



**CANADIAN
MANUFACTURERS
& EXPORTERS**

NEW BRUNSWICK DIVISION

Response to the
Independent Review Panel Discussion Papers
on the
Workplace Health Safety & Compensation Commission

November 2007

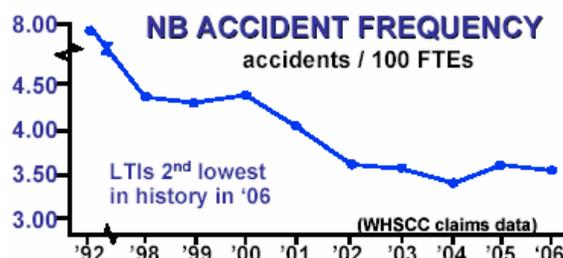
Canadian Manufacturers & Exporters (CME) has been the voice of Canadian industry for more than 135 years. CME membership is largely comprised of small & medium enterprises, but the Association also represents some of the largest companies in Canada. In New Brunswick, CME members account for an estimated 75% of manufacturing output and a substantial portion of exports.

CME is well recognized as industry's leading voice on health, safety and compensation issues. CME has a vested interest in ensuring an efficient, effective wc system that provides reasonable benefits to injured workers at competitive (for employers) assessment rates. In general, 10% of employers account for 90% of WHSCC assessment revenues and CME represents the majority of those employers. (As such, CME has traditionally been asked to nominate one or more representatives to the WHSCC Board.)

CME welcomes the opportunity to comment on this review of the provincial workers' compensation system. CME supported undertaking a review to 'benchmark' WHSCC performance against other workers' compensation systems. It is essential, however, that this exercise focus on specific improvements and not become a forum for debating social policy issues related to compensation. This would be divisive and counterproductive.

New Brunswick's workers' compensation system has evolved since the inception of this century-old compromise between employers and workers. Real challenges remain to ensure the sustainability of the wc system into the next century. In general, though, it is functioning relatively well and responsibility for continually improving the system should be left in the hands of the WHSCC and its stakeholders.

Of course, if there were no workplace injuries, there would be no need for a wc system or health & safety legislation. Eliminating injuries is the penultimate objective, but the reality is that accidents do happen. Great strides have been made in safety performance, particularly over the last two decades. And New Brunswick's performance compares very favourably with other Canadian jurisdictions.



Employers have the primary responsibility for safety and must maintain the authority to manage their operations in a safe, productive manner. However, continually improving safety performance depends on creating a 'culture of safety' and the cooperative efforts of all stakeholders. Thus, any changes in the compliance regime (eg. fines) should promote cooperation and be focused on performance, as opposed to 'prescription'. Prevention initiatives must also be focused on results. Innovative approaches should also be utilized to develop (eg. partnerships), deliver (eg. electronic & on-line) and finance (eg. tax incentives) such initiatives.

Despite improved safety performance and decline in lost time claims, the duration and cost of WHSCC claims are rising – and faster than other jurisdictions. WHSCC efforts to deal with soaring health care costs should continue and be enhanced. As well, this trend must be slowed through allocation and application of resources, including a 'leaning' of the claims management process. Similarly, improvements to the appeals process should be considered to deal with a growing backlog of cases.

This trend of claims costs threatens the sustainability of the system. Since 'reform' in '93, 'improvements' have been made to the benefits provided injured workers. Today, WHSCC benefits are in the 'middle of the pack' compared to other jurisdictions. Thus, there is very little margin for raising benefits and the cost of any such changes must be offset elsewhere in the system. It is critical, though, that no changes be made that would weaken the waiting period provision. This 'deductible' is essential to retaining discipline in the system.



While there are challenges on the horizon, WHSCC is presently in a sound financial position. Over the last three years, \$138M excesses were recorded and the funding ratio has reached 111% - above the policy target. These results were largely due to imposition of 'liability' and 'stability' surcharges earlier this decade.

The appropriate response is not to raise the target ratio. Assessments on provincial employers have risen faster than most other jurisdictions and rates are nearly at historic highs. Safety is essential for its own sake, but employers do expect a return on investments in safety performance. At the very least, surcharges must be eliminated before any consideration is given to enhancing benefits.

The result of this review should be to ensure an efficient, effective system that offers reasonable benefits to injured workers at competitive (for employers) assessment rates. Above all else, though, the Panel must resist the urge to recommend changes for change sake. And, any changes must not threaten the stability or sustainability of the system.

A summary of *all* (45) of the recommendations & positions put forth in this brief is provided in **Section 10**. These include:

- ***In considering any change to the H&S regulatory regime, the focus must be on cooperation, versus 'command & control', and on performance, as opposed to prescription.***
- ***Additional resources allocated to prevention must have a real impact on safety performance and must be focused on clear initiatives, preferably allocated over a defined time frame.***
- ***Current outreach and educational programs offered by WHSCC should be enhanced (eg. supervisory and manager H&S training, NB-specific young worker video).***
- ***Partnerships should be pursued to develop on-line & electronic resources for practical application of H&S knowledge and best practices (eg. small business training).***
- ***Finance NB should be encouraged to offer tax deductions for undertaking WHSCC programs.***
- ***Given increases in WHSCC H&S spending and increases in the public sector workforce, the amount of this 'grant should be re-evaluated.***
- ***Larger fines are not conducive to creating a safety culture and the negative effect of raising the maximum level would outweigh any deterrence value.***
- ***The courts should have the flexibility to impose more creative sentencing that results in positive, action-oriented measures to improve safety performance.***

- ***The trends clearly indicate that there is room for improvement in WHSCC claims management.***
- ***WHSCC should engage expertise to 'lean' the claims management process.***
- ***WHSCC should consider to reallocating resources from other areas of the WorkSafe 'division' to claims management.***
- ***Consideration should be given to developing 'return-to-work' incentives for smaller employers.***
- ***WHSCC should be more actively engaged with the medical community to make it easier and more rewarding to 'fast track' workers to early and safe 'return to work'.***

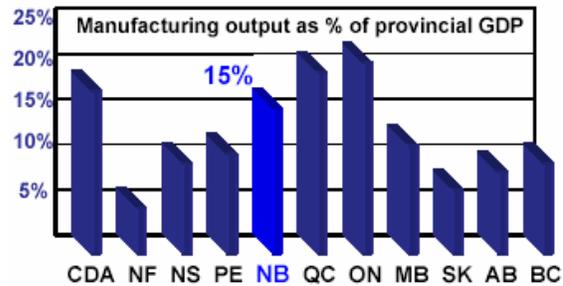
- ***The Appeals Tribunal should be required to apply WHSCC policy in its decision making process.***
- ***WHSCC should consider creating an initial level of appeal to improve the quality of the Commission's representation, reduce the appeals 'backlog' and lower overall costs.***

- ***There is little margin for raising benefits. The cost of any 'improvements' must be offset elsewhere in the system and any changes must be targeted to achieve a specific objective, bearing in mind the overall impact on the incentive to return to work.***
- ***Changes to the wage recovery rate or maximum compensation level aren't warranted.***
- ***CME steadfastly opposes any measures that would weaken the waiting-period provision and potentially return the system to financial instability.***
- ***The prohibition of 'topping up' is essential to maintain discipline and encourage return to work.***
- ***WHSCC Board (in consultation with stakeholders) is best positioned to evaluate the fairness and efficacy of the practice of deeming on an ongoing basis.***
- ***Electronic claims submission and electronic funds transfer should be investigated as a means to improve payment times.***

- ***Simply raising the funding ratio target is not the appropriate response to improved results.***
- ***Responsiveness in rates to improved performance is essential to maintain financial incentives for investments in health & safety initiatives.***
- ***The 'surcharge' must be eliminated before any consideration is given to 'improving' benefits or otherwise raising costs.***
- ***WHSCC should strive to regain the perception as having one of the most effective, competitive compensation systems in Canada.***

1.0 NEW BRUNSWICK'S MANUFACTURING SECTOR

Manufacturing is a key element of the Province's economic and social fabric. In fact, New Brunswick is the third most manufacturing intensive province in Canada, as the sector accounts for 15% of GDP. New Brunswick's manufacturing sector also employs more than a tenth of our workforce. And manufacturing jobs are highly valued. Average wages in the sector are almost double the average of the entire workforce.



Many more people are also employed by providing supplies and services to the sector. This is one aspect of the 'spin-offs' from manufacturing. Indeed, \$3.78 of economic activity is generated from each dollar of manufacturing production in New Brunswick. This is among the highest 'multiplier' in Canada.

Manufacturers in New Brunswick, as in the rest of Canada, are holding on in the wake of a perfect storm that's pounding the sector. Oil and energy prices have spiked to historic levels. And manufacturing, which is an energy intensive activity, has borne the brunt of this increase. The loonie, soaring at heights never seen before, presents real challenges for the majority of manufacturers that sell their goods in American currency. The increase in exchange rates over the last four years (including 21% in this year alone) has effectively sliced more than a third of the value that most manufacturers receive for their goods. This year, a slowing US housing market is exerting even more pressure on the provincial manufacturing sector.

These developments are being manifested in employment as the sector shed nearly 90,000 jobs across the country last year. Since a peak in 2004, more than a quarter million manufacturing jobs have been lost in Canada. These competitive pressures are not expected to abate as a seismic shift is taking place in the global economy, which will likely change the landscape for manufacturers in the Western world. The emergence of developing economies, such as China and India, has presented a new, aggressive source of competition. Our manufacturers will have to respond by improving productivity, by innovations in their products, processes and supply chains and even by developing new business models.

New Brunswick manufacturers, however, have always proved to be a resilient group. And the outlook for the provincial economy, lead mainly by 'mega-projects' in the energy and minerals sectors, is bright. These projects will present a host of opportunities for local companies. Manufacturers, however, will have to ensure their operations are lean and productive to take advantage of these opportunities. And governments will have to ensure we have the most competitive taxation and regulatory regimes possible.

In particular, the regulatory regime must not create impediments to a flexible, productive workforce nor act as a deterrent for manufacturers to recruit (and retain) the talent required to compete. Government policies, though, have an impact not only on the availability of a skilled workforce, but its costs. Charges on payroll are often said to be 'job killers'.



Over the last six years, levies on payrolls, exclusive of wage or benefit increases have risen 16.0%, which is considerably higher than the increase in cost of living over the same period. It must be emphasized that these payroll taxes are among the most onerous. As a non-profit tax, such levies go right to the bottom line and they must be paid regardless of whether a company is making money or not.

2.0 THE INDEPENDENT REVIEW

In its *Charter for Change*, Government pledged to undertake a "comprehensive review of the Workplace Health, Safety & Compensation Commission (WHSCC)". In May of this year, an "independent review" was launched to "determine whether the current WHSCC system provides the most appropriate benefits possible". It was to "examine how well the current system compares to workers' compensation systems across Canada" and to "reveal key considerations for the future of the WHSCC". Stakeholders (including CME) were consulted in June and a series of discussion papers was released in September.

The Review Panel has further defined its mandate to consider "what a New Brunswick worker faces when an injury occurs" in order to determine whether the WHSCC "is functioning appropriately and to its fullest potential". In this regard, the Panel is questioning whether the system is "adequate compared to its Canadian counterparts" and whether the WHSCC "provides appropriate coverage within the New Brunswick economic and social context". The discussion papers dealt with six topics, including prevention, coverage and benefits, financial performance, claims process and health care, the appeals process and governance. (Specific questions were asked on each of these topics.)

CME supported the undertaking of a review to 'benchmark' WHSCC performance against other workers' compensation systems. Indeed, industry regularly undertakes such exercises to identify gaps in performance and to improve operations and competitiveness. CME, however, had real concerns that this review could potentially become a 'public inquiry' and provide a forum for debating social policy issues related to the compensation system. CME strongly believed that such an unfocused review would be divisive and counterproductive to dealing with significant challenges facing the Commission.

It should be emphasized that WHSCC regularly consults stakeholders on issues dealing with compensation, as well as health & safety. Indeed CME is currently involved in consultations regarding injury reporting and fall protection. A few years ago, there was a major review of the *General Regulation* under *OH&S Act* and JHSC training was legislated following tripartite discussions. Through the years, CME has also been involved in numerous consultations on compensation matters. These included discussions in 2002 and in 1998, as well as consultations that lead to 'merger' in '95 and 'reform' in '93. Indeed, a number of issues identified in these discussion papers were previously raised during those rounds of consultations.

Discussions dealing with compensation tend to be the most difficult. (This may be explained by the fact that it is much easier to reach consensus on matters involving health & safety.) Of course, balance is the operative word in dealing with such issues. (It is interesting to note that the papers raise the question about the level of benefits offered to injured workers, whereas it is only questions whether the stability - and not the level - of assessment rates is appropriate.) Ultimately, though, decisions must be made to ensure the sustainability of this employer-funded insurance scheme. The system must not be utilized as an instrument to achieve social policy objectives.

The result of this review should be to ensure an efficient, effective system that offers reasonable benefits to injured workers at competitive (for employers) assessment rates. Care must be taken in making comparisons to other jurisdictions on isolated issues. The efficacy of the system is a function of a number of inter-related factors that individually may be perceived as 'better' or 'worse' than other jurisdictions. Above all else, though, the Panel must resist the urge to recommend changes for change sake. If the benchmarking exercise shows the Commission is functioning relatively well, it should leave the responsibility for continually improving the system in the hands of the WHSCC and its stakeholders.

3.0 The Issues...*PREVENTION*

3.1 Responsibility

Ideally, all workplace accidents would be eliminated, but there will likely be an ongoing need for a compliance regime and a form of insurance to minimize the incidence and loss from workplace injuries. In this system, employers have primary responsibility for health & safety, in cooperation with employees, the WHSCC and other stakeholders. For instance, Joint Health & Safety Committees (JHSC) play an important role in improving safety performance. Employers, though, must maintain the authority to manage their operations in a safe, productive manner.

Safety performance, though, ultimately depends on the creation of a 'culture of safety' in the workplace. This requires the cooperative efforts of employers and employees, as well as the regulator. Management must make a commitment that safety is, indeed, a value where no one should expect to get hurt at work. Workers must take ownership of safety - for themselves and their peers. The regulator must establish the appropriate standards for safety, and work with the other parties to encourage behavior that will exceed these standards. *In considering any change to the regulatory regime, the focus must be on cooperation, as opposed to 'command & control', and on performance, as opposed to prescription.*

3.2 Results

In the last two decades, great strides have been made in improving safety performance. As shown in the Discussion Papers, the occurrence of lost time injuries (LTI) recorded by WHSCC has fallen 60% over the past fifteen years and 13% in the last five years (to average 3.57/ 100 FTEs in '06). This has largely coincided with the adoption of the "internal responsibility system" for safety. Today, many workplaces are going beyond IRS to further improve performance and adopting 'behavioral' safety systems.

The mineral industry provides an illustration of safety performance improvements made in New Brunswick workplaces. From 1998 to 2006, the number of lost time injuries declined by 53.4% to 1.14/ 100 FTEs. (Note that the number of lost time injuries recorded by NB Mining Association also includes those of less than three days duration.) Reportable (no lost time) injuries dropped 66.2% to 1.50/ 100 FTEs and severity fell 52.6% to 50.3 (days/ injury) The results achieved last year are records for the provincial mineral industry and this year the industry is reporting further improvement. It should be emphasized that this is but one example, as other sectors also have 'good news' stories to tell.

As detailed in the Papers, WHSCC has also undertaken a number of initiatives to promote workplace safety. One of WHSCC's five "goals" is a decline in overall frequency of accidents, including a "significant" decline in 'focus' sectors and firms. Obviously, this focus has had a positive impact as three of four sectors have shown declines in lost time injuries from 2002 to '05 and the (77) 'focus' firms have had an overall improvement of almost 11%.

New Brunswick's safety performance compares very favorably with other Canadian jurisdictions. Comparisons of absolute performance are difficult to make (given the 3-day waiting period). However, the Papers show that only three jurisdictions had greater improvement from 2001-'05 and the decline in injury frequency was more than 3 points better than the national average over this period (17.9% drop in LTI). *While more should always be done to improve health & safety, one should be mindful of these positive results before making major changes to the existing system.*

3.3 Resources

The Papers provided a breakdown of resources allocated to health & safety services in New Brunswick and a comparison to other jurisdictions. Across Canada, spending on health & safety rose an average of 18.2% from 2001 to '05, while WHSCC raised its spending by 23.2%. (As well, WHSCC spending on health & safety increased a further 4.5% from 2005 to '06.) Stated in terms of assessable payroll, WHSCC spent \$0.12/ \$100 in '05, versus the Canadian average of \$0.11. *Thus, the resources allocated by WHSCC to health & safety would seem to compare favorably to other jurisdictions.*

The majority of WHSCC health & safety costs are comprised of salaries and benefits (68% of total \$8.5M in '06). From 2002 to '06, WHSCC health & safety payroll costs rose nearly \$1M. It's understood that, over this period, the number of health & safety officers rose from 26 to 33. CME supports (reasonable) increases in such 'front line' resources, as most employers view inspectors as another set of 'eyes & ears'. *Additional resources allocated to health & safety, however, should be shown to have a real impact on safety performance. They should be focused on clear initiatives, preferably allocated over a defined time frame.*

In this regard, it's suggested that *WHSCC should consider offering more outreach and support programs for supervisory and manager training on health & safety.* Incentives might be offered to firms to successfully complete such training. *Finance NB should be encouraged to offer tax deductions for undertaking specific WHSCC programs* (eg. 300% write-off of costs for H&S training; 200% write-off of investments to reduce safety risks). As well, *WHSCC should pursue partnerships with other 'Boards' and selected organizations involved in practical application of health & safety knowledge and best practices.* The objective would be to build upon and improve knowledge transfer to employers and workers.

The Papers also provided a comparison of health & safety for assessed and self-insured employers in the Province. (Employees of assessed employers comprise 87.5% of the workers provided health & safety services by WHSCC.) The Provincial Government provides an annual 'grant' of \$900k for OH&S initiatives (and ostensibly for safety services provided their, self-insured employees). This figure was initially set at \$750k (in '94 at 'merger') and raised to the present level in '98. *Given increases in WHSCC health & safety spending and increases in the public sector workforce, the amount of this 'grant should be re-evaluated.*

Perhaps more disconcerting, though, is the relative safety performance of self-insured employers. The reduction in lost time claims (from 2001 to '05) by both assessed and self-insured employers in New Brunswick compares favorably with the average across Canada. However, the relative number of lost time claims for self-insured employers in the Province has actually grown over this period (to 19.1% of total claims in '05). This seems inordinately high, given that these employees only constitute 12.5% of workers under WHSCC and they are largely employed in 'white collar', administrative positions. *It's suggested that an evaluation should be undertaken of this 'high risk' sector to determine the source of new claims.*

The Papers also provided a comparison of models used for delivering health & safety across Canada. In NB, as in PEI, Quebec, BC and the Territories, prevention and compliance are the Boards' responsibility. In Manitoba, Saskatchewan and Alberta, government has responsibility. In other provinces, it's split. *It is believed that there would be no value in changing the existing approach in this Province.*

3.4 Compliance

The Papers note that fines are used by every Canadian jurisdiction as a compliance tool. The maximum fine for OH&S violations in New Brunswick and PEI is \$50k. It's \$20k in Quebec and as high as \$500k in a couple of provinces. In 2002 consultations, WHSCC raised the question whether the maximum level of fines should be raised. CME responded by raising the question whether large fines are an effective means of improving safety performance or whether they might actually have unintended, adverse impact.

While it may be argued that the greater the fine, the greater the deterrence value, this value diminishes after a certain level. Improving safety performance largely depends on sharing information and experiences. There would naturally be a hesitancy to share such information, if it could ultimately result in imposition of a large financial penalty. Heavy fines would also result in a more adversarial approach with regulators, due to a fear of self-incrimination.

CME doesn't believe that larger fines are conducive to creating a safety culture and the negative effect of raising the maximum level in New Brunswick would outweigh any deterrence value. However, should consideration be given to increase the maximum fine, experiences of other jurisdictions must be reviewed carefully. As well, if it is decided that the current level doesn't provide sufficient deterrence, CME believes similar sanctions must be put in place for workers, as safety is a shared responsibility.

CME also believes that courts should have the flexibility to impose more creative sentencing that results in positive, action-oriented measures to improve safety performance. For instance, offenders may be required to offer more training, engage in public awareness campaigns or make (reasonable) changes to procedures or working conditions. Such measures would have significantly greater impact on safety performance than simply raising the level of the maximum fine.

Following the 2002 consultations, WHSCC instituted a policy that allowed for imposition of demerits, or additional assessments, on employers for violations of the OH&S Act. Demerits are utilized in conjunction with the Commission's 'zero tolerance' initiative. CME doesn't oppose the use of administrative penalties, but (as before) cautions that the level of penalty must be tempered by the fact that those charged can not offer a defense of due diligence before the courts.

Safety officers determine whether a violation of the zero tolerance policy has occurred and demerits of up to \$25k can be levied, at the Accident Review Committee's discretion. *CME urges WHSCC to closely monitor its zero tolerance policy to ensure it is applied fairly and effectively.* As well, in an earlier (1998) consultation, questions had been raised whether administrative penalties should be imposed on workers who took actions to impede their recovery. *CME believes that strong consideration should again be given to utilizing administrative penalties for workers who don't take reasonable steps to return to work.*

3.5 Return to Work

Obligations for employers to put injured workers back to work vary across Canada. In New Brunswick, the requirements depend on number of workers employed, which appropriately takes into consideration employers' capability to employ injured workers in a different capacity. The Paper notes that a Policy was adopted in '05 to allow injured workers to continue to receive benefits for a period of time after returning to work. *Consideration should be given to developing 'return-to-work' incentives for smaller employers.*

It is well documented, though, that early intervention is key to success in getting injured workers back to the job. In this regard, employers' experience is that the medical community is an administrative and technical barrier in most regions of the Province. It's suggested that *WHSCC should be more actively engaged with the medical community to make it easier and more rewarding to 'fast track' workers to early and safe 'return to work'.*

4.0 The Issues...WC COVERAGE & BENEFITS

4.1 Voluntary Coverage

The Paper notes that of a workforce of 355k in New Brunswick, 333k were covered by workers compensation in '06. The number of workers not covered increased to 6.1% from 5.5% of the workforce the previous year. Coverage is voluntary for provincial employers with less than three workers (or 25 in the fishing industry). Every province excludes some workers from wc coverage and about 80% of the Canadian workforce is covered by wc. The Paper gave an overview of the various criteria for coverage.

Compulsory coverage has been a topic of discussion since the institution of workers compensation nearly a century ago. In New Brunswick, 'universal' coverage was proposed in a '96 WHSCC Discussion Paper

and again in '02, in response to case dealing with contractors' coverage. The earlier paper estimated that about 15k workplaces, with \$640M payroll, were uncovered. They represented about \$8M in new assessments, indicating an average assessment rate of \$1.25/ \$100.

The later paper, however, noted that smaller employers typically have more claims costs than their larger counterparts. A large influx of such companies could 'skew' the rates for employers in existing classes. It also raised other issues about expanding compulsory coverage. For instance, considerable resources would be required to identify eligible employers and workers, identify their risk profile and assure compliance. There are also questions about treatment of liabilities for past accidents of new entrants.

Any New Brunswick employer (with at least one worker and \$3k assessable earnings) can voluntarily apply for wc coverage. (WHSCC has consistently stated that new entrants are to covered on a cost recovery basis. CME opposes the concept of universal coverage, but supports the provision of voluntary coverage, assuming it is provided on a cost recovery basis. *Thus, coverage should be granted on the basis of employers' requests (voluntary) and at rates commensurate with total costs, so it isn't subsidized by other employers.*

4.2 Coverage for Volunteers, etc.

The Paper notes that in all jurisdictions, except Ontario, Boards can extend coverage to volunteer workers. In New Brunswick, only volunteer firefighters, ambulance and emergency workers and people assisting police are covered by workers' compensation. (It was previously estimated this included about 5k people.) In 2002, WHSCC proposed extending coverage to some or all of the estimated 175k volunteers in the province that may be involved in "high risk" activities. *CME opposes such expansion of coverage without a rigorous evaluation of the impact on this employer-funded insurance scheme.*

The Paper also notes that Government formed a working group to evaluate the presumptive coverage of fire fighters that contract cancer, with the intent to introduce legislation. (The Paper states that six provinces have adopted such coverage with various conditions.) It's understood that WHSCC has conducted an evaluation of the issue. It's presumed that the cost is not insignificant. *CME believes coverage must be granted based on the determination of clear causation for a workplace injury.* While industry may not support such presumptive clauses, it's appreciated this issue is beyond the scope of this review.

Occupational diseases are also said to represent a significant issue for workers' compensation systems. In New Brunswick, such cases are estimated to account for 1% to 3% of new claims and claims costs, and it's estimated that there may be another 768 cases yet to be identified. *It is essential that, for the financial health of the system, any measures being considered to deal with this issue be based on sound science.*

In 2002, WHSCC proposed to eliminate the consideration of future earnings in calculating loss of earnings benefits for workers under 21, but to extend this provision to all students, regardless of age. It was estimated that young workers accounted for 1.7% of new lost time claims and only 2% of those (2/ year) had future earnings implications. Given the relatively in-significant financial implications, *CME didn't support eliminating this provision for young workers. Extension of this provision to all learners was also opposed.* This would set a serious precedent, creating the potential for consideration of future earnings in all claims.

4.3 Deductible... the Waiting Period

One of the Papers, in its background, states that "WHSCC administers no-fault workplace accident and disability insurance." It also notes that New Brunswick's workers' compensation system had a \$50M unfunded liability in the mid-'80s. By the early '90s this had grown to \$90M, about the amount of the Board's annual revenues. The sustainability of the system was in doubt, necessitating the reforms instituted in '93.

Perhaps the most important provision of the reform was the institution of a 3-day waiting period, reimbursable for claims of at least 30 days duration. The waiting period, akin to deductibles incorporated into any insurance system, introduced a real measure of discipline into the system. The waiting period was largely responsible for elimination of the unfunded liability over the next three years. While labour organizations have strenuously called for elimination of this deductible over the years, *CME has steadfastly opposed any measures that would weaken this provision and potentially return the system to financial instability.*

The deductible, though, has been modified. The duration of claims for which it would be reimbursed was reduced to 20 days, and the waiting period now doesn't apply to claims requiring hospitalization or to recurrent injuries. Serious consideration was also given to eliminating the waiting period for police and firefighters. The rationale was that these are high risk occupations. Of course, the risk of injury in other occupations can be just as high and this exception would have only established two classes of workers.

4.4 Wage Recovery

Another critical aspect of reform was a reduction of loss of earnings benefits from 90% to 80% of net earnings (including deductions for income taxes and CPP & EI premiums) up to the maximum compensable earnings, which is defined by legislation as 1.5 times the NB Industrial Aggregate Earnings. This value was established in 1993 as \$27,323 and is adjusted annually for CPI. It's now \$53,200. In 1998, the wage recovery rate was raised from 80% to the current 85%.

Loss of earnings is also adjusted for earnings that an injured worker is deemed to be capable of earning in another occupation. Deeming has also been the topic of much discussion over the years. It is, though, an accepted practice in all Canadian jurisdictions. Thus, any debate should focus on its application and not its merit. WHSCC has instituted various policies for determining capable earnings and these are reviewed annually. *It is suggested that the WHSCC Board (in consultation with stakeholders) is best positioned to evaluate the fairness and efficacy of this practice on an ongoing basis.*

Employers were also prohibited from 'topping up' benefits as another reform to introduce discipline and encourage return to work. (The Paper notes, however, these provisions do not apply to Part I & II provincial public sector employees, who receive 100% of their salary. No rationale is provided for this exception.) Most jurisdictions don't claw back remuneration provided above the eligible compensation level. This is hardly surprising, however, given that most jurisdictions haven't instituted a waiting period.

The Paper provides a comparison of wage recovery rates and maximum benefits for jurisdictions across Canada. The rate in New Brunswick is the same as that in Ontario, equivalent or a little higher than that in the Atlantic provinces and a little lower than that in Quebec and Western provinces. The maximum benefit level is 92% of the Canadian and nearly equivalent to the average of the highest (ON) and lowest (PE) provincial level. As might be expected, wage loss benefits in New Brunswick are 'in the middle of the pack'. *Thus, it's believed that changes to the rate or maximum compensation level aren't warranted.*

4.5 Other 'Benefits'

Over the years, 'improvements' have been made to wc benefits. In 1998 as a result of a court challenge, survivor benefits were extended to spouses who had been remarried prior to 1985, resulting in \$15M increase to benefit liabilities. As noted in the Paper, in '04, changes were made to meal & travel expenses, compensation for home modifications, prostheses and hearing aids and entitlement for hearing loss. This cost \$850k to \$1.3M in accident benefits and raised benefit liabilities by \$8.9M. The following year, various other improvements cost \$295k to \$665k for benefits and added \$4.4M to \$8.6M to liabilities.

The Paper provides a listing of wc benefits an injured worker is eligible for in New Brunswick and a comparison to other Canadian jurisdictions. An evaluation of the fairness of these benefits must be done by considering them in aggregate. 'Cherry-picking' would ultimately result in a system that over-compensates for losses and expenses incurred due to injury. In general, however, benefits provided by WHSCC can be seen to be 'average'. *Any further changes to these benefits must be targeted to achieve a specific objective, bearing in mind the overall impact on the incentive to return to work.*

4.6 Time for Payment

Average time for payment on a claim in New Brunswick after an injury or registration of a claim is shown to be significantly higher than the Canadian average. As well, while improvements have been made over the past five years, WHSCC is still falling further behind other jurisdictions. Improvements in claims management will result in faster payment. This issue is discussed in another part of this brief. *WHSCC should investigate electronic claims submission and electronic funds transfer to improve payment times.*

5.0 The Issues...CLAIMS PROCESS & HEALTH CARE DELIVERY

5.1 Claims Profile

While 25k claims were registered with WHSCC in '06, the majority were for 'notification' or rejected. The Paper shows that last year, 11,925 claims were accepted, including 6,026 that were for lost time of at least a day. (There were 8 fatalities and 5,892 only incurred medical costs.) Of these 4,620 claims required case management. The Paper notes that claims are administered by 223 *WorkSafe* staff at four locations. This includes 32 case managers, who each typically handle 50 to 75 claims and 40 to 45 LTDs.

As noted previously, lost time claims in New Brunswick are declining faster than the Canadian average. (The decline for self-insured employers, however, is not as great as for assessed employers.) The Paper shows that the large majority of these claims (78%) are less than 12 months duration and only 11% exceed 24 months. Musculoskeletal injuries account for the largest single source (36%) of claims and the bulk of claims (70%) are related to injuries to the shoulders or back.

5.2 Claims Management

The Paper shows that almost all injured workers (97%) are ready to return to work within 18 months. A large majority (80%) return to work within 3 months and more than half (60%) are out of work for less than a month. There hasn't been a significant change in these proportions over the past 5 years. Furthermore, the average duration of claims before return to work in New Brunswick has risen by 14.7% from 2000 to '05. All other provinces, but Nova Scotia and Quebec, reported declines. (Data for Ontario isn't provided.)

The Paper didn't provide a great deal of detail as to the reasons for the rising duration of claims handled by WHSCC. There are obviously a number of factors that impact this trend, including some that are outside the control of case managers (eg. type & extent of injury; age of worker; job satisfaction). Questions are raised, however, why the experience in New Brunswick is different than in other jurisdictions. *The trends clearly indicate that there is room for improvement in case management by WHSCC.*

It is somewhat disconcerting that claim durations haven't lessened even though the number of claims has been declining. This may be due in part to greater severity of accidents, but management of these claims certainly plays a role. Obviously, improving claims management may be achieved by allocating more resources and/ or by improving the process. The Paper notes that 14% of *Worksafe* staff is dedicated to dealing with lost time claims. Given that the total number of claims has been falling, *consideration might be given to reallocating resources from other areas of the 'division' to claims management.*

Before committing more resources, however, it should be determined whether the policies, process and procedures can be improved. (For instance, it's been suggested that engaging employers early in the process and taking a 'holistic' approach to adjudication can shorten durations.) There are a variety of tools (ie. value stream mapping, etc.) used by industry today to eliminate waste and non-productive processes from their operations. *It's suggested that WHSCC engage outside expertise to 'lean' the claims management process.*

While employers' 'return to work' practices have significant impact on claim duration, it's well documented that immediacy in managing new cases is essential to speeding a return to work. And a speedier return to work will result in faster, more productive recoveries and lower claims costs. *As noted previously, an improved return to work process with active medical community participation is fundamental to improving case management and reducing severity.*

5.2 Health Care

WHSCC has the legislated authority to determine the necessity, character and sufficiency for healthcare provided to injured workers. Healthcare costs in New Brunswick, as in the rest of Canada, have been rising sharply. Benefit payments for healthcare and vocational rehabilitation rose by 21.0% from 2001 to '05, compared to an average 29.4% across the country. (Ontario is shown to have the largest increase, 73.0%, while PEI had the greatest decrease, 25.9%) In '06, these costs comprised 31.9% of WHSCC total costs.

WHSCC is commended for being proactive and undertaking a variety of initiatives to help manage these costs (ie. establishing a cadre of physicians, accessing outside resources, etc.). A "continuum of care model" has also been instituted for claims where physical rehabilitation is indicated. WHSCC has also been operating a Workers' Rehabilitation Centre (WRC) in Saint John since 1965. (Alberta is the only other jurisdiction that has a rehabilitation centre for occupational injuries.)

The cost of operating the Centre, with 81 staff, was \$8.2M in '06, including 7.7M for treatment services. Over the years, the value of the WRC has been the topic of much discussion. Employers have expressed ongoing concerns as to whether the WRC duplicates services that could be provided more efficiently or effectively elsewhere. *It is suggested that a 'value for money audit' once again be conducted on the Centre to determine if the services could be more cost effectively provided by other parties.*

6.0 **The Issues...APPEALS SYSTEM**

6.1 Structure/ Governance

All jurisdictions have a process for appealing decisions on health & safety and compensation issues. The Paper describes the processes as "internal" and "external". New Brunswick's appeals system, described as "unique" in Canada, is something as a hybrid as it operates under the umbrella of WHSCC but makes decisions independent of the Commission. The Tribunal is the 1st and final level of appeal for decisions on claims under the *WC Act* and the 2nd level of appeal (after the Chief Compliance Officer) for decisions on health & safety issues (under the *OH&S Act*). As proposed in previous consultations ('96), *CME believes the Appeals Tribunal should be required to utilize WHSCC policy in its decision making process.*

As noted in the Paper, all other jurisdictions, except Saskatchewan, have a separate, external body to review decisions made by their workers' compensation boards and their associated "internal" review or appeal process. Decisions by these external bodies are considered to be binding, and the Ontario, Saskatchewan and BC systems don't allow for court review of their decisions. (Decisions by NB Appeals Tribunal are subject to court review.) There is differing treatment of new evidence at the various levels of appeal in each jurisdiction. *The 'unique' structure of New Brunswick's system was developed to meet provincial needs and it isn't believed that a fundamental change to the structure is warranted.*

6.2 Process/ Results

The Paper describes the appeals process in New Brunswick, which is initiated after notification by an appellant and review of the appeal to ensure that it meets the minimum criteria. After scheduling the hearing, which typically takes four to six months depending on availability of the parties and Tribunal members, parties are provided with a 30-day notice. The Paper also describes the various options for hearing an appeal, oral and paper, single or three-member panels and as a 'substituted' appeal.

The average time from identification of an appeal to mailing of the decision in New Brunswick is 243 days. This compares to a low of 172 days in Alberta (for standard cases) to a high of 627 days in PEI. The process in Nova Scotia is said to take 180 days, while it takes 270 days in Ontario. The Paper notes that the time required to hear an appeal increased by 3% last year, but the time required to process a case dropped by 11%. Given a rising number of appeals (up 18% last year), the 'inventory' of cases is rising (from about 200 in January '05 to 450 in July '07). *Clearly, steps must be taken to reverse this trend.*

6.2 Efficacy/ Costs

The Paper notes the single largest source of appeals (30%) in '06 involved acceptance of compensation claims. This was followed by deeming (10%), reopening of claims (7%) and finalization of benefits (6%). Anecdotal evidence suggests that (im)proper preparation of documentation by WHSCC case managers (who can't otherwise intervene in appeals) can have a major impact on the outcome. *WHSCC should consider if creating an initial level of appeal for wc decisions (eg. PEI's internal reconsideration officer) would improve the quality of the Commission's representation, reduce the appeals 'backlog' and lower overall costs.*

The Appeals Tribunal retains six workers' advocates and three employer advocates who assist in (78% and 24%) of appeals filed by their respective stakeholders. The cost for these advocates in '06 was \$714k, which represented 57% of the Tribunal's costs of \$1.24M. Including the (rising) cost of the advocates, the Tribunal's costs rose 11.3% increase from '02. The cost of the Tribunal compares favorably with other jurisdictions (eg. \$1.5M in Nova Scotia and \$18.4M in Ontario). *WHSCC, however, should consider if other options for the advocates (retained from the Province) would prove more cost effective.*

7.0 The Issues...*FINANCIAL PERFORMANCE/ RATES*

7.1 Trends

Over the last three years, WHSCC recorded \$138M excesses and the funding ratio reached 111% as of the end of 2006. (It's anticipated that another excess will be recorded in '07.) These results were largely due to imposition of 'liability' and 'stability' surcharges on assessments in the early part of this decade, after the funding ratio slipped below 100%. (A few years after the reforms of '93, the Commission became fully funded and remained so until '01.) Increasingly, investment returns are driving the finances of Boards across Canada and changes to accounting requirements have increased the volatility of results.

Following reform, WHSCC average assessment rates declined to a low of \$1.55/\$100 payroll in 1997 but then rose steadily to a peak of \$2.20 in '04. (This was the highest rate since before the '93 reforms.) Rates have been lowered the last three years to \$2.10 in 2007. The '07 rates, however, still included a 21¢ 'liability' surcharge, despite the fact that WHSCC reached fully funded status in '05. *CME strongly believes that this 'surcharge' must be eliminated before any consideration is given to 'improving' benefits or otherwise raising costs.*

7.2 Assessment Revenues

WHSCC assessment revenues have been rising (even with the decline in rates). From 2001 to '05, total assessments rose 43.7%. (It should be noted, though, that assessments on self insured employers, who accounted for 17.8% of the total in '05 actually declined by 4.3% over this period.) This increase is considerably higher than the average increase in assessments for Boards across Canada (33.2%, excluding self insured employers in Quebec). Despite WHSCC's relatively strong financial health, Alberta and Saskatchewan are the only provinces to have instituted higher rate increases over this period. *It is clear that New Brunswick is lagging other jurisdictions in reducing its rates (particularly on assessable employers)*

7.3 Investment Revenues

Investments accounted for 37.0% of WHSCC revenues last year, up from 26.8% in '05. This ratio is also significantly higher than just a few years ago. Investments are managed by NB Investment Management Corp. WHSCC exceeded its target for investment returns (CPI plus 3.8%) in '06 (13.3%). In the last four years its returns outpaced returns on public service funds (also managed by NBMIC). The Paper compares targets and returns for Boards' funds in other jurisdictions. It seems the WHSCC fund has performed better than most. (The CSST fund seems to be most volatile and the Manitoba Board's fund most stable.)

In response to GAAP requirements for 'mark to market' accounting for investment returns, WHSCC targeted funding ratio (defined in policy) was raised from 105% to 110%. (Legislation still only requires fully funded status to be achieved over a 5 year period.) This is intended to deal with potential volatility in equity markets. Thus, *WHSCC is urged to consider only potential changes to the assessment base and/or changes to its cost structure in its rate-setting process.* (An overly conservative might otherwise result.)

7.4 Benefits Costs

The Paper notes that 82.6% of WHSCC costs in 2006 were related to benefits (including STD & rehab, LTD, survivor benefits and medical costs). That year, benefit costs declined dramatically due to accounting of long term disability costs. In previous years, though, benefits costs were rising rapidly, in both absolute and relative terms, despite a decline in lost time accidents. The Paper provides a comparison of these costs in Canadian jurisdictions from 2001 to '05.

Over this period, WHSCC average benefit cost per lost time claim rose by 39.3%, compared to an average increase of 24.9% across Canada. Similarly, benefits costs (of new claims) relative to assessable payroll rose by 2.8% compared to an average decline of 7.3% in other Canadian jurisdictions. Should this trend continue, it would obviously threaten the competitiveness of this insurance program. *Thus, there is little margin for raising benefits and the cost of any 'improvements' should be offset elsewhere in the system.*

The Paper also compares benefit payments for assessed and self insured employers. From 2001 to 2005, payments for assessed employers in New Brunswick rose 4.5% while payments for self-insured employers rose 11.4%. The number of new lost time claims for assessed employers over this period declined 14.5%, however, versus 11.8% for self-insured employers. *It should be ensured that self-insured employers are paying the true cost of insurance.*

7.5 Administration Costs

While claims costs are subject to numerous variables and more difficult to manage, WHSCC has greater control of its administration costs. These costs have risen significantly in the past five years (15.9% from '02 to '06) and, last year, totaled \$31.2M, or 17.4% of WHSCC expenditures. (The '06 Annual Report noted that salaries, benefits & pensions accounted for a large majority of the 4.3% year over year increase.)

A comparison was provided of administrative costs for Canadian jurisdictions for 2001-'05, relative to assessable payroll (\$100). WHSCC costs (\$0.29) are shown to be less than the Canadian average (\$0.32) and to have grown 3.6% over this period. On this basis, the expenditures seem reasonable, but a \$4.3M increase in administration costs over 5 years for an operation with \$173M income. *WHSCC should be required to develop a plan for control of administration costs over a longer period of time.*

7.6 Assessment Rates & Funding Ratio

WHSCC average assessment rate declined marginally the last three years. The rise in rates since the late '90s, however, seems inconsistent with improvements in safety performance over this period. The Paper compares average assessment rates across Canada. While the average rate doesn't necessarily give a true comparison of wc costs, but it does indicate some trends. WHSCC had the 2nd lowest rate among Canadian provinces in '97 and the 3rd lowest rate in '01. In 2007, WHSCC has slipped to 5th.

A strategic goal of the Commission is to "hold rates to the lowest level possible, consistent with the best possible benefits to the clients". (The original statement of the goal was to have the "most conscientious benefits".) A decade ago, an objective was to hold rates among the lowest three jurisdictions in Canada, given the current legislative obligations. *It's suggested that WHSCC should strive to regain the perception as having one of the most effective, competitive compensation systems in Canada.*

As noted above, WHSCC funding ratio is now higher than the legislated target (100%) and its policy target (110%). WHSCC still faces real challenges to manage its costs and mitigate risk in volatility of revenues, but there's no reason to believe the improved financial results won't continue for at least the near term. *CME doesn't believe, though, the appropriate response to improved results is to simply raise the funding ratio target.* Thus, it's clear that there will be pressure to reduce rates and/or increase benefits.

8.0 The Issues... **GOVERNANCE/ STRUCTURE**

A key question of this review is the efficacy of the WHSCC Board. Over the years, a number of initiatives have been undertaken and changes made to better prepare Board members and to focus attention on policy, as opposed to operations. It is understood that the Board has been functioning quite well in recent years with a clear understanding of WHSCC goals and stakeholders' needs. *Thus, it's suggested that significant changes to the Board structure or governance model are not warranted.*

As noted in the Paper, the Board generally makes decisions by consensus, but the public representative casts the deciding vote in cases where employer and worker representatives disagree. The current structure and governance model was developed after merger in 1994. (At that time, the public representative was intended to be a healthcare professional that would make decisions based on medical science.) In the past, deciding votes were required more frequently and on issues that required safety 'expertise'. *CME had called on government to restructure the Board so that the Chairman would cast deciding votes.* This has not been an issue in the past few years, but could possibly arise again in the future.

The Paper notes that most Wilson Ministerial Report ('06) recommendations regarding recruitment and roles of Board members and role of the internal auditor have been implemented. Outstanding issues, including remuneration and length of Board terms and participation of Tribunal Chair on WHSCC Board, require legislative amendments.

9.0 CONCLUSIONS

New Brunswick's workers' compensation system has evolved since the inception of this century-old compromise between employers and workers. Real challenges remain to ensure the sustainability of the wc system into the next century. In general, though, it is functioning relatively well and responsibility for continually improving the system should be left in the hands of the WHSCC and its stakeholders.

The Papers point to the Boudreau (1980) and Woods-Gordon (1988) reports as 'bell-weepers' in the system's history. By the early '90s, though, the unfunded liability was growing unchecked while rates rose to unprecedented levels. Reform was required to rationalize benefit levels. The legislative changes of 1993, 'righted the ship' and "merger" in 1995, established WHSCC as a beacon for other systems.

Since the mid-'90s, changes have been made to the wc system, primarily to 'improve' benefits. These changes have increased the system liabilities by tens of millions of dollars. Volatility in investment returns, which comprise a growing portion of WHSCC revenues, has also impacted the ability of the fund to meet future benefits obligations. By 2001, the Board had once again slipped into an unfunded position. Surcharges were imposed on employers' assessments and rates rose to historically high levels.

Since the mid-'90s, safety performance has also improved significantly. While comparisons are difficult to make, New Brunswick has been at or near the 'top of the pack' in Canada. Safety is essential for its own sake, but employers still expect a return on investment in safety performance. Financial incentives must be maintained by providing a degree of responsiveness in rates to improved performance.

As well, employers expect that surcharges levied to deal with a specific challenge will be removed when the objective is achieved. At the very least, the surcharge must be eliminated before any consideration is given to further 'improving' benefits. Indeed, benefits provided injured workers in New Brunswick are, in general, in the 'middle of the pack'. And WHSCC benefit costs have been rising faster than other jurisdictions. There's little margin for raising benefits, without offsetting the costs elsewhere in the system.

The rise in benefit costs is due largely to soaring health costs and longer, more costly claims. WHSCC doesn't have control over all of these factors. Improvements, however, can be made to claims management and 'return to work' incentives, which would help reduce claims durations. As well, changes could be made to the appeals process to reduce the growing backlog of cases.

As well, a financial case may be made for making further investments in prevention initiatives. The focus, however, should be on initiatives with clear targets, and preferably with 'sunset' provisions. As well, targeted tax incentives may prove most effective in encouraging employers to take the lead in training and installing physical controls to improve safety.

The result of this review should be to ensure an efficient, effective system that offers reasonable benefits to injured workers at competitive (for employers) assessment rates. Above all else, though, the Panel must resist the urge to recommend changes for change sake. And, any changes must not threaten the stability or sustainability of the system. Specifically, the waiting period is a critical feature of New Brunswick's workers' compensation system and must not be compromised.

10.0 Summary...**RECOMMENDATIONS/ 'POSITIONS'**

PREVENTION

- Safety performance ultimately depends on the creation of a 'culture of safety' in the workplace. This requires the cooperative efforts of employers and employees, as well as the regulator. ***In considering any change to the regulatory regime, the focus must be on cooperation, as opposed to 'command & control', and on performance, as opposed to prescription.***
- Safety performance in NB has been improving steadily and compares very favorably with other Canadian jurisdictions ***While more should always be done to improve health & safety, one should be mindful of these positive results before making major changes to the existing system.***
- Resources allocated by WHSCC to health & safety compare favorably to other jurisdictions. ***Additional resources allocated to prevention must have a real impact on safety performance and should be focused on clear initiatives, preferably allocated over a defined time frame.***
- In this regard, ***current outreach and educational programs offered by WHSCC should be enhanced (eg. supervisory and manager H&S training, NB-specific young worker video).***
- WHSCC should also expand its cooperative efforts with Atlantic Canadian Boards and other organizations to improve knowledge transfer to employers and workers. ***Partnerships should be pursued to develop on-line & electronic resources for practical application of H&S knowledge and best practices (eg. small business training).***
- Incentives might be offered to firms to successfully complete such training. ***Finance NB should be encouraged to offer tax deductions for undertaking specific WHSCC programs.***
- The Province provides an annual 'grant' of \$900k for OH&S initiatives (and for safety services provided their, self-insured employees). ***Given increases in WHSCC H&S spending and increases in the public sector workforce, the amount of this 'grant should be re-evaluated.***
- The approaches to delivering health & safety services vary across Canada. In NB, as in PEI, Quebec, BC and the Territories, prevention and compliance are the Boards' responsibility. ***It is believed that there would be no value in changing the existing approach in this Province.***
- Fines are used as a tool for compliance. The question has (previously) been raised whether the maximum level of fines in NB should be raised. ***Larger fines are not conducive to creating a safety culture and the negative effect of raising the maximum level would outweigh any deterrence value.***
- Should consideration be given to increase the maximum fine, experiences in other jurisdictions must be reviewed carefully. As well, ***if the (maximum) level is raised, similar sanctions must be put in place for workers, as safety is a shared responsibility.***
- As well, ***the courts should have the flexibility to impose more creative sentencing that results in positive, action-oriented measures to improve safety performance.*** Such measures would have significantly greater impact on safety performance than simply raising the level of the maximum fine.
- Administrative penalties can be an effective compliance tool. However, ***the level of penalty must be tempered by the fact that those charged can not offer a defense of due diligence.*** As well, ***such penalties should also be used for workers who don't take reasonable steps to return to work.***

COVERAGE & BENEFITS

- Compulsory coverage has been an issue since the inception of wc. CME opposes the concept of universal coverage, but supports the provision of voluntary coverage, assuming it is provided on a cost recovery basis. Thus, ***coverage should be granted on the basis of employers' requests (voluntary) and at rates commensurate with total costs, so it isn't subsidized by other employers.***
- It has (previously) been proposed extending coverage to some or all of the estimated 175k volunteers in the province that may be involved in "high risk" activities. ***Such expansion of coverage must not be instituted without a rigorous evaluation of the impact on this employer-funded insurance scheme.***
- Government formed a working group to evaluate presumptive coverage of fire fighters that contract can-cer, with the intent to introduce legislation. While this is beyond the scope of this review, ***coverage must be granted based on the determination of clear causation for a workplace injury.***
- Occupational diseases are also said to represent a significant issue for workers' compensation systems. ***For the financial health of the wc system, any measures being considered to deal with occupation-al diseases must be based on sound science.***

- It was (previously) proposed to eliminate consideration of future earnings in calculating loss of earnings benefits for workers under 21, but to extend the provision to all students regardless of age. *CME didn't support either proposal, given the minor financial impact of the former and serious precedent of the latter*
- The most important provision of the '93 reform was institution of a 3-day waiting period. Similar to deductibles in any insurance system, this introduces a requisite discipline into the system. ***CME steadfastly opposes any measures that would weaken the waiting-period provision and potentially return the system to financial instability.***
- It was (previously) proposed to eliminate the waiting period for police and firefighters. The rationale for this is flawed, as other occupations can have a similar risk of injury and ***this exception would have only established two classes of workers.***
- Employers were also prohibited from 'topping up' benefits as another reform in '93. ***The prohibition of 'topping up' is essential to maintain discipline and encourage return to work.***
- Deeming is an accepted practice in all Canadian jurisdictions and any debate should focus on its application and not its merit. ***WHSCC Board (in consultation with stakeholders) is best positioned to evaluate the fairness and efficacy of this practice on an ongoing basis.***
- Wage loss benefits in New Brunswick are 'in the middle of the pack'. Thus, ***changes to the wage recovery rate or maximum compensation level aren't warranted.***
- Over the years, 'improvements' have been made to wc benefits. The 'fairness' of these benefits must be evaluated by considering them in aggregate. As well, ***any changes to benefits must be targeted to achieve a specific objective, bearing in mind the overall impact on the incentive to return to work.***
- Average time for payment on a claim in New Brunswick after an injury or registration of a claim is shown to be significantly higher than the Canadian average. ***Electronic claims submission and electronic funds transfer should be investigated as a means to improve payment times.***

CLAIMS PROCESS & HEALTH CARE DELIVERY

- The number of lost time claims in NB is declining faster than the Canadian average. The average duration of claims before returning to work, however, is also rising faster than the average across Canada. ***The trends clearly indicate that there is room for improvement in case management by WHSCC.***
- Obviously, improving claims management may be achieved by allocating more resources and/ or by improving the process. Given that the total number of claims has been falling, ***WHSCC should consider to reallocating resources from other areas of the WorkSafe 'division' to claims management.***
- Before committing more resources, it should be determined whether the policies, process and procedures can be improved. ***WHSCC should engage expertise to 'lean' the claims management process.***
- A speedier 'return to work' result in faster, more productive recoveries and lower claims costs. ***Consideration should be given to developing 'return-to-work' incentives for smaller employers.***
- While employers' return to work practices have significant impact on claim duration, immediacy in managing new cases is essential to speeding a return to work. ***WHSCC should be more actively engaged with the medical community to make it easier and more rewarding to 'fast track' workers to early and safe 'return to work'.***
- There are ongoing concerns as to whether the WRC duplicates services that could be provided more efficiently or effectively elsewhere. ***A 'value for money audit' should once again be conducted on the Centre to determine if the services could be more cost effectively provided by other parties.***

APPEALS SYSTEM

- NB appeals system is described as "unique" in Canada, as it operates under the umbrella of WHSCC but makes decisions independent of the Commission. ***The Appeals Tribunal should be required to utilize WHSCC policy in its decision making process.***
- The average time from identification of an appeal to mailing of the decision in NB is 'in the middle of the pack', but with a rising number of appeals, the 'inventory' of cases is rising. ***Clearly, steps must be taken to reverse this trend.***
- The 'unique' structure of NB's system was developed to meet provincial needs and it isn't believed that a fundamental change to the structure is warranted. ***However, WHSCC should consider creating an initial level of appeal to improve the quality of the Commission's representation, reduce the appeals 'backlog' and lower overall costs.***
- The cost of the Tribunal compares favorably with other jurisdictions. The cost of advocates retained to assist in appeals filed by stakeholders is rising, however. ***WHSCC should consider whether other options for the advocates (retained from the Province) would prove more cost effective.***

GOVERNANCE/ STRUCTURE

- Over the years, initiatives have been undertaken and changes made to WHSCC Board policies and procedures to improve its practices. It's understood the Board has been functioning quite well in recent years. Thus, ***it's significant changes to the Board structure or governance model are not warranted.***
- The Board generally makes decisions by consensus but the public representative casts a deciding vote when employer and worker representatives disagree. ***CME had called on government to restructure the Board so the Chairman would cast deciding votes.*** (This hasn't been an issue in recent years.)

FINANCIAL PERFORMANCE/ RATES

- Over the last three years, WHSCC recorded \$138M excesses and the funding ratio reached 111% as of the end of '06. (These results were largely due to imposition of 'liability' and 'stability' surcharges.) WHSCC still faces real challenges to manage its costs and mitigate risk in volatility of revenues. ***Simply raising the funding ratio target, however, is not the appropriate response to improved results.***
- WHSCC benefits costs have been rising rapidly in both absolute and relative terms, despite a decline in lost time accidents. The increase is significantly higher than the average across Canada. Should this trend continue, it would obviously threaten WHSCC's sustainability. Thus, ***there is little margin for raising benefits and the cost of any 'improvements' should be offset elsewhere in the system.***
- Benefit payments for self-insured employers in NB are rising faster than those for assessed employers. The relative number of lost time claims for self-insured employers is also growing. ***An evaluation should be undertaken to determine the source of new claims for self-insured employers and it should be ensured these employers are paying the true cost of insurance.***
- While claims costs are subject to numerous variables and more difficult to manage, WHSCC has greater control of its administration costs. These costs have risen significantly in the past five years. ***WHSCC must develop a plan for control of administration costs into the future.***
- The overall increase in assessment rates since the late '90s is inconsistent with improvements in safety performance over this period. While safety is important in its own sake, employers still expect a return on investment in safety performance. ***Responsiveness in rates to improved performance is essential to maintain financial incentives for investments in health & safety initiatives.***
- After reform, WHSCC average rates declined to a low of \$1.55/\$100 payroll in '97 but then rose to a peak of \$2.20 in '04 (the highest since before the '93 reforms). Rates have fallen marginally the last three years. The '07 rates, though, still included a 21¢ 'liability' surcharge, despite the fact that WHSCC reached fully funded status in '05. ***The 'surcharge' must be eliminated before any consideration is given to 'improving' benefits or otherwise raising costs.***
- Investment returns are increasingly driving the finances of Boards and changes to accounting requirements have increased the volatility of results. WHSCC targeted funding ratio was raised from 105% to 110% to deal with potential volatility in equity markets. Given this, ***consideration should only be given to potential changes in the assessment base and/or the cost structure (versus investment volatility) in the rate-setting process.***
- WHSCC assessment revenues have been rising. The increase from '01 to '05, is considerably higher than the Canadian average. Only Alberta and Saskatchewan have had larger increases over this period. ***NB is clearly lagging other jurisdictions in reducing rates (particularly on assessable employers).***
- WHSCC strategic goal is to "hold rates to the lowest level possible, consistent with the best possible benefits to the clients". A decade ago, an objective was to hold rates among the lowest three jurisdictions in Canada. In terms of average assessment rates, WHSCC had the 2nd lowest rate among Canadian provinces in '97 and the 3rd lowest rate in '01. In '07, it has slipped to 5th. ***WHSCC should strive to regain the perception as having one of the most effective, competitive compensation systems in Canada.***