

FINAL MINUTES

INTERJURISDICTIONAL AGREEMENT COMMITTEE MEETING May 1, 2006

ATTENDEES:

Carol Anne Duffy, Executive Sponsor, PEI
Pamela Cohen, Chair, BC
Doug Mah, AB
Daryl Davies, SK
Lori Ferguson Sain, MB
Cynthia Mendes, ON
Pascale Goulet, QC
Jean Landry, NB
Janet Curry, NS
Bonnie Blakney, PEI
Bruce Willis, YK

Attending for Specific Agenda Items

Serge Recchi, ON
Graham Smith, ON
Katie Scani, ON

REGRETS:

Brenda Croucher, AWCBC
Donna Strong, NL
Mike Triggs, NWT

WELCOME AND INTRODUCTIONS

The Chair, on behalf of the Committee, thanked Ontario for hosting the meeting, Lori Ferguson Sain for preparing the consolidated agreement and Doug Mah for preparing the terms of reference.

1. REVIEW OF AGENDA

The agenda was confirmed. Lori Ferguson Sain agreed to take the minutes. The Committee discussed the timing of future meetings and noted that preferably, the meeting should not immediately follow the Day of Mourning.

2. REVIEW OF PREVIOUS MINUTES

The May 2, 2005 minutes were reviewed and accepted with minor revisions.

Moved: Jean Landry

Seconded: Bruce Willis

Minutes to be distributed to Heads of Delegation

ACTION: AWCBC (Brenda Croucher)

3. ACTION ARISING OUT OF PREVIOUS MINUTES

(a) Revised Terms of Reference

The Chair noted that the new Terms of Reference with respect to choice of a Chair. The present Chair has been in the position for four years. The Chair was acclaimed as Chair for one more year.

The Committee discussed section 10.1 of the Terms of Reference about the provision of agenda items and supporting materials at least 60 days before the meeting date. The Committee noted that these timelines are a guideline. The intention is for items to be circulated with sufficient time before meetings for delegates to obtain instructions from their respective Boards.

It was noted that the Executive Sponsor is chosen by and reports to the AWCBC Executive Committee.

DECISION: The Committee agreed to include a definition of Executive Committee of the Heads of Delegation in the Terms of Reference.

ACTION: Pascale Goulet to review Doug Mah's draft Terms of Reference

(b) Consolidated Agreement

The Executive Sponsor noted that each jurisdiction will sign off on the consolidated agreement at the Heads of Delegation meeting in June 2006.

It was noted that some jurisdictions receive frequent information access requests for a copy of the IJA.

DECISION: Requesters can contact the AWCBC for a copy of the IJA.

(c) Legal Vacuum (Falling Through the Cracks)

Serge Recchi of Ontario joined the meeting.

Québec discussed the 2005 request from the Québec Protecteur du Citoyen (Ombudsman) for a discussion about workers' falling through the cracks. The Ombudsman has asked whether the IJA can be amended to ensure that no Canadian worker wherever injured will be without workers compensation. Would the Committee be prepared to undertake such a project? Do other jurisdictions laws permit such a situation?

Committee members discussed various scenarios where Canadian workers are injured outside Canada and the rights available to such workers. Members also noted that the legislation in each jurisdiction supersedes the IJA. In the absence of legislative amendment for each jurisdiction, the Ombudsman's requested amendment to the IJA is not an available option.

The particular case involves a worker injured in the United States of America. The Committee members also noted that there may not be a legal vacuum in the particular case. Although the worker's claim in Québec was denied, the worker may have other remedies available, including a possible claim in another jurisdiction.

Committee members also noted that the majority of Canadian jurisdictions provide coverage for injuries outside the jurisdiction in some cases when the applicable conditions are fulfilled.

4. MUTUAL AID & RESOURCES SHARING (MARS) AGREEMENT

Alberta introduced discussion on this topic. The MARS agreement for interprovincial forest fire fighting is currently operational. With respect to workers compensation coverage, the guidelines provide that workers injured on MARS assignment are covered and compensated by their home workers compensation board.

The Interprovincial/Territorial Emergency Management Assistance Compact (IEMAC) is still in draft form. The draft wording on workers compensation coverage is similar. The guiding principle is that each jurisdiction is responsible for workers compensation claims and assessment costs for its own workers regardless of location of injury.

Committee members noted that the workers compensation provisions of these agreements are not consistent with the IJA's cost reimbursement provisions. In addition, these agreements might affect a worker's rights of election where to claim workers compensation.

It was noted that MARS and IEMAC are only one type of interprovincial agreement. Other disaster planning agreements, such as pandemic planning are likely to come forward. The IJA Committee should explore methods by which to observe the spirit of the MARS and IEMAC agreements

The Alberta Department of Justice has requested input from the IJA Committee on a proposal to amend the MARS and IEMAC agreements to be consistent with and to refer to the IJA. Committee members generally agreed with this approach.

NOTE: Québec noted that further input from the CSST was required before Québec can set out its position on these issues.

DECISION: The Committee's consensus was to recommend that the MARS and IEMAC agreements be amended to be consistent with the IJA and that this consensus be communicated to Alberta Department of Justice.

ACTION: Alberta (Doug Mah)

DECISION: The Committee agreed to include the issue of interprovincial emergency planning as part of the Workplan and to communicate the issues to the Heads of Delegation at a future meeting.

ACTION: AWCBC (Brenda Croucher)

DECISION: The Committee established a sub-committee with Alberta, Manitoba and Yukon as members. The sub-committee will identify the issues pertinent to workers compensation in the context of interprovincial emergency planning. Issues identified include workers' rights of election and exploration of potential cost reimbursement mechanisms.

ACTION: Sub-committee

5. IJA SECTION 14 – PROVISION OF REPORTS AND DOCUMENTS

New Brunswick introduced discussion on the issue of information sharing among jurisdictions in the context of privacy legislation. Is section 14 IJA sufficient to constitute an information-sharing agreement under privacy legislation? Do jurisdictions include a worker's consent clause in their applications for workers compensation?

The legislation of various jurisdictions, including B.C., Alberta, Manitoba and Ontario permit information sharing without consent if the disclosure is authorized by a law or an information-sharing agreement under a law. Québec has specific criteria for consent to be sufficient (as per material distributed at the April 15, 2002 IJA Committee meeting). Québec offered to review New Brunswick's form for compliance with Québec requirements.

Members' consensus was that it is good practice to obtain a worker's consent to share information with other jurisdictions.

Discussion on agenda item number six was deferred until later in the meeting.

6. IJT ISSUE BETWEEN ALBERTA & B.C.

Carol Anne Duffy assumed the chair for this discussion. Pursuant to the Terms of Reference, Alberta and B.C. have brought an issue forward to the Committee for discussion and possible resolution. Alberta and B.C. set out their positions on the following case:

The matter concerns an interprovincial trucking employer with activity in Alberta and B.C. The employer was not registered under the AAP. All assessments were paid to B.C. A B.C. audit some years earlier indicated Alberta activity. B.C. did not notify Alberta of the audit results.

Although B.C. sent an AAP application to the employer, the form was not returned. The employer verbally notified Alberta that the employer was electing AAP in B.C. Alberta and B.C. did not communicate with each other about the employer.

A worker was injured in Alberta. B.C. paid the claim and has sought reimbursement from Alberta under the general cost reimbursement provisions.

The employer is bankrupt and Alberta cannot collect assessment arrears from the employer.

Members discussed that the AAP's requirements. Members confirmed that the AAP is a voluntary, special arrangement, available under certain conditions (see 12.2 of the IJA). Also, the AAP does not apply unless all parties (employers and commissions follow the proper procedures, including written application and notification.

Members also discussed the B.C. audit that identified Alberta activity. Is there a formal or ad hoc process for jurisdictions to notify one another about interjurisdictional employers' activity? Should there be? Had B.C. earlier notified Alberta about the B.C. audit, Alberta could have assessed the employer and collected assessments.

Members generally agreed that their jurisdictions would be interested in audit results from another jurisdiction regarding employer activity, subject to relevant information privacy laws.

Members agreed to defer discussion on AAP procedure until later in the meeting under item 8.

In the particular case, members noted that an opportunity remains for B.C. and Alberta to cost share the assessment premiums paid to B.C.

P.E.I. noted that the motor vehicle registration process for long haul truckers includes information on the number of kilometres driven in each jurisdiction. Apparently, there is a common computer application that calculates the amount owed to each jurisdiction.

Members expressed interest in this information, which would assist jurisdictions with AAP or general trucking employer registrations. Can Boards access this information? Have employers consented to the disclosure or sharing of this information? Is consent built into the AAP process?

DECISION: To obtain more information about the motor vehicle registration mileage computer application and provide an e-mail to the members.

ACTION: PEI

7. IJA/AAP STATISTICS

The Chair noted that activity was generally down. There was a question about the number of claims denied in some jurisdictions. Québec explained that the reimbursement requests are more carefully analyzed to make sure that there is a link between the worker and his employer's establishment in Quebec (as required by the Quebec Act). A worker must relate to the establishment in Quebec.

Manitoba requested clarification about the Committee's previous decision about the timeliness of billing requests ("subsequent billings") following an initial reimbursement request.

CONSENSUS: Members noted that for subsequent billings, timely and expeditious notification remains the principle, so that the reimbursing board can charge back its employers on a timely basis. However, the two-year timeline for requests arising from the May 2005 meeting is only a guideline, recognizing boards' operational requirements. A board's denial of reimbursement for subsequent billing would be contrary to the spirit of the IJA.

8. IJT – PROCESS FOR NOTIFICATION OF EMPLOYER PARTICIPATION OR WITHDRAWAL

Graham Smith and Katie Scani of Ontario joined the meeting for this item.

Ontario noted that there have been instances of late notification of AAP registrations or withdrawals by some jurisdictions.

The Committee also discussed the issue raised under agenda item seven whether there is a process to notify other boards about employer registrations or about audit results.

DECISION: Ontario offered to follow-up on this question and report whether there are formal or informal notification processes among jurisdictions about new employer registrations or audit results.

ACTION: Ontario

DECISION: Members were asked to remind their jurisdictions to follow the AAP procedures, including timely notification of registration and withdrawal.

ACTION: Committee members.

The members then discussed the timeline for assessing boards to notify registering boards about AAP registrations. There was discussion about notification within a certain number of business days. Members noted that notification timelines can be affected by operational requirements, such as "assessing season."

Following discussion, given the annual AAP procedures already developed, the general consensus was that it was reasonable for registering boards to notify assessing boards by March 31 in each year.

DECISION: Boards are to canvass their jurisdictions about a reasonable turnaround time for notification of AAP registration for use as a guideline.

ACTION: Committee members

Members discussed the statistics and whether the appropriate data are being collected and for what purpose. For example, AAP collects payroll information. The Executive Sponsor noted the Heads of Delegation have not given direction on this issue and thus, it is left with the Committee to determine what statistics are appropriate. No formal action has been undertaken on the statistics but members will consider whether the current statistics have value. This discussion will be brought forward to a future meeting.

9. IAIABC INTERNATIONAL COMMITTEE - UPDATE

The Chair provided an update on the international committee. The committee has been working on a project relating to undocumented workers and their impact on the workers compensation system. Information on this matter will be available later this autumn.

The Catastrophe Planning committee has discussed disaster planning, such as offsite data storage and recovery and pandemic planning. The Catastrophe Planning Committee has completed a checklist/best practices template that is available on line at www.iaibc.org.

10. IJA REFERENCE MANUAL – UPDATED FOR DISTRIBUTION

Members thanked Pam Cohen and AWCBC personnel for providing the updated reference manuals. The manual is an excellent resource. It includes past minutes, case studies, templates, protocols, etc.

11. AWCBC UPDATE

The Executive Sponsor reported that the AWCBC's Strategic Plan was approved in December 2005 and is on the website. She highlighted two strategic priorities of (a) networking and information dissemination and (b) analysis and interpretation of data.

With respect to the first priority, the AWCBC will move toward the establishment of discipline-specific committees that will be supported by the AWCBC. Consideration is being given to a "congress of committees" that would meet annually at the same time, with subsequent meetings of executive sponsors and committee chairs. The intention is to coordinate committees' work, improve linkages and avoid duplication.

The AWCBC's website has been improved, with additional links and publications.

Upcoming events are the AWCBC Congress in New Brunswick, June 25 to June 28 and the Learning Symposium in Regina, September 10 to 13.

12. OTHER BUSINESS

(a) Benefits in kind

Québec posed a question about "benefits in kind" in the context of requests and payment for medical assistance. Members confirmed that benefits in kind are not limited to medical treatment but the full range of services available.

Members also confirmed that the jurisdiction that requests the service ultimately pays for it. Often, an assisting board requests the assistance for the worker and deals directly with the provider. The assisting board may also receive and pay for the bill and then request reimbursement from the requesting board, rather than directing the invoice to the requesting board. This improves customer service and facilitates the ongoing relationship between the board and its service providers.

(b) Requests for reimbursement summary sheet

Ontario raised the issue of information accompanying a request for reimbursement. Members noted that the benefit summary sheet should accompany every request for reimbursement.

It is helpful to include information about the effective date of benefit changes. Before seeking reimbursement, requesting boards are also asked to confirm that the claim does not involve an AAP employer or a self-insured employer (self-insured in both jurisdictions).

DECISION: The payment reimbursement summary request template will be recirculated to members.

ACTION: AWCBC (Brenda Croucher)

(c) Next meeting

Toronto, Ontario, WSIB, Monday, May 7, 2007. The meeting then adjourned.