

**MINUTES
FINAL
INTERJURISDICTIONAL AGREEMENT COMMITTEE MEETING
FEBRUARY 20 & 21, 2007**

ATTENDEES:

Carol Anne Duffy, Executive Sponsor, PEI
Pamela Cohen, Chair, BC
Ed Bates, BC
Doug Mah, AB
Daryl Davies, SK
Lori Ferguson Sain, MB
Cynthia Mendes, ON
Suzanne Hewitt, ON
Pascale Goulet, QC
Jean Landry, NB
Janet Curry, NS
Kate Marshall, PEI
Donna Gathercole, NWT
Bruce Willis, YK

FACILITATOR AND TRANSCRIBER:

Cheryl Macdonald, AWCBC
Mitzi Alexander, AWCBC

REGRETS:

Ann Martin, NL

1. WELCOME AND INTRODUCTION:

The Chair, on behalf of the Committee, made welcoming remarks to the first All Committee meeting. The Chair suggested that item 6 on the agenda be placed ahead of item 5 to leave appropriate time to review item 5 at the end.

2. REVIEW OF AGENDA

The Facilitator proposed that the Committee use the morning for review of the set agenda and identification of items for a workplan and goals. Also, that a decision be made as to what the workplan would be by 10:30 am. on Day 2 of the meeting. Direction was provided to write down the goals, the activities and objectives for further discussion and the Facilitator outlined how this process would work.

3. REVIEW OF PREVIOUS MINUTES

The May 1, 2006 Minutes were reviewed and accepted with minor revisions including changes to 3(a) – Revised Terms of Reference.

Action: Pascale Goulet to review Doug Mah's draft Terms of Reference to end of June

Under item 6 of the Revised Terms of Reference there is a reference to paragraph 12.12 of the IJA – it should read 12.2

In the third bullet on page 5, 4th paragraph, it should read "Item 8".

A thank you was given to Lori Sain of Manitoba for taking and preparation of the past Minutes.

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4. REVIEW OF ANNUAL STATISTICS

It was noted that Alberta and Saskatchewan have not yet submitted their statistics. Saskatchewan advised that there has been a computer challenge experienced by that province that will delay their statistics until the end of February. Alberta advised it cannot provide feedback at this point on the delay.

It was noted that activity on the IJA is statistically “down”. The Chair noted the Boards which were most active in previous years are not showing the same level of activity and it appears that the spirit of the agreement on cost reimbursement is not being met. Alberta indicated this could be a management issue as to how significantly the IJA is being viewed by the individual jurisdictions. Discussion was held about the possible reasons behind the trend and it was recognized that operational priority of the IJA is important. BC noted that there has been a significant decline in activity in some jurisdictions where past participation had been timely and active. Quebec noted it is actively working on a modernization project, which is a great opportunity to review out-of-province claims processes and take into account the IJA from a computer perspective (to detect out-of-province claims, to generate statistics regarding those claims) and indicated that more statistics showing the IJA activity and all the IJA has to offer would be useful to them.

It was agreed that changing the statistics to properly reflect the workings of the IJA would be very useful and that this should become a goal of the Committee. Saskatchewan advised it removes costs from an employer as soon as requests are made which is a positive element of the IJA. BC suggested jurisdictions conduct a review of why we do cost reimbursement and examine how many Boards benefit from the cost reimbursement based on the statistics. Yukon suggested that it is a statistical issue in smaller Boards to recognize and put resources toward IJA claims. NB suggested jurisdictions should introduce a mechanism to count the negative responses as we are currently not capturing those in statistics. Ontario indicated they are not doing this for verbal opinions and exchanges related to the IJA. Quebec advised it partially captures these and they are important activities.

Overall, the Committee recognized there is no consistent approach to statistics and all that we wish to capture from these. Additionally, it was recognized there may be a benefit from revising and reviewing the training materials and the definitions to assist with capturing of the best and most accurate statistics.

Action: Review training materials

5. ACTION ARISING FROM THE MINUTES (#6 on Agenda)

(a) and (b) Interprovincial emergency planning/MARS Agreement

This Committee was asked to look into assisting the government emergency planning process. Alberta took back recommendations to government planning who then amended the emergency agreement (MARS). This was a very positive result for the Committee. Now, as a result, the agreement was amended to indicate that workers have a right to claim in the jurisdiction where their injury takes place. There are remaining issues for a subcommittee such as resolution of (a) who is a worker? (b) how compensation systems can assist governments to next meet objectives. The Committee recognizes five issues to be identified: (i) who is a worker (can they be made one by a requesting jurisdiction) (ii) how does election work (iii) immunity from suit (iv) cost reimbursement and (v) federal workers.

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The MARS agreement says a home jurisdiction will pay the cost and will then be reimbursed. There appears to be a disconnect between the MARS agreement and the IJA as they contemplate government to government reimbursement which is different from how the IJA works. Discussion was held concerning how reimbursement could be mirrored in the IJA and if, in fact, it needed to happen. There appears to be a sub-issue with regard to injury notification. The Committee identified there are groups of workers we cannot help, i.e., federal workers, RCMP, etc. and cannot deal with the immunity from suit problem short of deeming.

The subcommittee will address the fact that MARS has gone a long way already but there are ways we can continue to try and resolve the rest of the issues. The challenge is that workers compensation issues are often not considered until they come to someone's attention, (i.e., the NAFTA agreement). A system needs to be found to educate Boards to report to their various Ministers of Labour as an avenue for inclusion.

Action:

1. Provide subcommittee with written summary of the issues for Committee circulation;
2. Brief the Heads of Delegation on this issue so they consider their communication with their various Ministers of Labour with support of the workers compensation boards/commissions to identify and investigate the issues.

British Columbia noted the issues are not limited to interprovincial matters as they can involve international issues such as the example of forest firefighters in Australia. This can be connected to temporary foreign workers. We need to exercise caution when we look at interprovincial issues as we may extend the umbrella of coverage to foreign workers without a clear mandate to do so. Manitoba indicated that a straight no for coverage in all circumstances is not acceptable, so we must have a determination of what we can do. Quebec advised that from their perspective, important issues are the coverage for non-Quebecers working outside Quebec and foreign workers returning to their home country.

Alberta provided some comments on the MARS agreement, in particular, in relation to page 7 "Implementation Guidelines" which were revisited after our last meeting. Two thirds of the way down page 7 the wording is now improved to recognize the right of election. This does not work well with the IJA (as it is the opposite of cost reimbursement under the IJA). There is a question as to whether we should address this gap. We will no doubt administer this under our own Acts and the IJA in any event.

Action: Facilitate the revision of the MARS Implementation Guidelines. This will be a challenge as unlike the MARS situation, we no longer have an inside contact.

(c) Transport Canada Trucking Information

PEI had contacted their Director of Highway Safety to determine what trucking information is collected and how the Board could gain access. The issue was explored as to what would happen if an employer was not registered and should have been. The question remaining is can we ask for more information from registering truckers as employers.

Action: Explore feasibility of an agreement with all of the provincial transportation agencies for access to information.

Saskatchewan advised it is currently exploring the trucking issue again.

An outline was given of the T.J. Jolley case (AB & BC case). This is an issue which the Executive Sponsor is chairing. In this case a BC trucker was injured in AB in 2002 and a claim was filed and accepted in BC. The employer subsequently went bankrupt. The trucker had only

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BC registration and as a result, they felt BC should be reimbursed as the employer should have registered in Alberta. AB disagreed with this reimbursement. AB indicated it would not escalate the issue further. AB has attempted to get mileage information from BC through their Minister of Transport, but privacy rules have prevented this as a technical block to the exchange of this information. AB has concluded that even if it has the information, the employer is bankrupt and the money would go to unsecured creditors. As a lesson learned from this case, provincial transportation departments have good information so registration is important. Jurisdictions should be careful to get this information and AAP registration in writing as everyone is looking at this in hindsight and learning from it. We are trying to operate on good faith, however, this does present challenges.

(d) Consolidated Agreement Sign-off

Sign-off was completed with amazing speed, to the pleasure of all, and has now been posted on the website. The legislation is also placed there.

Action: The Chair will ask the AWCBC Executive Director to provide copies of the HOD signature sheet to jurisdictional representatives, as part of the IJA binder update.

(e) Notification Process: Newly Registered Employers

Ontario noted there was late notification of AAP participation by various jurisdictions. Jurisdictions weighed in on their notice process with eight providing responses. Six have indicated it is within 48 hours, one indicated same-day and one indicated five days. Of the eight jurisdictions in relation to cut-off dates, two used December 31, two used February 28, one uses March 15, one uses March 31, one uses any date and one did not provide comment.

Ontario proposes December 31st as a cut-off date for opting in/out.

Action: Survey to be distributed to the jurisdictions as some have legislated requirements that would prevent cooperation with particular deadlines. Various jurisdictions are unable to change opt in/out dates. It was noted at point 12.2(vii) of IJA October 31 is referenced as opting out date limit. What is being received is then effective January 1st of the following year. It is helpful to have indication whether it is a new employer. Action: Provide a summary of this issue and information and the questions involved around standardizing the date (Ontario).

(f) AAP Notification (Assess Board to Reg Board) - Poll

It was discussed that there is a question surrounding when there should be notification to a registering Board that a new employer has signed on and that this was noted to be needed on a timely basis, however, it was discussed that two to three years was not timely enough, but there was a question around what is "timeliness". There was a suggestion that it is time to nationalize the AAP process, we continue to handle this provincially. However, a national assessment process would enhance services. To achieve this, the Boards need to better communicate. Two issues to be understood are (a) what are the jurisdictional processes and (b) what can be done with regard to the various deadlines of the jurisdictions. The objective is clear to standardize the processes and have more consistent communication. In order to do this we need to (i) get the procedures from all jurisdictions and (ii) get dates for all jurisdictions.

A uniform process will enhance nationally

Saskatchewan polled the jurisdictions as to the perceptions of Saskatchewan not participating in trucking under the IJA. Ontario advised this is confusing. Manitoba indicated as well that it is

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confusing for employers and assessing Boards. NB advised from its perspective this takes away from the attempts to simplify the reporting process of cross-jurisdictions.

Action: At the request of the Committee, the Chair agreed to write to the CEO in Saskatchewan to attempt to get that jurisdiction to consider entrance into the AAP.

(g) Quebec Ombudsman's Request/Follow-up

Background: A Quebec company had a worker domiciled in Ontario who claims he was injured in the US. The claim was denied by Quebec up to the appeal level. The employer then brought up the issue that this did not involve a Quebec resident or someone injured in Quebec. The worker claimed the IJA would govern. The Quebec WCAT said no and worker went for judicial review of this issue, introducing a constitutional challenge to section 8 of the Quebec *Act* concerning the domicile rule. The Superior Court found on judicial review that the IJA does not supersede the *Act* and that no *Charter* violation was found under sections 6 and 15. The Court did not accept the argument of a legal vacuum as no claim had been filed with the Ontario or South Carolina Board so there was no official decision by those Boards and also there was a civil remedy. This case is now on appeal to the Quebec Court of Appeal.

Action (Quebec): The case should be brought back on the next agenda for follow-up and will no doubt be addressed at the annual AWCBC lawyers' conference in August in Edmonton.

6. TEMPORARY FOREIGN WORKERS

Alberta posed the question as to whether this was an appropriate issue for this Committee. It was noted that there is a labour market opinion provided to the federal government in Alberta when there is a requirement for temporary foreign workers. The worker is then brought in for a temporary purpose (when no one else is available for the work). If a worker is injured, the situation of modified work is very difficult when a worker returns to their country of origin. It is also hard to coordinate care and address all return to work issues. Quite often, the individual is gone from the jurisdiction by the time the various opinions come in, including a second labour market opinion which is often necessary. It was noted the federal government has workgroups in BC, AB and MB to assist the process of bringing in foreign workers. The federal government is open to accommodating modified work without the requirement of a second labour market opinion to keep the foreign worker in the jurisdiction. Quebec noted it does its own immigration. NB noted it has a situation similar to this involving a US worker. The question for the Committee is whether we should expand the Committee's mandate to look at these issues or should there be a task force to examine these issues. The Committee noted this may be identified on workplans of other committees.

Action: Identify these issues for the inter-committee projects/discussions and identify whether there needs to be a temporary foreign worker inter-committee task force.

7. OCCUPATIONAL DISEASE CASE (BC, AB, SK)

In this case a disabled worker injured in SK in 1998 claimed compensation in Saskatchewan. It was difficult to determine exposure outside Saskatchewan. BC was sent a letter saying BC appeared to be the province of greatest exposure and, therefore, should adjudicate. SK did not deny the claim – they simply told the worker it was not a type of claim acceptable in SK. BC determined this was not really an IJA section 7 claim, as it was a claim in its own right through exposure in BC. However, this individual was not a BC resident for the past three years and this, combined with the fact that this exposure in BC was not a full two thirds of the total exposure, meant that BC could not accept the claim in this manner (given it did not meet the requirements under the BC *Act*). The conclusion is that if this had not been a section 7 IJA claim, it would be a

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situation where BC would have had to deny the claim. This is an example of the benefit of all the work under section 7 done by this Committee and is very meaningful.

Action: It is good to note cases that have benefited from the work done on section 7.

SK noted asbestos claims are on the rise.

SK noted that records are often sparse from "older" times and you cannot always rely on the unions, CPP or Revenue Canada to have records from the 50's and 60's.

Action: Discussion of cooperation on obtaining employment records in long latency claims and the notion of whether coworkers have insufficient evidence to support these. Would a benefit/compensation committee be interested in this issue?

Manitoba weighed in that the firefighter cancer question concerning long term exposure in MB and SK meets both criteria. It is not necessarily a situation of a worker falling through the cracks as two places can accept, however, it is not a section 7 question as there is a double entitlement situation (does this involve the risk of double payment/assessment and in this instance, should all costs be shared?). Section 7 of the IJA would suggest there should be acceptance but would not look for the exposure.

Action: It was recognized there needs to be a more specific case brought back to the Committee for consideration. QC advised this would help as QC needs to understand section 7 better in order to feel comfortable signing on. It was also recognized there is requirement for communication collaboration in occupational disease cases to ensure people do not fall through the cracks in long latency disease cases. This needs to happen by looking at more occupational disease case studies. **It was noted QC NB & NWT are the only jurisdiction that does not apportion hearing loss.** Hearing loss is not part of section 7 so workers can currently claim in more than one jurisdiction. **NB and NWT also noted they act in the same way as QC.**

8. NEW BUSINESS

(a) Burger King Case - BC brought forward discussion of a Burger King case where Burger King is intending to hire someone in the Atlantic provinces who lives in Ontario. There was a question about coverage under the IJA. They did a survey and noted the assessment regulations are different so it may come down to how long a person is residing in a province.

Action: The Chair is to follow-up with Brenda Croucher of the AWCBC to get back to the Committee on this issue.

(b) Australian Firefighters - BC brought forward the issue of a firefighter exchange with Australia that was made without consideration to workers compensation issues. BC noted workers might be fit for coverage and this shows there is need for education of the provinces on worker' compensation issues.

(c) Election Forms - Quebec brought forward the issue of election forms and noted QC receives very few. They further noted that workers are not always being advised that they have a right to elect when an accident happens. BC brought forward an example of an instance where a worker does not get information about the right to an election and spoke about an instance where this situation was corrected between MB and BC when an election/de-election was allowed. Both boards must agree in these situations and repayment must be in full. MB inquired as to which jurisdiction needs to be notified of an injury in an IJA claim and noted the importance that we must give notice so the election can be offered.

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Action: Better train our respective staff to notify other jurisdictions/employers on election forms and notification procedures.

(d) New Chair – It was noted that the current Chair has served for 4-5 years and not fair to ask Chair to continue unless she has a strong willingness to do so. The Chair indicated she would serve for another year. Thanks were given by all Committee members. The Chair asked about succession planning – need to have leadership on Committee. The QC representative offered to sit as Vice-Chair over the next year with a view to stepping forward if she is still serving on the committee at that time. Discussion was held that the Committee would be best served given the large work agenda in moving to the two-day meeting.

Action: Details around succession plan to be provided to the Executive Committee

LUNCH

9. COMMITTEE MANDATE; GOALS, OBJECTIVES, WORKPLAN (#5 on Agenda)

How does preventing workers from falling through the cracks fit in? AB noted this should be amended to reflect the principles of the agreement and the group showed a consistent desire to amend. Several mandate ideas included: (i) avoidance of duplicate assessments; (ii) ID challenges in the agreement (iii) ensure workers do not fall through the cracks (iv) develop a team approach to work through problems and issues (v) to monitor and evaluate improving the IJA and its effectiveness (vi) to share experiences and resolve issues and provide education and assistance (vii) to monitor other agreements for workers compensation issues.

MB inquired as to whether prevention should be something that is on the table for consideration by this Committee.

Action: Document this issue in the Minutes for consideration by the Health and Safety Committee.

Day 2 - Discussion of Mandate Continued

The mandate involves supporting interjurisdictional cooperation and awareness on workers compensation matters through monitoring, evaluating and improving the IJA.

Quebec noted it would be greatly appreciated not to inform workers that they do have coverage in other jurisdictions but just set out that they are being referred to the other jurisdiction to explore the issue of coverage. QC also noted that when a worker is exposed in two jurisdictions, it is their experience that, at times, the payment is put on hold/suspended until QC makes its decision. QC does not understand why this happens and advised that this “back and forth” is confusing for the worker and for the adjudicators. Hopefully, the IJA Coordinators can assist with this. QC suggested it is good to call the other IJA coordinators so this becomes their issue.

The CSST has had some difficult experiences with the IJA operationally and is hoping that their feedback will assist the process to improve the working of the IJA. Many of the issues are set out in our goals and objectives, and hopefully this will assist the IJA in becoming more of a priority issue with the Boards.

The Chair expressed the concerns shared by QC are ones that many jurisdictions have felt and MB expressed that often, face to face contact is important such as the contact that takes place at Committee meetings to sort out this sort of thing. The Chair advised QC that we are all here to help with a response to claims should they need it. SK indicated the difference may be that people are weighing in at a higher level who are arms length from decision-makers or trying to

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resolve these issues. This can involve different practicalities. ON questioned whether getting money for the IJA is hard as it is not always an organizational priority for all jurisdictions and as well, it noted that finding the time to address all these issues is also a challenge. The Chair identified that this issue would be brought to Executive Committee. AB suggested we revisit the mandate and recommit to it by organization.

It would seem useful to remind the Heads of Delegation of the Committee's view of the nature of the agreement and the obligations under it. The history of the Committee was more legal at first and now a policy body creating rules was reviewed with a mix of some operational people. There was a discussion of what was necessary at the Committee table to make the agreement flourish. The Chair noted we needed to decide who should be at the Committee table. The executive representative weighed in there needs to be a stronger connection between committees to ensure there is no frustration around this issue. NS questioned whether there needed to be a cross committee exchange and the YK suggested there needs to be a long term plan to help parties work together. The Chair suggested that a model closer to the IAIBC would be useful. SK suggested other committees have access to information as it might assist with the improvement. The Chair also pointed out that people at the Committee table need to be able to make decisions. The executive representative weighed in that we also need more evaluation of lessons learned so we do not repeat the same problems.

MEETING CLOSURE

- **Workplan to be taken to the Executive Committee by Executive Sponsor and Chair**
- **Meeting ended with thanks given to the excellent facilitator and transcriber for all their kind assistance**