Organization Contact Information

As submissions from organizations may be made publicly available, we may need to contact a representative from your organization about the submission. Please provide the information about your organization below.

Organization Name: Millar Western Forest Products Ltd.

Contact Name: Len Bourdin, Director, Corporate Health, Safety & Risk Management

Email: [redacted] Phone: [redacted]

Please identify the industry of the organization(s) you represent [Select One or more that apply]

[Double click to activate each applicable checkbox]

- ☐ Accommodation, Hospitality and Food Services
- ☐ Agriculture
- ☐ Business, Personal and Professional Services
- ☐ Construction and Construction Trade Services
- ☐ Education
- ☒ Forestry
- ☐ Government
- ☐ Health
- ☒ Manufacturing, Processing and Packaging
- ☐ Mining
- ☐ Petroleum, Oil and Gas
- ☐ Pipelines, Communication and Utilities
- ☐ Transportation
- ☐ Wholesale and Retail
- ☐ Other (specify)

WORKERS' COMPENSATION IN ALBERTA

Before workers' compensation was developed, workers who suffered workplace injuries or illnesses had to sue their employers for damages. Many workers were not in a position to sue their employers or, if they did, were not successful. Under the law workers could be denied any compensation if they were found to have contributed in any way to their injury or illness. When a worker was successful in suing an employer, the costs could impact the continued viability of the employer's business.

In 1910, the Ontario government commissioned Chief Justice William Meredith to produce a report on workers' compensation for that province. He recommended a program based on collective liability and a wage-loss approach to benefits. Over time, provinces and territories created workers' compensation boards based on this. Alberta's WCB was created by an act of the Alberta Legislature in 1918.

There are five basic principles that underlie most workers' compensation legislation in Canada today, including Alberta. These are often called the "Meredith Principles".

- No-fault compensation. This means workers are paid benefits regardless of how the
- injury occurred. The worker and the employer waive the right to sue. There is no argument over responsibility or liability for an injury.
- Security of benefits. This means a fund is established to guarantee that money exists to pay benefits.
- Collective liability. This means that, on the whole, employers covered by the system
- share liability for workplace injury insurance. The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.
- Independent administration. This means the organizations that administer workers' compensation insurance are separate from government.
- Exclusive jurisdiction. This means only workers' compensation organizations provide workers' compensation insurance. All compensation claims are directed solely to the
- compensation board. The board is the decision-maker and final authority for all claims.

The Workers' Compensation Board – Alberta (WCB) is a third-party, independent and neutral agency that is responsible for the administration of workers' compensation in our province.

The WCB operates under the authority of the *Workers' Compensation Act* and three regulations under that Act: the Workers' Compensation Regulation, the Medical Panels Regulation and the Firefighters Primary Site Cancer Regulation.

For many industries in Alberta, coverage by WCB is mandatory. Employers in these industries must contribute to workers' compensation. Certain industries are not required to contribute to workers' compensation, but have the option to participate voluntarily. These industries are outlined in the Workers' Compensation Regulation. They include industries such as accounting, photography and real estate.

Approximately 92.63% of all workers in the province are covered by the WCB.

THE WCB CLAIMS PROCESS

The Workers' Compensation Act uses the term "accident" as a basis for many aspects of workers' compensation. The definition of the term includes injuries and illnesses.

When an accident occurs in the workplace, a claim is submitted to the WCB. People have many views about how the WCB should manage these claims, including how it assesses whether a claim is eligible for benefits.

DETERMINING A CLAIM'S ELIGIBILITY FOR BENEFITS

To be considered eligible for payment of benefits, an accident must meet two conditions: it must arise out of employment, and it must occur in the course of employment.

For many claims, it is relatively straightforward to determine if the accident arose out of employment (for example, if a worker falls from a ladder while performing their duties at work and breaks their arm.)

In some instances, it can be more challenging to determine that a worker's injury or illness arose out of employment. For example, a person may have a heart attack while at work, but that does not necessarily mean the heart attack arose out of employment.

For these kinds of situations, the WCB looks at several factors to determine causation of the worker's injury or illness (such as the worker's medical diagnosis, their conditions and duties at work, and personal factors such as pre-existing conditions.)

1. **Please provide your insights below on how eligibility for workers' compensation in complex claims should be determined.**

Millar Western believes that the Meredith Principles, which are the tenets upon which the Canadian workers' compensation systems were built, require that decision-making be based on evidence, law, policy and a fair, impartial and transparent process. These same principles must be applied when determining eligibility for workers compensation in complex claims. Determining a causal relationship (link) between an illness/injury and the workplace is necessary for all claims made to the WCB. It is the WCB's administrative responsibility to investigate all the evidence provided, apply the law and render a decision. In recognition that not all situations are straightforward, the "Benefit of Doubt" policy is fair and reasonable when considered within the context and interpretation provided, and when properly applied. However, it is imperative this not be use as a substitute for lack of evidence, or in a purely speculative sense, or when the issue can be decided on the balance of probabilities.

In order to accept a claim, Millar Western believes that the WCB must establish a nexus between a work activity being performed and the injury/illness. To facilitate timely and accurate adjudication, our involvement is essential prior to an entitlement decision being made. The evidence based determination must support that the claim arose during employment and is related to employment duties, not simply that the incident occurred in a workplace. The purpose of employer consultation would be to ensure the WCB has all relevant information the employer is aware of regarding the worker, the workplace and the work duties. Adjudicators must understand the actual work the injured worker was performing at the time and conduct a thorough investigation into both current medical and pre-existing conditions, This consultation step in complex claims will avoid situations where an entitlement decision is made based on an assumption by the WCB rather than fact, and minimize the need for an employer appeal because not all information was considered. We must also be

afforded sufficient time when dealing with complex claims to obtain expert medical opinion where warranted.

Recognizing that a thorough investigation may take time, the WCB could provide a mechanism whereby workers with claims under investigation are provided access to medical treatment prior to the adjudication decision, and the costs can later be either attributed to us if the claim is accepted or removed from our account, depending on the outcome of the investigation. This would be a proper, balanced, fair and effective solution, as opposed to bypassing the necessary adjudication process in order to provide a speedy decision so the worker has access to timely medical services.

PRESUMPTIONS ABOUT INJURIES AND ILLNESSES

Workers' compensation legislation in Alberta contains a number of presumptions about occupational diseases and workers in certain occupations and industries.

- Many presumptions are set out in the Workers' Compensation Regulation1. If a worker suffers an occupational disease, and was employed in an industry listed in the regulation within the preceding 12 months, then the disease is presumed to have been caused by employment, unless the contrary is shown.
- In 2003, the Workers' Compensation Act was amended to include a specific presumption relating to firefighters and certain types of cancers.
- In 2005, the Act was amended to include a similar presumption related to myocardial infarctions suffered by firefighters when occurring within 24 hours after attendance at an emergency response.
- In 2012, the Act was amended to provide that if a first responder is diagnosed with post- traumatic stress disorder (PTSD) then it is presumed the PTSD arose out of and occurred in the course of the first responder's employment in response to a traumatic event or series of traumatic events. First responders are defined as police officers appointed under provincial legislation, firefighters (both full and part-time), emergency medical technicians and peace officers who are authorized to use the title "Sheriff".

Some suggest that the entire scope of presumptive diseases should be expanded, to better reflect linkages that exist between certain occupations and certain injuries and illnesses.

Others feel evidence does not support the assumption that it is the type of occupation that should presume coverage, but rather that coverage should be based on the incident and whether it was the cause of the injury.

2. **Please provide your insights below on expanding the scope of presumptive diseases. Please elaborate on occupations and injuries/illnesses where you think presumptions should be expanded (or reduced).**

Millar Western does not support any expansion of the scope of presumptive diseases. The Meredith Principles, which are the tenets upon which the Canadian workers' compensation systems were built, require that decision-making be based on evidence, law, policy and a fair, impartial and transparent process. Implementation of presumption legislation is in contradiction of these basic fundamental principles. In theory the current scope of presumptive diseases should be reduced and strictly limited in accordance with the definition provided below, but realistically we acknowledge that it would be a significant challenge to remove provisions that have already been established. We propose the following recognized Standard be applied in consideration of any expansion of presumptive legislation.

Strong and consistent epidemiological evidence exists that in virtually every case the disease occurrence is linked to a single cause and that cause is associated with an occupation, workplace or work process.

Since the presumption of work relatedness is irrebuttable, it must be unlikely that the association is confounded by non-

occupational factors and must have definitive finding of a causal association, as well as a strong statistical association. The aim is to ensure that in virtually every case, workers will have developed their diseases as a result of the occupational processes. Evidence of non-work exposure that would override the work exposure is not expected to exist in individual claims in practice. It is the Board's administrative responsibility to investigate all the evidence provided, apply the law/policies and render a decision. If this overriding obligation is met, the application of a presumptive clause is not necessary. Application of a presumptive clause should not result in benefit payments the worker would not be entitled to through the regular adjudication process, it should only serve to expedite the process.

In select situations (e.g. mesothelioma claims related to asbestos exposure) application of a presumptive clause is expedient. Even where a presumptive clause exists, however, the WCB must still consider the personal and work history of the individual prior to making an entitlement determination. As is the case with many recent immigrants to Canada, significant exposure to a hazard may have occurred before beginning work in Alberta (e.g. noise exposure from mandatory military service, silica or asbestos exposure related to their living situation, PTSD related to experiences as a refugee, etc.). The focus of the WCB must remain on evidence based decision making for all claims, and ignoring factors external to the workplace can result in an incorrect decision being made if a presumptive clause is applied in the absence of a thorough investigation and consideration of personal circumstances.

Psychiatric and psychological injuries (including chronic onset stress) can be challenging from a claims standpoint, because there can be many different causes of these conditions (e.g., both work-related and non-work-related causes). This makes it challenging to determine if the injury arose out of and in the course of employment.

The state of policy today represents an evolution from the past. Not long ago, the WCB generally did not cover psychological and psychiatric injuries. Over time, workers' compensation systems have come to cover these injuries but struggle with these types of cases.

Presently, the WCB will consider a claim for psychiatric or psychological injury when there is a confirmed psychological or psychiatric diagnosis as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) and the condition results from one of the following:

- Organic brain damage,
- An emotional reaction to a work-related physical injury,
- An emotional reaction to a work-related treatment process,
- Traumatic onset psychological injury or stress, or
- Chronic onset psychological injury or stress

In the years to come, these types of cases are likely to continue to be challenging not only in terms of determining eligibility, but also in terms of return to work and vocational rehabilitation.

3. In your experience, what are some concerns that arise when it comes to claims around psychiatric and psychological injuries?

Millar Western supports the AFPA and ITF's position that establishing causation is a challenge since most mental health issues are multi-factorial. Mental health issues have become prevalent in society, contributing to higher rates of disability than ever before. In a 2012 workplace survey of over 6600 Canadian employees, 14% reported being currently diagnosed with clinical depression and 8% more believed they had depression, but had not been diagnosed. A further 16% reported they had experienced depression in the past (Ipsos Reid, 2012). Mental health is a concern for workers, employers, unions,

health and disability insurers, compensation boards and the health care system overall.

Here again Meredith principles must be applied in claims involving psychiatric and psychological injures, and in making entitlement decisions a clear link to a work related incident must be established. Mental health issues often evolve from individual life circumstances and reactions to specific events, combined with varying daily stressors. The very reason a causal relationship is hard to draw between mental health issues and employment is because in many cases employment is merely the location where these issues become evident. In Martin v Alberta WCB, the Court of Appeal upheld WCB policy provisions that exclude stressful employment factors considered to be normal pressures and tensions experienced by workers in similar occupations and conditions. Examples of circumstances that do not qualify as excessive or unusual events included interpersonal conflict, health and safety concerns, union issues and performance management including discipline. This is a critical distinction. Often employment is coincidental with the onset of systems and not necessarily the cause. It is essential the workers' compensation system and employers not absorb the cost of mental health care for disability due to a multitude of non-occupational mental health conditions that appropriately should be bourne by the provincial health care system. While resources within the public health care system may still need to be adequately developed, the solution is not to shift this responsibility to the workers compensation system.

We agree that stigma related to mental illness is also a challenge. The worker has an obligation to report and we have an obligation to provide the necessary care including reassigning the worker to other duties to prevent aggravating a pre-existing condition or a cumulative injury. We know that workers often do not disclose the existence of a pre-existing condition to us. In one of the first population-based surveys of Canadian workers regarding their perceptions about mental disorders in the workplace, a third of the workers interviewed indicated they would not tell their managers they were experiencing mental health problems. (Dewa, C.S., 2014). Chronic onset psychological injury or stress is especially problematic. Employees with a previous disability claim related to mental illness are almost seven times more likely to have another disability claim related to that illness than someone with no previous disability episode related to mental illness (Dewa, Chau & Dermer, 2009). In many cases, the initial onset of illness is unrelated to the workplace.

Psychiatric/psychological injuries are not as straightforward to manage as physical injuries, and a focus on specialized training of WCB staff on managing these claims would provide better results to all stakeholders. Ensuring case managers are adept and equipped to deal with the distinct issues presented by these claims would ensure proper processes / procedures are followed and claims handled more efficiently.

CLAIMS INVOLVING PRE-EXISTING CONDITIONS

The WCB's current policy provides that where a workplace injury causes a pre-existing condition to deteriorate or become symptomatic, the injured worker is eligible for payment of benefits.

- Medical evidence must show that the accident caused some worsening of the worker's pre-existing condition, at least on a temporary basis.
- It is not a requirement for the worker to have sustained a permanent clinical impairment as a result of the injury to qualify for benefits.
- Benefits for the worker continue until the worker recovers to the point that their remaining disability is due entirely to the pre-existing condition or unrelated health problem.

4. **Please provide your views on some of the issues and concerns that arise in claims involving pre-existing conditions.**

Millar Western believes that the Meredith Principles, which are the tenets upon which the Canadian workers' compensation systems were built, require that decision-making be based on evidence, law, policy and a fair, impartial and transparent process. Within this framework, the issue of causation/aggravation of a pre-existing condition is a significant issue. Many of these claims are paid on the basis of what is perceived to be a dubious "pre-existing condition" with questionable "causation". The challenge is in determining whether something in the workplace actually aggravated the condition. However, if no specific incident can be identified as aggravating a pre-existing condition, then a claim should be denied.

The worker has an obligation to report and we have an obligation to provide the necessary care including reassigning the worker to other duties to prevent aggravating a pre-existing condition. This requires that an onus be placed on workers who have a pre-existing condition and who are experiencing difficulties due to these pre-existing conditions to indicate that their job duties are aggravating their condition. Consideration should also be given when determining entitlement in situations when a deliberate, willful and intentional act of the worker aggravates a pre-existing condition.

Inconsistency is a major concern, both in terms of inconsistent interpretation of what a pre-existing condition is and inconsistent adjudication and application of cost relief provisions. The purpose of the cost relief policy is to ensure that we are not disadvantaged when hiring workers with pre-existing conditions, that worker's with pre-existing conditions are not disadvantaged in the hiring process because of their pre-existing conditions, and to relieve costs where it would be unfair to charge them to our experience account because the period of disablement is not a reasonable consequence of the compensable accident.

Current policy allows for WCB sponsored treatment for non-compensable conditions as a rehabilitation measure. Where the WCB, in consultation with us, is of the opinion treatment should be provided for a non-compensable condition as a rehabilitative measure, the costs associated with such measure should be relived from our experience. When a combination of compensable and non-compensable factors delay or prevent a return to employability, the WCB often provides assistance to address the combined problems. Cost relief should be applied in situations where payments made are related to conditions that are not compensable, but these present barriers in the return to work (e.g. obesity, rehabilitation surgery, addictions treatment, etc.).

Although the WCB prorates awards based on clinical impairment, full responsibility is accepted for permanent loss of earning capacity if, despite a pre-existing condition, a worker was able to perform the job duties prior to the compensable accident and is no longer able to do so because of the compensable injury. It is suggested that in application, dollar limits be established.

CLAIMS MANAGEMENT AND SERVICE DELIVERY

There are many views about the service experiences (i.e., quality, effectiveness, timeliness) that workers and employers currently have when they interact with the WCB.

5. **Please provide your comments on the timeliness and effectiveness of the WCB claims process.**

Millar Western believes that ensuring processes facilitate timely decisions is desirable but this is not as important as ensuring the end result is a considered and informed decision. Individuals who are rushed to produce quantity versus quality won't make the most informed decisions and may forego review of all available evidence in order to meet an artificial and arbitrary deadline.

Service timeliness has deteriorated over the last few years as has inconsistency in application of policy. In some cases

claims are managed by a variety of WCB work teams which impacts quality of service. Accuracy in adjudication and effectiveness of return to work programs both rely on the knowledge of WCB staff regarding the specific workplace the injured worker is attached to. The WCB should expand and more fully support dedicated relationships between WCB teams and specific employers/industries. Having this core base of knowledge will benefit both injured workers and employers, and is especially important in cases where workers are not continuing to be paid by their employer.

WCB processes work fairly well for physical injuries, however, not as well where the nature of the claim is non-physical or when dealing with complex claims. Once a claim is adjudicated and referred to a case manager, they should have no longer than 72 hours to make contact with an employer and worker. Examples include: where an adjudicator has booked IME & FCE assessments and program admission is put on hold because the Case Manager hadn't reviewed the file after more than a week. We feel that complex claims should be flagged for case management earlier in the process.

In adjudication of claims involving repetitive strain injuries, a model similar to that in BC should be implemented, whereby an Occupational Therapist does an onsite visit prior to the adjudication decision being made to verify that the job qualifies as being repetitive. This process supports evidence based decision making and serves as an example where timeliness is not as important as reaching the correct decision.

Service expectations should be developed with respect to case manager/adjudicator communication with stakeholders. The introduction of a specific performance standard in this area is supported (e.g. WCB response times to both workers and employers). The WCB should also be more proactive in educating employers re: WCB benefits, processes, programs, etc. Employers fund the system and should receive more support and communication from the WCB, in addition to the insurance aspect of workers compensation.

WCB decision writing has declined in the past year. Decision makers are not quoting all applicable legislation and policies (including policy numbers) on a decision, nor are they citing all evidence considered. Referring to WCB business practice rather than WCB policy in handling claims impacted by the wildfire evacuation is a recent example where inconsistency resulted. In some cases, employers have not received a written decision which stalls the appeal process. Failure to communicate changes regarding the interpretation of policy or a change in process, and why the changes were made is also a concern (e.g. payment of TTD benefits after termination for cause).

When a person in Alberta has concerns about the way their claim is being managed they do not have a single window through which to raise these concerns. Instead, they can raise their concerns through the Alberta Ombudsman, the Office of the Information and Privacy Commissioner of Alberta, the Alberta Human Rights Commission, their MLA, and/or the Minister of Labour, depending on the nature of their concerns.

The workers' compensation organizations in Saskatchewan, Manitoba, and Ontario each have a Fair Practices Officer that investigates service delivery complaints and attempts to resolve them. The Fair Practices Officer is a WCB employee who examines, investigates and reports on trends and potential systemic problems to the board of the organization. The Fair Practices Officer cannot change a WCB decision.

In New Brunswick, the Issues Resolution Office offers a secondary review of a claims decision and also acts as an ombudsman to help resolve service issues. The Issues Resolution Office reports to the WorkSafeNB's corporate secretary and general counsel.

6. What are your views about creating a mechanism in Alberta's workers' compensation system that would provide a single window for people to raise concerns about WCB claims management and service delivery? If you support this concept, what could it look like?

Millar Western believes there is merit in establishing a single window to raise concerns about service delivery and claims management. However, it is essential the scope of this new body does not cross into the jurisdiction of other agencies like the Appeals Commission, Alberta Human Rights Commission or Office of the Information and Privacy Commissioner of Alberta. These agencies have legislative mandates and any new mechanism should not attempt to circumvent or replace avenues of appeal or complaint already provided for in legislation. Where issues fall within the mandate of these agencies, the role of the new body should be limited to serving as a referral resource, providing guidance on appeal or complaint processes of other agencies, and recording/reporting issues and trends.

In addition having a centralized, better defined process for bringing forward complaints and providing a platform for reviewing issues internal to the WCB would be value added. While this new body could pursue internal resolution of issues that are not based on appealable decisions, any new mechanism must not have the ability to overturn WCB or Appeals Commission decisions, or to act in any way outside of WCB policy.

We note the experience of the Fair Practices Advocate in Manitoba is that many issues lie outside of appeal mandates, such as the timeliness of adjudication and processing of benefits, courtesy and communication, and the need for apology when things have gone wrong. Confirming there was a thorough investigation of the facts, verifying the facts upon which a decision was based are documented on the claim file and the decision is supported by the facts, and that clear reasons for a decision are documented would benefit all stakeholders. This new body could also provide a venue for bringing forward customer service issues (i.e. were phone calls returned and were questions fully answered). However, having this body judge whether the decision-maker was impartial and open-minded and/or exercised appropriate discretion has the potential to significantly interfere with evidence based decision making. This is allowed under the Manitoba mandate and Millar Western does not support extending the mandate to this extent.

We also do not support a mandate that includes the authority to make recommendations for changing a claim decision. Again, we note the Manitoba mandate authorizes the Advocate to make recommendations to change claim decisions where the decision is viewed as clearly wrong or unreasonable. The definition of clearly unreasonable includes "a refusal to exercise discretion where the facts call for its exercise, that cannot be rationally explained, or that is inconsistent with other decisions with similar circumstances". The Fair Practices Advocate 2014 Annual Report notes "This is a more stringent test than would be applied to the same issues through the appeals process". The Meredith Principles require that decision-making be based on evidence, law, and policy. Introducing subjective opinions into the decision making process to address a perceived lack of fairness violates these principles. The focus and mandate of any new body should remain on introducing a structured, consistent and transparent process for internally reviewing concerns/issues that are not appealable, and recording/reporting of trends to identify proactive measures that could be taken to improve customer service.

MEDICAL SERVICES

The timely communication of accurate medical information can impact decisions about a worker's claim, how their claim moves through the WCB process, and even the worker's income. Physicians and other health providers are therefore key

partners in the workers' compensation system. There are many views about the strength of these partnerships.

7. Please describe your views on the willingness of physicians and other health professionals to interact with the workers' compensation system on behalf of their patients.

For the most part, Millar Western does not believe that the willingness of physicians or other health care practitioners to interact with the workers compensation system is a widespread concern. We feel it is not that physicians/ health care providers do not want to interact with the WCB, but that they are not knowledgeable on the WCB system and processes. This lack of clarity presents the real barrier to effective interaction between health care practitioners and the WCB.

When the Canadian Medical Association developed their policy "The Treating Physician's Role in Helping Patients Return to Work after an Illness or Injury", three key points stood out for us:

- The majority of physicians have not received training on the RTW processes. Educating physicians on the functional model of disability management and thereby eliminating the awkward role where the physician acts as the gatekeeper of entitlement and ability to work was recommended.
- Recognizing the importance of the patient returning to all functional activities including work as soon as possible post injury with resulting improved mental, physical and social well-being. Physicians should be supported in communicating this philosophy to patients post injury and this should be proactively communicated to the general public.
- Development of efficient strategies to combat the ever increasing demands that physicians experience for medical/functional information. While appreciating the immense value of return to work information provided to insurers and employers, we need to recognize the time and priority demands being placed on physicians.

We support the CMA view of the role of the physician in the Return to Work (RTW) process and believe that this lack of understanding and clarity regarding the process and roles is underlying what is perceived to be a lack of willingness to interact with the WCB. In addition to the potential for creating an adversarial relationship, this also creates challenges with respect to timeliness of physician reporting.

While the WCB does not have control over physician behaviour, as a member of the ITF Association, we have taken steps to facilitate dialogue with the WCB and Alberta Medical Association, and to develop a working partnership focused on ensuring processes are successful for the patient (worker), physician and for the workplace (employer). Development of an online training module, physicians could complete on their own time and for which they would receive CME credits, is one recent suggestion. WCB efforts to date have focused on in-person workshops, but this takes physicians away from their priority which is seeing patients.

Millar Western believes that education regarding the importance of the patient returning to functional activities (including work) as soon as possible post injury and the resulting benefits (improved mental, physical and social well-being) should also target a broader audience including workers and the general public. This would reduce the likelihood of a physician being asked to "protect" their patient from being "forced" to return to work. Maintaining a focus on evidence based decision making provides the path for dealing with cases where a return to work is premature without the physician feeling they need to withdraw or take an adversarial position.

The WCB negotiates with physicians and other treatment providers, who have interest and expertise in work-related injuries and issues, for access to their services. This sometimes enables the WCB to have injured workers tested and treated faster

than these services could be accessed in the publicly-funded health system. The WCB pays these service providers directly for these services. The benefit to this is the reduced time it takes injured workers to be ready for employment, and it reduces employer costs.

8. What are your views on the WCB's current process for referring injured workers for medical treatment or services?

It is well established in research that the longer a worker is off work, the greater the likelihood that they will never return to employment. It follows that eliminating delays in accessing treatment results in a reduction in worker pain and suffering, and helps to facilitate timely discussions regarding return to modified work and workplace accommodation as part of the rehabilitation process. The current WCB process of taking injured workers out of the public health care que benefits us and our workers. This is not que jumping, as the Canada Health Act establishes Workers Compensation Boards as being outside the Act. We support the current practice.

There are many reasons for the WCB initiating a referral for treatment or services. Facilitating quicker access to diagnostic testing and treatment has obvious benefits. In addition, the attending Physician is most often the practitioner offering a medical opinion, but they may not be experienced in occupational injuries or have accurate and complete information about the job to make their determination. Referrals are often necessary to determine fitness to work. The determination of "fitness to work (FTW)" is based on establishing a match between the worker's abilities and the demands of the job. If the medical community only knows what the worker can do/can't do, they cannot make that FTW determination. This lack of information/communication can lead to conflicting opinions. To avoid such conflicts, a WCB initiated referral is often the most appropriate course of action, and the expediting of this service is in the best interests of the worker and employer. This should not be perceived as an attempt to deny benefits; the purpose is to ensure return to work is done in a safe and sustainable manner.

We are concerned that the current referral process does create some challenges though. Physicians are generally aware that some medical services (e.g. diagnostic testing, surgery, rehabilitation services) can often be provided more quickly if the condition is recognized as being covered by WCB. This can lead to an increased incidence of physician initiated WCB claims even where the worker did not originally identify the injury/illness as being work related.

In addition any fee differential should not inadvertently incent fraudulent reporting of WCB claims. We believe the additional reporting requirements imposed by the WCB system warrant an incentive for physicians, and that this should be based on reasonably negotiated rates. It is important the system not be sufficiently "rich" that WCB claims can be perceived as a "cash grab" or that the possibility of expedited treatment leads to claim fraud. Referral for treatment must be evidence based, and not provided primarily because it is available through the WCB system. The WCB processes should also not create any practices that jeopardize care available through the public health care system. Despite these challenges, overall we believe the current processes are beneficial to all stakeholders and should be continued.

Opportunities to further optimize technology and expedite sharing of information among practitioners do exist that will result in shortened referral timelines and better communication overall. As one example, a rehabilitation clinic in Calgary shortened referral time considerably when they began to accept forms electronically rather than solely relying on paper forms.

RESOLVING DISAGREEMENTS ABOUT MEDICAL ISSUES IN A CLAIM

There can sometimes be disagreements about the medical issues in a worker's claim. These can affect a worker's benefits.

9. How do disagreements about medical issues impact the relationships that physicians and other health providers have with the workers' compensation system?

Millar Western believes that disagreements about medical issues can lead to a lack of collaboration and information sharing, distrust among the parties and negatively impact the handling of a WCB claim. Adjudication can be delayed or may be incorrect which leads to an increase in claim disputes, and treatment decisions or delays in return to work planning. However, in our experience, the Workers Compensation Board is fairly open to and supports dialogue between WCB Medical Consultants and treating physicians. In addition, WCB guidelines for physicians are designed to provide medical practitioners with the most current medical information and research regarding work-related injuries so that practitioners can prescribe the best possible treatment decisions. They also address fitness-to-work criteria and the criteria that physicians need to be aware of when faced with a worker who sustains a permanent injury.

Continued encouragement of these measures helps ensure all parties are working with the same information and serves to reduce the likelihood of a disagreement between physicians, and between the WCB and health care providers. As noted in the response to question 7, the Canadian Medical Association policy "The Treating Physician's Role in Helping Patients Return to Work after an Illness or Injury" provides actions that can assist in disagreement about medical issues. We believe disagreements related to medical issues can be greatly reduced through a concerted focus on:

- Physician training on the RTW processes. Educating physicians on the functional model of disability management and thereby eliminating the awkward role where the physician acts as the gatekeeper of entitlement and ability to work.
- Recognizing the importance of the patient returning to all functional activities including work as soon as possible post injury with resulting improved mental, physical and social well-being. Physicians should be supported in communicating this philosophy to patients post injury and this should be proactively communicated to the general public.
- Development of efficient strategies to combat the ever increasing demands that physicians experience for medical/functional information. While appreciating the immense value of return to work information provided by physicians to insurers and employers we need to recognize the time and priority demands of the physician.

The role and opinions of WCB Medical Advisors has been challenged by various stakeholders. A main criticism is that they offer their opinion without the benefit of examining the worker. We recognizes that these individuals are experts in their areas of practice and are in the best position to provide guidance in the most effective treatment methodology using evidence based best practice. They have a legitimate role in communicating current information and best practice to other health care providers and should be positioned and promoted as a way to avoid conflicting opinions on medical issues. This also distinguishes the Medical Consultant role from the physician/patient relationship and facilitates independence in decision making based on objective medical information.

In Alberta's workers' compensation system, Medical Panels are used to provide an impartial, independent decision-making process to resolve bona fide conflicts of medical opinions. For example, the Medical Panel can resolve medical disputes between a worker's physician and a WCB medical consultant. The findings of a Medical Panel are binding on the WCB or the Appeals Commission for Alberta Workers' Compensation (Appeals Commission).

Medical Panels are composed of three physician members who are recognized as experts in their field and who are independent from the WCB.

Currently, only the WCB or the Appeals Commission can request a Medical Panel review. Some have suggested there would be value in allowing others (such as workers and employers) to also request a Medical Panel review.

10. **In your view, who should be able to request a Medical Panel review? Why?**

We support the current provisions that allow only the WCB or Appeal Commission to request that a Medical Panel be convened. Millar Western believes there needs to continue to be a structured process in place to ensure that issues put to a Medical Panel are bona fide differences in medical opinion on a medical matter and to ensure the panel process is not misused. Given the specialized nature of physicians serving a medical panel, the draw on the time of panel members, the length of time it takes to convene a panel of specialists and the costs associated with convening a medical panel a mechanism to verify appropriateness of a panel is critical. Panels are generally necessary where there is a conflict of medical opinion between two physicians of equal expertise or specialty, or to answer a medical question necessary to determine entitlement that cannot be determined through other means. However, panels should not be used where there are other methods for resolving a difference in medical opinion and this could become the case if anyone was able to request a panel.

We do support introduction of a formal mechanism that allows either the employer or the worker to request, through the WCB, that a medical question be put forward to a Medical Panel for review. Requests from either stakeholder would be submitted to the WCB and should be supported with a statement of the facts and reasons for the request. The request should not automatically trigger a panel.

The WCB would be responsible for reviewing the request and confirming whether criteria for a referral are met. As part of the process, the WCB would verify that the medical opinion on a medical matter expressed by the injured worker's treating physician(s) is based on all relevant medical information available. A medical opinion must include a full statement of the facts, medical evidence and reasons supporting a medical conclusion.

If this is not evident, the WCB's Medical Advisor would be responsible for communication of all relevant medical information and obtaining an updated medical opinion from the treating physician(s).

Where there is a bona fide difference of written medical opinion on a medical matter that affects entitlement to compensation, the issue would then be referred to a Medical Panel by the WCB. Questions being put forward to the Medical Panel should be provided to the worker and the employer in advance, and both should be afforded the opportunity for input. Realistically, the worker will want to consult with their physician and the employer may want to consult with their occupational health physician or other professional resource so timelines must be sufficient to allow for this step.

Consideration should be given to utilization of the medical panel earlier in the process (i.e. if there are medical conflicts which can't be resolved early in the claim process, it may be helpful to utilize the services of the medical panel). The current process seems to use the panel as a last resort. If a WCB adjudicator/case manager/supervisor could more easily request that a medical panel become involved for adjudicative purposes, it would likely help to expedite a decision and may reduce the use of the appeal system and resources in the future.

The Medical Panel Office performs an adjudicative function, but there are suggestions it could play other roles as well. For example, some say it might be valuable for the Medical Panel Office to provide educational or consultative roles with respect to the WCB's medical consultants.

11. What other roles, if any, could the Medical Panel Office play in resolving medical conflicts? Please describe.

Millar Western believes that placing expectations on the Medical Panel Office for providing an educational or consultative role with respect to the WCB's medical consultants is not practical. Given the specialized nature of physicians serving a medical panel, the draw on the time of panel members, the length of time it takes to convene a panel of specialists and the costs associated with convening a medical panel using a medical panel for this purpose is not an effective use of resources.

We recognize that each claim is unique and any differences in medical opinion that arise must be handled on a case-by-case basis. The process for Independent medical examinations already provides a process to ensure decisions are based on the best medical information available, and are useful in helping to resolve situations where there are conflicting medical opinions on the file. Physicians who have been trained to perform IMEs are selected based on their specialized expertise in the injury or illness. This information, specific to a claim, is available to the WCB Medical Advisors.

Development of a roster of specialists by the Medical Panel Office who are available to consult with the WCB medical consultants would be of dubious value. A process for specialist consultation already exists within the medical community and interjecting the Medical Panel Office into this process is not necessary.

If there are skill gaps in terms of WCB medical consultants, this could more effectively be addressed by reviewing the contractual nature of the medical consultants, and hiring additional consultants to broaden the range of expertise or recruit more specialized medical consultants. These could be contracted or part time positions. It is important that any issues regarding the skills and expertise, or perceptions of bias related to the WCB medical consultants not be addressed in a way that unnecessarily and negatively impacts the ability of the specialized physicians who would be selected to serve on a medical panel to provide patient care. The health care system is already stressed and using the medical panel office to fulfill an educational role would not be a value added service.

RETURNING TO WORK

One objective of Alberta's workers' compensation system is to help the injured worker return to work. An injured worker's return to employment can take several forms.

RETURN TO FULL OR MODIFIED DUTIES AT ORIGINAL EMPLOYER

Ideally, when a worker is capable of doing so, they can go back to their original employer (i.e., their employer on the date of accident). This might entail returning with modified duties based on the worker's abilities, which may be different than they were on the date of accident.

There is currently no requirement under Alberta's Workers' Compensation Act for an employer to return an injured worker to the workplace.

Under Alberta's human rights legislation employers have a duty to accommodate workers with disabilities, unless the accommodation imposes undue hardship on the employer.

Alberta's WCB does not handle disagreements or complaints about non-compliance with human rights legislation. Worker concerns about an employer's failure to accommodate, or employer concerns about undue hardship, must be filed separately with the Alberta Human Rights Commission.

Several other jurisdictions have provisions in their workers' compensation legislation that require an employer and worker to cooperate with return to work efforts.

12. Should the Workers' Compensation Act contain a provision that influences or compels an employer or worker to cooperate on return to work? Why or why not?

We feel the current Act and processes are appropriate to support the WCB's focus to safely restore an injured worker to employability. Millar Western does not support, or see value, in overlapping or competing legislation, which would be the case if the WCB Act and Human Rights legislation both had jurisdiction over accommodation.

With respect to worker cooperation, Section 54 of the Act states "If a worker behaves in a manner that tends to imperil or retard the worker's recovery or refuses to undergo any medical aid that the Board, based on independent medical advice, considers reasonably essential to promote the worker's recovery, the Board may reduce or suspend the compensation payable to that worker." This is reflected in WCB Policy 04-05 Part II, which indicates "A worker, while still recovering from a compensable injury, may benefit from temporary modified employment that helps the worker return to the pre-accident level of employment. In such cases WCB will seek and promote modified work opportunities for the injured worker. When a worker is offered suitable modified employment that is appropriate to his or her physical and medical condition, WCB determines whether it is reasonable for the worker to accept the employment. If it is reasonable, WCB adjusts the worker's compensation benefits accordingly." The overall approach by the WCB should support a progressive case management model and these provisions if applied by the WCB are sufficient to incent workers to meet with the employer to and cooperate in the return to work plan to qualify for compensation benefits.

With respect to influencing or compelling an employer to cooperate on return to work, existing duty to accommodate legislation, in combination with the inherent financial incentives to support return to work programs, is sufficient motivation for our company. A requirement in the WCB Act that compels us to go any further than what is currently required is not practical and will creating conflict with human rights legislation. The appropriate dispute resolution mechanism if an employee believes they are not being accommodated is under human rights legislation. In addition, claim costs drive our employer premium rates, so the motivation is already there for us to support return to work as soon as it is safe for the worker to do so.

We must have the ability to take into account business operations in considering return to work (e.g. seasonal work, operations in remote locations, overall worksite safety, etc.) and need the latitude to continue to make sound decisions that are in the best interests of our workforce as well as our business. In some cases we have legitimate operational reasons for concern regarding an employee's return to work that are outside the scope of workers compensation (e.g. employee relations issues). We must also not be forced into a situation where a worker is returned to work without our being reasonably confident the safety of the worker and others at the worksite will not be jeopardized. For these reasons, amending the WCB Act to compel employer cooperation is not necessary.

13. What challenges do employers face in returning an employee to work? If there are challenges, what additional supports do employers need from the WCB?

One of the greatest challenges is receiving timely information on restrictions and limitations. Often what is provided is not objective medical information and there are no repercussions on the physician for delays in reporting or for incomplete reporting. Millar Western believes that proactive efforts to educate and engage the medical community would assist in

removing a significant barrier that we face.

This challenge is reflected in the Canadian Medical Association policy "The Treating Physician's Role in Helping Patients Return to Work after an Illness or Injury". There were three key points that stood out for us in the CMA policy:

- The majority of physicians have not received training on the RTW processes. Educating physicians on the functional model of disability management and thereby eliminating the awkward role where the physician acts as the gatekeeper of entitlement and ability to work was recommended.
- Recognizing the importance of the patient returning to all functional activities including work as soon as possible post injury with resulting improved mental, physical and social well-being. Physicians should be supported in communicating this philosophy to patients post injury and this should be proactively communicated to the general public.
- Development of efficient strategies to combat the ever increasing demands that physicians experience for medical/functional information. While appreciating the immense value of return to work information provided by physicians we need to recognize the time and priority demands being placed on physicians.

Once a worker returns to modified duties the attention paid to the claim by the WCB drops off. This may be driven in part by the metrics applied within the WCB. The result is claims extending for longer than they should. This lack of priority and attention by the WCB focused on a return to regular duties remains a challenge. Another challenge is presented because claims for the same employer can be managed by a variety of WCB work groups which leads to problems with consistency and quality of service.

Our ability to manage our own workforce is impacted when a worker performing modified work violates a company safety policy, engages in misconduct, or has performance that is otherwise unsatisfactory. The WCB's approach to pay TTD benefits where we have suspended or terminated employment, and therefore terminated modified work shields the worker from accountability for their behaviour and creates a financial "penalty" against us. Examples include failure of a drug or alcohol test, misconduct (workplace bullying through to violence), insubordination, or theft. Other jurisdictions have avenues to consider suspensions or termination of employment for cause and this should be adopted by WCB Alberta.

We believe that keeping a worker on modified duties after a policy violation to avoid the financial impacts of a TTD benefit claim creates a negative work environment. This approach also presents a challenge for the Labour Ministry since there are two sets of public policy that run counter to one another. On one hand, every worker on every site should be safe but because of the WCB interpretation, the message is that if you behave inappropriately on modified work you will still receive TTD or other wage loss benefits even if terminated for cause. The "no fault" provision in legislation was developed with respect to *initial acceptance* of a claim but it is now being applied to situations beyond claim acceptance.

NO RETURN TO ORIGINAL EMPLOYER

When an injured worker cannot return to their pre-accident position, or where there is a permanent disability requiring a work modification, the WCB may provide Vocational Rehabilitation Services. These services are aimed at helping injured workers develop the skills and capabilities that will assist them to reach a state of employability. Vocational Rehabilitation Services can take a varying amount of time to complete, depending on individual circumstances.

The WCB will assist a worker in assessing skills and abilities within their anticipated work restrictions and will help them develop a long-term goal, upon which a vocational rehabilitation plan will be based. The goal is often set with an aim to

maximize the worker's earnings potential. Once the goal and the plan are identified, the worker will start 12 weeks of assisted job search, unless other skills or training opportunities have been identified.

Through the program the worker can access various services, such as short-term skills training or assistance with developing a resume. Potential earnings in the job are assessed using a survey methodology (labour market research conducted by an independent firm).

These can be used to "deem" the worker's earnings (and adjust their benefits), if the worker remains unemployed.

People have many views about the effectiveness of Vocational Rehabilitation Services in helping prepare workers to re-enter the workforce.

14. **In your view, do Vocational Rehabilitation Services provide injured workers with meaningful rehabilitation that prepares them for employment? Please explain.**

Experience in this regard has been inconsistent. In many cases commencement of vocational services has been premature. Employers need to have the opportunity to discuss vocational services prior to implementation, and the failure of the WCB to consistently follow this approach results in cases where vocational rehabilitation services are unnecessary or ineffective. There is no benefit in initiating vocational services where the worker remains job attached and/or where we are able to accommodate. There should be a greater emphasis on Vocational Rehabilitation Services being customized on a case by case basis, rather than being implemented based on a set protocol or driven by performance metrics.

In many cases, the WCB has not been diligent in ensuring that work conditioning and work hardening programs are sufficiently similar to the job and work environment the worker is being returned to. While this may not be possible in all cases, additional attention should be paid to this area (i.e. work hardening by walking in a parking lot versus walking on an uneven surface).

Our company is concerned that there is a tendency to "over rehabilitate" even where the specialists in the field have not identified the need (i.e. the worker has been restored to their pre-injury level of function). It is essential that decisions regarding vocational rehabilitation services be evidence based and made by specialists in this area, rather than having the process driven by case managers who may feel pressured because they are unsure what else to attempt. This misguided focus can contribute to a perception that vocational rehabilitation services are not effective.

It is our understanding that the mandate of the WCB is to return a worker to employability not actual employment. For this reason, the deeming process is essential and must be retained however the process and labour market research being relied on must be fair and balanced. The process and practices related to labour market research should be reviewed and consideration given to how this research will be done going forward. This is a critical area and ensuring that best in class practices are being followed, including the skills and expertise of the individuals doing this important work. A significant number of decisions have been overturned at the Appeals Commission, which could point to a lack of rigor in this regard. There is also a lack of transparency and clarity regarding the database of information that is being used to deem workers.

OTHER THOUGHTS YOU MAY HAVE

15. **Please provide any other comments you have relating to the WCB claims process.**

Millar Western is concerned with the recent approach of the WCB to pay TTD or other benefits where we have suspended or terminated an employee who is performing modified work for cause and feel the policy needs to be reviewed. With no change in the wording of the relevant policy, the WCB informed employers in 2013 that adjudication could not be affected by employment decisions. This in effect extended the no-fault principle to situations where workers on modified duties had been terminated for cause because of their own actions. The Appeals Commission subsequently overturned the WCB's decision to provide benefits in a number of appeals. It is doubtful that Justice Meredith considered modified duties as he formulated the principles of workers compensation so this area needs to be critically reviewed. This issue was scheduled for judicial review, however the cases have either been adjourned or withdrawn. Until there is a legal ruling on this matter, or the issue is revisited by the WCB and stakeholders to bring clarity to the matter employers and workers will continue to be treated unfairly. In order to ensure the WCB's principles of compensation promote prevention and workplace safety, the WCB must accept that the actions of the worker post-incident can indeed remove the worker from the course of employment and from entitlement to disability benefits.

In the interests of both workers and employers, there must be greater clarity regarding how the WCB will handle compensation entitlement when a worker does not comply with a condition of employment (e.g. a drug test, insubordination, workplace violence). The WCB Act should be amended to enshrine the principle that no-fault does not extend to the worker's own post-incident behavior that in effect removes the worker from the course of employment and WCB policy should clearly define circumstances by which the worker has effectively removed themselves from the workplace.

We further feel that identified gaps in processes should be addressed in a timely manner. A recent example is the lack of a policy to address natural disasters. A considerable number of workers and employers have been directly affected by the Wood Buffalo region wildfire. Even though there have been other similar major events, there is no definitive policy on how to deal with the issues presented. The recent evacuation of oil sands workers serves as an example of inconsistency. Some Case Managers enforced payment of TTD benefits for evacuated workers (the employer removed modified work) regardless of the severity of their initial injury while other case managers advised employers to direct workers to file for EI benefits. The WCB was not able to identify a specific policy to guide the decision making process.

There are also opportunities for the WCB to be more proactive in educating smaller employers re: benefits, processes, programs, etc. A stronger WCB/Employer partnership would be beneficial to both workers and employers. We should be getting more support and communication from WCB, beyond just the insurance coverage associated with paying WCB premiums. Another challenge is presented because when our claims are managed by a variety of offices/work groups. This leads to problems with consistency and quality of service. Millar Western feels this is an opportune time to review the Modified Work Policy to ensure it is appropriate and effective in dealing with current workforce challenges.

WCB BENEFITS

When a claim is determined to be eligible, the WCB will provide benefits to the injured worker.

LOSS OF EARNINGS

If a worker misses time from work beyond the day of the accident (a lost time claim), an injured worker receives monetary benefits based on their earnings as of the date of accident. These payments are non-taxable.

In 2016, injured workers eligible for temporary total disability (TTD) benefits receive 90% of their net earnings, up to a maximum insurable earning of $98,700 per year. The 2016 maximum insurable earnings amount translates into weekly compensation payments of $1,225.61.

There are questions about the WCB's current limits on insurable earnings. Some people have suggested that the current limits may be too low, given that wages in several occupations can be much higher than the current maximums. Others have suggested that the current limits should remain unchanged, but that workers should have the option to purchase additional coverage from the WCB for amounts above the current limits.

16. **Please comment on whether the current limits on insurable earnings should be changed.**

All jurisdictions have a cap on insurable earnings and at $98,700 Alberta has among the highest insurable earnings amount. Having a limit on the benefits payable to the worker (i.e. 90% of net earnings up to the Maximum Insurable Earnings amount) which is less than full salary replacement is consistent with recognized short and long term disability insurance practices.

It is important to note that WCB payments are non-taxable and for this reason, 90% of net earnings is an appropriate benefit amount. Taking into account the tax implications under this benefit schedule, depending on the length of time a worker remains off work, it is not unlikely for an injured worker to have a higher income while they are off work than they would if they were not receiving WCB benefits. Any increase in the compensation schedule will increase this likelihood and would create a disincentive to return to work.

The current WCB Alberta formula establishes the maximum insurable earnings amount such that the MIE covers the full wage of 90 percent of workers covered in the province. While there may be a relatively small number of individuals who sustain an injury and whose full salary is not covered, we believe this discrepancy can be addressed within the provisions of existing legislation. Millar Western feels there is no need to increase the MIE to provide for full wage replacement benefits in all cases, and as noted earlier this would be contrary to recognized insurance practices.

The WCB Alberta formula also provides for a COLA and an annual MIE adjustment which is intended to keep pace with wage growth on both an individual and an Alberta wide basis.

The current legislation and policies regarding long term compensation are also appropriate as is the formula and policies regarding adjustments.

17. **Should an option be made available for workers to obtain additional coverage through the WCB? Why or why not?**

The workers compensation system does not contemplate individual coverage paid by workers, and Millar Western does

not support any option for workers to purchase additional coverage through the WCB.

Notwithstanding that this suggestion is contrary to the basic tenets of the workers compensation system, options already exist for workers to purchase additional private insurance outside the WCB system so this is not necessary. We believe that blending a mandatory workers compensation system which is based on the Meredith principles with a voluntary "top up" system of insurance would create an unnecessary administrative burden, and result in confusion and conflict since the two systems are not compatible.

Workers who are concerned about loss of income and who want to purchase optional or additional coverage in the event of an injury or disability should be encouraged to do this outside the WCB system. This is more of an education and awareness issue, rather than a bona fide need to add another layer of worker benefits within the workers compensation system.

BENEFITS ADJUSTMENTS

Benefits can be adjusted through cost-of-living adjustments that are calculated by the WCB using a specific formula. The WCB Board of Directors approves the adjustments, which are effective January 1 of each year.

The WCB's cost-of-living adjustments are calculated on the basis of the worker's earnings on the date of accident. The adjustments do not account for earnings increases the worker may have received due to career progression.

Some suggest that benefit adjustments should take a worker's potential earnings as well as career progression into account. Others say this would not be practical, since it cannot be assumed a worker would have progressed in their career or received earnings increases.

18. **Please comment on whether WCB benefits should recognize career progression.**

Millar Western does not support WCB recognition of career progression or potential earnings. There are too many variables factors which make this a path fraught with significant challenges. Some are within workers control, some involve the continued scope and operation of the employer, and others are impacted by general economic conditions. All would require speculation by the WCB and there is no ability to follow evidence based decision making when the WCB is speculating about potential earnings and possible career progression. Furthermore, WCB benefits are already adjusted for cost of living increases which is the only tangible element related to potential earnings.

We believe that maintaining a WCB system that is fair and balanced is paramount. The WCB does not speculate about or take into account the possibilities of future demotion, termination or restructuring of our operations in making entitlement determinations, so it follows that they should not speculate about career progression either.

The only reasonable exception involves apprentices/learners and the current provisions in this regard should be retained.

DEEMING EARNINGS

Based on the goal that is set for a worker as part of Vocational Rehabilitation Services, the WCB will assess potential earnings in the job using a survey methodology (labour market research conducted by an independent firm). Select employers within each community where an occupation exists are surveyed to determine what they would pay employees hired into these occupations and how those earnings would increase to reflect growing experience for the first five years.

If a worker remains unemployed, but the WCB determines they are fit and ready to work in a potential position, the worker will be deemed capable of performing this work and earning this income. The WCB adjusts the benefits paid to the worker, to reflect the income that the worker is deemed capable of earning. The deemed earnings incorporate increases based on career progression that the worker would theoretically have in the deemed job.

Some people have suggested that this deeming process may not result in successful employment outcomes for injured workers, because the rehabilitation services provided may not have a connection to a worker's employment history nor be based on work realistically available in the economy. Others have suggested that the deeming process makes sense, since it is not always viable for a worker to return to their original position or secure employment when they are ready.

19. **Please comment on the WCB's use of "deeming" earnings for those workers who are not able to return to work with their original employer.**

The mandate of the WCB is to return a worker to employability not actual employment. For this reason, the deeming process is essential and must be retained however the process and labour market research being relied on must be fair and balanced. Millar Western feels that the process and practices related to labour market research should be reviewed and consideration given to how this research will be done going forward. This is a critical area and ensuring that best in class practices are being followed, including the skills and expertise of the individuals doing this important work. We know of a significant number of decisions being overturned at the Appeals Commission, which could point to a lack of rigor in this regard. There is also a lack of transparency and clarity regarding the database of information that is being used to deem workers, which is contributing to our concerns. Jobs being used for deeming purposes must be available and be representative of potential work the injured worker could perform.

In considering this question, we feel the review panel should distinguish between concerns based on operational issues internal issues and those that appropriately can be addressed through policy or legislative changes. Attempting to correct operational challenges or stakeholder dissatisfaction with the current process through policy or legislative changes will do a disservice to both workers and employers.

NON-COMPLIANCE AND EFFECT ON BENEFITS

Where the WCB considers a worker to be non-compliant, the WCB currently has the authority to suspend payment of the worker's benefits.

The WCB can consider a worker to be non-compliant in a number of circumstances.

One circumstance is if an injured worker refuses to participate or cooperate with the WCB's directions regarding medical treatment. This can happen for various reasons. The worker might not agree with the treatment plan; they may wish to see a provider who is not on the WCB's approved list; or they may wish to explore other treatment options (e.g., acupuncture versus surgery).

Another circumstance is when a worker refuses to return to work even though the WCB has deemed them fit to return to full or modified duties. This too can happen for various reasons. For instance, the worker's personal family doctor might disagree and advise them they should not yet return to work.

20. **When circumstances arise that may be considered non-compliant (e.g., refusal to participate in medical treatment, refusal of return to work, etc.), what actions should WCB consider and what should happen**

with a worker?

Section 54 of the Act states "If a worker behaves in a manner that tends to imperil or retard the worker's recovery or refuses to undergo any medical aid that the Board, based on independent medical advice, considers reasonably essential to promote the worker's recovery, the Board may reduce or suspend the compensation payable to that worker." This is reflected in WCB Policy 04-05 Part II, which indicates "A worker, while still recovering from a compensable injury, may benefit from temporary modified employment that helps the worker return to the pre-accident level of employment. In such cases WCB will seek and promote modified work opportunities for the injured worker. When a worker is offered suitable modified employment that is appropriate to his or her physical and medical condition, WCB determines whether it is reasonable for the worker to accept the employment. If it is reasonable, WCB adjusts the worker's compensation benefits accordingly."

A worker has the ability to decide whether or not to attend an appointment, participate in a program or return to suitable modified work. If they refuse a reasonable request, it is the responsibility and the obligation of the WCB to adjust or terminate WCB benefits.

The WCB should initially take reasonable steps to address the underlying issues surrounding the workers refusal to cooperate. If the employee is refusing treatment or to return to work on the advice of their physician, the WCB could take appropriate action to ensure both parties have all available information and understand the reasons for the physician's advice. The physician should be afforded the opportunity to discuss the issue with their patient. Treatment decisions must be evidence based, and if the recommended action is appropriate the worker has the right to refuse but the consequence of this must be an adjustment in benefits payable. Likewise for refusing to return to work. Returning to work is an important element of rehabilitation and it is essential WCB policy, process and practice not reinforce a "wait to get better first" philosophy.

We have a responsibility to protect the health and safety of all of our employees. It seems unlikely that an individual refusing drug/alcohol testing as part of their rehabilitation process would be an individual that we would want to put in a position that may endanger other employees or the public. For individuals with drug and alcohol problems it is imperative the system encourages workers to address a substance use/abuse problem rather than supporting the progression of such illnesses.

The recent approach of the WCB to pay TTD or other benefits where we have suspended or terminated an employee who is performing modified work for cause needs to be reviewed. With no change in the wording of the relevant policy, the WCB extended the no-fault principle to situations where workers on modified duties had been terminated for cause. The Appeals Commission overturned the WCB's decisions to provide benefits in a number of appeals. It needs to be more clearly laid out what WCB will do with respect to compensation when a worker does not comply with a condition of employment (e.g. a drug or alcohol test). Millar Western believes that the WCB Act should be amended to enshrine the principle that no-fault does not extend to post-incident behavior that in effect removes the worker from the course of employment and hence entitlement to disability benefits.

OTHER THOUGHTS YOU MAY HAVE

21. Please provide any other comments you have relating to the WCB benefits process.

As an outcome of this review, Millar Western feels that all benefit policies should be scheduled for review to ensure they

are serving their intended purpose and aligned with the philosophy surrounding workers compensation. At the same time, policies would be amended as necessary to be less ambiguous, which should result in more consistent application by WCB decision makers. Appeal Commission decisions overturning a WCB decision would help to inform the discussion regarding policies that are a priority for review.

WCB decision makers do not consistently apply appropriate WCB policies and legislation when making decision, and decisions are often based on opinion or interpretation. Section 44 of the WCA is one of the problem areas.

The recent approach of the WCB to pay TTD or other benefits where we have suspended or terminated an employee who is performing modified work for cause and decisions need to be reviewed.

When an employee has removed themselves from the course of employment by being impaired on the job the reasonable limits on the insurance provided by WCB have been violated. Clearly WCB is mandated to provide compensation to an injured worker. This does not extend to absolute entitlement. The entitlement arises out of a relationship: employer and employee. The worker has the right to compensation for the workplace injury but also the responsibility to their role in the relationship out of which this compensation arose. We feel that the WCB needs to be clearer with respect to compensation when a worker does not comply with a condition of employment with our organization (e.g. a drug test, insubordination, workplace violence). The WCB Act should be amended to enshrine the principle that no-fault does not extend to post-incident behavior that in effect removes the worker from the course of employment and hence entitlement to disability benefits.

As businesses, we have to be able to deal with employees whether on modified work or not. We have set standards that must be met for both the safety and functionality of the business. Continuing to cover a worker, once they have basically removed themselves from employment, is not practical and opens the system up to abuse and does not hold the employee to any accountability. WCB policies make it very difficult for an employer to treat an injured worker in a manner that is consistent with other workers. Workers have other avenues through which they can deal with their suspension or termination if they believe our actions are unfair.

REVIEW AND APPEAL OF WCB DECISIONS

The Workers' Compensation Act establishes a review and appeal process in the workers' compensation system. The Act provides for an internal review and an external appeal for issues brought forward by either workers or employers.

THE DISPUTE RESOLUTION AND DECISION REVIEW BODY

A person with a direct interest in an adjudicative decision or an employer account decision can request an internal review of that decision by the Dispute Resolution and Decision

Review Body (DRDRB). Members of the DRDRB are WCB employees.

The DRDRB is able to review issues related to entitlement to benefits. Generally the parties to a DRDRB review are the worker and the employer. The DRDRB will review the file material, gather information and submissions from the parties, and attempt to facilitate a resolution.

The DRDRB is a required step before an appeal can be made to the Appeals Commission. DRDRB decisions are not binding on the WCB.

22. **Please provide your views on the effectiveness and timeliness of the DRDRB process.**

Millar Western agrees with the AFPA and ITF's assessment that the DRDRB provides a valuable function in that many issues are resolved internally and the number of claims that go forward to the Appeals Commission is reduced through this process. Having this additional level of internal review is of benefit to all stakeholders and provides for a more timely resolution of issues where this can be accomplished. In addition, going through the formal appeal process is costly so this body has the ability to resolve issues before the expense of an appeal is incurred.

As noted in the response to other questions, decisions must be evidence based and the DRDRB allows for a second level of review within the WCB. For the DRDRB to effectively fulfill its mandate, it is essential that staff have the skills and expertise to provide an objective and informed recommendation, and to work towards an appropriate resolution. The DRDRB must not be given the ability to act outside policy and legislation.

While there may have been frustration expressed about the functioning of the DRDRB, greater transparency and communication regarding the work that is done by the DRDRB could assist in increasing stakeholder understanding of the value of this function.

A person has one year from the date a WCB decision was issued to request a review of that decision by the DRDRB. Some people say that this period is too short. Others say the one year limit is sufficient, since there is an opportunity to request extensions.

23. **What are your views about the one year limitation period to file a request for a DRDRB review?**

The timeline to request a review is consistent with most Boards who have either a 1 year or a 6 month timeline Millar Western believes 1 year is reasonable and see no reason to change this.

Consideration should be given to extending timelines at the stage when one of the parties is responding to information

provided to the DRDRB by the other party (i.e. if responding to a worker appeal, we, as employers need sufficient time to review the information, and obtain necessary input from our workplace or occupational health and safety practitioners). We feel that ensuring all parties are afforded sufficient time will facilitate better decision making at the DRDRB level and reduce the number of appeals that go forward because not all information could be considered in reaching a decision.

APPEALS COMMISSION

The Appeals Commission is a body established under the Workers' Compensation Act that is separate from the WCB. The Appeals Commission has adjudicators appointed by the Government of Alberta through a public recruitment process, as well as the Chief Appeals Commissioner, who also acts as CEO of the Appeals Commission.

The Appeals Commission has the authority to examine, inquire into, hear and determine all matters and questions arising under the Act in regards to decisions made by the DRDRB. The Appeals Commission may confirm, vary or reverse a decision of the DRDRB, and it may entertain new evidence during the appeal hearing. The Appeals Commission is required to follow the provisions of the Act and WCB policies.

The Appeals Commission is required to provide all persons with a direct interest in a matter the opportunity to be heard and to present any new or additional evidence. It must also permit the WCB to present to the Commission regarding the proper application of WCB policies, the Act or regulations related to the matter under appeal.

24. **Please provide your views on the effectiveness and timeliness of the Appeals Commission process.**

The structure is set up well with the Appeals Commission operating independently of the WCB. We appreciate the transparency of the publication of Commission decisions on the Can LII website, inviting employers to serve as one representative on panels interviewing prospective Commissioners, and periodically meeting with stakeholder groups to discuss metrics, annual statistics, challenges and use of the funds provided via an allocation from WCB levies are all positive features of the process. Millar Western commends the Appeals Commission for efforts in recent years to improve and streamline processes, and ensure a fair and balanced system exists.

Regarding the length of time to schedule a hearing and the length of time to render a decision, we note timelines for Alberta are much shorter than in other jurisdictions. While timeliness is important, adhering to a timeline is not as important as reaching considered and informed decisions. This is especially important at the Appeals Commission level since this is the final level of appeal. We agree with the ITF's assessment that an overemphasis on timelines may result in individuals being rushed to produce quantity over quality and may inadvertently forego review and consideration of all the available evidence in order to meet an artificial and arbitrary deadline. A performance focus on timeliness of the appeals process does exist, however moderating the emphasis on timeliness by reinforcing metrics regarding excellence in decision making may facilitate better decision making.

Our company believes that the use of technology should also be optimized to provide electronic communications regarding claims and appeals so the stakeholders can more effectively prepare to participate.

Presently, during a hearing the Appeals Commission limits its examination to the matters that are the subject of the appeal. Some have suggested the Appeals Commission should examine all issues impacting a claim, beyond the specific matters under appeal, if it is possible to resolve the matter in its entirety. Others say this would not be desirable, as it would raise the possibility of the Appeals Commission wading into matters that neither party wanted to revisit.

25. What discretion, if any, should the Appeals Commission have to examine issues relating to a claim that might not be the subject matter of the appeal, but might resolve the matter in its entirety?

The Meredith Principles, which are the tenets upon which the Canadian workers' compensation systems were built, require that decision-making be based on evidence, law, policy and a fair, impartial and transparent process Millar Western strongly believes that these same principles must be applied at the Appeals Commission level and the Appeals Commission must be bound by both legislation and policy.

In the interests of ensuring an evidence based, fair and transparent process the Appeals Commission must be restricted to only review identified issues of appeal and for which a decision has already been reached by the WCB/DRDRB.

Although we are strongly opposed to the Appeals Commission having the mandate to examine decisions related to a claim that were not initially identified as the subject matter of the appeal, we recognize that in order to streamline the process there is merit in having new issues and evidence accepted once an appeal has been initiated. In order for this to be manageable, it is important to have strict timelines within which new evidence or other issues must be formally tabled and shared with all parties.

RECONSIDERATION OF APPEALS COMMISSION DECISIONS

The Act allows for the reconsideration of Appeals Commission decisions. A re-consideration is not an appeal. Currently, there must be very good reasons for a reconsideration application to be successful. These reasons include:

- the presence of relevant evidence that was not available at the time of the appeal decision and which is likely to change the result of the original decision; or
- a significant defect in the appeal process or the content of the decision.

Some have suggested that the criteria the Appeals Commission considers for reconsideration of appeals may require more flexibility.

26. What factors should be considered by the Appeals Commission when determining whether a case should be reconsidered?

We believe the current legislation and policy are fair and reasonable, and should not be changed. A request for reconsideration should not be used by any of the parties as a means to arrange a second hearing if dissatisfied with the outcome. The need for finality of the appeal process requires that the test applied in a reconsideration threshold review be very high. Millar Western suggests that reconsideration must not become an appeal of the Appeals Commission decision which is intended to be the final decision, nor be allowed to become an opportunity to re-argue the original appeal.

Reconsiderations should only be granted where a significant defect in the appeal process or content of the decision is shown, or in situations where new evidence is accepted by the Appeals Commission and it is determined that it would have changed the decision. The party asking for reconsideration must be able to provide a good rationale that points to a serious defect in the original appeal decision. This could include a significant defect in the appeal process itself, or in the content of the decision, which would likely change the result of the original decision in order for a reconsideration request to be approved.

Reconsidering a decision rightly allows the Appeals Commission panel to consider relevant evidence that was not available at the time of the appeal decision and to correct a significant defect in the appeal process or content of the

decision.

GETTING HELP AT THE REVIEW AND APPEAL STAGES

The WCB operates an Office of the Appeals Advisor, which makes advisors available to inform and represent workers through the review and appeal processes.

For example, an advisor can help a person determine whether they have grounds for review or appeal of a decision. An advisor may also suggest alternatives to filing an appeal. Advisors can accompany workers and represent them at Appeals Commission hearings.

Some people question whether the Office of the Appeals Advisor is able to provide impartial and effective advice to workers, since it is not independent from the WCB. Others feel the services being provided by the Office of the Appeals Advisor are effective.

27. **What are your views about the ability of the Office of the Appeals Advisor (OAA) to offer impartial and effective advice to workers?**

In order to increase the credibility of this office, Millar Western recommends the establishment of the Office of the Appeals Advisor within the Ministry of Labour, and the office should operate at arm's length from the WCB.

While in theory, the Office should be in a position to offer impartial and effective advice to workers, the perception of bias because the OAA is established within the WCB will be difficult if not impossible to overcome. As long as the Office of the Appeals Advisors remains internal to the WCB and is staffed by WCB employees the concern regarding the OAA operating in a conflict of interest position will remain.

Currently, the Office of the Appeals Advisor is not available for employers. Employers can access the Employer Appeals Consulting Service (EACS), which is provided by WCB account managers.

EACS can help employers understand the facts, policies and legislation used to make a specific decision, and help them determine whether to proceed with a formal review or appeal.

EACS will not accompany or represent an employer at an appeal. EACS will offer advice to an employer on how to present their position in an appeal.

Some people have suggested that employers should have access to WCB-funded representation at an appeal, similar to what workers have in the Office of the Appeals Advisor.

28. **Should employers have access to WCB-funded representation at appeals? Please explain.**

Definitely, we should be provided with equal access to WCB funded representation as is afforded to the worker. The Meredith Principles, which are the tenets upon which the Canadian workers' compensation systems were built, require a fair, impartial and transparent process.

Not all employers have the discretionary funds to hire a representative to represent them through the appeal process and the Office of the Appeals Advisor, acting solely as an advocate for the worker, is inherently unfair. The presumption by the WCB that all employers have the knowledge and resources to effectively participate in the Appeals process is inconsistent with the principles of natural justice. Many employers lack the knowledge and resources to take on appeals

and should be able to access an employer appeal advisor to represent them.

As with the Office of the Appeals Advisor, Millar Western recommends the establishment of an independent Employer Appeals Office, within the Ministry of Labour, also funded through an allocation of WCB premiums. This office should be established at arm's length from the WCB.

The existing Employer Appeals Consulting (EAC) service offers limited advice for employers and no representation in an appeal. Because the service is so limited, employers are encouraged instead to hire external consultants. This creates a more costly and often a more adversarial appeal process.

The provinces of BC, Ontario, and Prince Edward Island provide employer appeals advisors independent of the WCB. The BC Office mandate is instructive - "Employers' Advisers provide independent advice, assistance, representation and education to employers, potential employers and employer associations concerning workers' compensation issues under section 94 of the Workers Compensation Act. In fulfilling this mandate, Employers' Advisers:

- Assist and advise employers, potential employers, and employer associations in understanding, working and complying with WorkSafeBC issues in Claims, Assessments and Prevention.
- Respond to inquiries about workers' compensation legislation, decisions, appeals and related matters in Claims, Assessments and Prevention.
- Prepare submissions on behalf of employers to WorkSafeBC, Review Division, Workers' Compensation Appeal Tribunal (WCAT) and assist employers in cases involving complex legal, medical or policy issues.
- Conduct seminars and public speaking engagements on occupational health and safety issues, prevention, claims management, assessments and appeals.
- Consult with WorkSafeBC officials to review and make recommendations to the Policy Department, Executive and Board of Directors.
- This service is available to all employers or potential employers free of charge."

PRIVACY AND CONFIDENTIALITY

When a worker appeals a decision, the WCB is required to provide the Appeals Commission with its records and information, including personal information (e.g., medical) relating to the claim or matter that is under appeal. The WCB is also required to provide the Appeals Commission with the written decision that is being appealed.

On request, the worker (or the worker's representative), the employer (or the employer's representative), and any other person with a direct interest in the claim may also receive redacted copies of this information from the WCB.

Recognizing that privacy rights are important to everyone, it makes sense to consider how information sharing takes place in the appeals process. Questions have arisen regarding what and how information about a worker's claim is presently shared with parties.

29. **Are the safeguards currently in place by the WCB adequate to protect worker information during the appeal process? If not, what safeguards would increase your level of confidence?**

Yes the safeguards currently in place are sufficient. There are many existing provisions in legislation and policy that adequately protect worker right to privacy. Employers require access to certain information in order to be able to make decisions and appropriately represent ourselves in an appeal. There are provisions within the FOIP process that safeguards right to privacy as well as allows for disclosure of allowable information. The WCB has a mandate to follow

relevant legislation, and we feel emphasis should be placed on ensuring that requirements are met rather than introducing new or additional requirements.

The Meredith Principles, which are the tenets upon which the Canadian workers' compensation systems were built, require that decision-making be based on evidence, law, policy and a fair, impartial and transparent process. Millar Western asserts that any move to amend legislation to further restrict access to information in an appeal would be a violation of these principles.

That said, there are some jurisdictions that allow for the parties to review information that will become part of the documentation for an appeal in advance of information being released to other parties. This affords them the ability to request that specific information be redacted and the request is ruled on prior to information being disclosed. Consideration could be given to introducing a similar approach in Alberta but that still ensures full and appropriate disclosure of information relevant to the appeal.

OTHER THOUGHTS YOU MAY HAVE

30. **Please provide any other comments you have relating to reviews and appeals.**

The requirements of the Alberta Public Agencies Governance Act (APAGA) regarding term limits for appointees should be balanced by careful consideration of the needs of the stakeholders of the Workers' Compensation system in Alberta. Our Industry Association – AFPA, through the ITF Association, has written to previous Ministers as far back as 2013 expressing concerns with the impact of the APAGA on the Appeals Commission for Alberta Workers' Compensation. We appreciate the importance of term limits for certain appointments to public agencies, however we also strongly believes governance policies must ensure public agencies are able to operate effectively while maintaining the public interest. It has always been our view that applying the term limit provision to appointees to the Appeals Commission for Alberta Workers Compensation has a serious negative impact on the ability of the Appeals Commission to fulfill its mandate and obligations to the workers and employers of Alberta.

Commissioners are merit-based appointments selected through a structured process that involves key stakeholder representation. Commissioners conduct over 1100 hearings per year and the Appeals Commission is amongst the most heavily tasked quasi-judicial bodies in Alberta. The Appeals Commission is the final level of appeal in WCB matters. Matters that reach this level of appeals are complex and often heavily contested.

In our experience, it takes 3-5 years for a Commissioner to acquire the knowledge and hands on experience required to fully function in this role. Hearing Chairs have an even more complex role. Based on the most recent annual data there are 51 commissioners, 18 of whom serve as full-time hearing chairs. In the period between 2013 and 2014, we understand the Commission lost the contribution of 17 commissioners, including 11 hearing chairs with a cumulative experience exceeding 132 years due to a combination of natural attrition overlaid by the term limit imposed by the APAGA. This unprecedented loss of experience because of arbitrary term limits impairs the Appeals Commission's ability to fulfill its adjudication responsibilities as well as its ability to recruit, train and mentor new commissioners. Term limits for several Commissioners end in 2016, including at least 4 hearing chairs.

There are several alternatives that could be considered:

- Exempt the Appeals Commission from APAGA by regulation, managing attrition of commissioners based on objective performance metrics.

- Exempt hearing chairs from APAGA term limits subject to objective performance metrics while leaving part-time members subject to APAGA term limits.
- Differentiate between service as a part-time Commissioner and service as a full-time hearing chair; differentiate between service as a hearing chair, and a vice chair and/or chief appeals commissioner. Currently all-time service as a Commissioner is counted under APAGA.

We note controversy has been generated based on a perception that employers are funding the appeals system and that the Appeals process is not operating independent of the WCB. A simple bookkeeping exercise whereby the Appeals system is paid from General Revenue and then reimbursed by the WCB will address these concerns. Radical changes in legislation or policy are not needed.

Regarding services available to claimants, it was suggested that legal aid could be available to claimants. Millar Western agrees with the ITF that the Office of the Appeal Advisor exists to provide this service and extending legal aid services to WCB claimants would be an abuse of the legal system.

WCB GOVERNANCE

The Workers' Compensation Act establishes the WCB and sets out the WCB's powers and how it is governed. People have many views about these subjects.

BOARD OF DIRECTORS OF THE WCB

The WCB is governed by a Board of Directors, which is appointed by the Lieutenant Governor in Council. Among its roles, the Board of Directors:

- guides the WCB's strategic direction;
- appoints and evaluates the performance of the WCB's President and CEO;
- determines the salary and benefits of the WCB's President and CEO which are paid out of the Accident Fund;
- approves and monitors the WCB's administrative budget and financial results;
- provides oversight of the WCB's management of its business and affairs; and
- is responsible for establishing the operating policies of the WCB.

The Board consists of a Chair, and up to three members considered to be representative of the interests of each of: employers, workers and the general public. Varying opinions have been expressed about the relationship between these board members and the stakeholders they are considered to be representative of.

31. **What involvement, if any, should stakeholders have in the nomination and recruitment process of WCB directors?**

Millar Western believes that Employer/Industry Associations should have direct input on their designated representatives. This would require that the Board recruitment be lengthened so that stakeholders are given sufficient time to recruit and put forward candidates for consideration. The same consideration should be given to broad stakeholder groups representing workers.

Broad stakeholder groups representing workers and employers should also be involved in the recruitment/ selection process as they are for the Appeals Commission. For Appeals Commission recruitment, both worker and employer representatives are involved in the final interviews and reach a consensus recommendation which is put forward to the Minister. Alternately, employer and worker representatives should be additionally vetted by representatives of the groups they will be representing prior to going forward to the Minister for approval.

The three candidates in each representative category should be a reflection of the stakeholder group they are designated representatives of and be drawn from a variety of backgrounds. It is essential that these positions not become political patronage appointments and should be competency based with a focus on the capabilities required.

32. **How do you (or your organization) currently provide input to the Board of Directors? What works and what could be improved?**

In our experience, as a member of the AFPA and ITF through AFPA, we know there is little to no opportunity to provide input to the Board of Directors. All communication appears to flow through the WCB Executive team and employer stakeholders have no feedback regarding what will be or what has been discussed by the Board of Directors. There has been no effort to obtain input from employer stakeholders whatsoever.

Ideally Millar Western would like to see a requirement that Board representatives regularly consult with the group they represent and have a meaningful dialogue on issues in advance of significant decisions being made by the Board. This would not preclude Board representatives from acting in the best interests of the system when they are at the table, but they need to be cognizant of views of their stakeholders when called upon to reach decisions that are in the best interests of all stakeholders.

The WCB Corporate Governance policy should be revised to oblige that all of the WCB Directors meet regularly with broad stakeholder groups such as the ITF Association (for employers) and the WCB Labour Coalition (for labour)

While the minutes of the meetings of the WCB Board of Directors are accessible on the WCB website, they contain little detailed information, limiting transparency. Currently, stakeholder confidence in the WCB governance is undermined because there is very limited accessibility to the WCB Alberta Board of Directors and there is no obligation for them to communicate with stakeholders. There is no publication in advance of a meeting regarding what will be discussed, which limits the ability of stakeholders to help inform the discussions. There is also no opportunity for direct input in advance of the Board making policy decisions.

As employers there is no system that allows us, as a major stakeholder, to bring issues forward through the Board of Directors. We have difficulty understanding how the employer representatives can put forward employer positions when they make no effort to find out what these positions are. Too often it appears that Board members rely solely on WCB staff for information and we do not support the WCB administration putting forward their interpretation/understanding of the position of stakeholders in lieu of Board consultation with stakeholders.

WCB CORPORATE OBJECTIVES AND KEY DELIVERABLES

On an annual basis, the WCB Board of Directors establishes corporate objectives and key deliverables.

Some of the measures and their results (from the 2015 WCB Annual Report) include the following:

- Returning injured workers to a state of fitness needed to return to work. With WCB support, 92.5% of injured workers achieved the fitness needed to return to work.
  This result exceeded the target of 90%.
- Delivering fair decisions. Decisions are reviewed and audited to ensure they are fair. WCB's average audit score of all decisions audited was 94%.

Performance targets can drive the culture of an organization. Some have expressed concerns about how the achievement of corporate performance targets such as early return to work for injured workers are being rewarded. Others say that an injured worker's chances of successfully returning to work increase significantly if they return to work within 3 months. Based on this, they suggest that the WCB's performance measures are valid.

33. **What are your views on the performance measures and targets currently set by the WCB? Are there additional or alternate measures you feel would be appropriate?**

Millar Western commends the WCB for a clear and consistent focus on alignment of goals, strategies, performance measures and communication. WCB reports provide us and other stakeholder groups with relevant and concise information on achievement related to the core goals of commitment to decision fairness, focus on safe return to work, leveraging prevention, and financial stability. That said, we note that changes in financial reporting in particular do not provide as much clarity as in previous years. We recommend that improvements be made in the quality and timeliness of

data available to stakeholders.

Regarding the WCB Corporate Scorecard and performance measures, the most effective way to improve performance is to measure and evaluate against established metrics, but we recommend a review of the current metrics to ensure they are relevant to WCB goals and will lead to the desired outcomes. Performance measures can inadvertently lead to poor decisions that align outcomes with the performance measures (e.g. fast decision making is not necessarily good decision making so using these measures as performance indicators may not be as appropriate as measures related to quality of decisions). Millar Western feels that the extent to which the current measures lead to the denial of claims or influence how a claim is then managed warrant a review.

With respect to the reward structure for Executive and WCB staff, any reward structure unless carefully crafted to promote desired behaviors can have negative unintended consequences. The current model seems at times to be overly activity-based rather than claim-specific results based. We suggest that consideration be given to introducing performance standards related to response times to both workers and employers.

Jurisdictions across Canada utilize differing definitions for similar measures, making comparisons difficult. In some Atlantic provinces (for example), there is a waiting period of 3-5 days for claims before they become lost time claims. So while Alberta's WCB considers any claim with a replacement of worker wages to be a lost time claim, Atlantic WCBs would not have any 1-2 day claims, where in Alberta we would. There is no opportunity to adjust for that type of nuance in the data reporting when looking at WCB Alberta statistics compared to other jurisdictions.

POLICIES OF THE WCB

The Board of Directors determines the need for and nature of consultation in its policy development process (i.e., when a policy is developed, changed or evaluated).

On an annual basis, the WCB creates a Policy Development Plan that identifies the issues it plans to address during that year. In addition, if a stakeholder believes a policy should be changed, they can send in a written request to the Chair for a policy review.

The WCB has established a policy and consultation process which includes:

- Issue Identification;
- Research and Analysis;
- Policy Development/Amendment;
- Stakeholder Consultation;
- Approval and Implementation.

Consultation can include public and/or expert consultation. For the most part, consultation is conducted through the WCB website (posted for 60 days). Depending on the nature of the issue, the WCB may convene an in-person meeting.

Stakeholders can subscribe to receive an email notice when the WCB's Policies and Information Manual is updated online, or when a new policy is posted for consultation.

In British Columbia, there is a Policy and Practice Consultative Committee made up of representatives from WorkSafeBC (the WCB equivalent in BC) and the employer and worker communities. The committee provides input and advice to WorkSafeBC's senior executive on stakeholder consultation processes, stakeholder perspectives on priority issues (e.g.,

policy, legislation) and the identification of stakeholder issues. In addition, on behalf of their communities, the committee is a forum to receive updates on key operational initiatives and share relevant information.

In Alberta, the WCB covers over 2 million workers and thousands of employers. The WCB's policies have wide-reaching consequences in the province, so it is important that its policy development process is adequate and effective.

34. **In your experience, is the WCB's current policy development process effective? Please describe how you would like to be consulted in the development of WCB policies.**

The WCB's current policy development process includes: advance publication of policies to be reviewed for the coming year, and in the past has involved online review of draft policies. Millar Western suggests that the WCB formalize in its process, the use of in-person multi-stakeholder consultation, where the anticipated change will incur costs above a threshold (for example, where costs impacting those most affected by the change are going to increase by more than 5%). The projected costing should be signed off by the Board Chair and communicated to stakeholders as part of the policy consultation process.

Previous consultations where multiple stakeholder groups were involved created the opportunities to share perspectives and increase stakeholder understanding of the potential impacts and implications of the change. Many employers operate in more than one province, and through this process we were also able to share approaches to the same policy issue that are employed elsewhere.

On all issues that will result in a direct cost impact for employers, either positive or negative (cost relief, combining experience, poor performance surcharge, etc.), the WCB should hold face-to-face meetings with employer groups where the WCB can present their position, and stakeholders can ask questions, understand the position of other groups, and all stakeholders gain a better understanding of the reasons and the impact of the proposed changes. These types of changes do not require the large, multi-stakeholder policy consultation meetings.

The WCB also needs to be more proactive in educating smaller employers re: policies and in communicating policy changes.

REVIEW OF THE WORKERS' COMPENSATION SYSTEM

The last comprehensive review of the workers' compensation system in Alberta was conducted more than 15 years ago.

The Alberta Public Agencies Governance Act contains a general requirement for the Minister to review each agency's mandate and operations every seven years. However, there is no requirement in the Workers' Compensation Act to conduct a review of the entire workers' compensation system within a specific time period.

Other Canadian jurisdictions have requirements in their legislation to review their workers' compensation statutes and regulations on a regular basis. For example, Saskatchewan has a requirement to conduct a review every four years; Newfoundland and Labrador every five years; and Manitoba every ten years. Some have suggested Alberta should adopt a similar requirement.

35. **What are your views about amending Alberta's Workers' Compensation Act to require that the government review the workers' compensation system on a regular basis?**
If you support this approach, how often should such a review occur?

We support amending the Act to require a review of the workers compensation system every 10 years. Conducting a review is time consuming if done properly, and sufficient time is also required to implement and get accustomed to the new provisions before initiating another review. A more frequent review cycle would create uncertainty and confusion in what is already a complex system.

OTHER THOUGHTS YOU MAY HAVE

36. **Please provide any other comments you have relating to the WCB's governance.**

The Meredith Principles, which are the tenets upon which the Canadian workers' compensation systems were built, require that decision-making be based on evidence, law, policy and a fair, impartial and transparent process. In order to meet this requirement, the WCB and the Appeals commission must remain independent and operate at arm's length from government.

Millar Western strongly believes that the Board of Directors, comprised of stakeholder representatives, must have the mandate to oversee the operation of the Workers Compensation Board without undue influence or pressure from government.

PREVENTION OF WORKPLACE INJURY AND ILLNESS

Occupational Health & Safety (OHS) falls under different provincial legislation, so the WCB Review is not intended to conduct a detailed examination of OHS.

However, since the workers' compensation system impacts OHS, the WCB Review will examine interactions between the system and OHS. People have many views about this subject.

ROLE OF WCB IN PREVENTION

The OHS program in Alberta is responsible for improving workplace compliance with OHS legislation through evidence-based prevention initiatives, education and enforcement activities. OHS is located in the Ministry of Labour.

Among its functions, OHS:

- is responsible for prevention activities that include: Work Safe Alberta; proactive strategic programs; the Certificate of Recognition (COR) Program; and the Work Right Campaign;
- educates workers, employers and the public through the use of bulletins, publications, e-learning programs and other educational materials;
- approves training programs across Alberta, such as Workplace Hazardous Materials Information System (WHMIS) training, First Aid training, and Spirometry and Lung Function training;
- approves worker permits, such as the Blasters Permit Program and the Asbestos Permit Program.

The funding for OHS in Alberta is provided through the WCB. This approach is consistent with other jurisdictions in Canada. In some jurisdictions, however, OHS and workers' compensation are housed in one organization.

The WCB also administers grants of annual operating funding to seven Alberta safety associations, for the purpose of promoting education in accident prevention to employers.

These grants are funded through a levy that is added to the WCB premiums of employers in the represented industries. In some industries, safety associations are funded directly by member contributions.

Some people have indicated it is currently unclear who safety associations are accountable to.

It is also unclear whether there are regular evaluations of the outcomes being achieved by safety programs and associations.

37. **What role should the WCB or Occupational Health & Safety have in the funding and oversight of safety associations?**

The current practice of employer funding of 'safety associations' through a WCB premium levy ensures all eligible employers in an industry contribute financially to a consistent standard of safety education, training, and audit programs. The transaction of collecting the premium levy and distribution to safety associations should be the only involvement of the WCB with regard to safety associations. This was deemed to be an expedient way to collect funding, but safety Associations are not and should not be considered part of the WCB system.

Safety Associations all have a governance structure that includes oversight by an elected Board of Directors by their membership. The Boards approve funding and are responsible and accountable to their membership for monitoring activities of the Association. The membership is comprised of employers and other stakeholders as appropriate. There is no need for the WCB to have any involvement in oversight of these associations, however the WCB should continue to periodically confirm employer support to fund the safety associations.

Millar Western disagrees with the opening premise that the workers compensation system impacts OH&S and therefore the WCB Review should examine interactions between the WCB system and OHS. They are two independent systems with different mandates and roles. We believe the mandate and role of Occupational Health & Safety with respect to safety associations is outside the scope of this WCB review.

38. **Please provide your insights below on the accountability of safety associations and the evaluation of their safety programs.**

Safety Associations all have a governance structure that includes oversight by an elected Board of Directors. The Boards approve funding and are responsible and accountable to their membership for monitoring activities of the Association. The membership is comprised of employers within the industry and other stakeholders as appropriate. Mechanisms satisfactory to the membership who fund the association are already in place for ensuring accountability of safety associations and evaluation of safety programs. Associations are funded by employers, and the accountability of these Associations is to their members.

The evaluation of safety programs is outside the scope and competence of the WCB. We disagree with your opening premise that the workers compensation system impacts OH&S and therefore the WCB Review should examine interactions between the WCB system and OHS. They are two independent systems with different mandates and roles. We believe the mandate and role of Occupational Health & Safety with respect to safety associations is outside the scope of this WCB review.

HEALTH AND SAFETY INFORMATION

Information gathered by the WCB represents the only available source of health and safety information that can be compared across employers and industries. This information is useful in setting health and safety policy and program direction. It is also often used by the public to evaluate the health and safety performance of Alberta's employers.

The users of WCB information are diverse, including: the Government of Alberta; industry and safety associations; employers; researchers; health practitioners and service providers; workers; unions; other jurisdictions; and the public. The types of information available are also diverse, including: industry level claims; employer level claims; injured workers demographics; injuries and illnesses claims; and financial aspects of employers and claims.

39. **How is the data currently gathered by the WCB meeting your safety and injury prevention needs? Please describe.**

The use of WCB claims data as a key measures to drive prevention is a significant concern to Millar Western; WCB data is meant for insurance purposes, not as a metric of safety performance.

The WCB is an insurance company and has a role to gather and analyse data for insurance purposes. Dissemination should be limited to aggregate data used to monitor the performance of WCB related programs and activities. An

employer advisory team established for the purpose of providing information and advice on WCB related matters and action planning based on current data would be beneficial.

The use of insurance claim data for the purpose suggested in this question will provide employers with flawed data upon which to base their assumptions. The integrity and interpretation of WCB data has also been a long standing concern and continues to be so. WCB data is relevant only for insurance purposes and it is not appropriate to be used for safety and injury prevention purposes. Injury prevention activities are outside the mandate of the WCB.

Millar Western feels that the WCB should NOT have any role in dissemination of individual company statistics to other organizations especially when the data may be misinterpreted or used inappropriately. The WCB does have a role in confirming insurance is in place.

With respect to injury prevention, these metrics should be true measures that reflect leading indicators. Responsibility for injury prevention rests with OHS not the WCB, and OHS should work with industry to develop appropriate leading indicators that correlate with a demonstrated reduction in injuries and that do not rely on WCB reporting based on insurance claim data.

As a further caution, jurisdictions utilize differing definitions for similar measures, making comparisons difficult. In some Atlantic provinces (for example), there is a waiting period of 3-5 days for WCB claims before they become lost time claims. So while Alberta's WCB considers any claim with a replacement of worker wages to be a lost time claim, Atlantic WCBs would not have any 1-2 day claims, where in Alberta we would. This is only one example of the inappropriateness of using WCB data for injury prevention.

40. What other data would be of assistance to you in meeting your safety and prevention needs?

With respect to safety and injury prevention, data must be meaningful and reflect leading not lagging indicators of safety performance. This cannot be determined from WCB data. Responsibility for injury prevention rests with OHS not the WCB, and OHS should work with industry to develop appropriate leading indicators that correlate with a demonstrated reduction in injuries.

OTHER THOUGHTS YOU MAY HAVE

41. Please provide any other comments you have relating to WCB and roles it could play in the prevention of workplace injury and illness.

Millar Western believes that the current role is appropriate. The WCB has an indirect link to prevention through the experience rating and funding mechanisms. The WCB appropriately fills a transactional role with respect to collection and distribution of the levies for safety associations and OHS. This is the extent of the involvement of the WCB in broader injury prevention initiatives that is appropriate. Responsibility for programming related to the prevention of injury and illness rests within OH&S not the WCB. On an individual employer basis, WCB reporting can provide a rudimentary overview of injury experience and trends, but it cannot be relied upon for comparison purposes.

FUNDING AND FINANCIAL SUSTAINABILITY

The WCB administers billions of dollars, through employer premiums and the payment of benefits and claims costs. Given that it manages significant amounts of money, people have many views about the WCB's funding and financial sustainability.

EMPLOYER PREMIUMS

The WCB is funded through premiums assessed to employers. There are no tax dollars involved in the workers' compensation system, and there are no deductions made from workers' pay cheques to fund the system. Employer premiums are established each year.

An employer's assessment rate is determined in the following way:

- The WCB assesses the overall financial picture of the workers' compensation system. Using actuarial reports and financial forecasts, the WCB determines what it will need to pay out. A significant piece of this puzzle is the projected present and future costs of claims that are expected to be made to the WCB in the upcoming year. Historical data helps the WCB project these figures.
- On the basis of the overall financial picture, and with a view to its Funding Policy, the WCB determines what overall amount of money it needs to collect from all employers covered by the WCB in Alberta. This amount of money is determined so that the total premiums collected in the current year will pay for all estimated present and future costs of claims that are made during that year.
- Based on the overall amount of premiums that need to be collected, the WCB determines premium rates for each rate group. There are 118 rate groups covering 364 industries. Some rate groups have only one industry in them, while others include up to 20 industries. The premium rates of each rate group are set based on their historical pattern of claims costs. (This is sometimes called the "industry rate".)
- Each employer within a rate group is then assigned their premium rate based on their record of claims costs. This is called the "experience rating". Based on how the employer stacks up to the average of their rate group (or "industry average"), their premium rate for large employers can be set up to 40% higher or lower than the industry rate. Small business premium rates can be set up to 5% higher or lower than the industry rate.

This process is intended to achieve three things.

- First, it ensures that every employer pays something, thereby maintaining the collectivist nature of the workers' compensation system.
- Second, it provides for fairness by distributing the premiums based on which employers and industries are more likely to be the source of WCB claims and costs.
- Third, by reflecting the different claims histories of different employers and industries, it builds accountability into the system.

The WCB's use of an "experience rating" component means that an employer's WCB claims influence the WCB premiums they pay. Some have suggested the experience rating gives employers an incentive to suppress WCB claims. Others say the experience rating gives employers an incentive to undertake safety programs and measures that prevent injuries and illnesses in their workplaces.

Some have expressed concern that the WCB does not have sufficient processes in place to investigate or deter claims suppression. Others say that existing processes work well.

Claim suppression is intentionally inducing a worker not to claim WCB benefits they are entitled to claim. Claims suppression can occur when incidents are not reported to the WCB, or when a claim is reported as 'no lost time' but actually involved lost time by a worker.

42. To what extent is the WCB experience rating system an incentive for preventing workplace injuries and diseases? To what extent is experience rating an incentive for promoting claims suppression?

The current funding model provides appropriate measures to ensure individual and collective (industry rate groups) employer accountability to ensure the Board provides high levels of benefits while maintaining long term actuarial sustainability of the system. In our experience, the experience rating system supports workplace safety and appropriate management of WCB claims through a system of discounts and surcharges. In addition to being an insurance mechanism through which premiums are established, experience rating also reinforces the importance of injury prevention as well as a safe and timely return to work.

That said, experience rating is an insurance mechanism and reliance on this metric to incent improvements in safety performance is flawed. Workers compensation provides insurance coverage for work related injury/illness. The WCB experience rating system is driven by current and future claim costs. It is not a reflection of safety performance and should not be used for this purpose.

In addition, Millar Western believes that the impact of experience rating is not the only or even the primary reason employers focus on injury prevention. Poor safety performance could result in an employer being unable to compete in the market place and impact customer perception of the organization. These factors are more significant than changes in experience rating related to higher claim costs.

Employers are already being held to a high standard through various pieces of legislation that make claim reporting a priority issue. We have seen no evidence of claims suppression, and with the reporting mechanisms in place (independent reporting from the worker, physician and employer) we do not see that the experience rating system is, or should be, a factor in claims suppression.

We have seen no evidence of a direct link between the experience rating system and alleged claim suppression. Studies in other jurisdictions have looked at claim suppression and noted that there are many contributing factors to non-reporting by the worker or the employer. To characterize keeping a worker on full pay as claim suppression as has been done in some jurisdictions is not accurate. This is often a benefit that has been negotiated by unions for their members. What has been noted by WCB Alberta is that actual or deliberate claim suppression is much less of an issue than employer misunderstanding regarding the types of issues that need to be reported, in particular the need to report no lost time/disabling injury cases. WCB Alberta has reported they have not had reason to take significant corrective action (levy fines, institute PIR holds, etc.) with an employer related to claim suppression in recent memory.

43. Is there a sufficient investigative process in place to deal with complaints of claim suppression and are the penalties sufficient to deter employers from this practice? How could investigative and penalty processes be improved?

Millar Western feels that the existing processes to investigate complaints of claim suppression are sufficient. Apart from investigation, the tripartite reporting requirements (worker, employer and physician) provide a safeguard against claim

suppression by employers.

We are remain strong advocates for evidence based decision making within the workers compensation system and have not seen any evidence that indicates claim suppression is an issue. This question asks stakeholders to speculate on ways to improve the process without providing any factual data indicating where and how claim suppression has been identified as an issue.

Until it is demonstrated that this an issue we do not see any need to change investigative or penalty processes. Furthermore, the effectiveness of a penalty process within the workers compensation system is questionable. The financial benefits of effectively managing the cost of claims, is a much stronger motivating factor than penalties.

INDUSTRY CUSTOM PRICING

The WCB offers Industry Custom Pricing (ICP) as an option for the calculation of employer premiums. Participation in ICP is industry-based. The WCB works with representatives of an industry to customize a pricing model for that industry. Various options exist. For example, an industry can choose to change the experience rating component, so that individual employers' claims records are weighted more heavily in the calculation of WCB premiums.

An industry must choose to move to ICP. Employers in the industry are polled on the proposed ICP program. If a majority of the industry votes in favour, the ICP program is then implemented for all employers in the industry.

An industry can later choose to opt out of the ICP program and revert back to the WCB's standard pricing model, by way of a similar majority vote.

In an industry-wide vote about ICP, a "majority" is defined as at least 50% of the industry as measured by insurable earnings. This means that, in some industries, a handful of very large employers can decide the vote, even if they constitute a minority of the total number of employers in the industry.

As a result, some have raised concerns that the WCB's approach to establishing an ICP

program creates inequities between smaller and larger employers. Others say the approach is not inequitable, because it is based on the number of workers in the industry, not the number of employers.

44. **Are employers of different sizes treated equitably in regards to ICP? If not, what strategies might be available to minimize inequities?**

Regardless of the mechanism used to make this decision, there will always be members of a group that are dissatisfied with the process dependent on the outcome. While smaller employers may feel they do not have the same degree of influence on the decision, the pricing formula itself does tailor the pricing to the size of employer. Larger employers pay a proportionally larger share of the industry premium, which is directly related to the insurable earnings metric.

The only other reasonable alternative would be to leave it up to each Industry group to determine how the decision would be made. However, this approach has the potential to create conflict among employers within an industry group. Millar Western believes that the current WCB policy provides an impartial and non-adversarial method by which an industry group can make the decision to participate or not. All members of an industry group, regardless of size, have the ability to discuss the merits and implications of program participation with other affected organizations and influence the decision.

PARTNERSHIPS IN INJURY REDUCTION

The Partnerships in Injury Reduction (PIR) program is a voluntary program in which employer and worker representatives work collaboratively with the government to build health and safety management systems.

A Partner is an association, corporation or organization that commits to taking a leadership role in health and safety by entering into a formal agreement with the Alberta government.

The Government and each Partner sign a Memorandum of Understanding outlining the specific commitments made by each organization.

The WCB offers an incentive (in the form of a premium reduction) to employers who participate in PIR. Some have questioned whether this incentive makes sense, since it is not connected to the employer's experience rating (i.e., their claims record). Others have suggested that the incentive makes sense, as it encourages employers to build safety management systems.

45. **What are your views about the WCB's current practice of providing a premium incentive for employers who participate in the PIR program?**

Millar Western strongly supports that the current practice of providing PIR incentives, and the criteria that have been established, remain in place. The program was developed in collaboration with experts in the field and is not intended to be reflective of an employer's experience rating.

Experience rating is an insurance practice, not a measure of safety performance. The WCB provides an insurance system and their only connection to the PIR program should be to administer the incentive application based on terms and conditions that have been negotiated by the Government and Partners.

Although the PIR is not a WCB program per se, the program does support building of occupational health and safety management systems thereby contributing to the reduction of work related injuries and associated WCB costs. Any concerns with the PIR should be dealt with by Government and the Partners, and are outside the scope and mandate of the WCB.

THE WCB ACCIDENT FUND

The Workers' Compensation Act requires the WCB to maintain sufficient funds in the WCB's Accident Fund for the payment of present and future compensation to injured workers.

The concept of future compensation is important. In many instances, the WCB will be required to pay benefits to a worker for a long time period. Benefits will also be subject to inflation over time. There needs to be sufficient money in the Accident Fund to cover these long-term costs.

The Accident Fund is considered fully funded when the total of all assets equals or exceeds 100 percent of total liabilities.

The Accident Fund is managed so that it can generate investment returns. These investment returns can sometimes be better or worse than expected.

In managing the Accident Fund and setting employer premiums, the WCB follows its Funding Policy, which is established by the Board of Directors. The Funding Policy has several goals:

- Minimize the risk of being unfunded – To ensure injured workers benefits are secure, and that there is

sufficient money in the Accident Fund for the payment of current and future benefits.

- Current employers pay for today's accidents – Stability is maintained in the Accident Fund by having today's employers pay for the current and future costs of today's accidents. This reduces the risk of passing the costs on to the next generation of employers.
- Minimize cost volatility to employers – To ensure that volatility of the Accident Fund does not create volatility in employer premiums. The objective is that premium rates reflect the current and future costs of today's accidents.
- Minimize the total cost charged to employers – The Accident Fund is managed to earn a rate of return that covers the annual growth in the liabilities associated with current and prior year accidents.

To achieve the goals of the Funding Policy, the WCB has established a target funding range for the Accident Fund of between 114% and 128%. This range was developed in consultation with experts independent of the WCB and the use of asset-liability modelling tools. The WCB indicates that the funding range, and the financial modelling that supports the range, are reviewed each year to ensure they remain appropriate.

If the funded ratio of the Accident Fund falls below the target funding range (i.e., lower than 114%), the WCB can decide to collect additional money from employers in order to bring the Accident Fund to required levels. This will be done in the form of a levy.

Conversely, if the funded ratio of the Accident Fund rises above the target funding range (i.e., greater than 128%), the WCB can decide to distribute a portion of surplus to employers. When the WCB does this, any money distributed is from better-than-expected investment returns, not the premiums that were collected.

This is akin to using a portion of interest from an investment, without touching the principal of the investment. Employer premiums are like the principal, and they stay in the Accident Fund so that they can fully fund the present and future costs of claims. Interest amounts that are realized from better-than-expected investment returns can be taken out of the Accident Fund and distributed to employers.

Questions have arisen about the WCB's target funding range and its implications for premiums, levies and distributions.

Some people say that the WCB should freeze or cut premiums so that it does not have a surplus in its Accident Fund. Other people say that freezing or cutting premiums would go against the principle that today's premiums pay for today's accidents and would raise the risk that there would be insufficient money available to pay the current and future costs of benefits for workers. Still others say that the Accident Fund should retain a comfortable surplus, in case markets are volatile and the Fund's investments fall in value.

46. **What are your views about the way the WCB establishes and implements WCB premiums, levies and distributions?**

The most effective way to ensure the fairness and sustainability of the system is to ensure premiums are set in an actuarially sound manner. Today's employers pay for the cost of today's claims, and current premiums must cover the net present value of current and anticipated future costs of claims, plus administration and appeals. Investment returns that exceed expectations should be fully returned to employers. While Millar Western supports the refund of employer premiums that arise when investment returns outperform expectations, we believe the current practice of collection of excessive funding by the WCB which contributes to overfunding must be reviewed.

Our company supports the need to ensure the WCB remains fully (i.e. 100%) funded over the long term to account for current and future claims costs. The WCB funding policy establishes a "Green Zone" range of 114-128% of fully funded premiums which cushions against fluctuations in market returns over time without having to dramatically adjust premiums year to year. However, we believe this range is excessive and recommend that the range required to maintain actuarial soundness be confirmed independently and information made available to stakeholders. In establishing the funding range, consideration should be given to amending the legislation requiring the WCB to be 100% funded to allow a short term funded position less than 100% where economic circumstances or unforeseen events result in this position. The WCB provides a sole source service and will not cease operation or "go bankrupt" as would be a concern if they were a private for profit insurance company. Once the range is set, the WCB should then be required to operate within that range, removing the cap on the annual surplus distribution to employers.

We understand that return of premiums surplus to maintenance of a fully funded position would be triggered once the funded position exceeded 128%, the upper end of the Green Zone. In practice, the WCB has operated for years above the 128% threshold, in effect, raising the upper threshold in apparent contravention of its own policy. The return of premiums surplus to the funding requirements would allow employers to reinvest these funds in maintaining and creating jobs for Albertans. The size of the funding discrepancy is not trivial, the difference between 136% and 128% is substantial.

Millar Western supports continual improvement in making Alberta workplaces safer. With respect to the OH&S levy we have previously identified several concerns. Employers who pay WCB premiums are now fully funding OH&S services provided by government. Not all employers in Alberta pay WCB premiums, yet all employers benefit from OH&S services. This discrepancy should be addressed.

We also have concerns regarding the process for establishing the annual OH&S levy collected from employers and the processes in place to ensure revenue received from the employer levy is applied to OH&S programs rather than flowing to General Revenue. We have an interest in ensuring the funding collected through the employer paid WCB levy is used in a way that provides value to Alberta workers and employers. There should be reporting back to stakeholders by OH&S regarding the value for dollars spent. We also want to see a requirement that unspent funds collected through the OH&S levy in one fiscal year are carried forward and used to reduce the OH&S levy funds collected in the next fiscal year.

47. What other ways can the WCB ensure the sustainability of the workers' compensation system?

The most effective way to ensure the sustainability of the workers compensation system is to ensure premiums are set in an actuarially sound manner. A fully funded system where today's employers pay premiums sufficient to cover the net present value of current and anticipated future costs of claims, plus administration, appeals and other associated costs provides for financial sustainability. Investment returns that exceed these costs should be returned to employers. This approach reinforces accountability and ensures sustainability of the system.

48. Distributing surplus money from the Accident Fund to employers is one way to address better-than-expected investment returns. What are some other ideas about what to do with these surpluses?

Surpluses in the Accident Fund that result from better than expected investment returns are not funds that the WCB or the government should be free to distribute as they wish. The surpluses exist because we have paid more into the WCB system through WCB premiums than was required to fund the current and projected future cost of claims. As a result the surplus is our money; funds that must be returned to employers. It is inherently unfair for the WCB to hold on to our

money, or for these funds to be misappropriated and used for any other purpose.

In lieu of considering suggestions about what to do with any surplus, the panel should recommend changes that will ensure the WCB is held accountable for ensuring premium rates more accurately reflect the cost of today's claims. Adjustment in the rate setting assumptions, as well as the funding rage, would reduce the likelihood of there being a surplus to distribute. Continuing the current process which has employers over paying premiums, and then receiving a portion of the surplus as a refund/dividend in subsequent years is not in the best interests of any stakeholders.

The WCB has operated for years with a funded position above 128% (the top of the Green Zone) in effect raising the upper threshold in contravention of its own policy. The value of the discrepancy is substantial (each 1% above 128% is approximately $70 million). Compounding the overfunding is the cap on the amount that can be returned to employers in any given year. The full return of any surplus to the funding requirement would allow employers to invest these funds in maintaining and creating jobs for Albertans.

Notwithstanding concerns regarding the current fully funded range of 114% to 128%, collecting more money from employer premiums than is required is not a practice that should be continued. Returning the surplus to employers does not impact benefits for workers and allows employers to maintain and create additional opportunities for workers in Alberta. Millar Western urges the review panel to clearly communicate the facts in dealing with the false worker/public perceptions that surpluses exist because of claims suppression, claim denial by the WCB, or other factors that are detrimental to workers. Claims adjudication and benefit entitlement decisions are evidence based and are not made based on potential cost.

We further recommend that WCB policy be amended so that any surplus is returned to employers within a period not greater than one year using the current formula. We do not support any move towards a "premium holiday" or other method of allocating the surplus.

OTHER THOUGHTS YOU MAY HAVE

49. **Please provide any other comments you have relating to funding and financial sustainability.**

Millar Western supports the need to ensure the WCB remains fully (i.e. 100%) funded over the long term to account for current and future claims costs. The principles upon with the compensation system is based provide for a framework for a fair and balanced workers compensation system and it is imperative that any changes resulting from this review not jeopardize the balance that exists.

The workers compensation system is fully funded by employers, and WCB premium revenue is not "government revenue" to spend at will. We only have to look as far as the Ontario unfunded liability situation to see evidence of consequences that can arise when the WCB system does not remain independent and impartial.

In the event recommendations will be made that involve significant changes to the compensation system, we recommend that options for deductibles, waiting periods and reintroduction of a self-insurance model within the WCB system also be open for consideration.

ADDITIONAL QUESTION

ALTERNATIVE DISPUTE RESOLUTION

Some people have said that various aspects of the workers' compensation system have become legalistic, daunting and/or too adversarial over time. (For example: the Medical Panel process, the DRDRB process and the Appeals Commission process.)

There have been suggestions that it would be valuable for the workers' compensation system to incorporate consensual resolution processes (such as alternative dispute resolution) at key points, as a way of making the system more accessible for workers and employers.

50. **Where, if anywhere, do you see opportunities to incorporate consensual resolution processes (such as alternative dispute resolution) in the workers' compensation system? What could these processes look like**

The Meredith Principles, which are the tenets upon which the Canadian workers' compensation systems were built, require that decision-making be based on evidence, law, policy and a fair, impartial and transparent process. Millar Western asserts that all entitlement decisions must remain evidence based and we do not support a consensual resolution processes when it comes to making benefit entitlement decisions. That said, there could be greater attention paid to resolution of issues through education of the parties on the relevant policies, law and evidence.

There may be room for introduction of an alternative dispute resolution process where the focus of discussions in on return to work, suitability of modified work, accommodation in an alternate position, etc. In this situation, negotiation may be more effective than following a strict adjudication approach. If such a mechanism were to be introduced, there must be a defined time limit in which this is to be completed. Participation of all parties must also be voluntary.

We strongly believe key stakeholder involvement from both employer and worker groups will be essential is developing any new process to ensure acceptance and a clear understanding of potential challenges.

GENERAL QUESTIONS

51. What do you like most about workers' compensation in Alberta?

The Alberta WCB has proven to be an effective and fair insurer of claims arising from occupational injury/illness and in the provision of meaningful and safe rehabilitation and economic loss benefits where recovery and/or rehabilitation to return to previous income is not possible.

The WCB Executive and Chief Appeals Commissioner make themselves available to meet with stakeholders, and the major stakeholder groups in Alberta are very engaged in discussion about challenges, opportunities and changes. Major stakeholders have demonstrated a commitment to ensuring a fair and balanced workers compensation system that is financially sustainable in previous consultations.

The independence of both the WCB and the Appeals Commission with respect to government, the independence of the Appeals Commission from the WCB, and the separation of OH&S and the WCB each having clearly distinct mandates, are also positive features of the existing system that should be maintained going forward.

The commitment to evidence based decision making, as is the case with private insurance companies, is also a positive feature. Decisions based on fact, not the skill or influence of an advocate, are essential in maintaining integrity in the WCB system and in ensuring the system is fair and balanced.

52. What are your primary concerns about workers' compensation in Alberta?

Millar Western supports the concerns outlined in the AFPA and ITF responses as follows:

The WCB Funding Policy (the fully funded range, process for setting the OHS levy collected from employers, OHS budget surplus allocation, and existing limits on the maximum annual surplus distribution to employers).

WCB Policy 04-05 regarding Termination of Employment while on WCB benefits.

Term limits of Commissioners appointed to the Appeals Commission - term limits can be beneficial for certain appointments to public agencies, however governance policies must ensure public agencies are able to operate effectively while maintaining the public interest. It has always been our view that applying the APAGA term limit provision to appointees to the Appeals Commission for Alberta Workers Compensation has a serious negative impact on the ability of the Appeals Commission to fulfill its mandate and obligations to the workers and employers of Alberta.

Personal Coverage for Directors of Corporations - The WCB Act does not mandate coverage for Corporate Directors. Personal coverage was meant to cover proprietors, partners in a partnership, directors of a corporation or society, or members of an association, board, authority, commission, or foundation for loss of wages in the event of an injury. It was never meant to protect them from lawsuit. Unfortunately, a loophole in the Alberta WCB Act exposes them to this liability. Other provinces, such as B.C., Saskatchewan, Manitoba, and Ontario have legislation that specifically prevents legal action from injured workers in the event that personal coverage is not in effect. For construction, the Corporate Director is often the employer on site. Without mandatory coverage, the Director could still be subject to litigation even though the corporation is covered by the WCB. The legislation must be amended to remove the loophole.

The expansion in what is considered work related where causation can be multifactorial (e.g. psychological injury, introduction of presumptive clauses, repetitive strain injuries, etc.) remains a concern. In order to ensure the WCB's principles of compensation promote prevention and workplace safety, the WCB Act should be amended to enshrine the

principle that no-fault does not extend to post-incident behavior that in effect removes the worker from the course of employment and hence entitlement to disability benefits.

The independence of both the WCB and the Appeals Commission with respect to government has been a contributing factor to the effectiveness of the workers compensation system in Alberta. This independence helps ensure the Meredith Principles, which are the tenets upon which the Canadian workers' compensation systems were built, can be upheld. These principles require that decision-making be based on evidence, law, and policy and that a fair, impartial and transparent process exists. Any increased political involvement in a system intended to provide no-fault insurance for injured workers fully funded by the employers of Alberta would not be in the best interests of stakeholders.

53. We invite you to provide any other comments you have, which you have not already provided.

Millar Western thanks you for the opportunity to work with government to ensure there is appropriate WCB coverage for Alberta workers through a fair, just and balanced insurance system. Alberta workers can only secure "mortgage paying jobs" if Alberta employers are successful, and the success of Alberta employers is dependent on the ability to recruit and retain a quality workforce.

As an employer, we recognize the critical importance of providing healthy and safe working conditions, and of supporting workers and their families in the event of a workplace injury. This review provides an opportunity to strengthen the workers compensation system by seeking solutions to current challenges that will meet the needs of both workers and employers.

The experience of other jurisdictions can provide useful input to the review process, but it is imperative that strategies recognize and work for the unique environment that exists in Alberta.

Thank you for taking the time to complete this workbook.