions that the problem not be over estimated and end up consuming more financial resources than it saves.

Non-business groups also have concerns that the WCB not become so focused on cost savings that they forget their mandate of protecting workers from injury and providing for the needs of injured workers. Nevertheless, many workers and union associations also agree that the WCB has not managed its money well and they are angry at what they consider to be unfair treatment of workers by the system. In general, they think that the system serves the interests of employers and bureaucrats more than workers. For this reason, some would like workers to pay part of the WCB premiums so that they will have greater influence on the system and others favour allowing private insurance to enter the marketplace and give some competition to the WCB.