AWCBC ALL COMMITTEE CONFERENCE

INTERJURISDICTIONAL COMMITTEE MEETING: MAY 12 – 13, 2010

The Marriott Hotel, 90 Bloor Street East, Toronto Ontario

2010 MEETING MINUTES

Attendees:

Doug Mah – AB

William Ostapeck – AB

Janet Welch – AB

Rhonda Dean - AB

Mark Powers – BC

Deepak Kothary – BC

Kevin Molnar – BC

Lloyd Hikida – BC

Glenn Jones – MB

Ann Martin – NL

Jean Landry – NB

Paula Arab – NS

Sarah Gallant – NS

Amy Groothuis – NT/NU

Susan Abernethy – NT/NU

Cynthia Mendes – ON

Liza Bowman – ON

Suzanne Hewitt – ON

Kate Marshall - PEI

Carol Anne Duffy - PEI

Pascale Goulet - QC

Sophie Genest - QC

Daryl Davies – SK

Bruce Willis – YK

Sheila Vanderbyl - YK

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Welcome and Introductions

- Agenda reviewed and adopted.

- Review of May 2009 Minutes: QC and NL submitted changes to the minutes. Revised minutes will be distributed to committee members by May 20, 2010 for approval. Final minutes will be issued by May 31, 2010.

  Action Item:

  - **Cynthia Mendes to distribute final approved minutes to committee members by May 31, 2010.**

- Action Arising from 2009 Minutes

  - **Discussed work completed last year & thanked everyone for their contributions.**

  - **Access to Information (Item 1a &b 2009 Workplan): Bruce Willis**

Bruce advised the committee that there are occasions when it would be beneficial for jurisdictions to share information regarding a worker's claim or employer activity (e.g. possibility of fraud, lack of disclosure regarding employment activity). He stated that in some cases, obtaining a worker's consent to share information may alert parties to a possible investigation of a claim or increase potential threats of harm to WCB staff.

BC stated that a Form 6 (worker's application for compensation benefits) asks the worker for information and also indicates that the worker's signature constitutes consent to obtain or share certain types of information to manage a claim. BC asked if it is possible to change the Form 6 to broaden the scope of information that can be obtained or shared with other compensation boards in Canada.

Bruce advised it may be possible, however, there was the possibility that it would also be contrary to provincial health care privacy legislation.

AB indicated their hospitals require a different kind of consent to comply with stringent privacy requirements. Changing the IJA will not allow AB to obtain certain types of health information.

NL stated that its jurisdiction requires informed consent to obtain information, especially in situations of potential fraud. The wording in a general consent does not cover anomalies.

NS advised its jurisdiction has similar guidelines as NL. Any information that is collected must be used for the purpose for which the consent was provided.

QC advised that before the CSST can release personal information to a third party outside the province, it must ensure the same minimum protection is provided by the other jurisdiction's privacy legislation.

Following the 2009 IJA Co-ordinators' meeting, Bruce canvassed jurisdictions to determine if amending the IJA to allow for greater information sharing would run contrary to a jurisdiction's own privacy legislation. He advised that of the responses he received, some jurisdictions are able to share information while others are not. Bruce has concluded that privacy legislation supersedes workers' compensation legislation and if the IJA were to be amended to include an information sharing clause, it may be contrary to some jurisdiction's privacy legislation.

Bruce is awaiting responses from a few jurisdictions before he can compile the summary report. The report will reflect that changing the IJA will not allow jurisdictions to enter into information sharing agreements that contravene their own privacy legislation.

Action Items:

- **Jurisdictions that have not responded to Bruce's survey are asked to do so by the end of May 2010.**
- **Bruce to compile and distribute survey results to committee members by end of June 2010.**

- **Training Materials (Item 2a 2009 Workplan): Rhonda Dean**

Rhonda provided a summary of the training materials she previously collected from other jurisdictions. She noted that some boards have more comprehensive training packages than others. She cited common deficiencies for jurisdictions to independently resolve:

1. Jurisdictions are not directly linking the instructional material to applicable sections of the IJA. It would be beneficial for jurisdictions to do so.
2. There is an absence of relevant discussion papers in training manuals (e.g. discussion papers of 2004 & 2008). Jurisdictions should be including these documents.
3. Lack of specific instructions as to how to set compensation rates. This would be a useful tool for front line staff.
4. Absence of sample decision letters that can be used as templates to clearly outline the specific legislation and policy that prevents full reimbursement or warrants a reconsideration of a decision. It appears MB provides calculations, and applicable policies and legislation to explain any shortfalls. At the 2009 IJA Meeting, it was agreed that jurisdictions should adopt this

practice. Boards need to implement changes agreed upon in order to make the annual meetings effective tools for change.

5. Dispute Resolution section (Section 16) missing from all manuals.
6. Section 8 has not been updated by various boards.

Action Items:

- **Jurisdictions to take the above information and revise training materials.**
- **Manitoba to provide Chair with samples of decision letters with personal identifiers removed that could be used by jurisdictions as templates. Chair to distribute samples to all jurisdictions. (July 2010)**

- **Emergency Management Services Material (Items 3a-d, 2009 Workplan): Doug Mah**

Doug advised committee members that there are agreements/protocols for national or international sharing/importing/exporting of workers both at the federal and provincial/territorial level to provide emergency services. For example, Alberta has entered into an emergency services agreement with a particular state in Mexico to exchange such services. Doug indicated that governments may not necessarily be informing their respective WCBs of such agreements.

Doug circulated jurisdictions' responses to the surveys regarding workers' compensation coverage for emergency services workers and the existence of emergency service agreements. Original intent of the survey was to ascertain if there should be any special handling of these types of workers or is the IJA as it presently stands, adequate to deal with them.

It was surmised from the responses that from a national perspective and subject to statutory limitations, every jurisdiction will cover workers coming into their jurisdictions and coverage will be extended to workers leaving their jurisdiction. For the IJA, this means there is coverage for workers (subject to statutory limitations) and a right to elect under the legislation.

With respect to existing agreements, Doug advised that of the jurisdictions that responded, there are some that do have agreements. Apart from MARS agreement, there are agreements that jurisdictions are party to in a variety of circumstances beyond forest fire fighting. Emergency relief also includes pandemics. It was recognized that it was difficult to obtain contracts from other governmental organizations as they are not always forthcoming with such information.

YK advised an EMS Agreement exists with Alaska for forest fire fighting and that it has been advised it will receive a copy but has not seen it yet. With respect to MARS, the right to elect is now incorporated and is no longer contrary to legislation. The determination that needs to be made is whether the

various agreements that exist are consistent with workers compensation legislation in Canada. If it is not consistent, are we prepared to live with it, especially with regards to rights of election? MARS agreement shows that WCBs should be consistent to ensure workers rights are not restricted. The task is to identify these agreements and determine if there is consistency with the IJA. If a jurisdiction has a specific agreement, the agreement should be reviewed to determine if it contravenes a worker's right to elect. If so, action should be taken to rectify the situation.

MB advised that provincial agreements do not necessarily have consistent drafting between them because the various branches of government do not have their contracts reviewed by a single legal department. In addition, most of the agreements MB found were between federal and provincial levels of government that were self-insured employers and therefore excluded from participation in the IJA.

NL advised that in its jurisdiction, the ability to obtain coverage depends on the individual's status as a worker. If the person is a volunteer, they may not be entitled to coverage because it would fall under coverage of a self-insured employer. The person who is injured has to meet the definition of worker under the respective legislation.

Doug commented there may be agreements that are inconsistent with the IJA and each jurisdiction will have to convince the applicable authority to change the agreement and make them aware that a worker, who goes from jurisdiction to jurisdiction as a continuation of his/her work, has the right to elect between the province of injury and residence.

Action Items:

- **Jurisdictions which have not responded to the survey are asked to submit their materials to Doug by end of May 2010.**
- **Jurisdictions are to individually identify and notify their respective governments of any agreements regarding emergency service workers that may conflict with a worker's right to elect.**
- **Doug to distribute survey results and list of Agreements. (June 2010)**

- **Alternative Dispute Resolution Training Guide (Item 2b, 2009 Workplan): – Doug Mah**

Doug provided committee members with a draft paper for consideration outlining the IJA dispute resolution best practices training guide. He prefaced the document by stating the principles/foundation for dispute resolution. Doug reiterated that the IJA is a living document that continues to be

interpreted through the IJA Co-ordinators' meetings. Jurisdictions must look at the general process to determine whether or not to engage in dispute resolution and adjudicate in good faith.

Disputes typically arise when invoices are not paid and a business decision must be made as to whether or not to pursue the matter. A number of factors must be considered when determining if one is going to proceed with the dispute resolution model. These include: effort required to secure payment, amount of payment, length of time to resolve the dispute. For example, AB has a case with QC that has not been resolved for 15 years, with a number of letters being written back and forth. In addition, there must be a common understanding of facts that both jurisdictions agree upon (Point 7 on page 2 of the ADR Training Guide). In another case, NWT and AB had different sets of facts; therefore it was not a differing interpretation of the IJA.

One must determine why a jurisdiction is not willing to pay in full. In the first step, the case manager may want to speak to the IJA Co-ordinator before contacting the other board.

There are four possible options for dispute resolution. A fifth possibility is one board suing another board. However, this would not be acting in good faith under the IJA.

Outcomes of dispute resolution are not binding because of exclusive jurisdiction of each board regarding claims paid to workers in their respective jurisdictions. It remains a jurisdiction's decision to implement the dispute resolution decision into subsequent administration of the IJA. One also has to take into account any limitation periods of applicable provincial legislation.

AB advised it has been through the arbitration process twice, achieving one unfavourable result and one somewhat favourable result, but is still a big supporter of the process. The comment at Paragraph 35 of the arbitration decision between AB and YK notes adjudicating boards should make every effort to ensure that the reimbursing board is kept informed of costs being incurred.

ON indicated that Paragraph 27 of the arbitration decision provides clarification as to the meaning of Section 9.5 of the IJA. The arbitrator stated that billings should not be more frequent than quarterly, perhaps annually. ON would support annual requests especially in the long term claims, where the experience rating window has closed.

SK advised it could not make requests annually because its computer system is designed to automatically send out requests quarterly. Its' finance department would prefer requests to be issued monthly.

YK advised that perhaps the IJA needs to be amended so that incidents of waiting five or more years to request reimbursement do not occur. This not only affects administrative costs, but Chambers of Commerce are inquiring as to the lengthy delay for reimbursement on such claims because in the YK, administrative and claims costs are combined. There is nothing in the IJA regarding delays in requests

for reimbursement but boards need to be mindful of running afoul of provincial legislation such as with a limitation of actions (after six years in some jurisdictions).

Doug advised there is no specific point to be made regarding dispute resolution except that if a claim for a small amount is causing friction between two boards, it may be better for the requesting board to not push the matter if it appears no amicable solution is available in order to preserve the good relationship with the other board.

BC advised that the AB and YK arbitration decision seems to indicate requests should be made no more than quarterly but at least annually under the IJA.

Action Item:

- Jurisdictions are asked to invoice each other in a timely fashion.

- **Best Practices Guide – AAP (Item 2b-2009 Workplan): Deepak**

Deepak was to look at best training practices for the AAP, but after conferring with co-chairs, determined that this would be ideally addressed after draft of new AAP model is agreed upon.

- **General Cost Reimbursement (GCR), Section 9 (Item 9, 2009 Workplan): Suzanne Hewitt**

Suzanne raised the question of the value of continuing GCR under Section 9 of the IJA. She noted that there are administrative costs and problems (e.g. impact to experience rating) as well as issues between jurisdictions that are repeatedly discussed at IJA committee meetings. ON asked what value would be lost if cost reimbursement did not exist. If the GCR is to continue, Suzanne raised the question of increasing minimum threshold for cost reimbursement from $1,000 to $10,000 as well as introducing a threshold for secondary cost reimbursement requests.

The Chairs advised the committee that prior to the meeting, they asked Lori Sain from MB to provide background material regarding cost reimbursement which will be distributed to committee members after the meeting. It was noted that the 1979 IJA actually removed cost reimbursement, but it was thereafter reintroduced as Appendix C in 1993.

Jurisdictions discussed the intent/benefits/drawbacks of Cost Reimbursement under Section 9 of the IJA. There is considerable administrative cost and process associated with the task as commented on by all jurisdictions.

QC intermittently receives invoices for less than $25 and the cost for staff to review the request and issue reimbursement is considerably more than the invoice itself. QC suggested a threshold of $200 for secondary requests.

NS advised there should be clarification about what is being paid versus what is being billed, especially in the statistics that are being tracked. Furthermore, cost reimbursement sometimes occurs after the experience rating window closes, thereby having no effect on the employer's cost statement of the reimbursing board's jurisdiction.

NS raised a situation whereby a Canada-wide transportation carrier is self-insured in one jurisdiction, but not in all others. If a claim occurs in a jurisdiction where the employer is not self-insured, would there be a possibility that there would be no reimbursement from the board where the employer is self-insured and therefore not subject to the IJA?

AB advised that cost reimbursement recognizes the national nature of work and the fact that workers flow from one jurisdiction to another freely as a constitutional right. The trend in Canada has been to reduce barriers. Cost reimbursement allows for a jurisdiction to more properly insure its risk for workers traveling into other jurisdictions. The jurisdiction that creates the risk ought to pay the costs of a claim. A large number of workers claim in their home jurisdiction and if cost reimbursement did not exist, the home jurisdiction would be facing considerable costs for claims for which its jurisdiction did not create the risk. For example, should MB, who has no cap on its wage loss benefits, be obliged to carry all the costs of a claim when MB was not involved in creating the risk such as where a MB resident travels to AB for work and is killed due to some hazard created by the AB industry which MB has no control over?

QC stated that cost reimbursement is like a balancing scale and is required to avoiding duplicate assessments. Cost reimbursement is linked together with paying assessments. An employer pays a premium, and the worker receives coverage. It would not be fair to other employers who do not have workers outside of QC to be paying for the increased risk factor created by employers who do.

QC has an international agreement with France regarding worker's compensation coverage. The worker is provided with a certificate of coverage from the CSST. France agrees not to collect assessments if Quebec is already doing so. Therefore, reimbursement is not necessary.

YK stated the assumption is that the cost of requests/reimbursements balance out at year end. Bruce suggested one possibility to streamline the labour intensive process would be to raise the threshold for reimbursement to $10,000. Small boards cannot recover enough from regular employer assessments to cover catastrophic events and therefore cost reimbursement is a factor used for offsetting the expenses and risk. In addition, some jurisdictions may have to change legislation to remove cost reimbursement.

QC indicated that about 45% of its claims have costs below $10,000. Raising the threshold to $10,000 would exclude a significant portion of claims from cost reimbursement. This may be administratively easier, but it would detract from the importance of dedicating resources to the IJA and would likely result in the same problems of not enough manpower to do the administration as is already the case

because boards would reallocate resources due to fewer IJA claims. In addition, the mobility of the current workforce means that the number of IJA claims will not be decreasing in the future and resources will be needed to administer these claims.

SK asked the Committee to consider paying dollar for dollar under Section 9 as is currently done with the AAP, Section 12, thereby charging the true costs of claims to employers in the jurisdiction ultimately responsible for the claim costs.

NS advised it has a minimal number of claims exceeding the proposed $10,000 threshold in its jurisdiction and therefore it might be effectively removed from the IJA if it agreed to an increased threshold. In addition, if statutory limitations to reimbursement are not honoured, it could be a significant monetary burden to smaller jurisdictions which have wage loss caps.

AB stated that jurisdictions should not be second-guessing the decisions of other boards and looking for items that are not covered under their respective legislation. AB agreed with SK that ideally, cost reimbursement could be handled by finance departments, simply as another 3rd party invoice to be paid, thereby reducing it to a commercial or financial transaction.

NB stated that there should be a system in place that is efficient as possible, perhaps raising the threshold to $5,000 as opposed to $10,000. This would still allow for lower dollar value claims to be included in the cost-reimbursement process to ensure the IJA remains materially viable to smaller boards.

Deepak indicated that statistically speaking, assessments are in the eight billion dollar value range in comparison to the denied value of claims which is about one million, so in the big picture it is a very small percentage. Is the value of denial sufficient to go through the current cumbersome administrative process of recalculating the maximum claim costs payable under the reimbursing board's legislation?

QC indicated that a cheque cannot be sent to another Board without a file being opened. The file is the justification for the invoice attached.

YK suggested that in the absence of change, cost reimbursement needs to continue because there needs to be a basis for approving costs to be paid. Furthermore, raising the threshold may be prejudicial to its board due to its small size.

AB advised that there are no impediments in its legislation (section 29) to paying dollar for dollar. NS advised the impediment may not be legal, but rather financial.

SK stated that a board should eventually recover the higher costs of paying dollar for dollar on regular IJA claims by imposing those higher costs against the firm experience of the accident employer which

will result in higher assessments. SK was in favour of dollar for dollar reimbursement under regular IJA as under current AAP.

Bill stated that theoretically, it is not the Reimbursing Board's claim so the Reimbursing Board's legislation should not apply to limiting the benefits payable to the other board. Shouldn't the boards look at their respective legislation to see whether it is possible for all jurisdictions to actually pay if moving to dollar for dollar invoicing?

AB stated it can pay in conformity with its own Act or the Act of the jurisdiction where worker was reimbursed (injured).

Action Item:

- **Individual jurisdictions to determine and report back at next meeting if: 1) there are any legal impediments to paying dollar for dollar for General Cost Reimbursement under Section 9, as is done under the AAP Section 12; 2) it is agreeable to raising the threshold from $1,000 to $5,000 for cost reimbursement; 3) it is agreeable to establishing a minimum invoice amount for subsequent requests to be a minimum of $200.**

- **Access to Information from Department of Transport (Item 4a-c 2009 Workplan): Jean Landry**

Jean stated that there may be a number of trucking companies who have chosen not to take advantage of AAP, and if so, they may be under-reporting to jurisdictions, thereby resulting in fewer dollars available to cover the cost of AAP claims in general. At the present time, there is no hard evidence to suggest under-reporting is a significant problem.

There are external provincial agencies that could potentially assist in identifying and tracking inter-provincial trucking activities such as the International Fuel Tax Agreement (IFTA) through Department of Finance. The Department of Finance has an on-line report that identifies particular trucking carriers and their kilometres travelled by jurisdiction, total number of litres consumed and total litres purchased in each jurisdiction.

Jean advised his action point from the last IJA Committee meeting was to canvass jurisdictions to determine if: 1) they could enter into information sharing agreements with government branches/agencies responsible for IFTA and 2) there was sufficient concern/interest from the various Assessment Departments to enter into information sharing agreements. He distributed survey results to committee members.

Deepak advised this issue was raised as an agenda item at the Assessment Directors meeting in June 2009. Attendees were not as familiar with the issue; however, they thought it was an item for further

consideration, especially if data became available to show significant under-reporting by trucking companies. Deepak noted that B.C. legislation does not allow for sharing of information with other boards if it had an information sharing agreement with its IFTA regulator.

NS stated this was not an IJA committee issue, but rather an issue for the individual assessment departments of jurisdictions. Many jurisdictions already have an agreement with Canada Revenue Agency regarding collection of payroll information for the purposes of auditing employer assessment.

QC advised that it is difficult to determine which jurisdictions a trucking company drives through. It is an assessment issue and one that individual assessment departments should deal with. Should such information sharing agreements be made in the future, the collected and shared ITFA data could be monitored on an ad hoc basis.

The Committee agreed this matter was primarily an assessment issue that did not fit within the IJA Committee's mandate and that jurisdictions would be responsible for entering into their individual MOUs to access information from various federal/provincial agencies. It was determined that no formal request to the Assessment Directors Committee Chair asking for a review would be necessary as the item was already before the Assessment Directors in 2009. Its next meeting is set for June 26, 2010. Deepak was not certain if this matter was on the agenda, but did not see a lot of interest or anxiety around the issue during the 2009 discussion.

- **Triggers for Potential IJA Claims (Item 5-2009 Workplan): Pascale Goulet & Sophie Genest**

QC provided committee members with a list of triggers to identify potential IJA claims for the purposes of issuing and obtaining a signed election form from a worker. A signed election forms is a useful tool not only to identify the jurisdiction in which the worker wishes to claim benefits, but also to facilitate the cost reimbursement process under the AAP and Section 9. The absence of an election form could potentially mean a worker is receiving benefits from more than one jurisdiction for the same injury and their employers would be charged duplicate assessments for the same injury. QC reiterated that no jurisdiction has limited its participation in Section 4.1 of the IJA and therefore election forms should be obtained from workers. It is important to send the election form to the other jurisdiction as soon as it is received from the worker rather than only when required in conjunction with an IJA reimbursement, because it is harder to collect overpayments from the worker at a later time if double compensation has occurred.

Sophie advised that during her previous attendance at IJA Committee meetings (prior to 2001), the periodic failure of jurisdictions to obtain a signed election form from a worker before adjudicating the claim was problematic issue. She noted that regrettably, this continues to be the case a decade later.

NL advised its legislation does not require them to have a signed election form on file before adjudicating and paying a claim. Therefore, it becomes essential to re-educate staff about the importance of identifying claims in which election forms are needed so that workers do not get compensated twice for the same injury, employers do not pay duplicate assessments and cost reimbursement between jurisdictions is facilitated. NL has included an expanded consent clause to its election form notifying workers that information will be shared with the other applicable boards.

BC asked if the absence of an election form was an extensive problem. QC advised it was difficult to determine because double compensation for the same claim is not always detected. However, QB is seeing more cases of workers obtaining benefits from another board without a signed election form who then approach QC for benefits. QC has in the past denied these claims because workers have "unofficially elected" when they accepted benefits from the other board. The CSST Appeals Tribunal, however, is indicating that the worker has six months to elect under QC's Act and is entitled to elect with the CSST because the worker was not informed of his or her right to elect. If a worker has received benefits from another Board as well as QC, QC will attempt to collect the money back from the worker, however, this is not always easy. There is also the option of collecting the debt from any future benefits that the worker may be entitled to.

ON reiterated that it is important to have received a completed election form before paying a claim, because to do otherwise jeopardizes a possible reimbursement request. The ON Appeals Tribunal has ruled that the receiving of benefits from a specific board does not mean a worker has made an election with that board. AB advised that its Appeals Tribunal has made similar rulings. One cannot presume a worker has elected because he/she has claimed for benefits.

SK advised the problem is an administrative one and that asking adjudicators to remember to request an election for rare cases is problematic as no election is required under SK legislation. In addition, if the injury occurs in SK, SK is required to pay the claim costs and cannot refuse on the basis of not having received an election form. There is also a requirement that SK process 75% of claims within a specified timeline.

QC said it is very clear under Section 4.1 that when there may be entitlement to benefits from more than one jurisdiction, the Adjudicating Board needs to obtain the worker's election and notify the other board. A jurisdiction's specific legislation may not be in full harmony with the IJA's election requirement; however, each board should try to administer claims so that it works in harmony with the IJA given all are signatory to the Agreement and responsible for the legal obligations under it.

MB advised their legislation allows them to adjudicate a claim before a written election is received from the worker. Furthermore, in order to process claims faster, a worker is deemed to have elected with its Board even if only verbally to open the claim. The signed election is collected and put on file thereafter in due course. MB also noted that the election requirement which is specified within the various

jurisdictions' legislation is not the same thing as the election form contemplated under the IJA. Even if there is no duty to obtain an election under governing legislation, there is still a contractual duty to have the IJA election signed.

QC advised their Appeal Tribunal has made it very clear that a verbal election by a worker is not an election under its legislation until it is received in writing.

NS advised its system is not designed to capture out of province claims. However, the IJA Committee's mandate is to raise awareness about the Agreement. Although, a jurisdiction's legislation may not be in harmony with the IJA, it is nonetheless important to identify IJA claims through the use of triggers such as an out of province address or health care number.

AB advised its legislation is similar to that of SK in that there is no requirement to ask for an election from the worker. However, AB is willing to meet the spirit and intent of Section 4.1 and will attempt to get workers to sign the IJA election form for all future claims. There is merit in doing so to prevent double compensation and to facilitate cost reimbursement. Appeals decisions are saying that workers are not being properly informed of their right to elect and this is a weakness in the interjurisdictional process. Forum shopping by workers is a constitutional right in Canada. Jurisdictions should meet each other halfway. As a Committee we can agree on the triggers and implement them in our respective jurisdictions so that workers are properly informed of their right to elect.

NB advised it honours Section 4.1. A claim is not sent to an adjudicator until an election form is signed. Corporate measures such as time to pay may not be suitable for IJA claims. Corporate measures should not be used as an excuse to bypass the acquisition of a signed election form before the claim is paid.

Jurisdictions were asked if they could leave a claim pending (abandoned) until the election form was received. A worker's right to elect has to be his/her own decision. For example, the ON WSIB cannot be seen to be influencing a worker in this regard. ON also noted that in addition to the absence of an election form in a claim, the worker's residency may pose a problem when determining which jurisdiction is to reimburse the other for claim costs. An issue arises if the accident happens in one jurisdiction but the worker's residency or employment connection cannot be clearly established with the potential reimbursing jurisdiction and may in fact allow the worker the right to elect out of province.

YK advised this is a big problem for its jurisdiction because most of its workers do not live in YK so it is often trying to determine the employer of record and where the worker is actually from.

QC stated it has the right to withhold benefits if a worker does not provide information; workers are quick to provide and sign the election if it is holding up payment of benefits. QC would like to know how other boards record their statistics relating to IJA claims.

AWCBC ALL COMMITTEE CONFERENCE

INTERJURISDICTIONAL COMMITTEE MEETING: MAY 12 – 13, 2010

The Marriott Hotel, 90 Bloor Street East, Toronto Ontario

2010 MEETING MINUTES

Action Items:

- **Quebec to summarize and distribute to committee members, list of issues with elections and potential solutions.**
- **Carol Anne Duffy to determine if IJA claims can be excluded from key statistical measures.**

- **Long Latency Claims (Item 6-2009 Workplan): Kate Marshall**

In 2008, Kate completed a survey about the existence of procedures/guidelines for handling long latency claims. In 2009, she compiled this information and distributed copies of long latency guidelines based on current processes and procedures. The document includes best practices/methodology for confirming employment and employment history, medical diagnoses and principles to for adjudication. It will be incorporated into the best practices/training guide.

- **Administrative Issues (AAP) (Item 8-2009 Workplan): Deepak Kothra**

IJA sub-committee members discussed benefits and possible improvements to the administration of the AAP. It was agreed further action on this issue will commence once the model for the new AAP has been finalized.

- **Motor Coach – Application to Participate in Alternative Assessment Procedure (Item 7 – 2009 Workplan)**

Mark provided an overview of the proposed options for creating a new AAP model to allow a new industry (Charter, Tour and Sightseeing Bus Services), to participate. The draft was prepared following discussions held amongst AB (Doug Mah), BC (Mark Powers), MB (Lori Sain) and ON (Liza Bowman, Suzanne Hewitt, Cynthia Mendes). It was agreed that Motor Coach will be engaged in the process once jurisdictions have agreed upon the draft of the new AAP model.

Under the practice of applying the current AAP Section 12, the worker's place of residency is the factor used to determine where an employer is required to pay assessments/premiums rather than other factors such as the employer's location or where an employer conducts most of its business.

Option 1:

Under this option of the proposed AAP model, the employer would pay assessments to the jurisdiction in which it had the most substantial connection. For example, if an employer was registered as a limited company in MB, and had a head office in MB, with the majority of employees living in MB, they would be considered as having a substantial connection to Manitoba. Although the employer may have workers living in other jurisdictions, MB would still be considered the Assessing Board for all the workers. Under this scenario, the employer would pay all their assessments to Manitoba based on payroll for all employees regardless of residency. MB would pay all AAP claims regardless of where the worker resided and it would not affect a worker's right to claim in the other jurisdictions nor create any new rights.

For this option, the committee would have to determine whether occupations that did not travel interjurisdictionally would be covered under the AAP as well. For instance, in the case of a mechanic working for an employer in an industry that has applied to the AAP, would he/she be entitled to coverage if the worker only lived and worked in AB, though not actually traveling through more than one jurisdiction? Option 1 would cover all workers regardless of where they worked or lived. The proposed model would work more effectively if all jurisdictions agreed to be a party to it.

In situations where the employer had relatively equal business in more than one jurisdiction, it would be up to the employer to decide which jurisdiction it wished to register as its Assessing Board. The Registering Board(s) would take all necessary steps to give the Assessing Board the authority to collect assessments on its behalf. The Assessing Board would have to set an appropriate blended assessment rate for the employer that has applied to the AAP. If a worker was injured, he/she would elect in which jurisdiction they wished to apply for benefits (that of Assessing Board or jurisdiction where injured), and the Assessing Board would be responsible for paying the cost of the claim to the board that accepted and paid the claim.

Option 2:

Under this option, all workers of the Schedule 1 interjurisdictional transport company would be covered if they were involved in interjurisdictional travel as part of their work duties. There is a perception that it may be difficult to sell Option 2 to the employer stakeholder community for workers who never lived in the jurisdiction. Identifying the people who are captured under the agreement makes administration of the AAP more difficult.

AB advised that rate setting is going to be complex because there would be two sets of rates appropriate for the industries included in the AAP– one rate for an interjurisdictional employer in that industry and another rate for those employers that do not have workers involved in interjurisdictional travel. Would we be asking boards to cover workers that would not normally be covered? The

Assessing Board would be acting under contract to collect the assessments for all the other boards and holding it in trust. A board has the right to assess an employer but that ability can be in a number of ways, including delegation by that board or contract with another board to collect assessments on its behalf. The AAP will continue paying dollar to dollar as transfer of assessments which is a notional account used to define a proportionate share of assessment to cover such claim costs. An argument can be made that an Assessing Board is not attempting to cover workers not normally covered because even though they are collecting assessments on the other board's behalf, the claim still belongs to the other board along with the duty to administer it according to the other board's respective legislation.

QC inquired as to how one would determine the substantial connection of an employer because it would be subject to interpretation. In QC, there is a requirement to have an employer have an establishment and a worker a domicile. Page 2 of the proposed AAP has a section listing the criteria for substantial connection. It may be better to do this in an appendix which is easier to change rather than the agreement itself. QC advised that perhaps 10% of employers registered in their province have workers living in other jurisdictions.

NS stated that in this type of scenario, there would have to be special rate setting where surcharges might apply. This would be difficult to sell to the employers in that jurisdiction.

The Committee agree that an extra surcharge is just a cost of having the benefit of reduced paperwork through participation in the AAP.

NB advised that setting one rate for all employers in a particular industry across the country poses risks. The employers who would opt for the AAP would be the higher risk employers. Larger companies represent 63% of payroll in NB. It may be better to edit the current wording of the AAP rather than proceed with the revised AAP proposal. Furthermore, an employer being registered in the AAP allows a jurisdiction to gather information for assessment purposes through agreements such as IFTA.

BC advised that the size of the problem may not warrant a new AAP model. The current AAP works pretty well, with a few exceptions. Perhaps the residency issue needs to be tweaked to try to address these.

ON suggested that it might be beneficial to have the employer renew their participation annually. This way the residency of an employer's workers would be fairly current and they could register in the appropriate jurisdictions. Additional requirements could include that the employer be in good standing and already registered in a jurisdiction before it can join the AAP. Consideration should be given to having clear definitions around residency, employment location, business location, minimum number of workers an employer should have in order to be considered eligible for AAP participation.

QC advised that at the time the AAP was originally drafted, residency was considered a common factor in determining where assessments would be paid. Pro-rating was difficult and it was important to keep it simple rather than complicated so the transfer of 100% of claim costs was agreed upon. AAP appears to be working well for employers and one has to keep in mind that the AAP won't supersede each board's own legislative limitations. It seemed most boards were in favour of leaving the worker residency the deciding factor for identifying the Assessing Board rather than changing to the employer's most substantial connection.

Liza stated that it appeared clear the Committee did not want to fix something that was not broken so further work is needed on the new AAP model. All comments related to the new model are to be directed to Cynthia who will distribute them to the subcommittee in advance of the conference call discussion.

Final draft of the AAP will be sent to all jurisdictions for review and comment before a draft is sent to Motor Coach for review or comment.

Action Items:

- **Subcommittee to determine if current model with attached appendix would be suitable or if blended assessment may be the preferred option.**
- **Subcommittee members to notify Cynthia Mendes by May 21, 2010 of their availability to participate in a conference call either in May or June 2010.**

New Business:

- **Miscellaneous – Paula Arab**

NS asked committee members, for experience rating purposes, whether there are jurisdictions that do not provide credits to an accident employer once they have received IJA cost reimbursement or AAP assessment transfers from another board.

- ON advised it provides credits for monies received, but not for any shortfall.
- YK does not provide credits because they do not have firm experiences; therefore, no experience rating.
- AB does provide 100% credit to the employer although they may not receive 100% back in cost reimbursement from the other jurisdiction.
- MB was aware of situations where it reimbursed AB less than the total amount requested and in such cases AB removed 100% of costs from the employer's AB firm experience although MB only transferred on the amount actually reimbursed to the employer's MB firm experience. In this situation, the employer's firm experience in MB only reflects maximum payable under MB Act as opposed to actual costs incurred by AB.

NS asked jurisdictions if there was any benefit to tracking cost reimbursement statistics given that it leads to confusion because claims costs overlap from year to year.

Various jurisdictions indicated that statistics provide a big picture as to volume of activity, increasing/declining trends and benefits of having IJA and AAP. The statistics should be reviewed over a number of years as opposed to year to year to get a better picture of interprovincial activity. Committee members agreed it would be beneficial to ensure they are using a set of clear definitions.

MB stated statistics will be a good indicator of what new industries will add to the AAP in general, but may not necessarily be so useful at the board level.

Action Item:

- **Kate and Sarah will examine current definitions and distribute their suggestions to the committee to see if any jurisdictions are interested in tracking any specific new statistics.**

- **Case Studies – Rhonda Dean**

AB presented cases for round table discussion:

Adjudicating province is seeking reimbursement for pension costs. BC, the reimbursing jurisdiction, has paid to the capitalized value of the claim; its legislation does not permit payment beyond the capitalized value. Is this practice fair? Is it in accordance with section 9.2 and 9.6 of the IJA? Alberta does not capitalize the value of a claim. Is it appropriate for the Assessing Board to do so and to revisit its payments and to create an overpayment if the claim has reached its capitalized value?

YK advised it does not capitalize. They do pay 75% of gross earnings for older claims. If a jurisdiction is doing what it normally does pursuant to their policy, then one must accept that. However, if it is not, then it is contrary to the IJA.

Bill advised AB used to estimate future costs by capitalizing costs. Such estimates should not be used to cap reimbursement if a board can actually pay more under its legislation.

MB stated older claims should only be revisited if there is change in legislation. Capitalizing and reserving are used to estimate the cost of the claim going forward. It is not a method to cap benefits to another jurisdiction and therefore should continue to pay the claim if respective legislation allows it.

In BC, payment is made to the maximum of the cap value of the claim. Workers have an opportunity for commutation and BC pays only to the reserve amount.

AB stated it used to request full amount for capitalized value but now pays out as costs are incurred. AB tweaks any IJA requests it makes so that other boards can pay (such as to MB which cannot pay into the future, so it only makes requests once the entitlement period to payment has passed. It breaks lump sums into smaller amounts and requests reimbursement periodically).

SK advised they do use caps internally for insurance purposes only, not for reimbursing on an IJA basis. A special agreement occurred between ON and SK for one case involving survivor benefits.

BC advised that one board may say a 15% cap value is worth $50,000 and the other says it is valued to $80,000. One board pays to age 65; other pays for life of the claim. Boards need to capitalize for insurance purposes, however, this should not be indicative of the actual payment of the claim as this is dependent on many factors including actual life span of the worker.

AB thought there should be equivalency and agreement between boards about how to cap costs.

ON advised that caps come into play for old claims. Ontario will pay monthly amount up to legislative limits.

MB does not pay cap costs. Their jurisdiction can only pay monthly until the worker reaches 65 years of age. MB cannot pay benefits into the future. NB, YK and QC do not cap for reimbursement purposes. NS does not believe they are capping for reimbursement purposes. NWT does cap its claims.

Jurisdictions discussed the benefits/drawbacks of which approach should be taken: A board pays until benefits stop or, if there is a cap value, benefits are only paid to that cap value in one lump sum or month-by-month. Payments month-by-month may or may not exceed the capitalized value of the claim.

Case Study #2:

Alberta believes that if a board made an error in paying a claim, it should not be allowed to recover monies by withholding payment on another IJA/AAP claim. YK is in agreement with AB. Limitation of actions is six years under YK provincial legislation.

QC asked if a Reimbursing Board had paid in excess of the invoiced amounts, should the Requesting Board reimburse the overpayment. Committee agreed that the Requesting Board should be reimbursed the overpayment

Re-adjudication & Overpayments: In situations where an Adjudicating Board experiences a change in a decision because of an appeal, it should be reflected in the payments of the Assessing Board. Determination of an error is not re-adjudication. Jurisdictions should act in good faith to deal with these claims as they do not occur often.

Action Item:

- **Alberta volunteered to review and report gaps in the current cost reimbursement protocol of the IJA (Section 9) at the IJA Co-ordinators' meeting in 2011.**

Case Study #3a:

Leased operator hired another leasing operator. In SK, leasing operator is not an employer. In AB, leasing operator can be an employer. SK determined that the leased operator was part of the larger transport company and therefore a worker. The larger company had never been involved in the adjudication of the claim (modified duties etc.).

Can two different employers be charged for the cost of the same claim? Is it re-adjudication because one jurisdiction has determined that a different employer is to be charged with the cost of the claim? Does one jurisdiction take precedence over another for employer charging?

In AB, Company " A" was found to be employer of the injured worker. As Company "A" was participating in the AAP, and the worker was a resident of SK, AB requested reimbursement under the AAP. The accident happened in AB. In SK, the worker was found to work for Company "B", but Company "B" did not participate in the AAP.

The Committee concluded that because of individual legislation there could be two different employers for the same individual. Though Company "A" participated in the AAP, the injured worker did not qualify for the AAP for that employer in Saskatchewan. There would be no reimbursement under the AAP. SK needs to deny the request.

This case illustrated that the AAP operates at the worker level, and that not all workers of an employer may be covered under the AAP. The jurisdiction that receives all the assessments/premiums for a worker must be able to cover that worker in all jurisdictions. Situations such as this could be avoided if more communication was occurring between the Assessing/Registering Board(s) to ensure employers were properly registering in the AAP.

Case Study #3b:

SK trucking employer hired a NS worker who is injured in U.S.A. The injured person was not considered a worker in SK because there is no substantial connection to SK's jurisdiction; NS stated that in its jurisdiction, to be an employer, one must have more than three workers in NS in order for WCB coverage to be considered. In this case, the worker would not have had coverage in NS because there were fewer than three employees working for the employer in NS.

There was mention that the worker may have travelled through ON. ON indicated that if the worker had a substantial employment connection and regularly worked in ON, the worker could claim in ON (assuming he/she was not an independent operator). ON also indicated that in such a case, the employer would have been required to pay premiums in ON.

The bottom line is that employers should check with every jurisdiction's Board that workers travel through to determine appropriate coverage.

Dispute Resolution – (Item 2b – 2009 workplan): Doug Mah

Doug advised he is retiring from the IJA committee. He reflected on the experience of the past 12 years and made suggestions for going forward. He appreciated the spirit of collegiality to resolve issues; however, he noted that the same issues keep recurring. Therefore, it was important to develop consensus and understanding before parties become entrenched in their positions.

Dispute resolution proposal could be an expedient way to resolve disputes. The only true limitation period in the IJA is section 9.10: The Adjudicating Board has to make initial claim within two years of acceptance. We should amend the IJA to overcome these deficiencies and should meet a day early to specifically deal with dispute resolution cases as a group to find workable solutions. Mediation contained in Section 16 brings finality to an issue. It would be productive if disputes were added to the process to create a body of jurisprudence.

Doug stated that it may be useful to add an additional clause to the IJA that if two jurisdictions are unable to resolve a conflict, then the claim costs should be shared equally.

Doug described a case wherein two pilots flying between AB and SK were involved in an accident in MB. The case went before an Arbitrator and rendered a decision that the parties considered to be acceptable.

YK stated that the parties involved in a dispute must agree on the facts before dispute resolution is undertaken. There are pending changes to the IJA, and we should consider also inserting limitation periods. There is currently nothing in the IJA to close disputes.

BC indicated the idea of getting together either before or after the IJA Co-ordinators' Committee meeting is good. Each party has to give its statement of facts and issues one month before the meeting. AB agreed that stricter deadlines for submission of materials should be in place.

QC advised meetings used to occur semi-annually in April & October, two days each. The Committee was agreeable to a conference call sometime in autumn 2010 and meeting a full day ahead of the annual meeting in spring 2011. It was also agreed that materials to be discussed at the annual meeting

must be supplied sooner. In the past, some issues on the table were not even reviewed prior to the meeting due to lack of time or not receiving the final e-mail before leaving for the conference.

Round Table:

QC asked if the AWCBC website could be used as a secure repository for sharing/posting materials. That way, everyone would have access to the same version at the same time and could potentially make real time edits.

Action Item:

- **Carol Anne Duffy will ask Executive Committee if a repository can be created. In the interim, any revised documents that are e-mailed should not have previous versions attached as the volume of material becomes unmanageable.**

ON asked other boards who are requesting cost reimbursement from ON, to ensure:

1) Copies of claim file documents that are provided be copied single-sided as opposed to double-sided.

2) Date of accident be included on all correspondence to assist in proper identification of the claim.

3) Legal name and address of the employer be provided for initial requests.

4) Weekly gross earnings used to pay wage loss benefits be clearly identified.

Rhonda advised AB is now sending weekly gross benefits.

Action Item:

- **MB will distribute copy of their invoicing correspondence as a template for jurisdictions to use.**

Newfoundland requested jurisdictions to advise how they handle hearing loss claims. QC stated they pay the full amount for hearing loss if the worker comes to Quebec first. Other jurisdictions do pro-rate compensation for the amount of noise exposure in their respective jurisdiction.

Action Item:

- **NS will distribute a chart regarding hearing loss. Jurisdictions are to communicate changes to Sarah. Sarah will update and issue final version. (September 2010)**

AWCBC ALL COMMITTEE CONFERENCE

INTERJURISDICTIONAL COMMITTEE MEETING: MAY 12 – 13, 2010

The Marriott Hotel, 90 Bloor Street East, Toronto Ontario

2010 MEETING MINUTES

Selection of new Chair:

Bill Ostapeck will be assuming the role of chair of IJA committee effective May 14, 2010. Committee members extended appreciation to the outgoing co-chairs.

Committee members agreed that the role of chair should be rotated amongst members based on alphabetical order of jurisdictions. Because they have recently acted as chairs, B.C., ON and P.E.I. will be exempt from the rotation until the other jurisdictions have had an opportunity to chair.

Meeting concluded at 10:20 a.m.