

**AWCBC ALL COMMITTEE CONFERENCE**

**INTERJURISDICTIONAL COMMITTEE MEETING: MAY 14-15, 2008**

The Fairmont Royal York Hotel, 100 Front Street West, Toronto Ontario

**Attendees:**

Pam Cohen – BC

Ed Bates – BC

Bruce Willis - YK

Doug Mah – AB

Lorraine Thomson – AB

Rhonda Dean – AB

Daryl Davies – SK

Glenn Jones – MB

Mike Trigg – NT/NU

Cynthia Mendes – ON

Liza Bowman – ON

Suzanne Hewitt – ON

Pascale Goulet - QC

Jean Landry – NB

Brian Field – NS

Paula Arab – NS

Kate Marshall - PEI

Carol Anne Duffy - PEI

Ann Martin – NL

Welcome and Introductions

1. Agenda Review
2. Review February 2007 Minutes. Agree to adopt changes recently submitted by Pascale Goulet
3. Action Arising from Minutes (Material)

Discussed what was done last year & thanked everyone for stepping up with significant work effort.

**4a (item 1 on workplan)** Terms of reference have been accepted and the French version has a new target of June 30, 2008 & the resource will be Pascale. Finalized English version today May 14, 2008. Post.

**Action: Brenda Croucher to provide final draft of IJA Manual with HOD signature sheet & terms of reference – June 2008**

## AWCBC ALL COMMITTEE CONFERENCE

### INTERJURISDICTIONAL COMMITTEE MEETING: MAY 14-15, 2008

The Fairmont Royal York Hotel, 100 Front Street West, Toronto Ontario

#### **2a (workplan) completed** – need to review existing materials

The committee recognized there is a need to create training materials that include reference to the IJA itself to be understandable to a broader audience other than those who adjudicate claims. Brian from NS and Rhonda from Alberta have agreed to be in subcommittee to start the process & Mike from the NWT was able to confirm Gerrie Slifka from the NWT, as a participant with training/adult education expertise.

- Checking with committees & timeframe
- Revised dates on workplan & resources

#### **4b MARS Material**

Reviewed correspondence and suggested the following change to one paragraph:

*“Consequently, injured personnel who may have entitlement to benefits in either their home jurisdiction or where the injury occurred must elect in the adjudicating jurisdiction.”*

**Action: Report back with suggested changes in 2009-Doug**

**3a (workplan)** - Confirmation of word changes by May 2009

**3b (workplan)** - Write report & share with IJA November 2008 committee approval February 2009

**3b (workplan)** - Submit report to executive sponsor March 2009, to committee May 2009

**4a (workplan)** - letter from Saskatchewan CEO was received March, 2008. Received agreement, in concept, to proceeding with 3-year pilot for AAP in Saskatchewan, pending policy approval. Discussed the need for Saskatchewan to amend its statement in Appendix A, to state that they will enter a 3-year pilot, per s.17.4.

**Action: Daryl agreed to provide this information to his Board.**

#### **4c Access to Information from Department of Transport (4d workplan)**

- Jean provided update on info from department of transport; the committee discussed the info from department of transport. Jean found no other trucking agreements beyond AAP but did find the International Registration Plan (IRP) which includes info from US and Canada at vehicle level. Could potentially have MOU.
- Next steps each jurisdiction

**ACTION: ALL to advise their respective assessment reps in time for their Assessment Directors meeting in June. Jean will provide website address to group & may undertake small pilot.**

**Report back May of 2009**

#### **4d Processes (election forms) to Identify Gaps**

##### **Double Compensation (5a 5b workplan)**

- Discussed the processes election forms to identify gaps. Daryl reviewed survey & did not identify any specific cases where duplicate compensation occurred.
- Important to educate our respective employees that workers must be advised of their potential right of election, regardless of whether or not the election can be offered in the jurisdiction providing the information

**Action – Pam & Pascale to provide info on triggers for potential IJ claims.**

##### **1. Review IJ Statistics (material) -8a,b,c, 9 (workplan) Pascale**

- Received statistics

## AWCBC ALL COMMITTEE CONFERENCE

### INTERJURISDICTIONAL COMMITTEE MEETING: MAY 14-15, 2008

The Fairmont Royal York Hotel, 100 Front Street West, Toronto Ontario

- Discuss uses and potential use of statistics. In many cases, it is the number of claims and dollars involved that are used to determine staffing, business plans, IJ activities
- Stats include cost reimbursement, what accidents happen in each jurisdiction, managing claim costs, putting cost of claim to the jurisdiction where claim occurred. Some Boards track additional information such as mutual aid and cooperation (arranging medical exams for workers who have claims in other jurisdictions, as well as elections coming in and going out).
- One mandate is to raise awareness of IJA and to educate.

***ACTION All – Using Pascale’s emailed information of January 30 2008, go back to your Boards and determine possibility of tracking out of province activities and inquire what IJA information would be useful.***

#### **Readjudication material**

- Doug provided update on different types of readjudication from different jurisdictions. Significant discussion occurred re ongoing challenges between jurisdictions and whether or not we should raise the minimum level of reimbursement to an amount greater than \$1,000. Another suggestion was for committee members to investigate dollar for dollar reimbursement, as with the IJT. Is this legislatively possible? There was also a description of the European model, which is a different type of reimbursement.
- 2. Readjudication –Doug**
    - a. Cost Reimbursement** – Discussed various scenarios where “readjudication” takes place and agreed that in only one type of case is it appropriate. This is where the individual is determined not to be a worker in the reimbursing jurisdiction. Doug’s paper on this issue, with scenarios, should form part of our future training materials.
    - b. Cases of Disputed Claims** – Reimbursing jurisdiction disputes whether claim is an IJ claim at all. It was agreed that whatever happens, the worker should not be left hanging. 3<sup>rd</sup> party dispute resolution would be the recommended avenue if adjudicators and IJ Coordinators could not come to agreement first.
    - c. Cost Relief** – The assessment costs follow the employer to the jurisdiction where the injury occurred. Cost relief applied by the reimbursing Board is not considered readjudication. Discussed methods of getting file to employer

#### **3. AAP Transfer of Costs and Forum Shopping**

Doug provided an example of a complex claim/assessment issue in which an AB employer was not at fault for a 3<sup>rd</sup> party accident and the worker’s claim was eligible for cost transfer, but this would have no effect.

The suggested resolution agreed to was to transfer claims costs of the AB account of the MB-based employer. Obtain a refund of assessments under the AAP from MB, who can then charge those costs to the MB account of the MB-based employer. Then treat claim as if MB worker had sustained the injury in AB and elected to claim AB.

#### **4. BC’s Suicide Awareness Recommendation**

Pam described a BC case that had been brought to the Committee in the past. In preparation for a possible Coroner’s Inquest, BC has taken steps to attempt to mitigate suicide risk in the future and is asking mutual aid and cooperation from other Boards. The Chief Medical Officers of PEI, NWT, AB, NFLD, and NS replied to a query by their counterpart in BC to see if psychological assistance on an emergent basis are readily available and if protocols in place. AB has protocols. PEI does not have sufficient psych resources in their province.

***ACTION – ALL Survey your home jurisdiction to find out if early intervention protocols are in place to reduce/prevent psychological sequelae on claims. Does your jurisdiction have suicide protocols in place when staff faces a worker’s threat of suicide? Is someone at your Board able to assist other Boards in arranging emergency psych assistance if called by another Board pertaining to workers living outside the adjudicating jurisdiction?***

## AWCBC ALL COMMITTEE CONFERENCE

### INTERJURISDICTIONAL COMMITTEE MEETING: MAY 14-15, 2008

The Fairmont Royal York Hotel, 100 Front Street West, Toronto Ontario

#### 5. New Business

**a. Retroactive Application of AAP (Doug/Rhonda)**

Case Study – AB Act doesn't require election for in-province trucking accidents. Difficult to contact employer to determine if account existed or if required to register. Worker injured in AB. No election but claimed AB (Manitoba resident). Retro AAP implemented in MB. Reimbursement denied by MB. Trigger should have been out-of-province address, though not a trigger in QB in all cases. Retro AAP should not have been accepted. No reimbursement to AB under general IJA. AB should request premiums and MB should get credit. Lesson: Board who collects all assessments under AAP is required to notify all participating Boards and reimbursement should not have been denied by MB. If you collect the assessments, you pay the claim.

**b. Retroactive Application of Situs of Accident (Doug/Rhonda)**

Case Study-worker changes facts re where accident occurred (AB/SK). Request for reimbursement denied as it was over 2 years, no election under 4.1. Is there leniency allowable on limitation period? The election is a shield to prevent double compensation, but not necessarily a bar to reimbursement. However, if the evidence shows that there was no secondary application, it would be inappropriate to say no. The limitation period is important, though can be waived if circumstances dictate. The IJA Coordinator role is to ensure that the IJA works properly and not to attempt to minimize payment.

**c. Cost/Charging Distribution (Doug)**

What do you do with the shortfall costs? Charge to employer? Majority said yes, but might be appropriate to relieve costs. Experience rated employers get hit twice. Possible to amend agreement with Boards also agreeing to amend their policies. Another argument is that the costs are just apportioned. However, the employer gets charged for the accident in 2 jurisdictions.

AB still a tort province. They still relieve costs on 3<sup>rd</sup> party matters as soon as they determine that there is insurance and a viable cause of action.

Fatalities – in some jurisdictions, the amount charged may be an average amount and in some jurisdictions, it's a maximum. In cases where there are no dependants, costs still charged. If you are a home jurisdiction and you have an out of province fatality and you pay, do you include or exclude the cost into the averaging. At least 3 jurisdictions charge the maximum. Is it fair to include out of province accidents?

If the accident happens in your jurisdiction and adjudicated by another, do you treat the same? Fatality should only be counted in the jurisdiction where it occurred.

**Action (all) Check with your NWISP rep. (need consistency)**

**d. Invoicing**

For fatalities, do you request actual or average? Should be actual costs? When you pay out, do you pay out actual or estimated/maximum? Response: actual

Agreement billing minimum is quarterly. A jurisdiction had been billing monthly and will cease. Should reimbursement occur at the same rate as out-billing?

**e. Translation Fees – no issues**

**f. Trucker/Court decision (Pascale)**

Worker living in ON, working for QC employer injured in US. CSST denied, as worker not a resident. At review and appeal, decision upheld. Employer stated that worker was not a worker. Employer opined that IJA superseded ACT, but this was not upheld. At Superior Court (Charter Challenge under s.7), decision was that there was no constitutional breach. At

## AWCBC ALL COMMITTEE CONFERENCE

### INTERJURISDICTIONAL COMMITTEE MEETING: MAY 14-15, 2008

The Fairmont Royal York Hotel, 100 Front Street West, Toronto Ontario

Court of Appeal, decision upheld (no breach). Worker then went to Supreme Court but appeal denied.

- g.** Invoices/med reports sent to other WCB's (Pascale)  
Does an initial invoice start a claim? In many jurisdictions, yes, though further information is gathered to make further determinations. In some cases, invoices are held for a period of days to see if another document arrives to match to existing claim or start new claim. If no further information arrives re: an invoice where no claim exists, claim is abandoned. In other jurisdictions, invoice is paid or at least a medical report fee paid if that is the first document, or in SK, an "auto-adjudicate" mode allows payment. Letters are often automatically triggered by such documents. In QC, keep for 6 months and if no match, sent back to original sender (e.g. hospital)
- h.** IJA reimbursement requests (non-registered employer vs. should have registered) (Pascale)  
Issue has been discussed in past as well. Should check, if employer not registered, whether employer should have been registered. This is not a bar to reimbursement. There are sometimes challenges in determining whether employer should have been registered.
- i.** Medical Assessment Referrals (Pascale)  
When QC requests assistance in arranging medical appointments, if there's a gap in the length of time it takes to arrange appointment, would it be possible for Boards to update the requestor with information on the future appointment date (to facilitate communication)?  
Suggest that the letter from the provider to the worker, copy to the adjudicating Board and also the letter from the requestor to include a similar statement.
- j.** Consent when requesting claim info from another Board (Ann)  
Privacy provisions pose some challenges to release of information in certain cases. When another Board requests medical information from a Board, for the purposes of adjudication at the other Board, information has been released, in the past, without consent. NFLD will be requesting consent from the worker first and question arises as to what form of consent is required. YK is of the opinion that consent is not required due to their legislative authority. NS would attempt to get consent first, but their Act says that if they are releasing information that is for the use in which they had originally collected it, it is ok to release. Have to review on case by case basis. SK will release information that is being released for workers compensation purposes. ON requires written consent from worker in most cases, before any health records will be released. However, ON provision stipulates that if the health care provider believes worker will harm self or others, information can be released. BC takes a similar position as ON, with some use similar to NS. QC requires specific consent. In some cases, QC asks the other Board to provide similar protection. NT states that any medical report made out for the purposes of the claim belongs to NT. MB uses "consistent use" provision. Consent would be requested if info requested by non-contracted 3<sup>rd</sup> party. NB similar to MB. Application for compensation allows release.
- k.** Chair: Pam has enjoyed serving on the committee for the past 15 years and in the role of Chair for the past 5. It is time to hand the Chair over to a willing volunteer. Call for volunteers. Pascale, the current Vice Chair, cannot take on the role for the coming year because of her extensive time out of the country in the coming year.

Liza Bowman and Cynthia Mendes have agreed to co-chair!

Adjourned 10:10 a.m.