



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



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

Main Points

What we examined

At the request of the Northwest Territories Legislative Assembly and with the concurrence of the Nunavut Legislative Assembly, we examined whether the Workers' Compensation Board of the Northwest Territories and Nunavut complies with legislation and Governance Council policies in the way it processes compensation claims by injured workers. We also looked at how appeals of its decisions on claims are managed and resolved. We did not look at the Board's other activities such as its levies of assessments on employers, its inspections and other accident prevention services, and its investment activities.

We examined how the Board is governed, focussing on how the Governance Council oversees the Board's direction and management.

Why it's important

The Board is an important public institution. Like most workers' compensation boards, it is unlikely to satisfy both workers and employers in all cases but it needs to have the confidence of the community. In the future, it will need to deal with the increased activity expected as a result of growing oil and gas development and mining in the North.

What we found

- In almost all cases from 2005 that we examined, the Board complied with the applicable legislation and policies in processing claims by injured workers. However, a small number of claims have remained unresolved for a number of years, mostly due to differences over medical or policy issues. These cases are costly in terms of negative publicity, staff time, appeals expenses, legal fees, and the psychological toll on claimants.
- While the Board has made some recent improvements to its procedures, it has not been clear enough in its communications with claimants or effective at explaining its rules, procedures, and—above all—its limitations. This has contributed to unrealistic expectations and frustration among claimants.
- The Governance Council lacks capacity in certain technical areas. The current appointment process does not clearly specify the

technical competencies an ideal candidate would possess to ensure that individuals with the needed skills are selected from the various constituency groups. At present, Council members are not provided with adequate training to strengthen technical capacity.

- Policy consultation with stakeholders has been inadequate. The Council adopted a new approach to policy consultation in December 2005 and is currently implementing it on a trial basis. The Policy Committee (a subcommittee of the Governance Council) does not sufficiently demonstrate independence. While it does not regularly obtain proposals on policy issues directly from stakeholders, particularly on controversial matters such as pain disorder and pre-existing conditions, it does receive management's suggestions.

Introduction

Workers' compensation is well established in Canada

1. Workers' compensation systems exist in each of Canada's provinces and territories. They provide remedies to workers who have been injured on the job, and increasingly they enforce laws and promote awareness of safety practices for avoiding injuries. They are created under provincial or territorial law, with the result that the systems are all similar in terms of structure and policy, but are not identical. They may differ from each other in their size, and also in their policies concerning the injuries they cover and the remedies they offer.
2. Ontario established the first workers' compensation board in Canada. In 1910, the provincial government appointed Mr. Justice William Meredith to head a royal commission studying workers' compensation. The commission submitted its report (the Meredith Report) in 1913. The government accepted its recommendations and passed legislation that created a workers' compensation board in 1915.
3. The commission report sets out the Meredith Principles, one of which is that injured workers give up the right to sue their employers in exchange for compensation benefits. Meredith called for no-fault insurance, collective liability, independent administration, and exclusive jurisdiction. The system based on these principles operates at arm's length from government and is shielded from political influence, with only limited powers allowed to the minister responsible. The Meredith Principles still guide workers' compensation systems in Canada. However, each board is bound by its enabling legislation and the Principles themselves.
4. The Association of Workers' Compensation Boards of Canada is a central organization for all of the country's boards. The Association publishes comparative information and is a forum for sharing ideas.
5. A workers' compensation board is basically an insurance company. Its unique feature is that in reviewing the evidence of a particular claim it may be required by law to make all reasonable inferences and presumptions in favour of the worker.

The Workers' Compensation Board serves two jurisdictions

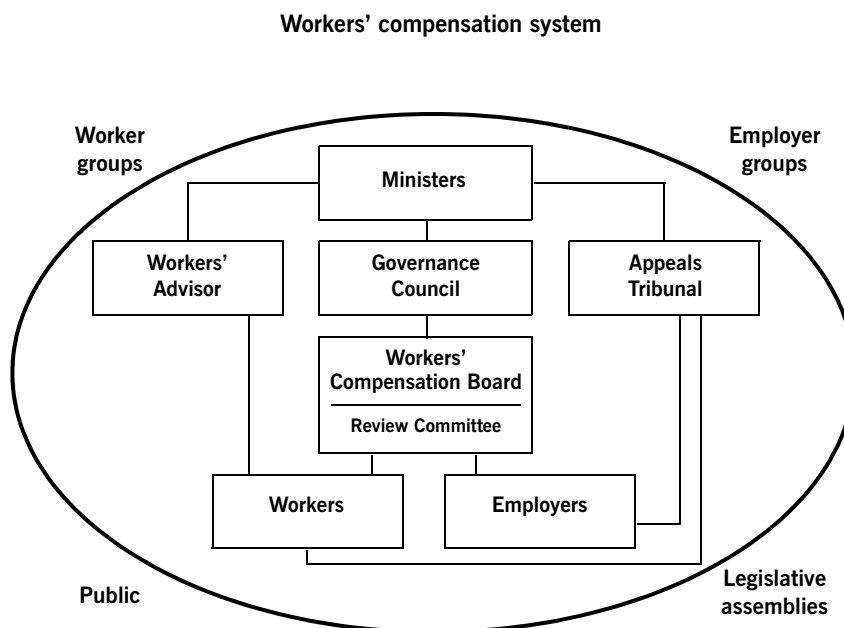
6. The Workers' Compensation Board of the Northwest Territories was established in 1977. After the creation of the Territory of Nunavut

in 1999, the two territorial governments agreed to maintain a shared board named the Workers' Compensation Board of the Northwest Territories and Nunavut (the Board). The Board's Governance Council is appointed by the Northwest Territories minister responsible, who consults with the Nunavut minister responsible, particularly concerning Nunavut candidates. The Council functions as a board of directors of the Workers' Compensation Board. It oversees the Board and appoints its President.

7. The Board applies provisions of the *Workers' Compensation Acts*, the *Safety Act*, the *Mine Health and Safety Act*, the *Explosives Use Act*, and the regulations for each territory.

8. The Workers' Compensation Board has various stakeholders (Exhibit 1). Some Governance Council members and senior managers see the most important as being workers and employers. The Board provides services to both and receives funding from employers.

Exhibit 1 Key stakeholders in the workers' compensation system



9. However, the *Workers' Compensation Act* of each territory also assigns a role to public interest representatives, and the Board has a relationship with the ministers responsible for it.

10. Although it is not dependent on public funding, the Board is a public agency of the two territorial governments, making them major stakeholders. So are members of the two legislative assemblies, who

have constituency interests as well as interests in the institution of the Board itself. Members of the public are also considered stakeholders because of their interest in a functioning workers' compensation system.

11. Other stakeholders in the system include the Appeals Tribunal, the Workers' Advisor Office, Board employees, and the Governance Council.

Finances are on a sound financial footing

12. The Board is in a strong financial position, with assets exceeding liabilities. We audit the Board's financial statements on a yearly basis as part of our mandate.

13. The Board is fully funded—that is, it is on a sound financial footing. It has sufficient money set aside to pay the future costs of all known claims. Its annual income from employer assessments and from its investments is sufficient to pay its costs, including claims and administration. The two governments pay their own premiums for their employees. In addition, the governments pay for the costs of the program for harvesters (hunters and trappers) and do not pay any subsidies.

14. The Board has a responsibility to cover its costs and liabilities, and to ensure that assessment rates do not vary excessively from year to year.

15. To finance future payments on existing claims, the Board maintains an investment portfolio. This makes the task of managing its assets complex. Together with employer assessments, revenue from investments goes to cover the Board's annual funding requirements. At the end of December 2005 the Board had investments and cash totalling \$283 million. At the same date it had future costs of current and previous claims of \$208 million. (Figures have been calculated by an actuary.)

16. The Board had reserves of \$84 million at the end of December 2005. Reserves are approved by the Governance Council. They provide for contingencies, including unexpected operating costs, rate subsidy changes, safety training, and disasters. The Board set up the reserves to ensure that it would have funds to deal with unforeseen circumstances.

Focus of the audit

17. The Auditor General decided to undertake a performance audit of the workers' compensation system in response to a request contained in a motion of the Legislative Assembly of the Northwest Territories.

18. The motion focussed on issues pertaining to the claims and governance processes, including accountability and to concerns about claims that remained unresolved even after many years. These claims make up only a small proportion of the total caseload, but they can be highly visible. We are aware that every workers' compensation board in Canada has cases that are hard to resolve. The Legislative Assembly of Nunavut passed a motion in support of the request. A copy of the Legislature's motion is included as Appendix A. The section at the end of this report titled **About the Audit** explains what we did.

19. In light of the concerns expressed to us and debated by members of the Legislative Assembly (MLAs) in each territory, we audited the claims and appeals process for injured workers to determine whether the Board handles claims in compliance with legislation and policy.

20. The Office of the Auditor General of Canada does not audit policies nor comment on them specifically.

21. We also examined

- the Board's governance structure,
- the Governance Council's oversight of the direction and management of the Board,
- the relationship between management and the Governance Council,
- the relationship between the Board and its stakeholders, and
- the clarity of these roles and relationships for stakeholders.

22. We did not examine other areas of this complex organization, such as how assessments are levied on employers, accident prevention services (including inspections), and investment activities.

Observations and Recommendations

Governance

23. The Meredith Principles are designed to shield the workers' compensation system from overt political influence. At the same time the Board is a public agency of the two governments and is

accountable by law to each territory's legislature. Because the ministers responsible do not have day-to-day control, they appoint a Governance Council to guide and oversee the Board, with a Chair who reports regularly to the ministers.

24. We expected that the Governance Council would oversee the direction and management of the Board in an appropriate manner promoting transparency and accountability to stakeholders.

25. We interviewed the Chair and three other members of the Governance Council and senior management staff. We also interviewed outside stakeholders, including employer and employee representatives. We reviewed legislation, board minutes, and other relevant documentation.

26. We found the Governance Council fulfils its oversight role well in some areas but could make improvements in others.

The ministers' role is not clearly defined

27. For the Governance Council to fulfil its oversight role, its relationship with, and the Board's relationship with the ministers must be clear. We expected the ministers' roles and their relationship with the Council and the Board to be clearly understood and documented.

28. The Board's relationship with the ministers responsible is less clear than the relationship that most of the territories' other Crown corporations and public agencies have with their Ministers.

29. A territorial Crown corporation is intended to operate at arm's length from government. To shield it from day-to-day political control, usually it is governed by a board of directors. Taxpayers do not pay for the costs of the Board, other than the governments' payment of premiums for their own employees. For this reason and also under the Meredith Principles and certain provisions of each territory's *Workers' Compensation Act*, the Board has greater independence than most other territorial public agencies.

30. Each territory's *Workers' Compensation Act* appears to confer broad powers on the ministers to make a range of orders (directives), but it does not specify the details of these powers or list the types of orders ministers could make.

31. The Board is a public agency as set out in each territory's *Financial Administration Act* (FAA). Most of the provisions of Part IX of the FAA apply to the Board, and some refer to it specifically:

- A directive by the Minister of Finance cannot affect any funds in the Board's Accident Fund.
- The Board is exempted from the investment restrictions placed on other public agencies.
- The Board can write off a larger amount of assets or debts owed to it than can other public agencies.

32. The ministers' roles, in relation to the annual report and corporate plan, are not clear. Currently, they receive but do not approve the corporate plan and annual report.

33. The FAA does not expressly require action by each minister in response to the Board's plans and annual reports. However, the law may be understood as giving the minister responsibility for reviewing, challenging, and approving the plan as well as reviewing and tabling the annual report.

34. We note that the ministers' offices have limited staff and capacity to analyze these documents. For example, the Northwest Territories' Minister has only one executive assistant and one secretary to handle this and other duties.

35. Although the Board provides documentation and a briefing to each new minister, it does not have a formal protocol for communications with ministers. This protocol could clarify responsibilities, including the steps used to appoint Council members, handling information requests from other MLAs, and the expected turnaround time for providing information.

36. **Recommendation.** Through consultations with the ministers and the Council and in accordance with existing legislation, the Board should draft a communications protocol documenting the ministers' roles and relations with the Council and the Board, and between the Board and members of the legislative assemblies.

***Board's response.** It is of critical importance that the roles and relationship of the ministers, the Governance Council, Chairperson, President, and the Board be in writing and agreed to by all parties. The communication protocol should also specify how communication between the Board and MLAs is conducted. For the purposes of transparency these documents should be made public and available on the Board's Web site, and possibly also on the governments' Web sites.*

Council's performance needs to be regularly assessed

37. We expected the Governance Council's performance to be assessed regularly and the findings supplied to the ministers at least once a year.

38. Our inquiries and review of Council minutes found that no regular assessment is conducted of Governance Council members' performance. Members last undertook a self-assessment in October 2004. Objective assessments of how well the Council functions collectively and individually would help it make improvements. This information would enable ministers to evaluate how the Council is working and to determine whether they need to take action.

39. Recommendation. The Council should develop a way of objectively assessing how well it functions collectively and individually. The assessments should be provided to the ministers at least once a year.

Council's response. *The Council agrees with the recommendation. In October 2005, it hired an independent expert governance advisor, and is currently working on a process to achieve this result.*

The Council needs capacity to meet new technical demands

40. We expected the Council to have an established skills set enabling it to address the range of issues and risks faced by the Board. We also expected the Council members to receive orientation and ongoing training to ensure that they are capable of meeting new technical demands.

41. In reviewing appointments we found that the ministers followed the *Workers' Compensation Acts*. They appointed two Council members each to represent the interests of employers, workers, and the general public. Other provinces and territories use similar models.

42. Ministers also refer to a brief list of technical skills that Council members should have, including familiarity with financial management, corporate governance, and strategic planning. (The list is part of the terms of reference for the Council and its committees.) The list does not explain the skills it specifies. It does not state how potential members' skills will be assessed. The Council needs the capacity to authoritatively challenge management proposals and help provide strategic direction.

43. Recent corporate scandals in the private sector have led to major changes in what is expected of governance boards in terms of their responsibilities, skills, and accountabilities. Neither of the territories has amended its *Workers' Compensation Act* to reflect these changes.

44. We reviewed the qualifications and experience of the current Governance Council members. In terms of their background and experience they were qualified to serve as members under the *Workers' Compensation Act*. With today's enhanced job requirements, however, additional technical qualifications may be appropriate. Members receive orientation and training, but more focus on technical areas may be needed.

45. Some of the members we interviewed said that it takes almost a year before a new appointee is sufficiently knowledgeable about the Board's activities to make a meaningful contribution to discussions. In our interviews we asked members to explain for us technical areas in the list of skills referred to by ministers when making appointments. Some were not clear about the full meaning of the technical areas and concepts. This highlights the need to describe the specified skills set more precisely, to appoint candidates with the strongest possible skills, and to increase initial and ongoing training for Council members.

46. The Governance Council could assist the ministers by defining in sufficient detail its members' mandate and required skills, balancing the traditional representative responsibilities with new technical demands. Good and efficient management needs vastly different skills today from in the past; so does governance at the highest level. To expedite the process, the Council could examine approaches adopted by other workers' compensation systems across Canada.

47. Current members of the Governance Council are not formally asked to suggest suitable candidates for appointment. Their input could be useful.

48. **Recommendation.** For the ministers' consideration, the Governance Council should define its members' mandate in sufficient detail, including needed skills, balancing the traditional representative responsibilities with new technical demands. To expedite the process, the Board should examine approaches adopted by other workers' compensation systems across Canada.

Council's response. *The Council agrees with the recommendation and will review the current skill set list that is in place and expand it to include the required detail.*

49. Recommendation. The Council should direct the Board to develop a plan for increased initial and ongoing training of all new Council members. Training should cover the Board's policies, the way it operates, and technical topics such as financial management and internal controls.

Council's response. The Council agrees with the recommendation. While we do have an in house orientation process that defines how the board operates, we will examine its effectiveness and determine what else may be required to ensure board members are adequately trained when first appointed.

50. Recommendation. To assist the ministers responsible for Council appointments, the present Council members should offer their suggestions for new appointees through the Chair, highlighting the qualifications of the individuals suggested.

Council's response. The Council agrees with the recommendation. The Council has discussed this issue and would be willing to become involved at whatever level the ministers deems appropriate.

The Council holds management to account

51. Periodic assessments. We expected the Council to carry out periodic assessments of the President and to ensure that the Board's corporate reports contain appropriate measures of performance. We also expected the Council to communicate its expectations clearly in a way that management would understand.

52. The Council holds management to account by setting annual objectives in the President's accountability agreement and later evaluating performance against those objectives. The goal-setting and annual appraisal processes for the President have improved in recent years.

53. The *Financial Administration Act* requires the board to include in its corporate plan, the expected performance for the year compared to last year. Our review of the corporate plan for 2005–07 noted that it contained no targets or strategies for achieving the stated goals. Without targets, quantified where appropriate, it is difficult to see how the Board can compare what it has achieved against what it sought to achieve, and whether its strategies worked.

54. Our interviews and review of documentation revealed that the Board receives limited input from stakeholders in the development of objectives, goals, targets, and performance indicators for its annual

corporate plan. Input from stakeholders would help to ensure that the right things are being measured to evaluate performance.

55. Recommendation. The Council should

- ensure that the Board's annual corporate plan contains appropriate targets and strategies; and
- consider involving stakeholders in developing the Board's goals, performance indicators, and targets for the corporate plan.

***Council's response.** The Council agrees with the recommendation relating to the corporate plan. While Stakeholder involvement is not something the Governance Council would object to, getting interest from the major stakeholders to participate in goals and performance indicator development may be difficult. We will explore the recommendation further.*

56. Comprehensive risk management framework. We expected the Governance Council to receive the right information at the right time, including information on important business and financial risks. We also expected the Governance Council to actively assess and challenge the identification of key risks, as well as policies for limiting the risks to the level that the Governance Council has determined it is willing to accept.

57. The Council's governance role requires a risk management system—that is, a process for identifying, prioritizing, acting on, and reporting internal and external risks. The Board has some of the necessary components but it lacks a cohesive and comprehensive system or framework for managing risk.

58. Senior managers have identified three risks:

- a shortage of staff in financial services
- an uncompleted business resumption plan
- a potential lack of stability of information technology

It is not clear what other risks the Board may face, including external risks.

59. In June of each year, the Council holds a strategic planning session to develop a corporate plan. This includes an environmental scan that discusses external risks. The Board has not adopted a plan for dealing with and prioritizing internal and external risks. This step would enable the Board to determine where it should focus its attention and resources to minimize potential losses and maximize opportunities.

60. The Board has controls that could be useful in risk identification and mitigation. These include an internal auditor, on staff since January 2005 and two investigation co-ordinators.

61. The Internal Audit unit has a charter and a three-year plan, although this was approved late and could provide better audit coverage based on a more thorough risk analysis. Internal Audit currently reports to the Senior Legal Counsel, as well as directly to the Audit Committee.

62. Like most boards of directors, the Governance Council sits as a committee of the whole to discuss many items and uses subcommittees for specialized work.

63. Each Council committee includes the full Council membership, although each has a different chair. Since our audit, the Council has eliminated the subcommittees and consolidated all of its work under the Governance Council.

64. The terms of reference for the Governance Council and its subcommittees lack sufficient detail, with the result that their roles and responsibilities are unclear to some Council members, particularly in certain technical areas.

65. For example, the terms of reference for the Oversight Committee give it two important duties: to evaluate how effective internal controls are and to ensure that the risk management framework is effective.

66. When we asked Committee members about these duties, they were not sure what the terms of reference meant. As yet, the Board has no risk management framework, and there was very little evidence of monitoring by the Council to ensure that internal controls are effective.

67. Recommendation. The Governance Council should ensure that the Board has a comprehensive risk management framework in place and that it periodically evaluates the effectiveness of the Board's risk management practices and internal control systems in keeping with its mandate.

Council's response. The Council agrees with the recommendation.

68. Governance structure. We expected a structure to be in place giving the Council appropriate independence from management. Also important is the perception of independence, which ensures that the Council is credible to outside stakeholders.

69. In our review of legislation and the corresponding governance structure of the Council we noted that the President of the Board is a non-voting member of the Council. Members view this arrangement as positive since it allows their questions to receive prompt answers from the President at meetings. Some meetings are open only to voting members if the Council feels that is necessary; an example is the yearly review to prepare an appraisal of the President's performance.

70. The arrangement appears to work quite well. Other boards in Canada also have their President as a non-voting member. However, the Council needs to ensure that stakeholders understand the President's role as a non-voting member.

71. **Recommendation.** The Governance Council should ensure that stakeholders understand the President's role as a non-voting member, to lessen the likelihood of their assuming that his presence at the Council table unduly influences other Council members.

Council's response. The Council agrees with the recommendation.

Consultation deficiencies weaken accountability to stakeholders

72. We expected the Council to consult stakeholders and ensure that they understand who approves policies.

73. **The Governance Council approves policies.** The responsibility for approving Board policy rests with the Governance Council—not management, the ministers, the Review Committee, or the Appeals Tribunal. From our interviews with claimants and our review of files and related decisions, it is apparent that many claimants are unaware of this fact.

74. Policies cannot be changed through the review and appeals processes. We found that the Review Committee and the Appeals Tribunal operate within their mandate. The Review Committee and the Appeals Tribunal can make rulings on whether Board policy was properly applied. They cannot decide whether Board policy is fair or should mirror the policy of other Canadian workers' compensation boards.

75. When policy issues leave claimants unsatisfied, they look for a way to vent their frustrations and be heard. Often they turn to the media or their political representatives to seek solutions and make the public aware of the issue. Their actions create significant negative media attention, and put pressure on ministers and other MLAs to

“fix” the Board. The result could be that the system ceases to be politically independent, as required by the Meredith Principles.

76. Recommendation. The Council should direct the Board to emphasize to all stakeholders that the Governance Council approves policies.

***Council’s response.** The Council agrees with the recommendation. The Governance Council is currently becoming more involved in the stakeholder consultation process and plans on continuing to do so. For example, the current stakeholder consultation on the business case for a proposed new office headquarters in Yellowknife was chaired by the Council chair and attended by Governance Council representatives from labour and employers. The Council members in attendance gave a presentation and fielded questions.*

77. Policy consultation. The lead responsibility for policy consultation rests with the Board’s Policy, Planning and Evaluation Unit, which reports to management. In 2005, the Board had only one formal mechanism for policy consultation: posting a policy on its Web site. Given the importance and complexity of certain policies, this was not an adequate method of stimulating input from stakeholders. The Governance Council’s Policy Committee therefore directed the Board to change its approach. Since December 2005 the Board has been implementing a pilot project that uses a variety of policy consultation techniques, including sending letters or e-mails, posting information on Web sites, meeting stakeholders, and consulting focus groups.

78. The new approach does not specify which stakeholders should be consulted, although it is generally understood that they include groups representing employers and employees. (These groups were consulted on the pilot project.) It is not clear whether other outside stakeholders will be consulted, including medical specialists, physiotherapists, and mental health specialists.

79. The Governance Council has tried to meet with stakeholders and the general public by visiting one community each year for public meetings where stakeholders can express their opinions, including about Board policy. The public response to these visits was low. With the number of communities in the Northwest Territories and Nunavut, it will take years to visit every one. This is the only formal mechanism for the Governance Council (and formerly the Policy Committee) to receive direct input from stakeholders on policies.

80. Ideally the Governance Council would handle its own policy development. This may not be practical as members do not serve in a

full-time capacity and already spend significant time on Board business, although they have other occupations. Given the challenges facing the Board, particularly on tough issues such as pain disorders and pre-existing conditions, the Council needs to consult stakeholders regularly in a way that demonstrates its independence from management. In other words it needs some first-hand input.

81. Recommendation. The Governance Council should

- monitor whether the new approach to policy consultation encourages input from stakeholders (including outside stakeholders such as medical specialists, physiotherapists, and mental health specialists), and prompts them to propose new policies or changes to existing ones; and
- regularly seek proposals on issues directly from stakeholders and management, particularly in controversial areas, such as pain disorders and pre-existing conditions.

Council's response. The Council agrees with the recommendation.

The claims and appeals process

82. Our audit objectives included determining whether the Workers' Compensation Board handles claims in a fair, timely, and impartial manner in accordance with its enabling legislation and internal policies.

83. The claims process begins with a workplace accident. The worker and the employer each prepare a report outlining what happened and the type of injury suffered. The employer provides wage information so that the Board can calculate workers' benefits if they miss work because of the injury. If a worker receives medical attention, the physician carrying out the examination also submits a report to the Board.

84. Once the Board has the reports, its staff will review the evidence to determine whether the claim is valid and the worker is entitled to time-loss and other benefits. The Board needs medical evidence of an injury before it can accept a claim.

85. The Board's goal is to reduce the impact of workplace accidents on workers' lives and enable them to return to work as soon as possible. For this purpose it compensates workers for time away from work and provides them with necessary medical care, including physiotherapy, surgery, and prescription drugs. The Board covers travel costs associated with required medical treatment.

86. The type and length of benefits depend on the injury and expected recovery time. Workers who suffer minor injuries may return to work the same day or in less than a week. Workers receive compensation for time missed and any medical treatment required.

87. For more serious injuries, the amount of time away from work can be significant, and workers may not fully recover. These workers receive compensation benefits until they can return to work, or until they are determined to be permanently impaired and placed on a pension for the rest of their lives. The Board also provides pensions to spouses and dependants of workers who die as a result of a workplace accident.

88. The Board compensates workers according to how badly they have been impaired. In other words, based on the evidence, medical advisors calculate how much physical ability a worker has lost, and convert this into a permanent disability or impairment percentage. Caseworkers then calculate a pension amount based on the worker's income before the accident or the yearly maximum insurable earnings set by Board.

89. Some of the more seriously injured workers are able to return to work but not in the same occupation. These workers may be eligible for retraining and job search benefits. They may also be eligible for pension benefits if their injuries result in a permanent disability.

90. The Board does not accept every claim it receives. Staff will deny a claim if it does not meet the rules established under relevant legislation or Board policies. The Governance Council reviews and approves all policies.

91. When the Board denies a claim, the worker can appeal the decision to the Review Committee and then the Appeals Tribunal. The worker can also request help from the Workers' Advisor.

The Board can make improvements to its claims process and how it handles claimants

92. We expected the Board to resolve claims in an impartial manner in accordance with its enabling legislation and internal policies.

93. Our observations are based on a sample of claims registered in 2005 (Exhibit 2) and issues relating to unresolved claims.

94. For the 2005 claims we examined, we noted that the Board processed most claims in accordance with its legislation and significant policies, and without major problems.

Exhibit 2 Registered claims by category in 2005

No time-loss claims	1,333
Time-loss benefits, pensions, or fatalities	1,038
Denied claims or denied time-loss	256
Other claims*	694
Total claims recorded	3,321

* Other claims are invalid claims or claims without any associated cost.

Source: Board database

95. At the same time we observed the need for certain improvements.

- Staff training could be increased.
- Communications from the Board dealing with sensitive and complex areas could be reviewed.
- Letters to claimants could be written in plain language and sent more promptly.
- Ways could be sought to better serve out-of-territory claimants.

96. We also noted the Board has made recent improvements in certain areas of claims monitoring and caseworker training.

97. Our audit did not review the efficiency of the claims process because the Board had recently hired a consultant to do this.

98. We selected a statistical sample of 82 claims registered in 2005, including denied, time-loss (major), and other claims. We examined whether Board staff had applied legislation and significant policies correctly to these cases. We concluded that the Board is applying law and policies appropriately, except for the policy relating to “camp workers.” At the same time we noted areas for improvement.

99. Denied claims. The Board denied approximately eight percent of the claims registered in 2005. For a claim to be accepted, there must be

- a worker,
- an employer,
- a personal injury resulting from an employment-related accident,

- proof of the accident, and
- an injury that is consistent with the worker's activity at the time of the accident.

If a claim does not meet all of these criteria, compensation will be denied.

100. Common reasons for denial included injury that occurred outside work and the lack of objective medical evidence of injury.

101. We reviewed 33 claims that were denied in 2005 as part of our statistical sample of 82 claims. One concerned a camp worker engaged in recreational activity when he was injured. Board policy states that workers living in a work camp are covered 24 hours a day, whether or not they are performing job duties. We investigated further and found that the Board does not always follow this policy.

102. Management indicated that the Board has denied similar claims for work camp-related injuries, although we could not obtain an accurate number. The Board has not determined how it will address this issue.

103. The Board needs to follow all its policies approved by the Governance Council, including the policy for camp workers. Given the number of individuals currently employed in work camps in the North, which is expected to grow in the coming years, this is important.

104. Recommendation. The Board should follow all its policies, including compensating injured camp workers. If the policy is unclear, management should suggest clarification changes for the Governance Council's approval.

Board's response. *The Board agrees with the recommendation.*

Interactions with claimants

105. We expected claimants to be treated impartially and with respect. We expected employees to receive extensive training, when they are hired and regularly thereafter, with an emphasis on customer service for front-line staff.

106. Treating claimants with respect is important and sometimes difficult. Injured workers have told us in our interviews with them that claims staff sometimes treated them disrespectfully. On the other hand, some workers admitted to us that they verbally abused claims staff when notified of a Board decision or given other information about their claims. Some workers even threatened claims staff with physical

violence. We also noted that summaries of telephone conversations in some claimant files mentioned instances of verbal abuse.

107. We noted that the Board offered only one course on customer service to its staff in the past two years and not all claims staff took the course. Customer service training is a way in which to ensure appropriate verbal communications. We believe that caseworkers dealing with claimants need regular training to help them better handle difficult communications.

108. We observed that Board employees usually communicate with claimants by telephone and keep in their files summaries of the information they give or receive.

109. Commercial businesses with call centres increasingly tape telephone calls for quality assurance and training purposes. The caller is informed at the beginning that the conversation may be taped. The Board currently does not tape calls. Consequently there is no objective evidence to confirm or refute workers' allegations of disrespectful treatment.

110. Taping telephone conversations with claimants could serve the interests of both parties. Claimants would have a complete and accurate record of their discussions with Board staff. The Board could use the calls for training and quality review. It would also have the evidence needed to deal with callers who become abusive and threaten staff, or with staff who treat claimants disrespectfully. However, any decision to tape calls needs to be accompanied by an extensive education program and a commitment on the part of the Board to use tapes only for quality control, not to weaken a claimant's case.

111. Recommendation. The Board should

- provide customer service training annually, including training in handling verbal communications with claimants; and
- consider taping telephone conversations for training and quality assurance purposes, but first allay people's concerns by launching an education program to explain the reasons for taping.

Board's response. *The Board agrees that customer service training is important and will continue to ensure that front line staff receives all necessary training.*

The Board has no experience with taping telephone conversations and is aware that this could be viewed as intimidation of or lack of trust in injured workers. However an internal WCB staff project team has already identified

and recommended that claims calls be monitored as an objective record of the quality of the two-way telephone conversation between staff and their clients. The Board still needs to review the matter thoroughly including cost implications and stakeholder awareness planning.

112. Claims with no time-loss. We expected that workers would be contacted if an employer or a doctor filed claims on their behalf.

113. According to our claimant file reviews, sometimes the Board did not contact a worker whose employer or family doctor filed a report on his or her behalf, indicating that the worker had had a job-related accident and had received a medical examination but did not need to take time off work. The board has a policy to do this. The Board classifies this as a “no time-loss” claim. It records the claim, pays the cost of any medical examination, and then closes the file.

114. While this type of claim may be low-risk, the Board should inform the worker that it has accepted the claim. The injury could result in a future claim if another accident aggravates the condition or the injury leads to degeneration. The worker may also be entitled to other benefits, such as physiotherapy.

115. In 2005 the Board received a total of 3,321 claims, including 1,333 no time-loss claims—40 percent of the total registered.

116. Recommendation. The Board should inform a worker when an employer or family doctor files a report of accident or medical examination and should inform them that their claim has been accepted, since this could have an impact on the worker’s future entitlement to benefits.

***Board’s response.** The Board currently sends out a form letter accepting or denying no time-loss claims in these situations. The Board’s oversight was not ensuring that these letters were placed on the worker’s file. This oversight will be corrected.*

117. Time-loss (major) claims. In the case of a severe injury for which recovery is expected to take or has already taken longer than six weeks, the Board assigns the claim to a case manager and classifies it as a “time-loss” (major) claim. The case manager writes to the claimant outlining the Board’s and the worker’s responsibilities, and explaining other pertinent issues. The worker is asked to sign and return the final page of the letter as attestation of having read the communication and understood his or her responsibilities and those of the Board. As part of our statistical sample, we reviewed 21 such claims and found 4 that did not contain the worker’s response. There was limited evidence of

follow-up to determine why the letters had not been returned to the Board.

118. Time-loss (major) claims are high-risk, and the expenses associated with them are significant. The claims may involve serious injury, longer recovery times, surgery, vocational rehabilitation, and possible permanent impairment.

119. If the caseworker and the claimant establish an effective relationship from the outset, this can lessen the impact of the injury on the worker's life. A key factor in the relationship is an understanding of the roles and responsibilities of the Board and the worker. This is why it is important to obtain written confirmation from each worker who submits a time-loss (major) claim, indicating that he or she has read the Board's letter of acknowledgement and has understood the worker's responsibilities.

120. In 2005 the Board received 1,038 time-loss (major), pension, or fatality claims—31 percent of the total of 3,321 claims registered.

121. Recommendation. On receiving a time-loss (major) claim, staff should increase follow-up efforts to obtain written confirmation from the claimant that he or she understands the respective roles of the Board and the worker.

Board's response. *The Board agrees with the recommendation.*

Claims staff training and supervision

122. We expected newly hired employees to have the qualifications to handle job needs. We also expected employees to receive proper supervision from senior individuals who review and approve their work.

123. Along with appropriate policies, managing claims requires the exercise of human judgment in making assessments and decisions. Because no set of rules can predict every contingency, good judgment is essential. If people make decisions, they can also make mistakes. Any business involving this risk needs good controls to help protect against error or fraud. The Board's claims management function carries significant risks, and controls would normally include having staff with appropriate qualifications and experience, integrity, ongoing training, and supervision. Other important controls are a suitable division of duties and senior-level monitoring.

124. From our review of incoming qualifications for 20 caseworkers selected judgmentally, we found they had an appropriate mix of

experience in case management, along with education in a related field. The educational and experience requirements are lower for newly hired support staff.

125. However, after being hired by the Board, it is important for employees to receive initial and ongoing training in technical subjects such as policy and medical issues and in communication skills. The Board has an initial training program for newly hired caseworkers, but they do not all complete this. If workloads are heavy, they learn on-the-job instead. Ongoing training in people skills could be improved.

126. To ensure that the Board treats all claimants consistently and fairly, it is vital to maintain quality and reduce the risk of mistakes in the claims process. A suitable division of responsibilities will promote quality. For example, some tasks can be delegated to junior caseworkers; more senior staff members can provide oversight, monitoring, and coaching and be responsible for making higher-risk decisions. Senior-level review of work performed by more junior employees is particularly important.

127. We noted key areas in which managers do not always perform reviews. Later, we discuss the lack of documented review of denial letters. Aside from this problem, we found that the adjudicator or case manager does not always review wage calculations. Undertaken initially by junior staff, wage calculation can be a complicated task. Errors may have a direct impact on worker benefits and Board costs. In 8 out of 25 claims, we found that caseworkers did not review the calculation. Although we found no errors in the sample we examined, the fact remains that these calculations need to be reviewed to ensure quality.

128. Currently the claims manager for the Northwest Territories has 17 staff directly reporting to her. For good quality control practices, managers' workloads must match their responsibilities. If the workload is too high, they may be unable to provide in-depth monitoring and review. In this case, the number of direct reports is too high to allow effective management and supervision, including provision of mentoring and advice.

129. Recommendations. The Board should

- make it a requirement for all who have contact with claimants to receive training at the time of hiring and regularly thereafter, as a way of developing and enhancing their skills;

- identify areas that are complex or sensitive, and make sure that these are staffed by employees with appropriate abilities and experience;
- ensure that a senior staff member reviews complex transactions, including manual calculations; and
- restructure the claims function to reduce the number of direct reports to the claims manager for the Northwest Territories.

Board's response. *The Board agrees with the recommendation.*

The creation and recruitment of a new position is currently underway to reduce the number of direct reports in the function of the claims manager, Northwest Territories operations, with the addition of a supervisory position.

130. Recent improvements. We expected the Board to monitor the claims process and to provide training to caseworkers on policy and medical conditions.

131. We note that in the past two years the Board has improved claims process monitoring in some key areas, as well as the training provided to caseworkers on policy and medical conditions.

132. Managers now use statistical reports and file reviews to monitor claims timeliness and decision quality. The statistician provides monthly reports to the claims managers; these summarize caseworker workloads, the amount of time-to-first payment, unapproved payments to medical service suppliers, and claims that require transfer to case managers. Managers use the reports to follow up on claims that require action.

133. Managers and the claims services trainer also review claims files to ensure that caseworkers have

- applied legislation, policy, and procedures correctly;
- made correct entitlement decisions; and
- met the time-to-first-payment standard.

After reviewing the files, the managers list observations for staff training purposes.

134. The review takes place after a caseworker has made major decisions on the claim, but we also note that managers and caseworkers consult informally. Caseworkers regularly receive guidance from managers to help them in making decisions on claims.

135. Training for caseworkers has increased, although we have noted that there is room for further improvement in areas, such as communications training. The Board's Policy, Planning and Evaluation Unit provides training on new policies or changes to existing ones.

136. The medical advisors offer monthly training sessions, during which they give caseworkers information on specific medical conditions. For example, in November 2005, the medical advisors provided training on repetitive strain injuries. They discussed contributing factors, possible treatment options, the various diagnoses that physicians might make, and expected recovery periods. Attendance at training sessions is mandatory for caseworkers.

137. We noted that caseworkers regularly consult the medical advisors—for example, when determining whether reported injuries are consistent with the accident circumstances, estimating expected recovery time, and considering treatment options.

138. The medical advisors have also begun to hold medical review sessions with case managers. Every two weeks a case manager brings all open claims files for review and discussion with a medical advisor and a nurse advisor. The goal of the session is to determine the medical or other measures required to help a claimant return to work. Claims managers sometimes attend these sessions as well. We attended a session and noted that all parties involved in managing the presented cases were knowledgeable about the workers and their circumstances.

The Board has difficulty serving out-of-territory claimants

139. We expected the Board to have policies for dealing with out-of-territory claimants.

140. From our many file reviews and discussions with claimants, we noted that about 50 percent of them are non-residents, although their injuries occurred while working in the territories. Typically, they were engaged in higher-risk occupations, such as mining or construction. Often employers fly workers to a job and back to their home provinces after completion of the project. Injured workers commonly return to their home for treatment after being injured, making case administration more difficult. We noted that their claims were dealt with at long range, by telephone or written correspondence.

141. Currently the Board has no specific policies to guide case management for out-of-territory claimants. The Board does not fly caseworkers to meet claimants and rarely flies claimants to the territories.

142. When we asked whether boards in other jurisdictions might be able to help, management noted the problem that each follows different legislation and policies.

143. Board case workers, managers, and medical advisors told us of the difficulty of adjudicating out-of-territory claims and obtaining good-quality medical reports on which to base decisions. The Board's costs of treating out-of-territory claimants can be high. Being unable to meet with claimants and assess their recovery in person, case workers and medical advisors rely on correspondence and medical reports from practitioners. These professionals are usually located near where the claimants live and must also be dealt with at long range.

144. To reduce recovery time and help claimants return to work more quickly, one possible solution might be to organize field visits to areas with a high concentration of injured workers. Caseworkers and the Board's medical advisors could meet injured workers to better assess current treatments and perhaps identify ones that would be more effective. Medical advisors could meet with local physicians and explain to them the information to be included in a medical report, so that the Board could better assess the worker's condition and options for treatment.

145. Video conferencing is becoming increasingly common and widely available. This could be an economical way for a case worker to discuss a case face-to-face with an out-of-territory claimant. Currently, the Board does not use video conferencing for client communications.

146. **Recommendation.** To better serve out-of-territory claimants and seek opportunities for resolving long-unresolved claims more quickly, the Board should consider video conferences or trips to areas with a high concentration of claimants.

***Board's response.** The Board will review video conferencing and trips to areas of high concentrations of claimants to determine if these are viable solutions to the issues raised. However, a significant impediment to this approach would be the fact that the Board's medical advisors would be legally required to obtain and hold a medical license in each of the provincial jurisdictions where they visit to examine and assess injured workers. Additional medical liability coverage requirements are also necessary.*

Long-unresolved claims feed negative perceptions of the Board

147. Every workers' compensation board in Canada must deal with claims that are unresolved or take a long time to settle. Some of the claims have been pending for many years. Long-unresolved claims may

give rise to considerable negative publicity and may involve heavy costs, including staff time, appeals expenses, medical examinations, specialized medical assessments and treatments, legal fees, and a psychological toll on claimants.

148. Few claimants are dissatisfied with the Board to the point of deciding to appeal a decision. In the three-year period from 2003 to 2005, an average of 107 claims a year were reviewed by the Review Committee, and an average of 26 claimants subsequently appealed the Review Committee's decision to the Appeal Tribunal. Of the 107 Review Committee cases, 22 percent concerned the denial of an initial claim, and 6 percent the denial of time-loss benefits. The rest concerned the termination of benefits, pension denials, disagreements over the degree or percentage of permanent impairment, or other issues. The Board receives approximately 3,200 claims each year.

149. We expected long-unresolved claims would be for reasons other than errors in applying policy and legislation. The review and appeals processes should catch any of these problems.

150. We reviewed 21 claims files selected judgmentally and interviewed 18 of the claimants. We also examined related Review Committee and Appeals Tribunal decisions. We found that generally, these cases remained unresolved because of factors other than errors in applying policies or legislation.

151. Most of the unresolved cases we reviewed related to policies or different views on complex medical issues. Another issue was the difference between what injured workers expected and what the Board offered in the way of retraining.

152. The 21 claims files we reviewed were outstanding because of

- Board policy not to compensate a worker in a particular type of case (33 percent of claims);
- different medical views (29 percent);
- vocational rehabilitation (including retraining) issues (19 percent); and
- other issues (19 percent).

153. Many unresolved cases are associated with the Board's policy on pain disorders. Equally contentious is the question of pre-existing conditions—a complex policy and medical area.

154. Differing medical views. We expected processes to be in place to resolve differences in medical views.

155. We found that, at present, neither the Board nor the Appeals Tribunal has a formal procedure for resolving these differences. Given the time and costs expended on unresolved complex cases by claimants and the Board, it may be useful to provide for some kind of binding arbitration by independent specialists acceptable to both sides.

156. We found through our file reviews that physicians usually agree or differences can be resolved without a formal process. However, we also found that medical views may differ for complex cases, particularly those involving pain disorders and pre-existing conditions. The Board's existing process has been unable to resolve some of these cases.

157. The Board employs two physicians as medical advisors. Through our review of files and related Review Committee and Appeals Tribunals decisions we found that their perspectives on medical aspects of a case may differ from those of outside medical specialists. 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.

158. The Board compensates workers who have suffered injuries for which there is objective medical evidence. Sometimes, claimants' outside physicians may have a different view than the medical advisors on the cause and extent of the injuries. In these circumstances, the Board's policy is that one of the on-staff medical advisors should contact the worker's physician to resolve the conflict. If they cannot come to an agreement, the policy states that the claimant should be referred to a specialist.

159. However, in our file review we noted that caseworkers referred cases, where a specialist's views had been received, to the medical advisors for review and further opinion. If the medical advisors disagreed with a specialist's report, the caseworker overruled the specialist.

160. **Recommendation.** The Board and the Tribunal should develop a formal process for resolving differences in medical views together. For example, they should investigate whether a medical review panel could be set up to make binding decisions for differences of medical opinion. The panel could be composed of independent specialists acceptable to both parties. If suitable independent specialists are not available in the territories, the Board should seek expertise elsewhere. The worker would retain the right of appeal but not on the agreed medical facts.

Board's response. *The Board agrees that the issue of differing medical opinions is a serious one, and that the Board and the Appeals Tribunal need to come to the best solution. Our understanding, from our review of different models in other provinces, is that a medical review panel is a costly solution that will not produce a definitive benefit but will add delays to the appeals process. This will be particularly true in the Northwest Territories and Nunavut where there are not a sufficient number of specialists to constitute appropriate panels.*

It is important to recognize that a diagnosis that is made based on a worker's interview with a general practitioner or a specialist may lack the scientific discipline and expertise required to determine that the worker's injury was caused by the workplace. Therefore, the value of this diagnosis cannot be equally weighed against the advice or opinion of a Medical Advisor with specific training in workplace injuries.

Tribunal's response. *The Tribunal agrees with the recommendation. A medical review panel may help the Appeals Tribunal in trying to find its way through some of the conflicting medical opinions. It would, however, add additional cost and time to the process.*

161. Recommendation. The Board should establish closer ties with other physicians, including the claimant's own general practitioner and specialists—for example, to achieve a common understanding of the medical and psychological facts and to develop practical solutions.

Board's response. *The board sees the tremendous benefit of having better working relationships with physicians. Since 2003, the Board has established the practice of Medical Case Conferencing whereby injured workers, their attending physicians and other treating healthcare workers meet with the Board's medical advisor(s) and the injured worker's claims officers to discuss the relevant issues including treatment plans, barriers in recovery and return to work plans. These are held in person whenever possible or via teleconference. Other tangible practices are well established to improve better working relationships with physicians.*

162. Retraining. We expected claimants to understand the conditions under which they would be entitled to retraining.

163. We found that some claimants did not fully understand these conditions. We also found that they had unrealistic expectations of the amount and type of retraining to which they were entitled under the Board's vocational rehabilitation policy.

164. Injured workers with permanent impairments may be eligible to receive Board-financed retraining for jobs that would match their

changed abilities. However, the primary goal of the Board is to help injured workers recover and return to a state of employability with earnings at their pre-injury level up to a maximum of the year's maximum insurable remuneration as soon as possible.

165. The Board sets eight options to guide caseworkers in determining the need for vocational rehabilitation. For example, if a worker's pre-injury employer offers the same, modified, or different work, the claimant is not eligible for retraining. The options are arranged in a fixed order, and the first option that applies in a particular case is the option that must be followed. Not all injured workers understand or agree with this approach.

166. Claimants may expect that if they are physically incapable of returning to the pre-accident employment, the Board will pay for retraining for a different career. Instead, the Board has the option of providing claimants with the tools and equipment needed for an existing job, if a suitable employer is found.

167. Claimants must meet five conditions to receive academic retraining benefits. Claimants who meet four of the conditions may feel entitled to retraining if they are not aware of the fifth condition.

168. Recommendation. At an early point in the claims process, the Board should explain its retraining policy and the rationale for it. This will help prevent any misunderstanding and ensure that the claimants' expectations are in line with the vocational rehabilitation policy.

Board's response. *The Board agrees with the recommendation. Although the Board believes it does a good job in explaining its policies to injured workers, it is clear from this and other recommendations that there is room for improvement in our communication with claimants. We recognize that improved communication is beneficial to claimants and the Board, and will take the necessary steps to improve and track our communication.*

Procedures in place to investigate matters of suspected abuse or fraud

169. We expected the Board to have appropriate procedures for investigating potentially fraudulent claims. Given the sensitivity of this area, we also expected the Board to report to stakeholders at least once a year about its fraud investigation activities.

170. We examined a judgmental sample of cases investigated for fraud by the Board's Investigations Unit. We found that the Board had in place appropriate procedures to be followed in investigating potentially fraudulent claims.

171. We found that the Board reports some information about its Investigations Unit in its annual report. However, the information could be expanded to include details about each type of investigation and the results, while of course maintaining the confidentiality of personal information.

172. Workers' compensation boards have various ways of identifying and dealing with suspected cases of fraud or abuse. The Board requires proof of an injury and a medical assessment of its nature and extent. It cannot afford to assume that every claim is fully justified.

173. Investigations into potential fraud are disliked by claimants but are necessary for the Board to fulfil the responsibilities entrusted to it. Some claimants believe that the Board seeks to videotape them performing physical activity of which they are supposed to be incapable as a result of their injury. The fact is that fraudulent claims are sometimes made, injuries may be exaggerated, and service providers, such as physicians and physiotherapists themselves may commit fraud. The Board needs to have reasonable controls for detecting suspected fraud.

174. The Board's Investigations Unit uses a number of indicators that may trigger investigations. Caseworkers and review staff told us that they do not act on isolated evidence or a single videotape. Between January 2003 and December 2005, the unit investigated 188 compensation claims and 72 other cases flagged by the indicators. It found indications of possible fraud in 87 (almost 45 percent) of the cases examined. The unit also investigates unregistered employers, employer misrepresentation, and other issues. The investigations have forestalled improper disbursements of large sums of money and have also led to the recovery of considerable sums.

175. Fortunately most claimants are above suspicion. Nevertheless controls are necessary to detect and deter anyone tempted to act dishonestly.

176. Recommendation. To allay public fears that the investigations unit unfairly targets claimants, the Board should expand its annual reporting on the unit's activities by giving more details about each type of investigation and the results, while of course maintaining the confidentiality of personal information.

Board's response. *The Governance Council, as part of its oversight role, requires the Board to routinely report on the activities of the Investigation Unit. Non-personal investigations' information can easily be provided in the annual report.*

Some claimants may not understand other components of the workers' compensation system

177. Three other important components of the workers' compensation system have a role in the claims and appeals process:

- the Workers' Advisor
- the Review Committee
- the Appeals Tribunal

178. **Workers' Advisor Office.** The Workers' Advisor is a position established by law to assist individuals making a claim. The Workers' Advisor helps claimants better understand each territory's *Workers' Compensation Act*, regulations, and decisions, and provides support throughout the claims process. The Workers' Advisor is not a lawyer but can assist or represent claimants before the Board, the Review Committee, and the Appeals Tribunal. At present one Workers' Advisor is responsible for both territories, but the ministers plan to appoint a second to share the workload and cover claimants in Nunavut.

179. **Review Committee.** The Review Committee is the first level of appeal. An internal body of the Board, the Review Committee is composed of two co-chairs appointed by senior management, plus a support staff of two.

180. The Review Committee is authorized under each territory's *Workers' Compensation Act* to hear any matter on compensation and assessment claims. It normally reviews documents, but since 2004 it can hold an oral hearing if the employer, the worker, or a dependant requests one.

181. Following a review, the Review Committee may uphold, reverse, or vary the original decision. There is no time limit on filing an appeal with the Review Committee.

182. Over the three-year period from 2003 to 2005 the Review Committee received an average of 107 review requests annually. It upheld approximately 83 percent of the Board's decisions.

183. **Appeals Tribunal.** The Appeals Tribunal is the second and final level of appeal. It is an independent, external body set up under the Act to be the final claims arbiter.

184. The ministers can appoint members in equal numbers to the Tribunal to represent workers and employers, as well as two to represent the general public.

185. Over the three-year period from 2003 to 2005, the Appeals Tribunal heard 78 appeals and overturned approximately 18 percent of them, ruling in favour of the worker.

186. The Appeals Tribunal can only

- hear appeals only on decisions reached by the Review Committee concerning claims and payment issues; and
- confirm, vary, or reverse these decisions.

An appellant has the right to request a rehearing; the application must be supported by new, previously unavailable evidence.

187. The Appeals Tribunal can subpoena and call witnesses and hear sworn testimony as in a court of law. It can consider both oral and documentary evidence. There is no time limit on filing an appeal with the Appeals Tribunal.

188. A court can overturn an Appeals Tribunal decision and order a rehearing only in limited circumstances, for example, if it has determined that the Appeals Tribunal did not follow the principles of natural justice.

189. The Appeals Tribunal bases its decisions on the compensation policies set by the Governance Council. It does not make the rules but is the final level for deciding whether the Board has followed them. The Appeals Tribunal members' opinion of a Governance Council policy is irrelevant. Their role is to determine whether the rules were followed. If the Governance Council is of the opinion that the Appeals Tribunal has not properly followed the rules it can stay the decision and order a new hearing. Since 2000, the Governance Council has only received ten applications for ordering a rehearing (six on behalf of workers).

190. We expected the Appeals Tribunal would have clearly defined procedures, trained and competent members, and the ability to resolve appeals in a fair and impartial manner in accordance with its enabling legislation. We also expected it to be independent in public perception and in fact. To ensure competence, we expected to find established criteria for guiding the selection of Appeals Tribunal members. We further expected appointment terms to be staggered in a way that would ensure the proper mix of new and experienced members.

191. We found that the Appeals Tribunal has defined procedures and resolves appeals in an impartial manner in accordance with enabling legislation.

192. We found that the Appeals Tribunal is independent of the Board, the Governance Council, and the territorial governments. In other words, none of these can tell the Tribunal what to do or how to conduct its business. This is an important fact, and all stakeholders should be aware of it.

193. We also found that appointment terms could be staggered more systematically to strike a better balance between experienced and new members representing workers, employers and the public interest.

194. A newly appointed member who is unfamiliar with this type of institution may, at first, have little to contribute.

195. Appeals Tribunal membership. The cases appealed to the Appeals Tribunal can be immensely complex and may involve difficult medical and legal issues. Members do not serve on the Appeals Tribunal in a full-time capacity. There is a limited pool of potential appointees with the necessary expertise. Neither territory's *Workers' Compensation Act* sets out the qualifications for Appeals Tribunal membership.

196. The Appeals Tribunal is more a jury of peers than a judicial panel composed of experts in law and Board policies. Some other boards have full-time lawyers under contract on their appeals tribunals. Both approaches are valid. However, with the complexity of the cases they must hear, members who are not medical or legal professionals need access to independent expert advice in medicine and law.

197. The Appeals Tribunal has an independent legal advisor. It seeks independent medical opinions when necessary.

198. Newly appointed Appeals Tribunal members do not receive comprehensive orientation or training. They are given a presentation by the Chair, an introduction to the claims process, and the opportunity to attend additional training sessions. Also, in the past few years, the chair has organized training on critical thinking and decision writing provided by consultants. The current Chair has also assembled some orientation and training materials for members.

199. The Appeals Tribunal hears complex cases. It needs a better orientation and training program to ensure that members have the necessary knowledge for making informed decisions. We understand that the Chair is developing a broader ongoing training plan for Tribunal members.

200. Members spend an average of three to four days a month on cases, while the Chair spends eight to ten days a month. This may not

be enough time, given the complexity of cases. Members receive an honorarium for their work, but it is quite modest, and the time commitment is significant for people with full-time jobs.

201. A hearing panel is composed of three members. This allows the Tribunal to select the best expertise for a particular case.

202. Members' terms are not staggered systematically, presenting the risk that several experienced members might leave at the same time. On-the-job experience and formal training are essential for this very public role. Staggering the terms in a systematic way would ensure that, at all times, there is a core of more experienced members to hear particularly complex cases and to mentor newer members.

203. As of January 2006, the Tribunal did not have equal numbers of worker and employer representatives, as required by law. There were three members representing workers but only one representing employers, and that member's final term on the Tribunal was to end on 10 March 2006.

204. Recommendation. The Tribunal should do the following:

- Develop a plan for systematically staggering the terms of appointees to ensure a balance between experienced and new members representing the various constituencies.
- Develop and formalize its members' qualifications, orientation, and training policy, including required core knowledge. It should have both initial and ongoing training plans for members.

Tribunal's response. *Agreed that the Tribunal should develop a plan for staggering appointments at the discretion of the minister.*

The Tribunal agrees with the second point.

205. Appeals Tribunal's independence. In a claims process such as the Board's, an effective, independent, and efficient appeals process ensures smooth functioning. It also sends an unambiguous message of fairness to stakeholders and particularly to claimants. We expected that the Appeals Tribunal would not only be independent, but would be perceived as being independent. The Board needs to work with the Appeals Tribunal to reinforce this perception as well the actual independence of the Appeals Tribunal.

206. We interviewed four Appeals Tribunal members and the Chair. All of them confirmed that, in their experience, there has been no attempt by the Board, the Governance Council, or the ministers to influence or interfere with any case. The Appeals Tribunal decisions

we examined in our review of unresolved claims did not show any indication of an attempt by the Board, the Governance Council, or the territorial governments to influence the Appeals Tribunal.

207. The Appeals Tribunal relies on Board staff, including medical advisors, for explanations of medical matters. Sometimes the claimant and Workers' Advisor are present during clarifications, and at other times they are not. There is no specific Appeals Tribunal policy in this regard.

208. The Appeals Tribunal provides a summary of the clarification proceedings, including any clarification of evidence, to the claimant and the Workers' Advisor. If the Appeals Tribunal does not ensure that all claimants receive full accounts of clarifications, a court could find that the Tribunal has not followed the principles of natural justice.

209. Recommendation. The Appeals Tribunal should clearly publicize what it can and cannot do to make its mandate clear to stakeholders.

Appeals Tribunal's response. The Appeals Tribunal should have its own website allowing it to publish decisions and other information.

Communications

210. We expected the roles and relationships of the Board and its stakeholders to be generally understood.

211. We interviewed 18 injured workers with unresolved claims, as well as other stakeholders. We also examined 21 unresolved claimant files, as well as related review and appeal decisions. We found that many stakeholders in the workers' compensation system did not correctly understand the Board's role and relationships.

212. Some Legislative Assembly members find it difficult to obtain information. Although the Board cannot provide information in contravention of the *Access to Information and Protection of Privacy Acts*, it should take steps to improve information sharing. Some other boards have established a liaison function to promote better relations with the minister and the legislature. The Board does not currently have such a position.

213. The Board could be more transparent by making greater use of its Web site to provide relevant and timely information to stakeholders, as some other boards do.

214. The Board currently does not report to its stakeholders at a public annual general meeting. This would be a useful forum for

providing information to stakeholders and dispelling misconceptions about the Board.

215. Recommendation. The Board should

- carry out periodic surveys to gauge public perception of its roles, responsibilities, and activities, and publicly clarify where survey findings indicate serious misconceptions about the Board or its partners in the workers' compensation system;
- set up a liaison function (as some boards elsewhere have done) to work with the two legislatures and other key stakeholders, with the aim of ensuring that the Board's activities are well understood, promoting constructive dialogue, and improving its image;
- make greater use of its Web site as a channel for providing relevant and timely information to stakeholders; and
- report to stakeholders at a public annual general meeting.

Board response. *The Board agrees with the importance of regular surveys. However, nationally recognized survey experts have advised us, as recently as February 2006, that there is a limit to how frequently we can do this due to the limited number of survey respondents and survey fatigue. The Board also recognizes that addressing widespread misconceptions is complicated and that substantial communication plans will be required.*

The Board recognises the importance of members of the legislative assemblies being fully informed on how the Board operates and having access to information to assess whether the Board is properly carrying out its legislated responsibilities. The Board has provided members of the Nunavut Legislature with briefings on its operations and legislated responsibilities. Members of the Northwest Territories Legislature have not responded to the Board's requests to make similar presentations. The Board appreciates the Auditor General of Canada highlighting the importance of communication between the Board and members of the legislatures and will take what steps it can to improve this two way communication. We would appreciate a commitment from the NWT Legislative Assembly to also do what it can to improve this two way communication.

The Board agrees that it should make greater use of its Web site as a channel for providing useful and timely information to stakeholders. The WCB launched its new Web site on May 18, 2006. The new Web site is better designed to meet this objective. It is easier to navigate, highlights stakeholder consultation, reporting injuries and the WCB's newest programs and advertising. Most importantly, it now technically provides ability for readers to comment and provide feedback to the WCB on posted material.

The Governance Council has already agreed to have public annual general meetings in Iqaluit and Yellowknife in 2006 in conjunction with the tabling of its Annual Report.

216. Denial letters. We expected senior staff members to review and approve important communications, such as a letter to a claimant denying a claim (Exhibit 3).

Exhibit 3 Confusion created by correspondence

In 2005 the Board sent a letter to a worker informing him that he did not qualify for a benefit for permanent medical impairment, based on the opinion of one of the two Board medical advisors. During the following month, the other medical advisor reviewed the file and disagreed with the first opinion.

The next day, the Board sent a second letter to the worker notifying him that he would receive a four-percent impairment benefit, to be paid in a lump sum. The letter did not explain the change in decision. There was nothing in the claim file suggesting that staff had advised the worker about the change in decision, either through another letter or verbally.

Aside from that omission, this was a case in which the controls in place worked well. All closed files are sent to the Medical Unit for review. It was at this stage that the second medical advisor discovered the mistake.

217. A denial letter is a very important communication. It must be clear and sensitive, and written in plain, unambiguous language. To ensure that denial letters meet requirements, proper quality management is vital. This includes a review and final approval by a senior staff member before the letter is sent. The review checks that the decision to deny the claim is correct and has been clearly explained to the claimant, using appropriate tone and language.

218. We noted that the claims manager in the Yellowknife office logs and signs each denial letter reviewed, recording the claim number, date of the letter, and whether she agreed with the decision. We found that the manager had reviewed 16 of the 20 cases we examined.

219. The Iqaluit office did not keep similar records. Consequently, we could not determine whether the claims manager is reviewing denial letters.

220. Of the 33 denial letters we examined, 8 were not sent promptly and 3 were not clear.

221. Recommendation. A senior staff member should always review sensitive letters, such as a claim denial, to ensure that the presentation is clear and the tone appropriate. A record should be kept of the review. This is an important client service control.

Board's response. *The Board has had for a number of years a procedure requiring managers of claims in both the Northwest Territories and Nunavut to review all denial letters. Although there has been a lack of consistent documentation of this review in Nunavut this has since been corrected. In addition the Board takes seriously the observations about ensuring the presentation is clear and the tone appropriate and will be reviewing this matter in detail.*

222. Delays and jargon in communications. We expected communications to be sent on a timely basis and be easy to understand.

223. The Board has measurable performance standards for timely service. Nevertheless many workers expressed concerns about long waiting times for receiving information. They also complained of overly technical written communications that quote at length from Board policy and complex medical reports. The workers told us they did not understand the letters.

224. From our statistical sample of 82 claims, we examined written correspondence sent from the Board to injured workers. Our aim was to see whether the letters were timely and easy to understand. We found that sometimes months passed from the time the Board received an injury report until it sent a letter accepting or denying the worker's claim. In addition, the letter did not always clearly explain the Board's decision (Exhibit 4).

Exhibit 4 Excerpt from a denial letter

The following passage from a denial letter shows how convoluted language can obscure the meaning of a communication. A few words have been changed to protect the privacy of the individual to whom the letter was addressed. For the most part language errors have not been corrected.

Information on file indicates that you did not miss any time initially from work due to your shoulder injury nor did you require any initial medical attention. One would think that [if] you sustained an injury at work in October that you would have been unable to initially perform your regular job duties or wait approximately five months to seek medical attention.

The working diagnosis on file in relation to your right shoulder is a type of syndrome. Medical opinion on file indicates that there is no medical information on file to link this syndrome to the reported injury. And that a twisting injury could have resulted in a strain type injury. However I note there is no medical information to support such a diagnosis.

225. Recommendation. The Board should send acceptance and denial letters promptly. It should make letters easy to understand by using plain language and avoiding technical jargon.

Board's response. *The Board agrees.*

226. Frustration points to a need for better communications. We expected the Board to communicate and deal with unresolved cases in a way that minimized the claimants' frustration.

227. From our interviews with claimants dissatisfied with the decisions or lack of progress on their cases, it is clear to us that much more needs to be done to improve communications. Specifically, the Board needs to do a better job of explaining its rules, procedures, and, above all, its limitations.

228. Some of the claimants told us that they could not see the correlation between the Board's assessment of their percentage of disability and their new income-earning capabilities. For example, the Board may assess a 10 percent physical impairment, but the injured worker cannot do the same job as before and may have to take a job that pays substantially less. After the injury the worker cannot maintain the same standard of living and may face serious financial and personal hardships. The worker feels penalized because the Board does not fully compensate for the loss of income-generating ability.

229. Obviously it would be irresponsible of the Board to accept all claims without evaluating their eligibility. Due diligence is mandatory to protect the system. However, the Board needs to do more to educate the public and claimants, explaining exactly what is covered and what is not, what compensation is available, and what limitations there may be on the amount of compensation.

230. Recommendation. The Board should present its policies to workers more clearly and comprehensively, specifying what is covered and what is not, and explaining its rules, procedures, and, most importantly, its limitations.

Board's response. *The Board wishes that all claimants understand how the workers' compensation system works, and our staff attempt to explain this to them. In most cases we are successful; this report emphasizes the consequences when we have been unsuccessful and we will attempt to improve in this area.*

Conclusion

231. Stakeholders show a considerable lack of understanding of the Board. We examined this issue from two viewpoints:

- Does the Board administer its claims process in accordance with the law and its own policies?
- Is the Board taking all necessary measures to ensure that its policies are relevant, appropriate, and effectively communicated to stakeholders?

232. The Board needs to make improvements in several areas of its claims process, particularly communications, staff training and development, monitoring and controls for managers, and reporting of issues and results. In our opinion, however, the Board generally complies with the *Workers' Compensation Act* of each territory and the policies developed by the Governance Council. The Board needs to find better ways of resolving medical disagreements on complex cases to its own satisfaction and that of its claimants. It needs to improve service for out-of-territory claimants.

233. Many of the long-unresolved claims and disputes are due to policy or medical disagreements, or misunderstandings. In our view, the Board needs to improve its communications on policy matters with all stakeholders, especially explaining why its policies differ from those of other Canadian boards.

234. The Board needs to convince stakeholders that it is open and progressive. The Governance Council needs to be improved and made more independent of management in order to emphasize that it is effective and in charge.

235. The Board needs to counter misconceptions as soon as they develop. Releasing more information would help, particularly publishing data not previously made available or more complete data. Protecting confidentiality today should not be seen or used as a barrier to effective communications. The Board needs to make better use of modern communications tools, such as its Web site, to provide timely and accurate information.

236. The role of the Appeals Tribunal is not well understood. It needs to emphasize what it can and cannot do.

237. The ministers' roles need to be clarified, setting out their responsibilities and duties under each territory's *Workers' Compensation Act* and the *Financial Administration Act*. The ministers play an

important part in the governance process, especially when the Board is under criticism. The Council Chair needs to promptly alert the ministers if appropriate changes are required to enhance the Board's image, or if prompt attention ought to be given to governance or management problems. Ministers are responsible for seeing that the best candidates are appointed to the Governance Council and Appeals Tribunal, and their terms should be staggered systematically. They are also responsible for ensuring that appointees to the Council and the Appeals Tribunal have the capacity to deal with today's challenges.

About the Audit

Objectives

The Motion from the Legislative Assembly is in Appendix A.

The objectives of our audit were to determine whether

- the Workers' Compensation Board of the Northwest Territories and Nunavut processes claims in a fair, timely, and impartial manner in accordance with its enabling legislation and internal policies;
- the Appeals Tribunal resolves appeals in a fair, timely, and impartial manner, in accordance with its enabling legislation;
- the Governance Council oversees the direction and management of the Worker's Compensation Board in an appropriate manner promoting transparency and accountability to stakeholders; and
- the roles and relationships of the Board and its stakeholders are clearly understood.

Scope

Our audit examined the workers' compensation system in the Northwest Territories and Nunavut, focussing on

- the current claims process, specifically the policies and procedures of the Board, its Review Committee, and the Appeals Tribunal, and the role of the Workers' Advisor; and
- the governance of the Board, specifically its roles and responsibilities, and those of its stakeholders, and its transparency and accountability to its stakeholders.

Approach

We audited the claims, review, and appeals processes by conducting reviews of various processes and interviews with Appeals Tribunal members, Review Committee members, management, staff, and claimants. In addition, we reviewed legislation and a sample of the files.

We audited governance of the Workers' Compensation Board by conducting a review of legislation and key documents. We also interviewed individuals involved with the governance of the Board and stakeholders. Finally we compared the Board's framework with that of other workers' compensation boards in Canada.

Criteria

We expected that

- the Worker's Compensation Board had clearly defined procedures, trained and competent staff, and the ability to resolve claims in an impartial manner in accordance with its enabling legislation and internal policies;
- the Appeals Tribunal had clearly defined procedures, trained and competent members, and the ability to resolve appeals in a fair and impartial manner in accordance with its enabling legislation;

- the Governance Council oversaw the direction and management of the Worker's Compensation Board in an appropriate manner promoting transparency and accountability to stakeholders; and
- the roles and relationships of the Board and its stakeholders were clearly understood.

Audit team

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Appendix A The motion made by the Northwest Territories Legislative Assembly

The motion made by the Northwest Territories Legislative Assembly requested that the Auditor General of Canada undertake a comprehensive performance audit of the workers' compensation function of the Northwest Territories/Nunavut Workers' Compensation Board and report to the Legislative Assembly.

The motion requested that the performance audit examine the

- organization, training, and orientation of personnel; practices, attitudes, philosophy, internal performance measures, procedures, and resources associated with administering claims by injured workers to ascertain whether these conform with the spirit and intent of the *Workers' Compensation Act*;
- management of the claims to determine whether it conforms the spirit and intent of the *Workers' Compensation Act*; and
- adequacy and appropriateness of the Board's corporate governance model and accountability relationship to the Government of the Northwest Territories and the Legislative Assembly.

The motion also requested that the Auditor General examine additional factors that she feels are relevant.

Appendix B List of recommendations

The following is a list of recommendations found in the Report. The number in front of the recommendation indicates the paragraph where it appears in the Report. The numbers in parentheses indicate the paragraphs where the topic is discussed.

Recommendation	Response
Governance	
<p>36. Through consultations with the ministers and the Council and in accordance with existing legislation, the Board should draft a communications protocol documenting the ministers' roles and relations with the Council and the Board, and between the Board and members of the legislative assemblies. (23–35)</p>	<p>Board's response. It is of critical importance that the roles and relationship of the ministers, the Governance Council, Chairperson, President, and the Board be in writing and agreed to by all parties. The communication protocol should also specify how communication between the Board and MLAs is conducted. For the purposes of transparency these documents should be made public and available on the Board's Web site, and possibly also on the governments' Web sites.</p>
<p>39. The Council should develop a way of objectively assessing how well it functions collectively and individually. The assessments should be provided to the ministers at least once a year. (37–38)</p>	<p>Council's response. The Council agrees with the recommendation. In October 2005, it hired an independent expert governance advisor, and is currently working on a process to achieve this result.</p>
<p>48. For the ministers' consideration, the Governance Council should define its members' mandate in sufficient detail, including needed skills, balancing the traditional representative responsibilities with new technical demands. To expedite the process, the Board should examine approaches adopted by other workers' compensation systems across Canada. (40–47)</p>	<p>Council's response. The Council agrees with the recommendation and will review the current skill set list that is in place and expand it to include the required detail.</p>

Recommendation	Response
<p>49. The Council should direct the Board to develop a plan for increased initial and ongoing training of all new Council members. Training should cover the Board's policies, the way it operates, and technical topics such as financial management and internal controls. (40–47)</p>	<p>Council's response. The Council agrees with the recommendation. While we do have an in house orientation process that defines how the board operates, we will examine its effectiveness and determine what else may be required to ensure board members are adequately trained when first appointed.</p>
<p>50. To assist the ministers responsible for Council appointments, the present Council members should offer their suggestions for new appointees through the Chair, highlighting the qualifications of the individuals suggested. (40–47)</p>	<p>Council's response. The Council agrees with the recommendation. The Council has discussed this issue and would be willing to become involved at whatever level the ministers deems appropriate.</p>
<p>55. The Council should</p> <ul style="list-style-type: none"> • ensure that the Board's annual corporate plan contains appropriate targets and strategies; and • consider involving stakeholders in developing the Board's goals, performance indicators, and targets for the corporate plan. <p>(51–54)</p>	<p>Council's response. The Council agrees with the recommendation relating to the corporate plan. While Stakeholder involvement is not something the Governance Council would object to, getting interest from the major stakeholders to participate in goals and performance indicator development may be difficult. We will explore the recommendation further.</p>
<p>67. The Governance Council should ensure that the Board has a comprehensive risk management framework in place and that it periodically evaluates the effectiveness of the Board's risk management practices and internal control systems in keeping with its mandate. (56–66)</p>	<p>Council's response. The Council agrees with the recommendation.</p>
<p>71. The Governance Council should ensure that stakeholders understand the President's role as a non-voting member, to lessen the likelihood of their assuming that his presence at the Council table unduly influences other Council members. (68–70)</p>	<p>Council's response. The Council agrees with the recommendation.</p>

Recommendation	Response
<p>76. The Council should direct the Board to emphasize to all stakeholders that the Governance Council approves policies. (72–75)</p>	<p>Council's response. The Council agrees with the recommendation. The Governance Council is currently becoming more involved in the stakeholder consultation process and plans on continuing to do so. For example, the current stakeholder consultation on the business case for a proposed new office headquarters in Yellowknife was chaired by the Council chair and attended by Governance Council representatives from labour and employers. The Council members in attendance gave a presentation and fielded questions.</p>
<p>81. The Governance Council should</p> <ul style="list-style-type: none"> • monitor whether the new approach to policy consultation encourages input from stakeholders (including outside stakeholders such as medical specialists, physiotherapists, and mental health specialists), and prompts them to propose new policies or changes to existing ones; and • regularly seek proposals on issues directly from stakeholders and management, particularly in controversial areas, such as pain disorders and pre-existing conditions. (77–80) 	<p>Council's response. The Council agrees with the recommendation.</p>
<p>The Claims and Appeals Process</p>	
<p>104. The Board should follow all its policies, including compensating injured camp workers. If the policy is unclear, management should suggest clarification changes for the Governance Council's approval. (82–103)</p>	<p>Board's response. The Board agrees with the recommendation.</p>

Recommendation	Response
<p>111. The Board should</p> <ul style="list-style-type: none"> • provide customer service training annually, including training in handling verbal communications with claimants; and • consider taping telephone conversations for training and quality assurance purposes, but first allay people's concerns by launching an education program to explain the reasons for taping. (105–110) 	<p>Board's response. The Board agrees that customer service training is important and will continue to ensure that front line staff receives all necessary training.</p> <p>The Board has no experience with taping telephone conversations and is aware that this could be viewed as intimidation of or lack of trust in injured workers. However an internal WCB staff project team has already identified and recommended that claims calls be monitored as an objective record of the quality of the two-way telephone conversation between staff and their clients. The Board still needs to review the matter thoroughly including cost implications and stakeholder awareness planning.</p>
<p>116. The Board should inform a worker when an employer or family doctor files a report of accident or medical examination and should inform them that their claim has been accepted, since this could have an impact on the worker's future entitlement to benefits. (112–115)</p>	<p>Board's response. The Board currently sends out a form letter accepting or denying no time-loss claims in these situations. The Board's oversight was not ensuring that these letters were placed on the worker's file. This oversight will be corrected.</p>
<p>121. On receiving a time-loss (major) claim, staff should increase follow-up efforts to obtain written confirmation from the claimant that he or she understands the respective roles of the Board and the worker. (117–120)</p>	<p>Board's response. The Board agrees with the recommendation.</p>

Recommendation	Response
<p>129. The Board should</p> <ul style="list-style-type: none"> • make it a requirement for all who have contact with claimants to receive training at the time of hiring and regularly thereafter, as a way of developing and enhancing their skills; • identify areas that are complex or sensitive, and make sure that these are staffed by employees with appropriate abilities and experience; • ensure that a senior staff member reviews complex transactions, including manual calculations; and • restructure the claims function to reduce the number of direct reports to the claims manager for the Northwest Territories. <p>(122–128)</p>	<p>Board's response. The Board agrees with the recommendation.</p> <p>The creation and recruitment of a new position is currently underway to reduce the number of direct reports in the function of the claims manager, Northwest Territories operations, with the addition of a supervisory position.</p>
<p>146. To better serve out-of-territory claimants and seek opportunities for resolving long-unresolved claims more quickly, the Board should consider video conferences or trips to areas with a high concentration of claimants.</p> <p>(139–145)</p>	<p>Board's response. The Board will review video conferencing and trips to areas of high concentrations of claimants to determine if these are viable solutions to the issues raised. However, a significant impediment to this approach would be the fact that the Board's medical advisors would be legally required to obtain and hold a medical license in each of the provincial jurisdictions where they visit to examine and assess injured workers. Additional medical liability coverage requirements are also necessary.</p>

Recommendation	Response
<p>160. The Board and the Tribunal should develop a formal process for resolving differences in medical views together. For example, they should investigate whether a medical review panel could be set up to make binding decisions for differences of medical opinion. The panel could be composed of independent specialists acceptable to both parties. If suitable independent specialists are not available in the territories, the Board should seek expertise elsewhere. The worker would retain the right of appeal but not on the agreed medical facts. (147–159)</p>	<p>Board's response. The Board agrees that the issue of differing medical opinions is a serious one, and that the Board and the Appeals Tribunal need to come to the best solution. Our understanding, from our review of different models in other provinces, is that a medical review panel is a costly solution that will not produce a definitive benefit but will add delays to the appeals process. This will be particularly true in the Northwest Territories and Nunavut where there are not a sufficient number of specialists to constitute appropriate panels.</p> <p>It is important to recognize that a diagnosis that is made based on a worker's interview with a general practitioner or a specialist may lack the scientific discipline and expertise required to determine that the worker's injury was caused by the workplace. Therefore, the value of this diagnosis cannot be equally weighed against the advice or opinion of a Medical Advisor with specific training in workplace injuries.</p> <p>Tribunal's response. The Tribunal agrees with the recommendation. A medical review panel may help the Appeals Tribunal in trying to find its way through some of the conflicting medical opinions. It would, however, add additional cost and time to the process.</p>
<p>161. The Board should establish closer ties with other physicians, including the claimant's own general practitioner and specialists—for example, to achieve a common understanding of the medical and psychological facts and to develop practical solutions. (147–159)</p>	<p>Board's response. The board sees the tremendous benefit of having better working relationships with physicians. Since 2003, the Board has established the practice of Medical Case Conferencing whereby injured workers, their attending physicians and other treating healthcare workers meet with the Board's medical advisor(s) and the injured worker's claims officers to discuss the relevant issues including treatment plans, barriers in recovery and return to work plans. These are held in person whenever possible or via teleconference. Other tangible practices are well established to improve better working relationships with physicians.</p>
<p>168. At an early point in the claims process, the Board should explain its retraining policy and the rationale for it. This will help prevent any misunderstanding and ensure that the claimants' expectations are in line with the vocational rehabilitation policy. (162–167)</p>	<p>Board's response. The Board agrees with the recommendation. Although the Board believes it does a good job in explaining its policies to injured workers, it is clear from this and other recommendations that there is room for improvement in our communication with claimants. We recognize that improved communication is beneficial to claimants and the Board, and will take the necessary steps to improve and track our communication.</p>

Recommendation	Response
<p>176. To allay public fears that the investigations unit unfairly targets claimants, the Board should expand its annual reporting on the unit's activities by giving more details about each type of investigation and the results, while of course maintaining the confidentiality of personal information. (169–175)</p>	<p>Board's response. The Governance Council, as part of its oversight role, requires the Board to routinely report on the activities of the Investigation Unit. Non-personal investigations' information can easily be provided in the annual report.</p>
<p>204. The Tribunal should do the following:</p> <ul style="list-style-type: none"> • Develop a plan for systematically staggering the terms of appointees to ensure a balance between experienced and new members representing the various constituencies. • Develop and formalize its members' qualifications, orientation, and training policy, including required core knowledge. It should have both initial and ongoing training plans for members. (177–203) 	<p>Tribunal's response. Agreed that the Tribunal should develop a plan for staggering appointments at the discretion of the minister.</p> <p>The Tribunal agrees with the second point.</p>
<p>209. The Tribunal should clearly publicize what it can and cannot do to make its mandate clear to stakeholders. (205–208)</p>	<p>Appeal Tribunal's response. The Appeals Tribunal should have its own website allowing it to publish decisions and other information.</p>

Recommendation	Response
Communications	
<p>215. The Board should</p> <ul style="list-style-type: none"> • carry out periodic surveys to gauge public perception of its roles, responsibilities, and activities, and publicly clarify where survey findings indicate serious misconceptions about the Board or its partners in the workers' compensation system; • set up a liaison function (as some boards elsewhere have done) to work with the two legislatures and other key stakeholders, with the aim of ensuring that the Board's activities are well understood, promoting constructive dialogue, and improving its image; • make greater use of its Web site as a channel for providing relevant and timely information to stakeholders; and • report to stakeholders at a public annual general meeting. (210–214) 	<p>Board response. The Board agrees with the importance of regular surveys. However, nationally recognized survey experts have advised us, as recently as February 2006, that there is a limit to how frequently we can do this due to the limited number of survey respondents and survey fatigue. The Board also recognizes that addressing widespread misconceptions is complicated and that substantial communication plans will be required.</p> <p>The Board recognises the importance of members of the legislative assemblies being fully informed on how the Board operates and having access to information to assess whether the Board is properly carrying out its legislated responsibilities. The Board has provided members of the Nunavut Legislature with briefings on its operations and legislated responsibilities. Members of the Northwest Territories Legislature have not responded to the Board's requests to make similar presentations. The Board appreciates the Auditor General of Canada highlighting the importance of communication between the Board and members of the legislatures and will take what steps it can to improve this two way communication. We would appreciate a commitment from the NWT Legislative Assembly to also do what it can to improve this two way communication.</p> <p>The Board agrees that it should make greater use of its Web site as a channel for providing useful and timely information to stakeholders. The WCB launched its new Web site on May 18, 2006. The new Web site is better designed to meet this objective. It is easier to navigate, highlights stakeholder consultation, reporting injuries and the WCB's newest programs and advertising. Most importantly, it now technically provides ability for readers to comment and provide feedback to the WCB on posted material.</p> <p>The Governance Council has already agreed to have public annual general meetings in Iqaluit and Yellowknife in 2006 in conjunction with the tabling of its Annual Report.</p>

Recommendation	Response
<p>221. A senior staff member should always review sensitive letters, such as a claim denial, to ensure that the presentation is clear and the tone appropriate. A record should be kept of the review. This is an important client service control. (216–220)</p>	<p>Board's response. The Board has had for a number of years a procedure requiring managers of claims in both the Northwest Territories and Nunavut to review all denial letters. Although there has been a lack of consistent documentation of this review in Nunavut this has since been corrected. In addition the Board takes seriously the observations about ensuring the presentation is clear and the tone appropriate and will be reviewing this matter in detail.</p>
<p>225. The Board should send acceptance and denial letters promptly. It should make letters easy to understand by using plain language and avoiding technical jargon. (222–224)</p>	<p>Board's response. The Board agrees.</p>
<p>230. The Board should present its policies to workers more clearly and comprehensively, specifying what is covered and what is not, and explaining its rules, procedures, and, most importantly, its limitations. (226–229)</p>	<p>Board's response. The Board wishes that all claimants understand how the workers' compensation system works, and our staff attempt to explain this to them. In most cases we are successful; this report emphasizes the consequences when we have been unsuccessful and we will attempt to improve in this area.</p>