

**THE ROLES AND RESPONSIBILITIES OF THE MINISTER  
RESPONSIBLE – WORKERS' COMPENSATION BOARD OF THE  
NORTHWEST TERRITORIES AND NUNAVUT**

## INTRODUCTION

The Workers' Safety and Compensation Commission (WSCC) prepared this document to give the Minister Responsible for the WSCC a general overview of his/her roles and responsibilities. This document is intended for information purposes only and is not to be considered legal advice or direction from the WSCC.

The roles and responsibilities of the Minister Responsible for WSCC are fundamentally different from those of a Minister responsible for a government department because the WSCC is an administrative tribunal with quasi-judicial functions. The Privy Council Office (Canada) has produced *Accountable Government – A Guide for Ministers and Secretaries of State (Guide)*<sup>1</sup> which contains an explanation of the differences in the roles and responsibilities between these two kinds of Ministers. Although the *Guide* is written for Federal Ministers and refers to Parliament, the principles stated in it are equally applicable to the Minister Responsible for the WSCC and the Legislative Assembly of the Northwest Territories.

The *Guide* states at page 5:

“Departmental powers, duties and functions are vested in Ministers through statute. Many of these powers are normally delegated to deputy ministers and departmental officials, who act on their behalf. Ministers are individually responsible to Parliament and the Prime Minister for their own actions and those of their department, including the actions of all officials under their management and direction, whether or not the Ministers had prior knowledge. In practice, when errors or wrongdoings are committed by officials under their direction, Ministers are responsible for promptly taking the necessary remedial steps and for providing assurances to Parliament that appropriate corrective action has been taken to prevent reoccurrence.

Ministers' responsibilities may include a variety of non-departmental bodies such as Crown corporations or tribunals. In accordance with the enabling legislation, Ministers exercise varying degrees of control and responsibilities for the agencies that are part of their portfolio.”  
[emphasis in original]

The *Guide* states at page 9:

“A Minister's degree of control and responsibility for a non-departmental body is defined in the Act that establishes that body. Where a Minister's relationship with a non-departmental body is at

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<sup>1</sup> Privy Council Office, *Accountable Government - A Guide for Ministers and Secretaries of State* Queens Printer, 2007. (Copy available on line [www.pcp-bcp.gc.ca](http://www.pcp-bcp.gc.ca))

arm's length, the Minister should still provide the organization with general guidance on the government's objectives and expectations, consistent with the mandate and independence of the organization. Ministers need to know both the details of their responsibilities, as well as the limits of their powers, for those bodies. Deputy ministers can provide advice to Ministers on these issues, particularly in the context of integrated portfolio coordination.

The nature of the relationship between a Minister and an administrative tribunal with independent decision-making or quasi-judicial functions is a particularly sensitive issue. Ministers must not intervene in specific decisions of those bodies. Specific guidance governing Ministers' dealings with quasi-judicial tribunals is included in Annex E, as are guidelines for Crown corporations in Annex F.

Heads of non-departmental bodies are appointed by the Governor in Council, on the recommendation of the responsible Minister, after consultation with the Prime Minister. Their responsibilities and duties, and those of the designated Minister, vary with each governing statute. The responsible Minister is accountable for the overall effectiveness of non-departmental bodies in his or her portfolio, as opposed to their day-to-day operations. But while their degree of independence from the portfolio Minister may vary, all non-departmental bodies have a responsibility to answer to Parliament. Heads of non-departmental bodies and their officials appear before parliamentary committees and do so in accordance with the principles of ministerial responsibility and the political neutrality of public servants. Many non-departmental bodies are required to report annually to Parliament, through their designated Minister, on their performance and planning."

This paper reviews the various legislation (*Workers' Compensation Act, Safety Act, Mine Health and Safety Act* and the *Financial Administration Act*) associated with the Workers' Safety and Compensation Commission, and sets out the "details of [the Minister's] responsibilities, as well as the limits of [his/her] powers, for those bodies".

## **ACCOUNTABILITY TO THE LEGISLATIVE ASSEMBLY**

### **MINISTER'S ACCOUNTABILITY**

A Minister responsible for a government department is accountable to the Legislative Assembly for the day to day operations of the department and its spending. This is because the Legislative Assembly has through legislation assigned various duties and funding directly to the Minister for the government department s/he operates.

The WSCC is not a government department. It is a quasi-judicial body established by the Legislative Assembly. Pursuant to section 77<sup>2</sup> of the *Financial Administration Act* the WSCC is accountable to the Legislative Assembly *through* the Minister Responsible. This is also emphasized in the Purpose Statement of the *Workers' Compensation Act*. The WSCC's funding comes directly from employer assessments levied by the WSCC.

As stated in the *Guide* the Minister Responsible's relationship with the WSCC is different than it is with a government department. Accordingly his/her accountability for the WSCC is different than it is with a government department.

The *Oxford Dictionary* defines "accountability" as being responsible for one's conduct. The principles behind accountability are knowing: 1) the details of one's responsibilities, and 2) to whom they are accountable to for one's conduct. The *Workers' Compensation Act* sets out the duties and responsibilities of the Minister, the Governance Council and the President of the WSCC.

Simply stated the Minister is accountable for the exercise of the duties and responsibilities given to him/her under the *Workers' Compensation Act*. The WSCC is accountable to the Legislative Assembly for the exercise of the duties and responsibilities given to it.

A key responsibility given to the Minister in the *Workers' Compensation Act* is the appointment powers. The Minister appoints the Governance Council, the Appeals Tribunal and the Workers' Advisor and is directly accountable to the Legislative Assembly for those appointments. The Minister's responsibility does not end with making the appointments. The Minister is responsible for the continued monitoring of their performances. However, the monitoring of their performance can not cross the line into intervention. As stated in the *Guide*:

"The nature of the relationship between a Minister and an administrative tribunal with independent decision-making or quasi-judicial functions is a particularly sensitive issue. Ministers must not intervene in specific decisions of those bodies."

The Minister is also accountable "for the overall effectiveness of non-departmental bodies in his or her portfolio, as opposed to their day-to-day operations". The overall effectiveness of these non-departmental bodies will be carried out by the persons appointed to those positions by the Minister. The Governance Council, the Appeals Tribunal and the Workers' Advisor are accountable to the Minister for the effectiveness of their bodies and if they are

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<sup>2</sup> 77. A public agency is ultimately accountable, through the appropriate Minister, to the Legislative Assembly for the conduct of its affairs.

unable to maintain effective operations than the Minister is responsible to find persons who can. This is why the Minister needs to monitor their performance.

## WSCC ACCOUNTABILITY

As specified in the *Financial Administration Act* the WSCC is accountable to the Legislature for the conduct of its affairs. The WSCC is a corporate body divided into three parts: the Governance Council, the President and the staff of the WSCC. Each part has specific duties and responsibilities. Staff are accountable to the President and the President is accountable to the Governance Council. As a whole the WSCC is accountable to the Legislative Assembly. This is different than the accountability structure of a government department where the Minister is accountable for the day to day operations of the department.

The question becomes:

*How is the WSCC accountable to the Legislative Assembly and what is the Minister's role in this accountability?*

The primary **reporting process** through which the WSCC is accountable to the Legislative Assembly is the annual report. Section 96 of the *Financial Administration Act* requires that the WSCC submit an annual report to the Minister who tables it before the Legislative Assembly. Subsection 106(4) of the *Workers' Compensation Act* requires that the President and other representatives of the WSCC must on request provide the appropriate Committee of the Legislative Assembly with whatever explanations or information it may require to properly understand the WSCC's annual report and the WSCC's functions and activities.

The process requires the WSCC to bring to the Legislative Assembly information necessary for assessing whether or not the WSCC is properly carrying out its mandate. The content of the annual report is crucial for proper accountability. The information provided must be sufficient for the Legislative Assembly to make a proper assessment. Section 96 of the *Financial Administration Act* and section 106 of the *Workers' Compensation Act* set out, in general terms, the contents of the annual report:

- WCB activities;
- financial statements;
- the annual report of the Auditor General of Canada;
- any other information the Minister may require; and
- any other information the Governance Council considers necessary or advisable.

The Minister's role in this process is to determine what information s/he may require in the annual report so that a proper assessment of the WSCC can be made. Although the type of information contained in the report will probably remain constant from year to year it is likely that certain specific information may be required one year and not another. It is the Minister's responsibility to discuss matters with the appropriate Legislative Assembly committee and the Governance Council to determine what information will be required in any given year.

The annual report should identify any short comings in the carrying out of these duties and responsibilities. The appropriate party can be held responsible for their conduct.

## **MINISTERIAL DUTIES**

In addition to the responsibilities related to the annual report, the Minister has further duties under Part IX of the *Financial Administration Act*:

## **BUDGETS**

The WSCC does not receive money from the government for its operations. All money received by the WSCC comes from employer assessments and investment returns on those assessments. Subsection 92(1) of the *Financial Administration Act* states: "[The WSCC] shall annually submit an operating budget for the following financial year for the approval of the appropriate Minister." Subsection 93(1) "[The WSCC] shall annually submit a capital budget for the following financial year for the approval of the appropriate Minister."

Although the budgetary subsections use the word "approval" in relation to the Minister, this does not mean the Minister can direct how monies are to be spent. Section 78 of the *Financial Administration Act* prohibits the government from directing the financial management and financial administration of the WSCC to the extent that it affects the disposition of any monies in the WSCC's Workers' Protection Fund. Furthermore, the *Workers' Compensation Act* gives the WSCC exclusive jurisdiction to determine these matters. Accordingly, these sections must be interpreted in accordance with the entire scheme of the two Acts. The Minister's approval is to ensure that the budgets are in accordance with the provisions of the *Financial Administration Act* and the *Workers' Compensation Act*.

An example of where it would be appropriate for the Minister not to approve a capital budget would be if the WSCC was budgeting monies to purchase real property in excess of \$100,000 but did not have Commissioner in Executive Council approval to purchase the property as is required by subsection 99(2) of the *Workers' Compensation Act*.

## CORPORATE PLAN

Subsection 91(1) of the *Financial Administration Act* states: “[The WSCC] shall annually submit a corporate plan for the approval of the appropriate Minister.” The contents of the plan are specified in subsection 91(3) of the *Financial Administration Act* as including:

- The objects or purpose of the WSCC;
- The objectives of the WSCC for the period of the plan;
- The strategy for achieving the objectives;
- The expected performance of the WSCC; and
- An evaluation of the efficiency, economy and effectiveness of the WSCC.

It is through the corporate plan that the Minister can provide the WSCC with general guidance on the Government’s objectives and expectations. As stated in the *Guide*:

“Where a Minister’s relationship with a non-departmental body is at arm’s length, the Minister should still provide the organization with general guidance on the government’s objectives and expectations, consistent with the mandate and independence of the organization.”

This will of course involve communication between the Minister and the WSCC. The Auditor General of Canada in a December 2000 *Report of the Auditor General of Canada to the House of Commons, Chapter 18 – Governance of Crown Corporations* made the following comments about federal Crown Corporations which may be useful to the Minister Responsible and the WSCC:

“Governance Protocol Between Ministers and Crown Corporations:

**18.118** In previous sections of this chapter we have cited the need for dialogue to reach an understanding between each Crown corporation and the responsible minister on the implementation of key aspects of governance, including:

- how the board of directors will be involved in the appointment of the board, the chair and the CEO;
- how the government will communicate any issues it wants a Crown corporation to take into account in its corporate plan;
- mechanisms for ministerial feedback on the corporate plan; and
- procedures for handling ad hoc issues and maintaining ongoing contact between ministers and corporations.

**18.119** In addition, the dialogue could cover elements such as:

- Expectations for performance monitoring;
- Performance evaluations of boards and CEOs and their remuneration; and
- Potential conflicts of interest.

**18.120** Each minister's situation is unique, and strategies need to reflect the minister's needs and demands as well as the needs of the corporation. Each time there is a change of minister or a new chair is to be appointed, the agreement would be reconsidered and reviewed. The key to success for both parties would be managing expectations. As a means of confirming the agreement, the chair of the corporation could record his or her understanding of the agreement in writing and the minister could outline the agreement in a letter upon the chair's appointment. The agreement thus documented would constitute a governance protocol. Prospective new board members would be given a copy of the protocol. A protocol that gave the board a meaningful role would help attract strong board members, and this would serve the interests of both the corporation and the government."

The Auditor General of Canada's 2005 Report on the Workers' Compensation Board recommended the establishment of a communication protocol. It is the joint responsibility of the WSCC and the Minister to ensure that communication protocols are in place and regularly updated.

## APPOINTMENTS

The Minister has a number of appointment powers in the *Workers' Compensation Act* which are outlined in greater detail below. These are specific legislative duties that are placed upon the Minister. His or her responsibility does not end with the appointment. As is mentioned by the Auditor General, the Minister should establish performance expectations and monitoring for the respective appointees. The workers' compensation system will operate best when competent individuals are appointed to the various positions, and their performance expectations are established, monitored and reported.

### *Governance Council*

The workers' compensation system is not a government department. It is a system that is based upon an historical compromise between workers and employers. The Governance Council is mandated with the responsibility of overseeing the entire system. It is comprised of seven persons (a chairperson, two representatives of employers, two representatives of workers and two public interest representatives) each bringing different perspectives and interests on matters. The Governance Council has a statutory duty of care to act honestly

and in good faith with a view to the best interests of the WSCC. This means that the Governance Council must make sure that the WSCC is provided with general direction for addressing the competing interests of workers and employers. In addition the Governance Council must monitor the WSCC to ensure it is carrying out its statutory duties and responsibilities properly and effectively.

The Minister's first duty is the appointment of the Governance Council. The Governance Council will establish how the WSCC carries out its duties and responsibilities; therefore, it is crucial that the Minister make the best appointments possible. The Minister must ensure that the collective membership has the proper balance of qualifications, knowledge, skills, experiences and attitudes for providing the effective governance of the WSCC. A competent Governance Council will ensure that fair and reasonable policies are in place and that the President & CEO of the WSCC is operating the organization in the manner intended in the legislation.

### *Appeals Tribunal*

The workers' compensation system is about conflicting interests and the resolution of those conflicts. The Governance Council, who is made up of the competing interests in the system, sets the rules for decisions to be made. The WSCC is the first level decision maker on matters related to claims and assessments. Internal to the WSCC is the Review Committee which has responsibility for the first level of appeal of these decisions.

The Appeals Tribunal is the second and final level of appeal in the workers' compensation system, and has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions in respect of an appeal of a Review Committee decision (subsection 126(1)(a)). Appeal Tribunal decisions are final and conclusive.

The Appeals Tribunal's role is to determine whether rules were properly applied and good decisions were made on a particular file. The Appeals Tribunal is not like a court of appeal in the court system with responsibility for making the rules. This is a part-time Tribunal without the expertise or resources to make proper decisions about the system but they can make decisions about an individual claim. The appeal is a fresh hearing of the matter.

It may confirm, vary or reverse any decision of the Review Committee (subsection 119(2)(a)).

The Appeals Tribunal may:

- make rules respecting its procedure and conduct;
- have the powers of a *Public Inquiries Act* board; and
- take evidence under oath in or outside of the Territories.

No decision or policy of the Governance Council is subject to appeal (subsection 126(4)). The Appeals Tribunal has to apply policies of the Governance Council which apply to the subject matter of the appeal when making its decision (subsection 130).

The Minister is responsible for appointing members to the Appeals Tribunal. As with the Governance Council the Minister's responsibilities do not end with the appointment; the Minister is responsible for the continued monitoring of their performances. However, the monitoring of their performance can not cross the line into intervention. As stated in the *Guide*:

“The nature of the relationship between a Minister and an administrative tribunal with independent decision-making or quasi-judicial functions is a particularly sensitive issue. Ministers must not intervene in specific decisions of those bodies.”

The Minister is also accountable “for the overall effectiveness of non-departmental bodies in his or her portfolio, as opposed to their day-to-day operations”. The overall effectiveness of the Appeals Tribunal will be carried out by the persons appointed to those positions by the Minister. The Appeals Tribunal is accountable to the Minister for their effectiveness and if they are unable to maintain effective operations then the Minister is responsible to find persons who can. This is why the Minister needs to monitor their performance.

The Minister will receive complains from stakeholders who are dissatisfied with a decision made by the WSCC or the Appeals Tribunal. As is stated in the *Guide* and mentioned previously, the Minister must not intervene in decisions of the WSCC or the Appeals Tribunal. The Minister should draw the individual's attention to the WSCC appeal process. This is the process that has been set up by the Legislative Assembly. Decisions of the Appeals Tribunal are final and conclusive.

In Appendix E of the *Guide* it is stated:

“The Minister's office can expect requests for assistance from other Ministers on behalf of their constituents. Where such an intervention with an agency is not appropriate because the request concerns a quasi-judicial case, the Minister's office should indicate that an intervention is not possible by any Minister and suggest that the constituent deal directly with that agency.”

### *Workers' Advisor*

WSCC staff are required to treat all claimants in a fair, polite and helpful manner. For a variety of reasons, some claimants require assistance in understanding the legislation and processing their claims. The *Workers' Compensation Act*

provides claimants with access to a workers' advisor whose job is to assist claimants in their dealings with the WSCC. The workers' advisor is appointed by and reports to the Minister. The workers' advisor also provides the Minister Responsible and the Governance Council with an annual report on the operations of the Workers' Advisor Office. The *Workers' Compensation Act* provides that the expenses for the Workers' Advisor Office are paid out of the Workers' Protection Fund.

## **YEARS' MAXIMUM INSURABLE REMUNERATION**

The amount of benefits that an injured worker receives and the amount of assessments that an employer must pay are based upon the Year's Maximum Insurable Remuneration (YMIR). For 2007, YMIR is set in regulations at \$70,600.00. Employers do not pay assessments on the portion of any individual salary greater than \$70,600.00. An injured worker will only receive compensation on that portion of his or her salary that is equal to or less than \$70,600.00. The Governance Council is required on an annual basis to review the amount of YMIR, and make recommendations to the Minister on the appropriateness of this amount.

## **ASSIGNMENT OF TASKS AND DUTIES**

Section 96 of the *Workers' Compensation Act* is an extraordinary power section which provides the Minister Responsible with the authority to refer or assign to the WSCC duties and tasks. This section is very broadly worded and its proper interpretation may be limited by how various other legal principles apply to the duty or task. Prior to invoking this power, the Minister Responsible should consult with the Department of Justice and the WSCC.

## **SHARED WORKERS' COMPENSATION BOARD**

The WSCC is a corporation created by the Northwest Territories Legislature, and now operates under the trade name Workers' Safety and Compensation Commission of the Northwest Territories and Nunavut. Provisions of the *Workers' Compensation Act* provide that the WSCC may administer the Nunavut *Workers' Compensation Act*. The governments of the Northwest Territories and Nunavut have entered into an agreement for this purpose. The agreement is of an indefinite duration that may be terminated upon appropriate notice by either government. The Inter-governmental Agreement (which is attached as Appendix C) specifies that the Ministers Responsible from both jurisdictions must meet periodically throughout the year and must consult before initiating changes to the legislation that the WSCC administers.

The provisions of the both territories' legislation require that the two Ministers Responsible work closely together. For example, the Ministers are required to consult on various appointments and it would be prudent for them to agree on the content of the corporate plan and annual report.

## **LEGISLATIVE REVIEW**

It is the Minister's prerogative to conduct a review of any legislation for which s/he is responsible. However, if the Minister wishes to conduct a review of the *Workers' Compensation Act* and have the costs of the review paid for out of the Workers' Protection Fund, the Minister must have the consent of the Governance Council.

## **REGULATION MAKING POWER**

As with most legislation, the Commissioner has the power to make regulations upon the recommendation of the Minister. Regulation making powers are specified in section 169 of the *Workers' Compensation Act*, section 25 of the *Safety Act*, section 45 of the *Mine Health and Safety Act* and section 13 of the *Explosives Use Act*.

## **EXPLOSIVES USE ACT, MINE HEALTH AND SAFETY ACT, SAFETY ACT**

The WSCC also administers these pieces of occupational health and safety legislation. The powers and duties of the Minister under these Acts are less extensive than under the *Workers' Compensation Act*.

In addition to the regulation making powers noted above, the Minister has the authority to appoint legislation committees under both the *Mine Health and Safety Act* and the *Safety Act* for the purposes of advising the Minister on the need for changes to these Acts/regulations. The committees are made up of representatives of workers, employers and the public interest. The WSCC's Chief Mine Inspector is a member of the committee established under the *Mine Health and Safety Act* while the WSCC's Chief Safety Officer is the Chairperson of the committee established under the *Safety Act*.