

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

BOARD GOVERNANCE REVIEW

REPORT AND RECOMMENDATIONS

Submitted to:

Dan Miller
Minister of Skills, Training and Labour
Province of British Columbia

April 18, 1995

Submitted by:

Patrick O'Callaghan
Managing Partner
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and

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President
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April 19, 1995

Mr Claude Heywood
Chair
Board of Governors
Workers' Compensation Board
6951 Westminster Highway
Richmond, BC
V76 1C6

Dear Mr. Heywood:

Enclosed please find a copy of the Report and Recommendations prepared by Patrick O'Callaghan and Judi Korbin as a result of their review of governance of the Workers' Compensation Board. Please distribute the Report to the Board of Governors for their information and review.

I am pleased to learn that arrangements have been made with Patrick O'Callaghan and Judy Korbin to attend the Board of Governors' meeting on May 1, 1995, to discuss the report and answer any questions.

I have also provided copies of the report to Ken Georgetti of the British Columbia Federation of Labour, Jerry Lampert of the British Columbia Business Council and Suromitra Sanatani of the Coalition of British Columbia Businesses. It is my intention to make copies of the Final Report more widely available in early May.

Yours truly

Dan Miller
Minister

Attachment

Province of
British Columbia

Minister of
Skills, Training
and Labour

Parliament Buildings
Victoria, British Columbia
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Board Governance Consultants
PATRICK O'CALLAGHAN
& ASSOCIATES

April 18, 1995

The Honourable Dan Miller
Minister of Skills, Training and Labour
Parliament Buildings
Victoria, B.C.
VSV 1X4

Dear Mr. Miller,

We are pleased to submit our Report on Board Governance of the Workers' Compensation Board of British Columbia.

The report contains a summary of our analysis and a set of recommendations which we believe will assist in improving the effectiveness of the Board of Governors.

We sincerely appreciate the assistance of past and current Governors as well as the many other people involved with the Board who provided their perspectives. We would also like to thank you for the opportunity to undertake this project and can assure you of our continued support and interest in ensuring there is an effective board governance system in place at the WCB.

Yours sincerely,

Patrick F. O'Callaghan
Managing Partner
Patrick O'Callaghan & Associates

Judi Korbin
President
Judi Korbin Inc.

POC:as
enclosure

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A. INTRODUCTION

On January 23, 1995 the Minister of Skills, Training and Labour requested a review of the structure and operations of the Board of Governors of the Workers' Compensation Board of British Columbia (WCB). Ultimately the Board of Governors is accountable to the people of British Columbia through the Minister who has responsibility for their appointment.

Mr. Miller indicated that recent events had suggested the governance system at the WCB might be in jeopardy. He requested that as part of our analysis we interview past and current Governors, the President, the Chief Appeal Commissioner and major constituents of the workers' compensation community. We were asked to provide a preliminary report and recommendations within six weeks aimed at restoring confidence in the governance structure and improving the overall effectiveness of the Board.

On March 1, 1995 we presented a preliminary oral report to the Minister. We respectfully submit our final report this 18th day of April 1995.

Patrick O'Callaghan

Judi Korbin

B. OVERVIEW

The Workers Compensation Act, 1989 was proclaimed on June 3, 1991. It enacted the unanimous recommendations to the Minister submitted on October 31, 1988 by the thirteen-member worker, employer, government and chairman Advisory Committee on the Structure of the Workers' Compensation System of British Columbia.'

The WCB of British Columbia is ranked as one of the best institutions of its kind in Canada according to almost every yardstick of performance. In measures of assessment rate, compensation benefits, financial stability and injury prevention, the WCB's past record is something of which its stakeholders and its employees can be proud.²

One cannot help but be impressed when reviewing the WCB Annual Reports from 1991 through 1994 with the scope and magnitude of the Governors' achievements.³ The current and past worker, employer and public interest governors all emphasized that much has been accomplished over the past four years.

On the other hand, the Governors agree they have had difficulty dealing with several issues regarding the recruitment, selection and/or contract negotiation of the Chair, the President and/or the Chief Appeal Commissioner. In addition, significant policy issues have created divisions on the Board⁴ which have made it difficult for the Board to operate effectively. All of the stakeholders⁵ have recently expressed concern as to whether the current governance structure is viable. All of the parties we interviewed articulated a high level of frustration.

The current governance structure is a unique and challenging model which is more complex than other models and has consequently proved more difficult to implement. We believe that the basic structure envisioned by the Munroe Report and the 1989 legislation is sound. The Munroe Report governance structure requires a strong commitment and support by all stakeholders to ensure it functions properly.

As a result of a number of circumstances, which are described in this report, the Board has not had the opportunity to operate in a fashion that is consistent with the original intention of either the Munroe Report or the subsequent 1989 legislation. With the implementation of the recommendations made later in this report, we believe the current governance structure will at least have the opportunity to operate effectively. *However, without the goodwill and co-operation of all stakeholders this governance system will not work.* If the goodwill and co-operation do not exist and cannot be developed then other options such as four employer, four worker, four public interest governors and one Chair or the structure in place prior to 1990 should be evaluated by the Minister.

The recommendations we make are interconnected. If only a part of what is recommended is implemented, there is a risk that it will impact other recommendations and consequently weaken the value and effectiveness of the total integrated set of recommendations.

C. GOVERNANCE

I. A Definition

Governance means the process and structure used to direct and manage the affairs of an organization.

The affairs of every organization must be directed and managed. This is achieved by the creation of a set of rules which in turn creates a structure and allocates power to responsible parties.

The structure is created by the legal and administrative framework within which an organization functions. This includes the organization's governing statutes, the articles and by-laws, resolutions of the Board and other policies and procedures which are adopted by the organization, and community standards.

The governance process refers to the system for decision-making used by the parties who are charged with directing and managing an organization and for making the decision-makers accountable.

The principal objective of governance (i.e. directing and managing the affairs of the organization) is to serve the stakeholders and ensure the financial viability of the organization.

Directors, Governors or Trustees must see their primary responsibility as acting in the best interests of the organization and all stakeholders. This is a fundamental tenet of effective governance. Good governance must ensure that the interests of all stakeholders are protected.

Effective governance requires a system of accountability by management to the Board and the Board to the stakeholders. Further, it requires vigilance by the Board in overseeing management and vigilance by the stakeholders in assessing organization performance, with particular emphasis on the role of the Board of directors.

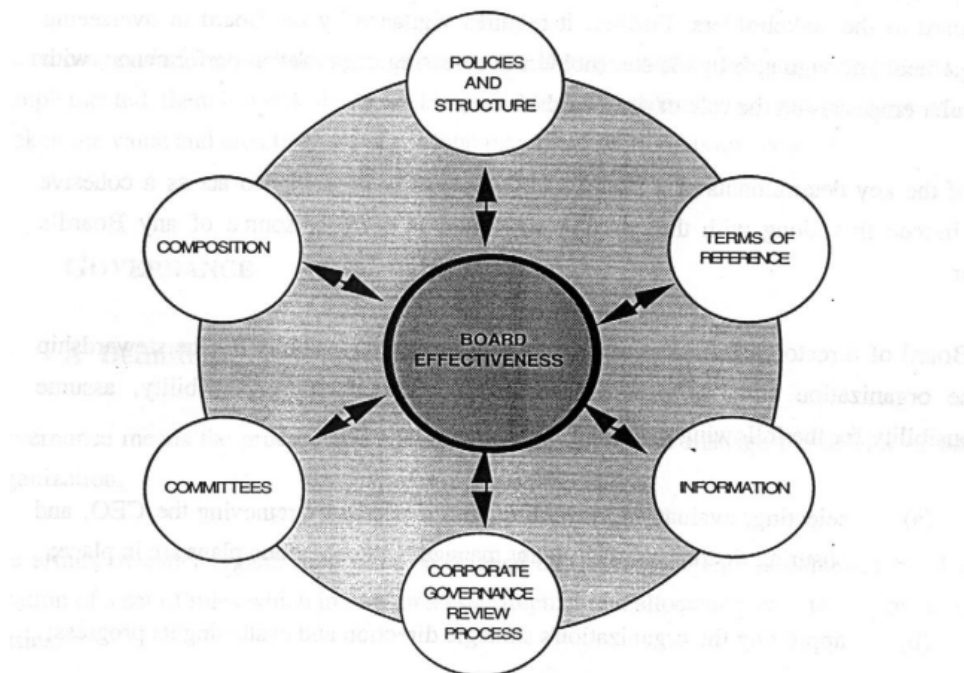
One of the key determinants of a Board's effectiveness is its ability to act as a cohesive unit. Indeed this along with the enacting legislation is a major source of any Board's power.

The Board of directors of an organization must assume responsibility for the stewardship of the organization and, as part of the overall stewardship responsibility, assume responsibility for the following matters:

- (a) selecting, evaluating, rewarding, and if necessary removing the CEO, and ensuring that appropriate senior management succession plans are in place;
- (b) approving the organization's strategic direction and evaluating its progress;
- (c) ensuring legal and ethical conduct by the organization's officers and employees;
- (d) identifying the principal risks of the organization's business and ensuring the implementation of appropriate systems to manage these risks;
- (e) ensuring a communications policy is in place for the organization; and
- (f) ensuring the integrity of the corporation's internal control and management information systems.

II. A Board Governance Model

It is important to view governance within the context of an integrated model. Board governance is not a set of isolated initiatives or practices. It is a system of mutually reinforcing principles, structures and processes designed to enhance the effectiveness of the Board. Action in one area (or circle) impacts other areas. No single area can be dealt with in an isolated fashion.



The outer circles in the diagram on the previous page encompass the key elements of any Board effectiveness model:

- (a) *Board Composition* - a clearly defined process for annually reviewing the composition of the Board and establishing Board membership criteria which are linked to the current needs of the organization;
- (b) *Terms of Reference* - clearly defined terms of reference for the CEO, the Chair, the Board, the Directors and Committees;
- (c) *Committees* - clearly defined purpose and process for committees in general and clearly defined terms of reference for each committee and its relationships to the Board and management;
- (d) *Information* - the availability, quality, relevance and timeliness of information required by the Board;
- (e) *Governance Review Process* - an effective process to manage and review corporate governance on an ongoing basis to ensure it meets the current needs of the organization; and
- (f) *Policies and Structure* - clearly defined policies and structure which support the Board's ability to carry out its stewardship responsibilities including acting independently of management when necessary.

III. The Munroe Report

The Munroe Report provided the basis for the 1989 legislation and had the unanimous support of all stakeholders. The Report recognized the unique nature of the governance structure which it was recommending.

There can be no question that workers and employers have a rightful claim to a predominant position on the Board of Governors. Workers are the intended beneficiaries of the system; for the most part, employers pay for it. Little more need be said to legitimize their claim to predominance. In the language of this Committee's terms of reference, workers and employers must be able to "...participate effectively in the initiation, development and approval of [the] policies, programs and procedures" of the workers' compensation system.

After thoughtfully elaborating on the above rationale, the Report went on to describe the appropriate composition of the Board.

In sum, we think the Board of Governors should be comprised of thirteen voting members (As will be seen, we also think that there should be two non-voting members: the occupants of the newly created offices of president/chief executive officer and chief appeal commissioner.) Five should be representative of workers; five should be representative of employers... Lastly, two public interest governors should be appointed in consultation with the earlier-appointed governors and the chairman.

There were several strong messages contained in the Report regarding the composition of the Board of Governors. The Report emphasized that the role was a part time responsibility, the most senior members of each community should be represented on the Board and that there should not be a place on the Board reserved for professional groups.

The Report anticipated the need for Governors to see their roles in the broadest context and referred to the legislation in emphasizing this point.

Certainly, the *Act* is very much concerned with occupational health and safety in individual industrial enterprises, and with claims for compensation by individual workers who have suffered job-related illnesses or injuries. But the *Act* is also the embodiment of a social principle in which society as a whole has a stake. For that reason, nobody can truly claim exclusivity of interest.

Finally, the Report defined the functions of the Board of Governors.

On the one hand, its members should not be involved in the day-to-day minutiae of the organization. Rather, the daily running of the organization should be left to the responsible officers, administrators and other personnel who will be subject to the usual accountabilities. But nor should the new governing body be merely advisory. It should exercise real control in the definition of senior executive functions; the

selection and assessment of the most senior officers; the development of policies and regulations; the approval of operating and capital budgets; the approval of major programs and expenditures; the investment of monies on hand; planning for the future.

IV. The Workers Compensation Act 1989

The 1989 legislation mirrors the recommendations of the Munroe Report.

The power for governing the Workers' Compensation Board of British Columbia is allocated amongst the stakeholders, the Board of Governors, and management. The stakeholders are the workers, the employers and the people of British Columbia. The government appoints the Board of Governors in consultation with the stakeholders. Like many organizations, the Board members are drawn from various constituencies. Unlike most organizations, the WCB Governors are selected according to a specific formula outlined in Section 81 of the Act. There are thirteen voting members appointed by the Lieutenant Governor in Council on the recommendation of the minister; one chair; five "governors representative of workers;" "five governors representative of employers;" and two "governors representative of the public interest." The president and the chief appeal commissioner are non-voting governors by virtue of their office.

The Governors' responsibilities are described below:

The governors shall approve and superintend the policies and direction of the Board⁶, including policies respecting compensation, assessment, rehabilitation and occupational safety and health and

- (a) shall
 - (i) select and define the functions of the president and chief appeal commissioner,
 - (ii) review and approve operating policies of the Board,
 - (iii) approve operating and capital budgets of the Board,
 - (iv) develop policies to ensure adequate funding of the accident fund and of the silicosis fund referred to in section 41,
 - (v) approve major programs and expenditures,
 - (vi) plan for the future of the board, and
 - (vii) enact bylaws and pass resolutions for the conduct of the business and functions of the governors, including, without limitation , bylaws with respect to
 - (A) the quorum for a meeting or class of meetings of the governors, and
 - (B) the manner in which their policies shall be published, and
- (b) may
 - (i) establish and give direction to committees,
 - (ii) authorize the board to acquire and dispose of land and buildings, and
 - (iii) delegate in writing any of the powers and duties of the governors to the president, chief appeal commissioner or an officer of the board, subject to any terms and conditions set out in the delegation.

The Act is also very specific regarding the powers of the president and the structure and powers of the Appeal Division.⁷

The Munroe Report and the legislation envisaged the primary role of the Governors as being the stewards of the workers' compensation system in British Columbia focused on the interests of all stakeholders.

D. FACTORS WHICH INFLUENCED THE BOARD'S EFFECTIVENESS

I. The Magnitude of the Job

Neither the Munroe Report nor the legislation anticipated the enormity of the task that was assigned to the new Board of Governors. This Board was handed all of the traditional responsibilities that might accompany a typical appointment to a four billion dollar insurance company and much, much more.

In addition, they were assigned the task of overseeing a new appeal structure with its own senior executive, budgets and operating policies. And most importantly, their task included overseeing the social policy inherent in the WCB's regulation-making authority in areas of compensation, assessment, rehabilitation, occupational safety and health, first aid, and other areas independent of the Minister and Cabinet. This final task is analogous to asking the Board of a major Canadian insurance company to take on the responsibility for federal financial policy and regulation in the insurance industry. This enormous and time consuming task was made even more complex because there had been very little policy review under the previous structure.

II. Lack of Training for the New Governors

The Board was asked to operate a governance structure that is more complicated than most other typical governance structures.

To whom is the Board accountable? What is the significance of a structure in British Columbia that is made up of five worker, five employer and three non-aligned Governors? What was the meaning of "representative of workers, employers and the public interest?" How do you prevent such a structure from drifting into a pure collective bargaining process when it must by necessity and by law operate as a governance structure? What is the real role of the Chair under such circumstances? What are the appropriate Committees? How should priorities be established?

Further, there is little in the legislation that provides an overall purpose or charter for the WCB and this lack of general direction by the government makes the definition of the role of the Board Governors even more challenging and important.

Interviews and research indicate there was little or no training and direction for the Governors from outside resources with expertise in these areas. Governors were left very much on their own, especially for the first eight months prior to the appointment of the first Chair. Even after the Chair was appointed, not enough time was devoted to seeking outside perspectives regarding the unique nature of their roles and responsibilities. The Governors, with the best intentions and keen enthusiasm vigorously attacked a series of initiatives on several fronts before ensuring the foundations for cooperation and effectiveness were in place.

III. The Impact of the First President and CEO

All parties interviewed agreed the first President lacked the confidence of the Board almost from the beginning of his tenure. His departure after twenty nine months only added to the lack of continuity and leadership which was so critical for the structure in its formative years. His departure also created a number of ancillary problems which had a serious impact on Board effectiveness.

The lack of confidence in the CEO translated into a serious lack of trust by the Governors in the WCB infrastructure. This in turn led the Governors to become involved in details and activities which should not have been their responsibilities. The time Governors have spent on committees, sub-committees and simply preparing for meetings far exceeds the original concept of a part time Board member. This level of time commitment was never anticipated by the legislation.

IV. The Problem of the Chair Acting as the CEO

The other major consequence of the situation described above was that the Chair was pressed into taking on the role of the President and CEO while a search for a replacement was underway. The search went on for fifteen months during which time there was frequent and understandable confusion regarding whether the Chair was acting as the Chair or acting as the CEO. The Board became far too involved in the details of policy making and operations. This led to a blurring of the distinction between the CEO and Chair roles and further misunderstanding regarding the role of the Governors.

V. The Politicization of the Two Key Management Roles

Unfortunately, the two key management roles became politicized to the extent the perception exists that the President is the "employer's" person and the Chief Appeal Commissioner is the "worker's" person. This is extremely counterproductive and completely undermines the intention of the legislation and the Munroe Report.

It creates an impossible situation from a governance point of view because it polarizes the Board on an issue that is absolutely at the heart of effective governance. The President and the Chief Appeal Commissioner must have the unanimous and unchallenged support of the Board.

This polarization highlighted the need to clarify the role of the Chair. Although the Munroe Report focused on the critical role of the Chair, the Report never anticipated the set of circumstances described above, especially so early in the new Board's life.

VI. The Pace of Change

The scope and magnitude of the new Board of Governors' responsibilities, the lack of training and direction for the Governors, and the instability of the leadership of the organization should have indicated the need to move slowly and very cautiously. On the other hand, a review of the regulations and supporting policy had not been undertaken for many years and required attention.

As a result, the agenda of the Board and its Committees was enormous⁸ and the pace of change and activity was incredibly demanding. The enormity of the task and the controversial nature of some of the policy and regulation issues made it even more difficult.

The Board simply could not cope with the pace which was set given the newness and the fragility of the governance structure.

VII. Board of Governor Appointments

The Munroe Report emphasized the necessity that appointees be senior in their fields.

It is imperative that the governors be drawn from the most senior ranks of their organizations or callings. Adherence to that recommendation will facilitate the development of consensus, just as a lack of adherence will surely hamper such development.

Nor do we think that professional groups should have places reserved for them on the Board of Governors. Medical or other professional advice can easily be otherwise obtained. Indeed, there is some danger that the existence of "professional governors" would result in the range of professional advice being too narrow.

Governors, no matter from which group they are appointed, must have the confidence of their respective communities and the ability to clearly articulate their positions with authority. The government of the day has the responsibility to ensure the appointments are appropriately senior and have the support of their respective communities. In our view this guideline has not been followed in all instances thus reducing the opportunity for the structure to succeed.

We also note that the only articulated criteria for potential new Governors seems to be how well a potential Governor is perceived to, or in fact does, represent one of the three constituencies. There is neither a process which examines, nor a set of criteria which takes into consideration, the overall strengths and weaknesses that exist on the Board and the strategy and direction of the organization.

VIII. The Disproportionate Turnover of Employer Governors Compared to other Governors

Unfortunately, there has been an imbalance in the turnover of Governors. While four of the original worker Governors remain on the Board, only one of the original employer Governors remains on the Board. Over the course of four years there have been two replacement worker Governors and five replacement employer Governors. The two original public interest Governors remain on the Board.

This imbalance has created some instability because of the significant learning curve for new Governors. In addition, it has emphasized the need for clearer terms of reference consistent with the legislation and for a more comprehensive orientation program for new Governors.

IX. The Lack of Board Cohesiveness

We recognize that the very nature of the new structure creates an especially unique challenge for the development of Board unity. However, unity and cohesion are central to effective governance.

We acknowledge that there have been instances where both worker and employer Governors have taken positions that were not supported by their representative groups. The problem, however, is that the first time the Board interpreted the legislation, they defined their role in the following manner:

"...the representative governors' primary duty and responsibility is to represent the interests of their constituencies."⁹

We believe that this interpretation of the Act and of the Munroe Report is in error. The Governors primary responsibility is to the organization and to all stakeholders. From the very beginning the Governors' differences were emphasized rather than the organizations need to have them focus on the best interests of stakeholders generally.

The method by which Governors are briefed and prepared for meetings does little to assist them to understand or appreciate each others point of view. Because the Governors are skeptical of the information they receive from the management of the WCB, they have increasingly relied on their constituent groups to analyze Board agendas and supporting material and to brief Governors before meetings. Public interest Governors are at a distinct disadvantage in this regard.

Board meetings need to be conducted in a respectful and calm fashion. It is clear that personal outbursts and rancor have reached an inappropriate level and frequently create an acrimonious environment at meetings. This is not productive and should not be tolerated.

There are other symptoms of a divided Board. Governors "caucus" on a regular basis during meetings. While caucusing may be constructive to further a resolution from time to time, it should not be a standard practice for governing Board business. Even organization charts and letterhead for the Board symbolize a divided Board. There are separate boxes and categories for each of the Governor groups serving to emphasize not their unity of purpose but rather the representative group from which they are selected.

E. RECOMMENDATIONS

I. A General Purpose Statement or Charter Section in the Legislation.

The current legislation does not provide an overview or purpose statement which can be referred to by the organization and Governors. A statement of purpose similar to the one in the labour legislation would be extremely helpful for setting a framework and establishing a charter for the workers' compensation system in B.C.

We recommend that every effort should be made to revise the legislation at the earliest opportunity to include a purpose statement which provides the direction for the operation of the workers' compensation system in the province. The statement or mandate should take into account the need to provide for:

- (a) fair occupational health and safety regulations for the prevention of workplace injuries and illnesses and the rehabilitation of injured workers;
- (b) a fair compensation system for affected workers;
- (c) the supervision of financial matters such that the viability of the workers' compensation system in B.C. is secure; and
- (d) the protection of the public interest with respect to workers compensation matters in B.C.

II. Allocate Time and Resources to Defining Governance and its Application at the WCB; and Annually Review Board Effectiveness.

As we have pointed out, there was very little early direction or training for the new Board in spite of the fact that the new governance structure was significantly different from other organizations. Both the breadth and magnitude of the Board's responsibilities, and some of the understandable difficulties that have arisen over the past three years indicate the need to revisit some of the fundamental principles that underlie effective governance.

The Board needs, as a priority, to allocate time and resources to examining the unique nature of its governance structure and to implementing processes and structure which will effectively support the Board. This process of examination is as important as the end result because the process will allow the Governors to work together in establishing and clarifying governance principles at the WCB.

We suggest a facilitated approach which should be implemented over the course of several months. The process should include an examination of the following:

- (a) What is the meaning of governance and how is it applied in other organizational settings?
- (b) What are the unique attributes of the WCB of British Columbia? What are the implications of these attributes for the governance system at the WCB?
- (c) What structures and processes need to be put in place to appropriately support the Board's mandate?
- (d) How does the Board ensure the time commitment required of Governors is reasonable and that the time committed is as productive as possible?

We recommend this process include a thorough review of the terms of reference of the key roles within the governance structure. This should include:

- (a) the Board of Governors;
- (b) a Governor;
- (c) the Chair;
- (d) the President and the Chief Appeal Commissioner; and
- (e) the Committees.

We recommend the development of a Board Manual which at a minimum includes the redefined terms of reference, a statement of Board Guidelines which summarize the operating procedures of the Board, and a Board Governance Schedule which annually calendarizes the major governance activities. These activities should include, but not be limited to the:

- (a) annual CEO review;
- (b) annual Chief Appeal Commissioner review;¹⁰
- (c) strategic plan approval;
- (d) operating budget and capital plan approval;
- (e) committee reports;
- (f) board performance review; and
- (g) annual Governor criteria review.

Governance is not a set of static processes. It is a system of mutually reinforcing principles, structures and processes designed to enhance the effectiveness of the Board. We recommend the governance system be reviewed annually by a Board Governance Committee on behalf of the Board.

III. The Primary Responsibility of Governors is to Act in the Best Interests of the Workers' Compensation Board of British Columbia and all of its Stakeholders.

The current governance structure cannot operate effectively if the Governors define their role in Bylaw No.2 - Statement of Roles and Responsibilities of the Voting Governors dated October 7, 1991.

At the heart of our concern is the following excerpt from the Bylaw:

The Board of Governors is not a typical "corporate board of directors." Rather, the representative governors' primary duty and responsibility is to represent the interests of their constituencies.

This definition is not consistent with either the Munroe Report or the subsequent legislation. Neither is it consistent with any effective board governance model with which we are familiar. This definition of Board responsibility creates disunity and weakens the Board's ability to act cohesively.

We do agree this is not a typical corporate board. Our analysis supports this observation and our recommendations outline several ways to address these differences.

Most importantly, however, we believe effective governance depends on the ability of the governors to be scrupulous in identifying what they regard as the best interests of the organization and/or of the stakeholders generally.

A board is not a parliament where elected members represent the best interests of their constituency. Governors have only one constituency and that is the organization and all of its stakeholders. No matter how vigorously issues are debated the Governors must rise above their particular representative interests. We recognize and support the fact that Governors are selected to be representative of particular interests but this in no way diminishes their primary responsibility as Governors to act in the best interest of the organization and stakeholders generally.

It is for these reasons we recommend the Governors interpret their primary responsibility as that of acting in the best interests of the WCB of British Columbia and all its stakeholders.

The Bylaw gives heavy emphasis to the Governors' legislative role. Bylaw No.2 describes the business function role as "necessarily incidental" to their other responsibilities. This understates the importance of the Governors' responsibility for the business functions which embrace the Appeal Division as well as the stewardship of a 4.5 billion dollar corporation employing over 2,000 people in eleven major office locations throughout the province. We recommend there be a balance in the resources and time the Board allocate between their role in conducting the "business functions of the corporation" and their role in the regulation and policy area.

Finally, we recommend that the current WCB letterhead and all other literature referring to the Board be revised to show the Board of Governors as a single entity. Any of the symbols which emphasize a divided Board should be eliminated. This includes the frequent use of caucusing during Board meetings.

IV. The Governors Must be the Most Senior People from Each of their Constituencies

The Munroe Report was very clear about the need for the most senior people from the representative groups to be appointed to the Board. The Report cautioned that:

"Adherence to that recommendation will facilitate the development of consensus, just as a lack of adherence will surely hamper such development."

We strongly agree. In fact we argue that at this juncture in the Board's history, adherence to this guideline is more important than ever.

We recognize the challenge Governors face in having to rise above the specific interests of their representative groups in order to act in the best interests of all stakeholders and in the WCB itself. This requires leadership, confidence and courage. It requires the ability to articulate to their representative groups the rationale behind the decisions they make even though, from time to time, these decisions may not be consistent with the views of the representative groups.

We recommend the government be vigilant in ensuring Governor appointments are in fact senior people from the representative groups. It is also very important the government pay close attention to the recommendations of the representative groups regarding the appointment of new Governors. Just as the representative groups must appreciate the Governors mandate to act in the best interests of the WCB and all stakeholders so must the government ensure that the nominees to the Board clearly have the support of their representative groups. The government must retain the right to make the final decision but nominations need to be the result of extensive consultation.

The Munroe Report also made the following comments concerning the public interest Governors which we believe to be helpful:

It is true, as we have said, that workers and employers must be accorded the greatest voice on a representative Board of Governors. However there are good reasons why the public interest should also be represented. In recent years, there has been a growing public demand -- to which governments are now responding -- for lay or public representation on self-governing bodies established by statute, including those which are self funded....While the parties with the most immediate interest should hold majority say, the broad public perspective should have formal sway...

...the Act is also the embodiment of a social principle in which society as a whole has a stake....it is likely that a small representation of carefully chosen lay or public interest governors will be of assistance in the development of consensus among the representative governors....It is a genuine attempt to acknowledge the legitimate interests of everyone involved.

Public interest Governors are appointed to represent the "public interest" and to assist in developing consensus. It follows, therefore, that these appointments should be people who have a reputation, profile and history as "public" participants within B.C. Further, public interest Governor candidates need to have the skills necessary to forge consensus at the Board when necessary.

Increasingly, Boards of all kinds are spending time developing, on an annual basis, a set of criteria that should be used in the appointment of new Governors. We recommend that the Board examine the skills and experience that exist on the current Board and the strategy and objectives of the organization. Using the information developed during this process the Board will be in an excellent position to provide some guidance to the government and the representative groups when they are appointing Governors.

This is an excellent opportunity to consider some changes to the current Board membership. We believe it would be constructive to bring new perspectives and energy to the Board but at the same time recognize the need for continuity. A change in the Board's composition will facilitate the redefinition of the Board's terms of reference and the implementation of the recommendations included in this report. We recommend a 30% to 50% change in the Board's composition.

Further, we recommend two-year Governors' terms which can be renewed twice. After six years a Governor should be required to leave the Board for a period of two years before being eligible for re-appointment. Two year terms are consistent with the leadership mandates for most of the labour organizations and are not too onerous an initial commitment for Governors considering joining the Board. Two year terms also give the government some flexibility in staggering terms and reinforcing the concept of Governor accountability.

V. A Review of the Committee Structure of the Board

The "revised" Board terms of reference should lead to a revision of the types of committees which the Board creates. We recommend that the Board give serious consideration to the establishment of the following committees:

- (a) Board Governance Committee
The terms of reference of the Board Governance Committee should include the responsibility for:
 - (i) working with the Chair to establish the priorities and meeting agendas for the Board of Governors;
 - (ii) on an annual basis, reviewing the needs of the Board and making recommendations regarding the skills, experience and background that the government and representative groups might take into consideration when making appointments to the Board;
 - (iii) developing a process for an annual review of the performance of the Board and the governance processes that are critical to its effectiveness.

- (b) Human Resources and Compensation Committee
The terms of reference of the Human Resources and Compensation Committee should include the responsibility for:
 - (i) the annual reviews of the CEO and the Chief Appeal Commissioner;
 - (ii) the specific compensation and contract review for the CEO and Chief Appeal Commissioner;
 - (iii) compensation philosophy, guidelines and benefits;
 - (iv) union relations;
 - (v) management succession.

- (c) Audit Committee
The terms of reference of the Audit Committee should include the responsibility for:
 - (i) identifying the major risks to the financial stability of the organization and ensuring the implementation of appropriate systems to manage those risks;
 - (ii) reviewing and understanding the scope of the external audit, the overall audit approach, and the key audit considerations;
 - (iii) reviewing and approving the internal auditors plans;
 - (iv) reviewing and assessing the financial statements;
 - (v) reviewing and understanding significant regulatory, legal and tax matters;
 - (vi) reviewing internal and external auditor recommendations and concurring with the resulting management action steps.

We believe that the creation of these committees in addition to several of the existing committees will assist in providing a focus and balance to the Board's activities. In addition, we anticipate that some the existing committees could be folded into one of the three recommended committees.

VI. Improve the Quality and Consistency of Governors' Information

The Board of Governors must have access to all the information needed to carry out its full responsibilities. The information must be available in a timely manner, in a format conducive to effective decision making, and be tailored to Governors' needs. Good quality information is a cornerstone for effective Board governance.

Some have argued that "knowledge" may be a more appropriate word than "information." A Governor's real problem is not lack of information but rather its context and content. The real concern of most Governors is having too much information to digest in the time they have available. Governors are part timers; no matter how diligent they want to be there are limits to the time they are able to devote to the WCB.

(A) A Policy Bureau for the Board of Governors

The Worker and Employer Governors have increasingly relied on expert researchers from their respective constituencies to brief them on compensation, assessment, rehabilitation and occupational safety and health agenda items¹¹ before meetings. The public interest Governors -- who have no organized constituency -- have virtually been left to their own devices to organize their background material.

The result of this situation is that Governors come to the Board Meetings with different background data on issues. They are making decisions with differing information bases. This has been particularly divisive and makes consensual decision making extremely difficult.

We recommend that a Policy Bureau be created and be composed of a small staff of three to four policy development experts reporting directly to the Board through the Chair. The purpose of the Policy Bureau will be to develop sound analysis, alternatives and options in the compensation, assessment, rehabilitation and occupational safety and health areas. This analysis should include statistics on work place injuries and illnesses, cost impact studies and comparison of data with other jurisdictions. The Policy Bureau should have an operating budget controlled by the Board, and the ability to second appropriate staff from the WCB when necessary and/or retain expert advice. The views of the major constituents must be incorporated into the development of alternatives and options developed by the Bureau.

The Policy Bureau would have the following responsibilities:

- (a) undertake "public interest" analysis, develop alternatives, present options and make recommendations in support of the Governors public interest policy priorities. This should include not only analysis in support of WCB regulation amendments, but also analysis in support of Order in Council regulation amendments and legislative amendments which the Governors recommend to the Minister;
- (b) undertake extensive consultation with WCB constituents and determine consultative mechanisms appropriate to the issues being considered including the holding of public hearings; and
- (c) work closely with the Corporate Development Group to ensure that the impact of any policy changes on the corporate side of the WCB are clearly known before any changes are introduced.

One of the important results of the creation of the Policy Bureau should be a substantial reduction of **direct** time involvement by Governors in the review and development of occupational safety and health regulations. Similarly, the work of the Industrial Diseases Standing Committee should be embraced by the Policy Bureau. The role of the Governors will be setting priorities and making decisions on the basis of thorough consultation and analysis undertaken by the Policy Bureau.

The separation of the Bureau from the WCB administration should be reviewed by the Governors in twenty four to thirty six months with a view to incorporating the Bureau into the WCB administration. This time frame will allow the new CEO to create Governor confidence in the administration under his leadership.

This recommendation recognizes that the President of the WCB will continue to have a policy development group at the WCB which we would characterize as the corporate development group. This group would report to the President and has the following responsibilities:

- (a) facilitate corporate planning within the WCB and monitor implementation plans;
- (b) provide input to the Policy Bureau with respect to the impact of proposed public interest regulation changes on the operating objectives of the WCE; and
- (c) recommend potential changes to regulations or legislation which would enhance the ability of the WCB in meeting its corporate objectives.

(B) Streamline the Information going to the Board

Information going to the Board needs to be consistently presented, summarized and in many instances reduced. With this in mind, the following recommendations are aimed at improving Governor "knowledge" while at the same reducing their time commitment:

- (a) All material going to the Board must have a one to two page executive summary with appropriate supporting material. This allows for differences between individual Governor's level of knowledge.
- (b) All material going to the Board and committees should have a standard format agreed upon between management and the Board. This will assist the Governors in dealing more efficiently with large amounts of information on a wide range of issues.
- (c) Presentations to the Board should summarize the material sent out in advance. Most of the presentation time should be devoted to answering questions and a full discussion of the issue. This style of presentation assumes that all Governors will have thoroughly reviewed the material sent out by management.
- (d) A Forward Agenda should be developed which outlines critical topics to be covered by the Board annually -- this is a useful and very effective Board management tool.
- (e) Board and committee meeting agendas and the required background material should be provided at least two weeks prior to each meeting so that Board members have an opportunity for advance review of the relevant materials; if the appropriate information necessary to deal with the agenda item is not available the item should be moved to the next meeting.
- (f) A central feature of each Board meeting should be the CEO's and Chief Appeal Commissioner's oral reports concerning the state of their respective organizations and events affecting them since the previous meeting -- this is an important source of knowledge for Governors.

VII. The Role of the Chair

Board leadership is one of the key success factors to an effective governance system. The Chair provides that leadership and is the key link between management and the Board and the Board and government. The Chair leads the planning of the Board's work, the discussion at Board meetings, and sets the style, tone and pace for the Board. In attitude, manner, commitment, wisdom, judgment, integrity and work capacity, the Chair inevitably provides a model for all Governors.

The Munroe Report provided the following guidance which we believe remains very instructive:

What is required at the outset is someone with diverse talents. First of all, the chairman must enjoy the confidence of the labour and management communities and must be adept at forging consensus. Second, he or she must have the skills necessary to preside at meetings of the Board of Governors; to ensure the productive operation of that body; to facilitate and monitor the implementation of that body's decisions by the subordinate officers and staff. Third, he or she must be capable of acting as public spokesperson on broad policy matters. Finally, the chairman will have to develop the appropriate relationships with government.

The Chair responsibility at the WCB of British Columbia is a particular challenge because of the unique nature of the Board. We believe the WCB Board Chair is most likely to be a success when:

- (a) the position is part-time (30% to 50%) and there is no confusion between the role of the Chair and that of the CEO;
- (b) the terms of reference are clearly defined and the emphasis is placed on the Chair's role to manage and lead the activities of the Board of Governors, not the WCB itself;
- (c) the Chair is perceived by all to be impartial and fair;
- (d) the Chair has the ability to forge consensus but is willing to exercise leadership when it is necessary to move forward;
- (e) the Chair has the strength of character to control and unify a group which has difficulty rising above representative interests to achieve a common purpose.

One of the recommendations of the Munroe Report which we strongly endorse is the need for the Chair to have a small staff devoted to the operation of the Chair's office. An important member of that staff should be an Executive Co-ordinator who has the confidence of the Board members, the WCB staff and the Government in order that he or she can facilitate activities and issues on behalf of the Chair and the Board. Without such an assistant to the Chair it will be difficult to maintain the Chair's part time status.

VIII. Reduce the Time Commitment of Governors

Governors cannot afford to spend the amount of time that they have historically spent fulfilling their Governor obligations. A serious consequence of such a demanding schedule is that it could become increasingly difficult to attract potential Governors who meet the criteria for membership and who are willing to devote such a significant portion of their time to the WCB. An additional consequence is Governors are likely to become involved in areas which are more appropriately the responsibility of management.

An important side benefit of many of the recommendations we have previously made should result in a reduction in the amount of time Governors are having to spend on WCB matters.

We recommend that reasonable time targets be established for Board commitments. These targets should include preparing for and attending Board and committee meetings and any other additional Board activities. If Governors find the time required to meet their responsibilities is in excess of these targets, the pace of Board activity should be reduced and priorities re-examined. We suggest the target be two to three days per month.

IX. New Terms of Reference and Code of Conduct for Individual Governors

The legal descriptions for an individual Governor or director are helpful and provide some guidance for individual directors. Broadly speaking we are referring to the Governors duties:

- (a) to act in good faith;
- (b) to exercise powers properly for the purpose for which they are conferred;
- (c) to avoid conflict of interest;
- (d) not to fetter the future exercise of directors powers.

The problem is that these descriptions are not as helpful as they might be when individual Governors ask "What does this mean in terms of my actions and behaviour?"

We recommend the development of a set of practical guidelines and terms of reference for individual Governors that would include, but not be limited to, guidelines regarding attendance, participation, communication and interaction, standards of decorum, and levels of preparation.

F. SUMMARY

The public has the right to a workers' compensation system in which they have confidence.

The current governance structure has not had the opportunity to function within the framework and guidelines outlined in the Munroe Report and the legislation.

Although much has been accomplished by the Board in the past four years, our recommendations address those issues which we regard as having been a barrier to effective governance. We emphasize our recommendations are interrelated and should be implemented as an integrated single recommendation. To select a few recommendations and disregard others will weaken the potential impact of this report.

With the goodwill and co-operation of all stakeholders and the implementation of our recommendations we believe that the current governance system can function effectively for the benefit of all stakeholders.

G. EXECUTIVE SUMMARY OF RECOMMENDATIONS

The recommendations we make are interconnected. If only a part of what is recommended is implemented, there is a risk that it will impact other recommendations and consequently weaken the value and effectiveness of the total integrated set of recommendations.

I. A General Purpose Statement or Charter Section in the Legislation

1. We recommend that every effort should be made to revise the legislation at the earliest opportunity to include a purpose statement which provides a framework for the purpose and operation of the workers' compensation system in the province. The statement or mandate should take into account the need to provide for:
 - (a) fair occupational health and safety regulations for the prevention of workplace injuries and illness and the rehabilitation of injured workers;
 - (b) a fair compensation system for affected workers;
 - (c) the supervision of financial matters such that the viability of the workers' compensation system in B.C. is secure; and
 - (d) the protection of the public interest with respect to workers compensation matters in B.C.

II. Allocate Time and Resources to Defining Governance and its Application at the WCB, and Annually Review Board Effectiveness.

2. The Board needs to allocate time and resources to examining the unique nature of its governance structure and to implementing processes and structure which will effectively support the Board.
3. A thorough review of the terms of reference for all key roles within the governance structure should be undertaken.
4. The development of a Board Manual which at a minimum includes the redefined terms of reference, a statement of Board Guidelines summarizing the operating procedures of the Board, and a Board Governance Schedule which annually calendarizes the major governance activities.
5. The governance system be reviewed annually by a Board Committee on behalf of the Board.

III. The Primary Responsibility of Governors is to Act in the Best Interests of the Workers' Compensation Board of British Columbia and all of its Stakeholders.

6. The Governors should interpret their primary responsibility as acting in the best interest of the WCB of British Columbia and all of its stakeholders.
7. There must be a balance in the resources and time the Board allocates between its role in conducting the "business functions of the corporation" and its role in the compensation, assessment, rehabilitation and occupational safety and health areas.
8. The current WCB letterhead and all other literature referring to the Board should be revised to show the Board of Governors as a single entity. Any of the symbols which emphasize a divided Board should be eliminated.

IV. The Governors Must be the Most Senior People from Each of their Constituencies.

9. The government must be vigilant in ensuring appointments to the Board are in fact senior people from the representative groups. It is also very important the government pay close attention to the recommendations of the representative groups regarding the appointment of new Governors. The government retain the right to make the final decision but nominations need to be the result of extensive consultation.
10. Public interest Governors are appointed to represent the "public interest" and to assist in developing consensus. It follows therefore that these appointments should be people who have a reputation, profile and history as "public" participants within B.C. Further, public interest Governor candidates need to have the skills necessary to forge consensus at the Board when necessary.
11. The Board should annually review its composition and make recommendations to the government regarding criteria for selection of new Governors.
12. The Board should implement two-year Governors' terms which are renewable twice. After six years a Governor should be required to leave the Board for a period of two years before being eligible for re-appointment.
13. A 30% to 50% change in the Board's composition will facilitate the redefinition of the Board's terms of reference and the implementation of the recommendations included in this report.

V. A Review of the Committee Structure of the Board

14. The Board should give serious consideration to the establishment of the following committees:
 - (a) Board Governance Committee
 - (b) Human Resources and Compensation Committee
 - (c) Audit Committee

VI. Improve the Quality and Consistency of Governors' Information

15. A Policy Bureau should be created for the Board of Governors and temporarily located separately from the WCB administration and should:
 - (a) report directly to the Board through the Chair;
 - (b) be composed of a small staff of three to four policy development experts;
 - (c) develop sound analysis, alternatives compensation, assessment, rehabilitation and health areas;

- (d) have an operating budget controlled by the Board, and the ability to second appropriate staff from the WCB when necessary and/or retain expert advice;
- (e) incorporate the views of the major constituents into the development of alternatives and options developed by the Bureau;
- (f) be reviewed in 24 - 36 months as to whether or not the Policy Bureau should be folded into the WCB organization.

16. Streamline the Information Going to the Board.

- (a) All material going to the Board must have a one to two page executive summary with appropriate supporting material.
- (b) All material going to the Board and committees should have a standard format agreed upon between management and the Board.
- (c) Presentations to the Board should summarize the material sent out in advance. Most of the presentation time should be devoted to answering questions and a full discussion of the issue.
- (d) A Forward Agenda should be developed which outlines critical topics to be covered by the Board annually.
- (e) Board and committee meeting agendas and the required background material should be provided at least two weeks prior to each meeting.
- (f) A central feature of each Board meeting should be the CEO's and Chief Appeal Commissioner's oral reports concerning the state of their respective organizations and events affecting them since the previous meeting.

VII. The Role of the Chair

17. The Chair of the WCB Board:

- (a) Should be part-time (30% to 50%) and there should be no confusion between the role of the Chair and that of the CEO.
- (b) Needs to have clearly defined terms of reference with the emphasis placed on the Chair's role to manage and lead the activities of the Board of Governors, not the WCB itself.
- (c) Should be viewed as impartial and fair.
- (d) Should have the ability to forge consensus but is willing to exercise leadership when it is necessary to move forward.
- (e) Should have the strength of character to control and unify a group which has difficulty rising above their representative interests to achieve a common purpose.

18. The Chair requires an Executive Co-ordinator who has the confidence of the Board members, the WCB Staff and the Government in order that he or she can facilitate activities and issues on behalf of the Chair and the Board.

VIII. Reduce the Time Commitment of Governors

- 19. A reasonable time target of two to three days per month should be established for Board commitments.
- 20. If the actual time is exceeding the target, then the pace of the Board should be reduced and priorities reexamined.

IX. New Terms of Reference and Code of Conduct for Individual Governors

21. The Board should develop a set of practical guidelines and terms of reference for individual governors which include but are not limited to guidelines regarding attendance, participation, communication and interaction, standards of decorum and levels of preparation.

¹ Munroe Report.

² For example; The WCB has maintained the highest compensation benefit levels in the country since 1986, and currently offers the lowest assessment rates in the country. It has maintained a consistently high rate of return which has closely approximated the national average for WCB's. Historically, the WCB has been one of the healthiest systems in the country in terms of its unfunded status although this is an area which requires close attention.

³ See the Chair Reports in each Annual Report.

⁴ "Board" throughout this report refers to the Board of Governors.

⁵ "Stakeholders" refers to the employees, the employers and the people of British Columbia.

⁶ Footnote added by the authors. The reference here to "board" is to the WCB organization not the Board of Governors.

⁷ See Sections 84 and 85 of the Act.

⁸ We thoroughly reviewed the Board and Committee Meeting Binders over the past three years. The quantity and scope of this material can only be described as awesome!

⁹ Bylaw No.2 -- Statement of Roles and Responsibilities of the Voting Governors - October 7, 1991.

¹⁰ The Munroe Report states clearly "We do not contemplate that the chief appeal commissioner will be accountable for the decisions made in individual cases. On the contrary, the statute should be clear that this is not the case. However, the notion of quasi-judicial independence does not stand as an impediment to an accountability for the general operation of the office."

¹¹ As opposed to administrative policy.