

Highlights

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Focus on Appeals

All across the country, each working day, hundreds of injured workers are attempting to make someone “in Appeals” understand their particular situation. Probably about 60% of them will be successful.

At the inception of the Workers’ Compensation system in Canada, Chief Justice Meredith (the architect) ruled against allowing decisions of the Board to be appealed to the courts. It would undermine the very purpose of the compensation system by allowing relatively wealthy employers to harass injured workers who had neither the financial resources nor the health to withstand such actions.

Workers’ Compensation benefits, however, are adjudicated on the basis of forms and reports which can all too often lack detail or can be easily misinterpreted.

An internal appeal system has developed which has served to provide the human face to those forms; to render justice in those cases which don’t fit the usual mold; and to improve policies by exposing the upper echelons of the Board to the realities of the life of the injured worker. External appeals systems have also developed which provide an important impartial second look at both individual claims and, through them, the interpretation of the Act.

In some jurisdictions, employers have very limited rights to challenge injured workers’ claims, while in others, financial incentives have created an entire strata of ‘consultants’ who will appeal all aspects of an injured workers’ claim on behalf of the employer.

In some provinces, it may be that the system is still improving, but in many, changes are occurring which will drastically reduce the value of the appeal system for injured workers: introduction of time limits; reduction of independence; removal of policy-changing powers; a push to “mediation and settlement” concepts; and perhaps most tellingly - an attempt to discourage actual hearings where an injured worker can explain the complexities of his/her claim to someone who should be providing undivided attention.

An independent powerful appeal system which guarantees the opportunity for an “eye to eye” hearing, is extremely important for injured workers. As we fight for improvements, it is valuable to share the knowledge of what is happening across the country.

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CIWA/ACVAMT Projects

For more information on any of our projects, give us call at 807-345-3429

TOGETHER WE CAN WIN

We are really pleased by the response to these new resources. We have received orders for over 500 copies of these tools and are preparing for our third printing. The interest has ranged from major national unions, Workers Compensation Boards, provincial and federal governments, major employers and of course, injured workers and injured workers groups.

The video is being shown on community TV stations, at public meeting sponsored by the OFL, in training sessions at the WCB and at injured workers meetings.

Thanks for your support.

NEW STAFF AT THE OFFICE

We are pleased to welcome Tara Lewis as our newest full time staff member. She comes with experience in community development, awareness programs in the schools and is bi-lingual.

We hope to have Tara develop a program to raise awareness among young people about hazards in the workplace. It sure is great having Tara working with us!!

SPEAKERS BUREAU

A wonderful letter of praise which we received after our session in New Brunswick. Thank You!

Dear Steve:

Just a note to say that it was a pleasure to meet you in Moncton during our training session. You and your organizing committee are to be commended for putting on this three day Speakers Training Session. The accommodations at the Memramcook Institute were first class, the training sessions were professional and informing and most importantly were fun.

I think that all those who participated, left this training session enriched with the knowledge you and your facilitators shared with us. Not forgetting all those who participated in this training session, the experiences and the exchange of ideas and the information shared, was enlightening and educational for all.

We all arrived at the Memramcook Institute as strangers and left as friends. This in itself was worth the pain and suffering that we as injured workers experienced. The consideration shown by you and your committee knowing that we all have limitations because of our injuries was much appreciated and I thank you for that.

In closing, on behalf of myself and Ron Jesso, I would like to extend to you and your team, our heartfelt thanks and appreciation for inviting us as members of the Newfoundland and Labrador Injured Workers Association to participate in this training session.

Kindest Regards

Austin Haynes

C.I.W.A. Board Members

BC... Don McGregor , Prince George Northern Association of Injured & Disabled Workers	QC... Liane Flibotte , Montreal l'ATTAQ
AB ... Vacant	NF... Phil Brake , Labrador City U.S.W.A.
SK... Robert Lindsay , Regina Voice of the Blue Rose Advocacy	NB... Wendy McGee , Saint John St. John Labour Community Services Inc.
MN... Wayne Desiatnyk , Winnipeg Injured Workers of Manitoba	NS... Dave MacKenzie , Westville Pictou County Pictou County Injured Workers Assoc.
ON... Lesley Penwarden , St. Catharines Ontario Network of Injured Workers Groups	PEI... Vacant

Provincial Updates: *Focus on APPEALS*

The next issue of the newsletter will focus on Chronic Pain. We welcome your contributions. Please send, fax or e-mail your submissions, letters or comments by May 29th.

APPELS

Partout au pays, à chaque jour ouvrable, des centaines de victimes d'accidents et de maladies du travail essaient de faire comprendre leur situation particulière à quelqu'un des tribunaux d'appels. Environ 60 % de ces personnes réussissent.

Lors de la création du système d'indemnisation des travailleurs et travailleuses au Canada, le juge en chef Meredith (l'architecte du système) avait statué contre le fait qu'on puisse en appeler des décisions de la Commission devant les tribunaux. Permettre à des employeurs relativement riches de harceler les victimes d'accidents et de maladies du travail qui n'auraient ni les ressources financières ni la santé de vivre ces procédures amoindrirait la raison d'être même du système d'indemnisation.

Par contre, les prestations d'indemnisation des travailleurs et des travailleuses sont accordées sur la base de formulaires et de rapports qui, trop souvent, manquent de détail ou peuvent être facilement mal interprétés.

Un système d'appel interne a été développé, lequel a servi à donner un visage humain à ces formulaires, à rendre justice dans les cas qui sortent de l'ordinaire, et à améliorer les politiques en exposant les niveaux supérieurs de la Commission aux réalités de la vie de la victime d'un accident ou d'une maladie du travail. Des systèmes d'appel externes ont aussi été développés qui permettent un deuxième regard impartial important sur les réclamations individuelles ainsi que sur l'interprétation de la loi grâce à ces réclamations.

Dans certaines juridictions, les employeurs ont des droits très restreints pour contester les réclamations de victimes d'accidents et de maladies du travail, tandis que dans d'autres, les mesures incitatives financières ont créé toute une strate de « consultants » qui en appelleront de tous les aspects d'une réclamation d'une victime d'un accident ou d'une maladie du travail au nom de l'employeur.

Dans certaines provinces, il se peut que le système continue de s'améliorer. Mais dans plusieurs, il y a des changements en cours qui vont amoindrir considérablement la valeur du système d'appel pour les victimes d'accidents et de maladies du travail : introduction de délais... réduction de l'autonomie... retrait de pouvoirs modifiant les politiques... une impulsion vers les concepts de «

médiation et règlement »... et, sans doute ce qui est le plus révélateur, une tentative de décourager les audiences qui permettent à une victime d'accident et de maladie du travail d'expliquer la complexité de sa réclamation à une personne qui devrait lui accorder toute son attention.

Un puissant système d'appel indépendant qui garantisse la possibilité d'audiences face à face est extrêmement important pour les victimes d'accidents et de maladies du travail. Tout en nous battant pour des améliorations, il est important de partager les connaissances sur ce qui se passe partout au pays.

YUKON

La situation à la commission des accidents du travail du Yukon évolue sans cesse. La législation est prévue pour l'automne 1999 ; les personnes concernées font de plus en plus de contributions envers la politique à appliquer ; on est en train d'aplanir les processus d'appel. Nous percevons tout cela comme des gestes positifs posés par un président du conseil d'administration progressif, par un nouveau président intérimaire de la commission et par le gouvernement NPD.

Les changements ont débuté par la création d'un poste de défenseur des travailleurs et travailleuses, financé et administré par la commission, et répondant seulement au ministère de la Justice, accessible sans frais aux travailleurs et travailleuses. Le processus d'appel comporte deux paliers, le deuxième étant constitué du conseil d'administration. Le premier niveau (comité d'examen interne) accusait des retards prononcés entre l'audience et la décision. Ceci est en train d'être corrigé avec la désignation d'un président permanent pour le comité en la personne de l'ancien défenseur interne des travailleurs et travailleuses. Les décisions sont maintenant rendues fondées sur la législation et sur la politique avec un raisonnement clair.

Tous ces changements positifs ne se font pas facilement ; nous subissons toujours l'héritage du dernier président du conseil et des trois derniers

présidents de la commission en deux ans. Quelques réclamations n'ont pas été traitées correctement dans le processus de l'appel précédant les accusations qui sont traitées par l'entremise du conseil d'administration ou de l'ombudsman en vue de les soumettre à nouveau au système mais de façon appropriée.

Malgré la situation reluisante que j'ai décrite, il y a encore des écueils. Vous ne pouvez pas montrer de nouveaux trucs à un vieux chien. L'administration a de la difficulté à voir son autorité contestée, à justifier et à documenter ses décisions, et à exécuter les décisions du processus d'appel. L'attaque la plus à craindre viendra, à mon avis, dans le proche avenir. La pression économique et les coûts de la commission seront à la hausse à mesure que nous essayerons de remettre cette voiture sur ses roues. Ces changements coûtent très cher. Les coûts augmenteront à mesure que les victimes d'accidents et de maladies du travail recevront des droits complets et que la fin des prestations commencera à être fondée sur le recouvrement médical et/ou sur la réadaptation.

J'entrevois une lutte pour maintenir le cap en encourageant ces coûts assez longtemps pour que le système se stabilise à un niveau où les lésions et maladies diminuent (la sécurité est rentable) et que la durée des réclamations soit réduite grâce à une réadaptation efficace permettant de réintégrer les victimes d'accidents et de maladie du travail dans le vrai emploi.



Things at the Yukon board are generally in a state of flux. Legislation is scheduled for Fall 1999, input to Policy from the stakeholders is progressing. The appeal processes are being straightened out. All of which we see as positive steps being achieved by a progressive WCB Chair, new acting President and NDP Government.

The changes started with formation of a Workers Advocate position funded by the WCB, administered and only answering to the Dept. of Justice, provided at no cost to the worker. The

appeal process is 2 levels with the second being the Board of Directors. The first level (Internal Review Committee) had been experiencing lengthy delays between hearing and decision. This is being overcome with the appointment of a permanent chair, who was the previous internal workers advocate. The decisions now are coming out based on legislation and policy with clear rationale attached.

All of these positive changes are not coming easily. We're still suffering the baggage of past Chair and the previous 3 Presidents in 2 years. There currently are a number of claims that were not handled properly through the appeal process. These are being dealt with through the Board of Directors or Ombudsman to return them to the system properly.

Despite the rosy picture I have portrayed, pitfalls remain. You can't teach old dogs new tricks. The administration is having difficulty having their authority challenged, having to justify and document their decisions and implement decisions of the appeal process. The most fearful attack, I believe, will come in the near future. The pressure of the buck, the costs at the WCB, will be increasing as we try to get this wagon back on track. These changes are all expensive. Costs will increase as injured workers receive full entitlements and termination of benefits start being based on medical recovery and/or rehabilitation.

I foresee a battle to stay the course incurring these costs long enough for the system to level out at a point where injuries go down (because safety is cost effective), and the duration of claims reduced by effective and proper rehabilitation returning injured workers into real employment.

BRITISH COLUMBIA

In BC there are essentially three levels of statutory Appeal. This is excluding the administrative systems for reviewing decisions within the department and the Judicial review process through the courts.

In general, BC provides a statutory right to appeal any decisions made by Board officers with respect to a worker. This initial appeal is usually to the Workers' Compensation Review Board which is an administrative tribunal that is external to the WCB and to which both workers and employers can appeal. The greatest percentage of appeals are made by workers.

Generally a notice of appeal must be filed within 90 days from the day the decision is communicated to the worker, dependents, or employer. However the Review Board has the authority to allow late requests as well as extensions of time for proceeding.

The time limits relating to appeal in BC have become increasingly controversial recently due to WCB's consistent failure in providing timely disclosure. Deadlines and hearing dates are often reached before the worker or representative has access to information required to appropriately decide the grounds for appeal, or to properly know and prepare their case.

Decisions of the Review Board can be appealed to the Appeal Division which is internal to the WCB. It is supposed to operate at 'arm's length' from the WCB's administration. Appeals to the Appeal Division must be made within 30 days after the finding is sent out. The Chief Appeal Commissioner may allow a late appeal or extension of time.

A worker, dependant, or employer, may also request review of a medical finding by the Board, the Review Board, or the Appeal Division by the Medical Review Panel (MRP) providing a physician certifies there is a bona fide medical dispute to be resolved.

The MRP consists of a panel of 3 doctors who are required to be independent of the Board. The decision of the Medical Review Panel is final and binding. However, the MRP is administered internally by the Board.

Although in principle these three levels of appeal should provide for appropriate dispute resolution,

in practice they have not. The question of true independence from Board influence, the competence, fairness, and legality of the decisions, expedience in rendering decisions, and as well, the Boards willingness, (or lack of it) to implement findings, have all resulted in significant criticism in all three levels.

Current criticisms are numerous however it is generally agreed that a significant contributing factor is a failure of all three appellant bodies to know the full and true facts of the case before them. Instead they often base their decisions on inaccurate, incomplete, 'summaries', compiled by the Board.

It is also generally agreed that the current three level model is a fair system in principle if administered as intended and appropriately staffed and isolated from Board influence.

Unfortunately, excessive backlogs, restrictive and manipulative information practices, lack of representation, vaguely interpretative and, in some cases, unlawful policies, and a perception of Board sympathetic practices has resulted in the majority of injured workers having virtually no confidence in the appeals process.

Navigating the appeals process often takes years, only to start all over again when the Board fails to implement the appellant bodies findings.

The complexity of workers' compensation issues and the long term impact, makes experienced and competent representation imperative. Unfortunately, it is simply not there for the majority of BC workers when they need it.

Each decision must be appealed individually while waiting several years for the policy to crawl it's way up the priority list for change by the Panel of Administrators.

ALBERTA

In Alberta we have two levels of appeals within the W.C.B.. There is C.S.R.C., the first level of appeal. If your clam is upheld, you can appeal to the Appeal Commission. You are allowed to bring forward any issue that has been addressed by a case manager or adjudicator. There are no exclusions in Alberta.

You have approximately one year after C.S.R.C. to appeal any decision Appeals Commission. There is then a 6 month time limit to appeal to the Ombudsman. Time limits are difficult in Alberta for one reason - the lack of knowledge that injured workers have of the time statutes.

The first level of appeal is probably the hardest to get a positive decision from. Only about 6 percent of claimants are successful here, adding to their frustrations. At the second level, out of 1, 183 claims in 1997, only 164 were overturned. We lack representation and although it is claimed the Appeals Commission is independent of the board, we have evidence of the opposite.

Depending on the worker and his/her rep, he/she might be treated fairly, but it does not mean that claims will be accepted. If they are accepted, case managers usually don't accept these decisions and claimants are forced through new hearings. Workers and employers have equal access to files, but as an employer, you have the right to employer services which could be anything and everything including having an appeals advisor. Your rights are constantly breached and you are always told that there is a next time.

In Alberta you need a representative because another common complaint from workers is that they are being read policy and act and they don't understand, therefore being turned down without being fully informed.

We presently have three advocates, two attorneys and the C.P.A. representing workers at both levels and judicial review. Policy change in Alberta has struggled with what the board calls, Public

Hearing on Policy, but never effectively changes policy. Outside the appeals system you are allowed to submit suggestions for Policy Review.

SASKATCHEWAN

In the province of Saskatchewan, the appeals system works in three different areas. The first appeal is verbal with the case worker. If that fails, then you can appeal your case to the Appeals Committee which is a written letter of appeal. Of course in Saskatchewan this is a very slow procedure which can take up to 2 to 3 months before receiving an answer from WCB. If the individual fails at this level, he or she can then write a letter of appeal to the Board of Directors. Again this is another very slow procedure which can take another 2 to 3 months.

If the individual fails at this level, he or she can then request a hearing with the Board of Directors, and try to iron out things face to face. If this fails, then the individual has no other recourse, but with the Legislative to try and reopen his or her case which is a very long and drawn out thing.

In Saskatchewan there is no time limit on appeals like we are starting to see happen in other provinces. We feel that while the injured worker is going through his or her appeal, they have absolutely no income. We must enforce WCB to amend their Policy in some way so that these individuals are not out of income and that we must somehow speed up the appeal process.

We also think we should have a complete independent appeals process. So we can get away from bias discussions.

MANITOBA

Medical Review Panels

Occasionally, the WCB requires an expert, independent medical opinion before it can make a decision on an injured worker's claim. These

opinions are usually required when claims are fairly complex or when the written medical opinion of the injured worker's physician differs from the opinion of the WCB's medical doctor.

When this need arises, a Medical Review Panel may be arranged. It may also be called for complex cases where the WCB requires an expert independent medical opinion.

The worker may request, in writing, that a panel be called to examine his/her case. The letter should be addressed to the WCB and must include the worker's name and claim number. The WCB may also request a panel.

The panel is comprised of three physicians - a chairperson appointed by the Minister responsible for Workers' Compensation Act; a physician selected by the worker and a physician selected by the worker's employer.

The physicians selected by the worker and the employer must be specifically skilled in a field of medicine related to the injury or disease and whose name is on a list provided by the College of Physicians and Surgeons of Manitoba.

A physician cannot be selected to act or serve on a medical review panel if the physician:

- a) has examined or treated the worker;
- b) examines workers on behalf of the employer;
- or
- c) has acted as a consultant in the treatment of the worker.

Physicians on the Medical Review Panel review the information in the worker's file and then examine the worker. If x-rays or additional medical information are required, they will be obtained for review by the panel. The panel may determine its own rules of procedure. Once the panel has prepared its written opinion, this information will be forwarded to the WCB for consideration. The opinion of the panel is not binding. Other considerations may affect the outcome of a decision on a claim. The medical review panel provides a medical opinion only.

This opinion may be used to assist in the adjudication of the claim.

ONTARIO

Originally, under Bill 99, WSIA, AUTOMATIC retroactivity was proposed; that is NO time window to wrap-up our unsettled claims which weren't already in the appeal process.

Meanwhile, the government was challenged in court regarding attempted overriding of "Grand-fathering" under several other Acts ie: "this is tantamount to changing the rules in the middle or at the end of the game" and ruled against the government.

Result: Time limit windows for appeals on accidents/illnesses established under previous WCA's which "skirt" the issue, not being clearly right or wrong with respect to the court's decision.

Conversely, the Board has the power to reconsider any decision "at any time as it considers it advisable to do so", even if the statutory appeal period has expired; reasons to reconsider range from the frivolous -- arbitrary changing of original decision to the factual -- substantial new evidence.

Should our side challenge the legality/legitimacy of this state of affairs also? Can we win? Does that really matter? Can we manage it financially? I suggest it is, at least, a worthwhile investment to obtain a competent, qualified legal opinion.

If the reply is "more pro than con" and we choose to pursue it, three major consequences are immediately apparent:

1. Court injunction to at least modify, if not arrest enactment of the WSIA (Workplace Sanctioned Injuries Act)
2. It may open the door for further action regarding the many injustices of the WSIA

3. Mega media opportunities and ammunition whether we actually win in court or not; elections are at most 1 ½ years away, almost tomorrow in political thinking.

Delay is worth it. Further opportunity to debate is worth it. Opportunity to actually make change is worth it. Revealing Elizabeth Witmer, the Mike Harris Conservatives and their Big Corporate Backers as avaricious, knuckle-dragging malefactors, sacrificing human beings in exchange for profit, in open court and the press just before election time, is worth it!

Anybody interested? Shall we "Go For It"? What do you think?

QUEBEC

Bill 79 that ATTAQ and its members fought for 7 months was finally adopted last June. This Bill that will significantly change the existing appeal structure, should come into force on the 1st of April 1998. When it was presented we knew that our rights were under attack and we foresaw that the presentation of this Bill was nothing but an attempt by the CSST (our WCB) to take control of the appeal process of its own decisions. We previously had 2 levels of appeal. With Bill 79, we will have only 1. Our last level of appeal was far from being perfect but was at least independent, not tri-partite and under the jurisdiction of the Minister of Justice. Once Bill 79 is put in place, our only level of appeal will be tri-partite and under the jurisdiction of the Minister of Labour who is also responsible for the CSST. One will have 30 days to ask for an internal review and then 45 days to ask for an appeal. The President of the new tribunal worked for 15 years within the CSST, one Vice-President comes from the Review Board of the CSST and the other Vice-President comes from a law office that always worked on behalf of management. The effects of this Bill are easily foreseeable. The appeals presented will be fewer and the only tribunal that will hear and decide on the appeals will be a controlled one. That's what we

denounced during our fight against the Bill and we now have the confirmation that we were right. We, in Québec, fought from 1931 until 1977 in order to have access to an independent appeal body and this right has just been taken away from us. We will now have to start a new battle in order to have access once again to tribunals that are susceptible to offering a minimum of justice.

NEW BRUNSWICK

In New Brunswick (NB) “**any decision**, order or ruling of any officer of the Commission under the Workers’ Compensation Act **affecting the rights of an employer, a worker or a dependent**, can be appealed to the Appeals Tribunal. However, it is possible to have that “officer”, usually the Case Manager, **reconsider** their original decision. This can eliminate the need to go to the Appeals Tribunal. Note: There are no exclusions about what can be appealed.

You could say that there are **two levels of appeal** within the Commission:

1. reconsideration by the Case Manager; and
2. Appeal to the Appeals Tribunal Chairperson or Vice-Chairperson acting alone or the full Appeals Tribunal.

For example:

“**within thirty days** after receipt of notice of the decision” any party directly affected by a decision shall apply for a Statement of Facts;

the Commission “shall **within thirty days** provide the party with such information”;

“**within thirty days** of receipt of the statement of facts”;

“..Notice of Appeal shall be served upon the Commission **within fifteen days**.. ;

No time limit on reconsideration’s by Case Managers and appeals to the Appeals Tribunal is a good thing for injured workers in NB. However, the time limit on appeals to the Court of Appeal is detrimental..

Money is a big factor. The injured worker must be represented by a lawyer and the clock is always ticking.

The Workplace Health, Safety and Compensation Commission (WHSCC) establishes the Appeals Tribunal in NB. The Tribunal consists of a **Chairperson**, appointed by the Lieutenant-Governor in Council, a **representative of workers** and a **representative of employers**, appointed by the board of directors.

The Commission will say that the Tribunal is an “external” body, but the Tribunal is **bound by the policies of the Commission**. It is possible for a member of the Commission to be a member of the Appeals Tribunal, by that, bound by the very policy that they established !!

I think, under these circumstances, it is very difficult for an injured worker to get a favourable decision.

Upon written request an injured worker, or dependents (if injured worker deceased), and/or an employer, or their appointed representative, **will be** provided with a copy of the claim file. This copy is provided at the cost of .25¢ per page.

However, before an Appeals Tribunal hearing a comprehensive summary document is prepared and supplied to all parties involved, at no cost. Also, an injured worker is allowed to review their Claim File, supervised, any time, if prior arrangements are made.

Representation is available, free of charge, by the Dept. of Labour (Workers’ Advocate). The employer is also allowed representation. You never know when the Employer’s Advocate will show up. It is also possible for you to be represented by your union, a friend or whomever you wish. Although the system is designed so that you can represent yourself, having someone else with you is definitely recommended.

Policy change is an internal process. Advocates have appealed certain items to the Appeals Tribunal and policy was changed when it was

proven to be unfavourable to the injured worker. It is not something that happens every day, only occasionally. Normally, policy changes are made without the injured worker's participation. In NB, I believe the employers have strong representation on the board of directors and, by that, influence policy

NEWFOUNDLAND

Workers' Compensation Commission (WCC) has one level of appeal (review). It is a paper review only, and is called Internal Review. It is the final decision of WCC.

There is one level of appeal (review) outside the Commission. The outside review system is called Workers' Compensation Review Division (WCRD). A worker, who disagrees with a decision of the Commission, may request a hearing before the Review Division and his/her case is heard by a single review commissioner who renders a decision in writing. There is a statutory requirement that sets a six month time limit from the time the worker requests a review to the time a decision is rendered by the commissioner.

All issues are appealable. Though there are no exclusions, it is pretty difficult to overturn a Permanent Functional Impairment (P.F.I.) Award.

A worker has only 90 days to appeal a decision of the Commission to Internal Review. A worker has ninety days to appeal a Commission's final decision to WCRD, however, WCRD can sometimes extend the time limit for valid reasons. Legislation disallows reviews beyond one year of the Commission's final decision. The time limits effect injured workers in that they are barred from having a decision, made by the Commission, overturned. Injured workers can be, and some are, sentenced to a life of poverty and despair because of time limits.

Internal Review Specialists are appointed by the administrators of the Commission. Commissioners of the WCRD are appointed by

the Minister of Labour. They are bound by Commission policy. They are not permitted to decide on the merits of a case.

Internal Review overturns about 20% of the decisions reviewed. Many times workers are treated in an abusive manner and with very little respect. There is still the feeling that injured workers are scamming the system. WCRD overturns approximately 40% of the cases placed before it.

Some employers are very active in the appeal system. Some may have representation at appeal hearings to contest the right of injured workers to receive benefits. Employers' rights are protected very well under the compensation system. I wish the same could be said for injured workers' rights. Every precaution is taken to ensure that employers' rights are not infringed upon. Employers have access to injured workers' claim files. All that is necessary is for some representative of the employer to write the Commission and request the file. A worker does not have access to information on the employer.

Representation at reviews is not provided for injured workers. Sometimes an injured worker can get Legal Aid to represent them. If they are lucky enough to have a union, their union may represent them. Sometimes injured workers may get representation from MHA's, Lawyers (paid), Clergy, spouses, members of the family, and friends. All injured workers should have the right to be represented at appeals if they wish.

Most policies are changed by the Commission itself. Such changes are made to conform to new legislation. Other changes are made as a result of decisions made by WCRD. Many changes are made as a result of lobbies by the Newfoundland and Labrador Federation of Labour, Unions, injured workers' associations and other interested groups and individuals. Some changes are made as a result of lobby from the Office of the Workers' Advisor.

NOVA SCOTIA

Press Release

The appeals system in Nova Scotia is a major disaster! When a person becomes involved in the appeal system of Workers Compensation, one should be prepared for a long hard struggle. In their brochures, they tell clients they have the right

to appeal, but they don't say it could take up to five years or longer, with no clear decision rendered.

Several years ago, I gave WCB a suggestion on how to clear up the back log of appeals, and how to give people a faster decision. The suggestion would be to put all injured workers that are waiting for their decision back on regular benefits, while they go through the appeals system. I am quite sure that nobody would be waiting for five or six years then!

The Workers' Compensation board of Nova Scotia is the only organization in Nova Scotia where an employee can make numerous wrong decisions and have a bad attitude towards their customers, and then in turn, be rewarded with a promotion within the organization.

Before the appeals system will ever change, they have to have a complete house cleaning of some employees at the WCB. It would also be nice to have a Minister of Labour in Nova Scotia with some back bone, and will stand up to high ranking officials at WCB and tell them this is the way it's going to be and if they don't like it, give them their walking papers.

I am quite sure there would be a major attitude change with the employees serving clients! Maybe then the clients would be treated like people, not beggars!

People who never dealt with WCB will never understand the frustration that an injured workers goes through while dealing with WCB.

You are only one accident away from becoming an injured worker !

Exerpts from a Report from London, England

REMEMBER THE DEAD & FIGHT FOR THE LIVING

April 28th is Workers' Memorial Day, a day to remember workers around the world who have been killed, disabled, injured or made unwell by their work. It highlights the preventable nature of the greater majority of workplace accidents and ill health, promoting campaigns and union organization in the fight for improvements in workplace safety. Our slogan for the day is "Remember the dead - fight for the living".

Many events are currently being organized around the country and around the world.

Workers Memorial Day originated in Canada in 1985 when the public sector union CUPE arranged events to commemorate those killed, injured or made unwell by their work. The Canadian government gave official status to the day when it passed the "Act respecting a day of mourning for persons killed or injured in the workplace" on February 1st 1991. Trade Unions in the USA, the UK, Asia and elsewhere have been organizing events on this day since 1989.

CUPE's symbol for the day is a caged canary as used to detect poisonous gas in mines, with a slogan of "Remember the canary". As CUPE says: "Today, CUPE members act as front line protection for their fellow citizens ... they have become the canaries."

April 28th is Workers' Memorial Day

The International Confederation of Free Trade Unions (ICFTU) estimates that every day of the year worldwide 500 workers are killed at work

Workers Memorial day originated in Canada in 1985 when the public sector union CUPE arranged events to commemorate those killed, injured or (approx. 200,000 annually) and an estimated 65 to 165 million contact occupational diseases.

Studies by the government's safety enforcement agency, the Health & Safety Executive (HSE), have continually shown that 90% of workplace

accidents are preventable and that 70 % of these are the result of employers failing to act positively. The HSE estimates the cost of this to the nation is up to \$16 Billion annually! In reality this financial cost is a subsidy to employers, so we pay them for trashing us at work.

Mick Holder
London Hazards Centre, England.

Letters to Dear Andy

Are you experiencing problems in your local group and need a bit of advice? Andy would be pleased to answer any of your questions about your group's dynamics. Do you have a good story to tell about your group? Please write in and share the news, either good, or not so good.

Dear Andy,

I work in a hotel. Each year at Christmas, each worker in my unit (housekeeping) receives \$500 worth of shares in the company if there have been no accidents at work. We get \$300 worth even if accidents are reported to the WCB, as long as they do not result in time off work. We get nothing if someone has to go on Workers' Compensation benefits.

Right now, we have two people at work who should really be at home on compensation. My co-workers tell people who have had accidents not to tell the company. They say: "Just come to work and we'll cover for you until you feel better." The closer to Christmas, the worse it is.

I think this is wrong. I wonder if other readers have similar experiences and what they do about it?

Sincerely,

"Don't want to be bribed" from Ontario

Dear Don't want to be bribed,

The situation you describe is becoming all too common all across Canada. Employers are discouraging their workers from reporting accidents so they can get big refunds from the WCB. This is called "Experience Rating". I agree with you. This practice is wrong. Your co-workers must understand that they are all at risk of getting hurt. Then, if they don't have a chance to heal completely, that injury can turn into a permanent, life long disability.

Because there was no time lost from work, the WCB won't recognize it and the worker will get no compensation and will have no job.

We have to stick together and fight for our Health and Safety - Our long term Health.

Andy

Good Luck,

Supreme Court of Canada/Lung Cancer

For once we have good news! A **major legal victory** in the struggle to obtain compensation for all workers suffering from industrial disease, and particularly for lung cancer victims, and for asbestos workers. M. Guillemette died in 1986 and it is deplorable that it took 12 years to get a final decision, given the reasons for refusing his widow's claim. Nevertheless, I believe this decision may be a significant step forward.

On February 23rd, 1998 the Supreme Court of Canada in a unanimous decision overturned a Québec Court of Appeal Decision in the case of *Succession Guillemette v. J.M. Asbestos*, and subscribed in full to the reasoning of the dissenting judge in the Québec Court of Appeal (Justice Forget). No other reasons will be given by the Supreme Court.

Given that all the Québec judgments, including Justice Forget's judgment, are in French, I fear that the significance of the Supreme Court's decision will not be known outside Quebec. I strongly recommend that something be set up so that an appropriate translation of the dissenting judgment in the Québec Court of Appeal may be circulated to the community of people who care about workers' rights to compensation for industrial disease. (If you are interested in following up on the translation, let me know what you suggest and I'll be glad to forward the judgment and reread the translation if that can be of help).

The specialized compensation tribunal (Commission d'appel en matière de lésions professionnelles), the CALP, had upheld the workers' compensation claim of the widow of an asbestos miner who had died of lung cancer. The tribunal had accepted the claim, even though the worker was never diagnosed with asbestosis. While admitting that the epidemiological data was not all conclusive, the tribunal held that there was sufficient evidence to compensate, particularly given that Québec legislation includes in

scheduled diseases covered by a rebuttable presumption "asbestosis, lung cancer, and mesothelioma caused by asbestos." The J.M. Asbestos company went to Superior Court to get the decision quashed, on the grounds that it was manifestly unreasonable and incorrect, and that for the legislative presumption to apply the worker (or his widow) must prove that his lung cancer was caused by asbestos. Both the Superior Court of Québec and the Québec Court of Appeal accepted this reasoning and refused compensation.



In a very eloquent dissenting opinion, Justice Forget of the Québec Court of Appeal underlined that legislative presumptions regarding industrial disease would be of little use if the worker had to prove causation. He also underlined that it was no more an injustice to mistakenly compensate a worker whose disease had not been caused by work, than it was to wrongly refuse compensation to a worker whose disease had in fact been caused by work.

Among the questions underlying his judgment is the issue of scientific uncertainty: who bears the consequences of unclear scientific evidence.

I think the Supreme Court judgment is very important for many reasons. Aside from the administrative law considerations (it reiterates that Courts must defer to specialized tribunals), it justifies a broad interpretation of schedules containing presumptions and contains many very useful considerations about the role of these presumptions. Because of the issues involved, I'm sure that this judgment could be used in the defense of workers suffering from industrial disease whose claims are governed by the law in other provinces.

Please spread the word.

In solidarity, Katherine Lippel
UQAM: Département des sciences juridiques Montréal

Making Work Fit The Worker

When the office workers at the Manitoba Government Employees' Union began to wonder if strains and aches were related to their use of computers, they and their employer called in the Occupational Health Centre.

According to Margaret Day, the worker co-chair of the MGEU's workplace health and safety committee, the OHC organized a half-day session that provided workers and the employers with the information needed to make effective changes.

"It was a truly educational session," said Day. "It showed us that you don't have to spend millions of dollars to address many workplace health problems. It was not the sort of educational session where you sit and listen to a lecture all day. By the end of the day, we were doing things differently."

Focusing on the workplace

The half-day session organized for the MGEU is just one example of the Ergonomic Group Services the the Occupational Health Centre is now offering. Ergonomics is the science of adapting work so it matches workers' needs, capabilities, and limitations. Consideration is given to how workers interact with all aspects of the work environment. The task, the work space, tools, and equipment are all examined. The goal is to fit the job to the worker, not the worker to the job.

We all pay a price when there is a bad fit. Musculoskeletal injury is one of the ten leading occupational problems in the United States. In 1992 Statistics Canada reported that strains and sprains accounted for 42 per cent of all time loss claims accepted by workers' compensation boards. According to the Manitoba Workers'

compensation board, approximately 50 percent of lost time injuries in 1995 were the result of sprains, strains and tears.

Ergonomic approaches to this growing problem are effective. A 1992 Quebec study found that ergonomic changes reduced time-loss workplace accidents by 30 to 50 percent. Estimated savings were six to ten million dollars. Other benefits

from ergonomic changes include:

- improved attendance
- reductions in the number and severity of accidents
- reduced WCB costs
- increased productivity

While the computer has brought with it a rise in the number of repetitive strain injuries, ergonomic problems can arise in the most traditional of work settings. The OHC's Occupational Health Nurse Diane Gagnon said, "For this reason the Occupational Health Centre has designed two different ergonomic approaches, one for offices and one for industrial workplaces."

Reprinted from Focus at the MFL Occupational Health Centre

Letters to the Editor

Dear Editor:

I am writing to tell you of a totally stupid rehabilitation plan which I am currently being forced into by the Workplace Safety Insurance Board. They have decided that I will attend a four year College course because a one year course will be too hard on me. I was also told that my F.E.L. was based on the amount of money I would make on completion of said four year course. Upon completion of this course I will be 54 years of age and will have to compete with the twenty or so young people who will also be looking for the same type of employment. Personally, if I was an employer, it wouldn't take me long to figure out which person to hire. I may have life experience but the younger people have life and they will gain life experience as they age.

The one year course would only give me experience in the field in which I am already involved in and which I enjoy. With the four year course, I will basically have to start my own business to get gainful employment, which is what I wanted to do with the one year course. I really don't understand how four years of walking on cement floors and sitting in screwed up chairs is easier than one year of walking on cement floors and sitting in the same chairs. The only reason that I got from the WSIB is that I would have to lift about 40 lbs. When I asked if they had ever heard of a mechanical lifting device to assist with the lifting, they got upset. With the thousands of unemployed people around, it would be no problem to hire someone to do the lifting for me.

I personally think that the "Board" is wasting untold thousands of dollars on stupidity, and yet they cry and complain about the lack of money. I'm sure if they would put the brain in gear and give the mouth a rest, everything could be worked out to everyone's

satisfaction. If I had the money that they have wasted on me in the last eight years, I would have my business well established, and I would be a productive member of society. I think that their plan is to keep the injured workers under their fist until he can no longer think for himself or he is too afraid to voice his opinion because of the fear that he will be cut off and left to starve. I have tried every way that I know of with the exception of my "wife and sons" (they are non-existent according to the Board) getting a lawyer and suing their asses off. I am a reasonably mild tempered person, but that mildness is being slowly replaced with the temperament of a rattlesnake.

As far as I am concerned, the "Boards Buddy" Mike Harris is as useless as tits on a boar pig. As long as his pockets are filled, he doesn't give a tinkers damn for the rest of the people in this province.

I would like to know if there is any way that I could get the "Board" to get it together and stop their screwing around. If not then do you know the name of a good lawyer. My VR Plan is supposed to be being appealed, but as of yet, I have heard nothing.

Thank you for your time and understanding,
Allan Kellar

We welcome your letters. By sharing our thoughts and experiences with the each other, we all stand to benefit.

Please send your letters, questions or comments to: **The Editor, Highlights. P.O. Box 3678, Thunder Bay, ON. P7B 6E3** or e-mail to ciwa@norlink.net or fax to 807-768-7240.

How to Contact Us !

C.I.W.A. / A.C.V.A.M.T.
P.O. Box 3678
1201 Jasper Drive, Suite B
Thunder Bay, Ontario. P7B 6E3

Phone: 807-345-3429
Fax: 807-768-7240
E-Mail ciwa@norlink.net
URL.....http://indie.ca/ciwa/

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Thunder Bay, ON. P7B 5Z6

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