



15th Legislative Assembly of the Northwest Territories

Standing Committee on Accountability and Oversight

Report on the Review of the
Report of the Auditor General
on the Workers' Compensation
Board of the Northwest Territories
and Nunavut

Chair: Mr. Jackson Lafferty

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Northwest
Territories

Legislative Assembly
Standing Committee on Accountability and Oversight

October 26, 2006

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Accountability and Oversight is pleased to provide its Report on the Review of the Report of the Auditor General on the Workers' Compensation Board of the Northwest Territories and Nunavut and commends it to the House.

A handwritten signature in black ink, appearing to read 'J. Lafferty', written over a circular stamp or mark.

Jackson Lafferty, MLA
Chairperson

**STANDING COMMITTEE ON
ACCOUNTABILITY AND OVERSIGHT**

**REPORT ON THE REVIEW OF THE REPORT OF THE
AUDITOR GENERAL ON THE WORKERS' COMPENSATION
BOARD
OF THE NORTHWEST TERRITORIES AND NUNAVUT**

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REPORT ON THE REVIEW OF THE REPORT OF THE AUDITOR GENERAL ON THE WORKERS' COMPENSATION BOARD OF THE NORTHWEST TERRITORIES AND NUNAVUT

The Standing Committee on Accountability and Oversight held its public reviews on the Report of the Auditor General on the Workers' Compensation Board of the Northwest Territories and Nunavut (the Report) from June 28 to 30, 2006, and on September 20, 2006. The Committee was pleased that Mr. Keith Peterson, a Member of the Nunavut Legislative Assembly and Standing Committee on Government Operations, was able to attend our June proceedings as an observer. The Committee would like to thank the Auditor General, Ms. Sheila Fraser, and her staff for their excellent work in preparing the report and in assisting the Committee with its review. We would also like to thank everyone who provided written submissions or appeared before the Committee, and in particular the injured workers and their family members who showed great courage by speaking in public about their personal experiences.

GENERAL COMMENTS

The Report came about at the request of the Legislative Assembly after years of frustration on the part of injured workers, their families, and MLAs with the callous and corporate-centred administration of the cases of some injured workers.

The Auditor General of Canada (AGC) accepted our request to conduct a performance audit of the Workers' Compensation Board (WCB), the Appeals Tribunal and related offices to look into their compliance and process in relation to these cases. In all about 40 files were referred to the AGC.

The Committee does not find a WCB in crisis, and neither did the AGC. However, several areas of fundamental concern have been identified. These are at the most senior levels of the WCB and consequently have filtered into the organizational roots and culture of the Board.

These issues have caused this most vital of our labour institutions to go astray, violate and deny the rights and privileges of some injured workers and allow an attitude of indifference, avoidance and denial to pervade the Board and the Tribunal.

The Report makes 36 recommendations, almost all of which the relevant workers' compensation authorities agree with. This is a start to the process of

rehabilitation. Changing the policies and performance will take some time, but it must begin with the will and the commitment of the Governance Council and senior WCB executives who are entrusted with this essential part of our economy and our society.

The Report states that the WCB is an important public institution that needs to have the confidence of the community. The Committee was pleased that the Auditor General was able to confirm many aspects of the system are working well, including the processing of claims according to policy, and the financial position of the Accident Fund.

However, as the Report indicates, and as our discussions with employers, workers and other stakeholders confirm, there are many areas where fundamental change is needed, including policy development, accountability to stakeholders, the claims process, and communications. The existence of several unresolved claims that go back decades is particularly troubling for Members.

Recommendation

The Standing Committee on Accountability and Oversight recommends the Minister come forward with options to expedite the resolution of long-outstanding claims, and to improve timelines for the hearing of appeals.

The Governance Council must continue to show leadership and commitment, as it demonstrated in its appearance before Committee in June, to improving the policy development process, and in particular resolving difficult issues such as chronic pain and pre-existing conditions. The Council should not be afraid to break new ground and try made-in-the-north solutions where approaches borrowed from other jurisdictions do not work.

The Council should also continue its work to improve accountability, for example, by developing its external reporting as well as its internal balanced scorecard. In the area of risk management, we encourage the Council to expand its efforts to prepare for a Mackenzie Gas Project beyond reviewing the rate structure to, for example, looking at the adequacy of its policies to deal with the types of injuries and issues that are likely to come with such a mega-project.

Following our discussion with members of the WCB administration, the Committee was concerned that management may not fully appreciate the need for substantive changes to the way the Board deals with claimants. For example, one member of the management team admitted that due to turnover and

operational requirements some training takes place on the job. This is not acceptable. It is essential that all claims staff receive sensitivity and customer service training. Further, this training should be provided by outsiders who can provide a fresh perspective and experience from other organizations.

Plain language communication is another area that requires improvement, and the Committee welcomed the administration's commitment to progress on this front. We encourage the WCB to look not only at the letters it sends out to claimants, but also at developing plain language versions of at least the most commonly used policies.

At the time of our June hearings, the Governance Council and Board had not yet had the opportunity to develop a work plan for addressing the Auditor General's recommendations, and advised us that they were working on a draft protocol for communications with the Minister and Legislative Assembly. The Committee looks forward to reviewing both the work plan and the draft protocol in the coming months. The Committee will also consider making a regular practice of conducting public hearings on the annual reports tabled by the WCB, Appeals Tribunal and Workers' Advisor in order to keep the lines of communication open as we work toward a more effective workers' compensation system.

Recommendation

The Standing Committee on Accountability and Oversight recommends the Minister ensure the Governance Council and Workers' Compensation Board administration complete a draft communications protocol and an action plan to address the Auditor General's recommendations, and forward these to the Committee by the end of 2006.

The Committee was pleased to hear that the Appeals Tribunal is developing its own website and is looking for a location outside of the WCB's offices. The actual and perceived independence of the Tribunal from the Board is essential to its credibility and performance. The Committee encourages the Tribunal to work on developing performance measures which will help it to become more accountable to the public.

Recommendation

The Standing Committee recommends that the Minister locate the Appeals Tribunal offices separate and apart from the Board and that this relocation be undertaken as an immediate priority.

CORPORATE CULTURE

While the Report provided many recommendations that will help to make the workers' compensation system more effective and responsive, the nature of audit did not allow for it to deal directly with the WCB's corporate culture, which the Committee believes is at the root of many of the concerns of injured workers and their families. Members have heard that from the perspective of at least some clients, the WCB has an unfriendly, fortress-like atmosphere, where workers and family members feel like they are treated with suspicion from the moment they walk in the door. The one employer who spoke at our public hearings also expressed concern with how workers are treated, and stated categorically, "we don't authorize, permit, support WCB being ruthless of what claims it supports. ... We want workers to be taken care of. ... We want them to be rehabilitated, we want them to be compensated, and we want it to be done quickly and expediently. ... We will pay for that."

Recommendation

The Standing Committee recommends the Minister direct the Governance Council to overhaul its reception protocols, security practices and client and public relations functions to provide a more accessible and responsive level of service.

When we asked the Workers' Advisor about his impression of the WCB's corporate culture, in our view, he captured the issue when he said, "I believe that at some point in the last 20 years, managing the Accident Fund has taken a greater priority than managing the legislation." As the Workers' Advisor went on to point out, the fault does not lie with any individual WCB staff, who are, after all, doing what they have been trained to do. This is an institutional problem which the organization as a whole needs to commit to fixing.

We were concerned after discussing the WCB's corporate culture with the Governance Council that some of the Council Members seemed to have the impression that what we are effectively asking is for them to always say "yes". The Committee understands that not all claimants have a compensable injury that can easily and readily be diagnosed and processed. Likewise, the Committee recognizes that not all employers are always right in their demands. In some cases the answer will have to be "no". We would like to make it clear that our expectation is not for the WCB to always say "yes", but for them to treat all claimants and clients in a timely and professional manner, in compliance with legislation and consistent with best medical and legal practice, whether their claim is ultimately approved or not.

The Committee believes that the improvements to staff training, communications, and the policy development process recommended by the Auditor General, when implemented, will help to improve clients' experiences with the WCB. However, we also believe that more is needed to reorient the WCB to a customer service focus. The WCB has a mandate not only to manage the Accident Fund, but also to assist injured workers and their families.

The obligation the Board has to the families of injured workers cannot be underestimated. The Committee was especially moved by accounts it heard from workers, and their spouses, of the pain and turmoil suffered by families when workers – most often the key family providers -- lose their jobs and, over time, their sense of worth and value to themselves, their families, their fellow workers, and their communities.

Recommendation

The Standing Committee recommends that mandatory orientation and training be implemented for all new employees before they are allowed to engage clients. The Committee further recommends on-going professional development be programmed for each employee, manager, executive and member of the Governance Council and Appeal Tribunal, and documented and reported annually, as a key component of performance measurement.

This duty to assist should be stated clearly in the *Workers' Compensation Act*. As the Workers' Advisor suggested, it is perhaps time to also supplement the Meredith principles, which are the foundation of our workers' compensation system, with new concepts that are needed for the 21st century. While it is impossible to legislate compassion and good customer service, the Committee believes a clearer articulation of the WCB's mandate would provide guidance and help to set an appropriate tone for the corporate culture.

The Committee stresses that the WCB has a unique role as our society's lawful, mandatory and sole worker insurance program. As such, when injury and job-related illness occurs, the worker deserves the Board's fullest consideration, compassion and support services. We expect our WCB to do more, and do better, for injured workers in the NWT and Nunavut. They expect it, and their employers pay for it.

Recommendation

The Standing Committee on Accountability and Oversight recommends the Government introduce amendments to the *Workers' Compensation Act* that set out the WCB's mandate, including its duty to assist injured workers, in clear terms.

WORKERS' ADVOCACY

One of the intended advantages of the workers' compensation system was to create a non-adversarial alternative to the courts that would provide a less complicated and faster process for resolving claims. Unfortunately, many claims have nonetheless ended up before the courts. The WCB is well equipped to litigate these cases with staff lawyers and lawyers on retainer.

Claimants, however, are at a considerable disadvantage to the WCB. Injured and often without income, they must often rely on legal aid, which will not necessarily pay for counsel with expertise specific to workers' compensation issues. Claimants may also have difficulty accessing independent medical advice. This means that when the system does become adversarial, there is a tremendous imbalance of power and resources.

The Committee heard suggestions that one way to correct this imbalance would be to set up a legal fund for injured workers or to expand the mandate of the Workers' Advisor to allow claimants to obtain legal representation and medical advice through that office.

Other witnesses spoke against this approach, which they are concerned could push more cases into the justice system, and instead favoured making the workers' compensation system work in the non-adversarial way originally intended. Among this group was Governance Council Member, Steve Peterson, who told us, "litigation is not what compensation systems is about. ...It is supposed to be worker reps and employer reps sitting down compassionately over-viewing the file. ...I think that if we were able to go and be much more diligent in our principles and make sure the presumption favours the worker and those issues are addressed with that sort of focus, we would avoid a lot of this litigation. ... I think that it's something we can resolve in-house if we were more diligent in enforcing that presumption for the worker."

The Committee cannot support such an idealistic approach. While sound policy applied by well-trained staff using best practices should resolve most cases, it must be accepted that mistakes, errors and challenges will occur. It must also be accepted that the average worker will need legal or other professional help to get answers. The recent Valic (NWT Supreme Court) and Rennie (Nunavut Court of Justice) cases are illustrative of the delays and procedural hurdles injured workers can encounter in trying to have their claims resolved.

Recommendation

The Standing Committee recommends the Minister direct the Worker's Advisor to draw up a proposal to provide for assistance to workers who need expert medical evidence, and/or legal assistance with judicial reviews, to move their case forward.

CONFLICTING MEDICAL OPINIONS

A good deal of discussion during our public hearings centred on the role of the medical advisors in the workers' compensation system, and in particular on what happens when their opinions conflict with the opinions of outside physicians. As the Workers' Advisor told us, the issue of "objective medical evidence" accounts for about 60% of his caseload. It is also a factor in many of the WCB's long-unresolved claims.

As the Report states at paragraph 157, "the medical advisors' views carry considerable weight with caseworkers, claim managers and the Review Committee. In addition, the Appeals Tribunal considers the medical advisors views to be important evidence." The Committee heard that the WCB routinely accepts the assessments of its medical advisors, who, they argue, are experts in what causes injuries, over the assessments of one or more specialists. Many injured workers find this especially difficult to accept, as often the WCB's medical advisers' will make an assessment based on the file alone, without conducting a physical examination of the worker. Medical Advisor Dr. David King explained to us that he and his colleague are able to provide objective evidence of the possibility of a claimant's injury being caused by his or her workplace based on reviews of scientific literature. In Dr. King's view, this science-based evidence should be given more weight than personal or professional opinions. The Workers' Advisor challenged this method, which, from his perspective, also contains a frailty in that examinations of scientific literature may be as subjective as clinical evidence; for example, more emphasis may be placed on some studies than others.

If there is one area of common ground among those involved in this process, it is the frustration that some claims have remained outstanding for years because of the inability to resolve conflicting medical opinions. It is also an area of considerable debate in WCB circles across Canada. We are not alone in this.

The Committee agrees with the Auditor General's finding that a better process is needed to resolve conflicting medical opinions. We would add that this process must be independent, must provide finality, and must reflect the principles behind the workers' compensation system, and in particular the presumption in favour of the injured worker.

Recommendation

The Standing Committee on Accountability and Oversight recommends that, as a priority, the Minister work with the Governance Council to develop options for an independent means of resolving conflicting medical opinions that provides finality, and that reflects the basic principles of the workers' compensation system and in particular the presumption in favour of the worker.

CONCLUSION

The Committee looks forward to continuing to work with the Minister, Governance Council, WCB, Workers' Advisor and Appeals Tribunal toward achieving a more effective and responsive workers' compensation system.

Recommendation

The Standing Committee on Accountability and Oversight recommends the Government provide a comprehensive response to this report within 120 days.

**STANDING COMMITTEE
ON ACCOUNTABILITY AND OVERSIGHT**

**REVIEW OF THE AUDITOR GENERAL OF CANADA'S REPORT ON THE
WORKERS' COMPENSATION BOARD OF THE
NORTHWEST TERRITORIES AND NUNAVUT**

SCHEDULE OF WITNESSES

Wednesday, June 28, 2006

Ms. Sheila Fraser, Auditor General of Canada
Mr. Andrew Lennox, Assistant Auditor General
Mr. Roger Simpson, Principal

Mr. John Doyle, A/President of the Workers'
Compensation Board
Ms. Marie Wilson, Vice-President, NWT Operations
Dr. David King, Chief Medical Officer
Mr. Mike Triggs, Senior Legal Counsel

Thursday, June 29, 2006

Mr. Denny Rodgers, Chair of the Governance Council
Mr. Bill Aho, Council Member (Employer Representative)
Mr. Willard Hagen, Council Member (Public Interest Representative)
Ms. Karin McDonald, Council Member (Employer Representative)
Mr. Steve Petersen, Council Member (Labour Representative)

Mr. Colin Baile, Workers' Advisor

Ms. Debra Simpson, Chair of the Appeals Tribunal

Friday, June 30, 2006

Hon. Charles Dent, Minister Responsible for the Workers' Compensation Board

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SCHEDULE OF WITNESSES

Wednesday, September 20, 2006

Mr. Daniel Gélinas, Injured Worker

Ms. Effie Brown, Injured Worker

Mr. Greg Barton, Tim Hortons, Representative of Quick Service Restaurants

Mr. John Huffman, Injured Worker

Ms. Darlene Leisk, Injured Worker's Spouse

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LISTING OF WRITTEN SUBMISSIONS

Ms. Barb Round
Mr. T. G. Ison

