

WORKING TOGETHER

Safe · Accountable · Sustainable

Workplace Health, Safety and Compensation
2012 Statutory Review Committee

I. INTRODUCTION

The Government of Newfoundland and Labrador announced in January 2012 the start of the Workplace Health, Safety and Compensation Commission (WHSCC) statutory review. The review process is an opportunity to ensure the continued improvement of the workers' compensation system by considering the compensation and health care services, overall client service, the prevention of injuries and fatalities, and the financial sustainability of the worker injury fund.

The statutory review is required every five years under the *Workplace Health, Safety and Compensation Act* (henceforth referred to as the Act). The statutory review committee prepares a report comprised of conclusions and recommendations for government's consideration.

The primary goal of the statutory review is to listen to the views of the province's workers, employers and other interested parties to identify potential improvements in the system. The Committee invites submissions and presentations for its consideration.

II. BACKGROUND

Previous review committees identified different themes to guide their work and analysis. In 2000, the workers' compensation system was experiencing a financial crisis. In its final report, *Changing the Mindset (2001)*, the Task Force mapped out the design of a comprehensive framework for the future of the workers' compensation system. To control escalating costs and increasing claim duration, the Task Force recognized the need to place substantially increased responsibility upon the workplace parties (workers and employers). The authors of the 2005 statutory review committee report noted that government, workers, employers, and the Commission's Board of Directors endorsed the framework put forward in 2001's *Changing the Mindset*, resulting in significant changes to the system, especially in its financial sustainability management.

The 2005 review committee examined the efforts made by the commission in implementing the 2001 report and considered the need to manage competing

interests. In their report, titled *Finding the Balance* (2006), the 2005 Committee concluded “*claims duration is the key to lower assessment rates and increased benefits.*” The Committee also highlighted the need for more effective performance indicators so that the Commission and the key stakeholders could be better prepared to identify factors affecting claim duration, assess their influence, and implement changes to produce the desired results.

One of the key issues identified by the 2005 committee was the need for, and the continued support of, collaboration between all stakeholders – the Commission, employers, and workers – to ensure success in achieving a vision of a responsible, responsive, and viable workers’ compensation system in Newfoundland and Labrador. Indeed, in the discussions undertaken by the 2012 Committee to prepare for its work and in developing its approaches for this discussion paper, the theme of working together has arisen consistently.

As a result, the 2012 Statutory Review Committee is particularly interested in contributions that look at how the stakeholders can work together to continue to improve the system. All stakeholders are collectively responsible for supporting, contributing, and ensuring the system is working effectively in promoting workplace safety, providing appropriate benefits to workers, and ensuring the financial sustainability of the system. The WHSCC is constantly adapting to better meet the needs of the changing work environment but it is essential that all stakeholders work together to ensure a safe and healthy working environment for the workers of our province.

III. HISTORY OF THE WORKERS’ COMPENSATION SYSTEM IN CANADA

The workers’ compensation system in Canada is founded on the principles developed by Judge Sir William Meredith, and these continue to serve as the foundation for workers’ compensation systems across the country. In 1910, Meredith was asked to design a system of compensation which would be payable to individuals who were injured during the course of their employment. His report, submitted on October 31, 1913, identified five core concepts that are today the hallmarks of a reliable, equitable, and manageable compensation system. The five Meredith Principles¹ are described below:

¹ Saskatchewan's Workers' Compensation Board. http://www.wcsask.com/About_Us/Meredith_Principles.html.

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1. **No-fault compensation:** *Workplace injuries are compensated regardless of fault. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury. Fault becomes irrelevant, and providing compensation becomes the focus.*
 2. **Collective liability:** *All employers share the total cost of the compensation system. All employers contribute to a common fund. Financial liability becomes their collective responsibility.*
 3. **Security of payment:** *A fund is established to guarantee that compensation monies will be available. Injured workers are assured of prompt compensation and future benefits.*
 4. **Exclusive jurisdiction:** *All compensation claims are directed solely to the compensation board. The Board is the decision-maker and final authority for all claims. Nor is the Board bound by legal precedent; it has the power and authority to judge each case on its individual merits.*
 5. **Independent board:** *The governing board is both autonomous and non-political. The Board is financially independent of government or any special interest group. The administration of the system is focused on the needs of its employer and labour clients, providing service with efficiency and impartiality.*

There are twelve workers' compensation Boards in Canada. In Newfoundland and Labrador, the Workplace Health, Safety and Compensation Commission (WHSCC) is responsible for administering the WHSCC Act, which includes injury prevention and claims management.

All stakeholders have undertaken initiatives to build a safer work place culture and to improve client services that are more responsive to stakeholder needs. This has contributed to a reduction in the injury rate with the following results:

- Overall the average incidence rate has declined from 3.2 in 2001 to 1.8 in 2011, even though the number of workers, especially in the resource sector, increased over the same time period.
- Between years 2001-2011, there were about 20,269 fewer injuries in our province with a costs savings of almost \$610 million.

These improved results are encouraging, however there is still much work to do. In 2011, there were still about 4,070 reported injuries, the cost of which has a projected actuarial value of \$154 million.

IV. STATUTORY REVIEW PROCESS

The 2012 statutory review has two phases:

1. The first phase is a technical review of the Act to identify areas for improvement and modernization. This process began in March 2012 and will form a component of the Committee's final report to government.
2. The second phase is the public consultation process and it will focus on the broader administration of the Act and its regulations. The Statutory Review Committee will conduct public consultations and roundtable discussions as needed. The Committee will also accept written submissions. *For additional instructions on how to participate, please review the directions in the section at the end of this document, titled "Participation Guidelines."*

We encourage everyone with an interest in workplace health, safety and compensation to contribute to the review process.

V. THEMES

The Newfoundland and Labrador Employers' Council, the Newfoundland and Labrador Federation of Labour, and the Commission conducted a pre-planning phase to identify key themes for the public consultation process. Each sector had identified three priority themes. Together, these are:

1. Maximum Compensable Assessable Earnings (MCAE)
(Claim Benefit Ceiling)
2. Financial Sustainability
3. Labour Market Re-entry (LMR)
4. Medical Management
5. Occupational Disease
6. Prevention – Role of Stakeholders

5.1 Maximum Compensable Assessable Earnings (MCAE)

Injured workers qualify for wage loss benefits. Sections 73, 74 and 80 of the Act address wage loss compensation. Wage loss benefit is subject to a maximum prescribed amount set out under Regulation 21 of the provincial legislation.

In 2012, injured workers in Newfoundland and Labrador receive 80% of their net earnings to a maximum gross annual earnings of \$52,885 (defined as Maximum Compensable and Assessable Earnings).

Some questions to consider:

- *Is the current MCAE a reasonable level of wage loss compensation?*
- *What are the advantages or disadvantages of changing the MCAE payable to injured workers?*
- *What other alternatives are possible to ensuring a reasonable income replacement level for injured workers?*

5.2 Financial Sustainability

Financial sustainability is an outcome of balancing the costs of the system and benefits to injured workers. Financial sustainability is achieved through several approaches. These include a strong injury prevention strategy, a prudent investment policy, adequate experience-based assessment rates, and the provision of adequate compensation benefits. While recommendations should not be determined based solely on cost, the statutory review process will take into account the costs and effects of recommendations, both individually and collectively.

Some questions to consider:

- *What role can stakeholders play in reducing the costs of the system?*
- *What other factors affect the long-term financial sustainability of the system?*

5.3 Labour Market Re-entry (LMR)

When injured workers cannot be accommodated in suitable, available employment and earnings, the Commission provides the workers with a labour market re-entry process which includes a re-entry assessment, and if necessary a labour market re-entry plan (Section 89.2 of the Act). In the last statutory review (2006), the LMR process was targeted for improvement. The Commission developed and implemented a plan to address improved staff training, education, and performance measurement.

Some questions to consider:

- *How effective is the current LMR process in meeting the needs of workers and employers?*
- *What additional measures or changes would enhance the current LMR process?*

5.4 Medical Management

Early intervention on a claim from a medical management perspective has a positive impact on the injured worker's recovery, early and safe return to work, and claim costs and benefits. The Act and the Commission's policies provide direction for the medical management of claims. Through its policies, the Commission has developed strategic initiatives with respect to medical management. This statutory review provides an opportunity to discuss medical management.

Some questions to consider:

- *How can appropriate medical treatment be provided in a timely manner to support recovery and manage claim duration effectively?*
- *Are there other approaches that could enhance or improve medical management to better facilitate rehabilitation and early and safe return to work?*
- *How do stakeholders inspire and support change in the teaching and management of occupational health and occupational medicine?*

5.5 Occupational Disease

Currently the Commission defines and adjudicates occupational disease claims under Section 90 of the Act and Section 23 of its Regulations. This review will consider all matters associated with adjudication, benefit liability, and prevention of future occupational diseases. Managing occupational disease is challenging. For example, latency periods mean delays in the appearance of disease, sometimes when the person is no longer employed with the company.

Some questions to consider:

- *How could the system be best funded to address the coverage requirements?*
- *What revisions, if any, are needed in the current process of adjudicating occupational disease claims?*
- *What prevention measures are necessary to reduce the occurrence of occupational disease?*
- *How could the roles of WHSCC, the Occupational Health and Safety branch and other stakeholders be enhanced to increase workplace safety relating to awareness and the prevention of future occupational diseases?*

5.6 Prevention

The Commission offers prevention services to employers and workers to promote the reduction of workplace injury. The Prevention Services Division is responsible for the design, development, delivery, monitoring, and evaluation of workplace health and safety education and accident prevention initiatives. As well, the Commission is responsible for certification of safety training standards.

Prevention Services works with industry sectors, employers, and workers to promote awareness and prevention. This is done through consultation, collaboration, education, promotional material, and audits. As well, Prevention Services offers support for Occupational Health and Safety Committees, and the application of certification and training standards.

The Statutory Review Committee is interested in hearing about prevention models and methods and learning how best to identify opportunities for stakeholders to undertake initiatives that would continue to move the province toward a sustainable safety culture.

Some questions to consider:

- *How could workplace incident reporting be improved to provide the necessary information for stakeholders to use in the prevention of workplace injuries?*
- *What additional reporting criteria would enhance the potential for prevention?*
- *What approaches or initiatives should stakeholders undertake to develop an effective safety culture in our province's workplaces?*
- *What kind of training is needed to develop an effective safety culture in our province's workplaces?*

VI. PARTICIPATION GUIDELINES

Individuals and organizations wishing to make oral or written submissions are advised that all submissions will form part of the public record of the Statutory Review Committee's proceedings and will be publicly accessible through the *Access to Information Act*.

There are several ways to contribute to the statutory review process.

Presentations – The Committee will hold consultations in various parts of the province and invites individuals, stakeholder organizations, and others to share their perspectives on how to improve our system. Due to anticipated demand, those people wishing to present should pre-register to indicate their interest and to facilitate our planning of the consultation schedule, planned for January-February 2013. To register, call or email the Statutory Review Committee office at 709-778-4804 at WHSCCinfo@gov.nl.ca.

Written submissions – The Committee will accept written submissions (paper or electronic PDF copies) on the themes outlined in this document or on any topic relating to the workers' compensation system in Newfoundland and Labrador. Submissions may be stand-alone documents or may expand upon the themes presented at the public sessions. Written submissions may be sent by postal mail, e-mail, or fax **by March 1, 2013**:

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- By mail to:
Statutory Review Committee
PO Box 8158
St. John's, NL A1B 3M9
 - By e-mail (PDF formats only please) to:
WHSCCinfo@gov.nl.ca
 - By fax to:
709-778-4808

Roundtable discussions – The Committee may host several stakeholder roundtable discussions to engage key individuals and organizations on specific topics as needed. Participation in these sessions will be by invitation only.