

# FOR THE COMMON GOOD



FINAL REPORT OF THE ROYAL COMMISSION  
ON WORKERS' COMPENSATION IN  
BRITISH COLUMBIA

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**Royal Commission on Workers' Compensation in British Columbia**

*An independent Commission of Inquiry appointed by the Province of British Columbia*

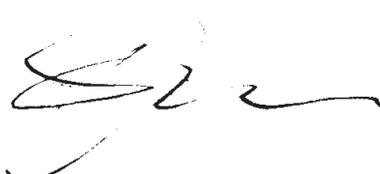
January 20, 1999

His Honour, The Honourable Garde Gardom  
Lieutenant-Governor, Government of British Columbia  
Government House  
1401 Rockland Avenue  
Victoria, BC

Your Honour:

The Royal Commission on Workers' Compensation in BC received its Terms of Reference on November 7, 1996. In accordance with these terms, and subsequent amendments, the undersigned submit this report.

Yours respectfully,

		
Gurmail S. Gill Commission Chairman	Oksana Exell Commissioner	Gerry Stoney Commissioner

***MASTHEAD***

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on behalf of injured workers

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on behalf of injured workers

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on behalf of the BC Federation of Labour

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In particular, the commission thanks the members of the panel of administrators for their commitment to this project.

The commission also received willing and thoughtful assistance from members of the Workers' Compensation Review Board, the offices of the Workers' Adviser, the Employers' Adviser, the Ministry of Labour, and a number of other agencies.



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BC Cancer Control Agency  
Ministry of Advanced Education, Training and Technology  
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This project was chaired on behalf of the commission by Dr. G. Dewey Evans and coordinated by Karen Ryan.



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**Workers' Compensation Review Board:**

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This project was co-chaired on behalf of the commission by Dr. G. Dewey Evans and Karen Ryan.



## List of Research Papers

*The following papers were completed for the Royal Commission on Workers' Compensation in British Columbia. Copies are available through Queen's Printer. See page vi for ordering information.*

### **ARA Consulting Group Inc., in association with James C. McDavid**

Report on the Importance and Organization of Research Funded by the BC WCB

### **ARA Consulting Group Inc., in association with James C. McDavid and Ted Semmens**

The WCB's Capacity to Evaluate Its Major Initiatives

- Factual Overview of the WCB's Major Initiatives
- Factual Overview of Selected Evaluation Activity at the WCB
- Criteria for the Effective Evaluation of Major Initiatives
- Assessment of Program Evaluation Activities for the Case Management Initiative in the BC Workers' Compensation Board
- An Assessment of Program Evaluation Activities for the Electronic Claim File Initiative in the BC Workers' Compensation Board

### **Armstrong, Elspeth**

Possible Consolidation of the Mines Act with the Workers Compensation Act

### **Bryce, George K.**

A Comparison of the 1997 OHS Recommendations of the Royal Commission on Workers' Compensation in British Columbia to the Provisions of Bill 14 (1998)

A Review of the Internal Ombudsman of the Workers' Compensation Board of BC

### **Bryce, George K., George Heinmiller and Victoria Macfarlane**

OHS Legislation Issues Papers:

- Legislative Objectives and Agency Directives: Options and Alternatives
- OHS Penalty Assessment Appeals
- Worker Radiation Health Protection
- Regulation Variances or Exemptions
- OHS Legislative Objectives
- Legislative Accountability
- Jurisdiction for Occupational Health and Safety within British Columbia
- Commentary on Specific Enforcement Problems with the Industrial Health and Safety Regulations and the Occupational Health and Safety Provisions of the Workers Compensation Act



- Analysis and Comparison of the OHS Enforcement Provisions of the Workers Compensation Act
- A Comparison of Fundamental Rights and Duties in Canadian Occupational Health and Safety Statutes
- Occupational Health and Safety Provisions in Statute or Regulation?
- Consolidating Provincial OHS Legislation and/or Transferring OHS Programs within BC
- A List of Federal and Provincial Occupational Health and Safety Legislation that Applies within British Columbia

### **Chaklader, Anjan**

History of Workers' Compensation in BC

### **Currie, Janet**

Application of Legal Causation Principles; Assessment of Permanent Partial Disability Pensions; Deeming of Employment Opportunities – A Comparison of the Workers' Compensation and Tort Systems

Availability of Appeals, Reopening and Reconsideration – A Comparison of the Workers' Compensation and Tort Systems

Charter Issues Pertaining to Survivor Benefits

Fundamental Entitlement Issues Arising from Sections 5, 10, 11 and 96: When does the Act Apply? When Are Tort Claims Barred? Who Makes These Determinations?

Philosophical Underpinnings of the Workers' Compensation System – Compensation Based on Loss vs. Compensation Based on Need

### **Evans, G. Dewey**

A Framework for Regulatory Review: the Business of Establishing the Environment for Safe Work Environments and An Accountability Mechanism that is Effective and Efficient

### **Furlong, Susan**

Report of the Non-Fatal File Review

### **Giammarino, Ron and Gerald Garvey,**

The Economic Role and Impact of Workers' Compensation

### **Grover, Geoff**

British Columbia Labour Force & Employment Dynamics: An Historical Review

### **Gunderson, Morley and Douglas E. Hyatt**

Some Benefit Considerations in Workers' Compensation

Waiting Periods and Direct Payments in Workers' Compensation



## **Institute for Work and Health**

The production and presentation of the following papers was coordinated by the Institute:

**Brooker, Ann-Sylvia, Sandra J. Sinclair, Judy Clarke, Victoria Pennick, and Sheilah Hogg-Johnson**

Effective Disability Management and Return to Work Practices: What Can We Learn from Low Back Pain?

**Chung, Jinjoo, Donald C. Cole and Judy Clarke**

Women, Work and Compensation: A Different and Changing Experience

**Frank, John W. and Andreas Maetzel**

Determining What Constitutes An Occupational Disorder: Is the Horse Already Well Out of the Barn Door?

**Gnam, William**

Mental Disorders, Mental Disability at Work, and Workers' Compensation

**Gunderson, Morley, and Douglas E. Hyatt**

Workforce and Workplace Changes: Implications for Injuries and Compensation

**Hogg-Johnson, Sheilah, Donald Cole, Pierre Côté, and John W. Frank**

What We Know About the Timing and Site of Interventions for Soft-Tissue Injuries of the Low Back, Neck and Upper Extremity

**Hyatt, Douglas E. and Terry Thomason**

Evidence on the Efficacy of Experience Rating in British Columbia

**Kerr, Michael S.**

Workplace Psychosocial Factors and Musculoskeletal Disorders: A Discussion Paper

**Norman, Robert and Richard Wells**

Ergonomic Interventions for Reducing Musculoskeletal Disorders: An Overview, Related Issues and Future Directions

**O'Grady, John**

The Role of Joint Committees in Workplace Health and Safety: A Review of the Legislation and Previous Studies

**Ostry, Aleck**

Historical Trends in the Epidemiology of Injury and Industrial Disease at the BC Workers' Compensation Board (1950 –1996)

**Shannon, Harry**

Firm Level Organizational Practices

**Thomason, Terry**



Fatal Benefits in British Columbia and Other Jurisdictions: Rationale and Practice

**Tunks, Eldon, Joan Crook, and Mikaela Crook**

The Natural History and Efficacy of Treatment of Chronic Pain Arising From Musculoskeletal Injury

**Intersol Consulting Associates Ltd., (Principal Investigator: Alain Rabeau)**

Regulatory Frameworks

Regulatory Review Process

**Law, David K.**

Alternative Dispute Resolution in Workers' Compensation

Appeal Decision Review

Employer Appeals

Issues in Workers' Compensation Versus Tort

Worker Employability and Earning Capacity

**Macfarlane, Victoria, Angela Weltz and Geoff Grover**

Occupational Health and Safety Program Delivery (Parts 1 and 2)

**Macfarlane, Victoria and Diana Tindall**

Compensation Services (Part 3)

**Macfarlane, Victoria and Angela Weltz**

Performance Indicators

**Macfarlane, Victoria**

Compensation Services (Part 2)

Employer Appeals

**Matheson, David S., and Georgene Miller**

Review and Assessment of the Administration of Medical Affairs at the British Columbia Workers' Compensation Board

**Mercer Investment Consulting; William M. Mercer Ltd.**

Part A: Governance Review

Part B: Asset/Liability Study

**Nelson-McDermott, Susan**

Workers' Compensation Board of British Columbia: Fatalities Investigations

**Perrin, Thorau & Associates Ltd.**

Comparative Review of Workers' Compensation Systems and Governance Models

Governance & Accountability for the BC Workers' Compensation System



Issues Research: Compensation Services, Adjudication & the Appeals Process in Canadian Workers' Compensation Systems

Comparative Review of Occupational Health and Safety in Canadian Jurisdictions

**Praxis, Inc.**

Analysis of the Commission's Public Submissions: Issues Matrix

Analysis of the Commission's Public Submissions: Theme Papers

**Ryan, Karen**

The Cohort Project Report: A Longitudinal Analysis of New Claims Registered with the WCB of BC, 1994 – 1996

**Samuels, Sharon**

Appeals from WCB Adjudication

**Semmens & Adams**

A Critical Appraisal of the Administrative Inventories

The Flow of Governance Information in the BC Workers' Compensation System

**Social Research and Demonstration Corporation (*Principal Investigators: Schwartz, Saul, Therese Jennissen and Michael Prince*)**

Interconnectedness and Accountability: The British Columbia Workers' Compensation System among the Set of Social Programs

**Tindall, Diana**

Compensation Services Program Overview

**University of British Columbia, Centre for Health Services and Policy Research: Clyde Hertzman, Kimberlyn McGrail and Robert Hirtle**

Summary Report of the Incidence and Prevalence of Worker Injury and Subsequent Outcome in British Columbia: A Record Linkage Study

**Wallbank, Rosemary, Sylvia Robinson, Shannon Turner, Nancy Cameron, and John Sehmer**

Terms of Reference Item 3(c) Relating to Rehabilitation and Re-employment Matters

**Weltz, Angela and Geoff Grover**

The Organizational Capacity of the Workers' Compensation Board of British Columbia: A Human Resources Synthesis



## Table of Contents

Letter of Transmittal .....	iii
Masthead .....	iv
Acknowledgments .....	vii
List of Research Papers .....	x
For the Common Good .....	xvii

### VOLUME I

- Chapter 1 • Introduction
- Chapter 2 • The Challenge of Research
- Chapter 3 • Governance and Accountability in the Workers' Compensation System
- Chapter 4 • Information and Decision Making
- Chapter 5 • Operations: Prevention Division
- Chapter 6 • Operations: Rehabilitation Division
- Chapter 7 • Operations: Compensation Division
- Chapter 8 • Compensation Adjudication
- Chapter 9 • Compensation and Assessment Appeals
- Chapter 10 • Disclosure
- Chapter 11 • The Board's Internal Ombudsman



## VOLUME II

- Chapter 1 • The Adequacy of Benefits
- Chapter 2 • Fatality Benefits
- Chapter 3 • The Scope of Coverage in BC: Who is Covered?
- Chapter 4 • The Scope of Coverage: Determining Work-Relatedness
- Chapter 5 • Sections 10 and 11: Limitations of Actions, Elections, Subrogations and Certification to Court
- Chapter 6 • Fatality Investigations
- Chapter 7 • Performance Indicators
- Chapter 8 • Organizational Capacity
- Chapter 9 • Funding

## VOLUME III

- Chapter 1 • List of Submitters
- Chapter 2 • Submitters' Quotes
- Chapter 3 • Frequency and Intensity Matrix
- Chapter 4 • Bibliography
- Chapter 5 • Recommendations



***FOR THE COMMON GOOD***

Your Honour:

I am pleased to present to you the royal commission's report entitled *For the Common Good*. This report, along with the commission's first report delivered in October 1997, is the result of 26 months of consultations, research and deliberations. It is the earnest hope of this commission that this report will lead to a more equitable, efficient and effective workers' compensation system for all British Columbians.

The scope of the mandate you assigned to this commission in November 1996 reflected the fact that the workers' compensation system in this province had not been thoroughly reviewed in 30 years. The structure of your mandate reflected the pressing need felt by both interest groups and individuals for a detailed review of the province's occupational health and safety regime and for resolution of the issues surrounding benefits to surviving dependants of deceased workers. In order to meet these terms, the commission found it necessary to divide its work: much of the first year of our mandate was dedicated to addressing occupational health and safety and fatality issues; the remaining fourteen months were used to address all other issues.

One consequence of these relatively short time frames was the need to make some very difficult decisions about the issues the commission could address in detail, those that the commission could only highlight for further study or resolution by the Workers' Compensation Board and those that it could not address. Another consequence is the size of this report. The commission has committed almost all of its time to identifying, analyzing, deliberating and making recommendations on the issues before it in order to cover as wide a number of topics as possible. We have spent less time concerned with producing an edited volume in the belief that our short time could be better spent addressing content. A final consequence is that the commission was unable to conduct a detailed costing of its recommendations contained in this report, although such an exercise, even if conducted, would likely have been fraught with difficulties. The commission fully expects the issue of costing of its recommendations to form part of the overall stakeholder discussion and debate of its suggested reforms.



From the outset, the intention of this commission was to involve workers, employers and other interested parties in identifying important issues and developing the commission's understanding of possible solutions. This took the commission to 38 communities and 56 meetings with 825 people including workers, injured workers, employers, advocates, organized labour, the Workers Compensation Board, caregivers and dependants, and a broad cross-section of other British Columbians. The commission also received 2,036 written submissions, possibly the greatest number of submissions to a royal commission in this province, highlighting the significant public interest in workers' compensation issues.

A serious challenge to the equity of this process was the fact that unlike organized labour and employers, this province's many active and important injured worker groups and individuals are not represented by provincial or even regional organizations. Recognizing that these groups and individuals deserve representation and a voice before the commission, the commission retained experienced counsel specifically to canvass and present their views. These submissions and those of other interested parties and the general public were of immense assistance in guiding the commission's deliberations. *Volume Three* of this report includes excerpts from the presentations and submissions made to the commission.

The current workers' compensation system has its roots in what is commonly known as the "historic compromise," an agreement, negotiated by government, involving workers collectively giving up the right to sue employers for work related harm in exchange for guaranteed levels of compensation for economic loss regardless of fault. While the commission heard from many groups and individuals critical of various aspects of the system, relatively few submissions were critical of this agreement. Indeed, the commission determined that the core underlying objective, namely that workers suffering harm from the production process should be entitled, as a matter of right, to fair and just compensation, is as valid today as it was at the turn of the century. Clearly, however, what society regards as fair and just compensation has evolved over the years and is the subject of considerable discussion in this report. The extent to which this objective has been supplemented or re-prioritized by other objectives has also been considered.

In the course of its work, the commission relied upon a number of important underlying goals and principles. While some were outlined in the commission's terms of reference, others emerged in the course of the commission's research and deliberations. Many of the principles may be either self-evident or familiar to those individuals knowledgeable about workers' compensation issues, but it is important that they be identified. They are:



- prevention of workplace injury and disease;
- reasonable incentives for employers and workers for objectives of prevention, rehabilitation and compensation;
- rehabilitation and re-employment of injured workers;
- fair compensation of injured workers;
- continuity of income for injured workers;
- equitable, efficient and effective allocation and distribution of benefits;
- compulsory, universal, no fault coverage;
- no right of action by workers against employers and co-workers;
- work-relatedness as a precondition to entitlement;
- cost-effective insurance for industry;
- specified accountability by workers, employers and the board;
- a fair funding load for industry;
- collective liability by employers;
- equity between employers and classes of employers;
- reasonable stakeholder consultation;
- exclusive jurisdiction by an autonomous compensation agency;
- a high quality, inquiry based model of administrative adjudication aided by statutory presumptions; and
- an independent, fair and impartial appeal process, with a limited right of review by the courts.

The commission report has two broad categories:

1. service delivery issues; and
2. benefit structures and entitlements.

The commission concluded that service delivery is the most urgently in need of reform, and has devoted all of *Volume One* and three chapters of *Volume Two* to the matter. This conclusion was supported by numerous submissions, including those from individuals and associations with great experience in the workers' compensation system. Clearly, any framework of benefits entitlement, regardless of how fair it might otherwise appear to be, will be compromised by a deficient delivery system.

The commission determined that, while deserving praise for fiscal responsibility, the Workers' Compensation Board of British Columbia has failed in its mandate to administer fair and equitable benefits to all injured workers, often those most in need of assistance.



The reasons for the board's service failure are complex and multi-faceted. Put briefly and in the context of the current decade, they relate to severe shortcomings in leadership, lack of defined goals, poor performance evaluation and deficient accountability structures and processes. These shortcomings have been exacerbated by the lamentable state of stakeholder relations in the workers' compensation arena, in particular those between industry and organized labour.

In order to improve the board's service delivery, the commission is recommending:

- a clear legislative mandate defining what services are to be delivered;
- an empowered governance structure and process enabling responsible stewardship of the system and reinforcing exclusive authority for policy making;
- meaningful accountability mechanisms to ensure proper levels of service;
- a claims adjudication process that promotes the trust and respect of participants and demands high-quality decisions in the first instance;
- an appeal process which is integrated, streamlined, timely and totally independent of the board; and
- a performance evaluation regime permitting better monitoring and reporting on whether, and how cost effectively, prevention, rehabilitation, compensation and related goals are being attained.

The other general category of the report, benefit structures and entitlements, raises important issues relating to the need for better equity and greater consistency in legislation. In short, the commission concluded that legislation must better define:

- what kinds of losses arising out of work related injury and disease are to be compensated; and
- how those losses can be more accurately, consistently and equitably measured.

While the commission has attempted to correct the most fundamental of these inconsistencies, it must be acknowledged that total reconciliation of the inconsistencies in workers' compensation is difficult if, not impossible. The reasons underlying these difficulties are complex and relate to the following elements:

- the historic compromise itself which, along with the underlying principles identified by the commission and referenced above, represent a diverse trading of rights and interests between workers and employers, with results not always consistent with principles normally applied by the civil courts;
- the need, in the context of a scheme of administrative adjudication, to draw lines and boundaries for entitlements which sometimes appear artificial;



- the lack of good data and conclusive research on a variety of issues; and
- the overlay of often conflicting ideologies between industry and labour

While some of the commission's recommendations on benefit structures will reduce expenditures within the system and others will increase them, none of the changes were made with the sole objective of reducing or increasing expenditures *per se*. In every instance, the recommendations were made in pursuit of a logically consistent approach to workers' compensation issues, and are presented for consideration and debate as a complete package. Indeed, having come to the conclusions it did, the commission would have preferred further consultations to identify and address pertinent stakeholder concerns. The possibility of seeking a further extension was considered but, under the circumstances, rejected by the commissioners in light of what was unanimously regarded as an urgent need for release of the report so that basic reforms could be made.

Not all of the recommendations contained within this report are unanimous. However, where there was not consensus, the commission adopted an approach that permitted the airing of dissents so that all perspectives would be before the public. Most importantly, the dissents were few in number. In all cases, including those in which consensus could not be reached, majority decisions and recommendations were nonetheless made, often on points which the system has struggled with unsuccessfully for many years.

During the commission's work, the Workers' Compensation Board often acknowledged the challenges it faced in improving service delivery, and was in the midst of rapid change on a number of fronts to address these challenges. Leaving aside the difficulties this posed for the commission's work, the extent to which these fundamental changes currently being undertaken by the board will be successful remains to be seen.

While the responsibilities for administration of workers' compensation are heavy, the commission was impressed with the knowledge and dedication of many people at the board. In addition to its own initiatives, the extent to which the board will be able to successfully implement any changes arising from this commission's recommendations will, to a large measure, depend on acceptance of change by the board at all levels.

Yours truly

Judge Gurmail S. Gill

