

FINAL Minutes  
IJA Meeting April 15, 2002  
Toronto, Ontario

Attendees

Greg MacCallum, PEI  
Doug Mah, Alberta  
Patty Cunningham, Alberta  
Jan Glemba, Alberta  
Pam Cohen, British Columbia  
Terry Smith, Saskatchewan  
Wayne Dale, Saskatchewan  
Cynthia Mendes, Ontario  
Jean Landry, New Brunswick  
Donna Strong, Newfoundland  
Mary-Anne Hook, Northwest Territories & Nunavut  
Catherine Gaulton, Nova Scotia  
Lori Ferguson Sain, Manitoba  
Pascale Goulet, Quebec  
Brenda Croucher, AWCBC

Regrets:

Deborah McNevin, Yukon

Review of Previous Minutes

The April 20, 2001 IJA Committee meeting minutes were reviewed and accepted.  
Minutes to be distributed to the Heads of Delegations

**Action: Brenda Croucher**

Action Arising Out of Previous Minutes

Electronic Communication-Bulletin Board

It was agreed that investigation into an electronic communication tool such as bulletin boards for IJA Coordinators was not a high priority.

In the interim, committee members were reminded that the “information request service” function through the AWCBC is the current mechanism for polling all jurisdictions. To avoid duplication of questions, check the protocols in the IJA binders and previous minutes.

Letters to Workers re: Right of Election

Reference was made to Page 6, #6 of the April 20, 2001 minutes. Quebec outlined their election procedure and advised that this jurisdiction does not necessarily send out a covering letter with their election form.

### CTA Response on Effectiveness of AAP

The Chair advised that an official response from the CTA outlining their satisfaction with the APP is expected in the near future. The Chair agreed to follow up with the CTA to ensure receipt of a response.

**Action: Greg McCallum**

### Comparable Statistics

The IJA Cordinators previously agreed that IJA cost reimbursement requests should not be included in the days to first pay statistic, as reimbursements do not involve payments to workers as contemplated by the statistic. Payments are reimbursements between boards. Similarly, reimbursement requests should not be double counted as a claim by the reimbursing board for the purposes of this statistic.

**Action: Lori Ferguson Sain agreed to follow up with the Chair of the Financial Comparability Committee.**

Maureen Mullen, WSIB joined the meeting for discussion on the following agenda item.

### Consideration of Hearing Loss

Extensive discussion took place with respect to the inclusion/exclusion of Noise Induced Hearing Loss Claims in Section 7 of the agreement. It was agreed that the AWCBC would work with Committee members and in particular Pam Cohen and Maureen Mullen to assist with the following tasks:

1. The Total number of denied interprovincial claims would be tracked from May 1, 2002-October 31, 2002 and broken down by how many were denied due to insufficient exposure, and whether there was exposure in other jurisdictions.  
**Action: IJA Cordinators**
2. The average total cost of 2000 and 2001 Hearing Loss Claims and a breakdown of medical and pension costs would be provided to the AWCBC by May 31, 2002.  
**Action: IJA Cordinators**
3. Template for the above statistics would be prepared and forwarded to the IJA Cordinators.  
**Action: AWCBC**
4. Scenarios to address “threshold” and “limit on pension” would be prepared and distributed to IJA Cordinators by May 31, 2002. This exercise will assist with determining if the costs were properly allocated, if workers are falling through the cracks and if it will limit workers from filing in more than once.  
**Action Point: Pam Cohen**
5. Scenarios would be prepared to address “how to” specific to hearing loss thresholds and pensions and distributed to IJA Cordinators by May 31, 2002.  
**Action: Maureen Mullen**

### 2001 Cost Reimbursement and APP Statistics

Provide 2001 Cost Reimbursement Statistics to AWCBC by May 31, 2002.

**Action Point: Nova Scotia, Manitoba, Yukon and Prince Edward Island**

Provide 2001 APP Statistics to AWCBC by May 31, 2002.

**Action Point: Yukon, Alberta, Saskatchewan, Manitoba, Prince Edward Island and Nova Scotia**

IJA Cordinators were reminded to notify their board/commission that for potential reimbursement claims arising before June 26, 2000, notice must be given to a reimbursing board no later than June 25, 2002 and that no reimbursements are payable on a claim unless the adjudicating Board/Commission has provided written notice within this time frame.

**Action: IJA Cordinators**

#### Clarification of APP Process

The WSIB presented a case for clarification with respect to appropriate process to follow when an Ontario-based trucking company is contracted to transport goods to destinations all within another province/territory, i.e. Manitoba. During discussion, it was noted that this case would not fall under the AAP as the work was only performed in Manitoba with no crossing between provincial borders. It was further noted that the Ontario employer should be reporting payroll accordingly and that the IJA is dependent upon where the worker works.

#### Effectiveness of Dispute Resolution Mechanism

Alberta referenced a document they prepared for discussion at the meeting and raised the following questions:

1. What type of issues is the dispute resolution provisions intended to cover?
2. On reimbursement matters, how can the adjudicative decisions of the Board receiving the reimbursement request be challenged by the Board making the reimbursement request, where the second Board disputes the correctness of the first Board's decision?
  - a) Through dispute resolution under the IJA?
  - b) Through the statutory appeal process in the jurisdiction that made the decision?
  - c) Through consensual arbitration?
  - d) Through the courts?

An example for the purposes of the discussion was reviewed. Following discussion, it was noted that option (a), dispute resolution under the IJA and (c) consensual arbitration would require the agreement of both parties. With respect to (b), the appeals process in the jurisdiction that says no, availability depends not on the agreement of the parties but the rules regarding "interested party status" in the jurisdiction where the appeal is brought. With respect to (d), it was noted that lawsuits are rarely started by agreement so

agreement would not be necessary. It was noted that both parties must agree to reimburse under the spirit of the agreement and that it is the reimbursing boards responsibility to “go after” the assessment.

### Third Party Claim Against Employer in Another Canadian Jurisdiction

Nova Scotia requested clarification with respect to the above topic. It was agreed that there was nothing jurisdictions could do to prevent a worker from going to another jurisdiction to sue. A question arose as to whether a statutory bar applied across the country. It was noted that in some jurisdictions i.e. Third Party MVA’s, workers can sue different employers in their own jurisdiction, but not their own employer in their own jurisdiction or workers can sue the director of a company who doesn’t have compensation coverage. It was further noted that jurisdiction could not by agreement under the IJA agree to not pursue suit in another jurisdiction. These types of issues would need to be dealt with on a case-by-case basis.

### Disclosure of Confidential Information (Section 12.3)

Quebec reviewed the CSST criteria related to the consent granted by a worker and authorizing disclosure of personal information to a third party. It was noted that the CSST cannot accept “too broad” consents nor those that are not specific, not signed or which do not meet the criteria outlined in the meeting materials under this agenda item. Quebec requested that this criteria be circulated to the appropriate staff at each board/commission. Quebec also provided a sample of the form that is required to be signed by the worker prior to release of information. A number of jurisdictions indicated that Freedom of Information issues will likely result in similar form requirements in their jurisdictions in the near future.

### **Action: IJA Cordinators**

It was also agreed that in cases where difficulties are experienced in obtaining information from boards/commission, the request should be elevated to the IJA Cordinator.

### Appeal Decision-Interpretation of IJA

Quebec circulated an appeal decision for discussion that related to whether the IJA or legislation in jurisdictions comes first. The appeals tribunal viewed the IJA as an administrative agreement and did not allow the workers appeal. The worker was injured in the U.S., so the decision will not fall under the auspices of the IJA, but will be of interest regarding which Canadian jurisdiction would or would not have been responsible for coverage of the worker. The case will go for judicial review. Quebec will ensure that the Committee is kept up to date on this case.

### Benefits in Kind Reimbursement –Appendix C and E

Difficulties were noted with locating the appropriate contact in each jurisdiction for Benefit in Kind Reimbursements. It was agreed that IJA Cordinators would review the

Operational IJA Contact List contained in the Reference Manual for accuracy and advise the AWCBC of any revisions.

**Action: IJA Coordinators**

Aggravation or Worsening of Disability-Section 8

A case study was presented by Quebec that addressed whether an aggravation would be accepted or denied. The case involved a worker that was injured in one jurisdiction but moved to a province where a recurrence was claimed. Following discussion, it was agreed that adjudication of any claim presented would require investigation and determination as to whether or not the “injury” in the new jurisdiction constituted a “new injury”, an aggravation of a pre-existing injury, no injury, or a continuation of an original injury. The latter would revert to the jurisdiction where the injury first occurred and the claim would be disallowed in the second jurisdiction.

Quebec indicated that their legislation does not permit them to accept an aggravation of a pre-existing injury unless the original injury also took place in their jurisdiction.

Should a situation arise where boards differ on the decision as to how to treat the claim i.e. an aggravation or a new claim, it was noted that the injured worker would have the option of appealing each decision in the jurisdiction where the decision was rendered.

Other Business

Clarification/Interpretation Required

New Brunswick requested clarification on the following questions:

Right of Election: A trucking scenario was described which led to a question as to whether a worker could elect to claim in more than two jurisdictions –i.e. other registering Boards. The IJA Committee concluded that a worker would not deal with more than two jurisdictions as the paying of accounts in multiple jurisdictions is different than worker election.

The IJA Committee also agreed that generally there can not be entitlement to claim in more than two jurisdictions i.e. jurisdiction of accident and jurisdiction of residence (other than occupational disease under Section 7).

Handling of Serious Injuries and Fatalities: Clarification requested with respect to which Board should contact the family for the purposes of completing the election form in the case of a fatality. The IJA Committee concluded that there was no standard procedure but that the board/commission in the jurisdiction where the worker resided may be the most appropriate board/commission to contact the worker. In many cases, prior input from the employer can be used as a guide regarding who should make first contact with the family.

Administrative Issue: It was concluded that IJA Contacts should be available to assist in cases where a jurisdiction is having difficulty getting the accident jurisdiction to confirm whether or not the worker was considered a worker under their legislation.

Form of Election: In cases where a worker may be entitled to compensation and may have entitlement in one of two jurisdictions, where both interjurisdictional and 3<sup>rd</sup> party election may apply, can a single Form of Election be used? The IJA Committee concluded that the Election Form prepared for the purposes of the IJA does not have to be used but that the form that is used must capture the information requested on the IJA Election Form, and must also clearly outline what other type(s) of election is/are required.

#### Request for Copies of the IJA

It was agreed that the IJA Working Document could be distributed with appropriate disclaimers i.e. document does not represent the original document, and is for information purposes only. The Agreement is between Boards and the requestor should be reminded that they are not a party to it and have no rights under it. There were no known objections to posting the working document on a Board's website, so long as appropriate disclaimers were noted. It was also stated that it would not be appropriate to post the Interjurisdictional Agreement itself.

#### Chair

It was agreed that Pam Cohen would be the new chair of the IJA Committee. The Committee thanks Greg McCallum for assuming the Chairperson role for the past three years.

#### Future Meetings

WSIB confirmed that there was no problem with the continuation of meetings at their Board. It was agreed that the committee would continue to meet once a year and that the next meeting would be in Toronto at the WSIB on April 14, 2003. It was noted that it is up to the Boards and Commissions as to who they will send to the meetings and that this will also depend upon the type of discussion that is anticipated at each meeting.

#### Workplan.

The IJA Workplan will be updated subsequent to the distribution of the IJA minutes.

**Action: Pam Cohen, Greg McCallum**