

MINUTES – BOARD MEETING
9:00am – February 22, 2018

Present: Dorine Pirie, Haley Flaro, Tim Petersen, Gaëtan Guérette, Lucien Sonier, Hector Losier, Tina Soucy, Julie Marr, Jim Stanley

Absent: Michèle Caron, Maureen Wallace

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

Staff present for portion of meeting: Wendy Papadopoulos, Crispina Caballero, Michael MacFarlane, John Hurley

Also present: Anne McInerney

Present for portion of meeting: Conrad Ferguson, Jeff Queen, Tammy Turner (for investment related items), Harry Gibbs (via conference call), Brad Rowe, Kyle Weeden

1 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.

The Board noted that some material from its governance training related to conflict of interest could be incorporated into the onboarding package for new Board members.

3 Adoption of the Agenda

The Board added Annual Report of Advocate Services to the agenda as item #13.

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

4 Adoption of Minutes / Review of Task List

The Board noted one typo in Item 6.

(a) Moved, seconded, and on consensus, the minutes of January 24 & January 25, 2018 were approved as amended.

(b) Task List of February 22, 2018

WorkSafeNB's acting Corporate Secretary & General Counsel reviewed the Task List with the Board.

Staff noted the item related to the creation of a Governance Calendar was removed and replaced with a review of a competency matrix related to Board member selection. The Board requested that staff create a "Governance Tracking List" to keep track of items related to governance activities.

The Board requested that long outstanding items remaining on the Task List include some additional narrative on the status of those items.

Staff and the Board requested minor revisions to the Task List related to setting or revising target dates.

Staff advised the Board that a discussion paper related to services provided at WorkSafeNB's Rehabilitation Centre (WRC), which is not intended to set out a position by the Board but rather to provide information, has been prepared and will be provided to the Task Force early in the week of February 26. The Board requested that this document be sent to Board members by email prior to being sent to the Task Force.

5 Acting President & CEO's Report

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

Report of the Comptroller

He advised the Board that he reached out to the Deputy Minister of the Treasury Board in response to the recent report by the Comptroller which contained information related to the WRC and found the meeting to be positive and productive.

Pay Equity

He also explained that the issue related to the review of a WorkSafeNB position to determine if a pay gap exists is ongoing. He advised that a meeting with the parties ahead of arbitration proceedings will be done in an attempt to resolve the issue.

Corporate Secretary & General Counsel Position

He explained that discussions with the recruitment agency to fill the position of Corporate Secretary & General Counsel with WorkSafeNB have begun. The Board requested that the acting Corporate Secretary & General Counsel compile a list of essential skills for the position to assist in recruitment efforts.

Fatality Review

WorkSafeNB's Vice President, WorkSafe Services explained that, as a result of the Board identifying an opportunity for education and information from a workplace that experiences a workplace fatality, staff have been reviewing approaches to this used by other jurisdictions. She noted that a model will be presented to the Board in March or April 2018 with a move to quickly implement following Board approval.

Performance Excellence

WorkSafeNB's acting President & CEO noted that two days will be established for Board members to attend performance excellence training as soon as possible, contingent on availability.

Client Experience Improvement Update (M18-17)

WorkSafeNB's Assistant Director, Service Excellence reviewed memorandum M18-17 related to the Client Experience Improvement Roadmap.

She provided an update on various 2018 initiatives. The Board inquired into Initiative 8 "Process for client insight and complaint handling", specifically why 2020 was indicated as the end date. Staff explained that this initiative began early because of its importance and various items related to this initiative will stretch out to 2020.

WorkSafeNB's acting Vice President, Corporate Services noted that Initiative 9 "Mobilize the PMO and continuous improvement" pilot is scheduled for April 2018.

The Board inquired how Initiative 10 "Assess, select and implement service delivery model (SDM)" will incorporate the voice of the client. Staff noted that this is currently done by way of complaint data, ongoing conversations with clients, and a voluntary exit survey from the WRC.

The Board requested that a document be available which would reflect all initiatives across the Client Experience Improvement Roadmap and staff noted this is currently being prepared.

General Counsel's Office Update

WorkSafeNB's acting Corporate Secretary & General Counsel provided the Board with an update.

He reported the 2017 end-of-year statistics for the Issues Resolution Office (IRO). In 2017 the IRO conducted 389 reviews, which represents an increase of approximately 15% over 2016. Of the reviews conducted, 70% of the original decisions were either confirmed or returned to the original decision maker for reconsideration. 30% of the files reviewed had the original decision varied or rescinded. 91% of the reviews were initiated by an injured

worker. He also reported that there has been a marked increase in the number of days that a file is waiting in the queue for a review. It was reported that there has been a significant increase in the number of self-referred cases and evidence indicates that much of this comes from the Office of the Workers' Advocate recommending to injured workers to bring their case to the IRO rather than to the WCAT through the Advocates. Finally, he noted that the WCAT Chair and the provincial Ombudsman both spoke favourably of the role the IRO is playing for WorkSafeNB clients.

He explained that WorkSafeNB has two cases before the New Brunswick Court of Appeal (NBCA) in March 2018. A previous issue which had been identified as a potential NBCA appeal has been resolved.

He also noted that a question related to WorkSafeNB's attendance at all Workers' Compensation Appeals Tribunal (WCAT) hearings was raised by an Advocate at a recent hearing which is in contrast to the Chair of the WCAT's expressed support of WorkSafeNB attendance.

He also noted that WorkSafeNB has received four recommendations as a result of a recent coroner's inquest, which WorkSafeNB will be responding to. He advised the Board that three more inquiries are scheduled through June and WorkSafeNB's role has been to have staff at the hearings to answer questions.

He advised that privacy training is ongoing with WorkSafeNB's Access Information Privacy Coordinator touring the province to provide training to staff.

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

6 Case comment re Québec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v. Caron (M18-15)

WorkSafeNB's acting Corporate Secretary & General Counsel introduced and reviewed memorandum M18-15 related to an employer's duty to accommodate injured workers.

He noted that the CSST (Quebec's WorkSafeNB equivalent) has the authority to impose obligations on the employer, where that authority in New Brunswick rests with the Employment Standards Branch at the department of Post-Secondary Education, Training and Labour. He noted that to date, this authority has not been a significant issue as WorkSafeNB works collaboratively with Employment Standards and the Human Rights Commission. The Board discussed that, especially given WorkSafeNB's focus on return to work efforts, enforcement related to the employer's duty to accommodate could be strengthened in the *Workers' Compensation Act*.

He also requested Board direction on a legal action which was filed several months ago and has not moved forward. The Board directed him to wait for further movement by the other party before deciding next steps.

7 Costing presentation – Three Day Wait – Conrad Ferguson (M18-20)

WorkSafeNB's consulting actuary presented information related to the estimated cost impact of removing the three-day waiting period under the *Workers' Compensation Act*.

The Board confirmed that information presented was prepared using 2018 as the base year for costing and is based on the current system.

He reviewed historical observations, a claims experience analysis (how distribution of new claims will be done), as well as costing estimates for the removal of the three day waiting period.

He stressed that the impact of the removal of the three day wait is not easily predicted and reviewed a range of possible impacts on the assessment rate.

The Board confirmed that the critical cost forecasting is related to the subset of clients who experience claim duration of less than 10 days. The Board also confirmed that WorkSafeNB may experience a potential spike in claim filing for clients who would previously have opted not to file a claim, which could be further driven by improvements in the adjudication process.

The Board discussed that this issue is one of many which will require stakeholder consultation to determine what WorkSafeNB stakeholders want. The Board also noted that some direction on this issue may come by way of a recommendation from the Task Force.

He also reviewed some performance indicators, noting some increases in lost time claims, benefit payments, and caseloads in 2016 which corresponds with policy changes in response to the challenge and overturning of WorkSafeNB policy at the WCAT.

8 Board Assessment Results – Norma Kelly (in camera)

9 Eckler Investment Model Review Follow-Up (M18-16)

WorkSafeNB's Treasurer introduced representatives from Eckler, a WorkSafeNB investment consultant who joined by conference call and a representative from PEI. He explained that Eckler will be expanding on its previous presentation on its Investment Model Review Report to the Board.

A representative from Eckler reviewed the analysis of what the past performance of WorkSafeNB's Accident Fund might have been if Vestcor Investment Management Corporation (VIMC) had managed the portfolio. He stressed that this type of analysis is difficult and also noted that the current passive investment management approach of VIMC does not align with WorkSafeNB's current belief of using active investment management.

He reviewed a simulated return history using VIMC investment strategies which match those of WorkSafeNB, noting that many of VIMC strategies which align with WorkSafeNB do not have a 10 year track record and some strategies are not offered at all. He also reviewed an actual fund that VIMC has managed for more than ten years with total authority to invest.

He noted that, based on the analysis presented, WorkSafeNB's Accident Fund would not have done much better or worse had it been invested with VIMC. The most critical difference is VIMC's strategy of passive management which results in lower investment management fees versus WorkSafeNB's active management which involves higher investment management fees but allows for significant gains in up markets. Staff noted WorkSafeNB's strategy has historically worked well and has added significant value to the Accident Fund.

The Board noted a recent amendment to VIMC's governing legislation which allows for some negotiation related to the ability of trustees to drive some of the decisions related to investments.

The Board also noted that VIMC manages pension funds, which are a very different liability than WorkSafeNB's Accident Fund with liabilities that can vary greatly depending on the year.

Representatives from Eckler exited the meeting prior to the Board continuing its discussion on the possibility of investing its Accident Fund with VIMC.

The Board discussed that before any decision could be made on this issue, it would need to consult with PEI. The Board also discussed that WorkSafeNB's incoming President & CEO should be involved in any decision.

Moved, seconded, and on consensus, the Board tabled the recommendation brought by the Executive Leadership Team for a decision on whether it will continue with the existing investment model or pursue one of the alternative models discussed in Eckler's report until the month following the appointment of WorkSafeNB's President & CEO.

10 Stakeholder Engagement Meeting Update (M18-21)

WorkSafeNB's acting Director, Planning & Policy, introduced and reviewed memorandum M18-21 related to the stakeholder engagement session scheduled for April 4, 2018.

She explained that the focus of the April session will be on what stakeholders can do in their workplaces to help facilitate successful return to work. The session will involve three presentations which will build on themes that emerged at the December 2017 meeting.

The Board agreed with the format for the next stakeholder engagement session.

11 Governance – Engaging Stakeholder Technical Committees (M18-18)

Deferred.

12 Governance – Balancing Decision (M18-19)

Deferred.

13 Report from Advocate Services

Moved, seconded, and on consensus, the Board acknowledged receipt of Advocate Services 2017 Annual Report and will request a representative from Advocate Services attend at a future Board meeting to discuss the contents.

The meeting adjourned for the day at approximately 3:00pm.