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NORTHWEST TERRITORIES
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*Workers' Compensation Board
Northwest Territories*

REPORT OF THE
WORKERS'
COMPENSATION
TASK FORCE

AUGUST 1981



Workers' Compensation Board
Northwest Territories
TASK FORCE

1981 August 19

Mr. J.D.C. MacLean, Chairman
Workers' Compensation Board of
the Northwest Territories
P. O. Box 8888
Yellowknife, N.W.T.
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Dear Chairman MacLean:

The Workers' Compensation Board Task Force is pleased to present our report on our review of the Workers' Compensation Ordinance and related matters.

Respectfully,

W. Berezowski, Chairman
A.R.W. Hettrick, Member
W.A. Case, Member
J. Showalter, Member
Rev. J. Ormiston, Member

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PREFACE

In October 1980 the Workers' Compensation Board of the Northwest Territories appointed a five member Task Force to review the Workers' Compensation Ordinance and related matters. This Task Force was comprised of representatives from the Workers' Compensation Board, organized labour, management and the public in general. Board Member W. Berezowski was appointed Chairman. A.R.W. Hettrick, Board Member, W.A. Case, Cominco Ltd., Mrs. J. Showalter, Federation of Labour and Reverend J. Ormiston, the United Church of Canada were appointed as members. Support services were provided by Bryan Roberts and Mrs. Audrey Vogel.

The terms of reference established for the Task Force were as follows:

- (1) The scope and adequacy of the present system of Workers' Compensation in the Northwest Territories.
- (2) The administration of the present system of Workers' Compensation including the role of the Workers' Compensation Board, its functions and reporting relationships.
- (3) Re-establishment of basic Workers' Compensation principles and priorities.

- (4) Workers' Compensation and the matter of industrial safety and health.
- (5) The current levels of compensation and the manner in which they are determined.
- (6) The processing of claims for compensation and the costs of replacement income compensation.
- (7) The function of rehabilitation of workers in respect of compensation.
- (8) The system of Workers' Compensation in other jurisdictions.

The Task Force began a series of meetings in November 1980 and over the course of the next few months met with senior management and staff of the Workers' Compensation Board of the Northwest Territories, Alberta Workers' Compensation Board, British Columbia Workers' Compensation Board, Saskatchewan Workers' Compensation Board, Saskatchewan Department of Labour and Commission de la santé et de la sécurité du travail du Québec. Of particular interest was the visit to the rehabilitation facility of the British Columbia Workers' Compensation Board in Richmond.

Letters were sent to all employers covered by the Ordinance, employer groups, labour and labour groups, municipalities and members of the Legislative Assembly calling for both written and/or oral submissions. Simultaneously the Task Force, through radio, newspaper and television, requested submissions from individuals, the public, business and labour organizations who wished to participate in the review. In addition a questionnaire was circulated to some four hundred randomly selected claimants for their input into this study.

Tentative hearings were slated; however as a result of the response and location of those submitting briefs, a two day hearing was held in Yellowknife only.

The Task Force would like to acknowledge the participation and contribution of those interested parties who took the time and effort in submitting their briefs. It is our hope that the recommendations in this report will serve to assist the Workers' Compensation Board in solving the problems that have been indicated and correct any injustices that the system may have caused.

The Task Force extends their appreciation and thanks for the assistance and courtesy provided by Mr. Justice Robert Sauve and staff of the Commission de la santé

et de la sécurité du travail du Québec; Mr. Roy Jamha, Mr. George Hickson and staff of the Workers' Compensation Board of Alberta; Mr. Brian King and staff of the Workers' Compensation Board of Saskatchewan; and Dr. Adam Little and staff of the Workers' Compensation Board of British Columbia.

SUMMARY OF RECOMMENDATIONS.

THE SCOPE AND ADEQUACY OF THE PRESENT SYSTEM OF WORKERS' COMPENSATION IN THE NORTHWEST TERRITORIES.

- (1) There be no change to the Workers' Compensation Ordinance with respect to the scope and coverage provided therein.

ADMINISTRATION OF THE PRESENT SYSTEM OF WORKERS' COMPENSATION INCLUDING THE ROLE OF THE WORKERS' COMPENSATION BOARD, ITS FUNCTIONS AND REPORTING RELATIONSHIPS.

- (2) The Board propose to the Legislative Assembly the following amendment to Section 3(2) of the Ordinance:
"The Board shall consist of not more than five members, one of whom shall be designated as Chairman, appointed by the Commissioner on the recommendation of the Executive Committee of the Legislative Assembly."
- (3) The Chairman discontinue his involvement in the day to day administrative and operational matters.
- (4) The Chairman assume a greater role in the development of policies respecting planning, communication and public information programs, and the review of financial, administrative and operational matters.

- (5) A Committee of the Board consisting of the Chairman and two Members be set up to meet regularly with the Executive Committee of the Legislative Assembly.
- (6) The Agreement between the Board and the Government of the Northwest Territories be amended to give the Board the necessary authority in establishing its manpower needs and to establish the classification and remuneration of its employees.
- (7) The Board continue its role as the agency responsible for the making of policy and the final authority with respect to appeals on questions of assessments and claims adjudication and other such matters that are covered under Section 8 of the Ordinance.
- (8) Honoraria for Board Members should reflect the responsibilities as outlined in the Ordinance and be reviewed annually.
- (9) The position of Executive Director be established and that this position be given the responsibility for all day to day operations of the Workers' Compensation Board.

- (10) An Executive Committee, consisting of the Executive Director, who will act as Chairman, the Director of Finance and the Director of Claims Services, be established for the interpretation of Board policy and advising the Departmental Managers on the implementation of such policy.
- (11) The Executive Committee is to meet, as and when necessary, to discuss and clarify matters concerning the operation of the Board to ensure a uniform approach to the resolution of issues and the implementation of policy.
- (12) The Executive Committee will meet regularly with the Chairman to discuss administrative matters and the development of recommendations for submission to the Board and the implementation of Board policy.
- (13) The Chairman, subject to the approval of the Board, shall determine the requirements, duties, responsibilities and remuneration of the Executive Officers.
- (14) Each Departmental Manager shall be responsible for the program planning, budget and administration of their department.

- (15) The Executive Committee under the direction of the Chairman shall be responsible for the development, preparation and maintenance of policy and procedure manuals.
- (16) The Board be given the necessary autonomy to carry out its duties and responsibilities.
- (17) The Board continue its study of expansion into the various regions as the need arises.
- (18) There be no change in the present system of internal appeals, bearing in mind that the injured worker shall receive the benefit of presumption of entitlement in return for having given up his right to recourse in common law, and that claims shall be dealt with as expeditiously as possible.
- (19) The Board be aware that appeal procedures are the subject of considerable interest in other jurisdictions. We recommend that experiences in other parts of Canada be studied periodically and proposed changes be considered, if and when they become necessary.
- (20) The Board make known its appeals procedures either in contact with individual workers and employers

or through some means of public information.

- (21) The Board investigate the establishment of an advocate service on a part-time basis.
- (22) The Chairman/Chief Executive Officer should be appointed for a period of not more than ten (10) years subject only to removal for cause. On the expiration of his term of office, the Chairman may be re-appointed.
- (23) The Workers' Compensation Ordinance and the administration of that Ordinance be subject to review every four (4) years.
- (24) This review be carried out by a Committee composed of management and labour representatives and a chairman appointed by the Government with a representative of the Board appointed to serve as a resource person to the Committee.
- (25) The Task Force is satisfied that the proper controls are in place and recommends no change in these administrative procedures.
- (26) The Board provide a forum on an annual basis to permit the Board to explain to all segments of

industry the rates and the rate making process.

- (27) The Board continue to evaluate its liabilities in accordance with the provisions of Section 58(4) of the Workers' Compensation Ordinance to ensure the adequacy of the Accident Fund.
- (28) An additional Member of the Board be appointed to the Investment Committee.
- (29) The Investment Committee present quarterly reports of its activities to the Board.
- (30) The Investment Committee recommend to the Board approval or change of the long term Portfolio Manager.
- (31) The Board establish a payroll inspection service to systematically call upon employers who are subject to the provisions of the Workers' Compensation Ordinance.
- (32) The Board take immediate steps to fulfill its obligations in accordance with the provisions of Section 56(1) of the Workers' Compensation Ordinance.

- (33) The Board continue its present policy with respect to upgrading of pensions.
- (34) The Board initiate discussions with government, industry and labour on future financing of these increases to ensure that all persons are treated equally.

WORKERS' COMPENSATION AND THE MATTER OF INDUSTRIAL SAFETY AND HEALTH.

- (35) The Board be allocated control by legislation of all aspects of Accident Prevention and Occupational Safety and Health for all industries to which the Workers' Compensation Ordinance applies.
- (36) The Board take the initiative and begin discussions with the Territorial and Federal Governments, industry and labour to work out plans to implement this development.
- (37) Until such time as the legislative directives are in place, an Advisory Committee be established to consult with the Executive Committee of the Government of the Northwest Territories and the Legislative Assembly of the Northwest Territories to minimize overlap of jurisdiction, duplication of services and paralysis of safety programs.

This Committee would consist of the Chairman of the Workers' Compensation Board, the Chief Mining Inspector and the Chief of the Safety Division.

- (38) Until the proposed change becomes effective the Workers' Compensation administration continue to maintain its close liaison with the various safety agencies in the Northwest Territories and expand its public information program with respect to accident prevention.
- (39) The Board propose to the Legislative Assembly the following amendment to Section 2(1)(a) of the Ordinance:
- "(iii) disablement arising out of and during the course of the employment of a worker, and"
- "(iv) a disabling or potentially disabling condition caused by an occupational disease;"
- (40) The Board develop the necessary procedures for evaluating the performance of the Merit Rebate Program.
- (41) If the Merit Rebate Program has not achieved a reasonable level of success by the end of the three year trial period, it be discontinued.

THE CURRENT LEVELS OF COMPENSATION AND THE MANNER IN WHICH THEY ARE DETERMINED.

- (42) The responsibility for setting the Years Maximum Assessable Remuneration (Y.M.A.R.) remain the responsibility of the Northwest Territories Legislative Assembly.
- (43) The Board monitor the wage structures in the Northwest Territories and the results of this study be included in the yearly report and recommendations pursuant to Section 50 of the Workers' Compensation Ordinance.
- (44) The Y.M.A.R. be set at a level to ensure that at least 80% of the workers in the Northwest Territories are earning less than the ceiling set by the Legislative Assembly.
- (45) The Board continuously monitor the innovative systems being adopted in the provinces of New Brunswick, Quebec, Saskatchewan, Alberta and those proposed in Ontario.
- (46) The Board present a report of their findings and recommendations to the Legislative Assembly prior to the establishment in four years time of the Legislative Task Force appointed to review

the Workers' Compensation Ordinance and related matters.

(47) The Board review the system of pensions payable to widows and dependants used in the provinces of Manitoba, Saskatchewan, Alberta and British Columbia to determine that the level of these pensions payable in the Northwest Territories are realistic and adequate.

(48) Section 35(1)(a), (b) and (c) and Section 49 of the Ordinance be amended so that the specified amounts set out in these sections can be set by Regulation.

THE FUNCTION OF REHABILITATION OF WORKERS IN RESPECT OF COMPENSATION.

(49) The Board update and refine its arrangements with the various provincial Workers' Compensation Boards for obtaining rehabilitation services for our injured workers.

(50) The Board appoint an additional Rehabilitation Counsellor to ensure more personal contact with claimants who are required to obtain treatment outside the Northwest Territories and to provide them with the necessary assistance and support.

- (51) The Board ensure that proper liaison and exchange of information exists between the Board, the claimant and the rehabilitation facility providing the treatment and/or counselling.
- (52) The Board continue with its Temporary Alternative Work Program and act as a catalyst between labour, management and the treating professions.
- (53) The Board review its Rehabilitation Program and formulate its goals and objectives as a priority item in its administration.
- (54) The Board clarify its policy with respect to claims resulting from aggravations of pre-existing conditions and second injuries to encourage industry to hire, or re-hire, disabled workers. This should lead to a more effective rehabilitation program for injured workers sustaining permanent disabilities.
- (55) The Board review the Quebec legislation which protects the job of an injured worker who has sustained a residual disability and monitor the success of this program.

THE SYSTEM OF WORKERS' COMPENSATION IN OTHER JURISDICTIONS.

- (56) The Board request the Legislative Assembly of the Northwest Territories to consider the authorization of a detailed study of universal coverage.

GENERAL.

- (57) The Board's Executive Committee submit recommendations at least annually to the Board with respect to amendments to the Ordinance.

THE SCOPE AND ADEQUACY OF THE PRESENT SYSTEM OF WORKERS'
COMPENSATION IN THE NORTHWEST TERRITORIES.

In developing the Canadian Workers' Compensation system it was Sir William Meredith's intent that eventually all workers would be provided with protection for accidents arising out of and during the course of their employment. The Northwest Territories Workers' Compensation Ordinance has achieved this goal and while some employer groups request to be exempt from mandatory coverage, the Task Force finds that alternate plans* when compared to workers' compensation coverage are either severely restricted in the protection and benefits afforded or are substantially more expensive for the employer.

In considering alternate plans either the worker suffers by not receiving the same protection as other workers or the employer suffers by paying substantially higher premiums. It is only reasonable that every worker in the Northwest Territories be entitled to the same protection under the law.

The Task Force therefore recommends that:

There be no change to the Workers' Compensation

* alternate plans - eg. - long term disability and accident
and sickness plans

Ordinance with respect to the scope and coverage
provided therein.

ADMINISTRATION OF THE PRESENT SYSTEM OF WORKERS' COMPENSATION
INCLUDING THE ROLE OF THE WORKERS' COMPENSATION BOARD, ITS
FUNCTIONS AND REPORTING RELATIONSHIPS.

Since the inception in January 1971 of the Collective Liability System of Workers' Compensation and the establishment of the Accident Fund in the Northwest Territories, the Board, consisting of a full-time Chairman and several part-time Members, has undergone tremendous administrative change. On the basis of all evidence presented and the vast geographical area in which the Board must provide its services, the Board and its staff are to be commended on their performance to date. This Task Force, appointed by the Workers' Compensation Board, calls for change which would not in the normal course of events be directed to the Board. In addition, the Board will not have the authority to react to all of these proposals as certain of these can only be addressed by action of the Legislative Assembly. We are hopeful that the recommendations contained in this report will serve to assist the Workers' Compensation Board and the Legislative Assembly in providing all workers and employers in the Northwest Territories with a more effective and efficient workers' compensation system. In this chapter, while we make certain recommendations for administrative change, these recommendations are not to be taken as either direct or implied criticism of the Board. Current and future developments taking place in the Northwest Territories require that certain changes be made.

SIZE, COMPOSITION AND RESPONSIBILITY OF THE BOARD

The Workers' Compensation Ordinance provides that the Board is a corporation consisting of not fewer than five members, one of whom shall be designated as Chairman. The Task Force observes that the Board presently consists of a Chairman and eight part-time Members with consideration being given to the appointment of additional members. The Task Force notes that the Workers' Compensation Board's responsibilities fall into the following categories:

(1) Legal

The Board is appointed by the Legislature and is responsible to the Legislature for effective administration of the Ordinance.

(2) Financial

The Board collects funds from industry and is responsible for effective administration of these funds accumulated in trust for compensation purposes only.

(3) Social

The Board responds to claims by injured workers and is responsible for the effective adjudication of claims from workers and dependants in accordance with the benefits enshrined in the workers'

compensation legislation.

In considering the duties and responsibilities of the Board in carrying out the provisions of the Ordinance, the Task Force is of the opinion that:

- (1) The number of Members should be kept small enough to allow the Board to function as a cohesive deliberative body rather than a regional representative institution.
- (2) The composition of the Board should consist of equal representation from management and labour.
- (3) The criteria for appointment of Members should be their demonstrated experience in their own field of endeavor and an understanding of workers' compensation.

It is therefore recommended that:

The Board propose to the Legislative Assembly the following amendment to Section 3(2) of the Ordinance:
"The Board shall consist of not more than five members, one of whom shall be designated as Chairman, appointed by the Commissioner on the recommendation of the Executive Committee of the Legislative Assembly."

ROLE OF THE BOARD

Workers' Compensation is a complex operation which involves adjudication of claims, medical and vocational rehabilitation, medical services, insurance, trusteeship and investment of Board funds.

In addition, the organization and management complexity is further complicated with the Board's requirement to serve and maintain effective relationships and to interact with a wide range of groups, ie. workers in general, claimants, labour unions, industry, governments, rehabilitation agencies and other professional groups.

With the inception of the Collective Liability System and the establishment of the Accident Fund, it was necessary to proceed gradually to ensure that sound basic business principles were established for the system to properly serve those for which it was created. To accomplish this goal, it was therefore essential that the Chairman involve himself very closely with detail in the day to day administration. If the Board is to deal successfully with the problems of the future, as it has with those in the past, it is the opinion of the Task Force that refinement of the role of the Chairman and the Board is necessary. The Chairman is the only full-time Member of the Board responsible for the administration of the Ordinance. It will therefore

be necessary to relieve him of many of the day to day operational problems so that he may devote his time to the initiation, development and review of policies and programs in the financial, administrative and operational areas of the Board in addition to external matters and other areas that cannot be delegated to staff.

A consistent concern expressed in the briefs submitted to the Task Force was the need for the Board to become actively involved in a communications program to advise of its functions, responsibilities, policies and procedures. It is the opinion of the Task Force that many of the concerns of workers and employers in dealing with the Board are the result of lack of knowledge of what is required of them under the Ordinance and what the function and responsibilities of the Board are. It is also the opinion of the Task Force that the Board could respond to these concerns by implementing an information program designed to clarify its functions and services. Further, it is the opinion of the Task Force that the Chairman of the Board should take the responsibility for the development of this program.

Many changes are taking place in the field of workers' compensation. These include new concepts of income replacement, integration of other social schemes - ie.

Canada Pension Plan, Unemployment Insurance, etc., with Workers' Compensation Board benefits, responsibility of Compensation Boards regarding safety and health and new approaches to injured worker rehabilitation. Against this background, and considering the potential development of the Northwest Territories, it is important that communication between the Board and the Government of the Northwest Territories be improved. We believe a continuous exchange of information between the Board and the Government concerning changes in workers' compensation concepts in various parts of Canada, and how and when these may be considered for the Northwest Territories would be a benefit to all. It is the opinion of the Task Force that a Committee of the Board, consisting of the Chairman and two Board Members be appointed by the Workers' Compensation Board to meet with the Executive Committee of the Legislative Assembly at least on a quarterly basis. This would be in addition to the statutory reporting to the Commissioner as provided in existing legislation.

The Board is a body incorporated by law and is the agency responsible for the administration of the Workers' Compensation Ordinance. If the Board is to carry out this responsibility effectively, meet the demands of industry and labour, and provide the services that are necessary, it must have the authority to determine and approve its manpower needs and classifications. It is the opinion of the Task Force that the present agreement between

the Board and the Government of the Northwest Territories should be amended to give the Board this necessary authority.

To ensure that the persons appointed to serve on the Board continue to be of the same high caliber as those presently serving, the honorarium for Board Members should be comparable to those paid in the provincial jurisdictions and it should be reviewed annually.

Based on the foregoing, it is therefore recommended that:

- (1) The Chairman discontinue his involvement in the day to day administrative and operational matters.
- (2) The Chairman assume a greater role in the development of policies respecting planning, communication and public information programs, and the review of financial, administrative and operational matters.
- (3) A Committee of the Board consisting of the Chairman and two Members be set up to meet regularly with the Executive Committee of the Legislative Assembly.

- (4) The Agreement between the Board and the Government of the Northwest Territories be amended to give the Board the necessary authority in establishing its manpower needs and to establish the classification and remuneration of its employees.
- (5) The Board continue its role as the agency responsible for the making of policy and the final authority with respect to appeals on questions of assessments and claims adjudication and other such matters that are covered under Section 8 of the Ordinance.
- (6) Honoraria for Board Members should reflect the responsibilities as outlined in the Ordinance and be reviewed annually.

CHANGES IN ADMINISTRATION AND THE ROLE OF STAFF

As a result of the recommended changes in the role of the Chairman and Board Members, logical changes in the role of the staff must follow. The Task Force has recommended that the Chairman discontinue his involvement in day to day administrative matters but continue the role of the person responsible for policy initiation and planning including the review for program changes in the areas of finance, administration and operations. It was further recommended that the Board retain responsibility for the making of policy and act as the final authority in the appeal mechanism.

As a consequence to these changes, it is therefore recommended that:

- (1) The position of Executive Director be established and that this position be given the responsibility for all day to day operations of the Workers' Compensation Board.
- (2) An Executive Committee, consisting of the Executive Director, who will act as Chairman, the Director of Finance and the Director of Claims Services, be established for the interpretation of Board policy and advising the Departmental Managers on

the implementation of such policy.

- (3) The Executive Committee is to meet, as and when necessary, to discuss and clarify matters concerning the operation of the Board to ensure a uniform approach to the resolution of issues and the implementation of policy.
- (4) The Executive Committee will meet regularly with the Chairman to discuss administrative matters and the development of recommendations for submission to the Board and the implementation of Board policy.
- (5) The Chairman, subject to the approval of the Board, shall determine the requirements, duties, responsibilities and remuneration of the Executive Officers.
- (6) Each Departmental Manager shall be responsible for the program planning, budget and administration of their department.

This delegation of authority and responsibility to the Board staff will only be effective if the staff is clearly aware of the Board's policies and procedures.

Clearly defined policies and procedures will not only assist the staff in implementing the Board's policies but will also assist the Board's clients in understanding the basis on which decisions are reached. This will require extensive documentation and the design of an appropriate system within which modifications of policy can be incorporated.

It is therefore recommended that:

The Executive Committee under the direction of the Chairman shall be responsible for the development, preparation and maintenance of policy and procedure manuals.

Although all organizations are unique in requiring special skills, talents, abilities and experience in their employees as well as the basic education and experience used in any occupation, the workers' compensation field is even more complicated. Thus, the expertise and experience necessary for an employee to contribute at a senior management level can only be acquired while employed by a Workers' Compensation Board. It follows that the potential number of experienced personnel a Board can draw on is limited. It is imperative for the Board to acquire and retain a highly qualified management team. To do so it should provide adequate management succession, a career development program,

adequate salaries and satisfactory reporting relationships. The Board requires the authority to plan and develop its organization as need dictates.

It is therefore recommended that:

The Board be given the necessary autonomy to carry out its duties and responsibilities.

SERVICES

Consistent with the need for a broader Public Relations Program is the need for the Board to establish a greater presence in the regions of this vast Territory, while at the same time, maintaining the efficient delivery of their services.

In keeping with this need and considering the efforts of the Board to date, it is therefore recommended that:

The Board continue its study of expansion into the various regions as the need arises.

APPEALS FROM BOARD DECISIONS

Considerable interest and discussion have taken place in all jurisdictions in Canada regarding appeals from Board decisions particularly concerning adjudication of workers' claims. When Compensation Boards were first established, appeals by dissatisfied workers or their representatives were directed back to the Board. The Board heard the appeals since Compensation Acts provide Board authority to reconsider any matter previously dealt by it. Boards are empowered to rescind, alter or amend any previous decision.

As modern industry became more complex and a greater variety of industrial diseases were identified, the number of claims increased and particularly, as Boards in the largest areas in Canada grew into huge and complex operations, corresponding dissatisfaction arose from workers as to their treatment and claims dispositions. This dissatisfaction manifested itself with workers being convinced that Compensation Boards had become "faceless, impersonal, dehumanizing organizations"* putting injured workers through a mail order assembly line and being more concerned with the costs of compensation than justice to the worker. Political pressures were exerted. Arguments were advanced that a Board hearing an appeal from its own decision was in

* Reshaping Workers' Compensation in Ontario
Paul C. Weiler

conflict of interest. In some jurisdictions, reacting changes were made. Intermediary Review Committees were established between initial adjudication by Claims Officers and the Board as such. Review Committees either adjudicate cases referred to it by Claims Officers or were the first to hear an appeal from a dissatisfied worker. In some jurisdictions appeals can be heard by the Courts on matters of law or jurisdiction.

As matters stand now the Boards of Alberta, British Columbia, Manitoba, Ontario, Quebec and Saskatchewan have exclusive and final jurisdiction regarding appeals. New Brunswick, Newfoundland and Prince Edward Island allow appeals to the Supreme Court of the Province, with permission of a Judge of that Court, upon questions of law or jurisdiction. In the Yukon, the Board has exclusive jurisdiction over all matters before it and its decision is not reviewable by any Court. In the Northwest Territories the proceedings of the Board may be restrained by the Courts only because of denial of natural justice or excess of jurisdiction.

The Task Force views with apprehension any move towards claims adjudication by the Courts. The historical development of Workers' Compensation in Canada arose out of the glaring inadequacy of the legal adversary system as an instrument to give relief to injured workers. To return to that method would be injurious to the worker and the employer

and retrograde in the extreme.

The Task Force received no recommendations one way or another pertaining to the Northwest Territories Workers' Compensation Board policy of internal appeals and public hearings.

As part of its investigations the Task Force sent out hundreds of questionnaires to injured workers as to their experiences with the Board. The response was very favourable to the Board in that they were treated fairly and their claims adjudicated quickly. A considerable number however, expressed no knowledge of the Board's appeal system.

It is therefore recommended that:

- (1) There be no change in the present system of internal appeals, bearing in mind that the injured worker shall receive the benefit of presumption of entitlement in return for having given up his right to recourse in common law, and that claims shall be dealt with as expeditiously as possible.
- (2) The Board be aware that appeal procedures are the subject of considerable interest in other jurisdictions. We recommend that experiences in

other parts of Canada be studied periodically and proposed changes be considered, if and when they become necessary.

- (3) The Board make known its appeals procedures either in contact with individual workers and employers or through some means of public information.

WORKERS ADVOCATES

Recommendations were submitted to the Task Force concerning the establishment of workers advocates to assist injured workers in filing their claims. Others suggested that such advocates be also available to the employer, particularly the smaller employer, in assisting him to understand the operations of the Workers' Compensation Board, its policies and the meaning of the Ordinance governing workers' compensation.

In evaluating these submissions and in discussing the subject with other Boards, it is the opinion of the Task Force that there is merit in such a program. The Ordinance to the average person is a complex matter. To an injured worker experiencing the trauma of an injury it becomes more so. Those who seek assistance from legal counsel find the costs to them relatively high and come away confused and often bitter.

The Task Force appreciates the fact that the "case load" in the Northwest Territories is fortunately not high and may not warrant the Board establishing a full-time advocate. On the other hand, there is merit in such a service.

It is therefore recommended that:

The Board investigate the establishment of an
advocate service on a part-time basis.

CONTINUITY OF THE BOARD

It is the opinion of the Task Force that when the Chairman is due to retire, his replacement shall have had the opportunity to understudy the position for a period of time. It is recognized that it is virtually impossible for an incoming Chairman to become totally familiar with the responsibilities and operations of the Board. However, before being encumbered with the responsibilities of a position of this magnitude, he shall have been given the opportunity of gaining an overview of the Board's operations and his role in same.

Since the only full-time Member of the Board, the Chairman/Chief Executive Officer, plays an important role in the successful operation of the Board, provision should therefore be made for security of tenure as this will ensure continuity of the Board's operations. It will also ensure that the person appointed to serve as Chairman continue to be of a high caliber.

It is therefore recommended that:

The Chairman/Chief Executive Officer should be appointed for a period of not more than ten (10) years subject only to removal for cause. On the expiration of his term of office, the Chairman may be re-appointed.

FUTURE REVIEW OF THE WORKERS' COMPENSATION ORDINANCE

There having been no public inquiry into the Workers' Compensation Ordinance since 1973 and with the subsequent establishment of the Accident Fund in January, 1977 the Workers' Compensation Board of the Northwest Territories is to be commended for the foresight in appointing a Task Force to review the Workers' Compensation Ordinance and in keeping abreast of the changing circumstances in this very complex field. However, to promote ongoing public input into workers' compensation, a more formalized periodic review mechanism should be established by the Legislative Assembly of the Northwest Territories as many of the demands and recommendations for change can only be addressed by legislative action. The Task Force is of the opinion that a comprehensive review of legislation such as the Workers' Compensation Ordinance with its large social, humanistic and financial impact on a significant portion of the populace of the Northwest Territories should not be neglected to this extent, nor should the responsibility of such a review rest with the agency in charge of its administration.

It is therefore recommended that:

- (1) The Workers' Compensation Ordinance and the administration of that Ordinance be subject to

review every four (4) years.

- (2) This review be carried out by a Committee composed of management and labour representatives and a chairman appointed by the Government with a representative of the Board appointed to serve as a resource person to the Committee.

COSTS OF ADMINISTRATION

The Task Force takes note of the concern expressed by certain employers with respect to increased administration costs. In conducting this review we find that the examples given are not indicative of the actual administration of the Ordinance. An annual administration budget is prepared and submitted to the Board for approval and is then tabled with the Legislative Assembly as an information item. The budget is then closely monitored by the Board.

The Task Force is satisfied that the proper controls are in place and recommends no change in these administrative procedures.

ASSESSMENT RATES

The Task Force is cognizant of the concerns expressed by certain employers and employer groups with respect to the accumulation of reserves. To provide a fund (The Accident Fund) for the payment of compensation and other costs employers are assessed annually on earnings of their workers. The Board sets the assessment rate appropriate to the class or group. The rate reflects directly the cost of accidents but certain other factors must be considered. Each class is to be a self-sustaining unit on an annual basis. The Board is required to levy upon and collect from employers in the class sufficient funds to pay for all accidents occurring in the class in that year. The funds collected must also include adequate reserves for the payment of pensions. Other factors taken into account in calculating a class or group rate include an estimate of the costs of unsettled claims at year end, expenses of administration, and provision for reserve funds and contingencies. The Task Force is of the opinion that the Workers' Compensation Board is assessing employers based on these factors and that the present method of calculating assessment rates should continue.

It is also the opinion of the Task Force that the only logical means of reducing the cost of workers' compensation is through a concentrated, co-operative effort

on the part of industry, labour and government to reduce the frequency of accidents in the workplace.

To ensure that industry is kept informed on the rate making process, it is therefore recommended that:

The Board provide a forum on an annual basis to permit the Board to explain to all segments of industry the rates and the rate making process.

RESERVES

The Northwest Territories Workers' Compensation system, as in the case of the Canadian system of Workers' Compensation, is based on two main principles: collective liability on the part of all employers and compulsory insurance in a fund known as the Accident Fund. It is in effect a mutual insurance scheme in which all employers in the Territories are collectively liable through a single fund for all industrial accidents occurring in the Northwest Territories. The Workers' Compensation Board has established reserves within the Accident Fund and have defined the liabilities to be funded through each specific reserve.

The Workers' Compensation Board has, since the establishment of the Accident Fund, obtained yearly an actuarial evaluation of its liabilities to ensure that these reserves are not excessive or deficient. These evaluations have been presented to the Legislative Assembly of the Northwest Territories on an annual basis. In reviewing these evaluations and in discussion with the consulting Actuary, the Task Force is of the opinion that while the reserves are adequate they are not excessive and continued care must be taken to ensure that these reserves do not fall into a deficit position. The Task Force is of the firm opinion that the funds contained therein must not be used for any other purpose than to meet the liabilities

committed against them.

The Task Force fully supports the concept of complete capitalization of all liabilities imposed upon the Accident Fund.

It is therefore recommended that:

The Board continue to evaluate its liabilities in accordance with the provisions of Section 58(4) of the Workers' Compensation Ordinance to ensure the adequacy of the Accident Fund.

INVESTMENTS

One of the concerns expressed by industry to the Task Force was the possible conflict of interest of the Government of the Northwest Territories acting as the Investment Portfolio Manager for the Workers' Compensation Board. The Task Force was asked to review the appointment of the Portfolio Manager to ensure that the management could be carried out without an actual or apparent conflict of interest. In conducting our review we found that the Government of the Northwest Territories no longer acts for the Board in this capacity and that a duly qualified independent firm of investment counsellors has been appointed to manage the Board's long term portfolio. The Portfolio Manager reports to the Investment Committee that has been appointed by the Board.

Based on the results of this review, it is therefore recommended that:

- (1) An additional Member of the Board be appointed to the Investment Committee.
- (2) The Investment Committee present quarterly reports of its activities to the Board.
- (3) The Investment Committee recommend to the

Board approval or change of the long term
Portfolio Manager.

PAYROLL INSPECTOR

A fund called the "Accident Fund" shall be provided by assessments to be paid by all employers in the manner provided in the Workers' Compensation Ordinance. With annual revenue of some seven million dollars the Board must develop a program to ensure the accuracy of these assessments and further ensure that employers are meeting their requirements as set out in the Ordinance.

It is therefore recommended that:

The Board establish a payroll inspection service to systematically call upon employers who are subject to the provisions of the Workers' Compensation Ordinance.

The establishment of this service will also complement the Board's communications program in providing assistance to any problems an employer may have pertaining to matters of assessment and the application of the Ordinance thereto.

EXPERIENCE ACCOUNTS

Certain presentations to the Task Force indicated that the Board should provide individual employers with a quarterly report detailing the assessment paid to the Board and the expenditures of the Board on behalf of their injured employees. Section 56(1) of the Workers' Compensation Ordinance is quite clear as to the requirement of separate experience accounts for each employer. While the Task Force can sympathize with the Board in respect to the increased workload, the legislative requirement is clear and must be carried out.

It is therefore recommended that:

The Board take immediate steps to fulfill its obligations in accordance with the provisions of Section 56(1) of the Workers' Compensation Ordinance.

PENSIONS

Since the inception of the Collective Liability System of workers' compensation and the establishment of the Accident Fund, the basis used for capitalization factors to determine the amount of monies to be set aside in the Pension Reserve is on a net real rate of return of 3%. This basis at present makes provision for future escalation of pensions to meet changes in the cost of living. Any added investment earnings over this 3% level will be available to provide for escalation from time to time without additional assessment on industry. For those unfortunate persons awarded benefits for accidents occurring prior to January 1, 1977 (establishment of the Accident Fund) there was no provision made by the legislators to have the private insurers provide for increased benefits to compensate for increases in the cost of living and the erosion of the purchasing power of the dollar. As no legislative requirements were in effect, no increases have been forthcoming from the insurers. Hence a widow receiving, through the private insurance system, a monthly payment of \$50.00 in 1953, unbelievably receives in 1981 some 28 years later the same monthly payment of \$50.00. The Task Force finds this situation utterly deplorable. The Workers' Compensation Board, in an attempt to alleviate this unbelievable situation through an additional assessment on the current employers operating in the Northwest Territories, has

provided some relief to these unfortunate persons by way of supplementary payments out of the Accident Fund. Thus, the same widow in addition to receiving a monthly payment of \$50.00 from the private insurer receives an additional payment of \$280.00 per month from the Board.

The Workers' Compensation Board is to be commended for taking the initiative in upgrading these pensions. The Board should continue this policy. It is the opinion of the Task Force that all pensions should be upgraded and maintained equally on the basis of the current years maximum assessable remuneration (Y.M.A.R.) that is in effect from year to year.

It is therefore recommended that:

- (1) The Board continue its present policy with respect to upgrading of pensions.
- (2) The Board initiate discussions with government, industry and labour on future financing of these increases to ensure that all persons are treated equally.

WORKERS' COMPENSATION AND THE MATTER OF INDUSTRIAL SAFETY
AND HEALTH.

In the development and establishment of the Canadian Workers' Compensation System Chief Justice Sir William Meredith in his report in the year 1912 stated: "For reasons both humanitarian and economic, the prevention of accidents should be a prime consideration in any scheme of Workmen's Compensation, and no system can be satisfactory which will not tend to produce the maximum effort and results in conserving the life, health and industrial efficiency of the workman."

This statement is as true today as it was then. In reviewing the past and current development of occupational safety and health in the Northwest Territories, the various pieces of legislation administered by different departments and levels of government do not provide a structured and cohesive unit designed to express an overall policy. This fragmented approach has hindered, and in the opinion of the Task Force, will continue to hinder the development of a co-ordinated safety and health program common to all of the Northwest Territories workers and employers no matter what their sector of activity. At the same time this fragmentation could create a useless and expensive duplication of services. In addition to this fragmented framework, there appears to be one essential component missing. There is virtually no

definition of the rights of those with the most at stake, the workers themselves. As it stands it would seem that the business of the safety and health of workers is exclusively the business of government and employers. This is a serious inadequacy of our Occupational Safety and Health legislation. We are paying heavily for industrial accidents in terms of both human suffering and economic waste. It is the opinion of the Task Force that immediate steps should be taken to rectify this situation. Accident prevention and occupational safety and health are an integral part of the collective liability compensation system for which the Workers' Compensation Board provides benefits and the basis on which the Board establishes its assessment rates to employers. Consultation with compensation officials in other jurisdictions has led the Task Force to affirm that all aspects of Accident Prevention and Occupational Safety and Health in the Northwest Territories should be administered by the Workers' Compensation Board.

In consultation with the Board's Medical Advisor, the Workers' Compensation Boards of Alberta, Saskatchewan and British Columbia, the Commission de la santé et de la sécurité du travail du Québec and submissions presented by labour groups, the Task Force is of the opinion that the Northwest Territories Workers' Compensation Ordinance should provide legislative flexibility so that occupational diseases that can be related to the employment be accepted without contention as being

compensible. The Board would therefore be able to fund preventive measures in the event of potential disability in addition to paying compensation in the event of measurable disablement.

Based on the submissions presented to the Task Force by industry and labour, and our discussion and review with other jurisdictions, it is therefore recommended that:

- (1) The Board be allocated control by legislation of all aspects of Accident Prevention and Occupational Safety and Health for all industries to which the Workers' Compensation Ordinance applies.
- (2) To this end, the Board take the initiative and begin discussions with the Territorial and Federal Governments, industry and labour to work out plans to implement this development.
- (3) Until such time as the legislative directives are in place, an Advisory Committee be established to consult with the Executive Committee of the Government of the Northwest Territories and the Legislative Assembly of the Northwest Territories to minimize overlap of jurisdiction, duplication of services and paralysis of safety programs. This Committee would consist of the Chairman of

the Workers' Compensation Board, the Chief Mining Inspector and the Chief of the Safety Division.

- (4) Until the proposed change comes effective the Workers' Compensation administration continue to maintain its close liaison with the various safety agencies in the Northwest Territories and expand its public information program with respect to accident prevention.

- (5) The Board propose to the Legislative Assembly the following amendment to Section 2(1) (a) of the Ordinance:
"(iii) disablement arising out of and during the course of the employment of a worker, and"
"(iv) a disabling or potentially disabling condition caused by an occupational disease;"

MERIT REBATES

In February 1980 the Workers' Compensation Board instituted a merit rebate program for a three year trial period for all employers subject to the provisions of the Workers' Compensation Ordinance. To qualify for a merit rebate the employer must have maintained an active assessment account for the latest three consecutive calendar years of not less than \$100.00 in each year, and claims costs of under 60% of the assessment in the last year as well as in total over the last three years. In the year of the rebate the employer must also have an active assessment account in good standing.

This program was designed to encourage safety programs and a reduction of accident costs.

In their briefs to the Task Force industry requested continuation of the program and encouraged the Board to provide them with more detailed explanation of how the rebate payments were determined. Labour, on the other hand, requested that the program be cancelled and the monies currently being paid back to the employers be put to other use such as the upgrading of pensions, construction of a rehabilitation clinic, etc.

In considering the submissions of the Task Force

and in reviewing similar programs in effect in the various provincial compensation jurisdictions, we are of the opinion that the merit rebate program as instituted by the Board has not been in effect for a sufficient period of time to evaluate its effectiveness in encouraging safety and the reduction of accidents.

While we believe that the objectives of such a program are desirable, it is our opinion that to date the means to evaluate the successes or failures of the program are inadequate.

It is therefore recommended that:

- (1) The Board develop the necessary procedures for evaluating the performance of the Merit Rebate Program.
- (2) If the Merit Rebate Program has not achieved a reasonable level of success by the end of the three year trial period, it be discontinued.

**THE CURRENT LEVELS OF COMPENSATION AND THE MANNER IN WHICH
THEY ARE DETERMINED.**

In their brief to Sir William Meredith in 1912, the Canadian Manufacturers Association stated that compensation should be a "substitution for the wages of which the injured workman and his dependants are deprived by the injury".

Sir William Meredith in recognizing this principle and establishing the original ceiling of \$2,000.00 described this ceiling on earnings as "probably the maximum amount earned in a year by the highest paid wage earner".

In addition it was also understood, when the system was established, that no worker should have more spendable income on workers' compensation than they would have received if they were working. Workers' compensation legislation pre-dates all other government programs of a socio-economic nature such as Unemployment Insurance, Old Age Security, Canada Pension Plan, Family Allowance, etc. The compensation system also pre-dates the income tax system which was originally introduced as a temporary measure to offset the costs of war. As a result of these many changes the workers' compensation system, while benefiting some workers generously, at the same time short changes others. The Task Force has found that the present

system of paying 75% of gross earnings below a fixed ceiling in non-taxable compensation results in a significant number of injured workers receiving less than 75% of gross earnings. Higher wage earners may be receiving as little as 40% of gross earnings. Abolishment of the ceiling, as is requested by organized labour, will not resolve these problems because of the 25% income tax factor. The Task Force believes in the validity of the Canadian and Northwest Territories Workers' Compensation system. However, it also recognizes that if the original intent of the system is to be maintained certain changes must take place. Because of the small economic base of the Territories the Task Force is hesitant to recommend immediate trend setting changes. We are of the opinion that the wage loss systems in New Brunswick, Quebec, Saskatchewan, Alberta and those planned for Ontario should be monitored very closely, and if proven successful, similar changes should be considered for adoption in the Northwest Territories.

Based on our studies, it is therefore recommended that:

- (1) The responsibility for setting the Years Maximum Assessable Remuneration (Y.M.A.R.) remain the responsibility of the Northwest Territories Legislative Assembly.
- (2) The Board monitor the wage structures in the

Northwest Territories and the results of this study be included in the yearly report and recommendations pursuant to Section 50 of the Workers' Compensation Ordinance.

- (3) The Y.M.A.R. be set at a level to ensure that at least 80% of the workers in the Northwest Territories are earning less than the ceiling set by the Legislative Assembly.
- (4) The Board continuously monitor the innovative systems being adopted in the provinces of New Brunswick, Quebec, Saskatchewan, Alberta and those proposed in Ontario.
- (5) The Board present a report of their findings and recommendations to the Legislative Assembly prior to the establishment in four years time of the Legislative Task Force appointed to review the Workers' Compensation Ordinance and related matters.
- (6) The Board review the system of pensions payable to widows and dependants used in the provinces of Manitoba, Saskatchewan, Alberta and British Columbia to determine that the level of these pensions payable in the Northwest Territories

are realistic and adequate.

- (7) Section 35(1)(a), (b) and (c) and Section 49 of the Ordinance be amended so that the specified amounts set out in these sections can be set by Regulation.

**THE PROCESSING OF CLAIMS FOR COMPENSATION AND THE COSTS OF
REPLACEMENT INCOME COMPENSATION.**

Our terms of reference call for an inquiry into the processing of claims and the costs of replacement income compensation.

With regard to the processing of claims response from claimants to a questionnaire sent out by the Task Force expressed satisfaction generally in the manner in which the Board processes claims. The Task Force is confident the Board will take whatever steps that may be necessary to continue adjudicating claims in a fair, speedy and equitable manner.

With regard to the costs of replacement income compensation, we are of the opinion that wage loss programs in other jurisdictions have not been in effect for a sufficient period of time to provide documented evidence of success or failure. We feel that it would be premature at this stage of our development to recommend specific changes in this area. If our recommendations as contained in the previous chapter are followed we will within the next few years be in a realistic position to consider an income replacement system of Workers' Compensation in the Northwest Territories.

THE FUNCTION OF REHABILITATION OF WORKERS IN RESPECT OF
COMPENSATION.

Rehabilitation is the use of all appropriate sciences and disciplines to assist persons handicapped by disease, disability or social maladjustment to achieve maximum well-being and usefulness. It is the cultivation, restoration and conservation of human resources. Nothing can replace the wish of every person who has known disability to live and work in dignity and in free and open competition with the world. Rehabilitation for workers injured in the Northwest Territories poses many unique problems. There are limited medical and physiotherapy facilities, a high transient workforce, a vast sparsely populated land mass, environmental restrictions for the disabled and employment restrictions for those who are no longer able to carry out their duties. While organized labour has called upon the Board to build a rehabilitation facility in the Northwest Territories, the Task Force, in considering all facets of this request, is of the opinion that this would not be an economically viable undertaking at this time nor would it alleviate the existing problems to any significant degree as the majority of workers would continue to return to their home provinces for treatment and receive the necessary support of their families. The Task Force is satisfied that the Workers' Compensation Board has made adequate arrangements throughout the provinces for rehabilitation

services for injured workers, but to make the Board's program a success additional emphasis must be placed on the matter of rehabilitation.

Based on our findings it is therefore recommended that:

- (1) The Board update and refine its arrangements with the various provincial Workers' Compensation Boards for obtaining rehabilitation services for our injured workers.
- (2) The Board appoint an additional Rehabilitation Counsellor to ensure more personal contact with claimants who are required to obtain treatment outside the Northwest Territories and to provide them with the necessary assistance and support.
- (3) The Board ensure that proper liaison and exchange of information exists between the Board, the claimant and the rehabilitation facility providing the treatment and/or counselling.
- (4) The Board continue with its Temporary Alternative Work Program and act as a catalyst between labour, management and the treating professions.

- (5) The Board review its Rehabilitation Program and formulate its goals and objectives as a priority item in its administration.
- (6) The Board clarify its policy with respect to claims resulting from aggravations of pre-existing conditions and second injuries to encourage industry to hire, or re-hire, disabled workers. This should lead to a more effective rehabilitation program for injured workers sustaining permanent disabilities.
- (7) The Board review the Quebec legislation which protects the job of an injured worker who has sustained a residual disability and monitor the success of this program.

THE SYSTEM OF WORKERS' COMPENSATION IN OTHER JURISDICTIONS.

What of the future? In recent years the compensation system in Canada and other countries has moved towards the replacement of the fragmented and overlapping of federal and provincial departments and agencies which have dealt with this basic social problem in a somewhat inconsistent manner. In New Zealand the system provides a no-fault compensation and rehabilitation scheme with equal benefits for all persons sustaining injury as the result of accidents regardless of cause. Sweden and the Federal Republic of Germany have basic no-fault schemes which provide a level of benefits for all persons disabled as a result of accident or sickness, however benefits are higher for those who are disabled as a result of their employment. The United Kingdom's system is very similar with the exception that if employer negligence is proven the workers may also sue for damages through the courts. New Brunswick, Quebec, Saskatchewan and Alberta have moved toward wage loss compensation involving integration of other government programs and Ontario is expected to move in this direction in the near future. Comprehensive programs have been proposed which make a persuasive argument for the adoption of a consolidated plan. To date these have not been implemented. In these times of double digit inflation and the rapidly increasing costs of adversary systems, economic considerations alone will accelerate the intergration of no-fault comprehensive

schemes for all of our society.

In view of the small population and workforce, it may well be that the Northwest Territories is the place to introduce Canada's first no-fault integrated comprehensive compensation program which provides equal protection and treatment for all its citizens. The Task Force does not feel that the matter of universal coverage is within our competence.

It is therefore recommended that;

The Board request the Legislative Assembly of the Northwest Territories to consider the authorization of a detailed study of universal coverage.

GENERAL.

During the discussion with the staff of the Board it was brought to our attention that certain housekeeping amendments should be made to the Workers' Compensation Ordinance. These suggestions have been submitted directly to the Board and are not included in this Report.

However it is recommended that:

The Board's Executive Committee submit recommendations at least annually to the Board with respect to amendments to the Ordinance.

LIST OF SUBMISSIONS.

Adams Mann Hinchey & Company
Agrena Arctic Limited
Alberta Construction Association
Amax of Canada Limited
Arctic Personnel Limited
Ken Ashton
Bank of Montreal
Bond-a-Ply Roofing Ltd.
C.A.S.A.W.
Canada Tungsten Mining Corporation Limited
Canadian National
City of Yellowknife
Cominco Limited and Pine Point Mines Limited
Dale Payne & Associates Limited
Esso Resources Canada Limited
Felec Services, Inc.
Flint Engineering & Construction Limited
Fort Smith Construction
Gem-Steel Enterprises Limited
Giant Yellowknife Mines
Golder Associates
Government of the Northwest Territories
Hamlet of Pond Inlet
International Brotherhood of Electrical Workers, Local Union 1541
Inuvik & District Chamber of Commerce

J.D.C. MacLean, Chairman, Workers' Compensation Board of the Northwest Territories

Marshall Macklin Monaghan Limited

Municipality of Rankin Inlet

Northern Arc Shipbuilders Limited

Northwest Territories Area Council, United Steelworkers of America

Northwest Territories Chamber of Mines

Northwest Territories Federation of Labour

Northwest Territories Registered Nurses Association

NorthwestTel

Oliver, Mangione, McCalla & Associates Limited

PCL Construction Limited

Patterson Enterprises Ltd.

R. Angus Alberta Limited

Harvey Rudis

Safety Division, Government of the Northwest Territories

Scanada Consultants Limited

Spence Bay Alcohol and Drug Committee

Territories Mine Accident Prevention Association

Town of Pine Point

Tree of Peace

Tundra Drilling Corporation

United Carpet Shoppe

Yellowknife Education District No. 1

Yellowknife Separate Education District No. 2