17.0 INTRODUCTION

The topic of fatalities benefits dealt with the payment and the services received by the dependants of deceased workers. The focus group with the most submissions on the topic of fatality benefits was the general public (29). There was some interest from the employer association (3), independent employers (1), injured workers (10), the injured workers’ associations (2), the union associations (7) and the unions (2).

The main concerns of the general public related to the sensitivity of the WCB to the families’ needs and the appropriateness of the investigations of fatalities as well as the involvement of the families. Other issues discussed included the financial support provided by the WCB and the variation in benefits provided depending on the age of the spouse and or children as well as the marital status of the widow or widower. There was some concern around dependents other than a spouse or child that should be considered for financial support. The employer association was the only group that felt that the benefits provided for funeral expenses and incidental expenses were too high and remains too high. The main thrust of all the groups who responded in this category was that the fatality benefits needed to be reviewed and that the benefits provided to dependants needed to be fair and swift in their delivery.

This paper looks at the 5 sub – issues on fatality benefits:

- Adequacy of funeral expenses
- Differentiation in benefits by age
- Sensitivity of WCB to family needs
- Success of vocational rehabilitation for surviving spouse and dependents
- Appropriate investigations of fatalities and participation of the families

17.1 ADEQUACY OF FUNERAL EXPENSES

17.1.1 Overall Response

More than half of the responses in this section was from the general public (3). Of the three respondents, two of the responses were rated with a high intensity while one was of medium intensity.

The employer association’s response was given a low rate of intensity. The union associations who responded to this issue felt that the allowance for funeral costs, transportation, and incidental expenses should be fixed at 15 percent of the maximum wage rate, and are adjusted in a ratio to the maximum wage rate in each year. The union associations’ response was given a medium intensity rating.

17.1.2 Discussion

All three respondents among the general public group felt that the funeral expenses provided were not in line with the prevailing market value for such services. One father who lost his son in a work related accident noted that the average cost of a funeral is $7000. Another father who responded noted the average funeral cost to be around $8000. Not only was the $2900 that was provided for funeral expenses by the WCB considered to be an insufficient sum but it was pointed out that some areas of British Columbia only have one funeral home so the ability to do
a cost comparison is impossible. In addition, the emotional effects of dealing with the loss of a loved one would make it difficult to ‘shop around’ for the best deal.

The employer association felt that the funeral expenses that were provided to the deceased worker’s family should be fair and reasonable. However, the employer association also felt that the $6,000 flat rate, adopted in 1994, for the payment of funeral and incidental expenses was too high. They continue to question whether that same amount remains too high.

The union associations found that the allowances provided to survivors of a fatality were not always delivered in a timely manner. The same group felt that the allowance for funeral costs, transportation and incidental expenses should be fixed at 15% of the maximum wage rate and that should be adjusted in a ratio to the maximum wage rate in each year.

17.1.3 Recommendations
The general feeling among the respondents from the general public group was that the allowance for transportation and funeral costs was not sufficient. With the exception of one respondent who felt that the entire cost of the funeral should be paid for, the rest suggested that the allowance should reflect the average cost of a funeral. The union associations suggested that the allowance should be fixed at 15% of the maximum wage rate, which would be adjusted in a ratio to the maximum wage rate in each year.

Example Recommendations

- The Commission must recommend an amount, which represents a fair and reasonable reimbursement of funeral and incidental expenses. The amount should not attempt to cover the high or low ends of the spectrum for funeral and incidental expenses, but rather the average costs that [could] reasonably be expected to be incurred. EMA – 038

- The WCB should cover the entire cost of a reasonable funeral, not just set a ceiling for funeral awards. GEN – 093

- The allowance for funeral costs, transportation, and incidental expenses should be fixed at 15 percent of the maximum wage rate, and be adjusted in a ratio to the maximum wage rate in each year. UNA – 013

- Because of changes since the 1994 resolution by the Board of Governors, approving a flat-rate death benefit, the Federation feels that new policies are needed. See Recommendation #57 (Designated as Recommendation #1; tab 15, p.6)

17.1.4 Quotes
“If you ask them how am I supposed to bury my son with $2900 and they say, well you are just going to have to shop around. The parents are so upset that you don’t go around seeing if you can shave $50 off a casket.” GEN-038
“WCB treats the deceased as though they were a piece of garbage to be disposed of in the least expensive manner.” GEN - 038

“Of all the stakeholders in the WCB system, deceased workers and their families have gained the least and lost the most. For the employer, the cheapest, permanently disabled worker is a dead one.” GEN-003

17.2 DIFFERENTIATION IN BENEFITS BY AGE – The two main areas discussed included the pension variation between spouses under 40, spouses under 50 and spouses over 50 as well as the eligibility of children to receive benefits after the age of 18. This section also touched on the definition of dependant and who should be eligible for benefits.

17.2.1 Overall Response
There were seven responses in this section with more than half of the respondents coming from the general public category (5). The general publics’ responses were divided up between the high intensity (2), medium intensity (1) and low intensity (2) rating. The two responses from the union associations were both rated with a medium intensity.

17.2.2 Discussion
The five respondents from the general public category all felt that it was discrimination to have a different benefits package provided to widows or widowers due to their age. One of the respondents also felt that it was unfair of WCB to provide her with the lump sum because of her age and the fact that she had no children. Her reasoning was that they were going to start a family and buy a home together. In addition, the age at which a child should no longer receive benefits was also discussed. One widow received a letter from the WCB only one year before her son turned 18. The letter informed the widow that her file was being reviewed now that the son was no longer in school.

The union associations who responded to the issue of fatality benefits and age noted that most accidental deaths happen to workers under the age of 45. The union associations also stated that the WCB categorizes surviving spouses according to age and that certain policies and procedures should be amended to make the process of dealing with a fatality less cumbersome. The union associations felt that age should not be used to discriminate against widows or widowers with respect to the provision of pensions.

17.2.3 Recommendations
The main cause for concern in this section was the variance in benefits paid to spouses due to their age. The same concern was shown regarding children and the age at which their benefits should cease.

Example Recommendations

- Discontinue the use of age as a factor in determining survivors’ pensions, and use wage loss as the dominant determining factor. GEN - 003

- Survivors’ benefits should be equitable with injured worker’s benefits. GEN - 003
• Recognize the appropriate balance between workers’ non-financial familial contributions and the elimination of direct worker-specific costs by: a) raising the children’s ages of dependency to 21, and 25 if attending school, subject to their income from other sources, from the ages of 18 to 25; b) keeping total family benefits at 100% of disability benefits until all children have passed the ages of dependency; c) raising the rate of spousal benefits from 60% to 80% of disability rate, and; d) raising the rates of children’s benefits consistently with spousal benefits.

GEN – 003

• For economic and cultural reasons (particularly chronic unemployment) dependency often extends well past the limits set by section 17(1). See Recommendation #60 (Designated as Recommendation #4; tab 15, p. 13) UNA – 013

17.2.4 Quotes

• “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

• “The lump sum given to me and all other widows in my shoes is only enough to get by for a short time. This decision was based on section 17 of the Act which discriminates on the basis of age and contrary to the equality provisions of section 15.1 of the Charter of Human Rights.” GEN - 104

• “I don’t believe there should be age discrimination for widows or widowers.” GEN – 143

• Treating surviving spouses differently according to their ages constitutes discrimination based on age, which is directly contrary to Section 15 of the Canadian Charter of Rights and Freedoms. To compound the difficulty of beginning to deal with my husband’s death, I [have] to continue my appeal with WCB on the basis of age discrimination. I cannot overstate how appalled I am that such overt discrimination would not have been corrected in the Act when it was first brought to the attention of the WCB. The factor of age discrimination contained in Schedule C is not inferred, it is not one where the factor of discrimination is subtle and therefore subject to interpretation in reference to the Canadian Charter of Rights and Freedoms. It is disgustingly blatant. GEN - 123

17.3 SENSITIVITY OF WCB TO FAMILY NEEDS

17.3.1 Overall Response
The biggest response was in this section with 17 responses. The main group making submissions on this issue was the general public (10). The group had 4 responses with a high intensity, 5 of a medium intensity and 1 of low intensity. The second largest group was the injured workers (3) with 2 high intensity recommendations and 1 response that was of low intensity. The union associations had 2 responses of medium intensity. Both the employer association and the unions had one response each, which was of medium intensity.
17.3.2 Discussion

One area that was focused on in this sub-issue was grief counseling. Several survivors were looking for counseling and did not know it existed through the WCB. One respondent was told about the availability of counseling one year after the death occurred. The respondent felt that it was too late by then. They were also told that they could ask the WCB questions but the family noted that they weren’t given a manual, nor were they told what they could ask about. A father, who was also from the general public group, repeatedly asked the WCB about getting some counseling for the loss of his son and both times WCB employees did not know if grief counseling was available, nor did they get back to him with an answer. A woman, whose son was killed at work, was denied grief counseling by the WCB. Another widow among the general public group who was offered counseling by the WCB found that there was nothing in place that would allow her to talk to other people who had suffered from similar experiences.

Another message that was sent from the general public’s category was that the WCB had no concern for the family after they had experienced the loss of a loved one through a work related fatality. One widow in the general public group felt that section 10 of the WCB Act was discriminatory in that it was designed to protect and facilitate negligent employers and obstruct the legal rights of the families of workers killed on the job. Her experience with the WCB bureaucracy has been very frustrating. The mother of a deceased worker stated that family all wrote letters to the WCB after her son’s death yet found that the WCB did not care what they had to say. Another member of the general public noted that there needed to be a regional fatality response team trained to support families. They also felt that the families deserved complete disclosure and access to information.

This sub – issue also suggested the need for the administrative side of the WCB to be more sensitive to the grieving process and the needs of the families of deceased workers. The WCB needs to appreciate that the grief process may last for a long time and there are some decisions that the remaining family may not be capable of making. For example, one father mentioned having 90 days to decide whether or not to make a lawsuit. The father noted that in 90 days the parents are incapable of making such decisions – they are sometimes incapable of deciding what to wear let alone making a lawsuit. Another woman found herself having to go through appeal after appeal in order to get any compensation for the loss of her husband. One injured worker suggested that the lack of respect shown between the different departments within the WCB and the lack of respect between medical doctors and the Board do not give a good feeling to the injured workers or their families.

One family, whose son was killed in a work place injury suffered from “mental and physical pain and emotional agony” (GEN-192) as well as increasing anger over their treatment by the criminal injury program of the WCB. The family received more than one phone call from the WCB asking to speak to the deceased six years after his death. The same submission also mentioned a mother whose daughter had been murdered yet her request to speak to an adjudicator was denied when she tried to seek information about why her claim was not accepted. The respondent also stated that he had spoken with 18 other families of murder victims whose experiences with the criminal injury compensation program had been uniformly described as “demeaning and insulting (GEN – 192). One woman, whose husband was killed while at work believed that his death was the result of a previous injury that was never properly taken care of by the WCB. The man who was killed had originally suffered an injury to his eye
and his widow believes that that partially lead to his death because he never received the proper medical attention. She found her experience with the WCB employees to be extremely unpleasant despite feeling that the organization itself is extremely helpful (GEN – 183).

Injured workers who responded to this sub-issue were concerned with the lack of closure on the files of the deceased claimants. One injured worker is still looking for closure 5 years after the death of his son. Another injured worker never received payment from the WCB in connection with her late husband’s accident. She would still like to have an explanation for why her husband’s teeth were removed after his death, why everything he used or touched was sterilized and who signed the authorization form for operations performed on her husband. In addition, she would also like to know why there were discrepancies on the admission dates and why two autopsy reports were completed for her husband.

The submission from the BC and Yukon Territory Council of the Canadian Federation of Labour, the unions and the employer association all felt that the WCB needed to work toward a fair, reasonable and consistent level for fatality benefits. The BC and Yukon Territory Council were concerned with the devastating trauma caused by the death of a worker. The union association feels that the bureaucratic nightmare faced by survivors can add to an already unbearable situation. In addition, the BC and Yukon Territory Council stated that certain policies and procedures should be amended to make the process of dealing with a fatality less cumbersome. The union associations also felt that the process of providing death benefits be reviewed and streamlined, so as not to create any undue hardships, and to provide death benefits in a timely manner. The latter suggestion is in keeping with the viewpoint of the unions. The unions felt that the death benefits needed to be brought in line with today’s current social values and norms in order to reflect fairness in age brackets and in same sex relationships.

17.3.3 Recommendations
Grief counseling was sought by several of the respondents from the general public. There was an overall need for the WCB to be more sensitive to the families of workers who had been killed in work related accidents. It was also suggested that grieving families should not be asked to make important decisions soon after the fatality had occurred. For example, the 90 – day time limit placed on executors making decisions regarding the processing of the claim should be reworded to “within a reasonable time frame.
Underlying concerns included the definition of spouse, particularly common law spouses. It was also suggested that people other than spouses and children might be a dependent of the deceased worker and that they should be considered for benefits from the WCB.

Example Recommendations
• In working towards a fair, reasonable, and consistent level for fatality benefits, you should have regard for how income loss is dealt with in fatality claims in other contexts (e.g. motor vehicle accident). EMA – 054
• Fatality benefits must be simplified in order to be readily understandable and applicable. EMA - 054
- Recognize non-dependent survivors, such as parents, siblings, or adult children, as having a reasonable expectation of benefits. Recognize that survivors’ non-pension benefits should be specifically suited to their needs.
  - GEN – 003

- WCB should adopt the definition of “Spouse” to include long-term common-law relationships, and afford them the same spousal benefits as married couples.
  - GEN – 009

- The WCB should be more sensitive to the families of workers killed in work-related accidents. GEN – 038

- The Commission should investigate the process since 1993, which has resulted in virtually no changes to fatal claim benefits. UNA – 013

- In particular, the Commission should ensure that they have obtained and reviewed the 1993 study by Messrs. Blacker and Lane, and the minutes and other records of the process, set up to change fatal benefits. UNA – 013

- Compensation for fatal benefits must recognize the changes in the family over the last 20 years. UNA – 013

- Specifically, the reality of both spouses working must be accommodated. UNA – 013

- An obvious change is that compensation may have to include day care in order to permit the surviving spouse, particularly if she is a woman, to carry on working and supporting the family. UNA – 013

- Another change required is to include the cost of [unpaid] labour in compensation. UNA – 013

- Section 17 should require the Board to fulfill the legal obligation of the deceased worker to pay family support. Past history of compliance, whether or not it was substantially met should not fetter the Board’s obligation in fatal cases.
  - UNA – 013

- The Commission should recommend that a [separate employer-sponsored life insurance program cover every worker in the construction industry]. UNA – 018

- The Commission should recommend that support services be provided to the surviving members of the fatally injured worker and that these services include, not only emotional counseling, but also financial counseling. UNA – 018

- The Commission should recommend that a process be put in place whereby a surviving claimant would deal with a single adjudicator. UNA – 018
The Commission should recommend that the WCB institute a critical incident stress team, to be dispatched to every traumatic fatality incident within twenty four (24) hours.

**UNA – 018**

17.3.4 **Quotes**

- “The Board must begin to view victims and their families as real people; not merely as statistics. Until then nothing will change.” GEN – 076

- “Surely the families of those killed on the job in BC deserve more than a fat envelope filled with confusing forms from the BC WCB.” GEN - 076

- “To have a maximum penalty of $7,500 for causing a man’s death through negligence constitutes a cruel joke on survivors and encouragement for those who ignore the regulations to continue to do so.” INJ - 067

- “Five years later we still seek closure to this devastating event in our lives. We still need honest and direct answers to our questions we feel we have the right to know” INJ – 067

- “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

- “Quite frankly I am getting sick and tired of companies like yours that are arrogant belligerent and deceitful. It is indeed very saddening to know that a wonderful helpful organization like this has to be subjected to being run by a handful of disgruntled employees who think that monetary compensation comes out of their own pockets.” GEN - 183

- “We and others have been subjected to inconsistency of legal reasoning, inaccuracies pertaining to facts of various cases, incomplete, unthorough, or [non-existing] investigation into the status of claimants and their cases, adversarial posturing by adjudicators, rudeness and lack of compassionate understanding of the devastating effects of losing a child or other family member to violent crime.” GEN - 192

17.4 **SUCCESS OF VOCATIONAL REHABILITATION FOR SURVIVING SPOUSE AND DEPENDENTS** - The WCB provides vocational rehabilitation to injured workers, and in some cases to workers' dependants, to offset the effects of compensable injuries, occupational diseases, and fatalities. Services provided include vocational assessment and planning, counseling, skill development, job readiness and placement assistance, income continuity, and employability assessments.

17.4.1 **Overall Response**

The respondents in this category included 2 from the general public – one was recorded as a high intensity and the other as a medium intensity. The other responses came from the union
associations and the unions. Both the latter groups had one comment each of medium intensity.

17.4.2 Discussion
There is some similarity between what is discussed in sub-issue 2 of fatalities – differentiation in benefits by age – and that, which is noted in sub-issue 4 – success of vocational rehabilitation for surviving spouse and dependents. Vocational rehabilitation includes income continuity payments. Income continuity payments are equivalent to the permanent pension amount awarded to the dependants of a deceased worker. The pension that a spouse or dependant receives due to a work related fatality is based on the age of the dependant. Therefore, there is some discussion of age related pension benefits in this section.

All of the respondents on this issue noted the inadequacy of the benefits provided through vocational rehabilitation for the survivors of a work related fatality. One member of the general public felt that the difference between what section 17 currently provided with respect to benefits and what should be provided made a very real difference to the quality of life a surviving spouse would have. In addition, the respondent was initially unaware that she was eligible for a pension until she was finally notified by the WCB. Another general public respondent stated that the survivor benefits and services, such as grief counseling, education and training and rehabilitation, are modeled on those given to injured workers thereby failing to recognize some of the specific needs of grieving families. For example, time limits for the beginning of education and training imposed for injured workers may not take into account the grieving process for survivor families.

The union associations felt that people other than the deceased worker’s spouse or children should also be allowed to receive compensation depending on the relationship that was shared with the deceased. Furthermore, the union associations are looking to provide a statutory right of rehabilitation for surviving spouses and children. The unions also feel that the rights of dependents and family members should be expanded. For example, children between the ages of 19 and 25 should have the right to continued compensation if they are involved in work training or continued education.

17.4.3 Recommendations
Respondents felt that the services provided to families or dependents of deceased workers should have been different than those received by injured workers. It was also suggested that surviving spouses and children should have a statutory right to rehabilitation.

Example Recommendations
• Section 17 should be amended to include a statutory right of rehabilitation for surviving spouses and children. UNA – 013
• The Sensitive Claims section could better serve survivor families if it upgraded with higher staffing levels, specialized staff education, training and job requirements, and active volunteer survivors’ support group. GEN – 003
• Survivor families require different services than do injured workers. GEN – 003
17.4.4 Quotes

- “Treating surviving spouses differently according to their ages constitutes discrimination based on age which is directly contrary to Section 15 of the Canadian Charter of Rights and Freedoms.” GEN - 123

- “In some cases, the difference between what is currently received under section 17 and what should be received could make a very real difference to the quality of life a surviving spouse will have.” GEN - 123

- “Where once accident prevention was pursued, we now see claims control being pursued.” UNI - 094

- “For economic and cultural reasons (particularly chronic unemployment) dependency often extends well past the limits set by section 17(1). See Recommendation #60 (Designated as Recommendation #4; tab 15, p. 13)” UNA – 013

- “Expecting trainees to know all the regulations not always mastered even by WCB inspectors or experienced season workers is unrealistic and irresponsible.” GEN - 067

- “Survivors’ compensation pensions are calculated net of federal benefits, while injured workers’ pensions are calculated gross of federal benefits. To deduct federal or other purchased benefits from pensions is to penalize workers for their foresight in providing for their families. Non-financial contributions to the common good of the family is not recognized or compensated for, when the worker dies.” GEN - 003

- “Separated or divorced spouses, who are in the process of obtaining or enforcing court-ordered support when a worker dies, are not considered for benefits.” GEN – 003

- “In 40% of fatal cases, benefits cease when the funeral and transportation cost allowances are paid. Adult children and parents, who are initially non-dependent are the hardest hit.” GEN – 003

- “Almost nineteen months passed during which there were absolutely no inquiries by the Board into our health, sanity or need. No one phoned to see how we were coping or indeed if either or both of us had committed suicide, which, in all truth, we had both seriously contemplated.” GEN - 192

- “I doubt that there will be much input on this subject as most victims who have had unsatisfactory relationships with the CIC Program are simply fed up with it and thus cynical about the possibility for positive change. It is also true that victims of crime and in particular those who have lost a loved one to murder, have experienced such a life-altering negative impact that it is often difficult to maintain the strength of focus to take advantage of an opportunity such as this.” GEN – 192
17.5  APPROPRIATE INVESTIGATIONS OF FATALITIES AND PARTICIPATION OF THE FAMILY

17.5.1 Overall Response
The main group that responded on this topic was the general public (7). Five of the responses were of high intensity and two were of medium intensity. The injured workers had 3 responses of high intensity and 3 responses of medium intensity. The injured workers associations had one high and one medium intensity issue. Finally, the union associations had one response of medium intensity.

17.5.2 Discussion
The response from the general public was that of shock with respect to how the WCB conducted their fatality investigations. One respondent “could not have imagined a more cursory, inaccurate and unprofessional document.” (GEN – 066). Another member of the general public group who had lost his son was shocked, disgusted and angry at how fatality investigations were conducted. He found that one of the hearings surrounding his son’s death was characterized by lies, innuendo and misrepresentation of facts, particularly by the WCB officer who contradicted his original accident report.

Some respondents found the investigation reports to be incomplete. In fact, one respondent from the general public group found that the investigating officer had never reviewed the RCMP Sudden Death Accident Report, the Coroner’s Report or the Pathology Report. Another submitter believed that the Coroner’s inquest was flawed and that information was obstructed. One mother alleged that the WCB showed no interest in cooperating with or involving other agencies such as the RCMP or Attorney General’s office over the death. The submitter also claimed that the WCB lent no assistance to convince the Coroner’s office to hold an inquest into the circumstances of the death even though the submitter felt that this was an obvious part of obtaining critical information from the accident scene.

Another area that was discussed under this sub-issue was that of families being involved in the fatality investigation. Several responses from the general public, the union associations and the injured workers showed that family involvement was not felt to be adequate. For example, families from the general public category made the point that the investigator is the only spokesperson for the claim and that there is no one to speak for the victim at the scene of a fatality. Another member of the general public also noted that without his diligent pursuit of the facts and the truth the entire investigation would probably not have commenced. Yet another woman who lost her son found that only WCB personnel and company management were allowed to speak at the hearing held for her son and she was only able to attend as an observer. Finally, a widow stated that her husband’s investigation report was inadequate as it had to be completed by a certain date and not all of the evidence was available by that time. Not only that but there are still no written instruction about proper procedures for the job that killed her husband.

The injured workers’ category also found that the family was not involved enough in the investigation. One family who lost their child still has unanswered questions that they felt they had a right to know. A father who lost his son stated that the coroner provided false information, in regards to his son’s work practices. These false statements led to invalid conclusions, which
later had to be rescinded. The father also found that the inspectors involved in his son’s case were denied permission to talk to him or his wife. The father felt that inquest become an expensive waste of time and money when the WCB completely ignored the recommendations of both the coroner and the jury. Another respondent from the injured workers’ category was still trying to find out:

- why all of her husband’s teeth had been pulled out
- why everything he had touched had been sterilized
- who had signed the authorization forms for two operations performed on her husband
- why there were two autopsy reports on the same man and
- why there were discrepancies on the admission dates.

The union associations commented on the need for victims of crimes to be given a greater role in the case of prosecution. They also note that survivors had expressed dissatisfaction with the current process of fatality investigation and follow-up.

Both the injured worker category and the injured worker association groups mentioned their concern over workers who had allegedly committed suicide due to their treatment by the WCB. A family who lost a loved one stated the need for further investigation into the suicide of an injured worker. They felt that WCB essentially washed their hands once the claimant was dead. The injured workers’ associations felt that families of victims who had committed suicide should be questioned relating to the death and the deceased’s involvement with the WCB. The same group felt that it was important to investigate those deaths that were a result of suicide in case the suicide was due to negligence or inappropriate handling on the part of the WCB.

17.5.3 Recommendations

Respondents in this section felt that the investigations into fatalities in the work place were not adequate. It was felt that the families were not included enough in the investigations. The investigating officer should not have any authority in determining what, if any, penalties, sanctions or charges should be laid against the work place in question. The investigating officer should remain a witness just as the coroner and police officer are.

More than one suggestion was made about giving interested parties or family members the right to cross-examination. It was also suggested more than once that mandatory drug testing should be used in regards to fatality claims.

In addition, there was also a concern around people who had committed suicide shortly after their treatment and dealings with the WCB. The injured workers’ associations suggested that any cases closed because of suicide should be re-opened and independently investigated to truthfully determine the cause of death. It was felt that criminal proceedings were required if it was found that the WCB was negligent in their handling of the worker’s case. Furthermore, family members should be involved in the investigations regarding the suicide deaths of workers who were dealing with WCB. Perhaps a special board should be set up to deal with fatality claims.
Example Recommendations

- If it is found that the attendant has been derelict in their duty to provide adequate care and treatment whether by violating protocols of patient care or exceeding their authority that attendant’s first aid ticket must be revoked immediately and without question. It is not the mandate of the First Aid Section of the WCB to protect an incompetent attendant; their mandate is to provide the best care possible for the injured. GEN - 076

- In cases of fatality:
  - Investigating officer should have no authority in deciding to proceed or not proceed in assessment of penalties, sanctions or any other charges
  - Investigating officer is deemed witness just like a coroner or police officer or any other investigating body
  - All penalty hearings should be conducted by 3 officers Penalty hearings should be conducted under oath
  - Right of cross examination by someone concerned with what happened at the examination
  - All investigation reports must be examined not just those prepared by WC employee
  - Mandatory testing for drugs and alcohol in regards to fatality claims
  - Families, the estate of the deceased, or their representative should have the right of cross-examination.
  - Either a panel of three Hearing Officers, a Magistrate or Court of Law judge should be mandatory.
    GEN – 055

- Amend the WCB Act to incorporate more flexible guidelines to interpret its sections, particularly in non-standard cases such as injury or death of juvenile workers.
  GEN-160

- Cases closed because of death should be re-opened and independently investigated to truthfully determine the cause of death. Suicides and deaths due to negligence or inappropriate case handling should be seriously pursued to discover if there are criminal or civil proceedings required. The above should also be deemed appropriate where injured workers upon the production of evidence make claims regarding trauma induced by the WCB staff. This should also be examined under Human Rights Laws. IJA-008

- The WCB should have a special board to deal with fatality claims, and claims should be dealt with equally. INJ-054

- There should be a requirement that a Coroner’s Inquest be conducted at the request of the surviving family or, where there are no survivors, at the request of a union representing the other workers in the workplace. In this way, those concerned that the true causes of the death have not been fully discovered, can be assured that a full inquiry, open to the public and judged by a jury representing values of the community, will be conducted into the fatality. This right should be extended whenever the cause of death is suspected to be work related. To address the issue of the response from the WCB to Inquest recommendations, a public-reporting obligation should be the duty of the Board. There should be a requirement that the Board
produce a response to each jury report that concludes a death was work related, and recommend measures to be taken to prevent future fatalities. The Board should be required to report within a set time period, and to set out its response to the recommendations. Where it disagrees with the recommendations, the Board should outline its reasons. Where it agrees with the recommendations, it should set out its plans for implementing the recommendations (p. 112). UNA-013

17.5.4 Quotes

• “I’m here representing fatalities as a file at WCB; fatalities are a minority thankfully – but they have some particular differences in fact that the main one being the victim is not there to tell his side of the story or to advocate for some recompense. In fact there is really – one of my concerns is the fact that there is no one to speak for the victim at the scene of a fatality. One of the questions I have is how could I be part of this investigation or at least get answers – it took a lot of work on my part to find out what actually happened at that site. And that probably started me off deciding that if anybody was going to find out about this it would have to be me obviously.” GEN-066

• “Had I not been as diligent as I was in the pursuit of the facts and the truth, this entire investigation would not even have commenced. It would have been just another fatality with the conclusion that the worker caused his own death.” GEN - 055

• “The WCB deals with individual people and lives. Human life is not a commodity by which the stroke of a pen, a sentence worded wrong, a paragraph misplaced, could and does destroy the individual person. Why is financial distress, emotional stress and insult added to the injury?” GEN - 055

• “The Board must begin to view victims and their families as real people; not merely as statistics. Until then nothing will change.” GEN – 0 76

• “I believe that every worker in the province of BC is deserving of a much higher standard of safety and emergency care than was afforded my husband, Shawn Brent York, on May 15, 1993. In order to ensure that this high level of quality care is maintained it is imperative that any complaints involving possible incompetence of an attendant must be regarded as the utmost seriousness and investigated thoroughly and promptly.” GEN – 076

• “We were naive enough to believe our legal system automatically incorporated the mechanisms to properly convict and punish employers maintaining unsafe working conditions...” GEN - 160

• “Without proper enforcement and meaningful consequences for disregarding the rulebook how can the WCB expect the public to take them seriously.” INJ – 067

• “Five years later we still seek closure to this devastating event in our lives. We still need honest and direct answers to our questions we feel we have the right to know.” INJ – 067
“Survivors have expressed dissatisfaction with the current process of fatality investigation and follow up. Public agencies are seen as doing a superficial job in the investigations. Most survivors understand that employers may have a motive to avoid any findings of responsibility because of possible sanctions. The Federation recommends a series of measures for the investigation of workplace fatalities. See Recommendation #56.” UNA – 013

17.6 FATALITY BENEFITS SUMMARY

17.6.1 Overall response
The responses in this section did not fit within the descriptions of the 5 sub-issues that were created under the theme of fatality benefits. There were 2 responses by the general public under this issue and one was of high intensity while the other was of medium intensity. The employer association, the independent employers and the injured workers’ categories all had one response each of high, medium and high intensity respectively.

17.6.2 Discussion
Of the two responses from the general public the area of concern was the death of a juvenile in the work place. It was suggested that parents who lose their children should be awarded compensation. The reasoning for receiving compensation had to do with the loss of wages, the fact that 50% of marriages end and that grieving is an expense. It was also felt that the WCB Act needed to incorporate more flexible guidelines in order to interpret sections like the determination of the value of life of a juvenile worker.

The employer association felt that death benefits payable under the Canada Pension Plan should continue to be deducted from the amount of fatality benefits paid to a dependent spouse and/or child. The independent employers, however, were looking to develop fair, reasonable and consistent levels for fatality benefits through stakeholder consultation.

17.6.3 Recommendations
Very few recommendations did not fit into the 5 prepared sub-issues. There was, however, some concern with the practice of discontinuing death benefits payable under the Canada Pension Plan once WCB benefits were provided. There was also a suggestion regarding the payment of benefits to parents whose children had been killed in a work-related accident. One recommendation that could probably relate to all areas covered under fatality benefits would be from the independent employers. Independent employers felt that the determination of fair, reasonable and consistent fatality benefits could be sought through stakeholder consultation.

Example Recommendations

• Death benefits payable under the Canada Pension Plan should continue to be deducted from the amount of fatality benefits paid to a dependent spouse and/or child under the Act. EMA-038

• Parents who lose their children should be awarded compensation. You lose wages, 50% of marriages end, [and] grieving is an expense. GEN-160
• Determine a fair, reasonable and consistent level for fatality benefits through stakeholder consultation. IEM-091

17.6.4 Quotes
• “No amount of regulation will improve health and safety experience [if] a “safety culture” is absent from the workplace.” EMA – 038

• “Simply stated, the dependants cannot be permitted to establish an economic dependency on a monetary amount which exceeds what the worker would have received if he/she survived. Any additional amount would clearly result in over-compensation.” EMA - 038

• “We were naïve enough to believe our legal system automatically incorporated the mechanisms to properly convict and punish employers maintaining unsafe working conditions.” GEN – 160

17.7 OVERALL SUMMARY
• The main group voicing their concern in the fatality benefits category was the general public. The areas that were of most concern to the general public included the sensitivity of WCB to family needs and the appropriate investigations of fatalities and participation of the families.
• All the respondents from the general public category felt that the WCB was not sensitive to the needs of the family. Although the WCB was involved with the family almost immediately after the fatality occurred they were not allowing for the grieving process take place. One service that should have been offered to grieving families as soon as possible would have been the counseling services that are available through the WCB. Some respondents mentioned the value of having a support group of people that have experienced a similar tragic loss due to a work place accident.
• The majority of the general public category did not find the fatality investigations of the WCB to be adequate. The families would have preferred more involvement in the investigations.
• The union associations had at least one response in each of the 5 sub-issues.
• The union associations and unions felt that there was a need for an overhaul of the fatal claim benefits section. They note the change of the family over the last 20 years and the fact that dependants are not necessarily just the widow and or young children.
• Both the general public and the union associations saw the importance of having more support services, including rehabilitation services, available to the dependants of a deceased worker. Not only should support services be provided but they should cater to the dependants of deceased workers versus injured workers who would not be experiencing the same loss or grief.
• The injured workers’ category was concerned with the fairness of fatality benefits as well as the treatment of families who had experienced the loss of a loved one due to a work place injury.
• The injured workers’ category suggested the creation of a special board to deal with fatality claims
• The employer association wanted to see a fair and reasonable benefits package provided to the dependants of the deceased worker yet they felt that rates established for funeral and incidental expenses in 1996 were too high and that they are still too high.

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• In establishing fair and reasonable benefits for survivors of a fatality claim the employer association added that the benefits must be simplified in order to be understood and readily applicable.

• The injured workers’ association and one member of the injured workers’ category all felt the importance of investigating the deaths of those workers who committed suicide after having dealt with the WCB for other injuries.

• Independent employers not only suggested the need for a fair, reasonable and consistent level for fatality benefits but also added that this could be achieved through the use of stakeholder consultation.