January, 2006

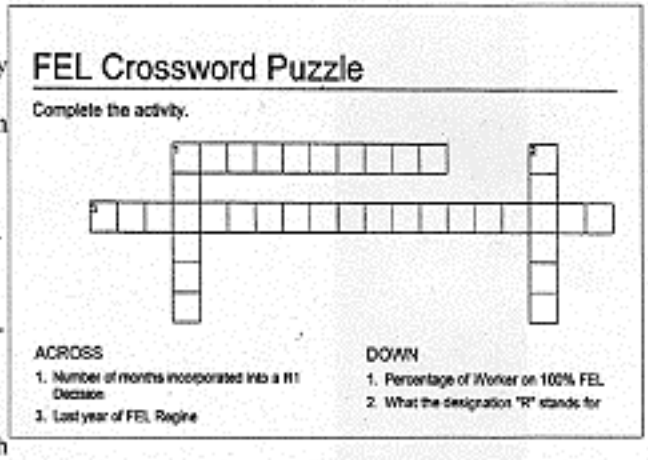
FINK & BORNSTEIN
PROFESSIONAL CORPORATION
BARRISTERS & SOLICITORS

Vol. 18 No.1

Workers' Compensation Newsletter

The WSIB Adjudication Training Manual:
Board Adjudicators Learn To Play The FEL (future economic loss) CROSSWORD PUZZLE

Prior to commencing work as an Adjudicator for the Workplace Safety and Insurance Board prospective employees go through a six month training program. Over 800 pages of material spanning 4 looseleaf binders, entitled *Adjudication Training Manual*, have been prepared by the Quality Improvement Branch of the WSIB. The material includes questionnaires, case studies and crossword puzzles. If it's a puzzle to our readers as to why dealing with adjudicators can at times be troubling, look no further than the Training Manual. By tackling the contents of the *Adjudication Training Manual*, and the *Adjudicative Advice* and *Best Approaches* documents, this article will explore the realms of **secret board policies, adjudicative advice** which is either wrong or unhelpful; and **misguided attempts** to make the WSIB less bureaucratic.



Secret Board Policies Revealed:

The Board has for over one year been gathering up a compilation of unpublished guidelines and policies not available to the general public, towards making the policies public. Over the past three months, the Board has made public two documents: *Best Approaches* and *Adjudicative Advice*. Nevertheless, **secret Board policies** such as those concerning Chronic Pain remain under raps. The whole purpose of creating a **secret policy** is apply rules consistently, but in a manner that workers and employers don't know about, so they can't complain. Examples that have come to light in the past two years, include the Board's employer registration amnesty program *(you can't register if your firm is under suspicion)*, and chronic pain entitlement (if a worker has headaches without a head injury the claimant is not entitled to benefits).

Consider the Following Previously Unheard of Policies Contained in the Training Manual:

- For cervical and lumbar strain, the Board indicates it will be reluctant to approve 12 weeks of physiotherapy consisting of hot and cold packs, labelling this treatment as "questionable".

Employers should raise this point with adjudicators.

(Continued on page 2)

WSIB Actuaries:
Employer Rates to go up by no more than (and no less) than 3- 5% annually for the next 9 years

Richard Fink says,
"The Current Workers' Compensation Benefits' System is Broken and Needs to be Replaced"

Employer assessment rates have increased by 3% in 2006 and according to the WSIB's actuaries in their report *"Funding Framework July 2005"*, rates need to rise by 3-5% for the next nine years in order to meet the Government's target of retiring the unfunded liability by 2014. That is over a 60% increase in employer assessments. The reasons for the current crisis are:

- manipulation of the WSIB assessment rates for political purposes;
- a 100% increase in the cost per average injury claim;
- the size of the unfunded liability (the difference between future liabilities for past claims and the amount of money set aside to pay for them) left over from the 1980s.

The WSIB's unfunded liability peaked at 11.4 billion dollars in 1995. (A debt higher than most Provinces' accumulated deficits). The unfunded liability came down to 10.4 billion in 1997 because assessment rates charged to employers increased by 40% from 1985 to 1994. In 1999, the unfunded liability dropped to 8

(Continued on page 8)

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-Adjudicators are sanctioned to ignore Psycho-vocational sketches of workers in preparing Labour Market Re-entry Plans.

Before the Board hauls off and pays $450,000.00 to train a truck driver with a back disability to be a computer graphics designer, an expensive ($1,200.00) Psycho-vocational test is done to determine if the injured worker has the intelligence to succeed in school. Many of these tests indicate it is very doubtful the worker will succeed, yet the Board goes ahead with the course regardless. Now the reason is clear, the Training Manual says the testing is unreliable, and results can be skewed by the worker's drug intake. The author of the training manual must believe that injured workers lower their drug intake while in school.

-The Training Manual gives a nine point checklist to determine whether the opinion of the Board's own doctors should be accepted over the opinions of the worker's treating doctors.

In my experience, countless times, adjudicators have stated in the file that a Board doctor's opinion is always preferred over the treating physician. One of the points in the medical evidence checklist is to "compare the credentials of those offering an opinion relative to the issue". In thirty years of WSIB practice, I have never seen that done, but in fact the opposite - if the doctor works for the Board he must be an expert in questions of "compensation medicine". As an advocate in the compensation system it is very interesting to discover that the **secret policies**, seem to have eluded even the original intended recipient.

The Training Manual raises a further interesting question, which is how can an adjudicator - education: 2 years at Seneca and six months at the Board, refuse to follow the opinion of a Board doctor (10 years of medical education).

More importantly, how can the adjudicator distinguish a misguided legal opinion from a Board doctor (0 years of legal education) such as "the worker meets our criteria for chronic pain entitlement", an opinion which an adjudicator should ignore, from a medical opinion - "the worker does not have an organic explanation for his symptoms". And better still, I ask our readers why the Board even needs doctors to give this type of opinion and most others. Should not the adjudicators have some medical training? In the odd case a medical explanation is required why not consult medical texts? If the medical condition is unclear, why not refer the matter to an outside clinician for consultation?

-Reprinted in the Training Manual is a memo from the Professional Practice Branch, dated September 2003, entitled *"Criteria for Adjudicators' Referral of Claims to Nurse Case Managers".*

The full details of this policy were not previously available. I did not know that nurses are to become involved if there is any indication of stress to the worker. Given that there are at least 20,000 claims per year that last more than a few weeks, to the psychological detriment of the effected worker, this means each Board nurse should be setting about to relieve the stress of about 2000 workers annually. I say good luck to the Board nurses, and to employers I advise - get the nurses out there solving emotional and psychological stress problems of your injured workers immediately, since emotional disturbance is the number one barrier to successful return to work.

Misguided Advice to Adjudicators:

-The Training Manual provides a checklist as to when an employer, who is challenging a claim, can obtain an employer directed medical examination of a worker.

Point number one says the adjudicator's decision whether the worker should go to the employer's doctor is final. This is patently incorrect, as it is the Appeals Resolution Officer's decision that is final.

The fourth point on the Training Manual checklist states that the employer's examination will only be approved if there are discrepancies in the medical file, but the last point on the checklist indicates that if the information being sought is already in the file then there is no right of examination by the employer. This is completely contradictory. What for instance would be the adjudicator's decision, if the file medical reports say the worker can't work (the file information), but employer sees the worker planting tomatoes (a discrepancy)? Which part of the checklist prevails? The Board has left one of employer's most potent weapons in disputing a claim in the hands of adjudicators who are subject to this questionable quality of training.

- The Training Manual states that in degenerative disc disease, the ligaments that join the bodies of the vertebrae become looser, permitting a sloppy coupling or shimmy between adjacent vertebrae.

Better the Training Manual should not deal with medicine at all, then preach this kind of poppycock. It would take a lot more than degenerative disc disease to cause a shimmy between vertebrae.

If the reader wants to know why the Board accepts entitlement for back disabilities without an injury, the Training Manual gives the explanation: "Mechanical low back pain may be defined as pain secondary to overuse of normal anatomic structure." This proposition is extraordinarily controversial, if one considers that the majority of the population with mechanical back pain, has it in the absence of any known overuse.

-The Training Manual tells adjudicators they need not review a file every 4 weeks if the worker is in an LMR program.

The Manual says the adjudicator should have as many files as possible set over for only long term review. Now I know the reason why injured workers can be failing school, yet remain there indefinitely.

-In *Adjudicative Advice,* ***Board staff is told that the primary source for information on whether a long term disablement is caused from work is the worker and the treating physician.***

Information from employers is only of use in clarifying and validating the worker's information. Employers now know why they are ignored! According to the *Adjudicative Advice* document, that a disability may be reported many months

(Continued on page 6)

WSIB TO EMPLOYERS: WE CAN'T REHABILITATE INJURED WORKERS -HOW ABOUT YOU TRY?

The Workplace Safety and Insurance Board is proposing that all Employers be subject to an additional $50,000.00 fine if the employers fail to provide productive remunerative and sustainable work to all injured workers, pursuant to section 40 of the Act, (referred to as the "co-operation section"). Employers are no stranger to sanctions for terminating injured workers pursuant to the Human Rights legislation, s.41 of the WSIA referred to as the "re-employment section", wrongful termination law, experience rating, Employment Standards, etc. Penalties for all of these statues can range upwards of $500,000.00.

What is different about the proposed changes to WSIB employment obligations, which employers have until January 26th, 2006 to comment on, is that companies are not just responsible for offering a suitable job, but the corporation has the onus to provide such a suitable job, whether or not the employer's operation currently has a job of such description that accommodates the worker's disabilities.

The WSIB is proposing 15 additional responsibilities upon employers in regards to return to work obligations. Most shockingly, all of the obligations are present for all employers - no matter the size of the company. The fines for General Motors (14,000 employees) will be the same amount as for Al's Motor Repair (2 employees).

The following are a list of additional employer responsibilities and my comments:

1. Employers must attempt to bundle together responsibilities from several jobs to create one new job conforming to a worker's restrictions. Previous to the proposed changes employers had only to provide a job that was "available".

Criticism: In a plant of 50 or less, the effect of peeling off the easy parts of employment from some job descriptions and bundling them together for the injured workers leaves the remaining pool of jobs more noxious for the non injured workers. This has the effect of causing more repetitive strain injuries and raising the level of antagonism towards the injured worker. In plants of less than 20 workers, bundling leads to inefficiency and decreased profits.

2. Employers are compelled to provide "short term" training which will allow an injured worker to perform alternate suitable employment.

Criticism: "Short term" is not defined, but more importantly, firms employing less than 20 employees do not have the resources to train workers for 6 months, with the prospect that the injured worker's condition may well deteriorate and cause a further layoff.

3. Offers of alternate employment to injured workers extending beyond 12 weeks must be productive (furthers the company's business goals); sustainable (job will go on indefinitely); remunerative (the job pays the worker what the job is worth, not an inflated amount for the purposes of avoiding WSIB liability); and specific (contain a job demands analysis with the offer). These criteria are all new. While the criteria are those the employer is compelled to meet, if the employer can prove (onus on the employer) that the criteria are impossible to meet, then the employer may be relieved of its obligation to re-employ.

Criticism: For the larger employer (more than 150 workers), who faces penalties of upwards of half a million dollars, what business is it of the Board's that the jobs being offered an injured worker are not productive or that the wages are inflated for the job being offered? Where does the Board receive the legal authority to tell all employers what to pay all injured workers, or what endeavors "meet the employer's business goals". Does the duty to co-operate in rehabilitating injured workers extend to a liability which includes the Board telling the employer how to manage its business?

Take the example of a $60,000 per year pipefitter with a back injury. New Board policies would prohibit the employer from offering the injured worker the job of estimator paying $40,000 per year on the basis the wage is not comparable and employment would not last through a downturn in construction. Need the employer offer this worker a job in a senior management? If the worker turns down the estimator job, the employers CAD vii experience rating cost will be well over $100,000.

Who is making the decision at the Board regarding the sufficiency of productivity and remuneration? A career civil servant Appeals Resolution Officer who never worked a day in construction or in a factory, let alone managed such; an adjudicator with 6 months of training; an Appeals Tribunal Vice-Chair, fresh out of a corporate law firm?

In the Canadian economy, the only employment that is sustainable (s. 40, criteria No. 3) eg: "indefinite" are jobs like that of the Chair of the WSIB.

4. Employers can provide work at home only in extraordinary circumstances.

Criticism: If an employer wants the injured worker, a foreman, to continue managing his roofing crew, while at home, resting his back; or have his lead hand take a week at home to pass a safety exam, what business is it of the Board's?

5. Workers are only compelled to accept work 50-60 kilometers from home, and employers should try to accommodate such.

Criticism: If the worker moves his residence further away from the plant than 60 kilometers, such a situation is not covered by the proposed policy changes. Why 50-60 kilometers, why not just 60? Most injured workers can't drive 50-60 kilometer in any event. Does that mean while the employer must offer the work, the worker by having driving restrictions, never has to accept it?

6. Employers are compelled to prepare a gradual *Return to Work Plan*, when the disability calls for one, including an outline of duties, physical demands analysis; functional abilities evaluation; work hardening duties (job requirements that not so much produce things but get

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the worker acclimatized to work); and work trials.

Criticism: For employers with fewer than 20 employees, there will be no one on staff with the expertise to prepare such a plan. Such employers will be forced to hire outside consultants at great expense. Furthermore, the disabilities of workers are rarely static, and the plan will have to be constantly revised, with direction from the Board, the worker and the doctors. This will be not only an expensive nightmare for the small employer but a lengthy diversion of resources.

7. Employers must contact workers one time per week as a minimum.

Criticism: While it may be fine to contact the worker with a sprained back once a week, the worker who just lost a finger doesn't necessarily want to hear from the employer every week until the amputation is better. Constant calling adds to the worker's stress and increases the probable result of psychological disability.

8. Employers must show that they are weekly monitoring and taking action on the *Return to Work Plan* including keeping a diary of their efforts which must be produced to the WSIB on demand.

9. Employers must offer modified work on an interim basis in the absence of a specialist appointment or conflicting or limited functional ability evaluations. However, the worker can object to returning to work and avoid returning for weeks (at employer's cost) by challenging the efficacy of the plan.

Criticism: Employers and workers should be encouraged to allow the worker to start back to work as soon as possible, and in 90% of cases this does happen. In the 10% of cases that it doesn't - when no modified work is readily available, the worker is reticent to return, doctors' prescriptions of disability are confusing, etc.; penalizing the employer, because it can't come up with the right solution on the Board's timetable, is draconian. Forcing the employer to offer interim work of no productive value just to satisfy the Board is not always a good example for the healthy workforce to observe. This often sets a bad precedent for the future expectations of the injured worker - that if the disability can persist, the removal of difficult job duties might be made permanent.

10. Employers must not allow the worker to feel unwelcome back at work.

Criticism: It is understandable that a worker not be harassed due to his disability, but to make a worker feel welcome raises the bar an employer must meet to a different level altogether. What if the worker was already at odds with co-workers and management before the accident? Can the employer change attitudes by fiat? How "welcome" is enough? What is the protocol for "welcome"?

11. An employer can avoid these 14 obligations by proving a legitimate lay-off strictly based on seniority, or legitimate grounds for dismissal (eg. theft). However, the cost of accommodation, short of threatening the financial viability of the company is not considered as an employer defense.

Criticism: Since the Board plans to accept the Ontario Human Rights Act as a standard for co-operation, even lay-offs by seniority may be no defense and as such have been rejected routinely by labour arbitrators. Furthermore, lay-offs by seniority are usually oriented department to department, not plant wide, which will lead to workers demanding a transfer rather than a layoff.

12. Employers in offering modified work must account for non work related disabilities.

Criticism: Under this policy, if a plant or site worker has non work-related asthma, which comes to light after a work injury, office work would have to be located so the injured worker would not be affected by dust in the plant or in the field. Here the Board is again dictating the working conditions and allocation of manpower resources in a company, a domain far afield from the Board's jurisdiction of rehabilitating the effects of a work injury, or health and safety standards of the workplace. Injured workers would have to have all their disabilities accommodated by employers - under Workers' Compensation laws!

13. The penalties apply to all employers and all employees regardless of the years that have passed since the accident and the size of employer.

14. The penalty is 50% of the wage loss benefits and 50% of the LMR costs for the first 5 days of breach and 100% of each thereafter, up to one year. Labour Market Re-entry Plans often cost the WSIB over $50,000.00 per plan annually. The penalty is payable immediately, appeals can be heard later, (often one year later).

15. Mediation is obligatory and mandatory whenever a dispute over the appropriateness of work is called for by any party.

16. Employers must have a written disability management plan in addition to a return to work program.

17. THE EMPLOYER'S OBLIGATIONS LAST INDEFINITELY

***Conclusion*:**

The WSIB proposed much the same obligations in 1999 but the proposals were shot down by the Conservative Minister of Labour. Now the WSIB, faced with rapidly inflating costs, a failed Labour Market Re-entry system for injured workers (only 30% of injured workers obtain sustainable employment), and no alternate solution to fix the failed paradigm of the current Workplace Safety and Insurance Act (ie.: an increasing percentage of injured workers are being paid full benefit to age 65), is looking to employers to stop the bleeding, before the Government is compelled through politically unpalatable rate increases, to pay the piper.

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CONSTRUCTION EMPLOYERS IN FOR RUDE AWAKENING ON CAD VII EXPERIENCE RATING CLAIM COSTS IN 2007

Starting in 2005 construction employers are being taxed on a new formula for experience rating. Although the calculation and billing date for the new formula will not be forthcoming until September 2007, the costs that will be used for that year are the claim costs employers have accumulated in 2005 and 2006. While the WSIB is inviting employers to have an impact statement prepared for them, the results produced from such statements are cryptic and misleading. Summarized below is exactly what an employer is facing.

The Board is changing the rating factor, the frequency/cost factor mix and the expected costs of the Cad VII system. Take the example of an employer with 20 employees with a payroll of $1,000,000.00 annually and a WSIB assessment of $10.00 per hundred dollars of payroll. Assume this employer had one accident in 2003 and one accident in 2005 , resulting in five months of WSIB benefits paid in 2003, 2004, 2005 and 2006, for a total of $20,000.00 of benefits paid to the two injured workers per year.

Under the CAD VII system of 2005 based on 2003 and 2004 ("the present system") the employer in the example above would still receive a rebate of $3,125.00. Had the same employer had no accidents in 2003 or 2004 the rebate would have been $15,625. If the employer had one accident in 2003 and 2004 but the worker was paid only for 2 weeks, the rebate would be $12,500. Therefore one can see that $20,000 in yearly claim costs are worth $12,500 in the employer's pocket, or $1.00 of claim paid to the worker is worth 65 cents in costs to the employer. The maximum penalty for the worst possible record ($75,000 of yearly costs) would be $37,500.00 charged against the employer in 2005.

Under the CAD VII system of 2007 based on 2005 and 2006 ("the future system") the employer for the same scenario in terms of costs experience in 2003-2004, would face a $5,000 penalty, instead of the past years $3,125.00 rebate. The maximum rebate in 2007 would be $50,000.00. Therefore in terms rebates, for each claim dollar paid to an injured worker the employer is out $2.25. However, the maximum penalty for the worst possible record ($90,000.00) is now $200,000.00. Therefore each dollar of claim costs is worth $3.60 in penalties, once the employer leaves the rebate phase and enters into a penalty scenario.

In conclusion, employers should be aware of the following:

1. If your compensation costs are significant (amounting to18% or more of what you pay the Board in annual assessments) and remain as is for 2005/ 2006, there is a good chance your past rebate will turn into a penalty.

2. Every time the Board pays your worker a dollar it's now costing you the employer between $2.25-$3.60.

3. One claim paid for 2 years or 2 claims paid for one year are going to draw close to the maximum penalty of at least two times your yearly WSIB assessment.

The WSIB is introducing new Regulations and policies compelling construction employers to find work for injured workers, assuming any work is to be had, on force of penalties of up to $50,000.00. Experience rating will easily add an additional $200,000 to the load of liability. If this is not the environment you wish to work in, we would be pleased to speak to you.

2006 Return to Work Obligations *(continued from pg 4)*

The Board's approach is a colossal mistake. Beyond the fact that administration will be ponderous, paper work massive, penalties so punitive that businesses will close, all of Ontario industry will be diverted from its goal of increasing efficiency and productivity into a clash of wills between employers, injured workers and the Board.

The Board is completely ignoring a self-commissioned study by Professor Eagan at the University of Toronto. The study illustrates that unless the worker and the employer are both positive and supportive of a return to work, the atmosphere in the workplace is poisoned and the worker becomes even more disabled. The Board's new approach is to throw it's shock troops of ergonomists, mediators, adjudicators etc. onto the shop floor to tell employers to conform or else!

The solution for employers is to wrestle control of the Board out of the hands of the current executive crew who have not improved LMR plans in the past 5 years, when the failure of these plans became evident. Secondly, the Workplace Safety and Insurance Act needs to be changed to end the current legal paradigm, which encourages workers to seek 100% entitlement benefits.

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after onset is only one factor to consider in allowing entitlement for the claim. Apparently, policy advice has been given in the document without reference to the time limits for reporting accidents contained in the law itself.

Inadequate Advice for Adjudicators:

- An excellent checklist is contained in the Training Manual on how to spot Health Care Fraud, but there are no instructions on how to apply the checklist except for this: "Consider the big picture, trust your instincts and take appropriate action".

What instincts does a prospective Adjudicator, fresh off the street with a few months of training in workers' compensation, have that they can let their instincts be their guide in fraud. No wonder fraudulent claims are endemic.

There should be an accumulated points check list for the adjudicator to fill out for each claim, and a referral authority to do more research when a certain score is achieved , short of sending in the prosecution branch.

-The Training Manual provides a convenient checklist to determine whether your employee has a repetitive strain injury, in the guise of advice to adjudicators on how to avoid same.

The fact that job satisfaction is the major mediator in repetitive strain injuries is not mentioned in this compendium, presumably because the Board doesn't want to let the cat out of the bag in front of their own staff. Nevertheless the following advice is given to Board adjudicators: "Avoid hitting the keyboard with excessive force". One supposes that after a frustrating conversation with an employer, confirming entitlement for an unwitnessed injury, not taking it out on the keyboard is valuable.

-While 200 inspectors from the Ministry of Labour roam the province handing out summons for safety infractions, it is the WSIB adjudicators who come face to face with negligence causing injury, and yet are powerless to correct deficiencies.

This is a major policy failure. The section of the Training Manual on health and safety advises that adjudicators should use personal protective equipment where other controls are not possible or practical. At what juncture is such information ever going to be useful to adjudicators? Are adjudicators themselves ever going to be asked to climb ladders and therefore have regard to safety harnesses? Are adjudicators going to assist or cajole residential roofers in supplying safety harnesses?

One might speculate on why there is a 6 page section on Health and Safety in the Training Manual. Is it to try to give adjudicators some background into the legislation that precedes workers' compensation -accident prevention? Or maybe it's because the word "safety" is contained in the Board's legislation and name. Either way, the section on Health and Safety reflects the major problem with Training Manual - too much material to digest and not enough information on any particular issue to provide competency. Adjudicators are told to draw mental cartoons of worksite accidents before allowing entitlement, but have no training as industrial engineers or ergonomists, or experience in a factory or job site. They are told to be detectives against fraud, but have no police training. What's the point of these platitudes?

The Adjudicative Advice document recommends that adjudicators refer disablement cases to ergonomists. This is certainly a better idea than a neophyte adjudicator drawing a cartoon in the minds eye.

-In the Best Approaches document adjudicators are told to be wary of sending injured workers with bad backs, back to work too soon, as they may need the application of ice and stretching limitations.

Furthermore, adjudicators are told the word of the family doctor regarding the first few days of disability, is sacrosanct. Finally, workers on strong drugs, or who have to drive long distances to work are not considered candidates for immediate return to work. If this policy is actually followed, it will be a major departure from current Board practice, which is that anyone who can walk, can do the appropriate modified duties.

Adjudicators Given The Wrong Philosophy:

The Training Manual states that fundamental values of the Workplace Safety and Insurance Board are: 1) correct and timely decision making; and 2) treating the "customers" in an individualized, caring and respectful way. One of the instructions in the Training Manual on how this should be accomplished is as follows:

When answering a question over the phone for an employer:

"Say: 'I'm checking for you now.' And while waiting for the system to show the information ask the customer a question".

Don't say: 'The computer is slow today'."

If an employer has to be kept waiting on the telephone for an answer, (and forced to face inane questions), why would the Adjudicator need to hide the fact? If the Adjudicator is trained to hide information, then dishonesty is being approbated, a very dangerous lesson and precedent.

Are employers and workers "customers" of the Board? In my opinion they are not. Workers are beneficiaries of a disability plan and employers are the sponsors of the plan. A customer is a potential or current contractor for services who enters or may enter into the contract of his own free will. A customer is purchasing something. There is no choice when it comes to WSIB, and certainly no purchase.

A customer is someone who you antagonize at the peril of the individual dispenser of services and the organization - it is to be avoided. A worker and employer are parties who can be expected to be routinely antagonized. The goal of adjudicators is to apply the legislation and policies properly. To a customer one tries to bend the rules to please, for instance, a price discount or an extra long return policy, and to placate with platitudes. For a worker and employer, getting a decision done promptly and correctly with all relevant evidence, and forgetting the platitudes, is what the parties are legally entitled to, and desire. Solutions to problems should be individualized, but the means to get there should be within the boundaries of the law and policy.

The Training Manual cautions - don't use

(Continued on page 7)

Changes to the NEER Plan for 2006:
Penalties Rise, Rebates Don't

In 2006, the Neer Plan has been changed to lessen rebates and increase penalties. The changes are in response to the position of "labour" that experience rating should either be eliminated altogether, or in the least, the current $100 million dollars of net rebates be eliminated. Accordingly, the results of the hard earned reduction of accidents by employers, which currently shows up as a net Neer rebate dividend to employers overall, will be eliminated and the money plowed back into increased worker benefits.

The manner in which the Neer formula has been changed is to increase the future projected cost of a claim, and to fiddle with the maximum limit of how much any individual or group of claims will cost the employer. Below are examples for 2 manufacturing firms, one company employing 90 workers and the other 200, comparing 2005 (the old Neer Plan) with 2006 (the new Neer Plan).

Company with 90 workers:

A company of 90 employees with $4,000,000.00 in payroll, will pay to the Board $120,000.00 annually. The Neer Plan formula of 2005 would calculate $23,000 of Expected Costs, with a maximum annual penalty of the same amount. A claim of short duration, say 6 months, would cost the company $9,000.00 of lost rebate, and therefore be worth to the employer approximately $0.75 for each dollar paid to the worker.

The Neer Plan formula of 2006 would calculate the same Expected Costs, but the maximum penalty would rise to $34,500.00. The same $12,000 claim as in the 2005 example, in 2006 will cost the company $11,750 in lost rebate, meaning that each dollar paid to the worker now costs the company nearly the same dollar.

The net result of the 2006 Neer Plan changes for firms of between 60 and 140 workers is that the company is "self insured" up to the maximum penalty, plus it must pay premiums (ostensibly for claim costs exceeding the maximum limits and past year's unfunded liability).

(Continued on page 9)

Training Manual *(Continued from pg 6)*

the words "you have to" or "you need to". The Manual says this "comes across as dictatorial, bureaucratic and as though you're telling people what to do". In fact the WSIB will always be bureaucratic. Producing the same result for the same set of facts, countless numbers of times, is the great virtue of a bureaucracy. The question is whether the correct result is being produced.

The new *Adjudication Training Manual* is confused and wrong about the adjudicator's role - it does not address why 10,000 decisions per year are overturned on appeals or that there are over 1,000 complaints to the Fair Practices Commissions annually! It tells adjudicators to make timely decisions yet omits any information on how an adjudicator can control his/her case load to make certain this is done.

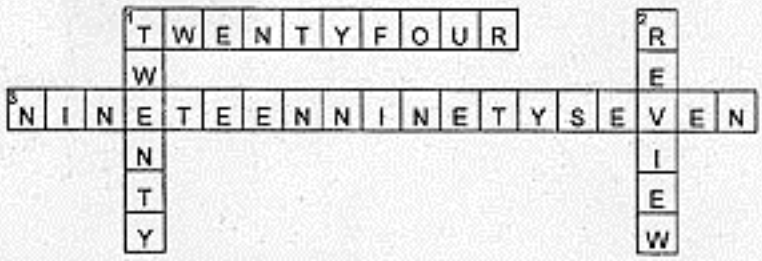
Conclusion:

New adjudicators should be given a two week introduction on the very basics of entitlement and how to access policies. Next, a five year step-up program in responsibility with hands on claims management, under the tutelage of a senior adjudicator, (and weekly seminars) should commence. Why the Workplace Safety and Insurance Board cannot implement this reasonable approach to staff training, currently conducted in every law firm in Canada and many insurance companies, is because adjudicators who are competent enough to be trainers, never stay adjudicators long enough to train new adjudicators. The *Adjudicative Training Manual* is a poor substitute for mentoring and hands-on training.

The Board's remaining **secret policies** should be published and distributed for comment. If the **secret policies**, *Best Practices* guidelines and *Adjudicative Advice* are appropriate, they should be sent for public discussion, amended and incorporated into the Policy Manuals, rather than floating around in some unindexed netherworld.

FEL Crossword Puzzle

Complete the activity.



ACROSS

1. Number of months incorporated into a R1 Decision
3. Last year of FEL Regine

DOWN

1. Percentage of Worker on 100% FEL
2. What the designation "R" stands for

WSIB Actuaries: *(Continued from cover)*

billion dollars when the Government took most of the inflation indexing out of partial benefits, and reduced benefits from 90% of net to 85%. The unfunded liability hit its low point in 2002 when huge stock market gains were realized on the Board's $18 billion worth of assets, which are set aside to pay future claims. However, the Board has never actually reduced the cost of the average claim!

With the drop of the stock markets in 2002, the unfunded liability rose to $6.6 billion in 2003. While stock returns began to increase in 2004, spiraling worker compensation benefits caused the unfunded liability to soar again to $7.1 billion. The WSIB has nine years to pay down this 7.1 billion dollars in order to reach the 2014 retirement target of the unfunded liability the Minister of Labour has endorsed.

The WSIB has been taking in $1 billion dollars per year from employers for the past 3 years, supposedly in order to pay off the unfunded liability. Instead, claim costs have exceeded revenues by between $544 million to $934 million over the last 3 years, thus leaving the WSIB in a worse financial position. Therefore the WSIB needs $700 million more revenue each year to start paying down the unfunded liability and $500 million dollars more revenue each year to catch up with 2004 claim costs. If the Board increased its assessments by 3% a year for the next 9 years it would still be $3 billion in the red. The Board's auditors in its *Funding Framework July 2005* analysis, state that rates can't rise by more than 5% a year for political reasons. That's good news because the Board really needs increases of 10% immediately and annually if they are to catch up with the current debacle.

Consider the following points on where benefits costs are going:

-the average claim cost has gone from $12,000 to $17,846 in the past 5 years and is expected to rise to $19,560 by 2006; -the average claim cost in construction went from $25,000 in 1999 to $52,967 in 2005;
-the total cost of benefits has gone from $2.2 billion in 1999 to $3.1 billion in 2004, while the total number of actual injuries has declined by 12,000;
-health care costs have gone from $229 million in 1999 to $405 million in 2004 and are expected to be $465 million in 2005;
-while 50% of injured workers suffering from a permanent disability or a widow's pension received full benefits in 1999, the percentage receiving full benefits increased to almost 90% by 2004;
-Labour Market Re-entry Plans are costing over $160 million per year outside of the cost of paying workers to participated in the Plans;
-$494 million is spent by the Board annually on administrative expenses.

The Government's answer to these problems was to promise a 20% decrease in accidents by increasing the number of inspectors. These inspectors are costing the Board $56 million annually. None of the fines received for Occupational Health and Safety violations ever goes to the Board or to the injured worker, but only to the Ontario Government. The inspectors have so far had little impact on accident statistics, leaving the program looking more and more like a cash grab.

Even if accidents declined by 10%, the savings to the WSIB would only be $140 million per year, far short of what the Board needs. Accident rates have declined 30% in the past 6 years, and employers have received no tangible benefit.

The Government has further increased the Board's claim costs by practically removing Canada Pension Plan Payments as a deduction from Loss of Earnings calculations. This measure has cost the Board $109 million last year. The Government has extended the time limitations for worker appeals of decisions, told the Board to revise its policy of deeming that a worker has found employment when he/she has not, and lowered the threshold for the acceptance of occupational disease.

The Board has responded to the crisis by proposing 15 new obligations employers must shoulder in regards to returning injured workers to work, under threat of penalties of up to $50,000.00 (see the article in this newsletter). In my opinion, the Board's labour market re-entry proposals are not only harmful to the competitiveness of the Ontario economy, but will cause an avalanche of paperwork and bureaucratic meddling, which will increase employer assessments.

The chief WSIB actuary, in presentations to employers over the summer discovered, that the cost of providing workers with narcotics has skyrocketed in the past 5 years to over $30 million annually. Rather than recognizing this over-medication of the work force to be the tip of the iceberg, the Board is looking at supplying the pills themselves through a special relationship with the drug companies, rather than through pharmacies. Assuming $1.50 per pill of oxycontin (the number one synthetic morphine pill) at 3 per day, 365 days per year, the Board has become the narcotic sugar daddy of 18,315 injured workers.

Our readers are asked to consider three important questions:

1) In the past 5 years, the Board has given less than 350 workers NEL awards worth over 60% - the Board's demarcation of "serious" injury, so why are more than 50 times that number of workers receiving long-term narcotic medication?

2) Why would any employer, or how could any employer allow (for health and safety reasons) an employee to step foot on the employer's premises under the influence of morphine, in quantities greater than that used per person in the palliative care wings of Ontario's hospitals?

3) If you, the reader, were in some way dysfunctional, in other words beset with behavioural problems (can't get along with people at work and/or socially), family problems, depressive illnesses, neuroticism etc. and were presented with the opportunity to receive free mind-numbing medication and income replacement, in return for simply talking yourself into becoming and presenting yourself to the world as a mental invalid, which choice would you make?

The answer to those questions leads to the inevitable conclusion that the current Board paradigm of rewarding illness behaviour causes injured workers to become more disabled. Given there is no evidence that accidents have become more disabling in the past 6 years to account for the stupendous rise in claim costs, the only conclusion is that the additional 10,000 injured workers annually, who stay on benefits indefinitely, have learned the system and are crashing it.

The reader is asked to contemplate the following.

-In Shenzen Province, China, seven workers daily have their extremities amputated at work. These manufacturing plants, that have no workers' compensation assessments and spend little on safety, are the competition Ontario employers are facing. Ontario employers

(Continued on next page)

WSIB Actuaries: *(Continued from page 8)*

must act smarter than global competitors, not more stupid by having the Workplace Safety and Insuance Board cherry pick what jobs employers must make available to injured workers (see accompanying article in this newsletter), or stupify the working population with morphine.

-In the state of Florida, the first jurisdiction to adopt the FEL NEL system (please see our firm newsletters on the deleterious effects of the Florida FEL NEL system from 17 years ago), the assessment rates for lock and cabinet installers are $37.00 per hundred dollars of payroll, and $53.00 per hundred dollars of payroll for roofers! This is the ultimate result of Ontario's FEL (now called LOE) NEL workers' compensation regime.

The only solution is to time limit non-catastrophic injuries by a change in legislation; provide superior chronic pain treatment; recognize the chronic pain epidemic in Ontario for what it is; hire and train higher quality adjudicators.

Changes to the NEER Plan *(Continued from page 7)*

Company with 200 workers:

A company with 200 employees is staring down the barrel of a Neer Plan shotgun. This company's premium would be $250,000. The expected NEER costs in 2005 would be $60,000.00, and the maximum penalty would be $90,000.00. In 2005, a claim costing $12,000.00 would eliminate $13,500 from the company's rebate. Therefore in 2005, each dollar of claim was worth $1.25 to the company's bottom line.

In 2006 the same claim cost will eliminate $16,875.00 of rebate meaning that a dollar of compensation claim cost the company $1.40. However wherein 2005 the maximum penalty for all claims annually was $90,000.00, that maximum is $134,800.00 in 2006.

Most incredibly for 2006, a single worker need be paid only $12,000.00 in benefits (including say only health care costs, such as for morphine), spread out over 3 years to reach that maximum, or be paid $90,000.00 in total benefits within 2 years.

Penalties for companies with more than 300 employees can reach up to a half million dollars per claim! Unfortunately, the bi-annual tinkering by the Board with the NEER plan, means that Neer makes less sense each year. Is the Board hoping that employers join labour in calling for the elimination of experience rating?

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is published quarterly
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