

MINUTES – BOARD MEETING
January 24, 2018 – 1:00pm and January 25, 2018 – 9:00am

Present: Dorine Pirie, Haley Flaro, Tim Petersen, Gaëtan Guérette, Lucien Sonier (January 24 afternoon and January 25 morning), Maureen Wallace, Hector Losier, Tina Soucy, Julie Marr, Jim Stanley

Staff present: Carolyn MacDonald, Michael McGovern, Laragh Dooley, Shelly Dauphinee, Amanda Aubé

Staff present for portion of meeting: Dr. Paul Atkinson, Caroline LeBlanc, Crispina Caballero

Also present: Daniel R. Thériault, Q.C., Charles Murray, Conrad Ferguson

1 In-camera session

2 Chairperson’s Remarks

The Chairperson welcomed the Directors to the meeting.

3 Declaration of any Conflicts of Interest

The Chairperson asked any Board members who have any conflicts of interest arising from the meeting agenda to declare that conflict. No conflicts declared.

4 Adoption of the Agenda

Moved, seconded, and on consensus, the agenda was adopted.

5 Adoption of Minutes / Review of Task List

The Board noted one typo under Item 7 in the minutes of November 29 & 30, 2017.

(a) Moved, seconded, and on consensus, the minutes of November 29 & 30, 2017 were approved as amended.

(b) Moved, seconded, and on consensus, the minutes of December 18, 2017 were approved as written.

(c) Task List of January 24, 2018

WorkSafeNB’s acting Corporate Secretary & General Counsel reviewed the Task List with the Board. The Board required no changes to the Task List.

6 Acting President & CEO's Report

WorkSafeNB's acting President & CEO presented his report to the Board, noting some additional developments as follows:

He advised that GNB has confirmed funding in the amount of \$40,000 funding to assist with WorkSafeNB efforts related to fishing safety.

He also noted that a Service Agreement has not yet been signed with GNB as it is WorkSafeNB's position that a provision be in place for GNB's payment of occupational health and safety efforts. The Board supported this position. He also noted that there has been some discussion surrounding a provision requiring WorkSafeNB to represent GNB at Workers' Compensation Appeals Tribunal (WCAT) hearings. The Board expressed its disagreement with this provision.

The Board discussed the Auditor General's scope of work and its focus on governance and claims management practices. The acting President & CEO advised he expects the Auditor General's work to be completed in the March timeframe, with a report shared with WorkSafeNB in advance of it being published publicly to ensure accuracy and allow time for responses from WorkSafeNB. The Board noted that while 2016 is the cut-off date for the scope of the audit, WorkSafeNB can reference efforts in 2017 in any required responses to findings in the report.

The Board noted its interest in training related to Performance Excellence, and the acting President & CEO advised he would explore training options for Board members.

WorkSafeNB's Vice President of WorkSafe Services provided the Board with an update on the Memorandum to Executive Council on legislative changes in relation to violence in the workplace. She explained that the announcement of new legislation will be done on April 28, 2018 (National Day of Mourning) and, despite WorkSafeNB's recommendation of an in-force date of January 1, 2019, Government has set an in-force date of September 1, 2018. She also noted that Government agreed to a 30-day consultation period, which will hopefully encourage the voice of the employer as they prepare to implement these changes. The Board confirmed with her and the acting Corporate Secretary & General Counsel that WorkSafeNB's OHS Officers are cognizant of situations where police involvement may be required and that jurisdiction is not anticipated to be an issue related to the legislative changes.

Client Experience Improvement Update (M18-10)

WorkSafeNB's Director, Service Excellence, reviewed memorandum M18-10 related to the Client Experience Improvement Roadmap. She updated the Board on the following two initiatives:

Initiative #5: Further develop leadership capability and competency: She explained this went to RFP and submissions will be reviewed in January 2018.

Initiative #25: Assess and enhance KIP's and tracking system: She explained staff are currently working on how KPI's are reported.

Moved, seconded, and on consensus, the acting President & CEO's report was accepted by the Board of Directors.

7 Annual Approval of OHS Arbitrators (M18-01)

Following the introduction of memorandum M18-01 by WorkSafeNB's acting Corporate Secretary & General Counsel, the Board of Directors discussed the annual appointment of arbitrators under subsection 25(2) of the *Occupational Health and Safety Act*. These arbitrators are appointed by the Board for the purposes of mediating and arbitrating complaints of Discriminatory Action under sections 24, 25 and 26 of the *Act*.

Moved, seconded, and on consensus, the Board of Directors rescinds the 1998 document titled "Arbitrator Selection Protocol" and directs that the appointment and assignment of arbitrators under the *Occupational Health and Safety Act* be as follows:

1. The Board of Directors is the sole appointing authority for arbitrators under subsection 26(2) of the *Occupational Health and Safety Act*;
2. Staff will seek re-approval of the list of appointed arbitrators annually in the first quarter of each year;
3. The list of appointed arbitrators shall have a sufficient number of appointees to ensure effective and efficient arbitration of complaints without having so many appointees that expertise is unable to be maintained;
4. Those persons appointed to the position of arbitrator shall be practising members of the Law Society of New Brunswick and shall
 - reflect gender balance and
 - reflect the English and French linguistic communities.
5. An arbitrator's appointment shall continue until rescinded or they resign.
6. When a Form 1 Complaint is received, staff shall assign an appointed arbitrator on a rotational basis, as required by Regulation 84-26, having regard for linguistic requirements.
7. Before providing the Form 1 Complaint and any additional materials received to an appointed arbitrator, staff shall obtain confirmation that the intended assignee has no conflict of interest or professional conflict with the parties.

Moved, seconded, and on consensus, the Board of Directors approved the 2018 list of appointed Arbitrators under the Occupational Health and Safety Act with the following appointments:

1. Gilles. G. Thibodeau, c.r., Edmundston, NB
2. Prof. John P. McEvoy, Q.C., Fredericton, NB

3. Kelly VanBuskirk, Q.C., Saint John, NB
4. René J. Basque, c.r., Moncton, NB
5. Basile Chaisson, c.r., Bathurst, NB
6. Nathalie Bourque, Moncton, NB
7. Sylvie Michaud, Moncton, NB
8. Joël Michaud, Fredericton, NB

8 Redraft of Arbitrator Selection Protocol (M18-02)

WorkSafeNB's acting Corporate Secretary & General Counsel introduced and reviewed memorandum M18-02 which included information regarding complaints of discriminatory action under subsection 25(2) of the *Occupational Health and Safety Act*. The Board was advised by WorkSafeNB's Vice President, WorkSafe Services that some proactive activities will be undertaken in workplaces where significant numbers of complaints exist.

9 Cannabis (Marijuana) as a Medical Aid (M18-03)

WorkSafeNB's acting Director of Planning & Policy introduced memorandum M18-03 regarding the establishment of a policy outlining the principles for the management of medicinal cannabis to treat compensable injuries. She explained this policy is related only to cannabis without a Drug Identifier Number (DIN) and that cannabis products with a DIN are covered under WorkSafeNB's general medical aid policy.

She confirmed with the Board that there is no anticipated additional cost to the system resulting from this policy. She also highlighted changes to the policy resulting from the stakeholder consultation.

WorkSafeNB's acting Corporate Secretary & General Counsel explained there is no case law directly related to this topic, although there is a human rights case before a court of appeal which may provide some broad guidance on this issue. The Board noted that some items contained in this policy will likely be challenged at the Workers' Compensation Appeals Tribunal (WCAT). It was noted that the strength of this policy is that it is evidence based, although it may have to be revisited periodically in the future.

WorkSafeNB's Chief Medical Officer addressed the Board. He explained that because worker safety is of the utmost importance for WorkSafeNB, the policy authorizes CBD rich cannabis to minimize the cognitive and performance impairment that is typically seen with THC rich products.

The Board clarified that existing claims with approved higher doses will not be affected by the enactment of this policy.

The Board sought clarification on why a maximum daily dosage of 3 grams or less was established in policy. He explained that the general dosage of the greater population was

lower than WorkSafeNB's average injured worker dosage and alignment was made with Veterans Affairs Canada.

The Board inquired whether a worker could safely return to work with this dose. He advised that for the average worker, this would be a generally safe protocol. A Risk Assessment will also help to identify any potential issues. It was noted that advising employers of possible impairment creates privacy issues.

He explained that the policy will be disseminated to the public, with a target to key stakeholders and training will be provided to staff for this policy's implementation.

The Board clarified that WorkSafeNB cannot be held liable for issues resulting from the use of medical cannabis as it is only the payer and not the prescriber.

Moved, seconded, and on consensus, the Board of Directors approved proposed Policy 25-015 Medical Aid – Cannabis (Marijuana) for Medical Purposes, Release 001.

Moved, seconded, and on consensus, the Board of Directors approved the in-effect date of Policy 25-015 Medical Aid – Cannabis (Marijuana), Release 001 to be April 2, 2018.

10 Medical Aid – Opioids (M18-04)

WorkSafeNB's acting Director, Planning & Policy reviewed memorandum M18-04 related to the review of Policy 25-012 Medical Aid – Opioids. WorkSafeNB's Chief Medical Officer explained the basis for the policy changes is the safety of our clients who use opioids. The policy changes reflect lower dosages of opioids to align ourselves with the Canadian Medical Association and the College of Family Physicians of New Brunswick. The policy changes are not retroactive.

He noted that further research may be conducted on this issue as ongoing data analysis suggests there may be a correlation with opioid payments made by WorkSafeNB and the deaths of workers who received those payments.

Moved, seconded, and on consensus, the Board of Directors directed staff to undertake stakeholder consultation related to changes to Policy 25-012 Medical Aid – Opioids as presented for 60 days.

11 WCAT Semi-Annual Update

The Chair of the Workers' Compensation Appeals Tribunal (WCAT) presented a semi-annual update to the Board.

He noted the WCAT overturn rate of WorkSafeNB decisions at 85% for 2016 has reduced to 69% for 2017. He surmised that WorkSafeNB presence at the hearings to present a full explanation of its decision likely accounts for this reduction. He noted his support of WorkSafeNB representation.

The Board discussed the standard of evidence with the Chair of the WCAT. The Chair of the WCAT explained that the standard in legislation has been adhered to by the WCAT and decisions likely result from how each vice-chair attaches weight to the evidence before them. There was a discussion that some administrative changes made by the WCAT (such as identifying a policy that may be in question) have improved the appeals process and that further systematic, legislative changes may change the process as well.

The Board expressed its concern with possible impacts to the system regarding the retroactivity of WCAT decisions. The Chair of the WCAT noted that if there was a clause related to retroactivity in legislation they would follow it. The Board noted it has recommended a legislative change on this issue.

The Board and the Chair of the WCAT also briefly discussed how medical evidence by way of a written submission to the WCAT by WorkSafeNB's Chief Medical Advisor could be submitted in anticipated appeals related to the newly approved WorkSafeNB policy related to medical cannabis (marijuana).

The Board inquired into wait times at the WCAT and were advised by the Chair of the WCAT that wait times are down to approximately 63 days (from filing to hearing date) and the time to render a decision is roughly 67 days. He further advised that the WCAT inventory has been reduced from approximately 470 to 83 appeals. He noted that the issue of attracting vice-chairs continues to be an issue.

The Board and the Chair of the WCAT discussed the establishment of WorkSafeNB's Issues Resolution Office, noting that the reduction in the WCAT backlog has likely resulted from the IRO process. There was also discussion on enhancing coordination between the IRO and the WCAT.

The Chair of the WCAT also noted that he is trying to tighten up the 1 year limitation period for filing an appeal of a WorkSafeNB decision.

12 Office of the Ombud

The Ombud of New Brunswick had a discussion with the Board of Directors. He noted that the Ombud's office does not generally receive a large volume of calls regarding WorkSafeNB.

There was discussion on the balance in the workers' compensation system in relation to how employer premiums should or should not factor into WorkSafeNB's decision making. The Board noted the political pressure of keeping assessment rates low, its guidance resulting from the mandate letter provided to WorkSafeNB from Government, as well as the Board's desire to ease employers into increasing assessment rates.

The Ombud, in response to a staff question on whether WorkSafeNB would benefit from more explicit legislation, noted his position that discretion is necessary to achieve equity. He explained that a conversation about how the workers' compensation system works

would likely be of benefit. The Board noted this is one of the goals of the stakeholder engagement sessions being held across the Province. He noted his desire to attend one of these sessions, which the Board was in support of.

He encouraged further private conversations on any issues with him and acknowledged the challenges the Board faces.

13 WorkSafe Services Evaluation Committee Report (*verbal update*)

WorkSafeNB's Vice President, WorkSafe Services provided the Board with an update on the WorkSafe Services Evaluation Committee (WSEC) meeting of January 24, 2018. She explained that the WSEC received a presentation on the Service Goal including updates on key actions related to strategies under the Service Goal. The WSEC was also provided with updated information on risk oversight. No recommendations for decisions were brought to the Board from the WSEC meeting.

14 Governance Issues

Board of Directors Performance Assessment (M18-05)

The Board reviewed memorandum M18-05 related to the Board's annual performance assessment. The Board expressed desire to have this completed electronically and anonymously. The Board also noted that a person outside of the Board should oversee the analysis, which will be done by both a data tool available to WorkSafeNB as well as an analysis of raw data by WorkSafeNB's internal auditor. A report detailing the results will be brought to the Board in February 2018.

Governance Education (M18-06)

WorkSafeNB's acting Director of Planning & Policy introduced memorandum M18-06 related to the governance education session. The Board agreed this session would be for WorkSafeNB only at its head office on April 5, 2018.

Policy 41-002 Governance Statement (M18-07)

WorkSafeNB's acting Director, Planning & Policy introduced memorandum M18-07 related to the update of Appendix D – Position Guidelines, Board Member, Appendix E – Position Guidelines, Chairperson, and Appendix F – Position Guidelines, Vice-Chairperson to Policy 41-002 – Governance Statement - Board of Directors to reflect legislative changes as well as various aspects of the Board members', Chairperson's and Vice-chairperson's duties.

The Board requested that Appendix F – Position Guidelines, Vice-Chairperson, Board of Directors, reflect the same required number of days to mirror that of a Board member.

Moved, seconded, and on consensus, the Board of Directors approved the changes to Appendix D – Position Guidelines, Board Member, Board of Directors, Appendix E – Position Guidelines, Chairperson, Board of Directors, and Appendix F – Position Guidelines, Vice-Chairperson, Board of Directors to Policy 41-002 – Governance Statement - Board of Directors as amended.

Recommendation, Board Member Appointments (M18-11)

The Board discussed memorandum M18-11 related to the appointment of two worker representatives to the Board of Directors. The Board was asked to review two applicants and make a recommendation to cabinet for their appointment.

Moved, seconded, and on consensus, the Board of Directors recommends to cabinet the appointments of Michael McMullin and Donna McNeill to WorkSafeNB's Board of Directors as worker representatives.

Selection of Members for Audit and Human Resources Committees (M18-12)

The Board discussed memorandum M18-12 related to member selection for the newly created Human Resources Evaluation Committee and Audit Committee.

Moved, seconded, and on consensus, the Board of Directors made the following Committee appointments:

Human Resources Evaluation Committee:

- Julie Marr, employer representative;
- Maureen Wallace, worker representative;
- Tina Soucy, alternate employer representative; and
- Michèle Caron, alternate worker representative.

Audit Committee:

- Tina Soucy, employer representative;
- Jim Stanley, worker representative;
- Gaëtan Guérette, alternate employer representative; and
- Maureen Wallace, alternate worker representative.

15 Stakeholder Engagement Debrief and Next Steps (M18-08)

The Board reviewed memorandum M18-08 related to Debrief Report of the Stakeholder Engagement Session held on December 13, 2017.

The Board discussed the difficulty in encouraging physicians to become involved in these sessions, and suggested exploring the possibility of WorkSafeNB attending a medical conference to bring key information to them. The Board also noted that perhaps larger employers with more experience in health and safety processes could help educate smaller employers with less experience.

The Board noted it was satisfied with the world café model, but expressed that it wanted to ensure these sessions do not become repetitive.

The Board also discussed the possibility of the Occupational Health and Safety Conference be expanded to be a general Workers' Compensation Conference which could provide an opportunity for more education of the system to stakeholders.

16 Safety Achievement Financial Incentive System (M18-09)

The Board received information contained in memorandum M18-09 related to Policy 23-610 Safety Achievement Financial Incentive System (SAFIS).

WorkSafeNB's consulting actuary from Morneau Shepell presented information to the Board including information on assessment models across Canada, the assessment model for WorkSafeNB including basic assessment rates, the compulsory Experience Rating System, and SAFIS which is a system for qualifying employers to further increase the financial incentive for a personalized rate resulting from prevention and post-injury management. A Senior Actuarial Analyst with WorkSafeNB reviewed how rebates or surcharges are calculated, what the maximum surcharge will be, how fatalities are calculated, and how employers can withdraw amounts from the fund.

The Board clarified that eligibility to participate in SAFIS is based on assessment premiums. The Board also clarified that a safety audit is conducted up front in order for the employer to qualify for SAFIS participation and results of the safety audit will impact conditions for entry. The Board confirmed that when it is determined the score resulting from the safety audit have to be increased, a reassessment is done before any access to the SAFIS fund is available.

The Board was advised that 30-40 employers would qualify for this program and that employers who are utilizing these funds, presumably for health and safety efforts, are doing so quite regularly.

The Board confirmed that the risk to non-participant employers is very minimal, with no major reputational risk to the organization as this program is not a driver of the overall assessment rate.

Staff confirmed with the Board that WorkSafeNB groups the businesses of employers together under one employer account to avoid divided safety and prevention efforts of that employer.

The Board noted it would be prudent to write to all participants who have entered into SAFIS to advise them that the policy has changed.

Moved, seconded, and on consensus, the Board of Directors:

- Approved Policy 23-610 Safety Achievement Financial Incentive System (SAFIS), release 007; and
- Rescinded Policy 23-610 Safety Achievement Financial Incentive System (SAFIS), release 006.

17 Procedure – Request for Funding Assistance (*Discussion*)

WorkSafeNB's acting President & CEO introduced this agenda item, reminding the Board that it previously discussed looking at criteria or a process for handling requests for grant funds to ensure fairness to all groups. WorkSafeNB's Vice President, WorkSafe Services, noted that WorkSafeNB does provide funding to organizations but these are viewed as partnerships with organizations that help to advance WorkSafeNB's work.

The Board directed staff to complete a scan of other jurisdictions and Crown Corporations and return this information to the Board in March for further discussion.

The meeting adjourned for the day at approximately 2:40 pm.