

# GOVERNANCE

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## GOVERNANCE

### A Briefing Paper<sup>1</sup>

#### ISSUE

Governance has been defined as “the process and structure used to direct and manage the affairs of an organization.”<sup>2</sup> This paper reviews the history of WCB governance in B.C. and discusses:

- trends in governance of Canadian WCBs
- governance structures in Canada and internationally, and
- some components of an effective governance system.<sup>3</sup>

#### HISTORY

##### The Meredith Commission (1913)

In 1910, the Ontario government commissioned Sir William Meredith to conduct the first major study into workers' compensation in Canada. Meredith reviewed systems in the United States, France, Belgium, England and Germany before issuing his report in 1913.<sup>4</sup> His report included a draft Workmen's Compensation Act.

Meredith recommended that the proposed Act be administered by a Board appointed by the state.<sup>5</sup> He expressed confidence that this Board would be free

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<sup>1</sup> This is one of several briefing papers that the Policy and Regulation Development Bureau is preparing on topics that may fall within the Royal Commission's terms of reference. The purpose of the papers is to give background information that will orient the Commission or others to some major issues. The WCB does not expect the Commission to make decisions on the basis of these documents. Rather, the Commission will make its own inquiries.

The papers do not pretend to cover all the issues that the Commission or others might raise. The general nature of the papers also means that they cannot include detailed discussion of all the issues. There may be relevant factors that are omitted with regard to some issues. The explanations of some matters may be less than would be desired if the issues are being considered for decision.

The papers refer to sources of additional information where known. There has been no attempt to exhaustively research all the issues. The papers do not include recommendations for resolving issues, or take a position with respect to them. They may discuss known alternatives, particularly when other jurisdictions have adopted them.

<sup>2</sup> This is how the term was defined by Patrick O'Callaghan & Judi Korbin. See *The Worker's Compensation Board of British Columbia, Board of Governance Review, Report and Recommendations*, April 18, 1995, at p. 6.

<sup>3</sup> The policy issues related to the appeal system are discussed in a separate briefing paper.

<sup>4</sup> *Final Report on Laws Relating to the Liability of Employers*, 1913.

<sup>5</sup> *Ibid.*, p. 7.

from political partisanship.<sup>6</sup> The Board was to be responsible for collecting the money for the accident fund and for disbursing all benefit payments. The Board was to have exclusive jurisdiction to determine all matters and questions arising under the Act and, subject to a power to reconsider any of its own decisions, its actions or decisions were to be final and not subject to appeal. Meredith's draft Act was subsequently enacted by the Ontario government in 1914.

### **The Pineo Report (1916)**

Shortly after Meredith prepared his report for the Ontario government, the government of British Columbia created a Committee of Investigation, chaired by Avarad Pineo, to study the workers' compensation system. The Pineo Committee concurred with Meredith's recommendation that a state appointed Board be charged with administration of the Act. Although some of those appearing before the Committee had expressed doubt that "a competent and economical administration" could be secured through a government appointed Board, Pineo pointed out that experience in the American states visited by the Committee, refuted such a view. Indeed, in most of those states, the Boards were "emphatically commended and approved" by representatives of both employers and workers. However, he commented as follows:

...the Committee is thoroughly convinced of the importance of the appointment of a competent Board so far as possible free from political interference. Upon the good judgment and ability of the men who have charge of the organization and conduct of this system of compensation administration will depend very largely its ultimate success. In fact, actual experience has in many cases shown that the personnel of the Board and the judicious administration of the Act have proven to be elements of greater importance in making it a success than have any special provisions peculiar to the Act itself.<sup>7</sup>

The Committee made the following recommendations as to the constitution and functions of the Board:<sup>8</sup>

- That the Board consist of three Commissioners;
- That the term of office of the Commissioners be at least 10 years, with appointments alternating in such a manner as to ensure that there would always be at least two members with experience on the Board;
- That provision be made for the Board to establish its principal offices wherever in the province it determined was most convenient from the standpoint of economy of administration and the prompt discharge of its duties;

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<sup>6</sup> Ibid.

<sup>7</sup> Report of the Committee of Investigation on Workmen's Compensation Laws, March 1, 1916, p. 16.

<sup>8</sup> Ibid.

- That the Board be given absolute power to appoint and dismiss its own employees, subject only to the approval of the Cabinet as to salaries;
- That the Board be authorized to make proper investments of the Accident Fund, but that custody of the fund and securities be vested in the Provincial Treasury in such manner that the Province will guarantee its safekeeping;
- That the making of regulations for the proper administration of the Act and the determination of the sufficiency of the Accident Fund be left wholly with the Board and its expert officials, without being subject to Cabinet approval; and
- That the Board's accounts be audited by the Auditor General or by an auditor appointed by Cabinet and the Board be required to submit an Annual Report to Cabinet.

The Committee also recommended that the Board be responsible for occupational safety and health, in addition to administering the compensation system.<sup>9</sup> Another recommendation was that a substantial portion of the cost of administration be assumed by the government, in view of "the great advantages which [would] result from the Act generally throughout the Province".<sup>10</sup>

Although the Committee was "of the opinion that a limited appeal would probably not result in any serious disadvantage to any one", it was "equally convinced... that an appeal [was] not necessary for the proper administration of the Act."<sup>11</sup>

The Workmen's Compensation Act, which came into force on January 1, 1917 incorporated all of Pineo's recommendations, with one exception. The Board was required to obtain approval for proposed investments from the Auditor General and the Minister of Finance.

As in Ontario, the Board of Commissioners was to be a unicameral decision-making body exercising administrative, policy making and final, quasi-judicial appellate functions. Commissioners were to be appointed by the Lieutenant-Governor in Council. They were to be full time and could be removed for cause. Commissioners could also be disqualified if they failed to dispose of investments in industries covered by the Act or any interest in equipment used for the prevention of injuries. One of the Commissioners was to be appointed by the Lieutenant-Governor in Council to be the Chairman of the Board. The Commissioners' salaries were to be paid out of the Consolidated Revenue Fund. (This continued to be the case until 1931).

### **Commissions of Inquiry into the Workers' Compensation System (1942-1966)**

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<sup>9</sup> Ibid., p. 8.

<sup>10</sup> Ibid., p. 17.

<sup>11</sup> Ibid.

Three Royal Commissions have inquired into the operations of the workers' compensation system. The first two Royal Commissions were conducted by Chief Justice Sloan of the B.C. Court of Appeal. The third Commissioner was Mr. Justice Tysoe, also of the Court of Appeal.

In his 1942 report, Sloan quoted, with approval, Pineo's comments regarding the importance of appointing a competent Board free from political influence.<sup>12</sup> He noted that the Board then consisted of a lawyer as Board Chairman and two Board members: one a former labour member of the Legislature; the other an engineer. He also pointed out that two of the original WCB Commissioners, including the Chairman, were still members of the Board. The third Commissioner had died in 1934.

Some labour groups appearing before the Royal Commission criticized the lack of labour representation on the Board of Commissioners. They submitted that at least one member of the Board should be elected by workers or labour organizations. The chief proponent of this plan suggested, under cross-examination, that employers might also select a Board member and agreed that "a man selected in this way is partisan".<sup>13</sup> Sloan rejected the proposal with these words:

In my opinion this plan is condemned by the ...evidence of its chief protagonist... It means the destruction of an independent Board of three and the substitution thereof of two partisan representatives directly seeking to advance the views of those they represent with the decision in all matters of controversy resting with the chairman.  
...[Board members] are appointed by the Lieutenant-Governor in Council... to carry out certain delegated duties, not for any special class, but for all those people who are within the scope of the Act, either as employer or employee.  
...To substitute for an independent tribunal, deciding issues on the merits, one in which the members are advocates as well as judges, would be a retrograde step and is a theory I must reject as unsound in principle.<sup>14</sup>

In respect to a suggestion by the Local Council of Women that one member of the Board be a woman, Sloan took the position that if the government appointed a woman, it should be because she was best qualified to do the job. It should not be because she was a woman.<sup>15</sup>

Although a few labour unions advocated a legislative amendment to permit an appeal in disputed medical cases, other unions opposed establishing any form of

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<sup>12</sup> Report of the Commissioner relating to the Workmen's Compensation Board, 1942, p. 17.

<sup>13</sup> Ibid., p.181.

<sup>14</sup> Ibid., pp. 181-182.

<sup>15</sup> Ibid., p. 184.

appeal from Board decisions. Sloan reviewed the reasons why a right of appeal had not been provided in the original Act and concluded that:

The Board's decisions [should] remain final and free from attack on appeal because an appeal to the Courts, or to a Board exercising appellate functions, is contrary to the theory of administrative decision basic to the system of our Act.<sup>16</sup>

However, in 1952 Sloan reconsidered his position and recommended creation of a Medical Appeal Board. Although he was sensitive to the fact that the reasons he had given in 1942 for not recommending the creation of such a Board were still applicable, in 1952 Sloan concluded that it was in the public interest that a true appeal process be set up to resolve disputes related to medical issues.<sup>17</sup> Consistent with Sloan's recommendation, a Medical Review Panel was established by legislation enacted in 1954. Further legislative changes were made to the Medical Review Panel process in 1955 and 1959.

The second Sloan Royal Commission also found that "the Chairman and Members of the Board [of Commissioners] were conducting its affairs in a highly commendable manner."<sup>18</sup> Consistent with Sloan's recommendation, legislation was subsequently enacted substantially increasing the Commissioners' salaries.

In 1966, Tysoe focussed on the issue of WCB Commissioners' security of tenure.<sup>19</sup> A mandatory retirement age of 70 had been added to the Act in 1936. In 1954, the legislation was amended to provide that the Commissioners would hold office during the pleasure of the Lieutenant-Governor in Council and, unless otherwise directed by the Lieutenant-Governor in Council, would cease to hold office on attaining the age of 70 years. Consequently, the WCB Commissioners had no security of tenure at the time of the Tysoe Royal Commission.

Tysoe noted that representations had been made to him by labour, industry and by the WCB Commissioners supporting appointments for a term of years certain with removal only for cause. He summarized the reasons advanced as follows:

- (a) Security of tenure precludes political interference.
- (b) Appointees should be men of mature age and with considerable experience in the professional, business, or labour field that would serve them well in applying themselves to the many and varied problems that arise in the administration of the Act. Such men are quite unlikely to give up what they have and accept appointment as Commissioners unless

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<sup>16</sup> Ibid., p. 190. A full discussion of the development of the current appeal system is provided in a separate briefing paper.

<sup>17</sup> Report of the Commissioner relating to the Workmen's Compensation Act and Board, 1952, p. 149.

<sup>18</sup> Ibid., p. 364.

<sup>19</sup> Commission of Inquiry - Workmen's Compensation Act - Report of the Commissioner, 1966, p.416.

they can feel secure for a fixed and determined term of years so long as they conscientiously perform their work.

(c) Without security of tenure the Commissioners are figuratively walking a tightrope from which they may be tumbled by pressure from various sources.<sup>20</sup>

Although Tysoe found “much force in these reasons”, he voiced concern about what could be done if there were security of tenure and an appointee turned out to be a disappointment.<sup>21</sup> He queried what would constitute “good cause” for dismissal and whether doing no more than is absolutely necessary would be sufficient. Since he was not firmly persuaded that there should be security of tenure, he chose to “take refuge in the belief”<sup>22</sup> that this issue was in the realm of legislative policy, and so he should avoid making any recommendation.

The Tysoe Royal Commission had been specifically requested to inquire into the appropriateness of making changes to the system for appealing decisions of the WCB.<sup>23</sup> Apart from the Medical Review Panel process, which had commenced in 1954, there was no statutory provision authorizing appeals. The Commissioners, through policy, had created what they called an appeal process. Disputed claims decisions were considered by a Board of Review. The Board of Review consisted of 3 senior officers of the WCB.

Tysoe concluded that to curtail the powers of the WCB through the creation of an external appeal system was not desirable. He recommended improving the WCB’s internal system of reviewing and reconsidering its own decisions. Accordingly, Tysoe recommended that the Board of Review be reconstructed. In particular, he recommended that the members of the Board of Review include a lawyer and a doctor. He also recommended that the members of the Board of Review devote their full time to that position to preclude the possibility of a Board of Review member reviewing his or her prior decision.<sup>24</sup>

Another issue addressed by Tysoe was WCB Commissioners’ salaries.<sup>25</sup> In 1954 specific salary amounts had been removed from the legislation, which then provided that salaries were to be fixed by the Lieutenant-Governor in Council. Although some labour groups made representations for increases in WCB Commissioners’ salaries, Tysoe declined to make any recommendation since salaries were a matter of government policy.

Tysoe also felt it necessary to recommend that the WCB Commissioners set about overhauling the machinery of administration.<sup>26</sup> He commented that better

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid., p. 5.

<sup>24</sup> Ibid., p. 366.

<sup>25</sup> Ibid., p. 417.

<sup>26</sup> Ibid., p. 440.

control and direction was needed from the top and some additions to staff were required. Although he approved of the Commissioners' desire to keep administrative costs to a minimum, he stated that he was "unable to approve a policy based so heavily on economy" that departments were unable to operate "to anything like full effectiveness and efficiency".

Following the submission of Tysoe's report, several changes were made to the Act. Amendments, which took effect on April 6, 1968, gave a specific right of review by the Board of Review and provided for a Chairman appointed by the Lieutenant-Governor in Council. Another amendment provided for the appointment of a Vice-Chairman of the Board of Commissioners, if Cabinet felt one was required. If the Vice-Chairman was not already a Commissioner, the appointment would be in addition to the three existing Commissioners.

Amendments in 1973 (which took effect on January 1, 1974) were more significant. These amendments provided for creation of independent boards of review, whose members would be appointed by the Lieutenant -Governor in Council, to hear appeals affecting workers. A right of appeal from decisions of the boards of review to the Commissioners of the WCB was also formalized in the legislation.

A legislative amendment in 1977 removed the need for Cabinet approval of WCB staff salaries. That same year, the composition of the Board of Commissioners was changed to a maximum of five members, one of whom was to be appointed Chairman. Another Commissioner could be appointed Vice Chairman.

### **The Munroe Committee (1988)**

Further calls for Royal Commissions following Tysoe were resisted by the various governments. However, in July 1987, the provincial Ombudsman released a report on the workers' compensation system.<sup>27</sup> That report concluded that the Board of Commissioners' policy and administrative functions conflicted with its adjudicative function. The report recommended that the appeal function be separate to ensure accountability.

Following the Ombudsman's report, the Minister of Labour appointed an advisory committee to examine the structure of the WCB and provide recommendations:

as to what needs to be done to ensure the parties of interest, i.e. employers and workers, can participate effectively in initiation,

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<sup>27</sup> Workers' Compensation System Study: Public Report No. 7. This report dealt with 2 major fairness issues. The first was the effectiveness of the claims and appeal systems in reaching correct and acceptable decisions within a reasonable period of time. The second major issue was accountability. Recommendations concerning an appeal system that was independent, expert and final were intended to address that issue.

development and approval of Workers' Compensation Board policies, programs and procedures.<sup>28</sup>

The committee was Chaired by Donald R. Munroe, QC, Barrister and Solicitor. There were 13 members of the committee including the Assistant Deputy Minister of Labour and the Chairman of the WCB. The other members were senior executives of trade unions, labour organizations, private companies and employer associations.

After calling for and receiving 45 formal written submissions, meeting with a number of individuals and groups, considering the reports of similar committees in other jurisdictions and reviewing other relevant material, the advisory committee submitted its unanimous report (the Munroe Report) and recommendations.

As reflected in the committee's terms of reference, by 1988 the concern was with accountability and not so much with the expertise and independence of the governing body, as underscored by Pineo's recommendations.

The advisory committee said that it was widely accepted that a new governing body should be constituted to superintend the general direction and policies of the WCB.<sup>29</sup> In discussing the reasons for that view, the committee stated:

The Workers' Compensation Board has great powers and obligations, the exercise and discharge of which may profoundly affect individual workers and employers. The Board is also the immediate guardian of the important social policies reflected in the legislation. It follows that the Board's officers and personnel should have regular input from the parties of interest and the public generally, and should be accountable in the usual ways in the carrying out of their duties.<sup>30</sup>

Following that reasoning, and after considering several alternate models, the Munroe Report recommended a governance structure which recognized the claim of workers and employers to a predominant position on the Board while also recognizing the need for public representation. The committee dismissed the suggestion that the government itself should be directly represented, reasoning that there needed to be perceived as well as actual independence from the executive branch of government. Representation of professional groups was also rejected. Injured workers, survivors or deceased workers' families were

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<sup>28</sup> Report and Recommendations to the Minister of Labour and Consumer Services by the Advisory Committee on the Structure of the Workers' Compensation System of British Columbia, October 31, 1988, p. 2.

<sup>29</sup> Ibid., p. 5.

<sup>30</sup> Ibid., pp. 5-6.

not expressly identified as a group for whom representation should be mandated.<sup>31</sup>

The Munroe Report recommended formation of a Board of Governors consisting of 13 voting members and two non-voting members. The voting members would consist of five Governors representative of workers, five representative of employers, two representative of the public interest and a Chairman. These Governors would be appointed for terms of not less than four and not more than six years. Appointments would be capable of renewal and terms would be staggered to ensure continuity. The appointment process would include consultation with recognized labour and management organizations. All of the voting Governors would serve on a part time basis, although the committee foresaw the Chairman eventually being full-time.

The non-voting governors would be the holders of two new statutorily created offices: a President/CEO and a Chief Appeal Commissioner. The role of the Chief Appeal Commissioner (the CAC) would be to ensure the proper and expeditious discharge of the WCB's quasi-judicial duties including claims, assessment and penalty appeals. The President/CEO would be responsible for implementing the policies of the Governors and administering the WCB.

Both positions would be appointed by and responsible to the Board of Governors. However, the CAC would not be accountable to the Board of Governors for decisions made in individual cases. He or she would only be accountable for the general operation of a final appellate system which would be part of the WCB but carry out its quasi-judicial duties at arm's length from the administrative and policy making structures.<sup>32</sup>

The committee thought it would be beneficial for the President/CEO to be a non-voting member of the Board to facilitate the flow of advice and communications between the executive officers and the Board of Governors.<sup>33</sup> The reason for the

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<sup>31</sup> However, T. G. Ison, former Chairman of the Board of Commissioners, makes the point that there is a risk that, under such a structure, the interests of permanently disabled workers could be insufficiently represented. This is because "while many are union members at the time of injury, they commonly cease to be members as time goes by." See *Compensation Systems for Injury and Disease: The Policy Choices*, p. 151.

<sup>32</sup> In *The Workers' Compensation System of British Columbia: Still in Transition*, at pp. 265-266, the following comments are made in respect to the role of the Chief Appeal Commissioner and an internal appeal body:

It is apparent that the question of the independence of the Appeal Division was not adequately settled in the drafting of Bill 27, nor by the Munroe Commission report that preceded it. The debate over whether the Chief Appeal Commissioner is an independent, external reviewer, or a part of the top management of the WCB, obligated to enforce WCB policy as she interprets it, continues to this day...

Ultimately, it may be beyond the capacity of the WCB Board of Governors, or its replacement, to resolve the issue of whether the structural relationship between the Appeal Division, as it exists today, is appropriate. It may require legislative resolution at this point...

<sup>33</sup> *Supra* note 28, p.14.

Chief Appeal Commissioner's participation as a non-voting Board member was to enable the Board of Governors to ensure that its policies were clearly understood by the system's most senior adjudicators.<sup>34</sup>

The advisory committee had this to say about the role of the new governing body:

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; and planning for the future.<sup>35</sup>

The Munroe Report also included detailed recommendations concerning the qualifications and functions of the Chairman of the Board of Governors, the President/CEO, the Chief Appeal Commissioner and Appeal Commissioners.

All of the recommendations contained in the Munroe Report were accepted by the Legislature and incorporated in Bill 27, (the Workers Compensation Amendment Act, 1989), which came into force on June 3, 1991. The new Board of Governors structure, along with the new Appeal Division headed by a Chief Appeal Commissioner, and the new position of President/Chief Executive Officer, resulted in the separation of the policy making, appellate and administrative functions of the former Commissioners.

### **The Korbin/O'Callaghan Report (1995)**

In December 1994 the Chairman of the Board of Governors resigned and the Deputy Minister of Skills, Training and Labour was appointed Chairman on an interim basis.

In January 1995, the Minister of Skills, Training and Labour hired two management consultants (Patrick O'Callaghan and Judi Korbin) to review the structure and operations of the Board of Governors. The request was prompted by events which "had suggested that the governance structure of the WCB might be in jeopardy."<sup>36</sup> The consultants were asked to provide a report and recommendations "aimed at restoring confidence in the governance structure

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<sup>34</sup> Ibid., p. 17.

<sup>35</sup> Ibid., p. 6.

<sup>36</sup> The Workers' Compensation Board of British Columbia, Board of Governance Review, Report and Recommendations, April 18, 1995, p. 4.

and improving the overall effectiveness of the Board.”<sup>37</sup> A final report was submitted to the Minister on April 18, 1995.

The consultants reported a “high level of frustration”<sup>38</sup> with the WCB governance system on the part of all those interviewed. Accordingly, they discussed the factors they felt had impeded the Board’s effectiveness, including the enormity of the task, a lack of training for new governors, politicization of the roles of President/CEO and Chief Appeal Commissioner, and a lack of continuity and leadership. However, the report’s major thrust was to highlight the absence of Board cohesiveness.

The report did not recommend any fundamental changes to the governance structure. Rather, it focussed on procedures and systems intended to reduce the contentiousness of interest group representation, improve the cohesiveness of the Board of Governors, and reduce the burden on Governors generated by the pace of change and the fractious personal relationships. Recommendations were made concerning the need for a statement in the legislation clarifying the purpose of the workers compensation system; the use of Board committees; the selection criteria for and orientation of Governors; the role of the Chairman; the system for providing information and policy advice to the Board; the nature of the duty owed by representational Governors; the need for guidelines and terms of reference for Governors specifying expectations as well as the need for a process to evaluate Board effectiveness on an annual basis.

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid., p. 5.

The conclusion of the consultants was that:

the Board has not had the opportunity to operate in a fashion that is consistent with the original intent of either the Munroe Report or the subsequent 1989 legislation. With the implementation of the recommendations made... in this report, we believe the current 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. [emphasis in original]*<sup>39</sup>

### **Bill 56 (1995)**

In the Summer of 1995, a new Chairman of the Board of Governors was appointed on an interim basis. Along with the Governors, the new Chairman had a mandate "...to address recommendations contained in the report on WCB governance completed by Patrick O'Callaghan and Judi Korbin in April..."<sup>40</sup> However, organized labour pronounced the Korbin/O'Callaghan report "dead on arrival".<sup>41</sup> At the same time, employers were publicly criticizing the terms of a new collective agreement between the WCB and its staff union and employer Governors had stated they were prepared to vote the contract down.

In July, 1995 the President and CEO tendered his resignation to the Minister. His letter explained:

...the longer term strategy is in jeopardy due to external attempts to intervene in operational matters that rightfully rest with management. While this is a Crown agency and by its very nature draws considerable public scrutiny, those with self interests have orchestrated an unrelenting attack on the organization. Unfortunately the Board of Governors is not sufficiently united in purpose to provide effective governance nor voice support for its management team.<sup>42</sup>

On July 13, 1995 the Legislature responded by enacting Bill 56 (the Workers Compensation Amendment Act, 1995). This Bill amended the Act to provide that the Lieutenant-Governor in Council could appoint a one or more person panel of public administrators to discharge the Governors' powers, duties and functions. This provision was immediately acted upon and the Board of Governors was dissolved and replaced by a Panel of Administrators. The President/CEO's resignation was not accepted and he continued in his position.

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<sup>39</sup> Ibid., p. 6.

<sup>40</sup> Ministry Press Release, June 22, 1995.

<sup>41</sup> The Workers' Compensation System of British Columbia: Still in Transition, p. 15. See also pp. 13-16 for a more detailed account of events that led up to the introduction of Bill 56.

<sup>42</sup> Ibid., pp. 15-16.

In a press release, the Minister stated that: "Recent events have brought into question the ability of the Board of Governors to put the interests of injured workers and their families before the interest of the individual governors and their sectors."<sup>43</sup> The appointment of a Panel of Administrators was "to provide an opportunity to review the system of WCB governance required for the longer term stability and functionality of the board of governors."<sup>44</sup> The Panel of Administrators was not intended to replace the Board of Governors on a permanent basis.

The legislation provides that a member of the Panel of Administrators ceases to hold office 12 months from the date of appointment unless the Lieutenant-Governor in Council orders otherwise. The original Panel consisted of a Chair and 3 members. One Panel member, appointed on July 27, 1995 ( and reappointed for a further one year term), resigned in late 1996 and has not been replaced. Since its inception, the Panel has had 3 different Chairs.

The Panel currently consists of a Chair and 2 members. The Chair was appointed on August 1, 1996 for a 1 year term. The two members were originally appointed on July 27, 1995. Their terms have been extended until July 31, 1997.

## **DISCUSSION**

### **1. Trends in Governance of Canadian WCBs**

The history of WCB governance in BC is illustrative of general trends that have occurred over the past 80 years in the governance of workers' compensation systems across Canada. These trends include:

- an increased emphasis on accountability to government and a decreased emphasis on independence of the governing body, including government intervention to revoke appointments and dissolve the governing board.

Appendix 8 itemizes accountability mechanisms mandated by statute in Canadian jurisdictions. Many of these have been enacted in recent years.

The most recent instance of a Board being dissolved was in Ontario. In November 1995, the government of Ontario replaced the WCB Board of Directors with a President. The President was appointed by the Lieutenant-Governor in Council to exercise the powers and perform the duties of the President, Board and Chair. Legislation was proclaimed on July 17, 1996 reconstituting a Board of Directors.

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<sup>43</sup> Ministry Press Release, July 10, 1995.

<sup>44</sup> Ibid.

- a move towards formal, direct representation of workers and employers in the governance structure.

Under the traditional Board of Commissioners structure, workers and employers had no formal entitlement to representation. Currently, in 9 Provinces and Territories, worker and employer representation is required by statute (see Appendix 1). In 5 of these jurisdictions equal representation is required (see Appendix 2). Equal representation was also required in B.C. under the Board of Governors' structure. However, worker and employer representation is not required on the Panel of Administrators.

Although the Northwest Territories and Nova Scotia do not require employer and worker representation on their Boards of Directors, the Nova Scotia Act provides that the Governor in Council shall endeavor to appoint an equal number of worker and employer representatives. Currently there are three labour and three employer members on that province's Board, in addition to a Chairman.

- the shift from a unicameral (Board of Commissioners) governance model to a Board of Directors/Board of Governors model, separating policy making, administrative and appellate functions. This shift has been accompanied by the appointment of Chief Executive Officers in most jurisdictions (see Appendix 7) and by the creation of external appeal bodies in the majority of provinces.<sup>45</sup>

During the 1980's and 1990's, all Canadian jurisdictions, with the exception of Saskatchewan, adopted a corporate governance model (see Appendix 1). T. G. Ison, former Chairman of the Board of Commissioners, has commented that this change was never preceded by any cost/benefit analysis.<sup>46</sup> In his view, the quality of appointments and security of tenure were the primary complaints about the Commissioners structure and there was no reason why a change to a Directors model should have been seen as the appropriate solution to these problems. He concludes that the Board of Directors structure was adopted because of demands for greater Board accountability from labour and management groups, because of a denigration of public service at the time, and because business corporations were portrayed as having a virtue superior to that of government organizations.

Fox-Decent, Chairperson of the Manitoba WCB, points to other pressures requiring resolution in the 1980s and 1990s. These were: the deteriorating financial situation of WCBs; stakeholder feelings of

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<sup>45</sup> Saskatchewan and the Yukon are the exceptions.

<sup>46</sup> Compensation Systems for Injury and Disease: The Policy Choices p. 150.

disenfranchisement; increasing demands for more openness and greater accountability from public institutions; and growing questioning about the WCB's role in the income security system in Canada. He opines that these pressures led governments to turn for assistance toward the introduction of a governance model normally associated with corporations even though "no one governance approach could, in a practical sense, provide a structure which would solve all of these problems."<sup>47</sup>

Even in Saskatchewan, the traditional Board of Commissioners model has been modified by statute to provide for the appointment of an Executive Director to assume the management functions and to require formal representation of workers and employers on the Board.

- a less powerful role for the Board Chair, as a consequence of the change in structure.

Under the traditional, 3 person Board of Commissioners structure, the Chair functioned as Chair, Chief Executive Officer and Chief Appeal Commissioner. The separation of management, appellate and policy making roles under the Board of Directors structure, has resulted in the Chair's authority and sphere of influence being greatly diminished.

- a shift to part time Board members.

Meredith and Pineo had both recommended the appointment of full-time Commissioners and this became the norm across Canada. Saskatchewan, which is the only province to retain the Commissioners structure, continues to have full time Commissioners. Currently, only the Quebec and New Brunswick Acts require the Chair of the Board of Directors to be a full time appointment (see Appendix 3). In Quebec, the Chairman also functions as CEO. The Vice-Chairmen are also required to be full time in Quebec. Other members of Boards of Directors are not required to be appointed on a full-time basis in any jurisdiction.

- a movement towards shorter terms of office for Board members or simply at pleasure appointments.

As envisioned by Meredith and Pineo, the original legislation in Ontario and B.C. provided for 10 year terms for Commissioners. The first B.C. Act also specified that Commissioners were eligible for reappointment. Today, the term of office is not always fixed nor is it always the same for all Board members (see Appendix 3). In jurisdictions where the Chair's term is fixed, half set a maximum term of 5 years. For other

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<sup>47</sup> Gouverner, C'est Choisir, p. 3.

members, the usual term of office varies between 3 and 5 years. There are no fixed terms in Ontario and Newfoundland. Reappointment is possible in all but 4 jurisdictions.

- an increasing number of Boards being given responsibility for occupational safety and health.

At one time, most WCBs had responsibility for accident prevention or occupational safety and health (OS&H).<sup>48</sup> However, except in Quebec and B.C., this responsibility was reassigned to provincial governments during the 1970's and 1980's. In the 1990's, 5 WCBs were again given responsibility for the OS&H function, so that today, the majority of WCB's have authority in that area (see Appendix 6).

## 2. The Choice of Structure

### In Canada

While the trends are universal, they have not produced identical governance structures in the Canadian jurisdictions. Currently, several distinct governance structures are created under Canadian legislation (see Appendices 1,2 & 4).

- The Acts in 4 of the 12 jurisdictions provide for bipartite Boards with equal representation from industry and labour<sup>49</sup>.
- The Acts in 3 of the remaining jurisdictions provide for a tripartite structure. In Alberta and Manitoba, workers, employers and the public interest have equal representation, while in New Brunswick the public interest is represented by fewer Board members.
- The Ontario Act provides for what that province's government describes as a multi-stakeholder Board,<sup>50</sup> composed of 3 to 7 members representative of workers, employers and "such others as the Lieutenant Governor in Council considers appropriate."
- The legislation in Newfoundland and Nova Scotia requires the Lieutenant-Governor in Council to appoint or endeavor to appoint an equal number of employer and worker representatives, without limiting appointments to these two groups or specifying whether additional appointees must be representative of any particular group. Currently, public interest representatives have been appointed in both of these provinces in addition to worker and employer representatives.
- The Yukon Act does not specify that any particular combination of interests must be represented.

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<sup>48</sup> Comparison of Workers' Compensation Legislation in Canada (1995) p. 21.

<sup>49</sup> Saskatchewan, Quebec, P.E.I. and the Yukon.

<sup>50</sup> News Release, Ontario Ministry of Labour, July 3, 1996.

- Currently, the B.C. legislation does not require a representative Panel of Administrators. However, the Panel was not intended to be a permanent governance structure. The Board of Governors, which preceded the Panel of Administrators, did provide for representation of workers, employers and the public interest.
- All jurisdictions also provide for the appointment of a Chair. Only the New Brunswick Act specifies that the Chair must not be representative of workers or employers. Although the legislation in other jurisdictions is silent on issue, the usual practice is to appoint a neutral Chair.
- The Acts in 2 jurisdictions provide that the Chair of the Board of Directors is also the CEO.<sup>51</sup> In Manitoba, the Chairperson currently acts in both capacities, although the legislation anticipates separate positions.
- In 5 jurisdictions, the legislation provides that the Chief Executive Officer of the WCB is a member of the Board.<sup>52</sup> Three of those jurisdictions specify that the CEO has no vote.<sup>53</sup>
- In 2 jurisdictions the Chief Appeal Commissioner/Chairperson of the Appeals Tribunal is a non-voting member of the Board.<sup>54</sup>
- Newfoundland provides for government to be represented on the Board through the appointment of the Assistant Deputy Minister as a non-voting member.
- The Quebec government may designate 2 official “observers” to participate, but not vote, at Board meetings.

### **Internationally**

Authority for administering the workers’ compensation system varies from country to country.<sup>55</sup> The functions of the administering agency also vary and tend to be less diverse than those delegated to Canadian WCBs.<sup>56</sup> Therefore, caution should be exercised in comparing Canadian and international governance models.

However, a cursory review of workers compensation systems internationally reveals that:

- The Australia and New Zealand programs are administered by independent State and/or Federal agencies or authorities. These

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<sup>51</sup> Quebec and Northwest Territories.

<sup>52</sup> Alberta, Ontario, New Brunswick, Newfoundland and the Yukon.

<sup>53</sup> Alberta, Newfoundland and the Yukon.

<sup>54</sup> Manitoba, New Brunswick.

<sup>55</sup> See *Unfolding Change: Workers Compensation in Canada*, Vol. 4, p. 17. This 1995 study reported that: “Fully two-thirds of 136 nations with workers compensation laws include [workers compensation] coverage within the general social service system, with relatively little distinction between work-related and non-work related injuries and illnesses. Only 10 (7%) of [workers compensation] systems worldwide are like Canada in that they require government provided [workers compensation] insurance.”

<sup>56</sup> For example, see *Comparison of Canadian and United States Workers’ Compensation Systems* (1993), p. 22 for a summary of the differences in the mandates of U.S. and Canadian WCBs.

organizations use a Board of Directors structure, similar to that found in many private corporations.

- In the Netherlands and Germany, the program is decentralized and administered largely by self-governing groups organized along industry lines.
- In the United Kingdom, Japan and Korea, workers' compensation is administered by the government as part of a broader social insurance system.
- Since 1984, Switzerland has moved away from government administration towards private insurance or sickness funds.
- In the United States, workers' compensation may be administered by an exclusive State Fund, by a State agency that regulates private insurance carriers or by a State agency that operates a State Fund in competition with private insurance carriers.

A more detailed description of governance structures in these countries can be found in Appendix 9.

### **Significance**

From the preceding survey of Canadian and international governance models, it may be concluded the number of potential structures is virtually limitless. In discussing the variety of governance structures existing in Canada, the Chairperson of the Manitoba WCB concluded that:

Clearly, no one model is canonical. As a democracy, successful models reflect local conditions and influences. I cannot see, from examining the various models, that there is any evidence that stakeholder satisfaction is markedly less under any particular model; that service quality depends on the model; that financial security or probity is guaranteed by the model; or that the prescience of the Board depends on it.<sup>57</sup>

If one accepts this analysis, the architects of any new governance model will need to ensure that it is customized for B.C. However, since structure alone is not determinative of governance success, they will need to consider other factors as well. The remainder of this paper will discuss some interrelated issues that may impact on governance system effectiveness.

## **3. Components of An Effective Governance System**

### **Clear Expectations**

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<sup>57</sup> Supra note 47, p. 6.

The powers, duties and jurisdiction of each Workers Compensation Board are set out in statute. The following are common to most Boards in Canada:

- exclusive jurisdiction over most matters set out in the Act;
- power to determine, review and approve programs, policies and budgets;
- authority to delegate powers;
- power to compel and examine witnesses and documents;
- broad investigative and inquiry powers, including the power to initiate investigations;
- power to appoint and hire staff for the administration of the Act;
- authority to acquire and dispose of real property;
- power to invest funds;
- the duty to submit an annual report;
- power to rehear matters; and
- the duty to administer or perform any act, duty or task assigned by the Lieutenant Governor.

However, significant differences exist amongst Canadian WCBs in relation to the breadth of their mandates, in particular:

- their power to make regulations (see Appendix 6);
- their jurisdiction over occupational safety and health (see Appendix 6);
- their responsibility for administering other Acts, such as criminal injuries compensation legislation;<sup>58</sup>
- the percentage of the workforce covered by their legislation;<sup>59</sup>
- their authority to appoint a Chief Executive Officer (see Appendix 7); and
- the degree to which they (or an external appeal body) have final authority over the setting of Board policy.<sup>60</sup>

In B.C., the Legislature has given regulation making and final policy making authority to the WCB. In addition, the WCB is responsible for occupational safety and health and administration of the Workplace and Criminal Injury Compensation Acts. British Columbia is one of only 5 provinces which can appoint a CEO without obtaining the approval of the Lieutenant-Governor in Council. Except for the Yukon, the highest percentage of the workforce is

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<sup>58</sup> Information on this issue is summarized in *Comparison of Workers' Compensation Legislation in Canada* (1995), p. 20. At the time of that survey, B.C., Manitoba, Quebec and the Yukon had responsibility for administering criminal injuries compensation statutes.

<sup>59</sup> In *History of Workers' Compensation and Regional Variations*, the Executive Director of the Association of Workers Compensation Boards in Canada reported that as of 1994, 97.6% of the B.C. workforce was covered under the Workers Compensation Act. Only the Yukon covered a higher percentage (100%).

<sup>60</sup> In Alberta, Ontario, Manitoba, the Northwest Territories and P.E.I., where an appeal tribunal decision turns on policy, the Board can either stay the decision or ask/ direct the tribunal to reconsider its decision. In B.C., the President may refer a finding of the Review Board to the Appeal Division for redetermination on grounds of error of law or contravention of published policy of the Governors/Panel of Administrators.

covered under the B.C. Act. As a result, the Panel of Administrators' responsibilities are amongst the broadest in Canada.

Although there is a separation of policy-making, administrative and quasi-judicial functions under the B.C. statute, ultimately it is the Panel of Administrators that must ensure that the system is operating in accordance with the spirit and intent of the Workers Compensation Act and other legislation for which the WCB is responsible.

The functions of the Governors, (which under section 83.1(3) are to be discharged by the Panel of Administrators), are set out in section 82 of the Act. The wording of this section is derived, almost verbatim, from the Munroe Report.<sup>61</sup> The section provides that the Governors:

shall approve and superintend the policies and direction of the board, including policies respecting compensation, assessment, rehabilitation and occupational safety and health and... 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 [G]overnors...

Whether this section provides sufficient guidance and direction concerning the Legislature's expectations was an issue raised by Korbin and O'Callaghan. Their report noted that the Workers Compensation Act in B.C. does not "provide an overview or purpose statement which can be referred to by the organization and Governors." It was the authors' opinion that a statement "similar to the one found in the labour legislation<sup>62</sup> would be extremely helpful for setting a framework and establishing a charter for the workers' compensation system in B.C."

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<sup>61</sup> Supra note 28, pp. 6-7.

<sup>62</sup> Section 2 of the *Labour Relations Code* provides as follows:

2(1) The following are the purposes of this Code:

- (a) to encourage the practice and procedure of collective bargaining between employers and trade unions as the freely chosen representatives of employees;
- (b) to encourage cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workplace skills and promoting workplace productivity;
- (c) to minimize the effects of labour disputes on persons who are not involved in the dispute;

At page 18 of their report, the authors indicated that the statement should take into account the need to provide for the following:

- (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 as 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.

However, a general purpose statement would need to be carefully drafted since such clauses are "binding in the sense that they cannot be contradicted by the courts; they carry the authority and weight of duly enacted law".<sup>63</sup>

Five Canadian compensation Acts contain purpose statements.<sup>64</sup> In addition, the Saskatchewan Workers' Compensation Committee of Review recently released a report recommending incorporating a purpose statement in that province's Act. The Review Committee recommended that the purpose statement include the original principles, the fiduciary trust relationship and the principles of natural justice.<sup>65</sup>

### **An Appropriate Appointment Process**

In most Canadian jurisdictions, Board members are appointed by the Lieutenant-Governor in Council, Governor in Council or Commissioner in Executive Council (see Appendix 2). The exceptions are the Northwest Territories and Quebec, where appointments are made by the Minister and government respectively.

In Manitoba and the Yukon, a consultative process is mandated in respect to the appointment of worker and employer representatives. In Manitoba, the Lieutenant-Governor in Council must also consult with workers and employers

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(d) to promote conditions favourable to the orderly, constructive and expeditious settlement of disputes between employers and trade unions;

(e) to ensure the public interest is protected during labour disputes;

(f) to encourage the use of mediation as a dispute resolution mechanism.

(2) The Board shall exercise the powers and perform the duties conferred or imposed on it under this Code having regard to the purposes set out in subsection (1).

<sup>63</sup> Dreidger on the Construction of Statutes, 3rd. ed., p. 264.

<sup>64</sup> Newfoundland, Yukon, Saskatchewan, Quebec and Ontario.

<sup>65</sup> Reported in Canadian Occupational Health and Safety, Vol. 20 No. 7, February 24, 1997. The Review Committee's report was released in early February, 1997.

regarding public interest representatives. In the Yukon, the Minister is required to consult with workers and employers regarding the Chair and Alternate Chair.

Saskatchewan and Quebec take a different approach. In those provinces, employer and worker representatives are to be selected from lists provided by unions and employer associations.

The appointment process recently implemented by the federal government may provide some ideas that could be adapted by the government in this province. At present the federal process applies only to full-time, fixed term appointments made by the Governor in Council. The process is based on the principles of integrity, accessibility and transparency and involves the following steps:<sup>66</sup>

- a job profile is prepared, describing the responsibilities of the vacant position and the selection criteria. This profile is developed in consultation with people affected by the appointment process, including the head of the organization in question, the office of the responsible minister, the Prime Minister's Office and, on occasion, other interested persons. The resource person in a Crown corporation is usually the CEO or the Chairman of the Board of Directors.
- notice of the vacancy is published in the Canada Gazette, along with the profile.
- shortlisted candidates are interviewed by the responsible minister as well as other officials.
- a press release is issued announcing the appointment.

In 1994, the Director of Appointments in the Prime Minister's Office reported that resumes garnered from the gazetted process had been an invaluable aid in the government's search for qualified potential appointees. During that year alone, the Office had pooled over 2000 names.<sup>67</sup>

An alternative federal appointment process was recommended in the Veilleux Report.<sup>68</sup> The author suggested that Crown corporation Boards develop profiles of potential candidates that could assist them in meeting their objectives. Those criteria would then be discussed with the Minister. A similar proposal was made by Korbin and O'Callaghan in respect to appointments to the Board of Governors.<sup>69</sup> Their recommendation was that the Governors annually examine the skills and experience of Board members and the strategy and objectives of the organization. Then, using the information developed during that process, the Board provide some guidance in relation to appointments to the government and the representative groups.

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<sup>66</sup> Conference Proceedings - Corporate Governance: Improving the Effectiveness of Crown Corporation Boards, pp. 41-44.

<sup>67</sup> Ibid., p. 43.

<sup>68</sup> "Unfinished Business": A Report on the Appointment Process to Boards of Directors of Crown Corporations.

<sup>69</sup> Supra note 36, p. 23.

## **Appropriate Criteria for Selecting Board Members**

Historically, the B.C. Workers Compensation Act, like the Acts in other Canadian jurisdictions, has provided little direction as to the criteria to be used to select Board members. However, necessary qualifications depend, at least to some extent, on the governance model selected in each jurisdiction. In jurisdictions where full time appointments are mandated, this obviously impacts on the pool of available candidates. Similarly, an absence of security of tenure in some provinces may also limit the number of potential candidates. In addition, the Ontario and Quebec Acts contain conflict of interest provisions which may disqualify some potential members (see Appendix 4).

- **Qualifications Under the Board of Commissioners Structure**

Under the Board of Commissioners model, it appears that Board members were selected for their special knowledge of labour or industry concerns, or because of their expertise in law or another specialty related to the Board's functions. Usually, the Chairperson was a lawyer. This was probably viewed as a desirable qualification because of the Commissioners' quasi-judicial role. However, in 1952, Sloan noted that the Chairperson at that time was a former Deputy Minister of Labour.<sup>70</sup>

One of the other Commissioners generally had a labour union background. However, in 1942, Sloan pointed out that this member's role was not to represent labour but simply to bring his "special knowledge of labour and social problems" to the Board.<sup>71</sup>

The third Commissioner was often a former executive of an industry association. However, at the time of his first Royal Commission, Sloan observed that the third Commissioner was an professional engineer.<sup>72</sup> Since this Commissioner was responsible for supervising the accident prevention work of the WCB, his qualifications were directly related to the Board of Commissioners' administrative role.

- **Qualifications Under the Board of Governors Structure**

The Munroe committee said it was imperative that the representative Governors be drawn from the most senior ranks of their organizations or callings.<sup>73</sup> The committee felt this would facilitate consensus and give the new structure credibility and momentum. Korbin and O'Callaghan strongly agreed and expressed the view that "at this juncture in the Board's history, adherence to this

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<sup>70</sup> Supra note 17, p. 363.

<sup>71</sup> Supra note 12, p. 182.

<sup>72</sup> Ibid., p. 181.

<sup>73</sup> Supra note 28, p. 11.

guideline is more important than ever.”<sup>74</sup> They reasoned that representatives drawn from senior levels in their organizations would be better able “to rise above the specific interests of their representative groups in order to act in the best interests of all stakeholders and the WCB itself.”<sup>75</sup>

However, Ison maintains that the Directors (or Governors) model involves a dilemma about the level from which Directors should be drawn. His analysis is as follows:

If the board consists of CEOs from major corporations and top leaders from the labour movement, most of them will probably be unfamiliar with the system, and other demands on their time will make it difficult for them to prepare for meetings. Drawing the directors from the lower levels can avoid these problems, but it may be more difficult to reach a consensus. It may also be more difficult for the directors to control senior management.<sup>76</sup>

James E. Dorsey, former Chairman of the Board of Governors, also points to practical difficulties the Board of Governors encountered in recruiting representatives from the “senior ranks”.<sup>77</sup> These difficulties included:

- finding true organizational and community leaders rather than association political leaders;
- finding someone from the senior ranks of small business prepared to deal with the demands of a large organization; and
- having private sector employers accept that managers from the senior ranks of public sector employers could represent properly the employer interest.

According to the Munroe Report, the roles of the public interest Governors were to represent the “legitimate interests” of the public and to assist in developing consensus.<sup>78</sup> Korbin and O’Callaghan state that:

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.<sup>79</sup>

To ensure that public interest Governors were perceived as non-partisan and would be able to fulfill their consensus-building role, the process for selecting

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<sup>74</sup> Supra note 36, p. 22.

<sup>75</sup> Ibid.

<sup>76</sup> Supra note 46, pp. 150-151.

<sup>77</sup> Workers’ Compensation Board Governance: Riding The Bull, p. 23.

<sup>78</sup> Supra note 28, p. 10.

<sup>79</sup> Supra note 36, p. 23.

these Governors required the Minister to consult with the Governors representing employers and workers and with the Chair.

Nevertheless, Dorsey points out that even with the help of one public interest representative who was an experienced arbitrator and academic and another who was a clinical psychologist, the Board could not achieve or sustain the necessary cohesion.<sup>80</sup>

The qualifications the Munroe committee considered necessary for a Chairman were listed in its report as follows:<sup>81</sup>

- The Chairman must enjoy the confidence of the labour and management communities and must be adept at forging consensus;
- 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;
- He or she must be capable of acting as public spokesman on broad policy matters; and
- The Chairman must be able to develop the appropriate relationships with government.

While Ison agrees that the role of the Chair in the Board of Directors model requires more talent in the dynamics of consensus politics, he cautions that "candidates selected for that talent might be less able to maintain or elevate the quality of the board output."<sup>82</sup> In addition, he argues that the Board of Directors structure may have a downward influence on the range of persons willing to accept appointment as Chair because the position involves less authority and probably more committee work than under the Board of Commissioners model.

The Korbin/O'Callaghan Report pointed out that: "In attitude, manner, commitment, wisdom, judgment, integrity and work capacity, the Chair inevitably provides a model for all Governors."<sup>83</sup> The authors endorsed the qualifications listed in the Munroe Report but modified one and added two more:<sup>84</sup>

- The Chair should be perceived by all to be impartial and fair.
- The Chair should have the strength of character to control and unify a group which has difficulty rising above representative interests to achieve a common purpose.
- The Chair should have the ability to forge consensus but be willing to exercise leadership when it is necessary to move forward.

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<sup>80</sup> Supra, note 77, p.21.

<sup>81</sup> Supra note 28, p. 12.

<sup>82</sup> Supra note 46, p. 151.

<sup>83</sup> Supra note 36, p. 29.

<sup>84</sup> Ibid., p. 30.

- **Qualifications for Board Members Generally**

In the literature on corporate governance, several qualifications are frequently cited as desirable for Directors. These may also be applicable to Board members in the workers compensation context. The qualifications include:

- independence/ ability to express views without constraint;
- the ability to work with other Board members/ function collegially;
- a capacity for long term thinking and planning and the ability to analyze a situation fairly rapidly;
- a demonstrated capacity to handle the heavy workload and a willingness to attend meetings on short notice;
- special skills or perspective;
- the ability to make and defend decisions; and
- the ability to communicate/state a lucid viewpoint.

### **Board Cohesiveness**

In a recent article, Jay W. Lorsch, a professor of Human Relations at the Harvard Business School, states that:

[A Board's] real power and ability depend on two...sources: the knowledge that directors have and *their cohesion as a group*.*[emphasis added]*<sup>85</sup>

He posits that cohesiveness is essential to Board empowerment and that empowerment means that:

... directors have the capability and independence to monitor the performance of top management and the company; to influence management to change the strategic direction of the company if its performance does not meet the board's expectations; and in the most extreme cases, to change corporate leadership.<sup>86</sup>

A variety of factors impact on Board cohesiveness, including:

- Board size;
- turnover/continuity of Board members;
- the range of disparate interests represented;
- the role of representative Board members;
- the role of the Chair; and

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<sup>85</sup> Empowering the Board, p. 111.

<sup>86</sup> Ibid., p. 107.

- whether Board members have a common understanding of their duties and of the organization's mandate.

While the third point is self explanatory, the other factors require further explanation.

- **Board Size**

John Longair, of the Business Leaders Research Program (The Conference Board of Canada), states that "numerous studies have reported that boards are too big" and "there have been frequent attempts to establish an optimum size."<sup>87</sup> He reports that research tends to support the conclusion that larger groups have greater difficulty taking action than smaller groups and cites the findings in a "classic study" by Mintzberg.<sup>88</sup> That study revealed the average size of action-taking groups in the executive ranks to be 6.5, and that of non-action groups to be 14.

However, Longair cautions that while smaller Boards do seem to be more efficient, there is no magic size, and "ultimately the size must be contingent on the business strategy and environment." For example, larger Boards may be needed in some cases to adequately represent stakeholder or regional interests. Furthermore, larger Boards can make use of smaller committees to deal with specific issues. According to Longair, the average Board size in Canada in 1992 was 12.

- **Turnover/Continuity**

Board continuity is affected by the length of members' terms of office (including their eligibility for reappointment) and whether members' appointments are staggered. Whereas the original Commissioners were appointed for 10 year terms, and could be reappointed, the appointment of a Panel member ends 12 months after the date of appointment, unless the Lieutenant-Governor in Council orders otherwise. This partly explains why 2 of the original 3 Commissioners (including the Chair) served for almost 30 years, while the Panel has had three Chairs during the past year.

Also, under the original Act, the Commissioners' terms of appointment expired in different years, thereby ensuring that the majority would always be experienced. Under the Board of Governors structure, terms were also staggered, although this was not a legislative requirement.

Longair maintains that it takes 2 or 3 years for a Director to learn about the nature of the company and its business or even longer for complex Boards.<sup>89</sup> In

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<sup>87</sup> Choosing the Board of Directors For The '90s, p. 5.

<sup>88</sup> Henry Mintzberg, Power in and Around Corporations (Englewood, N.J., Prentice Hall Inc., 1983), p.88.

<sup>89</sup> Supra note 87, p. 6.

a similar vein, Micheline Bouchard<sup>90</sup> ( Vice President, DMR Group Inc.) writes that the federal Financial Administration Act requires that no more than half of appointments to a Crown corporation Board should expire in any one year. However, in her view, effective stewardship requires that no more than a third of the Board be new appointees.

- **Role of Representative Members**

Korbin and O'Callaghan expressed concern that the role of representative Governors, as defined by Governors Bylaw No. 2,<sup>91</sup> created disunity and weakened the Board's ability to act cohesively.<sup>92</sup> This Bylaw provided that the representative Governors' primary duty and responsibility was to represent the interests of their constituencies. The consultants provided the following analysis:

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.<sup>93</sup>

On the other hand, Dorsey maintains that:

It is oversimplifying to say that [Governors] loyalty must be to the best interests of the organization. When conflict arises, acting in the best interests of the organization comes second to the best interests of the social program in all its respects. Among all of the stakeholders, workers intended to benefit from the program are entitled to receive paramount interest.<sup>94</sup>

He also argues that:

Workers and employers have many shared interests. But there are issues on which their conflicting interests will be virtually irreconcilable. Each group believes that its position is in the best interests of the system, the organization and all its stakeholders. On some issues, rising above their interests to embrace another perspective is betraying themselves, what

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<sup>90</sup> Supra note 66, p. 29.

<sup>91</sup> 7 WCR 151.

<sup>92</sup> Supra note 36, p. 21.

<sup>93</sup> Ibid.

<sup>94</sup> Supra note 77, p. 31.

they believe in and what they believe to be in the best interests of the system.<sup>95</sup>

According to Dorsey's analysis, "[t]he tension [in the Board of Governors model] was between representation and delegation."<sup>96</sup> He cites the following example:

The employers' forum publicly criticized the decisions of their representative governors; and sought more and more to direct rather than advise...the goal for some forum participants became to have governors require their consent or permission on pending decision making.<sup>97</sup>

- **Role of Chair**

Obviously, the Chair plays a key role in promoting Board cohesiveness. However, the Chair's ability to function as a unifying force may be affected by Board structure and composition. Ison notes that there is a risk of the Chair appearing to be partisan when there are a large number of worker and employer representatives on the Board.<sup>98</sup> This is because of the potential for an equal division of opinion among the representative members. In Ison's view such a situation can lead to one of three undesirable consequences:

1. The Chair seeks to demonstrate impartiality by voting on a roughly equal number of occasions with each group. That can militate against reaching the best outcome on each matter, and it can produce various types of gamesmanship.
2. The Chair votes according to his or her own judgment. That may make the incumbent politically vulnerable.
3. The Chair strives to have all conclusions reached by consensus. Controversial matters may then not be brought forward for resolution, with the result that the board becomes moribund.

In describing changes in the Ontario WCB governance structure between 1985 and 1995, Stritch<sup>99</sup> makes similar observations about the role of the Chair. He comments that when a neutral Chair held the balance between business and labour:

The position of the Chair in this arrangement proved to be a difficult one. Although the Chair had a tie breaking vote, this recourse could rarely be used in practice because it would have risked permanently alienating one or other of the two stakeholder groups...Normally the Chair has to operate

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<sup>95</sup> Ibid., p. 32.

<sup>96</sup> Ibid., p. 25. See also Guidelines for Corporate Governance in Canada, p. 71 which distinguishes between the role of a delegate and the Director's role as a representative of shareholders.

<sup>97</sup> Supra, note 77, p. 25.

<sup>98</sup> Supra note 46, p. 151.

<sup>99</sup> Homage to Catatonia: Corporatist Governance and the Ontario Workers' Compensation Board.

through mediation and consensus-building, and thus in practice tripartism has devolved into a system of mediated bipartism.<sup>100</sup>

The Chair's dilemma may be no different when public interest representatives are included on the Board but comprise a minority. Reflecting on his own experience as Chair of the Board of Governors in B.C., Dorsey writes that:

The governor decision making process must include a means to resolve predictable gridlock on important issues. In B.C. the choice was the tie-breaking vote of the chair. My one and only tie-breaking vote led to my resignation a month later.<sup>101</sup>

- **Common Understanding of Board Mandate and Role**

A common understanding of the Board's mandate and functions is also crucial to Board cohesiveness. Lorsch writes that in an empowered Board "Its members understand their common objectives and are willing to dedicate their time to accomplish them."<sup>102</sup> This raises the issue of how a common understanding is achieved.

In 1995, Korbin and O'Callaghan indicated that little or no training by outside experts had been provided to the Governors.<sup>103</sup> They suggested that such training could have assisted the Governors to define their role and responsibilities and ensured "the foundations for cooperation and effectiveness were in place."<sup>104</sup> The consultants recommended the development of a Board manual, which at a minimum would include: "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."<sup>105</sup> A draft Panel Manual, incorporating these items, was recently reviewed by the Panel of Administrators and approved with some revisions. Patrick O'Callaghan assisted in preparing the draft.

In addressing a conference of Crown corporation Chairpersons and CEOs, Bouchard also focussed on Board orientation and education<sup>106</sup>. She noted that typically, Crown corporation Boards comprise a majority of Directors with no prior experience in corporate directorship. Bouchard pointed out that it's the opposite in the private sector where the majority of Directors have experience on other Boards. In recommending a formal training program for Crown corporation appointees, Bouchard expressed the view that:

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<sup>100</sup> Ibid., p. 5.

<sup>101</sup> Supra note 77, p. 27.

<sup>102</sup> Ibid.

<sup>103</sup> Supra, note 36, p. 13.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid., p.34.

<sup>106</sup> Supra, note 66, pp. 28-29.

Even the ones with corporate experience need to know the policy and legislative framework within which Crown corporations operate... It is also important for those having no prior experience to be introduced to the fiduciary responsibility of any incumbent director.<sup>107</sup>

A discussion group at the same conference, made additional suggestions about the frequency and content of Board training sessions.<sup>108</sup> The participants made the observation that new appointees come to Crown corporation Boards with little understanding of the government's expectations of them or its expectations of the corporation. The group suggested that new Directors would benefit significantly from training on the fundamental responsibilities of Directors and the importance of corporate governance. It recommended that this training also "explain other general matters such as the role of the Crown corporation, the public policy purposes served, and accountability to Parliament."<sup>109</sup> Another of the group's recommendations was that training be provided periodically to experienced Directors.

The discussion group recommended that these general training sessions be supplemented by corporation-specific orientation sessions organized by each Crown corporation. Another proposal was that the development and presentation of training sessions draw, in part, on the resources of experienced Crown corporation Directors across the portfolio.

In view of this last suggestion, it is noted that, in 1991, the B.C. WCB organized and hosted a national session for Governors and Directors of other Canadian Workers' Compensation Boards in conjunction with the Association of Workers' Compensation Boards of Canada.<sup>110</sup>

## **Regular Governance Evaluations/ Reviews<sup>111</sup>**

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<sup>107</sup> Ibid., p. 29.

<sup>108</sup> Ibid., pp. 53-54.

<sup>109</sup> Ibid., p. 53.

<sup>110</sup> 1991 Annual Report of Workers' Compensation Board of British Columbia, p. 10.

<sup>111</sup> In designing an effective WCB governance review process, several recent reports may be of assistance. These reports identify principles of effective governance or performance standards, primarily for private corporations. For this reason, some of the guidelines may not have application to Boards outside the private sector. These reports are as follows:

- "Where Were the Directors?": Guidelines for Improved Corporate Governance, Toronto Stock Exchange Committee on Corporate Governance, Draft Report (May 1994).
- Guidance for Directors - Governance Processes for Control, The Canadian Institute of Chartered Accountants (December 1995).
- The Code of Best Practice (from Report of the Committee on Financial Aspects of Corporate Governance [Cadbury Report], December 1, 1992. This report was jointly sponsored by the United Kingdom's Financial Reporting Council, the London Stock Exchange, and the accounting profession in that country).
- Principles of Effective Governance (from In Search of Effective Governance), Canadian Comprehensive Auditing Foundation (1994).

The Munroe Report recognized that:

...structural reform is not a one time affair. The structures of the system must continue to evolve to meet contemporary requirements and expectations.<sup>112</sup>

Consequently, the author cautioned that it was conceivable that situations could arise that revealed the need for *ad hoc* adjustments. He stressed that the Board should be vigilant in that regard.

Similarly, Korbin and O'Callaghan noted that:

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.<sup>113</sup>

Accordingly, they recommended that the governance system be reviewed annually by a Board Governance Committee on behalf of the Board. The consultants suggested that this process include a thorough review of the terms of reference of the key roles within the governance structure as well as a board performance review. Subsequently, the Panel of Administrators delegated responsibility for these matters to the Priorities and Board Governance Committee.<sup>114</sup>

In some provinces, an external review of the Act or its administration is also required by statute.<sup>115</sup> Presumably, this would include a review of provisions dealing with governance. For example, the Saskatchewan Act provides for a Committee of Review to be appointed by the Lieutenant-Governor in Council, at least every 4 years, to review and report on any matters concerning the Act, Regulations or their administration. The committee has normally been composed of an equal number of employer and worker representatives and a neutral Chair. Fox-Decent writes that:

It may be argued... a quadrennial review of the legislation has been successful in ensuring that the [Saskatchewan] program evolved under

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<sup>112</sup> Supra note 28, p. 30.

<sup>113</sup> Supra note 36, p. 20

<sup>114</sup> See Terms of Reference for the Priorities and Board Governance Committee.

<sup>115</sup> California also provides for an external review of its system by the Commission on Health and Safety and Workers' Compensation. The Commission was created by statute in 1994 and is composed of 8 members, 4 from organized labour and 4 representing employers. The Governor appoints 2 organized labour representatives and 2 employer representatives. The speaker of the Assembly and the Senate Rules Committee each appoint 2 members, 1 each from labour and employers. The Chairman of the Commission is to be selected by the Commissioners, with the requirement that the Commissioners alternately select an employer and organized labour representative to chair the Commission for 1 year terms.

stakeholder control. Thus the pressures that have built up elsewhere and resulted in change seem not to have occurred there.<sup>116</sup>

The Newfoundland Act also provides for a Review Committee, with similar terms of reference to Saskatchewan's. The Committee is to be appointed by the Lieutenant-Governor in Council every 5 years.

After the Nova Scotia Act has been in force for three years, the Governor in Council is to appoint a Review Committee within 3 months, to review, report and make recommendations in accordance with terms of reference the Governor in Council establishes. In the Yukon the Minister is to cause the Act to be reviewed every 10 years.

Although the Manitoba Act provides for the appointment of an advisory committee, including representatives of employers and workers, to advise the Minister on compensation or any other matter under the Act, this provision is discretionary.

A regularly scheduled external review process may result in early detection and resolution of governance system problems. Thus minor irritants may be able to be dealt with before they escalate into crises. Such a process may also provide a needed safety valve for the expression of worker and employer complaints about the system, which inevitably build up from time to time.

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<sup>116</sup> Governance & Workers Compensation, p. 10.

## **APPENDICES**

## **RESEARCH SOURCES**

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Final Report on Laws relating to the Liability of Employers, the Honourable Sir William R. Meredith CJO, 1913.

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### **Royal Commissions on Workers' Compensation in British Columbia**

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Governance & Workers Compensation, Wally Fox-Decent, Workers Compensation Board of Manitoba, September 30, 1996.

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WCB Annual Reports

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**Board Model and Composition**

	B.C. Under Pre Bill 56 Bill 56		Alta	Sask	Man	Ont	Que	NB	P.E.I.	NS	Nfld	Yukon	N.W.T.
<b>MODEL</b> Board of Directors (BD) Panel of Public Administrators (PA) Board of Commissioners (BC) Board of Governors (BG)	PA	BG	BD	BC	BD	BD	BD	BD	BD	BD	BD	BD	BD
<b>COMPOSITION</b> Number of Members on Board or Panel	1+	15	≤11	≤5	11	5 - 9	15	10	3+	≤11	9	6 <sup>5</sup>	≤7
Chair (C) or Chairman (CM) or Chairperson (CP) Who must not be representative of either workers or employers	C	CM	CM	CP	CP <sup>3</sup>	C	CP <sup>4</sup>	CP	CP	C	C	C	CP <sup>4</sup>
# of members representative of workers <sup>1</sup>		5	≤3	≤2	3	(1) <sup>2</sup>	7	3	1+(2)	(3)	≤3(2)	2	(3)
# of members representative of employers <sup>1</sup>		5	≤3	≤2	3	(1) <sup>2</sup>	7	3	1+(2)	(3)	≤3(2)	2	(3)
# of members representative of public interest/general public <sup>1</sup>		2	≤3		3			1		(2)	(2)		
# of members ("persons" Lieutenant Governor in Council deems appropriate)	(2)					(1) <sup>2</sup>							
The President/CEO of the WCB		non-voting	non-voting			•		•			non-voting	non-voting	
Chief Appeal Commissioner/Chairperson of Appeals Tribunal		non-voting			non-voting			non-voting					
Assistant Deputy Minister of the Department of Employee and Labour Relations											non-voting		
# of Observers (non-voting, non-member)							2						
One designated by Minister responsible for the <i>Act</i>							•						
One designated by Minister of Social Affairs							•						

1. Where no number is specified in the legislation, the figure in parentheses represents current numbers, where available.
2. Minimum 3, maximum 7, members representative of workers, employers and such other persons as the Lieutenant Governor in Council considers appropriate.
3. Current Chair is also CEO, but functions are separate in *Act*.
4. Chair is also CEO under *Act*.
5. Plus an alternate member appointed to serve as Chair in Chair's absence.

Selection and Appointment of Board Members

	B.C.		Alta	Sask	Man	Ont	Que	NB	P.E.I.	NS	Nfld	Yukon	N.W.T.
	Under Bill 56	Pre Bill 56											
<b>SELECTION</b>													
Selection of employer and worker representatives to be made from lists provided by unions (or labour groups) and employer associations.				•			•						
Minister to consult with Governors appointed to represent workers and employers before making recommendations to Lieutenant Governor in Council re appointment of Chairman.		•											
Minister to consult with Chairman and Governors representing workers and employers before making recommendations re appointment of public interest Governors.		•											
Lieutenant Governor in Council to consult with workers regarding worker representatives; with employees regarding employer representatives; and both workers and employers regarding public interest representatives.					•								
Minister responsible for the <i>Act</i> to consult with employers and employer organizations regarding employer representatives; workers and labour organizations regarding worker representatives; and both workers and employers regarding the Chair and Alternate Chair.												•	
Employers and workers must have equal representation.		•		•			•		•		•	•	
Lieutenant Governor in Council shall endeavor to have employers and workers equally represented.										•			

Selection and Appointment of Board Members

	B.C.		Alta	Sask	Man	Ont	Que	NB	P.E.I.	NS	Nfld	Yukon	N.W.T.
	Under Bill 56	Pre Bill 56											
<b>APPOINTMENT</b>													
By Lieutenant Governor in Council/Governor in Council/Commissioner in Executive Council	•	•	•	•	•	•		•	•	•	•	•	
By Minister responsible for the <i>Act</i>													•
By government							•						

Terms of Appointment

Appendix 3

	B.C. Under Pre Bill 56 Bill 56		Alta	Sask	Man	Ont	Que	NB	P.E.I.	NS	Nfld	Yukon	N.W.T.
<b>TERM OF OFFICE</b>													
<b>Chair</b> Number of years the Chair serves	1 <sup>117</sup>	6	≤3	≤5 <sup>118</sup>	≤5	unspeci- fied	≤5	≤4	3 <sup>119</sup>	≤5	unspeci- fied <sup>120</sup>	≤3	≤5
<b>Vice-Chair</b> Number of years the Vice/Deputy Chair/Alternate Chair serves			≤3 <sup>121/122</sup>				≤5 <sup>121</sup>	≤3 <sup>123/124</sup>	≤3 <sup>121</sup>	≤5 <sup>121</sup>		≤3 <sup>121</sup>	
<b>Representational Members</b> Number of years members serve	1 <sup>117</sup>	6	≤3	≤4 <sup>118</sup>	≤5	unspeci- fied	≤2	≤3	≤3 <sup>119</sup>	≤4	unspeci- fied <sup>120</sup>	≤3	≤5
<b>Re-appointment</b> Are members eligible for re-appointment?		yes	yes <sup>125</sup>	yes			yes	yes <sup>126</sup>	yes	yes		yes	yes
<b>FULL TIME OR PART TIME</b>													
<b>Chair</b>				F/T			F/T	F/T		P/T <sup>117</sup>			
<b>Vice-Chair</b>							F/T	P/T		P/T <sup>117</sup>			
<b>Representational Members</b>				F/T				P/T		P/T <sup>117</sup>			
<b>CONFLICT OF INTEREST PROVISIONS</b>													
Board to define and create rules regarding conflict of interest					•							•	
Legislation requires disclosure, and affects participation and voting rights							•	•					
Some investments may result in disqualifi- cation of Chair (C), Vice-Chair (VC), or President (PR)						PR, C	C, VC						
<b>DUTY OF MEMBERS</b>													
To act in the best interests of the WCB/Commission						•		•					

<sup>117</sup> Unless Lieutenant Governor in Council/Governor in Council orders otherwise.

<sup>118</sup> Or until successor is appointed.

<sup>119</sup> Subject to removal by Lieutenant Governor in Council for cause.

<sup>120</sup> Determined by Lieutenant Governor in Council.

<sup>121</sup> Vice/Deputy/Alternate Chair designated by Lieutenant Governor in Council/Governor in Council/Commissioner in Executive Council/Government

<sup>122</sup> One or more representational members to be designated as Vice/Deputy/Alternate Chair.

<sup>123</sup> Vice/Deputy/Alternate Chair to be elected.

<sup>124</sup> One from members representing workers, 1 from members representing employers.

<sup>125</sup> Maximum 3 terms if never served as Chairman; maximum 2 terms if served as Chairman.

<sup>126</sup> Chair; with approval of Board of Directors; Members; one additional term only. The appointment of 1 worker and 1 employer director expires each year. Any appointments may be terminated at any time upon recommendation of Board to Minister or when Lieutenant Governor in Council is of the opinion a member representing workers or employers ceases to be representative.

To act in good faith and exercise the care, diligence, and skill of a reasonably prudent person

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Board Procedures

	B.C. Under Bill 56	Pre Bill 56	Alta	Sask	Man	Ont	Que	N.B.	P.E.I.	N.S.	Nfld	Yukon	N.W.T.
<b>ROLE OF CHAIR</b>													
Functions as CEO					(•) <sup>127</sup>		•						•
Determines time and place of Board meetings	•	•	•		•	•		•		•			
Presides over Board meetings	•	•								•			
Ex officio member of all committees			•										
Chair, Investment and Policy Committees <sup>128</sup>					•								
In case of tie, has casting vote							•			•			
May establish committees and designate members										•			
<b>BOARD MEETINGS</b>	•	•	•		•	•		•		•			
At call of Chair													
(Or) at such times as the Board considers it necessary for the conduct of its business				•	•					•	•		•
(But) not less than once per month												•	
(But) not less than once every two months			•			•	•						
(But) not less than X times per year					10			6					
<b>QUORUM</b>	•	• <sup>129</sup>	•	•	•		• <sup>130</sup>		•				
By majority													
By X number of members						5 <sup>131</sup>		5 <sup>132</sup>					3

<sup>127</sup> Functions of Chairperson and CEO are separate under the legislation; however, the same person currently functions in both capacities.

<sup>128</sup> Or may designate committee chairperson(s).

<sup>129</sup> Majority of voting Governors in office constitutes quorum unless a different quorum is specified by bylaw or resolution with respect to a meeting or class of meetings specified in the bylaw.

<sup>130</sup> Including the Chairman.

<sup>131</sup> Bill 99 provides that majority of members holding office constitutes quorum.

<sup>132</sup> Including the Chairperson (or Vice-Chairperson) and at least 1 employer and 1 worker representative.



Committees

	B.C. Pre & Post Bill 56	Alberta	Sask	Man	Ont	Que	N.B.	P.E.I.	N.S.	Nfld	Yukon	N.W.T.
<b>COMMITTEES</b>												
Claims Services Review Committee		•										
Assessment Review Committee		•										
Policy Committee				•								
Investment Committee				•								
Appeal panels consisting of Chair, Alternate Chair, one member representative of employers and one representative of workers											•	
Executive committee consisting of the Chairman, one member representative of employers and one of workers						•						
Provision that Panel/Governors may establish and give direction to committees	•											
Provision that Chair may establish and give direction to committees									•			

Board Authority

	B.C. Pre & Post Bill 56	Alta	Sask	Man	Ont	Que	N.B.	P.E.I.	N.S.	Nfld	Yukon	N.W.T.
<b>AUTHORITY</b>												
Board has power to make regulations in respect to some matters.	yes	no	no <sup>133</sup>	yes	yes	yes <sup>134</sup>	no	yes	yes	yes	no	no <sup>135</sup>
Subject to approval of Lieutenant Governor in Council/Governor in Council					•			•	•	• <sup>136</sup>		
Board has responsibility for Occupational Safety and Health	yes	no	no	no	yes	yes	yes	yes	no	no	yes	yes
Since the year:	1917				1996 <sup>137</sup>	1980	1995 <sup>138</sup>	1996 <sup>139</sup>			1992	1996

<sup>133</sup> Regulations made by Lieutenant Governor in Council, after consultation with the Board.

<sup>134</sup> Except for Exemptions and Appeals which government regulates.

<sup>135</sup> Commissioner of NWT may make regulations on recommendation of Minister.

<sup>136</sup> With the exception that the Board can make regulations regarding fisheries.

<sup>137</sup> WCB had responsibility for occupational safety & health until 1990. Responsibility was reassigned to provincial government from 1990 - 1996.

<sup>138</sup> Prior to this date occupational safety & health was the responsibility of a separate Occupational Safety & Health Committee Commission.

<sup>139</sup> WCB had responsibility for occupational safety & health until 1986. Responsibility was reassigned to provincial government from 1986 - 1996.

Chief Executive Officer

	B.C. Under Pre Bill 56 Bill 56		Alta	Sask	Man	Ont	Que	N.B.	P.E.I.	N.S.	Nfld	Yukon	N.W.T.	
<b>TITLE</b> Executive Director (ED), President (PR), President and CEO (PR/CEO), Chief Executive Officer (CEO), or Director General (DG)	PR/C EO	PR/C EO	PR	ED	CEO	PR	DG	PR/CEO	CEO	CEO	CEO	PR	CEO	
<b>SELECTION and APPOINTMENT</b> Chair of Board of Directors is CEO. CEO is appointed by Lieutenant Governor in Council, or Commissioner in Executive Council.  After consultation with Board of Directors. And subject to certification by Public Service Commission. CEO is appointed by Board of Directors/Governors or Panel of Public Administrators. Subject to approval by Lieutenant Governor in Council.					(•) <sup>140</sup>		•						•	
						•			•			• <sup>141</sup>		
						• <sup>142</sup>			•			•		
												•		
	•	•	•	•	• <sup>143</sup>				•		•	•		
									•			•		
<b>ROLE</b> Responsible for: Management/administration/direction of WCB within guidelines established by Board of Directors. Attending & participating as non-voting member at meetings of Governors. Advising and informing Board of Directors regarding operating, planning, and development functions of WCB.  Implementing Board policies. Advising Board of Directors on matters of policy.  All matters relating to personnel. Preparing capital/operating budgets and authorizing expenditures.							•	•	•	•		•		
		•												
			•						•					
	•	•	•							•		•		
										•		•		
	• <sup>144</sup>	• <sup>5</sup>	•		•									
									•		•			

<sup>140</sup> Current Chairperson is also the CEO, although the functions are separate under the legislation.

<sup>141</sup> Commissioner in Executive Council shall dismiss President if and only if Board of Directors recommends dismissal.

<sup>142</sup> Consultation was not required with respect to the appointment of the first President, after the Act was awarded on December 14, 1995.

<sup>143</sup> Except for first President (after changes to the Act in 1994) who was appointed by the Lieutenant Governor in Council.

<sup>144</sup> Other than staff of Appeals Commission.

Other functions as assigned by Board of Directors.

•	•	•		•						•		•	
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Accountability and Review Mechanisms

	B.C. Pre & Post Bill 56	Alta	Sask	Man	Ont	Que	N.B.	P.E.I.	N.S.	Nfld	Yukon	N.W.T.
Annual Report	•	•	•	•	•	•	•	•	•	•	•	•
Including a five-year plan.				•					•			
Chairperson to report to the Lieutenant Governor in Council, when requested by the Minister, on matters related to administration of <i>Act</i> and the financial status of the commission.							•					
Annual meeting with workers and employers at which Board to report on administration and policies under the <i>Act</i> .											•	
Board to publish and distribute to employers, workers, and general public, information regarding business transacted by the Board, that the Board considers useful to distribute.	•											
Independent audit annually or as ordered by Lieutenant Governor in Council/Provincial Auditor/Commissioner in Council.	annual	annual	as ordered	annual <sup>145</sup>	annual	annual <sup>146</sup>	annual	annual	annual	as ordered	annual <sup>147</sup>	annual
Actuarial report at least every X number of years.		5 years			as ordered <sup>148</sup>	1 year					3 years	3 years <sup>149</sup>
Accounting system must be satisfactory to Minister of Finance.				•								
Legislation requires Board to operate in a fully funded manner and future unfunded liabilities prohibited.		•										
Board and Minister responsible for the <i>Act</i> to enter into a Memorandum of Understanding every 5 years. Memorandum requires Board to give Minister: a 5-year plan; an annual statement setting out proposed priorities for administering the <i>Act</i> and its regulations; and an annual statement of investment policies and goals.					•							

<sup>145</sup> And at any time ordered by Provincial Auditor or Lieutenant Governor in Council.

<sup>146</sup> And at any other time on government order.

<sup>147</sup> Or by Auditor General for Canada.

<sup>148</sup> By Superintendent of Insurance.

<sup>149</sup> Or as Minister directs.

Accountability and Review Mechanisms

	B.C. Pre & Post Bill 56	Alta	Sask	Man	Ont	Que	NB	P.E.I.	NS	Nfld	Yukon	N.W.T.
Lieutenant Governor in Council may make regulations setting out guidelines for the making of Board decisions and a regulation so made supersedes a policy directive of the Board that may conflict with it.			•									
Minister responsible for the <i>Act</i> may order Board to investigate any matter under its jurisdiction.											•	
Public hearing to be held at request of person(s) interested in a decision to be made by the Commission.										•		
A Committee of Review/Advisory Panel may/must be appointed by Lieutenant Governor in Council/Governor in Council/Minister to review and report on any matters concerning the <i>Act</i> , regulations, or their administration.			•	• <sup>150</sup>						• <sup>151</sup>	•	•
At least every X years.			4 years							5 years	10 years	
Committee to include representatives of workers and employers.			• <sup>152</sup>	•					• <sup>153</sup>			
Annual review (value for money audit) of at least one WCB program, which may be selected by Minister, to be performed each year under direction of Provincial Auditor.					•							
Legislation requires Board to act in a financially responsible and accountable manner in exercising its powers and performing its duties.					•							
Annual report to Superintendent of Insurance regarding Accident Fund.					•							
Minister may issue policy directions, approved by Lieutenant Governor in Council, and these are binding on the Board.					•							
Board to make its policies available to the public.	•		•								•	

<sup>150</sup> Appointment of Advisory Committee is discretionary.

<sup>151</sup> In accordance with terms of reference as established by Governor in Council and after *Act* is in force for 3 years.

<sup>152</sup> Representation must be equal.

<sup>153</sup> Lieutenant Governor in Council to endeavor to appoint equal numbers of persons representing workers and employers.

**SUMMARY OF INTERNATIONAL GOVERNANCE STRUCTURES BY JURISDICTION**

\* (Adapted from Unfolding Change: Workers' Compensation In Canada [1995])

COUNTRY	TYPE OF SYSTEM	GOVERNANCE STRUCTURE	SYSTEM FEATURES/TRENDS
JAPAN	National public insurance fund (Workmen's Accident Compensation Program)	<ul style="list-style-type: none"> <li>Ministry of Labour administers</li> </ul>	<ul style="list-style-type: none"> <li>Workers compensation is not exclusive remedy - employees retain right to sue employer for negligence.</li> </ul>
AUSTRALIA	<ul style="list-style-type: none"> <li>8 separate systems by state/territory</li> <li>2 federal schemes for Commonwealth government employees and seafarers</li> </ul>	<p><u>Example s</u></p> <p>(1) Victorian WorkCover Authority</p> <ul style="list-style-type: none"> <li>monopolistic state system</li> <li>governed by Board of Management appointed by Governor in Council</li> <li>Board consists of 6 part time Directors including a Chairperson and 1 full time Director who is the Chief Executive of the Authority.</li> <li>At Board's request WorkCover Advisory Committee established to advise Board on prevention, compensation and rehab issues. The Advisory Committee has 15 members appointed by the Minister. Members are drawn from legal and medical professions, employer &amp; employee groups, insurers and self-insurers, and the Board of Authority.</li> </ul> <p>(2) ComCare</p> <ul style="list-style-type: none"> <li>Federal compensation scheme covering federal employees.</li> <li>The Safety, Rehabilitation and Compensation Commission has regulatory authority over occupational safety and health, premium setting &amp; regulation of licensed self-administrators.</li> <li>ComCare Australia has responsibility for administrative &amp; service functions &amp; provides support to the Commission.</li> <li>The Commission is a 9 member body with a part time Chair; an Executive Commissioner (CEO of ComCare); 2 labour representatives, 2 employer representatives and 3 other members with qualifications or experience relevant to the Commission's functions or the exercise of its powers.</li> </ul>	<ul style="list-style-type: none"> <li>Since 1980's trend toward government owned insurers &amp; state monopolies &amp; away from private insurers.</li> <li>Shift from judicial to administrative dispute resolution mechanisms.</li> <li>Employer self insurance is still permitted in 7 of 8 jurisdictions.</li> </ul>

\* Information obtained from Annual Reports, Board publications and a variety of secondary sources.

COUNTRY	TYPE OF SYSTEM	GOVERNANCE STRUCTURE	SYSTEM FEATURES/TRENDS
NEW ZEALAND	No fault compensation system for all accidents including motor vehicle, work, recreation, medical malpractice.	<ul style="list-style-type: none"> <li>• System administered by Accident Compensation Corporation (ACC), a quasi-government agency within the Ministry of Labour</li> <li>• ACC is an independent corporation headed by a part time Board of Directors. Six Directors, including the Chairman and Deputy Chairman are appointed by the Governor General on recommendation of Minister of Labour. The full time Managing Director is an ex-officio member of the Board who heads administration of day-to-day activities.</li> </ul>	<ul style="list-style-type: none"> <li>• No distinction between work related and non work related injuries</li> <li>• System does distinguish between work related and non-work related illnesses, with coverage only for the former.</li> </ul>
UNITED KINGDOM	Industrial Injuries Scheme is part of broader social security program that includes health insurance and non-work-related disability programs.	<ul style="list-style-type: none"> <li>• Department of Health and Social Security administers contributions and cash benefits for the Industrial Injuries Scheme.</li> <li>• National Health Service administers medical services through national and local area health authorities.</li> </ul>	<ul style="list-style-type: none"> <li>• Not an exclusive remedy, employees may also pursue claims under common law.</li> </ul>
GERMANY	System decentralized along industry lines. 3 components: <ul style="list-style-type: none"> <li>• General Accident Insurance</li> <li>• Agricultural Accident Insurance</li> <li>• Accidents at Sea Insurance</li> </ul>	General Accident Insurance administered by 36 non-profit Industrial Injuries Insurance Institutes. <ul style="list-style-type: none"> <li>• Institutes are largely self-governing.</li> <li>• Government supervision restricted to ensuring compliance with law.</li> <li>• Each Institute has a Representative Assembly and an Executive Committee. Both bodies include equal numbers of employer and worker representatives. A Managing Director heads daily operations and advises the executive group.</li> </ul>	<ul style="list-style-type: none"> <li>• Government involvement kept at minimum with Institutes functioning like large group self-insurers.</li> <li>• Workers compensation program is exclusive remedy.</li> </ul>

COUNTRY	TYPE OF SYSTEM	GOVERNANCE STRUCTURE	SYSTEM FEATURES/TRENDS
NETHERLANDS	No specific Workers Compensation system (blended into other social insurance coverages).	<ul style="list-style-type: none"> <li>• General supervision of benefit administration is provided by the Social Insurance Council whose members represent employers, employees, and the government.</li> <li>• Permanent disability pensions administered by industry associations with compulsory nationwide membership and bipartite government boards.</li> <li>• Medical benefits administered by 60 approved sickness funds supervised by a Tripartite Sickness Funds Council.</li> <li>• Old age and survivors' benefits administered by the Social Insurance Bank, which has a board with tripartite membership and is assisted by employer-employee regional labour councils.</li> <li>• National Revenue Dept. collects contributions for the old age, long term disability and survivor pensions.</li> <li>• Industrial associations collect the contributions for supplementary long term disability benefits for the employed.</li> </ul>	<ul style="list-style-type: none"> <li>• 5 major programs provide the same medical expense, disability and death benefits regardless of whether the injury or disease is job-related. These programs are governed by 5 different Acts.</li> </ul>
KOREA	Centralized Industrial Accident Compensation Insurance Program	<ul style="list-style-type: none"> <li>• Ministry of Health and Social Affairs and Ministry of Labour are responsible for general supervision of program.</li> <li>• Industrial Accident Compensation Insurance Deliberation Committee, composed of equal numbers of employers, employees and public representatives, serves as an advisory body to the Minister of Labour.</li> <li>• Minister of Labour may delegate to financial institutions the function of paying insurance benefits to claimants.</li> </ul>	

COUNTRY	TYPE OF SYSTEM	GOVERNANCE STRUCTURE	SYSTEM FEATURES/TRENDS
SWEDEN	Part of comprehensive, centralized social insurance system.	<ul style="list-style-type: none"> <li>• National Social Insurance Board supervises all the programs that are part of social insurance system.</li> <li>• Daily operations and administration by regional and local social insurance offices.</li> <li>• Appeals heard by Appeal Department of National Social Insurance Board.</li> <li>• Decisions of Appeals Department can be appealed to National Social Insurance Court.</li> </ul>	
UNITED STATES	50 separate State systems.	Program can be administered by: <ul style="list-style-type: none"> <li>• an exclusive State Fund.</li> <li>• a State agency that operates a State Fund in competition with private insurance carriers.</li> <li>• a State agency that regulates private insurance carriers.</li> </ul> (Examples of state governance structures are listed on the attached pages).	
SWITZERLAND	Compulsory accident insurance program that does not distinguish between occupational and non-occupational injuries.	Program supervised by Federal Office of Social Insurance located in Department of Interior. 3 providers: <ul style="list-style-type: none"> <li>• Swiss National Accident Insurance Fund (SUVA).               <ul style="list-style-type: none"> <li>- Autonomous, non-profit state operation</li> <li>- Designated carrier for employers covered prior to 1984.</li> </ul> </li> <li>• Private insurers.</li> <li>• Non-profit sickness funds.</li> </ul>	<ul style="list-style-type: none"> <li>• Program provides exclusive remedy for work related accidents.</li> <li>• In 1984, major reforms expanded the number of employees eligible for benefits and opened the system to private insurers.</li> </ul>

EXAMPLES OF GOVERNANCE STRUCTURES IN THE UNITED STATES<sup>154</sup>

TYPE OF ADMINISTRATION	STATE	GOVERNANCE
Exclusive State Funds		
	Washington	A single administrator appointed by the Governor.
	Ohio	<p>A single administrator appointed by the Governor with an Oversight Commission to review progress of the Bureau of Workers' Compensation in meeting its cost and quality objectives. The Commission may also make recommendations to the Administrator regarding premium rates, investment policy and administrative rules.</p> <p>Oversight Commission is appointed by the Governor and consists of 9 members. Of 5 voting members, 2 represent business, 2 represent workers and 1 represents the public. The Commission also has 4 non-voting legislative members who are the ranking members of the Ohio House or Senate Committees dealing with Workers' Compensation legislation.</p>
	Wyoming	A single Administrator appointed by the Director of the Department of Employment.
Competitive State Funds		
	Colorado	7 member Board consisting of 4 employer representatives, 2 employee (labour) representatives and 1 insurance representative, all appointed by the Governor to staggered terms.
	New York	13 member Board of Commissioners appointed by the Governor with the consent of the Senate.
	California	5 member Board consisting exclusively of policy holders or employers of policy holders. The Director of the State's Department of Industrial Relations sits on the Board as a sixth non-voting, ex officio member.

<sup>154</sup> Information obtained from 1996 AASCIF Fact Book.

TYPE OF ADMINISTRATION	STATE	GOVERNANCE STRUCTURE
Competitive State Funds		
	Minnesota	<p>Board consisting of 7 voting members and 4 ex officio, non-voting members who serve in an advisory capacity. Voting members include:</p> <ul style="list-style-type: none"> <li>• a person experienced in insurance underwriting principles;</li> <li>• a person experienced in workplace safety;</li> <li>• a non-management employee of a policy holder;</li> <li>• 2 members who represent employers with less than 50 employees; and</li> <li>• 2 members who represent employers with more than 50 employees.</li> </ul> <p>The ex officio members are all state officials.</p>
State Agency Regulating Private Insurance Carriers		
	Maine	<p>13 member Board composed of:</p> <ul style="list-style-type: none"> <li>• 8 industry division representatives;</li> <li>• 1 at large employer representative;</li> <li>• 3 public interest representatives appointed by the Governor; and</li> </ul> <p>The Company President.</p>
	Louisiana	<p>12 member Board. 9 voting members include:</p> <ul style="list-style-type: none"> <li>• 4 policy holders;</li> <li>• a business representative;</li> <li>• a labour representative;</li> <li>• another private carrier;</li> <li>• a representative from the State Office of Risk Management; and</li> <li>• a licensed insurance agent.</li> </ul> <p>The 3 ex officio members include :</p> <ul style="list-style-type: none"> <li>• a representative from the State Insurance Commissioner</li> <li>• a State Representative; and</li> <li>• a State Senator.</li> </ul>
	Missouri	<p>5 member Board of Directors appointed by the Governor.</p>