

**SUBMISSION**  
**TO THE**  
**NEW BRUNSWICK INDEPENDENT REVIEW PANEL**  
**ON**  
**WORKERS' COMPENSATION**

*BY*

*CANADIAN RESTAURANT &  
FOODSERVICES ASSOCIATION*



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## The Foodservice Industry

New Brunswick's foodservice industry is a huge sector of the provincial economy representing:

- \$883 million in sales or 4% of GDP;
- 25,000 employees or nearly 7% of workforce
- 10,000 employees under the age of 25; and,
- 1,422 commercial establishments

The foodservice industry is a diverse activity, feeding consumers in a variety of circumstances ranging from fine dining, to the small fish & chip shop, to the local pub or quick service restaurant. The size of establishments varies from small owner-operator units to large national chains. In spite of its size, the industry continues to be dominated by small independent, New Brunswick owned operations.

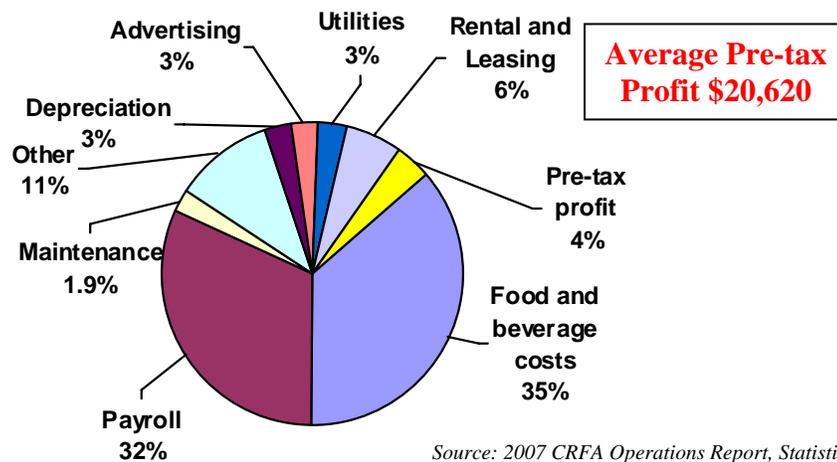
In 2006, the foodservice industry directly employed more than 25,000 residents of the province, making it one of New Brunswick's largest private sector employers.

The foodservice industry employs a diverse work force with many in management and skilled occupations. The industry also includes a large number of unskilled and semi-skilled occupations. The foodservice industry plays an important role in providing employment opportunities for those who experience the greatest difficulties in finding work, the young and the inexperienced. At a time when politicians of all stripes are talking about the youth unemployment crisis, nearly half of the industry's employees are under the age of 25. In fact 21% of all youth in New Brunswick are employed by the foodservice industry.

## Foodservice Industry and Workers' Compensation

The foodservice industry is one of the province's largest private sector employers. As a labour-dependent employer with razor-thin profit margins, the foodservice industry is particularly vulnerable to problems with the workers compensation system. The Canadian Restaurant and Foodservices Association (CRFA) believes a stable and viable workers' compensation system is important to a healthy workforce and a thriving employment environment. It is with an eye to maintaining a fair, sustainable and efficient system that this submission has been developed.

### Operating Expense Ratios - NB

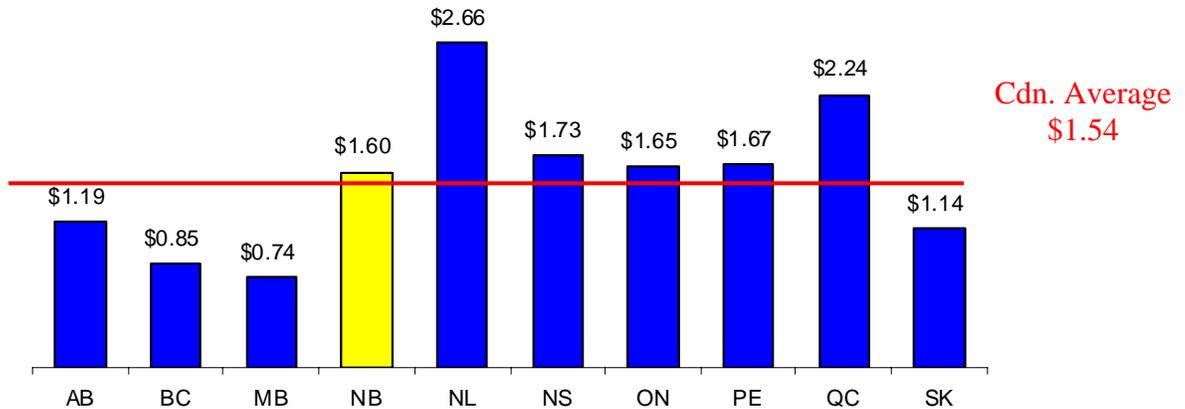


The New Brunswick Workplace Health, Safety and Compensation Commission (WHSCC) walks the fine line of providing benefits to injured workers while maintaining an affordable and sustainable insurance system for employers. For our industry, the vision for the WHSCC is very clear:

- Workers' compensation is an insurance program not a social program. As such it must be run using insurance principles.
- At the same time, injured workers deserve to be treated in a timely, respectable fashion and receive adequate compensation for a loss of earnings.
- Employers need an affordable insurance program that is accountable and competitive with other jurisdictions.
- Accident prevention is a priority; the best way to reduce workers' compensation costs is to prevent accidents from happening.
- Assessment rates must reflect the actual experience of the rate group and the individual firm.

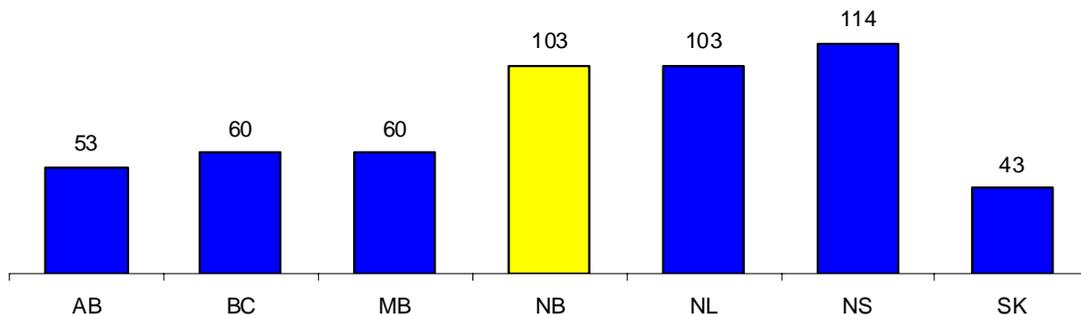
While the WHSCC has made tremendous progress to date and is viewed as one of the best run systems in Eastern Canada, government and members of this Committee must not lose sight of the fact that it still has not achieved the significant success when compared with compensation systems in Western Canada. Assessment rates in New Brunswick are still in the mid to upper end of the spectrum when compared with other jurisdictions in Canada.

**2006 Foodservice Assessment Rates**



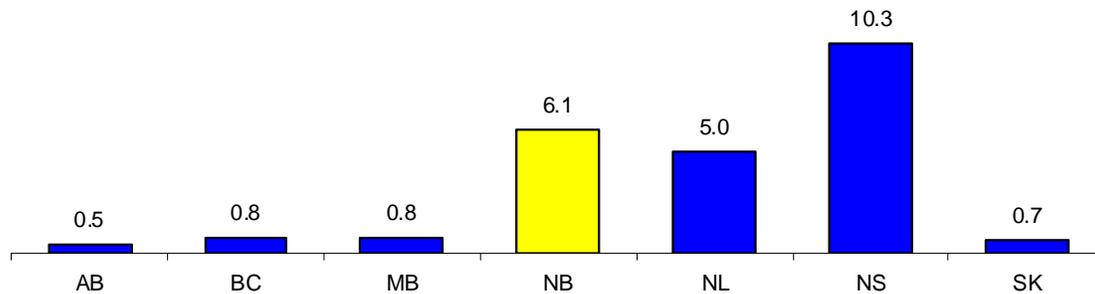
More troubling is the trend where New Brunswick continues to have some of the highest duration rates in the country and a large percentage of workers whose claims remain open much longer than those in western Canada. While the WHSCC is quick to say how well things are going and how far they've come, relatively high rates coupled with strong growth in wages means that the compensation bill for an average foodservice establishment continues to grow year after year. These cost increases impact the viability of businesses and make it difficult to attract new business to the province. When operators are faced with these cost increases, they have few options but to reduce hours and jobs in order to keep costs down.

**2005 Average Claim Duration (days)**



Source: AWCBC Key Statistical Measures

### Percentage of Wage Loss Cases Open After 2 Years (2005)



Source: AWCBC Key Statistical Measures

Given the high labour costs - including workers' compensation premiums, low profitability ratios of foodservice establishments and weak sales over the last few years, it is extremely important that foodservice operators see rate relief in order to protect the viability of many businesses and jobs for residents of the province.

It is a given that employers want lower assessment rates and injured workers want more benefits. Progress towards these goals will not be achieved unless the primary cost drivers improve and are reduced. The primary cost drivers are:

- Number of Claims
- Duration of Claims
- Number of cases receiving long-term disability benefits.

From the evidence, it is clear that while progress has been made, much has to be done to reduce claims and return injured workers back into the workforce. Only then can both employers and injured workers reach their respectful goals in a sustainable manner.

## System is at a Crossroads

New Brunswick's workers compensation system is at a crossroads and decisions made with this review could continue to stabilize and maintain the financial health of the system or could force the system back to the edge of a financial abyss where it was in the early eighties.

The Committee need not be reminded of the state of the system only a few short years ago. The system had a huge unfunded liability, climbing accident and duration rates, and spiraling assessments rates. While CRFA is not pleased with everything that is happening with the system, it must be clear that we support the true intentions of the Boudreau Report and the direction taken to restore the system in New Brunswick. CRFA believes the system in New Brunswick to be the envy of other jurisdictions in the region. While not perfect, focused attention on insurance principles and sound prevention measures will mean that injured workers receive adequate benefits and employers will have low assessment rates. Let's ensure the WHSCC continues on this path.

The best thing for the system today is not ruin the progress to date. The system is generally working well as evidenced by generally high satisfaction rates by both injured workers and employers. Most of the indicators seem to point out that the system is proceeding down a positive path. **Drastic change is not needed; only some fine-tuning is necessary.** The WHSCC must continue to focus on reducing accidents and re-enforce efforts to reduce claims durations and return injured workers back into the workforce. CRFA strongly urges the Review Committee to stay away from any quick fix intended to placate vocal special interest groups and focus on initiatives to reach the stated goals. Any change taken should not undo the significant progress made to date.

## Foodservice Industry Recommendations

CRFA supports the general thrust of the both the Workers' Compensation Act and the Occupational Health and Safety Act. These Acts attempt to introduce a culture of safety to the province and return the compensation system to an insurance program based on compensation for a loss of earnings. The aim is to encourage individuals to return to work through early and timely intervention and income differential incentives. While much has been accomplished, CRFA has several recommendations that the foodservice industry believes will further enhance the progress made to date. CRFA has categorized its recommendation into two groups, those to be introduced to the legislation and those that must be maintained and/or strengthened.

### NEW PROVISIONS

#### PURPOSE CLAUSE

The Workers' Compensation Act should have a clear "purpose clause" which sets out fundamental insurance principles. The purpose clause should also impose upon the Commission a duty to operate in a financially responsible manner and to operate in fiscal competitiveness with other Canadian jurisdictions.

- **CRFA recommends the inclusion of a purpose clause in the Act, which imposes a duty on the Commission to operate in fiscal competitiveness with other Canadian jurisdictions.**

#### COMMISSION STRUCTURE

A strong commission, endowed with the ability to manage claims, can have the greatest impact on the success of the workers compensation system.

CRFA believes in the bipartite nature of compensation commissions. Strong, experienced representatives from employee and employer constituencies must be present. There is no need for a public representative, other than the Chair or a Vice-Chair, to serve on the Commission. It is wrong for a public representative, who is not a stakeholder, to be the deciding vote should a decision come down to a Board vote. That is traditionally the responsibility of the Chair.

Employers also take issue with the fact that even though employers pay for all of the costs associated with workers compensation, they have little input into the operations of the Commission. Politicians control the legislation that governs the Commission as well as the appointments to the Commission. Our industry is of the view that sometimes this process has not adequately represented the business community in many cases when appointees are politically controlled. The foodservice industry believes that both the employer and labour communities would be better served if Commission members were chosen from nominees forwarded by recognized provincial or national groups or associations.

Given the complexity of the system and the steep learning curve associated with the issue, CRFA believes that Board appointments should be for a four-year term. Terms should also be staggered to ensure there is always a strong knowledge of corporate history in place on the Board.

- **CRFA recommends that Labour and Employer appointments to the Commission be selected by nominations from provincial and nationally recognized groups or associations. Appointments should be staggered to maintain corporate history.**
- **CRFA does not support the appointment of lay representatives to Commission.**

The appointment of the Chair of the Appeals Tribunal as a non-voting member of the Commission is deemed to be appropriate. CRFA believes it is important for the Appeals Chair to gain an understanding of the context with which policy has been developed. This leads to less of a focus on the interpretation of policy at the Appeals Tribunal and allows the Appeals Commission to focus on errors in law.

- **CRFA recommends that the Chair of the Appeals Tribunal continues to be a non-voting member of the WHSCC Board.**

### FINANCIAL ACCOUNTABILITY

To achieve financial accountability, the Commission must be charged with the responsibility of meeting disciplined financial targets. Positive steps were taken with the setting of measurable objectives and the introduction a five year strategic plan.

To strengthen financial accountability it is recommended that new provisions be added to the Act that support the goal of maintaining a sustainable, competitive

and financially responsible workers compensation system. Requirements would include the 5-year strategic plan, an annual statement of investment policies and a coordinated plan for the use of WHSCC funds for occupational health and safety.

Other checks and balances might include the authorization of the Auditor General to conduct an accountability audit. This audit would monitor the system's vital statistics including administration costs and investment return.

By statute, all new policies should be costed and be consistent with the objective of financial accountability.

- **CRFA recommends including statutory provisions in the Act requiring the Commission to operate in a financially responsible manner and to meet disciplined financial targets over a 5-year planning period.**
- **The Auditor General should also be authorized to audit the WHSCC.**

#### DEFINING WORK RELATED INJURIES AND DISEASES

The workers compensation program was established to insure workers against injuries caused by work. Over time entitlements have been expanded so that compensation is payable for injuries not clearly caused by their job.

CRFA is concerned that soft tissue injuries like sprains and strains will comprise an ever-increasing percentage of lost-time injury claims, even though there are typically non-work causes contributing to these injuries.

An insurance approach calls for entitlement to be defined so that payers know exactly what they are getting in the "policy" and beneficiaries know what they are entitled to on a consistent basis. The legislation must more clearly define eligibility, requirements for continuation of benefits, and criteria for terminating benefits.

The phrase "arising out of and in the course of employment" has been interpreted to mean an injury that manifests itself in the workplace as opposed to an injury arising out of the workplace.

Replacing the "benefit of the doubt" principle with "balance of possibilities" principle and rewriting the definition of "injury" to bring greater certainty and predictability to the WCB system is advocated. For example "In determining whether benefits are to be paid to a worker or a worker's dependents under this

Act, the Commission shall be required to find that the work-related accident was the dominant cause of the personal injury for which benefits are claimed”.

- **CRFA recommends amending the Act so that entitlement is contingent on the establishment of a work activity as the predominant cause of injury or disease.**

Diseases associated with the natural aging process or are multi-causal are also falling under the domain of workers compensation in many jurisdictions. CRFA believes that injuries and diseases that are not clearly identified as work-related should not be covered under an accident insurance plan funded solely by employers.

- **CRFA does not support the introduction for the automatic assumption of any natural diseases of an occupational disease unless it can be conclusively validated as work related.**

The current legislation was intended to exclude stress as a compensable injury unless it was the direct result of a traumatic event. However, there can sometimes be misrepresentations of the intent of the Act. Therefore, any reference to stress as the direct result of a traumatic event should be included in the definition of any injury section of the legislation.

- **CRFA recommends that specific conditions such as chronic stress be excluded by legislation.**

## **PROVISIONS THAT MUST BE MAINTAINED**

### **WAITING PERIOD**

The introduction of a waiting period has probably had the most significant positive impact on costs and lost time claims of any of the changes made during the 1993 review. Accidents in the foodservice industry are generally low severity in nature. Due to a high frequency of these minor injuries, claims and administrative costs for the industry can be fairly high.

The introduction of a waiting period has reduced costs and provided an added incentive for employers and employees to reduce workplace hazards. The waiting period acts as a deductible, which is standard in any insurance program.

In fact, a seven day waiting period was part of the original Meridith program of workers compensation.

The waiting period has reduced the time spent on administrative paperwork and prevented minor incidents from affecting an overall experience rating.

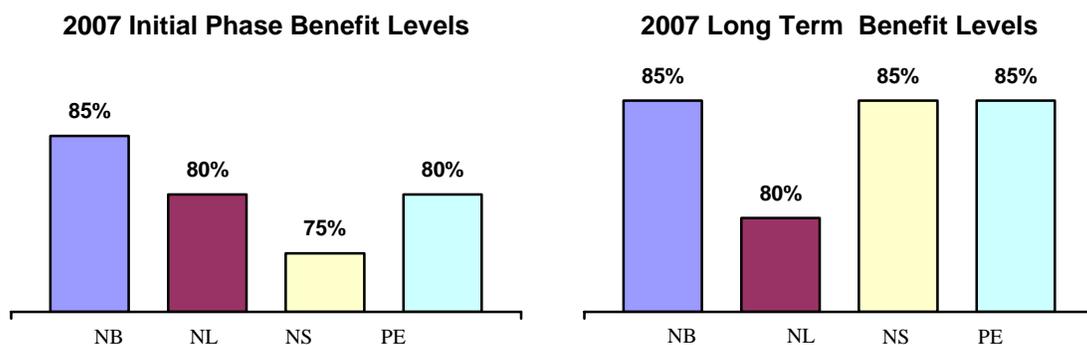
Foodservice operators also report that the waiting period encourages workers with minor injuries to stay on the job or seek alternative employment within the same establishment. Thereby maintaining the important attachment between employers and their employees.

Seriously injured workers are not impacted by the waiting period because injured workers on claim for more than 20 days and those that are hospitalized are reimbursed for this period.

- **CRFA recommends no change to the 3-day waiting period before compensation is payable.**

### BENEFIT LEVELS

It is important to ensure that injured workers are compensated at a rate that is fair and reflective of their earning capacity. That being said, there must continue to be a differential between pre-injury earnings and compensation to ensure a motivation to return to work. There are many Canadian and U.S. economic studies that suggest that as the level of workers' compensation benefits increases, so does the tendency of workers to claim and stay on benefits. The current benefit level of 85% of net earnings achieves this balance of compensating injured workers while establishing an insurance differential. Benefits in New Brunswick are in line with other jurisdictions and on the high end of the benefits in Atlantic Canada.



➤ **CRFA recommends retaining benefit levels of 85 % of net earnings.**

Injured workers in New Brunswick also benefit from the fact that New Brunswick is one of only four provinces in Canada where long term benefits are fully indexed to inflation. This means that benefits are not eroded over time as they are in many other provinces.

The inclusion of only pro-rated CPP income in the calculation of post accident earnings can bring post accident earnings above the 85 percent threshold. This diminishes the gap between pre and post accident earnings. This acts as a disincentive for injured workers to return to the workforce.

➤ **CRFA recommends a full offset for Canada Pension Plan benefits.**

CRFA supports provisions that do not allow workers to be topped up above the 85% threshold of their earnings. Top ups are counterintuitive to the principle of an earnings differential between pre and post accident income and can encourage injured workers to remain on claim. Top ups are also unfair because it creates two classes of workers, those with top ups and those with none. Workers should be treated similarly.

➤ **CRFA recommends the prohibition of wage top-ups.**

The Canadian Restaurant and Foodservices Association supports the continued inclusion of these sections of the current legislation.

- **Collateral Benefits** - CRFA supports the continuation of all collateral benefits such as top-ups and CPP benefits in the calculation of income and wages. It is the intention for there to be an income differential between pre and post accident earnings to act as an incentive for employees to return to the workforce.
- **Deeming** - There has always been much criticism by organized labour and injured workers about deeming. Deeming is not unique to New Brunswick. It is a practice carried out in all Canadian provinces except one and is an essential part of an earnings loss compensation system.
- **Appeals Bound by WHSCC Policy** - This is necessary to ensure consistent interpretation of the law. CRFA also supports the process by which any cases in which there is new evidence must go back through the Commission for adjudication.

## FUNDING STRATEGY

Injured workers and employee advocates have argued that given the recent improvements to the funding level that it is time to increase benefits. It must be recognized that much of the recent gains can be attributed to changes to the accounting principles which can lead to large fluctuations in the investment rate of return. Given these fluctuations, the WHSCC funding strategy should be structured so that the Commission can maintain a funding level of 110%. This buffer could also act as reserve in case of a large workplace disaster and annual fluctuations to investment income. This does not mean that the WHSCC should loosen its purse string or refrain from fiscal prudence in times of a surplus position. Surpluses should be returned to the employers who pay the assessments through lower assessment rates.

- **CRFA recommends that a funding level of 110% be achieved and maintained.**
- **Surpluses above the 110% level should be returned to employers through lower assessment rates.**

## OCCUPATIONAL HEALTH AND SAFETY

Occupational Health and Safety is an area where the WHSCC must continue to focus attention. Preventing an accident is the best way to reduce workers' compensation costs.

CRFA believes the merger between WCB and OH&S has had a positive impact on health and safety in the province. In smaller jurisdictions like Atlantic Canada, there are many benefits to a merged system including formal and informal communication and consistent information gathering and analysis. Safety officials have also said that employers were much more receptive to the advice and educational material of the safety officers knowing that these individuals had the power of enforcement behind them.

While CRFA is a strong advocate for safe workplaces, we do not believe the answer lies in creating countless regulations, formal procedures and paper trails. Efforts should be focused on determining high risk areas and then focusing efforts on educating the employers and employees.

CRFA supports the Zero Tolerance Program as well as the thrust to focus efforts including the power to add demits by targeting focus industries, high risk industries and firms with a significant accident history. The 5\*22 Safety program

has also been very successful at focusing efforts on creating safe workplaces. This approach builds a good cooperative partnership between safety officers and employers who view safety officials as a resource by which employers can create safer work places. This being said, safety officials should not hesitate to use their powers to crack down on employers or employees who flagrantly choose to ignore safe working procedures. CRFA believes these programs and approach should continue to be supported and endorsed.

In terms of penalties and fines, CRFA believes the current penalty structure strikes an appropriate balance between reasonableness and affordability versus appropriate deterrents. The aim of a penalty structure should not be to drive an employer out of business.

## Summary

Workers compensation rates in New Brunswick have a significant impact on labour intensive industries such as the foodservice industry. The high rates coupled with escalating labour costs in New Brunswick can impede businesses' ability to expand and provide new opportunities for New Brunswickers. Progress has been made to stabilize assessment rates but more must be done to bring them down. The focus on health and safety, return to work and a responsive experience-rating program has been major factors in the turnaround at the WHSCC. But more must be done because the system is still plagued with extremely high duration rates and an above average number of injured workers on long-term benefits. The WHSCC must continue to encourage individuals to return to work through early and timely intervention and income differential incentives.

The three-day waiting period is an essential element to this insurance program. It acts as a deductible and helps reduce the number of frivolous claims while doing much to maintain the employee's attachment to the workplace. Proper protections are in place to ensure seriously injured workers are not penalized by the waiting period.

Employers have been saddled with assessment rates that are still higher than the Canadian average. On the other hand, when all factors are considered, injured worker benefits are more than fair and are in fact the best in Atlantic Canada. Therefore, it is essential that no changes in benefit levels be contemplated.

In order to make the system more stakeholder driven, Commission representatives should be chosen from a list of nominations brought forward by representative stakeholder groups.

The WHSCC should continue to focus efforts on prevention. The thrust to target high risk industries and firms with higher than average accident frequencies will yield significant results to prevention efforts.

## **The Association**

*Canadian Restaurant and Foodservice Association* (CRFA) is the largest hospitality association in Canada representing over 35 000 members including restaurants, quick service establishments, hotels, caterers, institutions, educators and foodservice suppliers.

CRFA's mission is to create a favourable business environment and deliver tangible value to our members. We accomplish this through a variety of services to members, including:

- government lobbying on behalf of the foodservice industry;
- information and research on consumer trends and industry performance;
- group buying programs; and
- national and regional trade shows.

CRFA is governed by a volunteer Commission of Directors. CRFA was founded in 1944 and is incorporated as a nonprofit organization without share capital. The association is funded by membership fees and non-dues income from member services and trade shows.