

Workplace Safety and Insurance System: Issue Resolution Strategy Framework

December 2009

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A message from the Workplace Safety and Insurance System Coordinating Committee

Since its inception five years ago, agencies and stakeholders of the Workplace Safety and Insurance System (WSIS) have been working collaboratively to advance the goals and objectives of the system. Improving outcomes for workers and employers; improving service delivery; ensuring effective governance and financial sustainability has been the focus of this collaborative activity.

Stakeholders have identified issue resolution of compensation decisions as an activity that would improve service delivery throughout the system and several initiatives have been created to respond to this objective. However, the system would benefit from a strategy that coordinates and communicates issue resolution activity. This draft document – the WSIS Issue Resolution Strategy Framework - is meant to fulfill that purpose.

This draft strategic framework contains elements identified by stakeholders from previous consultations; and elements identified from the WSIS agency partners. These elements are interconnected and provide possible mechanisms for preventing issues and seeking resolution to issues when they do develop. The draft strategy also outlines how early issue resolution would happen in a less legalistic, or litigious environment.

The draft strategy contains suggested activity for improving decision quality; ensuring that the right decision is made the first time; and exploring opportunities for resolving issues early outside of the formal appeal stream. The end result will be an improved service environment for injured workers and employers; an environment that seeks to resolve issues clearly, respectfully and in a non adversarial way.

A strategy is only as good as the activity that flows from it, resulting in change. That is why the strategy contains a commitment to monitor performance. This will

ensure that stakeholders and agency partners of the WSIS are able to gauge if the strategy is attaining the intended outcomes.

We are committed to hearing from stakeholders as this strategy develops. The first step is to illicit feedback on this framework. Throughout this document you will notice a series of questions to assist you in drafting comments.

We would ask that all written submissions be sent not later than January 29, 2010.

Written submissions can be sent electronically to: wsis@gov.ns.ca

Or by mail to:

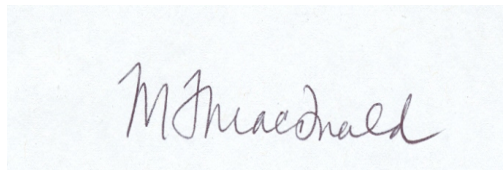
c/o Jeff Kelly
WSIS Policy Analyst
WCB of Nova Scotia
PO Box 1150
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Once written comments have been submitted, then a small working group will be assembled to assist us in next steps of the process. It is expected this will occur in February 2010.

Respectfully,



Chris Power
Acting Chair of the
Workers Compensation Board
Development



Margaret MacDonald
Deputy Minister
NS Department of Labour and Workforce

Workplace Safety and Insurance System

The Workplace Safety and Insurance System (WSIS) is Nova Scotia's collaborative partnership of government, agencies, 3rd party/aligned organizations and stakeholders (workers and employers). The WSIS is designed to foster collaboration for the purpose of achieving system goals and objectives. The four WSIS agencies (Workers' Compensation Board, the Workers' Compensation Appeals Tribunal, the Workers' Advisers Program, and the Occupational Health and Safety Division from the Department of Labour and Workforce Development) support each other by working together on shared initiatives that benefit the stakeholders of the system.

The goals of the WSIS

System activity is based on four key goals:

1. Improve outcomes for workers and employers
2. Improve service delivery
3. Ensure effective governance of the WSIS
4. Ensure financial sustainability of the WSIS

Each goal is accompanied by a list of objectives that were developed jointly by the WSIS agencies and stakeholders, which are instrumental to achieving the goals¹.

Included in goal number two, service delivery, are a series of objectives focusing on issue resolution. Through collaboration, system agencies have committed to improving service to injured workers and employers through joint training opportunities, exploring opportunities for early resolution efforts, reducing litigiousness and improving decision quality.

¹ For further details access the 2009 WSIS Strategic Plan, <http://www.wsis.ns.ca>

2009 Workplace Safety and Insurance System Strategic Plan: Commitment to Issue Resolution on matters of compensation

Since its inception, the WSIS has produced strategic plans that capture stakeholder input and set the direction for the system. The 2009 WSIS Strategic Plan has identified issue resolution as a priority for collaboration².

System activities to date

Issue resolution has been a consistent priority area for stakeholders and work has been ongoing. Listed below are the system's recent collaborative activities focused on improving issue resolution:

- Stakeholder Counsellors System – to assist workers and employers navigate their way through the system, thereby promoting better understanding of the Workers' Compensation system
- Creation of the Issues Resolution Working Group (IRWG) – interagency working group tasked with identifying and implementing methods of resolving claims-related issues earlier and less formally
- Cross training initiatives between agency staff to improve communication and processes – developing consistent practice and understanding
- The adjudication of Chronic Pain claims (inter-agency consultation on the adjudication of Chronic Pain claims resulting in a consistent approach)
- Special Early Intervention Initiative at the Workers Compensation Appeals Tribunal (WCAT) - an initiative exploring methods to resolve issues early in the WCAT process (detailed description of this pilot can be found on pg. 11 of the strategy)

While work has been done, the WSIS recognizes that there is an opportunity to continue to make improvements in this area. This document, the WSIS Issue Resolution Strategy, defines the overarching framework that will steer future

² For the purpose of this document, issue resolution activity will focus on areas within the workers' compensation side of the WSIS. Opportunities for issue resolution in Occupational Health and Safety will be explored at a later date.

system issue resolution activity. It will broadly outline what a systemic approach would entail and reaffirm the need for continued activity directed at addressing issues within the system in a transparent, fair and accountable manner.

The WSIS Issue Resolution Strategy

It is proposed that a WSIS Issues Resolution Strategy form the foundation of a collaborative approach building on past initiatives created to address issue resolution and connecting new initiatives for a common purpose. The core of the strategy would centre on three distinct but interconnected components:

1. Decision Quality
2. Early Resolution
3. Reducing Litigiousness

Each component would address gaps within the current issue resolution process as well as opportunities for process improvements identified by stakeholders.

The three components: an interconnected approach for issue resolution

The three components mentioned above are not meant to be viewed in isolation of each other. Rather, each component in the issue resolution process is connected to and influences the other components. For instance, initiatives that foster improved decision quality will also reduce litigiousness; and early resolution opportunities will further enhance the decision quality process in the long term and reduce litigiousness. The components are defined separately so as to provide the framework for future activity aimed at addressing issue resolution broadly.

What follows is a description of the three components, an explanation of the benefits of each and a series of questions where stakeholder input is sought in order to inform the evolution of the ongoing strategy.

Component #1 - Decision Quality

The objective of this component is to improve the quality of decisions produced within the system. It is proposed that this can be accomplished, in part, through the development and implementation of quality assurance processes that have at the root collaboration between the WSIS agencies. This component will have the greatest impact at the first level of the decision making process – the initial decision.

Elements and process of a quality decision

Arriving at a quality decision is a process. At the end of the process a well written quality decision must:

- address all relevant issues
- be easy to understand
- show clear reasoning that leads to a logical conclusion
- be respectful of all concerned
- explain necessary credibility findings

The well written decision is the end result of the entire adjudication process. A quality decision addresses all relevant information and weights that information accordingly. Communication between decision maker and injured worker or employer is established early and is ongoing throughout the decision process. When it comes time for a decision, it is explained both verbally and in writing and is done so in a fair, transparent and respectful way.

Stakeholders have indicated there are gaps within the current decision quality process, specifically relating to open lines of communication. It is necessary to ensure that the decision is communicated in a timely manner, to ensure injured workers and employers know they are being treated fairly, and to ensure that all are given the opportunity to be heard. Including strong lines of communication in the decision making process may help to prevent dissatisfaction.

Benefits of improving decision quality

Improving decision quality is a critical component of the strategy, and arguably the component that will render the greatest impact on issue resolution because it is focused on preventing problems from developing. System agencies will be given the opportunity to collaborate, to ensure that the right decision is made the first time. This will increase efficiencies within the system, engage agency partners, improve service, and lead to better decisions.

Proposed activities for improving the quality of decisions:

- Collaboration and joint training forums for system partners
- Increased training and development for decision makers
- Increased use of plain language
- Development of issues templates to assist decision makers in reaching the correct decision the first time
- Monitoring of decision outcomes and tracking appeal trends

Suggested Consultations Questions:

Is the overall concept of what goes into a quality decision, as identified in the quality and elements section correct?

Will stronger lines of communication promote better understanding of decisions and prevent disputes?

Component #2 - Early Resolution

Although it is expected that as decision quality improves there will be less issues progressing to appeal, the reality is that if an injured worker or employer disagrees with a decision, it can be appealed – the appeal is a legislative right. In keeping with the intent of the strategy, in some cases a formal appeal or a hearing may not necessarily be required to resolve an issue. Other mechanisms, such as an informal early resolution process, may be more appropriate.

Early Resolution defined

Early resolution would simply be a mechanism to provide the opportunity to potentially resolve a dispute before it progresses to a formal appeal or before it comes to a hearing once appealed. This component differs from decision quality because an early resolution process would occur after a decision has been rendered, and once the injured worker or employer has decided to appeal (or has appealed) the decision. An early resolution mechanism would allow for:

- Open lines of communication and facilitating dialogue
- An additional opportunity for workers and employers to be heard by another individual
- Workers and employers to be reassured understand that they are being treated fairly by the system

Benefits of early resolution

Benefits of an early resolution process could include:

- A quicker and more timely resolution of an issue
- Preserving and building relationships
- Increased efficiencies within the system through resolved or avoided appeals
- Better understanding of the issues by the various parties – decision clarity
- Improve the service experience

At previous WSIS consultation sessions stakeholders from both the injured worker and the employer communities have encouraged the system to explore an early resolution process.

Early resolution at WCAT and WCB

As a result of this stakeholder input, the WCAT initiated a one-year pilot project focused on an early resolution process in October 2008. The pilot project introduced the role of the WCAT Special Projects Officer who was tasked with exploring opportunities to resolve issues on appeal to the WCAT. This pilot is seen to be a success as the Special Projects Officer was able to find a remedy or resolution for approximately 30% of the issues that were reviewed. Through the course of the pilot, stakeholders have indicated that the service has been beneficial and believe it may have greater impact if it were situated earlier in the appeal process. In response to this feedback the WSIS has been exploring the implementation of a similar pilot earlier in the decision making process, located in the Legal Department at the WCB. To allow the necessary time to investigate and implement this activity the WCAT has extended the Special Projects Officer until the end of 2009.

Proposed early resolution activities

The key strategic question is how and where to explore and implement early resolution options. It is proposed that WSIS agencies collaborate and identify areas for early resolution. For example, one such opportunity could be to develop a conciliation/facilitation process that is designed to bring participants together in order to resolve disputes early in the process. It is also proposed that agencies explore early resolution options prior to a formal hearing. Both of these propositions will be informed at the completion of the early resolution initiatives pilots at WCAT and the WCB, as referenced above.

Consultation Questions:

Is an early resolution process worth pursuing?

Is a conciliation/facilitation process that promotes open dialogue and provides an opportunity for participants to be heard practical?

Are there other early resolution initiatives that the WSIS should explore?

Component #3 - Reducing Litigiousness

The third and final component of the strategy is focused on reducing litigiousness within the system.

Litigiousness defined: stakeholder perspective

In the context of the compensation system, the way in which issues are resolved has been described by some stakeholders as litigious. Stakeholders have expressed concern that issue resolution in the system is characterized by an over reliance on legal mechanisms. Legal procedure and mechanisms should not be interpreted as negative for the system, especially if an issue warrants proceeding to higher levels of appeal like the Nova Scotia Court of Appeal. However, issues that progress to this level are rare and involve complex legal questions. A legal process for these issues is appropriate as precedents are set that will guide the system in the future. However, the vast majority of the disputes within the system do not progress this far. Therefore a litigious approach to resolving every issue is perceived by stakeholders to be a barrier to timely and meaningful dispute resolution.

Litigiousness as a barrier to issue resolution

Stakeholders have indicated (through previous WSIS consultations) that the system relies heavily on the appeal process as a means to resolve disputes and that the process is overly legalistic. The appeal process itself has merit and is constructed to produce a fair and balanced approach to resolving disputes. However, if the process becomes too adversarial in nature, it is perceived as

more of a barrier to issue resolution. Not every issue before the appeal system needs to be handled in an adversarial manner.

An adversarial process is not always the most conducive to issue resolution as it focuses on a win/lose model. In certain instances, as noted above, this is appropriate; but in other cases, it might be more beneficial for the system to seek resolution through a less formal, less litigious, less adversarial process.

The first two components of the Issues Resolution Strategy focus on improving the quality of decisions and exploring opportunities to resolve disputes early. Proposed activities resulting from the first two components are aimed at reducing stakeholders' experiencing the system as litigious.

Reducing litigiousness through decision quality and early resolution

Through greater decision quality and opportunities for early resolution, the perception that the resolution process within the system is overly legalistic will ideally lessen. Lines of communication will be opened early, before the decision is rendered (e.g. communication between decision maker and worker and employer and less legal jargon in initial decision letters). Should the decision be disputed, there would be an opportunity to explore avenues for resolving the issue outside of the formal appeal process and to include parties early in the resolution process.

Other proposed mechanisms for reducing litigiousness

It is proposed that litigiousness could be further reduced through changes in the case management processes at the WCB and at the WCAT.

This could be accomplished through:

- More informal pre-hearing processes aiming at increased efficiencies and more timely resolution

- Adopting processes that focus on resolution through mutual discussions on the need for further investigation and/or evidence gathering, resulting in a less adversarial approach

Consultation Questions:

Is litigiousness correctly defined in the strategy?

Will the proposed mechanisms recommended in the strategy have an impact on reducing litigiousness?

Measuring success

A strategy is only as strong and relevant as the action that flows from it.

Therefore, success measures are part of the Issue Resolution Strategy. It would take time, however, for the initiatives that will eventually flow from this strategy to gain traction and show meaningful results. Given this reality, the system is committed to tracking the results of the strategy and reporting it annually through the WSIS reporting structure.

Where to go from here

The Issue Resolution Strategy is in the development (draft) stage. This is an opportunity for the WSIS agencies, through Coordinating Committee to hear from stakeholders concerning the direction of the strategy. It is important to get feedback from stakeholders regarding the components of the strategy: decision quality, early resolution, and reducing litigiousness. It is anticipated that elements of the strategy will evolve overtime – achieving the goals of getting the right decision early and reducing litigiousness within the system will not happen immediately, it will take time. However, the Issue Resolution Strategy is a critical first step because it provides the framework for all players within the WSIS to work together to achieving these goals.

Consulting with Stakeholders

Consulting with stakeholders will occur through a two step process:

The first step is to illicit feedback on this framework. Throughout this document you will notice a series of questions to assist you in drafting comments.

We would ask that written submissions be sent no later than **January 29, 2010**.

Written submissions can be sent electronically to: wsis@gov.ns.ca

Or by mail to:

WSIS Issues Resolution Strategy Framework
c/o Jeff Kelly
WSIS Policy Analyst
205 - 5595 Fenwick Street
Halifax NS B3H 1R0

The second step will occur in February 2010. A small group of stakeholders will be asked to provide further comments on the development of the strategy through a face to face meeting. Stakeholders will be selected from organizations that are heavily involved in the appeal system.

Appendix – Summary of Consultation Questions

Component #1 – Decision Quality

Is the overall definition of decision quality correct?

Will strong lines of communication promote better understanding of decisions and prevent disputes?

Component #2 – Early Resolution

Is an early resolution process worth pursuing?

Is a conciliation/facilitation process that promotes open dialogue and provides an opportunity for participants to be heard practical?

Are there other early resolution initiatives that the WSIS should explore?

Components #3 – Reducing Litigiousness

Is litigiousness correctly defined in the strategy?

Will the process recommended in the strategy have a direct impact on reducing litigiousness?