

Striving for Balance and Compromise

**2019 Statutory Review of
Newfoundland and Labrador's
Workers' Compensation System**

June 10, 2021

**Committee:
Judy Morrow, Q.C
Bernadette Coffey Sobol
Leonard Knox, P.ENG (Retired)**

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Introductory Remarks

On December 18, 2019, the Government of Newfoundland and Labrador (the “Government”) announced the commencement of the statutory review of the workers’ compensation system in the Province as required by section 126 of the **Workplace Health, Safety and Compensation Act** (the “Act”). This process provides a valuable opportunity to focus stakeholders’ and the public’s attention on workers’ compensation matters, all with the objective of improving the overall system for both workers and employers.

This statutory review is essential to maintaining a strong workers’ compensation system in the Province while ensuring realistic and financially sustainable procedures adhering to the Meredith Principles, an historic compromise and the foundation of all workers’ compensation systems in Canada.

To quote from the website of the Canadian Association of Workers' Advisors and Advocates, the Meredith Principles are based on:

- 1. No-fault compensation, which means workers are paid benefits regardless of how the injury occurred. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury.**
- 2. Security of benefits, which means a fund is established to guarantee funds exist to pay benefits.**
- 3. Collective liability, which means that covered employers, on the whole, share liability for workplace injury insurance. The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.**
- 4. Independent administration, which means that the organizations who administer workers’ compensation insurance are separate from government.**
- 5. Exclusive jurisdiction, which means only workers’ compensation organizations provide workers’ compensation insurance. All compensation claims are directed solely to the compensation board. The board is the decision-maker and final authority for all claims.**

Under authority of the **Act**, the two primary entities of the workers' compensation system in the Province are WorkplaceNL and the Workplace Health, Safety and Compensation Review Division ("WHSCRD"). Both are independent agencies and are the responsibility of the Minister of the Department of Environment and Climate Change, having been previously under the Departments of Immigration, Skills and Labour and Service NL.

WorkplaceNL has the responsibility to oversee the Province's workers' compensation system. Its mandate includes: education on the prevention of workplace injuries, illnesses, and occupational diseases; claims management for injured workers; and employer assessments. WorkplaceNL collaborates with the Occupational Health and Safety Division ("OHSD") of the Department of Digital Government and Service NL to articulate recommendations and develop programs respecting workplace health and safety. WorkplaceNL engages with the Newfoundland and Labrador Federation of Labour ("Federation of Labour") and the Newfoundland and Labrador Employers' Council ("Employers' Council") who represent injured workers and employers respectively. In addition, WorkplaceNL has established partnerships with various industry associations and organizations at both provincial and national levels, including safety standards organizations, safety associations, training providers, safety sector councils, unions, numerous health care service providers and certain government departments and agencies. For a summary of entities associated with WorkplaceNL as of April 2021, please refer to Appendix A.

WHSCRD consists of a panel of review commissioners and its sole mandate is to independently review final decisions of WorkplaceNL for errors in the application of legislation and policies under the authority of the **Act**.

The workers' compensation system in Newfoundland and Labrador is paid for through an Injury Fund that derives a portion of its revenue from employers who pay an annual assessment rate to WorkplaceNL pursuant to the **Act**, which is based upon the amount of their payroll and the level of risk in the industry in which they operate. Also, revenue is obtained from administrative fees paid by self-insured employers and from third party reimbursements. Further, investment income is generated by the Injury Fund, which is a significant portion of WorkplaceNL's annual revenue and is subject to market volatility. Financial stability of the Injury Fund is critical to maintain the sustainability of the workers' compensation system in the Province.

The Statutory Review Committee ("Committee" and also hereinafter referred to with the use of plural pronouns) appointed to conduct the review comprised of Judy Morrow, Q.C. Chairperson and Member-at-Large, Bernadette Coffey Sobol Vice-Chairperson and Workers' Representative and Leonard Knox, P.ENG (Retired), Employers' Representative.

They were asked by the Government to focus on three specific Thematic Areas:

- efficiencies in the review processes;
- balance in the provision of benefits; and
- financial sustainability.

In their review, the Committee welcomed commentary on matters related to the workers' compensation system not covered by these Thematic Areas and they reserved the right to consider matters outside the scope of the review.

The original deadline for submission of their final report was June 30, 2020. However, due to the COVID-19 public health emergency declared in March 2020, this deadline was varied to December 31, 2020. The Government then further extended the deadline to March 31, 2021, to allow sufficient time for the review of the public consultation submissions and research materials, and to facilitate the completion of an actuarial analysis of proposed recommendations. In January 2021, a Provincial General Election ("Election") was called, which Election was further delayed until March 27, 2021 due to an extensive outbreak of COVID-19. The Government remained under caretaker protocol during this time and therefore two pending presentations/submissions to the Committee were postponed until subsequent to the conclusion of the Election. The responsible Minister was notified that additional time was required beyond March 31, 2021. Despite the noted delays, the Committee is satisfied that updated information and data was obtained and relied upon throughout their deliberations.

This report entitled **Striving for Balance and Compromise** represents the completion of the Committee's mandate. It contains multiple recommendations designed to build upon and improve the robust workers' compensation system currently operating in the Province. These recommendations were derived from two principal sources: a province-wide public consultation process; and a series of roundtable discussions with officials from WorkplaceNL, WHSCRD, OHSD and its Advisory Council, and the various Safety Sector Councils. The Committee considered the information gathered through these processes with commitment and thoroughness. Where necessary, in-depth provincial and jurisdictional research was requested and obtained to enhance understanding of the issues presented and to compare processes and procedures in other jurisdictions. As well, proposed recommendations were forwarded to the actuaries at Morneau Shepell for a financial sustainability analysis.

In keeping with the mandate, the Committee's recommendations are organized according to the three Thematic Areas named above. Recommendations that fell outside of the Thematic Areas are included in the section entitled Other Thematic Areas. For informational purposes, the Committee also reviewed volume one of the 2013 Statutory Review Report, **Working Together - Safe, Accountable, Sustainable** ("2013 Statutory

Review Policy Report”) and volume two of the said 2013 Statutory Review Report (“2013 Statutory Review Technical Report”).

It is the sincere hope of the Committee that the Government will give each of the Committee’s recommendations due consideration in a timely manner.

Statutory Review Process Methodology

While formally announced by the Government in December 2019, the Committee commenced working on the statutory review in January 2020, starting with several orientation sessions with various staff members of the Department of Immigration, Skills and Labour who presented the mandate and scope of the statutory review, as well as, familiarized the Committee with the administrative procedures of the process. In addition, WorkplaceNL, WHSCRD and OHSD conducted roundtable sessions with the Committee to provide an overview of the workers' compensation system in the Province, including applicable legislation and policies, governance and funding models, client processes, statistical profiles, recent initiatives and a preliminary identification of issues.

Following these sessions, the Committee commenced planning the consultation process and drafted a **Discussion Paper** as attached in Appendix B. The Committee initially announced the public consultation process on February 26, 2020. In addition to News Releases, the process was advertised in newspapers and on radio stations throughout the Province, as well as, on the Government's Facebook page and on engageNL's website, both prior and subsequent to the suspension of the consultation process due to the declaration of the COVID-19 public health emergency and/or the Election, as noted herein. Please see Appendix C for a detailed summary of the media campaign.

The original consultation process provided three methods to participate: attendance and presentation at an in-person session in either St. John's, Gander, Corner Brook or Happy Valley-Goose Bay; submission of commentary via email or mail through Canada Post; and/or via accommodation requests. Due to not receiving the required minimum of three responses, the Committee cancelled the in-person sessions scheduled for Gander, Corner Brook and Happy Valley-Goose Bay, and offered the participants at those locations the option to present to the Committee by videoconference or teleconference. The individuals and organizations who registered to present were notified of the date and time of their sessions. For those individuals without access to technology, upon request, the Committee provided them with the **Discussion Paper** and return envelopes for submissions via Canada Post.

Unfortunately, the COVID-19 public health emergency precipitated the temporary suspension of the Committee's activities in late April 2020, including the in-person public consultations sessions scheduled for St. John's. As well, the option to email or mail-in commentary was extended until further notice. Those who were scheduled to present to the Committee were directly notified of the suspension, and the public was notified via the engageNL website. In accordance with the **Temporary Variation of Statutory Deadlines Act**, the deadline for the final report was extended to December 31, 2020.

The Committee resumed activities in late August 2020, and in mid-September announced the resumption of the public consultation process in accordance with public health guidelines as established by the Chief Medical Officer of Health. A News Release and radio advertisements directed the public to go to engageNL's website for the details of the revised consultation process. From September 28, 2020 to October 15, 2020, stakeholders and the general public were given an opportunity to present either in-person in St. John's, or to present via videoconference or teleconference. The deadline for email and mail-in submissions was October 9, 2020. Given the public consultation sessions were closed to the general public in accordance with public health guidelines, a list of presenters, with written consent, were announced weekly via News Releases. As well, a copy of all written submissions, together with a list of participants, all with written consent, have been posted on engageNL's website. Please refer to www.engageNL.ca to view submissions.

The Committee reviewed the 2013 Statutory Review Policy Report and the 2013 Statutory Review Technical Report and was briefed by staff members of WorkplaceNL on the progress of the implementation of recommendations to date. As well, the Committee conducted an extensive review of other reports and documents they deemed necessary to ensure a comprehensive understanding of all relevant supplementary materials. Appendix D provides a complete list of reports and agreements reviewed and analyzed by the Committee.

In keeping with the third theme of their mandate concerning financial sustainability, the Committee retained the actuarial expertise of Morneau Shepell to analyze proposed recommendations and cost implications. To allow sufficient time for this analysis and deliberations, the Committee requested and was granted an extension by Government to March 31, 2021. This extension afforded the Committee the opportunity to reach out directly to the Indigenous groups for commentary related to the statutory review. As well, the Committee accommodated a public consultation session with the Regional Health Authorities at their request. In keeping with Government's caretaker protocol, these submissions could not take place until following the Election on March 27, 2021. Resultingly, it was agreed that the actuarial analysis undertaken was subject to any commentary presented by Indigenous groups and the Regional Health Authorities, and the Committee reserved the right to seek a further financial sustainability assessment, if necessary, subsequent to these submissions.

During the first week of March 2021, Morneau Shepell submitted its preliminary findings and analyses, and subsequent to further engagement with the actuaries and the conclusion of the public consultation process, the actuarial reports were finalized and submitted to the Committee. Attached are the actuarial reports in Appendices E.1 to E.6.

Following an extensive review of the actuarial reports, the Committee further deliberated and decided on its final recommendations to Government. A majority decision protocol was agreed upon in instances where consensus was unattainable, with the dissenter noted.

In summary, the Committee received thirty-three submissions through the formal public consultation process: thirteen in-person, four videoconference, four teleconference, ten email submissions, and two mail-in submissions via Canada Post. In addition to the orientation roundtable discussions previously referenced, the Committee engaged roundtable discussions with the Advisory Council on Occupational Health and Safety, the Forestry Safety Association of Newfoundland and Labrador, the Newfoundland and Labrador Construction Safety Association, and the Manufacturing and Processing Safety Sector Council. Please note the Newfoundland and Labrador Fish Harvesting Safety Association choose to present at a public consultation session. Appendix F outlines a list of consultation participants and roundtable sessions who have provided consent. The Committee thoroughly reviewed every submission and where necessary requested follow-up information and jurisdictional research from WorkplaceNL and WHSCRD to supplement and assist in their deliberations and formulation of recommendations. Please see Appendix G for a list of supplementary research topics utilized.

Summary of Recommendations

Thematic Area 1: Efficiencies in the Review Processes

Recommendation 1: Worker and Employer Advisors

Recommendation 1.1: The scope of the worker and employer advisors' duties be expanded to include representation of Applicants at External Review Hearings and that their respective contracts of employment be renegotiated, if necessary, to reflect this expansion of duties.

Recommendation 1.2: Increase the number of worker advisors by a minimum of three advisors to be staffed with the Federation of Labour. To be clear, the Committee recommends a minimum of five worker advisors in total and to continue with a minimum of two employer advisors at the Employers' Council.

Recommendation 1.3: The monthly data reporting requirement of the Federation of Labour and the corresponding review requirement of WorkplaceNL, as obligated under the Federation of Labour Agreement with amendments, be continued, so that the performance of WorkplaceNL duties by worker advisors can be monitored and assessed regularly with the view of ensuring that the number of worker advisors is appropriate at any given time.

Recommendation 1.4: The monthly data reporting requirement of the Employers' Council and the corresponding review requirement of WorkplaceNL, and the monthly activity report requirement of the Employers' Council, as obligated under the Employers' Council Agreement with amendments, be adhered to, so that the performance of WorkplaceNL duties by employer advisors can be monitored and assessed regularly with the view of ensuring that the number of employer advisors is appropriate at any given time.

Recommendation 2: Internal Review Recommendations

Recommendation 2.1: Internal Review Specialists conduct a mandatory interview, either by telephone, virtual means or in-person, with the party seeking the Internal Review and that Policy AP-01 be revised accordingly.

Recommendation 2.2: Appropriate measures be taken by the Executive of WorkplaceNL to ensure complete independence, as well as, perceived independence of the Internal Review Division thus allowing the Internal Review Specialists to review, assess and make decisions independent of any perceived interference and/or bias.

Recommendation 2.3: The decision/correspondence from an Internal Review Specialist comply strictly with Recommendation 4 of Thematic Area 1 and further remove any reference to “final decision” in an Internal Review decision.

Recommendation 3: Internal and External Review Timelines

Recommendation 3.1: A committee of appropriate representatives of WorkplaceNL and WHSCRD be established to consult, review, analyze and formulate operational solutions to issues surrounding consideration of additional and/or new evidence. It is further recommended that the committee give consideration to the following:

- a. formalizing the triage process noted above;
- b. introducing a “red-flag” system at WorkplaceNL so that all documents relating to new or additional evidence for matters pending at External Review Division that are not caught in the triage process, are highlighted; and
- c. establishing appropriate timelines for the determination of issues relating to new or additional evidence irrespective of whether the matter is pending at the External Review Division.

Recommendation 3.2: An External Review decision shall be concluded and communicated to the parties within 60 days from the date of the Hearing.

Recommendation 3.3: The timelines provided in section 28.1 (4) (a) and (b) of the **Act** relating to an Application for Reconsideration by the Chief Review Commissioner or designate, be amended so that the timelines noted therein commence subsequent to the date of the Application and appropriate response times and/or rebuttal times provided to the parties. If there is a delay beyond the timelines provided, then the reasons for the delay must be clearly articulated in writing to all parties.

Recommendation 3.4: Implementation of External Review decisions by WorkplaceNL, shall be within 15 days from the date of the expiration of the 30-day period allowed for an Application for Reconsideration. If additional time is required, written correspondence must be forwarded to the parties outlining the reason for the delay and the expected date for implementation of the decision.

Recommendation 4: Decisions, Correspondence and Other Communications

Recommendation 4.1: All decisions and correspondence from WorkplaceNL, including the Internal Review Division and WHSCRD be written in plain language, including rationale for any decision, and where applicable, information regarding review processes, as well as, contact information of worker and employer advisors. Further, when requested and when the appropriate consent has been obtained from the applicable party, copies of written communications by WorkplaceNL and WHSCRD are to be forwarded to the designated representatives.

Recommendation 4.2: WorkplaceNL's and WHSCRD's respective websites be user friendly and that all policies and procedures continue to accommodate injured workers and other individuals, and employers who do not have digital access.

Recommendation 4.3: All legislation, regulations, policies, reports, correspondence, decisions, forms, websites, news releases, presentations and all other means of written and oral communication be amended and/or modified to eliminate the use of the word "Appeal" and replaced with "Review".

Recommendation 4.4: A record keeping and monitoring system for phone calls and voice messages received by WorkplaceNL and WHSCRD be established and maintained.

Recommendation 5: Establishment of Committee

Recommendation 5.1: A formal committee be established comprising of representatives from WorkplaceNL, the Internal Review Division and WHSCRD to meet quarterly, with the following goals:

- a. to enhance communication and cooperation between the noted parties;
- b. to identify and discuss trends and issues;
- c. to review emerging new areas of concern that may contribute to delays in obtaining information and/or making decisions;
- d. to report back to their respective organizations and governing Board of Directors where applicable, and the responsible Minister; and
- e. to make every effort to resolve on-going concerns and issues.

It is further recommended that minute taking at these meetings be mandatory, outlining action items, together with appropriate follow-up responsibilities.

Thematic Area 2: Balance in the Provision of Benefits

Recommendation 6: Injured Workers' Loss of Earning Capacity

Recommendation 6.1: For the calculation of loss of earning capacity for an injured worker, section 74.(2) of the **Act** be amended to increase the IRR from 85 per cent to 90 per cent commencing January 2022 and that no further rebates or discounts be provided to employers subsequent to 2021 until such time as the IRR of 90 per cent is achieved. (Note: These rebates and discounts do not include safety incentives under PRIME or any replacement program.)

Recommendation 6.1 is by the majority of the Committee, with a dissenting view by the Employers' Representative.

Recommendation 6.2: Section 81.1 of the **Act** be amended to allow employers to contribute to injured workers' collateral benefits under a group or private plan to which the injured worker was a member prior to the workplace injury.

Recommendation 7: Retirement Benefits

Recommendation 7.1: That the calculation of Retirement Benefits under section 75 of the **Act** be modified to include TEL benefits paid after 24 months, together with all EEL payments less applicable offsets.

Recommendation 7.2: At this time, there be no further amendments to the previous Pension Replacement Benefit or to the current Retirement Benefits provisions.

Recommendation 7.2 is by the majority of the Committee, with a dissenting view by the Workers' Representative.

Recommendation 8: Presumptive Coverage for Firefighters

Recommendation 8.1: Section 92.1(e) be amended to include in the definition of listed disease the following cancers: prostate, melanoma, cervical and ovarian.

Recommendation 8.2: Section 92.1(e) be amended to include in the definition of listed disease: a cardiac event while responding to or engaged in an emergency incident, and a cardiac event that occurs within 24 hours of being engaged at an emergency incident.

Recommendation 8.3: WorkplaceNL conduct an annual review of the presumptive coverage and listed diseases for career and volunteer firefighters across the country and seek amendments to the **Act** accordingly.

Recommendation 9: Essential Workers During a Public Health Emergency

Recommendation 9.1: The Government commission a study by the appropriate stakeholders to conduct a review and recommend appropriate amendments to the **Act**, regulations and/or policies to ensure there is appropriate coverage for essential workers during a high level alert state of public health emergency in the Province and to include in this study, an analysis of any relief that should be given to employers regarding premiums and/or assessments during the same period of time.

Recommendation 10: Chronic Stress

Recommendation 10.1: In accordance with Policy GP-02, entitled Stakeholder Relations, WorkplaceNL, in consultation with all stakeholders including the Federation of Labour and the Employers' Council, conduct a review of Policy EN-18 entitled Traumatic Mental Stress, with the intent and purpose of including chronic stress, particularly as it relates to workplace violence and/or harassment, all in conjunction with a review of the workplace violence and/or harassment provisions under the **Occupational Health and Safety Regulations, 2012**.

Thematic Area 3: Financial Sustainability

Recommendation 11: Financial Sustainability

Recommendation 11.1: To ensure financial sustainability of any recommendation outlined in this report, prior to implementation, it be determined and when necessary, completed: an updated actuarial assessment; an analysis as to the compounding effect if more than one recommendation with cost repercussions are being implemented simultaneously; and an analysis as to the financial impact to self-insured employers.

Other Thematic Areas

Recommendation 12: Prevention and Safety

Recommendation 12.1: The current structure of the OHS committees remain.

Recommendation 12.2: Standardized training of OHS committee members, with a focus on relevant issues, including but not limited to, hazard recognition and mitigation.

Recommendation 12.3: The process of minute reporting of the OHS committees be improved with an option for an online platform that highlights a "red-flagging" of issues so that there can be a timely follow-up by OHSD for inspection and action.

Recommendation 12.4: The OHS committee auditing process be modified and enhanced to ensure compliance of appropriate minute reporting.

Recommendation 12.5: Mandatory, as opposed to voluntary, supervisor training (with an online option) focusing on risk identification, mitigation management and legal implications be introduced, and penalties be invoked for failure by either employers and/or supervisors to conduct and/or partake in said mandatory training.

Recommendation 12.6: Modify the PRIME criteria to encourage the participation and resulting benefits to all employers, particularly small-to-medium-sized employers.

Recommendation 12.7: Standardize the PRIME safety and prevention requirements to align with the **Occupational Health and Safety Act** and regulations.

Recommendation 12.8: Establish a Health Care Safety Sector Council to promote safety in all health care related work environments for the delivery of safety training and injury prevention initiatives, in particular, as it relates to the following: manual materials handling; patient handling; employee responses to violence; and accidental slips and falls.

Recommendation 12.9: The development of a minimum standard certification training model and/or process for all Safety Sector Councils similar to the Certificate of Recognition in the construction industry.

Recommendation 13: Issues Regarding Claims Duration

Recommendation 13.1: In accordance with Policy GP-02, entitled Stakeholder Relations, WorkplaceNL, in consultation with all stakeholders including the Federation of Labour and the Employers' Council, conduct a review to develop new policies or to strengthen existing policies and procedures as they relate to the ESRTW program to ensure strict adherence to and enforcement of all provisions of the **Act**.

Recommendation 13.2: WorkplaceNL consider the development of a Physician's Report - Form MD in an electronic format wherein the completion of the medical and functional information relating to an injured worker is mandatory and unable to be submitted with partial or inadequate commentary.

Recommendation 13.3: WorkplaceNL and the Newfoundland and Labrador Medical Association conduct a review of the Medical Association Agreement to identify necessary amendments to address the issue of timely and comprehensive receipt of medical and functional information relating to an injured worker from treating physicians.

Recommendation 13.4: The Executive at WorkplaceNL develop a human resource protocol to address instability in its workforce from time to time, including but not limited to, issues of vacancies, sick leaves, turnover rates and the workload of client service providers.

Recommendation 14: Establishment of a Multi-faceted Occupational Clinic

Recommendation 14.1: A study be conducted as to the feasibility of implementing a comprehensive and multi-faceted occupational clinic to deal with occupational diseases and other occupational injuries, in particular musculoskeletal injuries.

Recommendation 15: Labour Market Re-entry

Recommendation 15.1: Prior to implementing any further modifications and/or amendments to the LMR program resulting from the 2018 LMR review, in accordance with Policy GP-02, entitled Stakeholder Relations, a review and consultation process engaging all relevant stakeholders including the Federation of Labour and the Employers' Council be conducted to address the following issues and concerns: overlapping of the ESRTW and LMR programs; the obtainment of meaningful and realistic employment opportunities; geographical and relocation challenges; the use of external LMR services providers; and an appropriate measuring and monitoring system.

Recommendation 16: Statutory Review Process and Committee Composition

Recommendation 16.1: The Lieutenant-Governor in Council appoint a statutory review committee five years and six months from the date the report of the previous statutory review committee is submitted. The additional six-month timeframe is to coincide with Recommendation 16.6.

Recommendation 16.2: The composition of the statutory review committee include an independent chairperson, an independent vice-chairperson and an independent member-at-large, at least one of which has a legal background and at least one of which has a financial background, together with a representative from labour and a representative from employers, for a total of a five-person committee.

Recommendation 16.3: The Government release to the public a copy of the report generated by the statutory review committee within fourteen days of it being presented to the Lieutenant-Governor in Council or the Minister responsible.

Recommendation 16.4: To provide efficiency, continuity and consistency in the post-statutory review process, the independent chairperson (and in their absence, the independent vice-chairperson) be a member of any transitional consultative group that the Government forms to review and assess the statutory review committee's report and recommendations.

Recommendation 16.5: The independent Chairperson of this Committee be appointed to act as a liaison to any post-statutory review process group formed to review and assess the **2019 Statutory Review Report - Striving for Balance and Compromise**.

Recommendation 16.6: During the post-statutory review process, the Government issue and release to the public within six months of the submission of the report, a statement with an explanation as to why they agree or disagree with a particular recommendation outlined in the statutory review report, together with an implementation plan with timelines of the accepted recommendations.

Recommendation 17: 2013 Statutory Review Technical Report

Recommendation 17.1: Government proceed with the necessary legislative changes to give effect to the 2013 technical recommendations as agreed to and supported by this Committee, which is more particularly outlined in Appendix J of this report.

Statutory Review Consultation Summary and Recommendations

In their deliberations, the Committee thoroughly reviewed the details of all of the participants' presentations delivered during the public consultation process, written submissions, roundtable discussions and relevant jurisdictional research to assist in the formulation of their recommendations. This section endeavors to provide an overview of the essence of what the Committee heard, together with recommendations and rationale for each Thematic Area as mandated by Government. In addition, the Committee considered representations on matters beyond the mandate and this report further outlines an overview with recommendations and rationale regarding any of those matters to which the Committee was of the opinion were warranted.

Thematic Area 1: Efficiencies in the Review Processes

Overview of Thematic Area 1

The workers' compensation system has a two-stage review process referred to as Internal Review administered by WorkplaceNL and External Review administered by WHSCRD, which injured workers or employers can initiate. Government recognized continued concerns with wait-times, adequate resources, representation (or lack thereof) and the public's understanding of the review processes and outcomes. In their review, the Committee was specifically asked to consider: resources available to injured workers for External Review Hearings; promotion of these resources to injured workers; procedural issues under the review processes; the timelines for the completion of the review processes; the cost of the review processes; and any potential enhancements available for improvement of both the Internal Review and External Review processes.

In the **Discussion Paper**, the Committee asked public consultation participants to consider the following questions:

1. Are any adjustments required to the workers' compensation system's Internal Review and External Review processes? If so, what changes would be beneficial?
2. Are processes and requirements surrounding both Internal Review and External Review clearly communicated to interested parties? If not, how can this be improved upon?

Recommendations and Rationale

Recommendation 1: Worker and Employer Advisors

In response to a recommendation of the 1991 Statutory Review, a Worker/Employer Advisor Program was established and two positions were created. The 1997 Statutory Review recommended increasing the number of advisors by two (two worker and two employer advisors) and to date these four advisors continue to work independently and are funded by WorkplaceNL through the Injury Fund at an approximate cost of \$620,000 annually.

The two worker advisors are located at the offices of the Federation of Labour in St. John's and Grand Falls-Windsor. Pursuant to Clause 2.4 of an undated 2008 Agreement between Workplace Health, Safety and Compensation Commission (WorkplaceNL), and the Newfoundland and Labrador Federation of Labour, together with Amending Agreements dated July 17, 2014 and November 25, 2015 ("the Federation of Labour Agreement"), the duties of the worker advisors include:

- a. providing injured workers with advice and assistance in making a claim for workers' compensation benefits, including but not limited to, advice and assistance with making requests for review of decisions at the internal and external review levels;
- b. the development and implementation of education and training programs to increase knowledge among workers of the workers' compensation system;
- c. the development and implementation of education and training programs to increase awareness among workers of the need for workplace accident prevention;
- d. the promotion of the Workers' Advisor Program across the Province, in particular through existing community organizations; and
- e. the provision of representation before the Workplace Health, Safety and Compensation Review Division in the cases of former miners at Baie Verte mines.

Both employer advisors are located at the office of the Employers' Council situated in Mount Pearl. Pursuant to an Amending Agreement dated August 29, 2014, Clause 2.4 of the Agreement between Workplace Health, Safety and Compensation Commission (WorkplaceNL) and the Newfoundland and Labrador Employers' Council dated

December 2, 2008 (“the Employers’ Council Agreement”), was amended to outline that the employer advisor duties include:

- a. the delivery and promotion of information and advisory services on a group and individual basis on topics related to workers’ compensation, injury prevention programs, occupational health and safety best practices, legislative requirements and best practices in early and safe return to work;
- b. the development of training and awareness programs for employers to assist in their understanding of the responsibilities, values and procedures for implementing various programs;
- c. the delivery of training and awareness programs through workshops and meetings with employers in all regions of the Province;
- d. the provision of a toll free line for the use of employers;
- e. the promotion of advocacy services to all employers in the Province to provide their input to Government and the Commission about their areas of concern and suggestions for improvement;
- f. the development and implementation of a marketing program to reach more employers in the Province through personal contact, media resources, trade shows and conferences; and
- g. providing employers with advice and assistance in preparing for appeals, including advice and assistance with making requests for review of decisions at the internal and external review levels, but not to include attendance or representation at review hearings.

Please note there is no provision in the Federation of Labour Agreement allowing worker advisors to represent injured workers (with the exception of former Baie Verte miners) at External Review Hearings. Similarly, there is no such provision in the Employers’ Council Agreement.

A jurisdictional review was conducted to compare the roles of worker and employer advisors across the country. All provinces and territories (except for Quebec) have worker advisors funded by their respective workers’ compensation programs and all of those but for Newfoundland and Labrador offer representation to injured workers at their respective external appeal/review processes. Ten of the provinces and territories have employer advisors (not Quebec or Nunavut/Northwest Territories) and are all funded by the

workers' compensation boards in their particular province or territory. Five jurisdictions, including Newfoundland and Labrador, do not offer representation to employers at external appeal/review processes.

It is important that the Committee bring to the attention of the reader that the issue of the scope of duties of the worker and/or employer advisors to include possible representation at External Review was also addressed in both the 2013 and 2006 Statutory Reviews.

To quote Recommendation 30 of the 2013 Statutory Review Policy Report:

That the WHSCRD and the WHSCC undertake an educational initiative to raise the awareness of the workplace parties regarding available resources to assist and represent them at external reviews.

Further, to quote Recommendation 20 of **Finding the Balance: The Report of the 2006 Statutory Review Committee on the Workplace Health, Safety and Compensation Act** ("2006 Statutory Review Report"):

The Committee recommends that the scope of the services provided by the Worker and Employer Advisors be expanded to include representation at the external appeal process including participation in the hearing process. Further, the contracts for these positions should include a formal reporting requirement with regular documented meetings between the Commission, the Newfoundland and Labrador Federation of Labour and the Newfoundland and Labrador Employers' Council.

Obviously, the scope of the duties of worker advisors as it relates to the lack of representation at External Review has been an issue since at least 2006. It is the finding of this Committee, that any measures taken to address this issue to date have not been adequate, as a number of participants throughout the public consultation process presented that the lack of representation on behalf of injured workers and their dependents at External Review, has led to systemic issues throughout both review processes.

In order for the Review Commissioner at External Review to overturn the Internal Review decision, it must be demonstrated that an error was made in the application of the policy or the intent of the **Act** and regulations. Therefore, to succeed at External Review, the Applicant would require a comprehensive understanding of the workers' compensation system from a policy and/or legislative perspective. The complexities of the legislation and the lack of knowledgeable representation by an experienced advocate on behalf of injured workers and/or their dependents present a disadvantage to the Applicant at the

outset. This, in turn, leads to time delays in processing applications, in scheduling hearings and ultimately in finalizing decisions. It is the view of this Committee that ensuring appropriate representation at External Review Hearings will assist injured workers and their dependents in receiving a fair hearing and overall will produce an efficient delivery of services to the stakeholders and generally improve the workers' compensation system in the Province.

It is recognized and accepted as a matter of fact by the Committee, that in Newfoundland and Labrador about 90 per cent of the External Review Applicants are injured workers or their dependents. In contrast to the resources often available to injured workers, some employers may have legal, financial and other human resources available to them to provide representation at External Review Hearings. However, in the interest of compromise and fairness, it is the recommendation of this Committee that the duties of the employer advisors also be expanded to include representation at External Review. The ability, of particularly small-to-medium-sized employers, to avail of the services of an employer advisor when seeking representation at External Review can be valuable and worthwhile. We make this recommendation acknowledging and accepting that this increase in duties should not overburden the current workload of the two employer advisors in the Province, as there has been no evidence presented to the Committee to suggest otherwise.

Recommendation 1.1: The scope of the worker and employer advisors' duties be expanded to include representation of Applicants at External Review Hearings and that their respective contracts of employment be renegotiated, if necessary, to reflect this expansion of duties.

It is the opinion of the Committee, that modification of the existing Worker/Employer Advisor Program (in conjunction with Recommendation 1.2) will be the foundation upon which the needs of the injured worker and their dependents and employers are further enhanced and this will result in improvements to the whole of the workers' compensation system in the Province.

The Committee sought a jurisdictional review of the caseload of worker advisors across Canada and it became clear that the Newfoundland and Labrador worker advisor caseload is the highest in the country. Please see Table 1 for a comparison of worker advisor caseload statistics in Canada for 2019. These statistics were submitted to the Committee by WHSCRD in its presentation during the public consultation process.

| Table 1: Jurisdictional Comparison of Worker Advisor Caseloads (2019) Source: WHSCRD | | |
|--|-------------------------|------------------------------------|
| Province | Worker Advisors | Annual Caseload¹ |
| Alberta | 29 f/t * | 2412 |
| British Columbia | 40 f/t | 4200 |
| Manitoba | 6 f/t; 1 p/t; 1 Manager | 255 |
| New Brunswick | 9 f/t | 534 |
| Newfoundland and Labrador | 2 f/t | 406 |
| Nova Scotia | 11 f/t | 977 |
| Ontario | 53 f/t and p/t mix | 8887 |
| Prince Edward Island | 1 f/t; 1 Director | 43 |
| Saskatchewan | 11 f/t | 308 |
| ¹ Annual Caseload refers to both internal and external review/appeal processes, as applicable, for the 2019 fiscal or calendar year and do not include carryovers from previous years. Therefore, actual caseloads in a jurisdiction at any particular time would be much higher when carryovers are included. Caseload definitions and reporting conventions vary across the country. Annual caseload is the most commonly reported indicator that can be compared between provinces. However, please note that the annual caseload statistic for Newfoundland and Labrador does not include actual representation at External Review Hearings. * f/t full time; p/t part time. | | |

It became evident to the Committee that the caseload per worker advisor exceeds the caseload per employer advisor in the Province which has created an unfair and imbalanced approach to the Worker/Employer Advisor Program. Please see Table 2 below for a comparison of worker and employer registered Internal Review cases in the Province from 2015 to 2019 as provided in a roundtable session by WorkplaceNL.

| Table 2: Comparison of Worker and Employer Registered Reviews in Newfoundland and Labrador at Internal Review Only (2015-2019) Source: WorkplaceNL | | | | | | | | | | |
|--|-------------|----------|-------------|----------|-------------|----------|-------------|----------|-------------|----------|
| Year | 2015 | | 2016 | | 2017 | | 2018 | | 2019 | |
| | # | % | # | % | # | % | # | % | # | % |
| Worker¹ | 927 | 84% | 935 | 81% | 824 | 79% | 722 | 85% | 714 | 82% |
| Employer² | 180 | 16% | 213 | 19% | 214 | 21% | 123 | 15% | 152 | 18% |
| Total | 1,107 | 100% | 1,148 | 100% | 1,038 | 100% | 845 | 100% | 866 | 100% |
| ¹ The totals reflect reviews registered on an injured worker's claim file (not outcomes). A review registered on a deceased worker's claim file, by a dependent spouse, would also be included in the worker totals. ² The totals for employers, represent requests for a review of a decision on an injured worker's claim file, where employers disagree with a decision. This does not include reviews registered by an employer in relation to their firm assessment filed. (There are approximately 8-15 firm assessment reviews annually.) Note: This data excludes External Reviews registered at WHSCRD. | | | | | | | | | | |

It is acknowledged that Table 2 outlines the number of registered reviews, and that worker and/or employer advisors may or may not provide representation on any of these particular claims. Comparable total caseload information of both worker and employer advisors was requested of WorkplaceNL and Table 3 below outlines same.

Table 3: Worker/Employer Advisors Data (2009-2020)
Source: WorkplaceNL

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | Totals |
|--|-------------------|--------------------|----------------------|----------------------|----------------------|----------------------|------------------------|------------------|------------------|------------------|------------------|--------------------|--------|
| NLFL Cases¹ | 1,525 | 1,750 | 2,087 | 2,606 | 2,284 | 1,938 | 2,247 | 1,773 | 1,485 | 2,128 | 2,185 | 1,991 | 21,816 |
| NLFL other activities² | 1,083 | 1,868 | 2,010 | 2,175 | 2,634 | 2,376 | 2,076 | 1,899 | 1,935 | 3,003 | 6,107 | 6,413 | 33,579 |
| NLEC cases | 27 ^{3 7} | 90 ^{3 7} | 59 ^{3 7} | 28 ^{3 7} | 10 ^{3 7} | 23 ^{3 7} | 86 ^{3 4 5} | 415 ⁵ | 439 ⁵ | 456 ⁵ | 465 ⁵ | 578 ^{5 6} | 2,676 |
| NLEC other activities | 35 ^{3 7} | 486 ^{3 7} | 3,012 ^{3 7} | 4,212 ^{3 7} | 4,561 ^{3 7} | 4,048 ^{3 7} | 2,532 ^{3 4 5} | 159 ⁸ | 173 ⁸ | 213 ⁸ | 234 ⁸ | 268 ⁸ | 19,933 |

¹ Cases includes cases for Internal Review, External Review, new cases, carry over, representation - this would not represent individuals; an individual may be counted more than once. (WorkplaceNL - issued database)

² Other activities include hours of activity listed as email, calls, fax, letters, policy interpretation, advocacy, conferences, workshops etc. (WorkplaceNL - issued database)

³ Sourced from WorkplaceNL - issued database, which captured activity at the task level

⁴ There may be duplication as two data sources were merged (WorkplaceNL - issued database and NLEC records)

⁵ Sourced from NLEC records - defined as new and ongoing cases only

⁶ Represents full year

⁷ System issues reported (WorkplaceNL - issued database)

⁸ Other Activities defined as ESRTW, PRIME, admin, OHS, wellness, policies, miscellaneous and excludes the final quarter

NLFL: Newfoundland and Labrador Federation of Labour

NLEC: Newfoundland and Labrador Employers' Council

The data outlined in both Table 2 and 3 provide clear evidence that the demand for worker advisors exceeds the demand for employer advisors.

Please note that all information relating to worker advisors from 2009 to 2020 and information relating to employer advisors from 2009 to 2015 in Table 3 was derived from WorkplaceNL's database and had been received by WorkplaceNL in a timely manner. However, the employer advisor data subsequent to 2015 had not been available to WorkplaceNL through its own database; therefore, the information from 2016 to 2020 was obtained directly from the Employers' Council upon this Committee's request for said information.

In addition to the foregoing, the Committee has suggested in Recommendation 1.1 that the duties of both worker and employer advisors be expanded to include representation at External Review Hearings. As previously noted, about 90 per cent of Applications to WHSCRD for an External Review are by injured workers or their dependents.

Undoubtedly, this will add a significant burden to the workload of the current worker advisors. There was no evidence presented to the Committee to suggest that the current workload of employer advisors was overburdened nor was there any suggestion that the two positions of employer advisors could not readily assume the additional duties associated with representing employers at External Review. In addition, it is noted in correspondence to the Committee, the management at WorkplaceNL are of the opinion that the number of employer advisors currently in place is appropriate. It is the recommendation of the Committee to increase the number of worker advisors by three for a total of five to be positioned at the offices of the Federation of Labour and that there be no corresponding increase in the number of employer advisors at the offices of the Employers' Council.

Recommendation 1.2: Increase the number of worker advisors by a minimum of three advisors to be staffed with the Federation of Labour. To be clear, the Committee recommends a minimum of five worker advisors in total and to continue with a minimum of two employer advisors at the Employers' Council.

In both the Federation of Labour Agreement and the Employers' Council Agreement there are monthly data reporting requirements of the Federation of Labour and the Employers' Council respectively, with corresponding monthly and annual review requirements by WorkplaceNL. These provisions lay the foundation so that the parties can monitor and assess, on an on-going basis, the duties of the worker and employer advisors, as well as, their respective workloads and to make the necessary recommendations to address any issues arising therefrom. In addition to these reporting and review requirements, the Employers' Council Agreement was amended on August 29, 2014, to provide for a written report to the Commission (WorkplaceNL) on all activities performed during the month to increase awareness and usage of the Employer Advisor Program. In response to the contractual obligations outlined in the respective agreements, a data entry system was created for both the Federation of Labour and the Employers' Council in 2008 which was fully implemented in 2009. As previously stated regarding the information contained in Table 3, data information from the Employers' Council was not available beyond 2015 through the data entry system noted above due to apparent technical difficulties. Since that time, WorkplaceNL agreed to receive quarterly financial statements on expenditures for the employer advisors from the Employers' Council in lieu of monthly data reports. It is the opinion of the Committee, that while quarterly financial statements are useful with certain aspects, they do not assist management at WorkplaceNL or the Employers' Council to assess and monitor the workload of employer advisors. Furthermore, the required monthly report regarding activities performed during the month to increase awareness and usage of the Employer Advisor Program, was not invoked until July 2020

and the Committee is not certain if this reporting obligation has continued beyond that date.

The obligations of the monthly data upload by both the Federation of Labour and the Employers' Council, together with the corresponding review obligations by WorkplaceNL is critical to adequately assess and monitor the success of the Worker/Employer Advisor Program. Therefore, it is the recommendation of this Committee that WorkplaceNL require all parties to strictly adhere to the reporting and reviewing obligations and terms of the respective contracts. As well, this Committee recommends that the Employers' Council continue with its monthly report on the activities performed to increase awareness and usage of the Employer Advisor Program. All of these reporting and review requirements are valuable tools in assisting management at WorkplaceNL, the Federation of Labour and the Employers' Council to ensure a fair and balanced program with an efficient allocation of resources and accountability to stakeholders.

Recommendation 1.3: The monthly data reporting requirement of the Federation of Labour and the corresponding review requirement of WorkplaceNL, as obligated under the Federation of Labour Agreement with amendments, be continued, so that the performance of WorkplaceNL duties by worker advisors can be monitored and assessed regularly with the view of ensuring that the number of worker advisors is appropriate at any given time.

Recommendation 1.4: The monthly data reporting requirement of the Employers' Council and the corresponding review requirement of WorkplaceNL, and the monthly activity report requirement of the Employers' Council, as obligated under the Employers' Council Agreement with amendments, be adhered to, so that the performance of WorkplaceNL duties by employer advisors can be monitored and assessed regularly with the view of ensuring that the number of employer advisors is appropriate at any given time.

Recommendation 2: Internal Review Recommendations

Authorization is provided in the **Act** to review all decisions of WorkplaceNL. An Internal Review process has been established and is outlined in WorkplaceNL's Client Services Policy Manual. To quote from AP-01 entitled **Internal Review**:

The purpose of WorkplaceNL's internal review process is to ensure that decisions of operating departments are fair, reasonable, and consistent. It may be accessed by a worker, dependent or employer who outlines their disagreement with a specific decision in writing.

The aim of WorkplaceNL is always to render fair and just decisions with as little delay as possible. Decisions must be in accordance with the spirit and intent of the Workplace Health, Safety and Compensation Act (the Act), regulations and WorkplaceNL policies, and have regard to the practices and principles of the Canadian Workers' Compensation System.

WorkplaceNL's final decision on a request for internal review will be provided within 45 days from the date the written request for review is received by WorkplaceNL. The final decision will be made in writing by an Internal Review Specialist, and shall include reasons in support of that decision as well as possible rights of review at the Workplace Health, Safety and Compensation Review Division (WHSCRD).

1. Time Limits

Anyone requesting a review must file the request within 30 days from the date WorkplaceNL's written decision was received. Requests for a review must be in writing and identify the reason(s) for the request. Requests for review outside the 30 day time period will be considered in accordance with the provisions of section 64 of the Act.

2. Internal Review Process

When a written objection is received, the Internal Review Specialist conducts an analysis to ensure that all relevant information has been considered and that the decision complies with the Act, regulations and policies. The Internal Review Specialist will normally only conduct paper reviews, although interviews, meetings, and requests for further details for clarification may also be undertaken in the execution of a flexible and responsive review process. The Internal Review Specialist will make WorkplaceNL's final decision and notify all parties in writing.

3. Internal Review Decisions

Where there is no written policy or where the intent of policy is uncertain, the Internal Review Specialist will render a decision in accordance with the Act and the merits and justice of the case.

Table 4: Jurisdictional Comparison of Internal Reviews/Appeal Processes (2019)
Source: Association of Workers' Compensation Boards of Canada

| Province/ Territory | Is the process conducted by internal employees? | What is the time limit to request review/appeal? | What is the time limit to make a decision? | Is it a paper review or hearing? |
|------------------------|--|---|--|--|
| NL | Yes (Policy, Planning and Internal Review Department) | 30 days | 45 days | Paper Review |
| PEI | Yes (Internal Reconsideration Officer) | 90 days | 90 days (extensions are possible) | Paper Review |
| NS | Yes (Internal Appeal Department) | 30 days | 30 days | Both |
| NB | Yes (Decision Review Office) | 90 days | None | Paper Review |
| QC | Yes (Administrative Review Office) | 30 days | None | Paper Review |
| ON | Yes (Appeals Services Division) | 6 months or 30 days when re-employment issues | 30 days | Both |
| MB | Yes (Review Office) | None | Generally 6-8 weeks | Paper Review |
| SK | Yes (Appeals Department) | None | None | Paper Review |
| AB | Yes (Dispute Resolution and Decision Review Body) | One year | 40 Days | Both |
| BC | Yes (Review Division) | 90 days | 150 days | Both |
| YK | Yes (Hearing Officer) | 2 years | No time limit; 30 days to implement | Both |
| NT/NU | Yes (Review Committee) | 3 years | 50 days | Both |

A jurisdictional comparison was conducted relative to the various internal review/appeal processes across the country and Table 4 above, as provided to the Committee by WorkplaceNL, is a synopsis of the provincial and territorial findings.

It is noted in Table 4 that six provinces, including Newfoundland and Labrador, provide for a paper review only. In this Province, Internal Review Specialists review and determine whether the decisions of WorkplaceNL are in accordance with the spirit and intent of the **Act**, regulations and policies. However, our policy dealing with Internal Review does provide the Internal Review Specialists the discretion and flexibility to conduct interviews and meetings, and to request further details for clarification when deemed appropriate. While this Committee is not suggesting a move to a hearing as opposed to a paper review, we are stating that the policy and procedures of the Internal Review process be strengthened to give the parties involved the confidence that their positions are heard.

This issue was also addressed in the 2013 Statutory Review and was outlined in Recommendation 28 that the Commission (WorkplaceNL) “...use its discretion to determine the scope of the internal review process regarding the use of interviews, meetings, and requests for further details on a case-by-case basis...”. Further, in May 2017, the Internal Review policy was revised to ensure that the discretion of Internal Review Specialists to decide cases on their individual merits, was not restricted.

Recommendation 2.1: Internal Review Specialists conduct a mandatory interview, either by telephone, virtual means or in-person, with the party seeking the Internal Review and that Policy AP-01 be revised accordingly.

Certain presenters throughout the public consultation process questioned the autonomy of the Internal Review Division. Some participants suggested the perception has been that the Internal Review Specialists may not be exercising complete independence in the decision-making processes and in fact, may often be influenced by other management and staff at WorkplaceNL. This Committee, is in no way finding that this is in fact the case; however, a perception, as opposed to reality, can often undermine the integrity of any process. This can result in an unfair and unfortunate perception for injured workers, their families, employers and the Internal Review Specialists themselves, who are striving to conduct a professional and objective review. It is worthy to note that Table 5 below, as provided to the Committee by WorkplaceNL, outlines the Internal Review results in 2019 and that 74% of these reviews supported WorkplaceNL’s original decisions.

| Table 5: Internal Review Results (2019) Source: WorkplaceNL | |
|--|---|
| 74% Denied | <ul style="list-style-type: none"> Internal Review’s decision was in favour of WorkplaceNL (i.e. the original decision of WorkplaceNL was upheld). The result of the review is a denied outcome. |
| 7% Allowed | <ul style="list-style-type: none"> Internal Review’s decision is in favor of the party requesting the review (i.e. WorkplaceNL’s original decision was overturned or modified, as some decisions may be allowed in-part). The results of the review is an allowed outcome (i.e. Internal Review’s decision finds merit in the objection raised by the party requesting the review). |
| 19% Referred Back | <ul style="list-style-type: none"> Internal Review’s decision was to send the file back to Claims Services as further information is possibly required to adjudicate. For example, further medical opinions might be required or information is missing. |

The Committee has been provided assurance by WorkplaceNL officials that the Internal Review Division has complete autonomy in conducting reviews and reaching decisions. The Internal Review Division is located on a separate floor from the claims and adjudication areas of the organization to create physical separation and to assist in eliminating any perception of bias. Despite these assurances by WorkplaceNL, the Committee is of the opinion that an overview of the Internal Review Process to address the perception as noted above, will enable WorkplaceNL to invoke the necessary policy changes to ensure complete independence of the Internal Review Division and thus preserving its integrity.

Recommendation 2.2: Appropriate measures be taken by the Executive of WorkplaceNL to ensure complete independence, as well as, perceived independence of the Internal Review Division thus allowing the Internal Review Specialists to review, assess and make decisions independent of any perceived interference and/or bias.

It is the observation of the Committee that often the correspondence and/or written decisions to injured workers, their dependents, and employers can be confusing and intimidating to the recipient. It is important that these documents be written in clear and plain language, and that the use of the word “appeal” be discontinued and “review” only be used. Further, it is important that a distinction always be made when referencing “Internal Review” versus “External Review”. We recommend that any reference to “final decision” in an Internal Review decision be eliminated as many inexperienced readers may misinterpret their right to proceed to External Review. While the officials of the respective organizations understand the distinction between WorkplaceNL and WHSCRD, members of the general public likely view them as one entity. As supplementary to the recommendation below, we suggest that the Internal Review Specialist advise the party can proceed with a further review through an External Review process, with details on how to proceed with the Application, and with appropriate information of the Worker/Employer Advisor Program, as applicable.

Recommendation 2.3: The decision/correspondence from an Internal Review Specialist comply strictly with Recommendation 4 of Thematic Area 1 and further remove any reference to “final decision” in an Internal Review decision.

Recommendation 3: Internal and External Review Timelines

The Committee recommends a number of improvements and/or amendments to timelines for both Internal and External Reviews and any amendments to policies and/or legislation resulting therefrom.

It became clear to this Committee during roundtable discussions and subsequent follow-up with WorkplaceNL and WHSCRD, that one of the difficulties in achieving shorter timelines and maintaining the efficiency of the review processes occur when an Applicant receives new evidence subsequent to an Internal Review decision but prior to an External Review Hearing date. The jurisdiction to assess whether the evidence is new evidence or additional evidence and whether or not it changes the original decision of the claim when considered on its merits, rests with WorkplaceNL. However, it has come to the Committee's attention that the lack of a formalized process and lack of timelines in dealing with new and/or additional evidence, is contributing to significant delays and inefficiencies in the review processes.

Section 64 of the **Act** states:

64. The commission may reopen, rehear, redetermine, review or readjust a claim, decision or adjustment, where

- (a) an injury has proven more serious or less serious than it was considered to be;**
- (b) new evidence relating to the claim, decision or adjustment has been presented to it;**
- (c) a change has occurred in the condition of an injured worker or in the number, circumstances or condition of dependents or otherwise; or**
- (d) a worker is not following medically prescribed treatment.**

Section 7 of the WHSCRD regulations under the **Act** states:

- 7. (1) The review commissioner may order production of all information that was before the commission in making its decision.**
- (2) If the commission receives evidence subsequent to the rendering of a decision and the commission advises the review commissioner that they have considered the evidence for which a review has been**

requested before a decision is made by the review commissioner and it does not alter their decision, the commissioner may accept that new evidence as part of the decision being reviewed.

A distinction must be drawn between additional and new information which has met the threshold of section 64 of the **Act**. The Internal Review Division implemented a new triage process in August 2019, that when advised by an official from the External Review Division of new and/or additional evidence from an Applicant whose External Review Hearing is pending, a priority review is conducted. If, subsequent to this review, it is determined that this evidence is additional and has no impact on the original decision, then officials at External Review are advised and pursuant to section 7 of the WHSCRD regulations, the Review Commissioner may accept that additional evidence as part of the decision being reviewed. If, however, the evidence is determined to be new evidence and may impact the original decision, then the matter is likely reopened under section 64 of the **Act** and therefore, will require further investigation by the original case manager.

While the implementation of the triage process noted above is commendable, it is the observation of this Committee that the process can be improved upon so as to further minimize delays and improve the overall efficiency of the review processes.

Recommendation 3.1: A committee of appropriate representatives of WorkplaceNL and WHSCRD be established to consult, review, analyze and formulate operational solutions to issues surrounding consideration of additional and/or new evidence. It is further recommended that the committee give consideration to the following:

- a. formalizing the triage process noted above;**
- b. introducing a “red-flag” system at WorkplaceNL so that all documents relating to new or additional evidence for matters pending at External Review Division that are not caught in the triage process, are highlighted; and**
- c. establishing appropriate timelines for the determination of issues relating to new or additional evidence irrespective of whether the matter is pending at the External Review Division.**

Section 28.(8) of the **Act** states that “A review commissioner shall communicate his or her decision, with reasons, to the person seeking the review, the commission and a person who appeared or made a submission on the review, within 60 days of the date of the application for review”.

This provision of the **Act** had been the subject of review during the 2013 Statutory Review process and was addressed in both the 2013 Statutory Review Policy Report and Technical Report.

To quote Recommendation 29 of the 2013 Statutory Review Policy Report:

That the provincial government amend section 28.(8) of the WHSCC Act to include: That a hearing must be held within 60 days of the application and that the decision must be rendered and communicated within 30 days after the date of the hearing, where there is no delay caused by any of the parties involved in the review, or the introduction of new evidence.

And to quote the description relating to this provision of the **Act** from the 2013 Statutory Review Technical Report:

Provide that the decision shall be made within 60 days after the hearing of the appeal ends.

It is noted there were conflicting views from the 2013 Statutory Review Committee and the Technical Reviewers. However, a subsequent analysis conducted by Government officials, concluded that proceeding with an amendment to section 28.(8) of the **Act** to require a decision from a Review Commissioner to be rendered and communicated within 60 days after an External Review Hearing was advisable. This Committee concurs with this conclusion.

The Committee received submissions advocating that WHSCRD does not have control of many of the factors contributing to a delay in scheduling Hearings and that a more suitable timeframe to trigger a deadline should be the date of the Hearing rather than the date of the Application. In fact, it was submitted that, in practice, this is the timeframe utilized by WHSCRD. The Committee heard submissions and is satisfied that the addition of full-time Review Commissioners has positively impacted WHSCRD's performance in reducing delays. As well, a jurisdictional review was conducted across Canada and it was clear that the current timeframe outlined in the **Act** is the shortest in the country. Further, this jurisdictional review reinforced that a revised timeframe of 60 days from the date of the Hearing is well within the allowed timeframes in other jurisdictions. Therefore, it is for these reasons that this Committee supports the following recommendation:

Recommendation 3.2: An External Review decision shall be concluded and communicated to the parties within 60 days from the date of the Hearing.

Currently, an Application by either party seeking a Reconsideration must be completed within 30 days of the decision under reconsideration. WHSCRD procedures allow additional timeframes to the parties for appropriate responses and/or rebuttal. Currently, the timeframe under which the Chief Review Commissioner or designate, is required to communicate their decision, with reasons, commences as of the date of the Application.

The following are the relevant provisions of the **Act** governing an Application for Reconsideration:

28.1 (1) A worker, dependent, employer or the commission may apply, in writing, to the chief review commissioner for a reconsideration of a decision of a review commissioner.

(2) An application under subsection (1) shall be made within 30 days of receipt of the decision that is the subject of the reconsideration being given.

(3) The chief review commissioner shall review the application and, where he or she determines that reconsideration is appropriate, shall reconsider the decision, or order that the decision be reconsidered by another review commissioner who did not make the decision.

(3.1) Where the decision to be reconsidered was made by the chief review commissioner, he or she shall refer the application to a different review commissioner who may in his or her discretion order that the decision be reconsidered, and conduct the reconsideration where one is ordered.

(4) A review commissioner shall communicate his or her decision, with reasons, on the application for reconsideration to the person seeking the reconsideration, the commission and a person who appeared or made a submission on the reconsideration

(a) within 45 days of the date of the application for reconsideration, where an oral hearing is not held; and

(b) within 60 days of the date of the application for reconsideration, where an oral hearing is held.

(4.1) Subsections 28. (4.1) to (4.3) shall apply to the reconsideration process, with the necessary changes.

(5) The chief review commissioner shall notify all the parties to which the request for a reconsideration relates of the request within 10 days of receiving it.

Recommendation 3.3: The timelines provided in section 28.1 (4) (a) and (b) of the Act relating to an Application for Reconsideration by the Chief Review Commissioner or designate, be amended so that the timelines noted therein commence subsequent to the date of the Application and appropriate response times and/or rebuttal times provided to the parties. If there is a delay beyond the timelines provided, then the reasons for the delay must be clearly articulated in writing to all parties.

The Committee heard from a number of participants that a lack of oversight and accountability exists regarding the implementation by WorkplaceNL of External Review decisions. This has led to delays in bringing closure to the parties, in what can be a very trying, lengthy and costly process.

Recommendation 3.4: Implementation of External Review decisions by WorkplaceNL, shall be within 15 days from the date of the expiration of the 30-day period allowed for an Application for Reconsideration. If additional time is required, written correspondence must be forwarded to the parties outlining the reason for the delay and the expected date for implementation of the decision.

Recommendation 4: Decisions, Correspondence and Other Communications

Generally speaking, it is the view of this Committee that all decisions, correspondence, forms, websites and other forms of written communication from WorkplaceNL and WHSCRD to injured workers and their families, employers, other stakeholders and the general public be written in accordance with a report entitled the **Accessible Communications Policy of the Government of Newfoundland and Labrador**. This policy applies to accessible public documents, Government publications, news releases, electronic and web-based information, public information sessions, meetings, consultations, press conferences and events.

Throughout a claims management process and subsequent review processes, there can be an on-going and continuous receipt of complex information relating to medical and /or legal issues. Further, the volume of documentation and forms received and required by WorkplaceNL and WHSCRD can be extensive and intimidating. It is crucial to the

understanding of the parties that all communications by WorkplaceNL and WHSCRD be conveyed in a clear and plain language writing style with rationale for any decision, information on review processes and advisor contact information where applicable. It is further recommended, when the appropriate consent has been obtained, that copies of these written communications by WorkplaceNL and WHSCRD be forwarded to the designated representatives of the applicable parties.

In addition, all websites and forms to be completed should be user friendly and readily accessible to the user. The Committee also recommends, in developing procedures to communicate to the stakeholders and to the public in general, it be recognized that not all recipients have digital access and that paper copies be made available upon request.

The Committee commends the Internal Review Division who has recently developed initiatives to improve communications with stakeholders by implementing, among other things, a writing style guide whereby it modified its decision letters with outcomes first and adopted WHSCRD's outcome terminology. In addition, it initiated a two-year clear language project, including but not limited to, revising all forms and file release letters.

It is the recommendation of this Committee that these initiatives, together with on-going training of all staff of WorkplaceNL, including the Internal Review Division and WHSCRD, continue or be implemented as the case may be. These initiatives are to include all decisions, correspondence, forms, websites and other forms of written communication.

It was clear to the Committee, and at times confusing, as to the interchangeable use of the words appeal and review and therefore, recommends that revisions be made and practices introduced to be consistent and clear regarding this terminology.

Many participants of the public consultation process addressed an issue that phone calls and voice messages were not being returned by staff members in a timely manner and it was suggested that the lack of a record keeping and monitoring system was compromising accountability. These types of complaints are unfair to the individuals attempting to make contact, but are also unfair to those staff members at WorkplaceNL and WHSCRD who are diligent in attending to such requests. A record keeping and monitoring system will standardize these practices and will provide management with the appropriate tool to monitor same.

Therefore, the Committee makes the following recommendations regarding all communications from the staff of WorkplaceNL, including Internal Review Division and WHSCRD:

Recommendation 4.1: All decisions and correspondence from WorkplaceNL, including the Internal Review Division and WHSCRD be written in plain language, including rationale for any decision, and where applicable, information regarding review processes, as well as, contact information of worker and employer advisors. Further, when requested and when the appropriate consent has been obtained from the applicable party, copies of written communications by WorkplaceNL and WHSCRD are to be forwarded to the designated representatives.

Recommendation 4.2: WorkplaceNL's and WHSCRD's respective websites be user friendly and that all policies and procedures continue to accommodate injured workers and other individuals, and employers who do not have digital access.

Recommendation 4.3: All legislation, regulations, policies, reports, correspondence, decisions, forms, websites, news releases, presentations and all other means of written and oral communication be amended and/or modified to eliminate the use of the word "Appeal" and replaced with "Review".

Recommendation 4.4: A record keeping and monitoring system for phone calls and voice messages received by WorkplaceNL and WHSCRD be established and maintained.

Recommendation 5: Establishment of Committee

A recommendation was made in the 2013 Statutory Review Policy Report concerning communication between WorkplaceNL and WHSCRD. Recommendation 31 states:

That the WHSCC and the WHSCRD develop a formal mechanism whereby WHSCRD's Chief Review Commissioner and WHSCC's Chief Executive Officer (CEO) meet no less than twice a year to discuss matters that affect client service delivery. This would include:

- a. developing and implementing a process to review the effectiveness and efficiency of the interface between the WHSCRD and the WHSCC;**
- b. reviewing any common, emerging areas of concern which contribute to delays in information or decisions;**
- c. reviewing trends which may indicate any required changes; and**

d. reporting the results of the foregoing to the WHSCC Board of Directors and the appropriate government authority.

In response to Recommendation 31, WorkplaceNL reported to the Committee that a meeting structure was agreed upon and that communications between both organizations at operational levels have improved. However, it was further presented to the Committee by other participants that, while communication between the organizations had improved, the lack of formal processes compromised its intent and effectiveness.

Therefore the Committee makes the following recommendation to strengthen and improve the communications between WorkplaceNL and WHSCRD:

Recommendation 5.1: A formal committee be established comprising of representatives from WorkplaceNL, the Internal Review Division and WHSCRD to meet quarterly, with the following goals:

- a. to enhance communication and cooperation between the noted parties;**
- b. to identify and discuss trends and issues;**
- c. to review emerging new areas of concern that may contribute to delays in obtaining information and/or making decisions;**
- d. to report back to their respective organizations and governing Board of Directors where applicable, and the responsible Minister; and**
- e. to make every effort to resolve on-going concerns and issues.**

It is further recommended that minute taking at these meetings be mandatory, outlining action items, together with appropriate follow-up responsibilities.

Thematic Area 2: Balance in the Provision of Benefits

Overview of Thematic Area 2

The workers' compensation system in the Province is an employer-funded, workplace injury program. Regardless of how a worker is injured in the scope of their employment duties, a worker is entitled to benefits. Section 44 of the **Act** states:

44. (1) The right to compensation provided by this Act is instead of rights and rights of action, statutory or otherwise, to which a worker or his or her dependents are entitled against an employer or a worker because of an injury in respect of which compensation is payable or which arises in the course of the worker's employment.

(2) A worker, his or her personal representative, his or her dependents or the employer of the worker has no right of action in respect of an injury against an employer or against a worker of that employer unless the injury occurred otherwise than in the conduct of the operations usual in or incidental to the industry carried on by the employer.

(3) An action does not lie for the recovery of compensation under this Act and claims for compensation shall be determined by the commission.

Further section 73 of the **Act** provides:

73. (1) Where, as the result of an injury, a worker is disabled or impaired either permanently or temporarily, totally or partially, the commission shall pay in relation to the worker

(a) medical expenses as provided for in section 84;

(b) a lump sum award for the permanent impairment as determined by the commission after consideration of a rating schedule; and

(c) compensation for the loss of earning capacity resulting from the injury calculated in accordance with section 74.

(2) The maximum and minimum lump sum awards payable under paragraph (1)(b) shall be as prescribed by regulations.

(3) The board of directors may for the purpose of paragraph (1)(b) approve a rating schedule which may be considered in calculating the amount of an award for a permanent impairment arising out of an injury.

As well, section 74 of the **Act** outlines loss of earning capacity to which an injured worker is entitled to benefits:

74. (1) Where injury to a worker results in loss of earnings beyond the day of the injury, the commission shall estimate the effect of the injury on the loss of earning capacity resulting from the injury and shall ensure compensation to the worker on the basis of the estimated loss.

(2) For periods of wage loss after March 31, 2018, the rate used for calculating a worker's loss of earning capacity shall be 85% of the difference between the worker's average weekly net earnings at the commencement of his or her loss of earnings resulting from the injury, subject to the maximum prescribed amount under subsection 80.(8), and the average weekly net earnings the worker is estimated to be capable of earning at suitable employment after sustaining that injury.

(3) The commission for the purpose of subsection (2) may determine that a worker is capable of working in suitable employment and estimate the wage he or she could earn in that employment.

(4) Where a worker reaches the age of 65 years, the compensation payable under this section shall stop.

(5) Notwithstanding subsection (4) where a worker is 63 years old or more at the beginning of his or her loss of earnings resulting from the injury, the commission may provide the compensation under subsection (1) for a period of not more than 2 years following the date of the injury.

It is the responsibility of the staff of WorkplaceNL, with the guidance and assistance of medical information from attending physicians and treatment providers, to estimate the effect of the injury and corresponding benefits to the injured worker and/or their dependents. These benefits can include wage loss, loss of earning capacity, retirement benefits, medical aid, medical treatments, rehabilitation measures and/or other benefits to dependents in the case of the death of the injured worker.

It is imperative to the success of a workers' compensation program that the resulting benefits to injured workers be financially sustainable and therefore a balance must be attained between the average employer assessment rate and the benefits received by injured workers. Government requested the Committee to review and analyze whether a balance exists in the provision of benefits to ensure the fundamental principles of a no-fault workplace injury compensation system is standardized, which is vital to maintain fairness and compromise for all stakeholders.

In the **Discussion Paper**, the Committee asked public consultation participants to consider the following questions:

1. Are worker benefits being provided in a fair and efficient manner? If not, what are possible areas of improvement?
2. How well is the balance between provision of benefits and employer assessment rates being achieved?

Recommendations and Rationale

Recommendation 6: Injured Workers' Loss of Earning Capacity

Income Benefits: The Committee received numerous submissions with a multitude of recommendations regarding the various components that comprise the formula for calculating an injured worker's loss of income benefits. As outlined in section 74 of the **Act**, the current Income Replacement Rate ("IRR") is 85 per cent of the difference between an injured worker's average weekly net earnings at the date of loss of earnings and the average net earnings the injured worker is capable of earning subsequent to the injury. This calculation of earnings is subject to a prescribed amount known as Maximum Compensable and Assessable Earnings ("MCAE") which is \$67,985 in 2021 and it represents the upper limit upon which the loss of earnings benefit is calculated.

Many labour leaders presented to the Committee that any percentage of wage loss below 100 per cent of actual earnings penalizes workers for being injured at their workplace. In the alternative, many presented a variety of scenarios with compromises below the 100 per cent of actual earnings. Further many submitted that an increase in the MCAE was warranted and in addition to this "ceiling", there should also be a "floor", so that no injured worker would receive less than minimum wage. In contrast, the employer presentations outlined the desire to maintain benefits to injured workers at the existing rates. They submitted that more time is required to assess the financial implications of recent changes to benefits prior to making any further increases.

A jurisdictional review was conducted regarding the MCAE and IRR levels throughout the country and Table 6 below provides a summary for 2021.

| Table 6: Jurisdictional Comparison of Maximum Compensable Assessable Earnings and Income Replacement Rates (2021) Source: Association of Workers' Compensation Boards of Canada | | |
|--|---------------------------------|--|
| Jurisdiction | MCAE | IRR |
| NL | \$67,985 | 85% |
| NS | \$64,500 | 75% for first 26 weeks; 85% after 26 weeks |
| PEI | \$55,300 | 80% for first 38 weeks; 85% after 38 weeks |
| NB | \$67,100 | 85% |
| QE | \$83,500 | 90% |
| ON | \$102,800 | 85% |
| MB | \$127,000; no limit on earnings | 90% |
| SK | \$91,100 | 90% |
| AB | \$98,700; no limit on earnings | 90% |
| BC | \$100,000 | 90% |
| YK | \$91,930 | 75% (gross earnings) |
| NT/NU | \$97,300 | 90% |
| Note: No limit on earnings are used by two jurisdictions and removes the link between maximum insurable earnings and maximum assessable earnings. There are views that other jurisdictions have avoided this approach because of the negative impacts on the business environment and workers' compensation systems (i.e. negatively impacting an employer's willingness to do business and a deterrence by those who employ high wage earners because of the higher premiums to be paid). | | |

It is clear that the MCAE levels and IRR in Atlantic Canada are generally lower than the rest of the country. However, Newfoundland and Labrador has the highest MCAE in Atlantic Canada and is either above or on par with its IRR. A further review indicates that all jurisdictions, with the exception of the Atlantic Provinces, have minimum weekly payments.

First Responders: Certain organizations representing uniformed first responders presented to the Committee that, given the unique work environment in often responding to emergency incidents where the potential for injury is elevated, first responders in the Province who are injured in their duties should receive 100 per cent of pre-injury earnings. It is not lost on this Committee as to the nature of the work of first responders in keeping the general public safe. Their significant and valuable contribution to society is irreplaceable. However, the Committee acknowledges that employees in many professions are required to work in environments where the potential for a work-related injury or occupational disease is heightened. This became even more evident throughout

2020 and 2021 during which there was a declaration of a public health emergency resulting from the COVID-19 pandemic.

The Committee is cognizant of the fact that, balancing benefits for workers throughout a very diverse workforce in the Province in which there are varying degrees for potential of injury, is challenging. However, standardizing benefits and ensuring equality amongst all workers, regardless of the occupation, must be a priority. A review of the IRR for uniformed workers across the country was conducted and all jurisdictions report no distinction for the entitlement of benefits for first responders.

Employer Negotiated Benefits: Section 81.1 of the **Act** prevents an employer from entering into an agreement (through collective bargaining or otherwise) to pay to an injured worker an amount in excess of compensation allowed under the **Act**. It states:

81.1 (1) After January 1, 1993 , an employer and a worker shall not in an agreement provide that the employer shall pay an amount in excess of the amount that the worker, as a result of an injury, is receiving as compensation either under this Act or as if the worker were a worker within the scope of this Act.

(2) Where an employer and a worker enter into an agreement in contravention of subsection (1), that agreement is of no effect.

(4) For the purpose of this section, the word "agreement" means a collective agreement or other contract of employment.

Several labour groups recommended in their presentations to the Committee that section 81.1 of the **Act** be repealed so that workers and employers are permitted to negotiate for benefits in excess of what an injured worker would be entitled to under the **Act**. We refer you to Appendix E.6 for actuarial commentary on this subject. To quote from page 2:

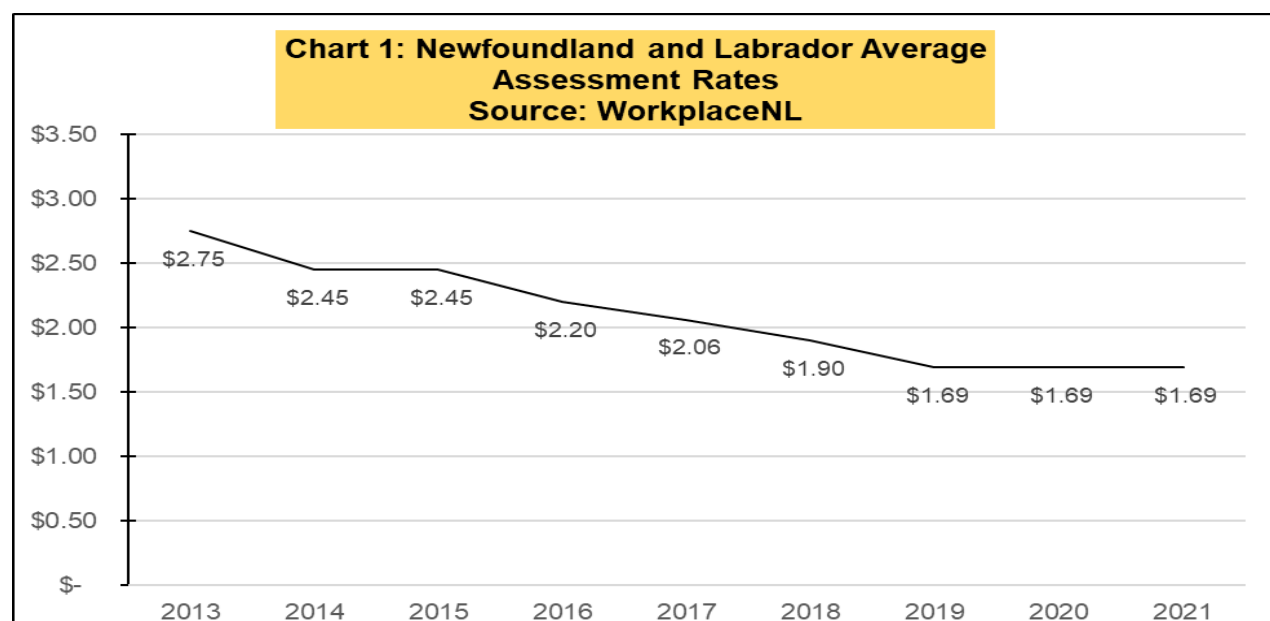
These ‘incremental’ top-ups were mostly found in public-sector union plans, and we believe that these types of benefits are not very common today. In general, there is a trend among employers towards short-term disability and long-term disability (STD/LTD) plans instead of legacy plan types such as top-ups or sick day banks.

It is worthy to note that in nine jurisdictions across the country there is nothing in their respective workers’ compensation legislation preventing an employer from “topping-up” an injured worker’s income.

Funding Target: WorkplaceNL is responsible for maintaining an Injury Fund which derives its revenue from employer assessments, investment income, self-insured

administration fees and third-party recoveries. A Funding Policy has been established setting a funding target of total assets of 110 per cent of total liabilities. This Funding Policy guides WorkplaceNL in setting annual employer assessment rates. The Injury Fund has been fully funded for more than five years and to quote from WorkplaceNL's **2019 Annual Performance Report**, it "...continually monitors the financial stability of the system due to: uncertainty surrounding the increasing number of claims and their duration; potential costs due to recent changes to benefit policies and legislative changes; downward trends of assessable payrolls due to changing economic factors; the changing nature of injuries; and potential changes in the financial market". The actuaries discuss the funding ratio in Appendix E.6.

Assessment Rates: Chart 1 below demonstrates the average assessment rates for the Province since 2013. The average assessment rate has been reduced by 38.5 per cent since 2013 to the current rate of \$1.69 per \$100 of assessable payroll. The base rate since 2019 is actually \$1.90 but WorkplaceNL applied a temporary \$0.21 discount which saved employers in the province approximately \$17.4 million per year. Note, by a News Release dated November 9, 2020, WorkplaceNL announced that the discount of \$0.21 would apply to 2021, thus keeping the average assessment rate at \$1.69. It was confirmed to the Committee that the rebate is calculated annually to discount the assessment rates over a period of fifteen years in an effort to return the funded position to the 110 per cent target. Further, the Prevention and Return-to-Work Insurance Management for Employers and Employees Program, also known as PRIME, is an incentive program which recognizes employers for compliant occupational, health and safety practices, as well as, good return-to-work practices, with a refund on their average annual calculated base assessments. Please refer to Appendix E.6 for the actuarial explanation on assessment rates.



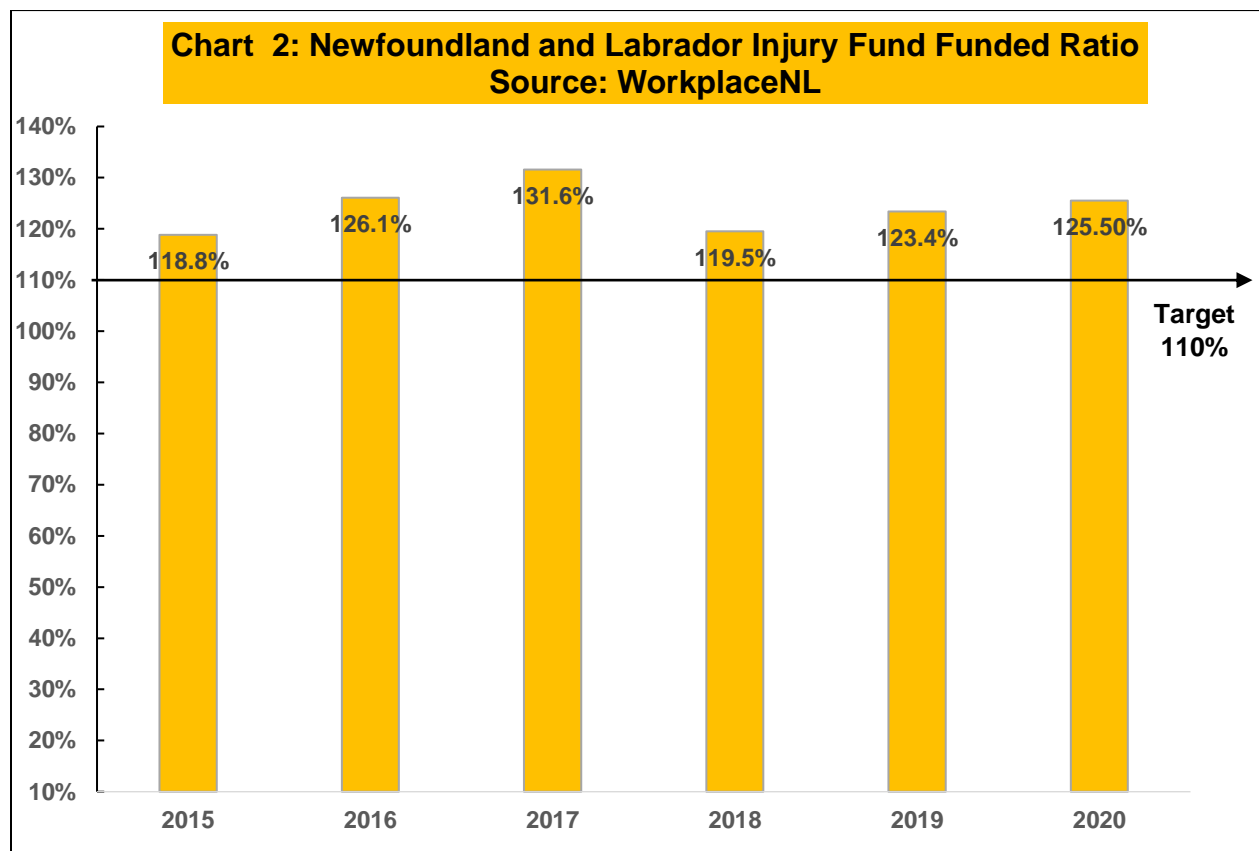
A review was conducted of the average assessment rates of the provinces and territories across the country and Table 7 below summarizes the results. It is worthy to note that Newfoundland and Labrador's average assessment rate is about 16.3 per cent lower than the Atlantic Province average and approximately 1.2 per cent below the national average.

| Table 7: Jurisdictional Comparison of Average Assessment Rates Per \$100 of Payroll (2021) Source: Association of Workers' Compensation Boards of Canada | |
|---|--------------------------------|
| Jurisdiction | Average Assessment Rate |
| NL | \$1.69 |
| PEI | \$1.57 |
| NS | \$2.65 |
| NB | \$2.17 |
| QC | \$1.77 |
| ON | \$1.37 |
| MB | \$0.95 |
| SK | \$1.17 |
| AB | \$1.14 |
| BC | \$1.55 |
| YK | \$2.07 |
| NT/NU | \$2.40 |
| Note: Rates cited as provisional | |

Historical Significance: It must be noted that in 1984, WorkplaceNL introduced an earning-loss system with an IRR at 90 per cent of net loss of earnings. Due to the instability of the financial position of WorkplaceNL and its Injury Fund, workers took a reduction on January 1, 1993. The IRR was reduced to 75 per cent for the first thirty-nine weeks following injury and 80 per cent thereafter; on January 1, 1998, the IRR was increased to 80 per cent for the entire period of benefits; on March 21, 2018, the IRR for all injured workers was increased to 85 per cent.

In addition, in the early 2000s, the financial position of WorkplaceNL continued to be unstable and the funded ratio had reached a low of 65.2 per cent of the total funds required to ensure benefits to injured workers in the future. Despite workers having taken a substantial reduction in benefits in 1993, the uncertainty of the financial health of the program was at risk. Therefore, through a Workers' Compensation Task Force, stakeholders agreed on a plan to return the system to financial sustainability. As a result, employers' assessment rates were increased substantially and a surcharge was implemented. Additionally, all stakeholders became engaged in preventative educational initiatives, particularly surrounding healthy and safe work environments and they made a strong commitment to reduce injury frequencies. Through the collaborative efforts of all

stakeholders, particularly employers and injured workers, the Injury Fund has exceeded the targeted goal since 2014. Chart 2 below demonstrates the funded ratio from 2015 to 2020.



Recommendation 6.1: For the calculation of loss of earning capacity for an injured worker, section 74. (2) of the Act be amended to increase the IRR from 85 per cent to 90 per cent commencing January 2022 and that no further rebates or discounts be provided to employers subsequent to 2021 until such time as the IRR of 90 per cent is achieved. (Note: These rebates and discounts do not include safety incentives under PRIME or any replacement program.)

This recommendation is by the majority of the Committee, with a dissenting view by the Employers' Representative.

An actuarial analysis was completed on this recommendation and as per the report of Morneau Shepell in Appendix E.1, this increase in the IRR to 90 per cent is expected to result in a one-time increase in liabilities by \$75.1 million and increase the cost of new

accidents per \$100 of assessable payroll by \$0.135. As stated on page 2 of the report, “For demonstration purposes, if this change had occurred on December 31, 2019, the funded ratio would be 116.6 per cent.” The actual funded ratio at the end of 2019 was 123.4 per cent and has further increased to 125.5 per cent at the end of 2020.

As previously stated, given that the Injury Fund had exceeded the 110 per cent target for a number of years, a 15-year plan was put in place to provide employers with a discount of \$0.21 per \$100 of assessable payroll (to be assessed annually) which commenced in 2018 and has provided employers collectively with approximate savings of \$17.4 million per year. As well, the current average assessment rate in Newfoundland and Labrador is approximately 16.3 per cent lower than the other Atlantic Provinces and about 1.2 per cent lower than the national average.

All stakeholders, including employers and injured workers have made sacrifices to stabilize the Injury Fund which ensures financial sustainability to the whole of the workers’ compensation system in the Province. In the interest of compromise and to ensure a balance of benefits, which is the subject of Thematic Area 2, the majority of this Committee feels strongly that for the reasons outlined above, the excess of the Injury Fund, in part, should be returned to the injured workers, restoring the IRR to the pre-1993 level at 90 per cent. It is clear in the actuarial report that the cost of this increase in the IRR can be readily absorbed in the over-funds which is further evidenced by the increase in the funding ratio at the end of 2020, despite the rebates given to employers in 2019 and 2020. The majority of the Committee supports a funded ratio of the Injury Fund at a minimum of 110 per cent and further supports a recalculation and adjustment of the discount to assessment rates for employers based upon the reduction in the funded ratio as a result of the increase to the IRR. Even if the funding formula did not allow any further discounts to employers beyond 2021, the base \$1.90 assessment rate is still approximately 6 per cent lower than the average assessment rate in Atlantic Canada.

The Employers’ Representative takes a dissenting view from the majority of this Committee given that injured worker benefits and employer insurance premiums in the Province are equal to or better than the other Atlantic Provinces. It is his position that, as we have a stable and fully funded Injury Fund, there should be no change to the IRR and the MCAE, and the annual rebate to employers should continue as long as it can. The Employers’ Representative refers to the submissions on behalf of employers which outline a number of increases in coverages that injured workers have received over the past number of years, including an increase from 80 per cent to 85 per cent in the IRR in 2018. He further reiterates the commentary of the actuaries that normally it would take up to five years to assess the financial implications of increases in benefits; he is also concerned of the possible compounding effect of multiple recommendations with cost implications. The Employers’ Representative supports a funded ratio of the Injury Fund at a minimum of 110 per cent but he is of the opinion that the excess funds continue to provide an annual rebate to employers, given the current economic environment in the

Province which has been further impacted by COVID-19. He is apprehensive to recommending an increase in the IRR as it may lead to increasing employer premiums which could result in a reduction in employment opportunities and thus negatively impacting the overall economy.

The Workers' Representative, in response to the position taken by the Employers' Representative, is that three years of refunds has equated to over \$50 million benefits returned to employers. She states if there is concern over the financial sustainability of the Injury Fund and the workers' compensation system in the Province, then employers should forgo any further rebates. It is her position that the excess funds in the Injury Fund should be fairly distributed to employers and injured workers as both stakeholders have made sacrifices to bring about financial sustainability. Further, it has been close to thirty years since the IRR was decreased below 90 per cent to 75 per cent and she states the time has come to restore the IRR for injured workers to the pre-1993 levels.

The actuaries advised the Committee to be persuaded by evidence-based analysis only. The Committee fully understands the concerns of all stakeholders; however, in the interest of balance and compromise, the majority members are persuaded to make this recommendation given the level of over-funding in the Injury Fund for the past number of years and the subsequent increase in the funding ratio in 2020. The majority of the Committee is of the opinion that utilizing the excess funds, in part, to return benefits to the pre-1993 rate to injured workers is fair and justified, and in keeping with the stated mandate of balance in the provision of benefits to which Government specifically asked the Committee to address. It is further suggested to commence the increase to the IRR in January 2022, to postpone any further non-safety-related rebates and discounts to employers beyond 2021 until the IRR is 90 per cent and to conduct an update on the actuarial analysis at that time to ensure financial sustainability.

As addressed in Recommendation 13 of this report, one could argue that claims duration could increase if the IRR is increased. Despite speculation, there was no factual evidence submitted to the Committee to substantiate this claim. In fact, the Committee specifically addressed this issue with the actuaries and with officials at WorkplaceNL. They confirmed that the data does not support an increase in claims duration particularly relating to any increase in the IRR over the years, including the increase that occurred in 2018. As is dealt with further in this report, claims duration in the Province is an issue; however, the Committee is of the opinion that timely implementations of the recommendations stemming from this Statutory Review will assist in reducing claims duration and in maintaining financial sustainability of the workers' compensation system in the Province.

Recommendation 6.2: Section 81.1 of the Act be amended to allow employers to contribute to injured workers' collateral benefits under a group or private plan to which the injured worker was a member prior to the workplace injury.

The Committee is not prepared at this time to recommend an amendment to section 81.1 of the **Act** beyond providing for employer contributions to collateral benefits. We are of the opinion that collateral benefits available to the worker prior to a workplace injury under any group or private plan, including health and dental, disability and life insurance premiums, should be eligible for contribution by the employer while the worker is in receipt of income replacement benefits, if the group or private plan so permits. It is unrealistic to expect an injured worker who is in receipt of a reduced income to maintain full coverage for themselves and their dependents. To be forced to discontinue these benefits could prevent the injured worker from maintaining appropriate insurance coverages and protecting the family's insurability with respect to pre-existing illnesses and other future medical conditions and/or non-work-related injuries.

Recommendation 7: Retirement Benefits

Background Information: Prior to January 1, 2019, qualified injured workers who were in receipt of wage loss benefits at age 65, were paid a Pension Replacement Benefit if they were able to demonstrate an actual pension loss from the Canada Pension Plan and/or an employer-sponsored pension plan. Effective January 1, 2019, the **Act** was amended to replace the Pension Replacement Benefit provisions with a new model of pension benefits entitled Retirement Benefits. Section 75 of the **Act** states:

75. (1) Where a worker who is in receipt of extended earnings loss benefits on or after January 1, 2019 reaches the age of 65 years, the worker is entitled to receive a lump sum payment equal to

(a) 5% of extended earnings loss benefits paid to the worker, together with accrued interest; or

(b) 10% of extended earnings loss benefits paid to the worker, together with accrued interest, where the worker is or was at the time of the injury a member of an employer-sponsored pension plan.

(2) Notwithstanding subsection (1), a worker to whom subsection 74(5) applies is entitled to a lump sum payment equal to the amount specified in paragraph (1)(a) or (b) in relation to all benefits paid under subsection 74. (5), together with accrued interest.

(3) For the purpose of subsections (1) and (2), the rate of interest is equal to the injury fund's 4 year average net rate of return.

(4) Where a worker dies before receiving a lump sum payment under subsections (1) or (2), the lump sum payment shall be paid by the commission to those dependents of the deceased worker who the commission considers to be appropriate recipients.

The amended legislation provides for a retirement benefit that is a one-time payment of 5 per cent of Extended Earnings Loss (“EEL”), plus interest and for those injured workers who had previously been part of an employer-sponsored pension plan, the lump sum payment will be 10 per cent of their EEL benefits, plus interest. This new model of pension benefits applies to all injured workers who turned 65 years old on or after January 1, 2019. Injured workers who had been entitled to the Pension Replacement Benefit and turned 65 years old prior to January 1, 2019, will continue to receive their benefit payments for life.

Jurisdictional Review of Pension Benefits: The Committee reviewed and analyzed pension benefit programs across the country and attached in Appendix H is a summary with explanations of the pension benefits provided by the various workers’ compensation boards.

Comparison of the Newfoundland and Labrador Pension Replacement Benefit with Retirement Benefits: The Committee also assessed the differences in the two pension models in this Province and Table 8 provides a summary.

| Table 8: Comparison of Pension Replacement Benefit with Retirement Benefits Source: WorkplaceNL | |
|---|--|
| Pension Replacement Benefit (1993-2018) | Retirement Benefits (2019 Onward) |
| Monthly/annual life benefit payable at age 65 | Lump sum payment at age 65 |
| Eligible if in receipt of wage loss benefits, turned age 65 prior to January 1, 2019 and can demonstrate a pension loss | Eligible if in receipt of EEL and turned age 65 on or after January 1, 2019; offers a minimum base protection to all injured workers |
| 55 per cent of injured workers who are in receipt of wage loss benefits at age 65 and demonstrate pension loss from Canada Pension and/or employer-sponsored pensions | Covers 100 per cent of injured workers upon reaching age 65 who were in receipt of EEL at any time on or after January 1, 2019 |
| Not equitable from a gender perspective given 42 per cent of EEL recipients are female but only 26 per cent qualified under this model | Gender equality is achieved given 100 per cent of EEL recipients receive a pension lump sum benefit under this model |
| Reflects estimated pension loss for injured workers who contributed to a pension plan | Proportional to the amount of EEL benefits received and reflects the degree of an injured worker's capacity to fund their retirement |
| Not payable to dependents | Payable to dependents |
| External actuarial costs of approximately \$201,000 annually to administer | No additional administration or external actuarial costs |
| Average 8-24 months to receive information on Canada Pension and employer-sponsored pension plans and to allow for actuarial analysis where necessary to calculate and determine benefits | Benefits can usually be processed within 1-2 months according to a set formula; if the injured worker was a member of an employer-sponsored pension plan, additional information confirming membership may be required |
| Subject to changes in the Canada Pension and individual employer-sponsored pension plans | Entitlement rules are outlined entirely in the Act and not subject to extrinsic changes |

Calculation of Retirement Benefits Subsequent to January 1, 2019: WorkplaceNL calculates an injured worker's retirement benefits on the basis of either 5 per cent or 10 per cent (whichever is applicable) of the actual EEL benefits paid subsequent to deductions for applicable offsets such as Canada Pension or other disability benefits. The Committee requested the actuaries to conduct an analysis of the financial costs to WorkplaceNL of including Temporary Earnings Loss ("TEL") in the calculation of the Retirement Benefits under section 75 of the **Act**. As outlined in the actuarial report in Appendix E.2, the actuaries analyzed this on the basis of two scenarios: Modification A whereby both TEL and EEL payments less applicable offsets are utilized for the calculation; and Modification B whereby TEL payments made after a 24-month period plus EEL payments less applicable offsets are used to determine Retirement Benefits. The estimated cost of Modification A is a one-time increase in liabilities to WorkplaceNL in an amount exceeding \$45 million and an increase in the cost of new accidents per \$100 of assessable payroll of \$0.015, while the estimated costs of Modification B is a one-time amount of just over \$25 million and an increase of \$0.010 per \$100 of assessable payroll for new accidents. The actuaries further outline that the funding ratio would be reduced by 4.2 per cent under Modification A and 2.4 per cent under Modification B.

Grandfathering of the Previous Pension Replacement Benefit: A number of submissions were made to the Committee as to the unfairness of not grandfathering all EEL recipients as of January 1, 2019, under the previous Pension Replacement Benefit program. Instead, only those who had turned 65 years old as of January 1, 2019, were grandfathered. It was presented that those individuals who were in receipt of EEL on January 1, 2019, but will turn 65 subsequent to that date, deservedly so, had a long-term expectation that they would be in receipt of a full replacement of pension benefits lost, upon reaching age 65. It was felt to choose an arbitrary date of January 1, 2019 for the cutoff was inequitable and unfair. Further, it was submitted that assessments to employers had been calculated on that basis and funds had been deposited and accounted for in the Injury Fund to reflect the liability. While there is certainly merit to this position, the opposite position is that previous or subsequent increases and decreases in any benefits could affect some or all of injured workers from time to time, either in a positive manner or unfortunately, for some, in a negative way. Appendix E.3 which is the actuaries' assessment of the cost of reinstating the Pension Replacement Benefit for pre-2019 injuries, outlines an increase in total liabilities to WorkplaceNL of a range of \$46.8 million to \$67.9 million. This would result in a reduction of the funding ratio in the Injury Fund as of December 31, 2019, by 4.3 per cent to 6.2 per cent.

Recommendation 7.1: That the calculation of Retirement Benefits under section 75 of the Act be modified to include TEL benefits paid after 24 months, together with all EEL payments less applicable offsets.

The Committee is aware that often injured workers lose significant time from work but do not ultimately receive EEL. This recommendation will provide retirement income protection to injured workers and their families for everyone who is off work longer than two years, regardless of the type of payments they receive. This will provide a more consistent treatment to claimants who experience a long-term absence from work due to their injuries.

Recommendation 7.2: At this time, there be no further amendments to the previous Pension Replacement Benefit or to the current Retirement Benefits provisions.

This recommendation is by the majority of the Committee, with a dissenting view by the Workers' Representative.

The Committee agrees with the amendments made to the Retirement Benefits program effective January 1, 2019, with the exception that the Workers' Representative is of the

opinion that the previous Pension Replacement Benefit should be reinstated for all individuals who had been in receipt of EEL benefits as of January 1, 2019. The overall Retirement Benefits program is supported by the Committee as it provides retirement protection to all injured workers regardless of whether they had previously been part of a pension plan. In addition, the Committee is of the opinion, based upon the statistics provided by WorkplaceNL, the current Retirement Benefits program supports gender equality.

The Workers' Representative puts forth the position of labour groups that changes made to the Pension Replacement Benefit program under the **Act** were completed without the proper consultation with major stakeholders. She is of the opinion that the process was flawed and the result negatively impacted a small group of injured workers. It is the Workers' Representative's position, that injured workers who were in receipt of EEL benefits but had not turned 65 years of age at the date of implementation of the Retirement Benefits legislation, should have been grandfathered under the previous provisions of the **Act**. As the Workers' Representative, she is unable to support a negative benefit change to a group of injured workers that occurred without consultation, without consideration of grandfathering and without formal notification of the Retirement Benefits change. She is concerned that these injured workers will suffer increased economic hardship as they were relying on receipt of this retirement benefit at age 65. Further, the Workers' Representative disputes the information provided by WorkplaceNL that to amend the Pension Replacement Benefit program to the Retirement Benefits program is cost neutral with the exception of the annual actuarial administrative costs. She believes that there were cost savings to the workers' compensation system as a whole and refers to commentary and data provided in Appendix E.3. Therefore, she is asking that WorkplaceNL conduct a review, in consultation with the stakeholders, on the impact to these injured workers, and consider grandfathering all of those who were in receipt of EEL benefits but had not turned 65 years of age as of January 1, 2019.

The majority of the Committee does recognize and respect the dissenting view of the Workers' Representative and sympathizes with those individuals who were not grandfathered under the previous Pension Replacement Benefit program. However, given the actuarial analysis in Appendix E.3 which outlines an approximate cost of \$46.8 million to \$67.9 million to reinstate the Pension Replacement Benefit for those affected individuals, compounded by the multiplier effect of other recommendations with cost implications, the majority of the Committee is concerned that this could put the financial sustainability of the workers' compensation system in the Province at risk. The Committee has been asked by Government to examine the balance in provision of benefits but with an attached financial feasibility lens. It is imperative, when making these recommendations, that striving for balance and compromise for employers and all injured workers be evaluated.

Recommendation 8: Presumptive Coverage for Firefighters

On January 1, 2017, the **Act** was amended to provide presumptive coverage for career and volunteer firefighters in the Province who have been diagnosed with certain cancers as of December 14, 2015, providing they meet certain criteria such as minimum periods of non-smoking, minimum periods of employment, exposure periods and age restrictions for certain cancers. Presumptive coverage facilitates an expedited adjudication process as the cancer is presumed to be a result of their work. Firefighters had been seeking this amendment to the **Act** for more than a decade and the change was in keeping with a growing trend across the country.

Section 92.2 of the **Act** outlines this presumptive coverage:

92.2 (1) Where a worker who is or has been a firefighter or a volunteer firefighter is diagnosed with a listed disease and is as a result disabled or his or her death caused by a listed disease,

- (a) the listed disease is presumed to be due to the nature of his or her employment as a firefighter or volunteer firefighter unless there is evidence to the contrary; and**
 - (b) the worker or his or her dependents are entitled to compensation as if the disease were an injury and the date of disablement were the date of injury.**
- (2) The presumption in subsection (1) applies to a worker**
- (a) who has been a firefighter or a volunteer firefighter for at least the cumulative period of service prescribed in the regulations; and**
 - (b) who has been regularly exposed to the hazards of a fire scene, other than a forest fire scene, throughout that period.**
- (3) In addition to the requirements in subsection (2), the presumption for primary site lung cancer applies only to a firefighter or volunteer firefighter who has not smoked a tobacco product in the 10 years immediately before the date of the diagnosis.**
- (4) Notwithstanding subsection (1), the presumption for primary site colorectal cancer does not apply to a firefighter or volunteer firefighter who is diagnosed with primary site colorectal cancer after the age of 61.**

In the definition section under 92.1(e) of the **Act**, listed disease for this presumptive coverage is defined to include eleven primary cancers: brain, bladder, colorectal, esophageal, leukemia, lung, kidney, non-Hodgkin's lymphoma, testicular, ureter and breast.

It was submitted to the Committee during the public consultation process that the presumptive coverage for career and volunteer firefighters in the Province should be expanded to include prostate cancer, melanoma, cervical cancer, ovarian cancer and certain cardiac events. The Committee sought an assessment and commentary as to the implications of such an expansion of coverage. Appendix E.4 outlines the actuaries' estimated cost of \$11 million to WorkplaceNL, as well as, \$0.005 per \$100 of assessable payroll for new accidents.

A jurisdictional review throughout the country was conducted. The Committee is satisfied, based upon the current presumptive coverage for firefighters in other provinces and territories, and further based upon the research evidence presented to the Committee, that an amendment to the definition of listed disease to which the presumption for career and volunteer firefighters in the Province applies, is warranted. As well, the Committee is satisfied that such an amendment is financially sustainable based upon the actuarial report noted above.

Therefore, the Committee makes the following recommendations:

Recommendation 8.1: Section 92.1(e) be amended to include in the definition of listed disease the following cancers: prostate, melanoma, cervical and ovarian.

Recommendation 8.2: Section 92.1(e) be amended to include in the definition of listed disease: a cardiac event while responding to or engaged in an emergency incident, and a cardiac event that occurs within 24 hours of being engaged at an emergency incident.

Recommendation 8.3: WorkplaceNL conduct an annual review of the presumptive coverage and listed diseases for career and volunteer firefighters across the country and seek amendments to the Act accordingly.

Recommendation 9: Essential Workers During a Public Health Emergency

Given the global outbreak of COVID-19 in 2020-21 and the declaration of a public health emergency with a number of alert levels implemented by public health officials, the Committee felt that it was timely to review and assess the impact of this disease for workers deemed essential by Government. Many participants in the public consultation

process requested that this Committee recommend to Government an assurance that essential workers during a pandemic are protected and entitled to the appropriate benefits under the workers' compensation system if the infectious disease was contracted during the course of their employment. In addition, this Committee is of the opinion that, given the financial burden employers are under during public health emergencies, consideration be given for relief regarding premiums and/or assessments during this time.

A jurisdictional review confirmed that, with the exception of British Columbia, no province or territory has proceeded to conduct a review with the intention of amending the legislation, regulations or policies, to establish presumptive coverage specifically for COVID-19 claims. However, Newfoundland and Labrador, while it does not have a specific COVID-19 presumption in its workers' compensation legislation, it does have a more general presumption for infectious diseases contracted in an occupation where there is a particular risk of contamination. Section 90 of the **Act** states:

90. (1) Where

- (a) a worker suffers from an industrial disease and is as a result disabled or his or her death is caused by an industrial disease; and**
 - (b) the disease is due to the nature of the employment in which he or she is engaged, whether under 1 or more employments, the worker or his or her dependents are entitled to compensation as if the disease were an injury, and the date of disablement were the date of injury, subject to the modifications mentioned in this section, unless at the time of entering into the employment he or she had falsely represented himself or herself as not having previously suffered from the disease.**
- (2) Subject to the approval of the Lieutenant-Governor in Council, the commission may make regulations setting out industrial diseases and associating descriptions of processes with the diseases.**
- (3) Where a worker referred to in subsection (1) at or immediately before the date of the disablement was employed in a prescribed process and the disease contracted is the prescribed disease associated with the description of the process, the disease shall be considered to have been due to the nature of that employment unless the contrary is proved.**

Section 23 of the regulations outlines the industrial diseases and associated descriptions of processes. Number 29 of the list of industrial diseases includes infectious or parasitic

diseases contracted in an occupation where there is a particular risk of contamination.

To quote the relevant regulation:

23. For the purpose of subsection 90. (2) of the Act the commission has set out the following industrial diseases and associated processes...

#29. Infectious or parasitic diseases contracted in an occupation where there is a particular risk of contamination.

(a) health or laboratory work;

(b) veterinary work;

(c) work handling animals, animal carcasses, parts of those carcasses, or merchandise which may have been contaminated by animals, animal carcasses, or parts of such carcasses; and

(d) other work carrying a particular risk of contamination.

It should be noted, based upon information provided by WorkplaceNL, since the outbreak of COVID-19 in 2020, ten claims have been filed and approximately 80 per cent were accepted for benefits.

While the Committee commends the Legislature for having the foresight of providing presumptive coverage for infectious diseases contracted in the workplace, it is believed that a study should be conducted to determine whether section 90 of the **Act** is adequate and whether it sufficiently addresses all concerns of essential workers during a public health emergency. Many ancillary issues were raised during the public consultation process such as: qualifications of an essential worker; volunteers who perform duties as essential workers; availability of personal protective equipment to essential workers; safety training available to essential workers; the right of essential workers to refuse work if it is believed that their health and safety is in danger; quarantine requirements of essential workers; long term effects of contracting the infectious disease; exposure while travelling to and from work on public modes of transportation; and other relevant issues.

Recommendation 9.1: The Government commission a study by the appropriate stakeholders to conduct a review and recommend appropriate amendments to the Act, regulations and/or policies to ensure there is appropriate coverage for essential workers during a high level alert state of public health emergency in the Province and to include in this study, an analysis of any relief that should be given to employers regarding premiums and/or assessments during the same period of time.

Recommendation 10: Chronic Stress

Since 2018, there have been two changes to traumatic mental stress coverage for injured workers: Policy EN-18 entitled **Traumatic Mental Stress** was amended to expand coverage; and the **Act** was amended to provide presumptive coverage for Post-Traumatic Stress Disorder (“PTSD”).

The definition of traumatic event under the policy has been modified to include more than one traumatic event which could have a cumulative impact on the injured worker. Further, the requirement for an acute reaction has been removed, the elimination of inherent risks so that professions that regularly experience traumatic events are now covered and the required medical evidence has been clarified.

Changes to the **Act** effective as of July 1, 2019, provide presumptive coverage to injured workers who have been diagnosed by a psychiatrist or registered psychologist with PTSD as a result of a traumatic event or multiple events at their workplace. Section 92.6 (1)(a) defines PTSD as one that is described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. Section 92.6 (2) and (3) state:

(2) Where a worker

(a) is exposed to a traumatic event or events in the course of the worker's employment; and

(b) is diagnosed with post-traumatic stress disorder by a psychiatrist or a registered psychologist, the post-traumatic stress disorder shall be presumed, unless the contrary is shown, to be an injury that arose out of and in the course of the worker's employment.

(3) Notwithstanding subsection (2), post-traumatic stress disorder that may be the result of an employer's decision or action relating to the employment of a worker including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment does not constitute an injury.

To quote from a News Release dated July 1, 2019, “This change brings Newfoundland and Labrador in line with the important movement taking place across the country to update workers’ compensation legislation to recognize work-related mental health injuries.”

WorkplaceNL advises that a review is planned to assess whether the changes noted above have been effective and therefore an assessment as to its adequacy is not currently available.

The Committee reviewed a document entitled **Advancing a Strong Safety Culture in Newfoundland and Labrador, A Workplace Injury Prevention Strategy 2018-2022** ("Prevention Strategy"). WorkplaceNL and OHSD, in consultation with safety partners and stakeholders, focused on eight injury and illness priorities including workplace violence. It is noted in this document that psychological injuries, PTSD and workplace violence pose significant challenges for workplace injury prevention.

The **Newfoundland and Labrador Regulation 5/12 Occupational Health and Safety Regulations, 2012 under the Occupational Health and Safety Act** outline a number of provisions relating to workplace violence and harassment:

22. (1) In sections 23 and 24, "violence" means the attempted or actual exercise of physical force to cause injury to a worker and includes threatening statements or behaviour which gives a worker reason to believe that he or she is at risk of injury.

(2) In this section and section 24.1, "workplace harassment" means inappropriate vexatious conduct or comment by a person to a worker that the person knew or ought to have known would cause the worker to be humiliated, offended or intimidated.

(3) In sections 24.1 and 24.2, "harassment prevention plan" means a plan developed, implemented and maintained by an employer in accordance with section 24.1.

(4) A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

In addition, regulations 22.1 and 23 elaborate on an employer's obligation to conduct a risk assessment and outlines the measures to be taken when a risk of injury to workers from violence is identified by this assessment. Further, regulation 24.1 stipulates the requirement of the development of a harassment prevention plan in consultation with the employer's occupational health and safety committee and a safety representative from WorkplaceNL.

Recommendation 10.1: In accordance with Policy GP-02, entitled Stakeholder Relations, WorkplaceNL, in consultation with all stakeholders including the Federation of Labour and the Employers' Council, conduct a review of Policy EN-18 entitled Traumatic Mental Stress, with the intent and purpose of including chronic stress, particularly as it relates to workplace violence and/or harassment, all in conjunction with a review of the workplace violence and/or harassment provisions under the Occupational Health and Safety Regulations, 2012.

For informational purposes and to assist in this review, the Committee sought commentary and a financial analysis relating to the proposed changes to Policy EN-18 by Morneau Shepell. Please refer to the actuarial report in Appendix E.5. The actuaries indicate the difficulty in projecting costs, given that relevant and credible data is insufficient as these recognized and compensable workplace injuries are relatively new in Canada. Further, it is indicated that the policy and legislative changes in the Province have only been invoked since 2018 and therefore statistics through WorkplaceNL are limited. The actuaries examined the potential financial exposure to WorkplaceNL using scenarios derived from the experience of other jurisdictions that provide coverage for chronic onset stress including workplace harassment. They estimated that covering such conditions could increase WorkplaceNL's new accident costs by up to \$0.04 per \$100 of assessable payroll annually and increase its liability of \$0.5 million to \$3.0 million per year of retroactivity. It is the advice of this Committee that an updated actuarial analysis be conducted prior to any further policy and/or legislative amendments to include chronic stress, particularly as it relates to workplace violence and/or harassment, to ensure financial sustainability of the workers' compensation system in the Province.

Thematic Area 3: Financial Sustainability

Overview of Thematic Area 3

As referenced in a roundtable discussion with the actuaries of Morneau Shepell, a basic definition of financial sustainability is the ability of an organization to maintain financial capacity over time. The third Thematic Area which the Government requested the Committee to examine was the financial feasibility of any recommendations made to ensure that the workers' compensation system in the Province is financially sustainable.

The workers' compensation system in Newfoundland and Labrador is a pre-funded system under a funding policy agreed to by stakeholders in which it maintains a funding ratio in the range of 100 to 120 per cent of accumulated assets in excess of total liabilities. The funding target of the Injury Fund is 110 per cent at any given time and as of December 31, 2020, it was funded at 125.5 per cent. This funding policy, if adhered to, ensures that sufficient funds will be available for existing injured workers for the duration of their claims and financial sustainability shall be maintained.

WorkplaceNL derives its revenue from employer assessments, investment income, administrative fees paid by self-insured employers and third party reimbursements. Assessment-based employers pay to WorkplaceNL based upon their annual payrolls, while self-insured employers (such as the Government) reimburses WorkplaceNL for the actual cost of claims incurred plus an administrative fee. Managing competitive assessment rates for employers while providing fair and reasonable benefits to injured workers under a financial lens of sustainability, is a priority.

WorkplaceNL's **2020-22 Strategic Plan** states:

WorkplaceNL closely monitors the financial stability due to:

- **Uncertainty surrounding the increasing number of claims and their duration.**
- **Potential costs due to recent changes to benefit policy and legislative changes.**
- **Downward trends of assessable payrolls due to changing economic factors.**
- **The changing nature of injuries.**
- **Potential changes in the financial market.**

Further, the uncertainty of the economic impact of the COVID-19 pandemic is another factor which must be closely monitored into the foreseeable future.

As outlined in the **Discussion Paper**, the Committee asked presenters to consider two questions when considering financial sustainability of the workers' compensation system in the Province:

1. With regards to maintaining financial sustainability, are there priority areas that need attention?
2. What role can stakeholders play in reducing the cost of the system?

Recommendations and Rationale

Recommendation 11: Financial Sustainability

The Committee retained the professional actuarial services of Morneau Shepell to conduct a financial assessment and provide commentary on proposed recommendations drafted, subsequent to the public consultation process. Attached in Appendix E are the six components of the actuarial report. They are:

E.1: Increase in Income Replacement Rate to 90%

E.2: Potential Modifications to Retirement Benefits

E.3: Reinstating the Pension Replacement Benefit for Pre-2019 Injuries

E.4: Additional Coverages under Presumptive Clause for Firefighters

E.5: Estimated Cost of Changes to Policy EN-18 to Include Chronic Stress

E.6: Additional Comments on Committee's Draft Proposed Recommendations including: the ability of an employer to "top-up" an injured worker's income and benefits; the maintenance of the Injury Fund at a minimum of 110 per cent; the requirement of not increasing the average annual assessment rate beyond \$1.90 as a result of any proposed recommendations; and the discontinuance of any rebates and/or discounts to employers subsequent to 2021 until the IRR for injured workers is restored to 90 per cent.

The Committee has referenced the actuarial analysis as it relates to any particular recommendation throughout this report and has provided commentary regarding our opinion and assessment as to the effect on WorkplaceNL's financial stability. Further, all assessments by the actuaries as outlined in Appendix E, were completed individually and

the additional cost impacts relating to several recommendations being introduced simultaneously were not considered. To quote from page 2 of the report in Appendix E.1, “If more than one benefit change is introduced, there may be compounding of cost impacts such that the total cost of two or more benefit changes may be higher than the sum of the costs when each benefit change is considered individually. Ideally, the potential for compounding of cost impacts would be considered prior to implementing multiple significant benefit changes.”

It was also brought to the Committee’s attention that any analysis conducted by the actuaries and any data provided by WorkplaceNL or other entities do not reflect the financial ramifications to self-insured employers such as the Government. The Committee is cognizant of the fact that, as a component of financial feasibility of any proposed recommendation(s), the cost to self-insured employers should be reviewed and assessed accordingly.

Recommendation 11.1: To ensure financial sustainability of any recommendation outlined in this report, prior to implementation, it be determined and when necessary, completed: an updated actuarial assessment; an analysis as to the compounding effect if more than one recommendation with cost repercussions are being implemented simultaneously; and an analysis as to the financial impact to self-insured employers.

Other Thematic Areas

Overview of Other Thematic Areas

Despite the three thematic areas of which Government requested consideration, the Committee welcomed commentary from presenters on all matters. They reserved the right to formulate recommendations on any issues addressed throughout the public consultation process which they felt appropriate, regardless of whether the issues aligned with the scope of their review as provided by Government and their stated mandate.

In the **Discussion Paper**, the Committee requested that stakeholders and interested parties to consider two general questions when making submissions:

1. What recommendations would you make that could improve the overall workers' compensation system?
2. What recommendations should Workplace NL and /or the WHSCRD commence to improve the workers' compensation system?

Recommendations and Rationale

Recommendation 12: Prevention and Safety

The cornerstone of an effective workers' compensation system is the on-going promotion and monitoring of workplace health and safety in order to prevent and reduce workplace injuries and illnesses. According to WorkplaceNL's **2019 Annual Performance Report**, its strategic approach to prevention is based upon two fundamental beliefs: workplace injuries, fatalities and occupational diseases are preventable; and building, achieving and maintaining a positive safety culture requires the collaborative effort and commitment of all stakeholders to making health and safety in the workplace, a priority.

Section 20.2 of the **Act** states as follows:

20.2 In order to promote health and safety in workplaces and to prevent and reduce the occurrence of workplace injuries and diseases the commission shall

- (a) promote public awareness of workplace health and safety;**
- (b) educate employers, workers and other persons about workplace health and safety;**

- (c) provide services to occupational health and safety committees, worker health and safety representatives and workplace health and safety designates established or appointed under the Occupational Health and Safety Act and coordinators and committees designated or established under Part III.1 of the Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act;
- (d) promote and provide funding for workplace health and safety research;
- (e) develop standards for the certification of persons required to be certified under the Occupational Health and Safety Act and approve training programs for certification;
- (f) certify persons who meet the standards referred to in paragraph (e);
- (g) foster commitment to workplace health and safety among employers, workers and other persons; and
- (h) make recommendations to the department respecting workplace health and safety.

Further 20.3 of the **Act** states:

20.3 The commission shall co-operate with the occupational health and safety division of the department, including the provision of information to the division, where it is necessary to give effect to this Part and the Occupational Health and Safety Act.

The **Occupational Health and Safety Act** and regulations outline provisions dealing with the establishment by employers of Occupational Health and Safety Committees (“OHS committees”) at work premises to assess and monitor the health, safety and welfare of workers. While this Committee recognizes that progress has been made in improving the OHS Committee Program, as a follow-up to recommendations made in the 2013 Statutory Review Policy Report, we also heard from a number of participants that additional measures need to be taken to ensure that the intent and resulting effects of the program are met.

The Committee further reviewed a Memorandum of Understanding between the Workplace Health, Safety and Compensation Commission (WorkplaceNL) and the

Occupational Health and Safety Branch of the Government (OHSD) dated December 29, 2010, together with an Amending Agreement dated January 16, 2019. As is required by statute, and as stated in the Memorandum, both WorkplaceNL and OHSD perform mutual and complimentary roles in the promotion and maintenance of safe and healthy workplaces. Further, WorkplaceNL and OHSD work in partnership to coordinate joint programming, manage data sharing, and strengthen mutual accountability and communications. In addition, the Amending Agreement in 2019 provided for the establishment of a steering committee with representation from both entities to develop a framework for the efficient use of resources in coordinating a targeted approach to high risk environments. The mandate of this steering committee included the collection and analysis of data to ensure an evidence-based foundation for the development of strategic initiatives targeting the prevention of known occupational diseases.

To quote from page 8 of the WorkplaceNL's **2020-22 Strategic Plan**, "WorkplaceNL and its partners have two substantial mechanisms to influence safety cultures in provincial workplaces: a workplace injury prevention strategy and an incentive program for employers".

As noted in the commentary for Recommendation 10, the Committee reviewed the Prevention Strategy detailing the results of a process conducted by WorkplaceNL and OHSD in consultation with safety partners and stakeholders, which focused on eight injury and illness priorities: musculoskeletal injury; occupational disease and illness; falls; serious injuries; young workers; workplace violence; traffic control; and psychological health and safety.

As noted earlier in this report, PRIME is a financial incentive system to recognize employers' positive health and safety practices. The Committee further reviewed a document entitled **Creating Opportunities for Safer Workplaces - A Review of WorkplaceNL's PRIME Program** ("PRIME Review"). The PRIME Review was recently completed to assess the success of the program, its effectiveness and to recommend modifications where necessary.

The Prevention Strategy and the PRIME Review operate collaboratively to ensure compliance with the **Occupational Health and Safety Act** and regulations and to facilitate the continuous improvement of prevention and safety measures. Both of these reports outline a number of recommendations and implementation is ongoing. One observation noted by the Committee in response to various presentations, is that the prevention and safety criteria under PRIME are not consistent with requirements outlined in the **Occupational Health and Safety Act**. The Committee is of the opinion that this can lend itself to legitimate confusion and misunderstanding by employers and therefore standardizing the criteria is recommended.

In line with the Prevention Strategy and PRIME Review, WorkplaceNL reported in its **2020-22 Strategic Plan**, that by 2022, it intends to strengthen and improve occupational health and safety outcomes in the Province. Safe and healthy work environments are the core of a successful workers' compensation system and on-going initiatives by WorkplaceNL and OHSD and their partners do bring about meaningful change.

As an additional measure to promote and improve health and safety standards within various industries, a Sector Council Program was established in 2007 which is funded by grants from WorkplaceNL and/or member levies. Further, WorkplaceNL created a Sector Advisor Program in 2007 to assist the industry-driven Safety Sector Councils in fulfilling their mandate. Currently there is one safety advisor staffed at the Federation of Labour and one staffed at the Employers' Council. Both positions and related costs are fully funded by WorkplaceNL.

The Committee heard from the four existing Safety Sector Councils: Newfoundland and Labrador Construction Safety Association; Manufacturing and Processing Safety Sector Council; Newfoundland and Labrador Fish Harvesting Safety Association; and Forestry Safety Association of Newfoundland and Labrador. As well, a review was conducted in 2017 and the **Sector Council Review, Final Report** was reviewed by the Committee. A number of recommendations were outlined in this report and have since been implemented by WorkplaceNL in collaboration with the various Safety Sector Councils. This Committee commends the work of those involved with the Sector Council Review and strongly supports continued implementation and monitoring of all initiatives and recommendations contained in said report.

In addition to the existing Safety Sector Councils, the Committee is of the opinion that the establishment of a Health Care Safety Sector Council for the promotion of safety and prevention measures throughout the four Regional Health Authorities ("RHAs") should be a priority. This Safety Sector Council would facilitate the sharing of safety prevention lessons learned amongst all RHAs so that safety management is uniform and consistent throughout the Province.

The Committee recognizes the work undertaken by WorkplaceNL, OHSD and the various committees relating to the Prevention Strategy, PRIME Review and Safety Sector Council Review noted above. In response to commentary in various presentations and roundtable discussions, as well as, the Committee's own assessments and observations in their review of the relevant documentation and reports, certain recommendations are being offered. While some of these recommendations may also have been addressed in one of these other reports, as well as, dealt with in the 2013 Statutory Review Policy Report, the Committee felt it is imperative to reinforce their significance.

Therefore, the Committee recommends the following prevention and safety measures supplemental to and in support of other ongoing safety and prevention initiatives:

Recommendation 12.1: The current structure of the OHS committees remain.

Recommendation 12.2: Standardized training of OHS committee members, with a focus on relevant issues, including but not limited to, hazard recognition and mitigation.

Recommendation 12.3: The process of minute reporting of the OHS committees be improved with an option for an online platform that highlights a “red-flagging” of issues so that there can be a timely follow-up by OHSD for inspection and action.

Recommendation 12.4: The OHS committee auditing process be modified and enhanced to ensure compliance of appropriate minute reporting.

Recommendation 12.5: Mandatory, as opposed to voluntary, supervisor training (with an online option) focusing on risk identification, mitigation management and legal implications be introduced, and penalties be invoked for failure by either employers and/or supervisors to conduct and/or partake in said mandatory training.

Recommendation 12.6: Modify the PRIME criteria to encourage the participation and resulting benefits to all employers, particularly small-to-medium-sized employers.

Recommendation 12.7: Standardize the PRIME safety and prevention requirements to align with the Occupational Health and Safety Act and regulations.

Recommendation 12.8: Establish a Health Care Safety Sector Council to promote safety in all health care related work environments for the delivery of safety training and injury prevention initiatives, in particular, as it relates to the following: manual materials handling; patient handling; employee responses to violence; and accidental slips and falls.

Recommendation 12.9: The development of a minimum standard certification training model and/or process for all Safety Sector Councils similar to the Certificate of Recognition in the construction industry.

Recommendation 13: Issues Regarding Claims Duration

The length of time it takes an injured worker to return to pre-injury duties is known as claims duration. The issue of a less-than-desirable average claims duration in the Province has been the subject of many studies and analyses for some time dating back to at least the 2006 Statutory Review. WorkplaceNL has implemented a number of changes to the workers' compensation policies and protocols over the years in an effort to reduce claims duration. However, as presented to the Committee, claims duration remains a challenge.

A jurisdictional review of claims measures was conducted across the country and Table 9 outlines the results. Newfoundland and Labrador is comparable to other jurisdictions in lost time injury frequency but we have the highest average days claims duration. However, the Committee has been cautioned and is aware, that the comparison of average days claims duration is problematic due to differences in legislation and measurement criteria. The caveat outlined by the Association of Workers' Compensation Boards of Canada in the table below clearly states that "...differences in population, industry mixes, coverage and legislation/policy may affect comparability between jurisdictions". For example, Nova Scotia's average claims duration in 2019 was 146.65 days but only covers 72.9 per cent of the workforce, while this Province covers 97.42 per cent of the workforce with an average claims duration of 152.24 days. Manitoba has the highest injury frequency per 100 workers but has the lowest average claims duration with 78.19 per cent of the workforce covered. Therefore, while the Committee recognizes that the length of claims duration is an issue to be addressed, it also accepts that an in-depth analysis of these statistics is warranted in order to properly compare jurisdictions and to adequately measure Newfoundland and Labrador's performance in this regard.

Table 9: Jurisdictional Comparison of Claims Measures (2019)
Source: Association of Workers' Compensation Boards of Canada

| Claim Measures | NL | PEI | NS | NB | QC | ON | MB | SK | AB | BC | NT/NU | YT |
|--|--------|-------|--------|-------|--------|--------|--------|-------|--------|--------|-------|-------|
| Lost Time Injury Frequency per 100 workers | 1.68 | 1.43 | 1.72 | 1.63 | 2.06 | 1.14 | 2.52 | 1.98 | 1.52 | 2.20 | 2.13 | 1.79 |
| Lost Time Claims | 3,700 | 1,092 | 5,844 | 5,314 | 82,821 | 65,664 | 12,871 | 8,754 | 29,142 | 55,232 | 919 | 453 |
| Workforce Covered (%) | 97.42 | 97.61 | 72.90 | 91.45 | 92.70 | 76.98 | 78.19 | 76.10 | 81.64 | 98.02 | 96.86 | 99.84 |
| Wage Loss Claims ≤ 90 Days (%) | 73.85 | 67.95 | N/A | 69.48 | 69.71 | 81.90 | N/A | N/A | 72.71 | 73.00 | 81.00 | 81.96 |
| Average Days Duration | 152.24 | 65.55 | 146.65 | 51.57 | N/A | N/A | 32.57 | 62.28 | 89.66 | 82.80 | 73.85 | 29.16 |
| Note: Differences in population, industry mixes, coverage and legislation/policy may affect comparability between jurisdictions. These measures use standard definitions that may differ from WCB reports. | | | | | | | | | | | | |

It has become evident to the Committee that a strong Early and Safe Return to Work (“ESRTW”) program is essential to minimizing claims duration. Secondary to safety and prevention, a successful workers’ compensation system requires a facilitation and resumption to meaningful employment by injured workers as soon as their functional capabilities permit. An effective ESRTW program preserves the injured worker’s skills and earning capacity and provides for an on-going and productive relationship with the employer. Benefits for the employer include: the retention of qualified and experienced workers; improvement in workplace moral; and a reduction in claims duration and overall claims costs.

Employers and injured workers have obligations under the **Act** to assist in a safe return to work process. Section 89 of the **Act** states:

89. (1) An employer shall co-operate in the early and safe return to work of a worker injured in his or her employment by,

(a) contacting the worker as soon as possible after the injury occurs and maintaining communication throughout the period of the worker's recovery;

(b) providing suitable employment that is available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings;

- (c) giving the commission the information the commission may request concerning the worker's return to work; and**
 - (d) doing other things that may be prescribed in regulations made under section 123.**
- (2) The worker shall co-operate in his or her early and safe return to work by,**
 - (a) contacting his or her employer as soon as possible after the injury occurs and maintaining communication throughout the period of the worker's recovery;**
 - (b) assisting the employer, as may be required or requested, to identify suitable employment that is available and consistent with the worker's functional abilities and that, where possible, restores his or her pre-injury earnings;**
 - (c) accepting suitable employment identified under paragraph (b);**
 - (d) giving the commission the information the commission may request concerning the worker's return to work; and**
 - (e) doing other things that may be prescribed in regulations made under section 123.**
- (3) The commission may contact the employer and the worker to monitor their progress on returning the worker to work to determine whether they are fulfilling their obligations to co-operate and to determine whether any assistance is required to facilitate the worker's return to work.**

Non-compliance by either the employer or worker is dealt with in the **Act** as outlined below:

89. (7) Where the commission determines that a worker has failed to comply with this section, the commission may suspend, reduce or terminate the worker's compensation.

(8) Where the commission determines that an employer has failed to comply with this section, the commission may levy a penalty on the employer not exceeding the cost to the commission of providing

benefits, return to work and rehabilitation services to the worker while the non-compliance continues.

(9) A penalty payable under subsection (8) is an amount owing to the commission and may be added to the employer's assessment and payment enforced under section 118.

In addition, section 89.1 of the **Act** outlines the obligation of an employer with more than 20 employees, to re-employ an injured worker who has worked continuously with the employer for at least one year, and to accommodate the work duties and/or the workplace to coincide with the injured worker's functional abilities, to the extent that the accommodation does not cause the employer undue hardship. As submitted to the Committee by WorkplaceNL in its commentary, one of the drivers beyond the control of WorkplaceNL which negatively affects claims duration, is the inability of some employers to accommodate injured workers following an injury, "...due to a variety of reasons ranging from the size of the employer to the health of the labour market". Unfortunately, there can be market fluctuations resulting from declines in certain sectors of the economy with closures and layoffs.

ESRTW concerns were addressed by various presenters throughout the public consultation process. Despite outside forces beyond the control of WorkplaceNL, the continuous and constant review of the ESRTW program is imperative to reducing claims duration. The Committee reviewed a number of initiatives that have been implemented or are on-going by WorkplaceNL which stemmed from an analysis referred to as Claims Management Model which concluded in 2015. We commend WorkplaceNL for striving to improve its ESRTW program so that injured workers can be accommodated back to suitable employment with the pre-injury employer, as this is the ultimate goal of an effective workers' compensation system and key to financial sustainability.

In addition to the need to constantly strive for improvement to the ESRTW program, the Committee heard from many presenters during the public consultation process that receipt of timely and comprehensive medical and functional information relating to an injured worker from treating physicians is a concern when addressing the issue of claims duration. Section 89.3 of the **Act** outlines the obligation of health care providers to submit requested information and the obligation on WorkplaceNL to pay for said information. As well, a Memorandum of Agreement for Provision of Medical Services between the Workplace Health, Safety and Compensation Commission of Newfoundland and Labrador (WorkplaceNL) and the Newfoundland and Labrador Medical Association was entered into on September 24, 2018 ("Medical Association Agreement"). The Medical

Association Agreement formalized and detailed the parties' obligations under the **Act**, and outlined provisions for completion of reports, payment of fees and on-going communication. It further provided for the establishment of a medical liaison committee and sub-committees to review and monitor issues.

According to commentary from WorkplaceNL, another issue which may contribute to a longer average claims duration period in the Province, is the instability of the workforce at WorkplaceNL from time to time resulting from position vacancies, sick leaves and staff turnover rates. This has an impact on effective case management, continuity of client service and return to work supports.

An additional factor that WorkplaceNL pointed the Committee to as a possible contributor to claims duration is the increase in benefits to injured workers. It submitted that, in 2017 an actuarial forecast was prepared regarding the impact on claims duration with the increase in the IRR from 80 per cent to 85 per cent. This forecast suggested a 30 per cent increase in the number of injury claims in both frequency and propensity. However, when questioned specifically on this point, both officials from WorkplaceNL and representatives from Morneau Shepell could not provide the Committee with direct evidence that the increase in the IRR to 85 per cent in 2018 actually caused an increase in injury claims nor in claims duration.

The Committee makes the following recommendations as ancillary to and in support of other measures currently on-going by WorkplaceNL, to address the issue of claims duration:

Recommendation 13.1: In accordance with Policy GP-02, entitled Stakeholder Relations, WorkplaceNL, in consultation with all stakeholders including the Federation of Labour and the Employers' Council, conduct a review to develop new policies or to strengthen existing policies and procedures as they relate to the ESRTW program to ensure strict adherence to and enforcement of all provisions of the Act.

Recommendation 13.2: WorkplaceNL consider the development of a Physician's Report - Form MD in an electronic format wherein the completion of the medical and functional information relating to an injured worker is mandatory and unable to be submitted with partial or inadequate commentary.

Recommendation 13.3: WorkplaceNL and the Newfoundland and Labrador Medical Association conduct a review of the Medical Association Agreement to identify necessary amendments to address the issue of timely and comprehensive receipt of medical and functional information relating to an injured worker from treating physicians.

Recommendation 13.4: The Executive at WorkplaceNL develop a human resource protocol to address instability in its workforce from time to time, including but not limited to, issues of vacancies, sick leaves, turnover rates and the workload of client service providers.

Note, certain other recommendations are outlined in Thematic Area 1 dealing with delays in the Internal and External Review processes which the Committee is of the opinion can assist to improve claims duration.

In addition to the above, the Committee identified other factors which affect claims duration which are beyond the direct control of stakeholders. They are as follows:

1. injured workers' timely and geographical accessibility to health care specialists and diagnostic testing;
2. geographical and associated travel challenges for injured workers in availing of medical treatments, and other rehabilitative services;
3. industry-based risks often lead to more serious injuries; and
4. age of the injured worker.

Again, to refer back to Table 9, note the Association of Workers' Compensation Boards of Canada recognizes that different parts of the country have a number of challenges in comparing jurisdictional claims duration. It became clear to the Committee that many extrinsic factors including geographical location, population demographics, various industry risks and availability of medical resources, all affect claims duration and policies and procedures of a workers' compensation system, not only in Newfoundland and Labrador, but throughout the country.

Recommendation 14: Establishment of a Multi-faceted Occupational Clinic

Many submissions throughout the public consultation process outlined the desire for the establishment of an occupational clinic to deal with a variety of issues. It is the opinion of

the Committee that the availability of these specialized clinics, virtual or otherwise, could provide medical examinations for a full range of work-related injuries, facilitate early treatment for injured workers, complement the worker's physician's assessment of functional abilities, assist in the ESRTW program, reduce claims duration and support research and education relating to occupational diseases and other occupational injuries.

Multiple presenters used the Ontario occupational health clinic model to illustrate how injured workers in that province have benefited for 30 years from these clinics. The Ontario occupational health clinics are led by an inter-disciplinary team of nurses, hygienists, ergonomists, researchers, client service coordinators and contracted physicians, with each clinic providing comprehensive occupational health services and information in five areas (see <https://www.ohcow.on.ca/about.html>):

- **An inquiry service to answer work-related health and safety questions;**
- **Medical diagnostic services for workers who may have work-related health problems;**
- **Group service for workplace health and safety committees and groups of workers;**
- **Outreach and education to increase awareness of health and safety issues, and promote prevention strategies; and**
- **A research service to investigate and report on illnesses and injuries.**

The Committee is of the opinion that education and research, particularly as it relates to occupational diseases, as a component of any occupational clinic that is established, would be extremely valuable and progressive. A collaborative approach with Newfoundland and Labrador's Memorial University's SafetyNet Centre for Occupational Health and Safety Research, a community alliance for multidisciplinary research, knowledge exchange and education in occupational health and safety, would be appropriate. To quote from its website:

... the mission of SafetyNet is to support research, education and knowledge transfer for the diagnosis, monitoring, treatment and, above all, prevention of work-related injuries and diseases. We seek to facilitate the interchange of evidence, data, and best practices among researchers, industry partners, and health professionals.

The work of this organization would clearly compliment the goals and objectives of a multi-faceted occupational clinic.

The Committee is cognizant of the fact that financial feasibility, population demographics and the geographical size of the Province provide unique challenges to the implementation of multiple clinics. It is recommended that a study be conducted to assess and determine if a variation and/or modification of the Ontario model of occupational health clinics would be an effective use of resources to improve the overall workers' compensation system in the Province. As well, virtual options should be considered to supplement an occupational health clinic.

Recommendation 14.1: A study be conducted as to the feasibility of implementing a comprehensive and multi-faceted occupational clinic to deal with occupational diseases and other occupational injuries, in particular musculoskeletal injuries.

Recommendation 15: Labour Market Re-entry

The Labour Market Re-entry ("LMR") program is an area of the workers' compensation system in the Province that was controversial in a number of submissions and roundtable discussions throughout the consultation process. It is a program in which the Committee has identified a number of on-going issues and concerns whereby WorkplaceNL, in the development of its policies, has, or at the very least is perceived to have, failed injured workers.

Section 89.2 of the **Act** outlines the provisions dealing with LMR assessments and plans. Specifically, to quote 89.2 (1) and (2):

89.2 (1) The commission shall provide a worker with a labour market re-entry assessment where

- (a) it is unlikely that the worker will be re-employed by his or her employer because of the nature of the injury;**
- (b) the worker's employer has been unable to arrange work for the worker that is consistent with the worker's functional abilities and that restores the worker's pre-injury earnings; or**
- (c) the worker's employer is not co-operating in the early and safe return to work of the worker.**

(2) The commission shall determine, after reviewing the results of an assessment, whether a worker requires a labour market re-entry plan in order to enable the worker to re-enter the labour market and reduce or eliminate the loss of earnings that may result from the injury, and shall determine the employment that is suitable for the worker.

To be clear, this Committee strongly supports an appropriate LMR program but observed issues in some of WorkplaceNL's policies to implement and execute such a program. Many of the same problematic observations were identified in the 2006 and 2013 Statutory Reviews. Note, WorkplaceNL completed a review of its LMR program in 2018 and many recommendations flowing therefrom are currently on-going and have been identified in WorkplaceNL's **2020-22 Strategic Plan**. Please refer to Appendix I for an overview and status of twelve LMR recommendations as provided by WorkplaceNL.

The Committee has identified concerns regarding the review of the LMR program in 2018 and the implementation of certain recommendations. It has been confirmed that no formal consultation process was invoked; therefore stakeholders were not given the opportunity to have input into any proposed changes to such a significant program in the workers' compensation system.

Policy GP-02 of WorkplaceNL's Client Service Policy Manual entitled **Stakeholder Relations** states as its objective:

This policy provides basic requirements and principles to guide Board and stakeholder relations to ensure that stakeholders are regularly engaged and consulted, and kept informed of WorkplaceNL's strategic commitments and outcomes.

Further in this Policy, one of the principles by which stakeholder relations is guided is to "... engage and consult stakeholders in an open exchange of information, to allow for informed decision making that considers the best interests of the workers' compensation system as a whole".

In addition, as specifically outlined under the section entitled Joint Labour and Employer Stakeholder Consultations, it states:

As needed throughout the year, WorkplaceNL staff consults with stakeholders, in writing or in person, on new or changes in policy, except housekeeping matters and changes that are the result of court decisions or legislative amendments. The Board considers this stakeholder feedback in making final policy or program decisions.

The Committee sought clarification from WorkplaceNL as to why an appropriate consultation process had not been invoked in the review of LMR in 2018. The response received was, the implementation of the recommendations to date were technical or procedural in nature and that stakeholders would be engaged prior to any further policy amendments to the LMR program. Officials from WorkplaceNL also stated that some of the delays on policy changes to the LMR program have been as a result of the

requirement of further analysis resulting from a Supreme Court of Canada decision (Caron) in 2018 which applies to workers' compensation boards across the country pertaining to the duty to accommodate. The Committee reviewed the twelve recommendations flowing from the 2018 review and the status of their implementation, as provided by WorkplaceNL and outlined in Appendix I. We disagree with the notion that these recommendations are procedural or technical in nature, nor that the decision noted above affords a viable reason for the lack of consultation with stakeholders. It is the opinion of the Committee that the recommendations resulting from the 2018 review are substantive and make significant modifications to the LMR program. Therefore, in compliance with the spirit and intent of Policy GP-02, stakeholders, including the Federation of Labour and the Employers' Council, should have been consulted during the review and prior to implementation of any recommendations. Only through meaningful engagement of stakeholders and an appropriate consideration of the feedback received, will informed decisions be made to ensure the best interests of the workers' compensation system are met.

As to the concerns regarding the substance of the LMR program, according to section 89.2 of the **Act**, WorkplaceNL should provide the injured worker with a LMR assessment and re-entry plan when they have reached maximum medical recovery but unable to return to work with the pre-injury employer, having properly exhausted all efforts relating to the duty to accommodate. All suitable work options with the pre-injury employer, taking into consideration the injured worker's functional capabilities, must be explored and ruled out before LMR is invoked. In other words, all ESRTW provisions must be exhausted prior to moving the injured worker to an alternate program. It is further recognized, however, that the possibility does exist for an injured worker who has undergone extensive rehabilitation and/or retraining processes to return to the pre-injury employer even subsequent to entering the LMR program. This should be an exception, as the ultimate goal of the ESRTW program is for the injured worker to return to pre-injury duties or accommodated duties with the pre-injury employer.

The following outlines substantive issues and concerns observed by the Committee with the existing LMR program and the proposed revisions following WorkplaceNL's 2018 review of the program:

1. WorkplaceNL has taken measures to introduce LMR services earlier in the claim. This can be confusing as it is outlined in the **Act** that LMR should only be invoked when it is unlikely that the injured worker will return to the pre-injury employer due to the nature of the injury and that all measures of accommodation by the employer have been exhausted. In fact, it could possibly be argued that introducing LMR features prior to this time violates section 89.2 of the **Act**. The Committee is of the understanding that all policies dealing with return to work prior to this

- time should be part of the ESRTW program and overlapping these programs is inadvisable.
2. As a follow-up to # 1, the Committee is of the opinion that WorkplaceNL should review its ESRTW program and develop policies to invoke measures of rehabilitation and retraining where appropriate to meet the goal of ESRTW with the pre-injury employer prior to advancing the worker to the LMR program. The LMR program should only be invoked when the ESRTW program has not been successful.
 3. Many injured workers who are unable to return to their pre-injury employers and therefore enter the LMR process, are often determined to be capable of performing duties in occupations with no realistic employment opportunities. The injured worker's benefits are then either reduced or eliminated. It becomes the worker's responsibility to find employment anywhere in the Province. While WorkplaceNL has developed a policy to assist the injured worker with relocation expenses, it is the opinion of the Committee that this policy may be insensitive to the demographics and personal circumstances of a particular injured worker, as well as, geographical challenges throughout the Province. In accordance with Policy GP-02, entitled Stakeholder Relations, this should be further reviewed with appropriate engagement from stakeholders including the Federation of Labour and the Employers' Council.
 4. The Committee observed that WorkplaceNL does not have a monitoring system in place to identify the number of injured workers who actually obtained meaningful employment subsequent to entering the LMR program. Many presenters on this issue submitted that internal LMR services should be offered as opposed to utilizing external providers so that WorkplaceNL could readily track injured workers who enter the LMR program to determine how many have actually found suitable employment. It is the Committee's understanding that utilization of external providers is one of the reasons given by WorkplaceNL as to why there is no monitoring system of the LMR program in place. However, the Committee does not accept this reasoning. Firstly, WorkplaceNL can negotiate contractual obligations with external providers (with the appropriate consent of injured workers) to provide the necessary information so that WorkplaceNL can obtain the data to monitor the success of the program. Secondly, WorkplaceNL can implement its own monitoring system by way of surveys, polls and other assessment tools. Many individuals on the LMR program are in receipt of partial payments from WorkplaceNL and these individuals would be

readily available for tracking. Assessment of how many individuals actually find meaningful employment through the LMR program is crucial to monitoring the program's success. Implementing substantive changes to the program without having the tools to assess how well the features of the existing program are operating against performance indicators, is counter to evidence-based decision making.

Recommendation 15.1: Prior to implementing any further modifications and/or amendments to the LMR program resulting from the 2018 LMR review, in accordance with Policy GP-02, entitled Stakeholder Relations, a review and consultation process engaging all relevant stakeholders including the Federation of Labour and the Employers' Council be conducted to address the following issues and concerns: overlapping of the ESRTW and LMR programs; the obtainment of meaningful and realistic employment opportunities; geographical and relocation challenges; the use of external LMR services providers; and an appropriate measuring and monitoring system.

Recommendation 16: Statutory Review Process and Committee Composition

Section 126 of the **Act** outlines the provisions for the appointment of a committee to conduct a statutory review of the workers' compensation system in the Province. Specifically, section 126. (2) states:

(2) The Lieutenant-Governor in Council shall at least once in every 5 years appoint a committee of at least 3 members which shall review, consider, report and make recommendations to the Lieutenant-Governor in Council upon matters respecting this Act and the regulations and the administration of each as the committee considers appropriate and upon other matters which the Lieutenant-Governor in Council or the minister may refer to the committee.

Subsequent clauses outline the direction under which this committee is to operate. To further quote section 126:

(5) The minister shall provide the technical, clerical and other help that may reasonably be necessary to help the committee and fix the rates of remuneration which shall be paid for that help.

(6) The commission shall, out of the injury fund, pay the expenses and remuneration of members of the committee provided for in subsection (4) and bear the cost of the technical, clerical and other help provided for in subsection (5).

(7) The chairperson and, in the absence of the chairperson, the vice-chairperson of the committee have the powers which may be conferred upon a commissioner under section 2 of the Public Inquiries Act and which a commissioner has under subsection 3.(1) of that Act and subsections 3.(2) and (3) of that Act apply to persons required to give evidence before the committee.

Throughout the consultation process and the preparation of this report, it became evident to the Committee that certain amendments and/or modifications should be made to the policies, **Act** and regulations and implementation procedures to accommodate the following recommendations:

Recommendation 16.1: The Lieutenant-Governor in Council appoint a statutory review committee five years and six months from the date the report of the previous statutory review committee is submitted. The additional six-month timeframe is to coincide with Recommendation 16.6.

Recommendation 16.2: The composition of the statutory review committee include an independent chairperson, an independent vice-chairperson and an independent member-at-large, at least one of which has a legal background and at least one of which has a financial background, together with a representative from labour and a representative from employers, for a total of a five-person committee.

Recommendation 16.3: The Government release to the public a copy of the report generated by the statutory review committee within fourteen days of it being presented to the Lieutenant-Governor in Council or the Minister responsible.

Recommendation 16.4: To provide efficiency, continuity and consistency in the post-statutory review process, the independent chairperson (and in their absence, the independent vice-chairperson) be a member of any transitional consultative group that the Government forms to review and assess the statutory review committee's report and recommendations.

Recommendation 16.5: The independent Chairperson of this Committee be appointed to act as a liaison to any post-statutory review process group formed to review and assess the 2019 Statutory Review Report - Striving for Balance and Compromise.

Recommendation 16.6: During the post-statutory review process, the Government issue and release to the public within six months of the submission of the report, a statement with an explanation as to why they agree or disagree with a particular recommendation outlined in the statutory review report, together with an implementation plan with timelines of the accepted recommendations.

Commentary and Recommendation on the 2013 Statutory Review

Recommendation 17: 2013 Statutory Review Technical Report

The Committee reviewed in detail, both the 2013 Statutory Review Policy Report and the 2013 Statutory Review Technical Report. It was imperative for continuity and completeness that the status of the recommendations outlined in both volumes be analyzed in conjunction with this review.

From a policy perspective, when the Committee was of the opinion that it was appropriate and necessary, they referenced the findings and/or recommendations flowing from the review in 2013 in various sections of this report. On many issues there were consistent submissions in 2013 as throughout the current consultation process. Forty-two recommendations were made in 2013, thirty of which (some with modifications) have been implemented and some of which have been rejected. The Committee is of the opinion that the communication to the public regarding the various recommendations of the 2013 Statutory Review could have been improved upon. Many presenters submitted to this Committee that inadequate action had been taken to implement the 2013 recommendations, when in fact, this was not the case. While there are some outstanding issues derived from the 2013 Statutory Review, many valuable and substantive modifications and/or amendments to policies and the **Act** and regulations governing the workers' compensation system in the Province, have been implemented.

There had also been a 2013 technical review of the **Act** and regulations, the implementation of which remains outstanding. Officials from WorkplaceNL presented to the Committee in a roundtable discussion regarding the technical recommendations in the 2013 Statutory Review Technical Report. Outlined in Appendix J is a summary table of the proposed changes stemming from this technical review and this Committee's specific recommendations in relation thereto.

Recommendation 17.1: Government proceed with the necessary legislative changes to give effect to the 2013 technical recommendations as agreed to and supported by this Committee, which is more particularly outlined in Appendix J of this report.

Concluding Remarks

In an effort to ensure the success and efficiency of the workers' compensation system in the Province, it is crucial that this review process take place to focus stakeholders' and the public's attention on workers' compensation matters and to provide them with a forum to present issues and concerns. Overseeing this review is a committee that is an independent body with labour and employer representation. Their task is to provide an objective and realistic review and assessment of the policies, **Act** and regulations, all under a financial sustainability lens and with the ultimate objective of improving the overall system for both workers and employers. Further it must be assured that adherence to the Meredith Principles which is the foundation of all workers' compensation systems in Canada, is paramount.

This Committee was asked by Government to review and assess three specific Thematic Areas: efficiencies in the review processes; balance in the provision of benefits; and financial sustainability. In addition, the Committee did not restrict submissions on any matters related to the workers' compensation system and reserved the right to make recommendations outside the scope of their mandate. The Committee trusts that the title of this report, **Striving for Balance and Compromise**, is indicative of the outlined recommendations and truly represents overall fairness to workers and employers in the Province. It is the sincere hope of the Committee that the Government will give each of the Committee's recommendations due consideration in a timely manner.

Acknowledgements

The Committee acknowledges the contributions of the workers, employers, employer representatives, labour representatives and other stakeholders who participated in this Statutory Review. It is critical to a review that all stakeholders be engaged in the process. The presentations and discussions at all roundtable and consultation sessions were invaluable to the Committee in assisting them to fully understand the workers' compensation system in Newfoundland and Labrador and to deliberate and report regarding improvements and recommendations, all in conjunction with the Committee's mandate. The comprehensive and extensive presentations, submissions and opinions of the participants brought credibility to the whole process. The Committee extends a sincere thank-you to all participants.

The Committee also wishes to extend their appreciation to the staff of the Department of Environment and Climate Change, the former Department of Immigration, Skills and Labour and former Department of Service NL. In particular, the Committee offers a sincere thank-you to Sharmane Allen, Manager and Secretariat to the Committee for her professional work and commitment to the process. As well, the Committee acknowledges the cooperation and engagement of officials from WorkplaceNL, WHSCRD, OHSD, the Communications and Public Engagement Branch of the Executive Council, the Centre for Learning Development, the Multi-Materials Stewardship Board and Morneau Shepell. This collaborative effort helped immensely in facilitating the review process and assisting the Committee to complete the task assigned to it by the Government in this 2019 Statutory Review of the workers' compensation system in Newfoundland and Labrador and in the preparation of this report entitled **Striving for Balance and Compromise**.

Appendices

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Appendix A

Summary of Entities Associated With WorkplaceNL Source: WorkplaceNL (April 2021)

Partnerships and Contracts

WorkplaceNL works closely with many stakeholder groups, service providers, as well as safety and community partners, to assist with client service and help prevent workplace injuries and illnesses in the Province. There are a broad range of collaborations including consultation, advice, training and service delivery through contractual arrangements. While this summary is not comprehensive, it does represent the majority of organizations to which WorkplaceNL is connected. The organizations that receive funding through WorkplaceNL are indicated with a bracketed reference (Yes or No). Note: funding relationships may change over time.

Visual Representation of Sample Partnerships



Worker Services Partnerships and Contracts

1. Labour Organizations

- Newfoundland and Labrador Federation of Labour - Office of the Worker Advisors and Sector Advisor (Yes)
- United Steelworkers for Baie Verte Mines and Iron Ore Company (No)
- Canadian Auto Workers (No)
- St. John's Fire Fighters Association (No)

2. Other Organizations

- Association for New Canadians (No)
- Association of Workers' Compensation Boards of Canada (Yes)
- Canadian Mental Health Association - Newfoundland and Labrador Division (No)
- Canadian National Institute for the Blind (Yes)
- Coalition of Persons with Disabilities, Newfoundland and Labrador (No)
- Consumers' Health Awareness Network, Newfoundland and Labrador (No)
- Threads of Life - family support post-workplace tragedies (Yes)
- Canada Revenue Agency (one information sharing agreement) (No)
- Marystown Shipyard Family Alliance (No)

3. Health Care Contracts Providing Services for Injured Workers

- Physiotherapy Clinics - 48 contracts (Yes)
- Occupational Rehabilitation Clinics - 26 contracts (Yes)
- Chiropractic Clinics / Independent Operators - 77 contracts (Yes)
- Prescription Drug Formulary - 1 contract (Yes)
- Permanent Functional Impairment Assessment Services - 4 contracts (Yes)
- Physician Services (Newfoundland and Labrador Medical Association) - 1 contract (Yes)
- Physiotherapy Supplies and Adaptive Aids - 1 contract (Yes)
- Medical Consulting Services - 2 contracts (Yes)
- Occupational Therapy Consulting Services - 2 contracts (Yes)
- Physiotherapy Consulting Services - 2 contracts (Yes)
- Chiropractic Consulting Services - 1 contract (Yes)
- Audiology Consulting Services - 1 contract (Yes)
- Home Assessments - 7 contracts (Yes)
- Home Modifications (partnership with Newfoundland and Labrador Housing) - 1 contract (Yes)
- Personal Care - 13 contracts (Yes)
- Transcutaneous Electrical Nerve Stimulation Machines - 1 contract (Yes)
- Supply of Home-Style Adjustable Beds - 1 contract (Yes)
- Standing Offer for Hearing Aids and Associated Devices - 10 manufacturers (Yes)
- Standing Offer for Hearing Aid Batteries - 1 supplier (Yes)
- Service Providers of Hearing Aid Devices - 10 contracts (Yes)
- Home Oxygen Equipment - 2 contracts (Yes)

- Taxi Services for Injured Workers - 4 contracts (Yes)
- Snow Clearing for Injured Workers - 8 contracts (Yes)
- Disability Guidelines (Reed Group) - 1 contract (Yes)
- Workplace Disability Management Assessment and Disability Management / Self-Assessment License Agreement - 1 contract (Yes)
- Labour Market Re-entry - 3 contracts (Yes)
- Introductory Computer Training for Injured Workers - 2 contracts (Yes)
- Document Translation Services - 3 contracts (Yes)
- Newfoundland and Labrador Centre for Health Information - 2 agreements: one for death confirmation; and another as host for the Baie Verte Miners Registry - 2 contracts (Yes)
- Physiotherapy Consultants - 2 contracts (Yes)

Employer Services Partnerships and Contracts

1. Safety Sector Councils

- Newfoundland and Labrador Construction Safety Association - industry-driven association taking a leadership role in reducing risk and preventing injury in the construction industry in the Province (Yes)
- Forestry Safety Association of Newfoundland and Labrador - safety organization that promotes and develops a positive safety culture in the forestry industry in the Province (Yes)
- Newfoundland and Labrador - Fish Harvesting Safety Association - industry-led safety organization helping to reduce injuries and save lives at sea and improve fishing vessel safety in the Province (Yes)
- Manufacturing and Processing Safety Sector Council in Newfoundland and Labrador - safety organization committed to promoting and protecting health and safety of employees and employers in the manufacturing and processing sectors in the Province (Yes)

2. Employer Associations

- Newfoundland and Labrador Employers' Council - Employer Advisors and Sector Advisor (Yes)
- Canadian Federation of Independent Business - (No)

3. Training Providers and Trainers (all private sector)

- Over 440 training providers and instructors - details available on the Certification Training Registry at <https://ctr.bluedrop.io/#/> (No)

4. Safety Standards Organizations

- Canada-Newfoundland and Labrador Offshore Petroleum Board - regulatory body of all activities of operators in the Canada-Newfoundland and Labrador Offshore Area, including health and safety of workers (No)

- Employment and Social Development Canada - Labour Program - oversees Canada Labour Code which covers occupational health and safety for federal workers (No)
- Canadian Standards Association - global organization dedicated to improving safety, health, the environment and economic efficiency in Canada and beyond (No)

5. Provincial Government

- Department of Environment and Climate Change (Yes)
- Department of Digital Government and Service NL- OHSD (Yes)
- Treasury Board Secretariat (Yes)
- Department of Education (Yes)

6. Safety Associations

- Workplace Safety North - provider of health and safety training and consulting, especially in the area of underground mining and forest products industries (Yes)
- Board of Canadian Registered Safety Professionals - is a public interest, not-for-profit association whose certificates are dedicated to the principles of health and safety as a profession in Canada (No)
- SafetyNL - a not-for-profit organization, who provides safety-related services and community programs in Newfoundland and Labrador (No)
- Canadian Centre for Occupational Health and Safety - offers a range of workplace health and safety services to help organizations raise awareness, assess risks, implement prevention programs and improve health, safety and well-being (No)
- Canadian Society of Safety Engineering - professional organization for health and safety practitioners drawn together in the common cause of accident prevention (No)
- Newfoundland and Labrador Occupational Health and Safety Association - organization promoting and representing occupational health and safety issues to employers and employees in all industries in Newfoundland and Labrador (No)
- SafetyNet - Centre for Occupational Health and Safety Research community alliance for multidisciplinary research, knowledge exchange and capacity development in occupational health and safety, based at Memorial University (No)

Appendix B

Discussion Paper

Note: This is the original version of the Discussion Paper. It was publically released on February 25, 2020. However, it was amended on three occasions (i.e. April 16, 2020, September 10, 2020, and December 30, 2020) due to the COVID-19 public health emergency. Each amendment was subsequently published on www.engagenl.ca. For accountability and transparency purposes, the specific amendments are noted in textboxes throughout this document.

1. Introduction

As directed by the Lieutenant-Governor in Council, a Statutory Review Committee (the Committee) has been established to conduct a review of Newfoundland and Labrador's workers' compensation system. The Committee comprises Judy Morrow, Q.C. (Chairperson and Member-At-Large); Bernadette Coffey Sobol (Vice-Chairperson and Workers' Representative), and Leonard Knox (Employers' Representative).

Pursuant to section 126 (2) of the **Workplace Health, Safety and Compensation Act** (the Act), the mandate of the Committee is to "...review, consider, report and make recommendations to the Lieutenant-Governor in Council upon matters respecting this Act and the regulations and the administration of each as the committee considers appropriate and upon other matters which the Lieutenant-Governor in Council or the minister may refer to the committee".

The Committee has prepared this Discussion Paper to help focus the consultation process. It outlines three thematic areas which the Government of Newfoundland and Labrador asked the Committee to focus on – efficiencies in the review processes, balance in the provision of benefits, and financial sustainability.

Notwithstanding the three thematic areas which the Government of Newfoundland and Labrador asked the Committee to focus on, the Committee welcomes commentary on matters related to the workers' compensation system not covered by the three thematic areas and reserves the right to consider matters outside the scope of the review.

The Committee recognizes that the success of this review hinges on the participation of workers, employers, key stakeholder organizations, and the general public. To facilitate participation, the consultation process is using a combination of approaches including public in-person sessions and, where deemed necessary, teleconference or videoconference sessions; in-person or teleconference or videoconference sessions in response to requests for accommodation; online and written submissions sent via email or mail; and in-person sessions with key stakeholder organizations as warranted by the Committee.

Amendment April 16, 2020:

The Committee recognizes that the success of this review hinges on the participation of workers, employers, key stakeholder organizations, and the general public. However, in the response to the COVID-19 situation all in-person public consultation sessions have been postponed until the situation is resolved. The public will be duly notified of the new dates once they are determined via the engageNL webpage and the media. In the meantime the Committee is accepting written submissions until further notice.

Amendment September 10, 2020:

The Committee recognizes that the success of this review hinges on the participation of workers, employers, key stakeholder organizations, and the general public. However, in the response to the COVID-19 situation the Committee postponed all in-person public consultation sessions until the situation was resolved and committed to providing an update on resumption via the engageNL webpage and the media. The Committee continued to accept written submissions until further notice. A revised consultation approach has now been developed, following public health guidelines, with further details below.

The Committee looks forward to receiving your input and assures that all input will receive due consideration in preparation of the final report. The Committee intends to report and recommend to the Government of Newfoundland and Labrador by June 30, 2020.

Amendment April 16, 2020:

The Committee intends to report and recommend to the Government of Newfoundland and Labrador by December 31, 2020. Please note that the original date of June 30, 2020, has been extended to address the COVID-19 situation.

Amendment December 30, 2020:

The Committee intends to report and recommend to the Government of Newfoundland and Labrador by March 31, 2021. Please note that the original date of June 30, 2020, was extended to address the COVID-19 situation.

2. Mandate, Principles and Funding

Newfoundland and Labrador's workers' compensation system is a mandatory, employer-funded, no-fault, work-injury insurance system developed to protect workers and employers in the event of workplace injuries.

The Meredith Principles are the foundation of the workers' compensation system and represent an historic compromise between workers and employers. These principles were developed by Judge Sir William Meredith in 1913 and are the hallmarks of a reliable, equitable and manageable compensation system. The principles are summarized in five key areas of focus:

1. No-fault compensation, which means workers are paid benefits regardless of how the injury occurred.
2. Collective liability, so that the total cost of the compensation system is shared by all employers.
3. Security of payment, with a fund established to guarantee that compensation will be available for injured workers when they need it.
4. Exclusive jurisdiction, which means only workers' compensation organizations provide workers' compensation insurance.
5. An Independent Board, that is autonomous and financially independent of government or any special interest group.

The workers' compensation system is paid for through the Injury Fund. This fund is supported entirely by employers and in recent years, the investment revenue generated by the fund. The Act requires all employers with one or more workers to register with WorkplaceNL and pay an annual premium based on their payroll and level of risk. The premium charged is known as the assessment rate. In return for entitlement to benefits under the Act, injured workers and dependents relinquish their litigation rights against the employer for injuries arising from their employment. A stakeholder-agreed Funding Policy helps ensure the financial sustainability of the Injury Fund.

3. Roles and Responsibilities

3.1. WorkplaceNL

Under authority of the Act, WorkplaceNL (formally known as the Workplace Health, Safety and Compensation Commission) oversees the Province's workers' compensation system. It is an independent agency of Service NL.

WorkplaceNL's three lines of business include (1) education on the prevention of workplace injuries, illnesses, and occupational disease; (2) claims management for injured workers; and (3) employer assessments (insurance coverage). For more details on WorkplaceNL programs and initiatives please visit <https://workplacenl.ca>.

WorkplaceNL also administers an Internal Review process (paper review only). Its purpose is to ensure that decisions made by its operating departments are fair, reasonable, and consistent. The Internal Review can be initiated by a worker, dependent

or employer within 30 days of receiving a written WorkplaceNL decision. Requests for an Internal Review outside the 30 day time period are considered in accordance with the provisions of section 64 of the Act. WorkplaceNL issues a written response within 45 days. Applicants who are unsatisfied with the decision can apply to the Workplace Health, Safety and Compensation Review Division (WHSCRD) for an External Review. For more details on WorkplaceNL's Internal Review Process please visit: <https://workplacenl.ca/site/uploads/2019/06/ap-01-internal-review-2017-05-25.pdf>).

3.2. Workplace Health, Safety and Compensation Review Division

The WHSCRD is an independent, quasi-judicial body, consisting of a panel of review commissioners. The WHSCRD is an agency of Service NL and is separate and independent from WorkplaceNL.

On behalf of employers or injured workers and their dependents, the WHSCRD reviews final decisions of WorkplaceNL for errors in the application of legislation, regulations and policies under the authority of the Act. An applicant has 30 days from the date of the final decision of WorkplaceNL to apply to the WHSCRD for an External Review. An extension of time may be provided by the Chief Review Commissioner, but no extension will exceed one year from the date of WorkplaceNL's decision. Section 28 (8) of the Act states the WHSCRD must process an application within sixty days. The decision of the WHSCRD is the final level of review provided by the Act. The only other recourse for a dissatisfied applicant is an Originating Application to the Supreme Court of Newfoundland and Labrador.

In addition to the External Review process, the WHSCRD also provides web-based distribution of its decisions; researches workers' compensation issues; and collects and maintains statistical information relative to the review process. For more details on the WHSCRD please visit <https://www.gov.nl.ca/whscrd/>.

3.3. Worker and Employer Advisors

The Injury Fund covers the costs of two worker advisors and two employer advisors who function independently of the WorkplaceNL and the WHSCRD. All four positions are housed externally, with labour and employer groups.

The two worker advisors are located at the Newfoundland and Labrador Federation of Labour (NLFL) in St. John's and Grand Falls-Windsor. They act as a liaison between an injured worker, WorkplaceNL, and WHSCRD and provide free advisory services to injured workers and dependents (union and non-union). They help with claim issues, the interpretation of legislation and policies, and assist in the preparation for review processes. There is no provision for the worker advisors to represent injured workers at External Review hearings except for cases dealing with former Baie Verte miners.

The two employer advisors are located at the Newfoundland and Labrador Employers' Council (NLEC) in [Mount Pearl] They provide free-of-charge, independent assistance and advice to employers on WorkplaceNL's legislation, decisions, appeals, policy, and related matters. One advisor focuses on mid to large employers while the other focuses on small employers. Employer advisors do not provide representation for employers at External Review hearings.

3.4. Partnerships

Collaboration, communication, and sound working relationships are critical to functioning of the workers' compensation system. WorkplaceNL works with the Occupational Health and Safety (OHS) Division of Service NL to make recommendations and develop programs respecting workplace health and safety. WorkplaceNL also works closely with the NLFL and NLEC who represent injured workers and employers respectively. In addition, WorkplaceNL has established partnerships with various industry associations, government departments and agencies, unions, safety sector councils, and health and safety coalitions at both provincial and national levels. For a listing of these entities including their websites please visit <https://workplacenl.ca/partner-organizations/>.

4. Purpose of Statutory Reviews

Section 126 (2) of the Act provides the Provincial Government with the authority to review the workers' compensation system every five years. This obligation has been in place since the 1950s and refers to the requirement to conduct a review of the workers' compensation system and not solely of the statute itself.

Statutory reviews provide a valuable opportunity to focus stakeholder and public attention on workers' compensation matters with the objective of improving the overall system for both workers and employers.

The five most recent statutory reviews were appointed in 1990, 1996, 2000, 2005, and 2012. The committees have ranged in size from three to six members, always with equal representation from employers and worker stakeholder groups.

The last statutory review represented the most comprehensive review of the province's workers' compensation system. It involved two phases: a clause-by-clause review of the Act (Technical Review), followed by an extensive public consultation. On February 14, 2014, the Provincial Government received a comprehensive two-volume report entitled **Working Together - Safe, Accountable, Sustainable**.

In recent years, several significant changes have been implemented to improve the workers' compensation system including:

- presumptive cancer coverage for career and volunteer firefighters, effective January 1, 2017;
- increase to the Income Replacement Rate for injured workers, or their dependents, from 80 to 85 per cent, announced in February 2018;
- creation of a new joint Injury Prevention Strategy for workers in Newfoundland and Labrador, launched in February 2018;
- creation of a new Retirement Benefit, that was made available to more injured workers, announced in November 2018; and,
- presumptive coverage for post-traumatic stress disorder for all workers covered by the Act, effective July 1, 2019.

5. Scope of the 2019 Statutory Review

In the wake of recent changes to the workers' compensation system and in recognition that it will take time for these changes to have measurable effect, the Government of Newfoundland and Labrador asked the Committee to focus on three thematic areas.

The Committee respectfully asks you to consider these three thematic areas and where applicable provide commentary on the eight accompanying questions. As mentioned previously, the Committee welcomes commentary on matters not covered by these thematic areas and reserves the right to consider matters outside the scope of the review.

5.1. Efficiencies in the Review Processes

As explained earlier, the workers' compensation system has a two-stage review process referred to as the Internal Review and External Review which injured workers or employers can initiate. There continues to be concerns with wait-times, adequate resources, and representation, and clear understanding of review processes and outcomes.

Some issues to consider include:

- resources available to injured workers for External Review hearings;
- how these resources are promoted to injured workers;
- review processes themselves;
- the time it takes to conduct reviews;
- costs of the review processes; and
- any potential enhancements (e.g., covering costs for travel, documentation, and representation).

Questions to Consider:

Question 1: Are any adjustments required to the workers' compensation system's Internal Review and External Review processes? If so, what changes would be beneficial?

Question 2: Are processes and requirements surrounding both Internal Review and External Review clearly communicated to interested parties? If not, how can this be improved upon?

5.2. Balance in the Provision of Benefits

The workers' compensation system is an employer-funded, workplace injury insurance system. No matter how a worker becomes injured or how dangerous an occupation is, when an injury occurs, a worker is entitled to benefits. While the injury and resultant loss of wages for all workers can be devastating, compensation for lost wages needs to be affordable to the system in order to be sustainable.

Ensuring the fundamental principles of a no-fault workplace injury compensation system that is standardized, remains vital.

Questions to Consider:

Question 3: Are worker benefits being provided in a fair and efficient manner? If not, what are possible areas of improvement?

Question 4: How well is the balance between provision of benefits and employer assessment rates being achieved?

5.3. Financial Sustainability

WorkplaceNL's Injury Fund is a legislated fund, separate from the Provincial Government Consolidated Revenue Fund. It is comprised of annual employer assessment fees and investment returns. WorkplaceNL's Board of Directors defines the Injury Fund as being fully-funded when the accumulated assets are 10 per cent greater than total liabilities. The desired range for the Injury Fund is between 100 and 120 per cent, with a target of 110 per cent.

Many factors influence the sustainability of the Injury Fund including (a) the number of injury claims and their duration; (b) costs associated with legislative and policy changes; (c) economic factors that impact [assessable] employer payrolls; (d) the changing nature of injuries; and (e) changes in the financial market.

Currently, the Injury Fund is fully-funded at 119.5 per cent and the average assessment rate for employers is \$1.90 per \$100 of assessable payroll. A temporary \$0.21 discount is currently in place lowering the rate to \$1.69 per \$100 of payroll. The current lost-time injury rate is at 1.6 per 100 workers representing a slight increase from the three previous years.

Ensuring sustainability of the Injury Fund over the long term remains a priority, guiding the Committee to advance recommendations that support financial sustainability.

Questions to Consider:

Question 5: With regards to maintaining financial sustainability, are there priority areas that need attention?

Question 6: What role can stakeholders play in reducing the cost of the system?

5.4. General Questions to Consider:

Question 7: What recommendations would you make that could improve the overall workers' compensation system?

Question 8: What recommendations should Workplace NL and /or the WHSCRD commence to improve the workers' compensation system?

6. Public Consultation Process

In compliance with the **Inclusive Public Engagement Policy**, the Committee is providing workers, employers, key stakeholder organizations, and the general public with several options to participate in the consultation process (listed below). The Committee respectfully requests that you review the **Discussion Paper** and use it to inform your participation where applicable.

The consultation process will adhere to the following privacy statement:

“The collection of information is done under the authority of section 61(c) of the **Access to Information and Protection of Privacy Act, 2015**, for the purpose of collecting public feedback on Newfoundland and Labrador’s workers’ compensation system.

It is recommended that you do not include personal information with your submission. However, any personal information that may be received will be governed in accordance with the **Access to Information and Protection of Privacy Act, 2015** and will only be used for the purpose of informing the review of the workers’ compensation system.”

6.1. Option One: Present at a Public In-Person Session

The Committee will be holding public in-person sessions in the four locations (listed below). If you wish to present at one of the sessions please RSVP by **March 9, 2020**, via email at info@2019srwcs.ca or call **Sharmane Allen** at **709-729-6381**. Once all the RSVPs have been received, you will be contacted with a time to present to the Committee. To accommodate presenters, day and evening slots will be available. All presenters will be given a maximum of 30 minutes to present and fifteen minutes for questions and answers.

- **St. John’s - March 17, 2020 (and 18 and 19 if needed)**
- **Gander - April 23, 2020**
- **Corner Brook - April 28, 2020**
- **Happy Valley - Goose Bay - April 30, 2020.**

On **March 13, 2020**, the schedule of presentations and venues will be posted on www.engageNL.ca. While the names of organizations will be publicly identified in the schedule, the names of private citizens will be withheld for privacy reasons.

The Committee requests that presenters submit an electronic copy of their presentation prior to their session (send to info@2019srwcs.ca) or bring four printed copies of their presentation to the session for distribution to the Committee and note-taker.

All presenters at the public in-person sessions will be asked in advance of their presentation if they prefer a media blackout during their presentation. Presenters who do not request a media blackout will have to sign a waiver. No recording devices will be allowed to operate at any time during the public in-person sessions.

Please note that if two or less RSVPs are received for Gander, Corner Brook or Happy Valley - Goose Bay, the public in-person session will be cancelled, and the presenter(s) will be given the option to present to the Committee via teleconference or videoconference.

6.2. Option Two: Online and Mail-in Submission

If you prefer to participate with a written contribution, you can send your document in PDF, DOC or DOCX form to **info@2019srwcs.ca** or mail a printed or handwritten copy to:

**2019 Statutory Review Committee – Workers’ Compensation System
c/o Sharmane Allen, Department of Advanced Education, Skills and Labour
P.O. Box 8700, 4th Floor, West Block, Confederation Building
St. John’s, NL A1B 4J6**

Please note the deadline for online and mail-in submissions is **April 30, 2020**.

6.3. Option Three: Request for Accommodation

If you wish to participate in the consultation process and require accommodation, please email **info@2019srwcs.ca** or call **Sharmane Allen at 709-729-6381** by **March 9, 2020**. Requests for accommodation will be addressed on a case by case basis in consultation with the Disability Policy Office or applicable government department.

Amendment April 16, 2020:**6.1. Option One: Present at a Public In-Person Session**

Once the COVID-19 situation is resolved the Committee will be holding public in-person consultation sessions. The public will be duly notified of the new dates once they are determined via the engageNL webpage and various media.

6.2. Option Two: Online and Mail-in Submission

If you prefer to participate with a written contribution, you can send your document in PDF, DOC or DOCX form to info@2019srwcs.ca or mail a printed or handwritten copy to:

2019 Statutory Review Committee – Workers' Compensation System
c/o Sharmane Allen, Department of Advanced Education, Skills and Labour
P.O. Box 8700, 4th Floor, West Block, Confederation Building
St. John's, NL A1B 4J6

Please note due to the COVID-19 situation the submission date is open until further notice.

6.3. Option Three: Request for Accommodation

If you wish to participate in the consultation process and require accommodation, please email info@2019srwcs.ca or call **Sharmane Allen at 709-729-6381**. Requests for accommodation will be addressed on a case by case basis in consultation with the Disability Policy Office or applicable government department.

Amendment September 10, 2020:**6.1. Option One: Present at a Private In-Person Session in St. John's**

The Committee will be holding private in-person sessions in St. John's (no RSVPs from outside St. John's were received prior to the suspension of consultation activities due to COVID-19). If you wish to present at one of the sessions please RSVP by **September 30, 2020**, via email at **info@2019srwcs.ca** or call **Sharmane Allen** at **709-729-6381**. All presenters may be accompanied by one other person. Once all the RSVPs have been received, you will be contacted with a time to present to the Committee. Please note that all RSVPs previously received (prior to the suspension of consultation activities due to COVID-19) will be contacted to schedule a private in-person session should they still wish to present to the Committee (or chose Option 2 or 3).

6.2. Option Two: Present Via Video or Teleconference

The Committee will be holding video and teleconferences to accommodate those who do not want to meet in-person and/or cannot travel to St. John's for a private in-person session. If you want to present by video or teleconference please RSVP by **September 30, 2020**, via email at **info@2019srwcs.ca** or call **Sharmane Allen** at **709-729-6381**. Once all the RSVPs have been received, you will be contacted with a time to present to the Committee.

Please note the following guidelines are applicable to Options 1 and 2:

- All sessions will be scheduled during the period **September 28 to October 15, 2020** (exact dates to be determined depending on RSVPs received). To accommodate presenters, day and evening slots will be available. All presenters will be given a maximum of 30 minutes to present and fifteen minutes for questions and answers. No recording devices will be allowed to operate at any time during the sessions.
- The Committee requests that presenters submit an electronic copy of their presentation at least two days prior to their session (send to info@2019srwcs.ca) for printing and distribution to the Committee and note-taker.
- Upon completion of all presentations, a list of the presenters, date of the presentation, and the electronic presentation document and related documents submitted to the Committee, will be posted on **www.engageNL.ca** (with the prior written consent of the presenter). While the names of organizations will be publicly identified, the names of private citizens may be withheld for privacy reasons. A news release will be issued to notify the public when the list of presentations is posted.
- If you do not want your presentation posted to the engageNL website, you must clearly indicate this intention to the Committee.
- However, please be advised that all submissions to the Committee are subject to and may be released in accordance with the Access to Information and Protection of Privacy Act, 2015.

Amendment September 10, 2020 (continued):**6.3. Option Three: Online and Mail-in Submission**

If you prefer to participate with a written contribution, you can send your document in PDF, DOC or DOCX form to info@2019srwcs.ca or mail a printed or handwritten copy to:

**2019 Statutory Review Committee – Workers’ Compensation System
c/o Sharmane Allen, Department of Immigration, Skills and Labour
P.O. Box 8700, 4th Floor, West Block, Confederation Building
St. John’s, NL A1B 4J6**

Please note the deadline for online and mail-in submissions is **October 9, 2020**.

6.4. Option Four: Request for Accommodation

If you wish to participate in the consultation process and require accommodation, please email info@2019srwcs.ca or call **Sharmane Allen at 709-729-6381** by **September 30, 2020**. Requests for accommodation will be addressed on a case by case basis in consultation with the Disability Policy Office or applicable government department.

Appendix C

Summary of Media Campaign

Government News Releases

- December 18, 2019 (Service NL) - Committee Established to Review Workplace Compensation System <https://www.gov.nl.ca/releases/2019/servicenl/1218n03/>
- February 26, 2020 (Service NL) - Consultations Begin on the Workers' Compensation System <https://www.gov.nl.ca/releases/2020/servicenl/0226n05/>
- September 14, 2020 (Immigration Skills and Labour) - Public Advisory: Resumption of Consultations on the Workers' Compensation System <https://www.gov.nl.ca/releases/2020/isl/0914n01/>
- September 25, 2020 (Immigration Skills and Labour) - Public Advisory: Schedule of Presentations: Week of September 28 <https://www.gov.nl.ca/releases/2020/isl/0925n04/>
- October 2, 2020 (Immigration Skills and Labour) - Public Advisory: Schedule of Presentations: Week of October 5 <https://www.gov.nl.ca/releases/2020/isl/1002n04/>
- December 30, 2020 (Immigration Skills and Labour) - Public Advisory: Reporting Deadline Extended for Workplace Health, Safety and Compensation Statutory Review <https://www.gov.nl.ca/releases/2020/isl/1230n05/>
- May 12, 2021 (Environment and Climate Change) - Public Advisory: Presentations to Statutory Review of Workers' Compensation Committee Available Online <https://www.gov.nl.ca/releases/2021/ecc/0512n04/>

engageNL Website Notifications - <https://www.engagenl.ca>

- Original posted February 25, 2020 (Consultation Announcement)
- Updated March 13, 2020 (List of Scheduled Presentations)
- Updated April 16, 2020 (In-person Sessions Cancelled Due to COVID-19)
- Updated September 10, 2020 (Resumption of Consultation Process)
- Updated December 30, 2020 (Extension Granted to March 31, 2021)

- Updated January 15, 2021 (Consultations Suspended During Provincial Election)
- Updated May 12, 2021 (Release of Consultation Submissions by Consent)

Media Processes

- VOCM Online Advertisements: (March 2 - April 5, 2020) (September 15 - October 11, 2020)
- VOCM Radio Announcements: (March 2 - 6 and 9, 2020) (September 15 - 27, 2020)
- Government of Newfoundland and Labrador's Facebook Page: (March 2 - April 5, 2020) (September 15 - October 11, 2020)
- Newspapers: Telegram (February 29, 2020), The Central Voice (March 4, 2020), The Western Star (March 2, 2020), and The Labrador Voice (March 4, 2020)

Appendix D

List of Reports and Agreements Reviewed and Analyzed

Note: These documents are outlined below in the order they appear in the report. Only documents that are publicly available are linked to the appropriate website.

- Working Together - Safe, Accountable, Sustainable Volume One: The Report of the 2013 Statutory Review Committee on Workplace Health, Safety and Compensation
<https://www.gov.nl.ca/ipgs/files/labour-workingtogether-pdf-src-2013-vol-i-parts1-2.pdf>
- Working Together - Safe, Accountable, Sustainable Volume Two – Appendices: The Report of the 2013 Statutory Review Committee on Workplace Health, Safety and Compensation
https://www.gov.nl.ca/isl/files/src_2013_vol_II_appendices.pdf
- Agreement between Workplace Health, Safety and Compensation Commission and the Newfoundland and Labrador Federation of Labour (2008), together with Amending Agreements dated July 17, 2014 and November 25, 2015
- Agreement between Workplace Health, Safety and Compensation Commission and the Newfoundland and Labrador Employers' Council dated December 2, 2008, together with Amending Agreement dated August 29, 2014
- Finding the Balance: The Report of the 2006 Statutory Review Committee on the Workplace Health, Safety and Compensation Act
<https://www.gov.nl.ca/isl/files/publications-labour-whsccreviewcommittee2006.pdf>
- Accessible Communications Policy of the Government of Newfoundland and Labrador
<https://www.gov.nl.ca/cssd/files/disabilities-pdf-accessible-communications-policy.pdf>
- WorkplaceNL's 2019 Annual Performance Report
<https://workplacenl.ca/site/uploads/2020/09/Annual-Performance-Report-2019.pdf>
- Advancing a Strong Safety Culture in Newfoundland and Labrador, A Workplace Injury Prevention Strategy 2018-2022
<https://workplacenl.ca/site/uploads/2019/06/advancing-a-strong-safety-culture-in-nl.pdf>
- WorkplaceNL's 2020-22 Strategic Plan
<https://workplacenl.ca/site/uploads/2020/09/WorkplaceNL-2020-22-Strategic-Plan-Final-2020-08-28.pdf>

- Memorandum of Understanding between the Workplace Health, Safety and Compensation Commission (WorkplaceNL) and the Occupational Health and Safety Branch of the Government (OHSD) dated December 29, 2010, together with an Amending Agreement dated January 16, 2019
<https://www.gov.nl.ca/dgsnl/files/ohs-amending-agreement-whscc-and-snl-01-16-2019.pdf>
- Creating Opportunities for Safer Workplaces - A Review of WorkplaceNL's PRIME Program
<https://workplacenl.ca/site/uploads/2020/07/Creating-Opportunities-PRIME-Review-FINAL.pdf>
- Sector Council Review, Final Report, 2017
- Memorandum of Agreement for Provision of Medical Services between the Workplace Health, Safety and Compensation Commission of Newfoundland and Labrador and the Newfoundland and Labrador Medical Association dated September 24, 2018

Appendix E

Actuarial Reports

Appendix E.1



7071 Bayers Road, Suite 3007
Halifax, Nova Scotia B3L 2C2

NFWCCWC

April 9, 2021

CONFIDENTIAL

Judy Morrow, Q.C.
Chairperson
2019 Statutory Review - Workers' Compensation System
c/o Sharmene Allen, Department of Immigration, Skills and Labour
P.O. Box 8700, 4th Floor, West Block, Confederation Building
St. John's, NL A1B 4J6

RE: Increase in Income Replacement Rate to 90%

Dear Ms. Morrow:

As requested by the Statutory Review Committee ("Committee"), we have estimated the cost of increasing the income replacement rate ("IRR") for earnings-loss benefits from its current level of 85% to 90%.

The data, methodology and assumptions used in our analysis are summarized in the Appendix to this letter, along with a brief summary of WorkplaceNL's historical income replacement rates. The results of our calculations are presented below. Our cost estimates are in respect of assessed employers only. An increase to the income replacement rate will also have cost impacts for self-insured employers (including the Government of Newfoundland & Labrador) but that is not considered in this letter.

Results

Our cost estimates are based on the results of WorkplaceNL's most recent valuation as at December 31, 2019. The estimates assume that the new income replacement rate will be effective January 1, 2020 and apply to all current and future claims from the effective date onwards. It is important to note that the effective date of January 1, 2020 is for measurement purposes only in order to assess the relative magnitude of the benefit improvement. While an effective date in the future could result in a minor difference in overall costs, we believe the current estimate provides a reasonable indication of potential cost for decision makers to consider. The estimated financial impacts of the increased IRR are shown in Table 1.

Ms. Judy Morrow
April 9, 2021

Table 1 – Estimated Impact of 90% IRR

| | December 31, 2019 |
|---|-------------------|
| Increase in Total Liabilities | \$75,127,000 |
| Increase in Cost of New Accidents (per \$100 of assessable payroll) | \$0.135 |

Please note the cost estimates shown in Table 1 include the following benefits that would be impacted by a change in the IRR:

- Temporary Earnings Loss (TEL) including wage-loss benefits paid while participating in a rehabilitation program
- Extended Earnings Loss (EEL)
- Retirement Benefits – Future contributions are based on a set percentage of EEL payments
- Survivor Income Awards – While the increase in the IRR appears to be directly applicable only to post June 1996 fatalities, a corresponding increase was applied to all survivor income awards when the income replacement rate was changed to 85% in 2018. Consequently, we have included all survivor income awards in our analysis regardless of the benefit terms applicable to the specific claimant.

Table 1 shows that an increase in the IRR to 90% is expected to increase liabilities by \$75.1 million. As of December 31, 2019, WorkplaceNL had a funded ratio of 123.4%. For demonstration purposes, if this change had occurred as of December 31, 2019, the updated funded ratio would be 116.6%. It is worth noting that any increase in liabilities due to the proposed change would be handled according to WorkplaceNL's funding policy.

In regards to the impact on the average assessment rate, a 90% income replacement rate is expected to increase new accident costs by about \$0.14 per \$100 of assessable payroll, all else equal. This represents an additional ongoing cost that WorkplaceNL would have to collect from assessed employers each year in order to cover the increase in the expected cost of new accidents resulting from the IRR change.

The estimates in Table 1 include the potential impact of an increase in the duration and frequency of claims associated with the improved benefit level as described in the Appendix.

Finally, it is also important to note that these liability estimates were calculated in the absence of any other benefit changes. If more than one benefit change is introduced, there may be compounding of cost impacts such that the total cost of two or more benefit changes may be higher than the sum of the costs when each benefit change is considered individually. Ideally, the potential for compounding of cost impacts would be considered prior to implementing multiple significant benefit changes.

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Other Scenarios

The financial impacts shown in Table 1 can easily be adjusted for other income replacements rates between 85% and 90% by interpolating the results. For instance, to estimate the impact of moving to an 88% income replacement rate, multiply the results in Table 1 by three-fifths (3/5).

In addition, we understand the Committee may be interested in proposing a gradual transition to the new 90% IRR by phasing in the increase over a period of time (2 to 5 years). The benefits of a short transition period should be balanced against the logistical challenges for WorkplaceNL of implementing and communicating income replacement rate changes each year. Further, a short transition period does not provide significant relief from the cost impacts of the IRR increase. This is because most of the affected benefits tend to have a long duration (~10 years) and applying a slightly smaller increase in the first year or two of a ten-year payment stream has limited impact. For illustration, based on a high-level analysis and reviewing the results from prior costings, we estimate that implementing the 90% IRR over a 5-year period would still result in an increase in liabilities of about \$57 million, compared to the \$75 million for the full immediate implementation as shown in Table 1. Moreover, it would result in a 9.5 cent increase on the average rate (due to higher new injury costs) in the first year of the transition, rising to 13.5 cents when the 90% IRR is fully implemented in year 5. A shorter transition period would produce impacts even closer to those shown in Table 1. While these are high-level estimates, they do provide some indication of the reduced costs associated with a gradual implementation of a 90% IRR.

Actuarial Opinion

With respect to the analysis provided, in our opinion:

- The data on which the calculations are based are sufficient and reliable for the purpose of the calculations;
- The assumptions used in the calculations are appropriate for the purpose of the calculations;
- The methods employed in the calculations are appropriate for the purpose of the calculations;

This letter has been prepared, and our opinions given, in accordance with accepted actuarial practice for workers' compensation organizations in Canada.

The Committee should be aware that emerging experience differing from the assumptions used may result in actual cost impacts that are materially different from the results presented in this letter. These would be revealed in gains or losses associated with future actuarial valuations.

We trust the information in this letter will be of assistance as you consider potential changes to the income replacement rate. If you require any clarification or further assistance, please feel free to contact us.

Thank you,



Mark Simpson, FCIA

This letter has been peer reviewed by Thane MacKay, FCIA

Appendix

Background

Prior to January 1, 1984, the Province of Newfoundland and Labrador operated a disability rating system whereby benefits to injured workers were dependent on the degree of physical disability (permanent functional impairment). The benefit was 75% times gross earnings times the percent of physical disability.

In 1984, an earnings-loss system was introduced with a benefit at 90% of net loss of earnings. Under this system, a worker does not need a permanent physical impairment to receive an earnings loss benefit. Instead, the benefit is centered on capacity to earn after the injury regardless of the degree of physical impairment.

On January 1, 1993, the benefit was reduced to 75% of net loss of earnings for the first 39 weeks following injury and 80% of net loss of earnings thereafter.

On January 1, 1998, the benefit for the first 39 weeks was increased to 80% of net loss of earnings resulting in the same benefit throughout the entire period of disability.

On March 31, 2018, the benefit was increased to 85% of net loss of earnings. Presently, all injured workers who suffer from an injury severe enough to miss time at work receive compensation at 85% of their net loss of earnings.

Data

The data used for our calculations is the same data as used for the valuation of WorkplaceNL's temporary earnings loss (TEL), Rehabilitation, capitalized extended earnings loss (EEL), Retirement Benefits, and capitalized Survivor awards as at December 31, 2019. The files used incorporate all revisions that were made to correct issues identified as part of our year-end data validation procedures. A summary of the data and the data validation procedures used is presented in our December 31, 2019 actuarial valuation report and is not repeated here.

In addition to these valuation data files, we have also used the results of the valuation for WorkplaceNL's outstanding EEL and outstanding Survivor liabilities in our calculations.

Finally, WorkplaceNL has supplied us with the 2020 tax tables used to determine claimant benefit amounts.

Ms. Judy Morrow
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Methodology and Assumptions

For the purposes of this estimate, we have assumed an implementation date of January 1, 2020 for the IRR increase. We have also assumed that there would be no adjustments to payments made before January 1, 2020.

We began by estimating the revised benefit that each EEL claimant would receive under the new income replacement rate. To do so, we started with the claimant's current benefit amount and worked backwards to calculate their implied pre-accident net earnings. This involved calculating the net estimated capable earnings level, net CPP offset, and net other offset for each claimant. We assumed that each claimant belongs to net claim code 1 when accessing the tax tables. Based on information received for a prior costing, this appears to be the case for the majority of EEL claimants. Once the implied pre-accident net earnings were determined for each claimant, we were able to recalculate their EEL benefit under the proposed new income replacement rate.

Next, we recalculated the capitalized EEL liability as at December 31, 2019 using the revised benefit amounts. The methodology and assumptions used to estimate this liability are the same as those used in our December 31, 2019 actuarial valuation and are described in detail in our valuation report. The revised capitalized EEL liability was compared to the same liability from our 2019 valuation to determine the overall percent increase due to the benefit change. This percent increase was assumed to apply to outstanding EEL awards and future Retirement Benefit contributions as well. For TEL, Rehabilitation and capitalized Survivor awards, we assumed that the percent increase in the liability due to the benefit change exactly corresponds to the percent increase in the income replacement rate.

Aside from the direct effect on the liability of an increase in the income replacement rate, studies have shown that benefit levels can have an influence on both the frequency and duration of claims. An increase in benefits usually leads to an increase in both the number and average duration of claims. We have grossed-up the percentages calculated above to account for these secondary effects based on the results from a relevant study¹. Table 2 below shows the gross-ups applied to the direct increase in benefits for our analysis.

¹ Benefit Increases and System Utilization: The Connecticut Experience. Dr. John A. Gardner. December 1991. WC-91-5.

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Table 2 – Gross-ups Applied by Benefit Category

| | Duration | Frequency |
|-----------------------------------|----------|-----------|
| Liabilities | | |
| • EEL | 90%* | None |
| • Outstanding EEL | 90% | 30% |
| • TEL (incl. rehab allowance) | 90% | None |
| • Retirement Benefit ⁺ | 90% | None |
| • Survivor | None | None |
| New Accidents | | |
| • Outstanding EEL | 90% | 30% |
| • TEL (incl. rehab allowance) | 90% | 30% |
| • Retirement Benefit ⁺ | 90% | 30% |
| • Survivor | None | None |

* Overall duration impact on in-force EEL claims limited to provision for expected terminations

+ Liabilities associated with future contributions only; same gross-ups as EEL as benefit based on EEL payments

We applied the liability increase percentages determined above, including the secondary effects, to the updated liabilities for the capitalized EEL, outstanding EEL, TEL, Rehabilitation, future Retirement Benefit contributions and capitalized Survivor benefits from our December 31, 2019 valuation. The resulting increase in liability represents the estimated cost of the benefit change for in-force claims as at December 31, 2019.

Finally, we projected future new accident costs for the same benefits under the new income replacement rate. The increase in new accident costs compared to the 85% replacement rate represents a cost to WorkplaceNL that would be collected from assessment revenue each year. To convert results to a rate per \$100 of assessable payroll, we have used WorkplaceNL's 2019 assessable payroll (\$8.184 billion).

For reference, \$26.5 million of the total liability impact in Table 1 (\$75.1 M) is due to the indirect effects on claim duration and frequency associated with the benefit improvement. In addition, about \$0.07 of the total rate impact on new accident costs (\$0.135) is due to the same indirect effects of the benefit change. Please note that while numerous studies of insurance programs show indirect impacts on frequency and duration due to benefit changes, the estimated magnitude of these impacts varies across studies. We have chosen gross-ups that lie within the range of estimated values based on the studies we have reviewed. However, the ultimate impact of indirect effects is very difficult to predict and could very well be higher or lower than the provision in our cost estimates.

Appendix E.2



7071 Bayers Road, Suite 3007
Halifax, Nova Scotia B3L 2C2

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April 9, 2021

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Judy Morrow, Q.C.
Chairperson
2019 Statutory Review - Workers' Compensation System
c/o Sharmane Allen, Department of Immigration, Skills and Labour
P.O. Box 8700, 4th Floor, West Block, Confederation Building
St. John's, NL A1B 4J6

RE: Potential Modifications to Retirement Benefits

Dear Ms. Morrow:

As requested by the Statutory Review Committee ("Committee"), we have estimated the potential financial impact of contemplated changes to the current Retirement Benefit ("RB") paid by WorkplaceNL.

This letter summarizes our analysis and results. The data, methodology and assumptions used in our analysis are summarized in the Appendix to this letter. The results of our calculations are presented below. Our cost estimates are in respect of assessed employers only. Changes to the Retirement Benefit will also have cost impacts for self-insured employers (including the Government of Newfoundland & Labrador) but that is not considered in this letter.

Background

The retirement benefit was implemented on January 1, 2019 for all Extended Earnings Loss ("EEL") claimants who turn age 65 on or after that date. It provides a lump sum payment at age 65 equal to 5% of the historical EEL payments made to the claimant, accrued with interest. The contribution rate increases from 5% to 10% if the injured worker was a member of an employer-sponsored pension plan at the time of their injury. The interest credited on RB contributions is the 4-year average net rate of return on WorkplaceNL's Injury Fund, floored at 0% (i.e. if in any period, the 4-year average net rate of return on the Injury Fund is negative, the interest rate is deemed to be 0% for that year).

The liability for retirement benefits is estimated by projecting a lump sum payment for each eligible claimant at their 65th birthday and discounting it to the measurement date. The expected lump sum payment for each claimant is based on their actual past EEL payments, projected future EEL payments, historical returns

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on the Injury Fund and expected future returns. More details on the valuation approach and assumptions are included in the Appendix. As at December 31, 2019, the liability for retirement benefits was \$74.8 million.

Potential Modifications

Currently, retirement benefits are only available to claimants who receive EEL benefits after January 1, 2019, and are based solely on their EEL payments. At the request of the Committee, we have estimated the cost of two modifications that would expand the current retirement benefit:

- A. **Include Temporary Earnings Loss (“TEL”) Payments made to EEL Claims:** Under this modification, the current retirement benefit would be expanded to include the prior TEL payments on EEL claims. For all claimants who receive an EEL benefit, their past TEL benefits would also be included in the calculation of their RB.
- B. **Include all Earnings-Loss Payments After 24 Months:** Under this modification, the current retirement benefit would be expanded to include any TEL benefits paid more than 2 years after their first lost-time payment. The first 24 months of TEL benefits would result in no RB contributions, but subsequent TEL payments would result in contributions. Any EEL benefits paid, regardless of duration, would remain eligible for RB contributions.

For the purposes of this letter, all references to TEL payments or benefits includes both benefit payments made to claimants for temporary earnings loss and wage-loss paid while the claimant is participating in a rehabilitation program (rehab allowance).

Modification A (include TEL payments on EEL claims) expands the base of benefits eligible for RB contributions but does not increase the number of eligible claimants from the current RB. Modification B (include all earnings-loss payments beyond 2 years) expands both the base of benefits eligible for RB contributions and the number of injured workers receiving the benefit.

Results

Our cost estimates are based on the results of WorkplaceNL’s most recent valuation as at December 31, 2019. The estimates assume that the RB changes will be effective January 1, 2020 and apply to all claims which reach age 65 on or after the effective date. It is important to note that the effective date of January 1, 2020 is for measurement purposes only in order to assess the relative magnitude of the benefit improvement. While an effective date in the future could result in a minor difference in overall costs, we believe the current estimate provides a reasonable indication of potential cost for decision-makers to consider.

In order to estimate the cost of the two modifications under consideration, we recalculated expected future RB lump sum payments under the expanded criteria. The costing approach largely follows the methodology used in the valuation for the current retirement benefit but includes more payments (both historical and

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projected future) in the calculation of future lump sum payouts. More details on the methodology can be found in the Appendix.

The estimated financial impacts of modifying the RB are shown in Tables 1.A and 1.B. The potential modifications impact both the liabilities as of the measurement date and the expected cost of new accidents going forward.

Table 1.A – Estimated Impact of including TEL payments on EEL Claims

| | December 31, 2019 |
|--|-------------------|
| Increase in Total Liabilities | \$45,491,000 |
| Increase in Cost of New Accidents (per \$100 of assessable payroll)* | \$0.015 |

** Rounded to the nearest half-cent*

Table 1.A shows that an increase in the RB to include the past TEL payments on EEL claims is expected to increase liabilities by \$45.5 million. As of December 31, 2019, WorkplaceNL had a funded ratio of 123.4%. For demonstration purposes, if this change had occurred as of December 31, 2019, the funded ratio would be reduced by 4.2% to 119.2%. It is worth noting that any increase in liabilities due to the contemplated change would be handled according to WorkplaceNL's funding policy, and would depend on the funding ratio and funding adjustments in the average rate at that time.

In regards to the impact on the average assessment rate, changing the RB to include the past TEL payments on EEL claims is expected to increase new accident costs by about \$0.015 per \$100 of assessable payroll, all else equal. This represents an additional ongoing cost that WorkplaceNL would have to collect from assessed employers each year in order to cover the increase in the expected cost of new accidents resulting from the RB change.

Table 1.B – Estimated Impact of including all TEL payments beyond 24 months

| | December 31, 2019 |
|--|-------------------|
| Increase in Total Liabilities | \$25,434,000 |
| Increase in Cost of New Accidents (per \$100 of assessable payroll)* | \$0.010 |

** Rounded to the nearest half-cent*

Table 1.B shows that an increase in the RB to include all TEL payments after 24 months since the injury is expected to increase liabilities by \$25.4 million. For demonstration purposes, if this change had occurred as of December 31, 2019, the funded ratio would have been reduced by 2.4%, from 123.4% to 121.0%. Again, it is worth noting that any increase in liabilities due to the modification would be handled according to WorkplaceNL's funding policy.

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In regards to the impact on the average assessment rate, changing the RB to include all TEL benefits paid beyond 24 months since injury is expected to increase new accident costs by about \$0.01 per \$100 of assessable payroll, all else equal.

Other Comments

When interpreting the analysis in this letter and contemplating changes to the existing retirement benefit, it may be helpful to consider the following items:

- The liability estimates were calculated in the absence of any other benefit or policy changes. If more than one change in benefits is introduced, there may be compounding of cost increases such that the total cost of two or more benefit changes may be higher than the sum of the costs when each benefit is considered individually. For example, an increase in the income replacement rate would have a direct impact on the cost of expanding the retirement benefit as the contemplated modifications would apply to a higher payment base.
- WorkplaceNL paid out \$3.8 million in retirement benefits in 2019 on claims from assessed employers. If the contemplated modifications are applied retroactively to claimants who have already been paid a RB, it would involve a cost in addition to those quoted in Tables 1.A and 1.B. A high-level estimate of the potential additional cost is \$1.9 million under modification A (including all past TEL on EEL claims) and \$1.0 million under modification B (including all TEL paid after 24 months).
- We have not included any provision for secondary impacts on claim frequency or claim duration associated with the contemplated benefit changes. While there could conceivably be some secondary impacts, we would expect them to be relatively limited given the long average time period between injury and receipt of a retirement benefit lump sum.
- Modification A (including all past TEL payments on EEL claims):
 - Results in situations where some TEL payments are eligible for RB contributions while others at the same duration are not. This differential treatment may be difficult to justify.
 - Reduces the impact that the timing of EEL approval can have on the value of a claimant's RB.
 - May result in additional pressure on case managers to approve EEL benefits because of the increased value of RB available to EEL recipients.
- Modification B (including TEL payments beyond 24 months):
 - Provides some retirement income protection to claimants who lose significant time from work due to injury but do not ultimately receive EEL benefits (for example, an injured worker who receives TEL for 3 years before returning to work).
 - Would likely involve more administrative effort than the current retirement benefit (or Modification B) because RB balances would need to be tracked and administered for more

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April 9, 2021

claimants. The level of administrative effort increases as the waiting period before TEL benefits are eligible for RB is shortened. WorkplaceNL staff should be able to give the Committee more information on any administrative challenges associated with modifying the current RB.

- Provides more consistent treatment of claimants who experience a long-term absence from work due to their injury, regardless of whether they are receiving TEL or EEL benefits.
- Arrangements similar to modification B (including TEL payments beyond 24 months) are used by other workers' compensation jurisdictions in Canada offering a similar retirement benefit. We are not aware of other jurisdictions who follow an arrangement similar to Modification A.

Actuarial Opinion

With respect to the analysis provided, in our opinion:

- The data on which the calculations are based are sufficient and reliable for the purpose of the calculations;
- The assumptions used in the calculations are appropriate for the purpose of the calculations;
- The methods employed in the calculations are appropriate for the purpose of the calculations;

This letter has been prepared, and our opinions given, in accordance with accepted actuarial practice for workers' compensation organizations in Canada.

The Committee should be aware that emerging experience differing from the assumptions used may result in actual cost impacts that are materially different from the results presented in this letter. These would be revealed in gains or losses associated with future actuarial valuations.

We trust the information in this letter will be of assistance as you consider changes to the retirement benefit. If you require any clarification or further assistance, please feel free to contact us.

Thank you,



Mark Simpson, FCIA

This letter has been peer reviewed by Thane MacKay, FCIA

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Appendix

Data

The data used for our calculations is the same data as provided WorkplaceNL's year-end valuation as at December 31, 2019. The main files are:

- Global Payment File – showing all historical payments by claim, benefit category and payment date
- AV10MP – showing current wage-loss payment entitlements as at the valuation date (TEL, EEL, Rehab claims)
- AV80MP – showing list of claims currently entitled to a future retirement benefit

The files used incorporate all revisions that were made to correct issues identified as part of our year-end data validation procedures. A summary of the data and the data validation procedures used is presented in our December 31, 2019 actuarial valuation report and is not repeated here. In addition to these valuation data files, we have also used the results of the valuation for inforce and outstanding EEL awards, and future TEL payments in our calculations.

Methodology and Assumptions

The methodology used in this costing closely aligns with the methodology used in valuing the Retirement Benefit for the 2019 year-end valuation. The costing largely takes the methodology used to value the current retirement benefit and applies it to the additional payments eligible for RB contributions under the modified benefit. We have summarized the methods and assumptions used below. Please see the December 31st, 2019 valuation report for a detailed description of methods and assumptions to calculate the current retirement benefit liability.

RB contributions are accrued with interest using the rolling four-year annualized net return on WorkplaceNL's Injury Fund, subject to a zero percent floor on the credited return. That is, in any year that the rolling four-year average net return is negative, the return credited to retirement accounts would be floored at zero percent. The actual crediting rates to use for the 1985 to 2018 period have been supplied by WorkplaceNL. For 2019 and beyond, an assumed long-term crediting rate of 5.75% is used, equal to the valuation discount rate (5.50%) plus a spread (0.25%) to account for the effect of the zero percent floor. This rate is meant to represent a reasonable expectation of the rolling four-year average net return experienced by the Injury Fund over the long-term, taking into account the restriction on negative returns. The assumed rate is slightly greater than the current discount rate (5.50%) because of the application of the zero percent floor. The assumed crediting rate is based on a past analysis of expected returns on the Injury Fund over the next 25 years.

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In our calculations, we have assumed that 30% of injured workers are members of an employer-sponsored pension plan (ESPP) at the time of their injury. This assumption is based on historical registered pension plan membership rates for the Province of Newfoundland and Labrador obtained from Statistics Canada and appears reasonable based on limited actual RB experience to date. The assumption results in an average RB contribution rate of 6.5% (base contribution rate of 5.0% available to all eligible claimants and an additional 5.0% available to 30% of eligible claimants assumed to be members of an ESPP).

The liability for the retirement benefit is composed of two distinct pieces:

1. Past Contributions: The present value of the expected retirement benefit balance at age 65 resulting from contributions prior to the valuation date.
2. Future Contributions: The present value of the expected retirement benefit balance at age 65 resulting from expected future contributions.

To estimate the liability for past contributions, we applied the assumed retirement benefit contribution rate (6.5%) to the eligible past benefit payments. The past TEL payments eligible for RB contributions depend on the modification under consideration and were obtained from the Global Payment File supplied for the valuation. These past contributions were then accrued to December 31, 2019 using the historical rolling 4-year average net returns on the Injury Fund as provided by WorkplaceNL for the 2019 valuation (see Table A.1 below). The past contribution balances for each claimant as of December 31, 2019 were then accrued to the claimant's expected retirement date (age 65) using the 5.75% assumed long-term crediting rate. The resulting projected account balance at the claimant's 65th birthday was then discounted back to December 31, 2019 using the valuation discount rate (5.50% per annum).

To estimate the liability for future contributions, we applied the assumed retirement account contribution rate (6.5%) to eligible projected future TEL payments. The future TEL payments eligible for RB contribution depend on the modification under consideration and were obtained from the projected cash flows underlying our 2019 year-end valuation results. These expected future contributions were then discounted back to December 31, 2019 using the valuation discount rate (5.50% per annum). For reference, the 0.25% spread in the assumed crediting rate due to the zero percent floor on returns was not explicitly incorporated into the calculations, but instead was provided for by applying a small margin (2%) based on the results observed for the past contribution liability. This simplification was made for technical ease with our systems and does not have a material impact on the calculated results, especially considering the large amount of uncertainty involved with trying to estimate the value of the zero percent floor. The detailed methods and assumptions used to project future TEL and EEL payments can be found in the December 31, 2019 valuation report and are not repeated here.

Please note that for the purpose of this costing, any reference to TEL payments is meant to include both temporary earnings-loss benefits received by a claimant and any wage-loss benefits received while participating in a rehabilitation program (rehab allowance).

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Similar to the approach used to calculate the RB liability for the Dec. 31, 2019 valuation, we did not include earnings-loss recipients who had recovered or terminated or turned 65 before December 31, 2019. In practice, this means that we did not include RB contributions on past TEL payments if the claimant was not active at the measurement date. Further, this costing assumes that a claimant's accrued retirement account balance is paid out at their 65th birthday. If a claimant stops receiving earnings-loss benefits prior to attaining age 65, the calculations assume that WorkplaceNL will continue to credit their notational account interest until the worker's 65th birthday before paying it out to the claimant (or spouse, or estate). Both of these assumptions are consistent with our understanding of WorkplaceNL's general administration of the current benefit.

The overall liability impact of the RB modification is the sum of the liability for past and future contributions. The impact on new accident costs for each retirement benefit modification was estimated as the incremental impact on the liability for the most recent (2019) injury year, converted to a rate per \$100 of assessable payroll using 2019 assessable payroll of \$8.2 billion.

Modification A: Include TEL payments on EEL Claims

In order to estimate the additional RB contributions under Modification A, we first identified the list of EEL claims currently eligible for a retirement benefit based on files supplied for the Dec. 31, 2019 valuation. We then identified all historical TEL payments associated with these claims to calculate the additional liability for past contributions using the valuation approach outlined above.

No additional allowance is calculated for future contributions on in-force or past EEL claims because we have assumed they will not revert to TEL benefits in the future. While it is possible that current EEL claims could receive TEL payments in the future, we would expect this to be a relatively rare occurrence and any additional liability associated with this type of future TEL payment is expected to be small.

However, a liability is required for outstanding EEL claims in respect of TEL benefits received prior to being approved for EEL benefits. Because the actual claims that will eventually become an EEL in the future cannot be reliably identified in advance, we cannot identify their historical or projected future TEL payments. Instead we estimated the proportion of TEL benefits paid to EEL benefits paid for a typical EEL claim. For this purpose, we used new EEL claims set up in 2019 as a model. For this cohort of claims, we calculated the ratio of the TEL benefits paid, accumulated with interest, to the present value of total expected future EEL payments. We then applied this ratio to the current RB liability in respect of outstanding EEL claims as at Dec. 31, 2019 to estimate the RB liability associated with their TEL payments.

Modification B: Include all TEL payments After 24 Months

In order to estimate the additional RB contributions under Modification B, we first identified the list of active TEL, EEL and rehab claims based on files supplied for the Dec. 31, 2019 valuation. We also identified past EEL claims who have since terminated but are eligible for a retirement benefit in the future based on an eligibility listing provided by WorkplaceNL. For each of these claims, we identified any historical TEL payments made

Ms. Judy Morrow
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two or more years after their accident date. These payments were then used to calculate the additional liability for past contributions using the valuation approach outlined above.

We used the projected payments from our aggregate TEL valuation in order to estimate future TEL payments occurring two or more years after the claimant's accident date. Because future TEL payments are estimated in aggregate for a particular injury year, rather than on an individual claim basis, we cannot use the precise 24 month criteria as was done for the past contributions. However, future TEL payments are projected by duration (payment year minus injury year) for each injury year. We made some simplifying assumptions for purpose of this costing and included expected TEL payments in durations 3 and later, along with half of the expected payments in duration 2. The standard valuation approach outlined above was then applied to these payments to estimate the additional liability for future contributions.

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Table A.1 – Historical RB Crediting Rates

| Year | Net Return |
|------|------------|
| 1985 | 20.00% |
| 1986 | 15.20% |
| 1987 | 13.20% |
| 1988 | 12.00% |
| 1989 | 10.40% |
| 1990 | 7.50% |
| 1991 | 11.40% |
| 1992 | 10.80% |
| 1993 | 12.30% |
| 1994 | 11.20% |
| 1995 | 10.70% |
| 1996 | 13.60% |
| 1997 | 11.70% |
| 1998 | 14.00% |
| 1999 | 12.90% |
| 2000 | 10.00% |
| 2001 | 5.79% |
| 2002 | 3.39% |
| 2003 | 5.79% |
| 2004 | 5.19% |
| 2005 | 6.99% |
| 2006 | 12.19% |
| 2007 | 8.77% |
| 2008 | 1.57% |
| 2009 | 3.08% |
| 2010 | 1.70% |
| 2011 | 0.62% |
| 2012 | 8.49% |
| 2013 | 8.08% |
| 2014 | 8.71% |
| 2015 | 10.95% |
| 2016 | 10.28% |
| 2017 | 8.62% |
| 2018 | 5.57% |

Appendix E.3



7071 Bayers Road, Suite 3007
Halifax, Nova Scotia B3L 2C2

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April 9, 2021

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Judy Morrow, Q.C.
Chairperson
2019 Statutory Review - Workers' Compensation System
c/o Sharmane Allen, Department of Immigration, Skills and Labour
P.O. Box 8700, 4th Floor, West Block, Confederation Building
St. John's, NL A1B 4J6

RE: Reinstating the Pension Replacement Benefit for Pre-2019 Injuries

Dear Ms. Morrow:

As requested by the Statutory Review Committee ("SRC" or "Committee"), we have estimated the cost of reinstating the pension replacement benefit ("PRB") for all injuries incurred prior to January 1, 2019.

The data, methodology and assumptions used in our analysis are summarized in the Appendix to this letter. The results of our calculations are presented below. Our cost estimates are in respect of assessed employers only. Reinstating the pension replacement benefit would also have cost impacts for self-insured employers (including the Government of Newfoundland & Labrador) but that is not considered in this letter.

Background

Prior to January 1, 2019, any injured worker who was receiving earnings-loss benefits when they reached age 65 was eligible for a pension replacement benefit. In order to qualify for a PRB, the injured worker had to demonstrate that they were a member of a pension plan (certain criteria were in place to define the type of pension plans that were considered eligible) at the time of their injury and that they experienced a loss in pension benefits as a result of their injury. The PRB was meant to compensate for any such loss. PRBs were paid in respect of lost income from Employer Sponsored Pension Plans (ESPP) and the Canada Pension Plan (CPP). Injured workers could receive both types of PRBs depending on their situation.

The PRB was replaced with a new retirement benefit (RB) beginning January 1, 2019. Any injured worker who reached age 65 on or after January 1, 2019 was eligible for the retirement benefit rather than the PRB (claimants who reached age 65 prior to 2019 remain eligible for the PRB). The retirement benefit is a lump sum payment at age 65 equal to 5% of a claimant's total extended earnings-loss payments, accumulated with interest. The contribution rate increases to 10% for any injured workers who were members of an ESPP at the

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time of their injury. The rate of interest credited on retirement benefit accounts is the Injury Fund's 4-year average net rate of return, subject to a 0% floor (i.e. negative rates of return are not credited).

The SRC has asked us to estimate the cost of reinstating eligibility for a PRB for all claims incurred prior to January 1, 2019 and giving those claimants the greater of their pension replacement benefit and their retirement benefit. Any claimant from this cohort who does not qualify for a PRB would continue to get their RB. However, any claimant who does qualify for a PRB would receive the greater of their PRB and their RB.

Costing Approach

There are several factors that make estimating the financial impacts of the contemplated change more difficult than regular actuarial costings including:

- We don't know in advance which of the current and outstanding earnings-loss claimants will qualify for a PRB. Some EELs will terminate prior to reaching age 65 and some of those reaching age 65 will not meet the criteria to qualify for the benefit.
- Of those claimants who do ultimately qualify for a PRB, the value of their PRB depends on numerous factors, none of which are known in advance including: the terms of their ESPP (varies from claimant to claimant), the amount of their earnings-loss benefit, and the length of time-loss due to injury.
- Finally, the above features are complicated further by the need to compare the PRB to the claimant's expected RB payment to determine which is greater. For some claims, the contemplated change results in zero incremental cost (those who do not qualify for a PRB or whose PRB value is less than their RB payment) while for others there will be a cost (i.e. PRB value > RB). This requires us to consider the relative distribution of RB values and PRB values among claimants, and not just rely on overall averages.

We have used WorkplaceNL's historical PRB experience, coupled with estimated RB results, to examine the cost of the Committee's request had it been in place historically. Those results are then used to guide our projections of future costs using an implicit assumption that history provides a reasonable indication of future PRB experience for pre-2019 injuries. However, given the difficulties noted above, our estimated range for expected costs is necessarily wide.

Results

Our cost estimates are based on the results of WorkplaceNL's most recent valuation as at December 31, 2019. The estimates assume that the reinstated PRB will be effective January 1, 2020 and apply to all workers injured prior to 2019 once they reach age 65. It is important to note that the effective date of January 1, 2020 is for measurement purposes only in order to assess the relative magnitude of the benefit improvement. While an effective date in the future could result in a minor difference in overall costs, we believe the current estimate provides a reasonable indication of potential cost for decision makers to consider. The estimated financial impact of the contemplated change is shown in Table 1.

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Table 1 – Reinstatement of PRB for Pre-2019 Injuries

| | December 31, 2019 |
|-------------------------------|-----------------------------|
| Increase in Total Liabilities | \$46,800,000 - \$67,900,000 |

Table 1 shows that reinstating the PRB for pre-2019 injuries and offering claimants the greater of their PRB and their RB is expected to cost between \$47 and \$68 million. As noted above, there is a wide range for estimated costs because of the significant uncertainty associated with this costing. We used two separate methods to develop the range estimated above. Both methods use WorkplaceNL's historical PRB experience, coupled with estimated RB results, to examine the cost of the Committee's request had it been in place historically. The low end of the range is based on an expected number of injured workers who may be eligible for the reinstated PRB and a fixed average incremental cost per PRB award based on historical experience. The high end of the range is based on the cost of the contemplated benefit relative to the RB exhibited by the historical analysis. More detail on each methodology is given in the Appendix.

The midpoint of the range in Table 1 can be considered as a reasonable, high-level estimate of the potential cost of the contemplated benefit change. However, please note that actual results could still fall outside the estimated range given the level of uncertainty involved.

Please note that the contemplated change does not impact new accident costs because it relates entirely to pre-2019 injuries (i.e. is not expected to impact the cost of new accidents going forward as their benefits are unchanged from current terms).

As of December 31, 2019, WorkplaceNL had a funded ratio of 123.4%. For demonstration purposes, if this change had occurred as of December 31, 2019, the updated funded ratio would be between 117.2% and 119.1% based on the results in Table 1. It is worth noting that any increase in liabilities due to the contemplated change would be handled according to WorkplaceNL's funding policy.

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Other Comments

When interpreting the analysis in this letter and contemplating reinstating the PRB, it may be helpful to consider the following items:

- The contemplated changes would reintroduce some of the challenges associated with administering the PRB including:
 - Significant expenses incurred by WorkplaceNL to get calculations completed by an external vendor given that each ESPP PRB requires an individualized calculation.
 - Considerable time is often needed to gather required information from administrators of the employer pension plans in order to complete the calculations. In some past cases, claimants have waited up to 2 years to receive their PRB calculation.
 - Numerous decisions are required for each calculation given their individualized nature. Without a detailed policy to guide practice for each item that could arise, calculation decisions risk being inconsistent and/or arbitrary.

Staff at WorkplaceNL could provide the Committee with better information on the various challenges associated with administering the PRB.

- WorkplaceNL staff would have to fully administer both the PRB and the retirement benefit for pre-2019 injuries because a claimant's optimal entitlement can only be determined at age 65 by calculating and comparing both benefits.
- The contemplated dual benefit structure for pre-2019 injuries would have to be maintained beyond 2050 given the age profile of existing EEL claimants.
- This costing assumes an eligible claimant will receive the greater of their PRB value and RB payout, both determined using WorkplaceNL's valuation assumptions. However, the retirement benefit is a one-time lump sum payment at age 65, while the PRB is a regular benefit payable monthly for life beginning at age 65. If the Committee's contemplated benefit change were adopted, decisions would be needed on how to determine the best benefit for a claimant who qualifies for both a RB and a PRB.
 - Would the claimant be given the choice on which benefit they prefer? What information would need to be provided so that they could make an "informed" choice? For example, it may well be the case that the claimant would prefer \$50,000 today rather than \$500 a month for the rest of his/her life, even if the latter benefit has a greater actuarial value. By giving the choice to injured workers, WorkplaceNL would take on additional risk (referred to as anti-selection risk in the insurance industry) where an injured worker with known medical conditions may select a lump sum value at age 65 if he or she expects to have a shortened life expectancy.
 - If a claimant chooses the monthly PRB and then dies shortly after age 65, is that an issue?
 - Conversely, if a claimant chooses the RB lump sum and then runs out of money early in retirement, is that an issue?

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- The liability estimates were calculated in the absence of any other benefit or policy changes. If more than one change in benefits is introduced, there may be compounding of cost impacts such that the total cost of two or more benefit changes may be different than the sum of their individual costs. For example, an increase in the income replacement rate would have a direct impact on the value of the existing retirement benefit and, consequently, on the cost of reinstating PRBs under the Committee's proposed terms. Ideally, the potential for compounding of cost impacts would be considered prior to implementing multiple significant benefit changes.
- WorkplaceNL paid out \$3.8 million in retirement benefits in 2019 on claims from assessed employers. If the contemplated modifications are applied retroactively to claimants who have already been paid a RB, it would involve a cost in addition to that quoted in Table 1. A high-level estimate of this potential additional cost is \$3 million.
- We have not included any provision for secondary impacts on claim frequency or claim duration associated with the contemplated benefit change. While there could conceivably be some secondary impacts, we would expect them to be relatively limited given the long average time period between injury and potential receipt of a PRB.

Actuarial Opinion

With respect to the analysis provided, in our opinion:

- The data on which the calculations are based are sufficient and reliable for the purpose of the calculations;
- The assumptions used in the calculations are appropriate for the purpose of the calculations; and
- The methods employed in the calculations are appropriate for the purpose of the calculations.

This letter has been prepared, and our opinions given, in accordance with accepted actuarial practice for workers' compensation organizations in Canada.

The Committee should be aware that emerging experience differing from the assumptions used may result in actual cost impacts that are materially different from the results presented in this letter. These would be revealed in gains or losses associated with future actuarial valuations.

We trust the information in this letter will be of assistance as you consider potential reintroduction of the pension replacement benefit. If you require any clarification or further assistance, please feel free to contact us.

Regards,



Mark Simpson, FCIA

This letter has been peer reviewed by Thane MacKay, FCIA

Appendix

Data

The data used for our calculations is a subset of the data provided for WorkplaceNL's year-end valuation as at December 31, 2019. In particular:

- Global Payment File – showing all historical payments by claim, benefit category and payment date.
- AV60MP – providing demographic details on all EEL claims, both current inforce claims and past terminated ones.
- PRBACCEPT4 – providing benefit and demographic details on all PRB claims, both current inforce claims and past terminated ones.

The files used incorporate all revisions that were made to correct issues identified as part of our year-end data validation procedures. A summary of the data and the data validation procedures used is presented in our December 31, 2019 actuarial valuation report and is not repeated here.

In addition to these valuation data files, we have also used the results of the valuation for retirement benefits and outstanding EEL awards in our calculations.

Methodology & Assumptions

The general approach we have used for this costing is to calculate retirement benefit lump sum payments for all historical EEL claims who would have reached age 65 during the period when PRBs were offered to such workers (1993-2018). The claimant's projected retirement benefit could then be compared to their actual PRB outcome based on historical experience. Given both the actual PRB value and projected RB value for the cohort of EEL claims reaching age 65 during this period, we can estimate the incremental cost of the Committee's contemplated changes relative to the pure retirement benefit cost. These results are then used to guide our projection of future costs for the contemplated benefit change.

To begin, we reviewed the historical PRB file and calculated the value of each claimant's (both active and terminated) award at age 65 using the 2019 valuation assumptions. For a complete description of these assumptions, please refer to our Dec. 31, 2019 valuation report. All values were converted to 2019 dollars using historical CPI rates.

Next, we identified all historical EEL claims who would have reached age 65 during the period when the PRB was offered (1993 to 2018). A retirement benefit lump sum was calculated for each claimant by applying the applicable RB contribution rate to their historical EEL payments and accruing it to age 65 using the actual historical crediting rates in use by WorkplaceNL. For each claimant we can determine the appropriate RB contribution rate to apply (5% vs 10%) based on whether they have an ESPP PRB on the historical PRB file. Again, all RB values were converted to 2019 dollars using historical CPI rates.

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The main results of these calculations are summarized in Table A.1 below.

Table A.1 – Historical Results: PRB and RB

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-------------|---------------|------------------|------------|------------|--------------------------|-----------------------------|----------------|---------------------------|
| Retire Year | EELs with PRB | EELs without PRB | Total EELs | PRB Value | RB Value – EELs with PRB | RB Value – EELs without PRB | Total RB Value | Cost of Greater Of Option |
| 1993-98 | 47 | 149 | 196 | 1,047,337 | 446,120 | 604,914 | 1,051,033 | 650,077 |
| 1999 | 23 | 27 | 50 | 322,464 | 188,627 | 110,441 | 299,068 | 145,053 |
| 2000 | 25 | 37 | 62 | 643,026 | 299,802 | 141,199 | 441,001 | 411,119 |
| 2001 | 31 | 42 | 73 | 680,074 | 373,526 | 216,191 | 589,717 | 378,278 |
| 2002 | 29 | 26 | 55 | 554,309 | 366,320 | 176,750 | 543,070 | 214,877 |
| 2003 | 36 | 51 | 87 | 748,541 | 409,894 | 339,344 | 749,239 | 399,280 |
| 2004 | 37 | 50 | 87 | 926,368 | 550,121 | 256,948 | 807,069 | 501,041 |
| 2005 | 36 | 53 | 89 | 1,232,299 | 523,863 | 287,867 | 811,730 | 811,014 |
| 2006 | 36 | 57 | 93 | 1,353,331 | 519,406 | 491,315 | 1,010,721 | 916,481 |
| 2007 | 41 | 71 | 112 | 1,000,086 | 825,357 | 532,311 | 1,357,668 | 474,325 |
| 2008 | 57 | 68 | 125 | 1,525,032 | 902,919 | 467,864 | 1,370,784 | 796,467 |
| 2009 | 62 | 73 | 135 | 2,897,594 | 1,101,912 | 648,246 | 1,750,158 | 1,998,921 |
| 2010 | 95 | 101 | 196 | 2,302,585 | 1,212,574 | 771,497 | 1,984,071 | 1,255,669 |
| 2011 | 83 | 79 | 162 | 2,882,364 | 1,469,167 | 597,258 | 2,066,425 | 1,619,103 |
| 2012 | 100 | 101 | 201 | 3,209,377 | 1,633,563 | 831,421 | 2,464,985 | 1,765,954 |
| 2013 | 110 | 108 | 218 | 4,223,885 | 1,986,240 | 875,971 | 2,862,211 | 2,545,884 |
| 2014 | 119 | 110 | 229 | 5,207,934 | 2,154,048 | 1,036,429 | 3,190,477 | 3,257,893 |
| 2015 | 129 | 116 | 245 | 4,533,498 | 2,439,702 | 1,057,777 | 3,497,479 | 2,427,035 |
| 2016 | 127 | 110 | 237 | 6,130,400 | 2,574,548 | 977,636 | 3,552,184 | 3,828,689 |
| 2017 | 138 | 111 | 249 | 5,669,216 | 3,282,317 | 1,036,888 | 4,319,204 | 2,957,615 |
| 2018 | 138 | 128 | 266 | 5,198,987 | 3,290,893 | 1,335,526 | 4,626,419 | 2,824,354 |
| Total | 1,499 | 1,668 | 3,167 | 52,288,706 | 26,550,919 | 12,793,793 | 39,344,712 | 30,179,128 |
| 2009-18 | 1,101 | 1,037 | 2,138 | 42,255,840 | 21,144,964 | 9,168,649 | 30,313,613 | 24,481,116 |
| 2014-18 | 651 | 575 | 1,226 | 26,740,036 | 13,741,508 | 5,444,256 | 19,185,764 | 15,295,586 |

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Table A.1 shows the result of our analysis by individual retirement years and for select recent periods. Column 9 (Cost of Greater Of Option) is the additional cost of providing claimants the greater of their PRB and their RB, relative to regular RB. Along with the total results over the experience period, Table A.1 also shows results for the most recent five and ten-year periods.

The results in Table A.1 can be used to compare the costs of the contemplated benefit change (column 9) to the base cost of the retirement benefit only (column 8). Dividing column 9 by column 8 and yields ratios in the range of 75% to 80% for entire experience and for recent years. Based on these results, we applied a 75% factor to RB liability as at Dec. 31, 2019 to estimate the future cost of the contemplated change. In doing so, we only considered the RB liability in respect of pre-2019 injuries (\$73.0 million) as the proposed change only applies to those accidents. Finally, we added WorkplaceNL's liability provisions for future claims management and occupational disease expenses in accordance with their valuation assumptions. This process results in an estimated cost of \$68 million for the proposed change.

As a second calculation, we estimated the number of EEL claims (both inforce and outstanding resulting from pre-2019 injuries) that could qualify for a PRB in the future if that benefit was reinstated. Next, we estimated the average incremental cost of providing the greater of their PRB value and their RB value to these claimants. The estimated cost of the contemplated change can then be estimated by multiplying the expected number of PRB claims by the average incremental cost per PRB claim, adjusting for inflation and discounting to their expected retirement date, and applying applicable liability loadings. The results of this calculation is outlined in Table A.2 below.

Table A.2– Estimated Cost: Method #2

| (1) | (2) | (3) = (2) x 65% | (4) | (5) | (6) | (7)* = (3) x (4) x (6) x 1.24 |
|------------------|--------------|-----------------|----------------------|-------------------------|---------------------------|-------------------------------|
| Category | Count | Expected PRBs | Average Cost per PRB | Average Years to Age 65 | Discount/Inflation Factor | Cost* |
| In-force EELs | 2,713 | 1,763 | \$24,000 | 9 | 0.7337 | 38,500,000 |
| Outstanding EELs | 648 | 421 | \$24,000 | 12 | 0.6618 | 8,300,000 |
| Total | 3,361 | 2,184 | | | | 46,800,000 |

* Includes loadings for future claims management (10.50%) and occupational disease expenses (12.25%)

The results in Table A.2 are based on the following data and assumptions:

- The number of EEL claims is based on inforce claim counts as at Dec. 31, 2019 along with expected outstanding claims from 2018 and prior accident years based on our valuation projections.
- The percent qualifying figure is based on the most recent experience data that suggests about 65% of EELs reaching age 65 receive a PRB. While a small percentage of EELs are likely to terminate prior to reaching age 65, we have ignored this impact for the purpose of this high-level estimate.
- The average cost of the contemplated change is based on the results in Table A.1. In particular, dividing column 9 by column 2 gives an estimate of the average cost per PRB claim. The overall historical experience suggests a cost of \$20,000 per PRB claim, while the recent 10-year and 5-year periods suggest

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costs of \$22,000 and \$24,000, respectively. Given this upward trend, we have assumed an average cost of \$24,000 per PRB claim based on the most recent experience.

- The inflation/discounting factor is based on WorkplaceNL's valuation economic assumptions and the average time to age 65 for the cohort of eligible claims. The assumed time to age 65 is based on the average age for inforce EEL claimants at the valuation date (56 years old) and assumes outstanding EEL claims will be capitalized in three years on average and have an age profile consistent with current in-force claims.

Appendix E.4



7071 Bayers Road, Suite 3007
Halifax, Nova Scotia B3L 2C2

NFWCCWC

April 9, 2021

CONFIDENTIAL

Judy Morrow, Q.C.
Chairperson
2019 Statutory Review Committee – Workers' Compensation System
c/o Sharmane Allen, Department of Immigration, Skills and Labour
P.O. Box 8700, 4th Floor, West Block, Confederation Building
St. John's, NL A1B 4J6

RE: Additional Coverages under Presumptive Clause for Firefighters

Dear Ms. Morrow:

The Statutory Review Committee (the "Committee") have asked us to estimate the financial impact of including additional conditions eligible for the presumptive coverage for firefighters under the *Workplace Health, Safety and Compensation Act* (the "Act"). Specifically, the Committee has asked us to estimate the financial impact of expanding the coverage to include:

- Prostate cancer;
- Melanoma;
- Cervical Cancer;
- Ovarian Cancer; and
- Cardiac Events while responding to, engaged at, or within 24 hours of an emergency incident.

For the cancers listed above, the firefighter would have to have a work history that satisfies a certain specified minimum service period in order for the presumption to apply.

Current Coverage

The current presumptive coverage for firefighters is detailed in Section VII.1 of the Act. The minimum service period in order to be eligible for the presumption is documented in the *Workplace Health, Safety and Compensation Regulations* (the "Regulations"). The current presumption applies to both career and volunteer firefighters, as defined in the Act. The current coverage is summarized below.

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Table 1 - Diseases Covered by Current Firefighter Presumption Clause

| Disease | Minimum Years of Service |
|---------------------------------|--------------------------|
| Primary Site Brain Cancer | 10 |
| Primary Site Breast Cancer | 10 |
| Primary Site Bladder Cancer | 15 |
| Primary Site Ureter Cancer | 15 |
| Non-Hodgkin's Lymphoma | 20 |
| Primary Site Kidney Cancer | 20 |
| Primary Leukemia | 5 |
| Primary site Testicular Cancer | 20 |
| Primary Site Colorectal Cancer* | 20 |
| Primary Site Oesophageal Cancer | 25 |
| Primary Site Lung Cancer** | 15 |

* The presumption for colorectal cancer does not apply to a firefighter who is diagnosed after the age of 61.

** The presumption for lung cancer only applies to a firefighter who has not smoked within 10 years of diagnosis.

Under the current presumption, the benefits are the same as provided under the Act with the exception that any costs regularly provided under the Medical Care and Hospital Insurance Act ("Medicare") are absorbed as regular Medicare expenses by the Province of Newfoundland and Labrador. Therefore, the expected health care costs payable by WorkplaceNL is much lower than had the covered illnesses been treated the same as any other workplace injury or disease.

General Comment on Approach

WorkplaceNL currently holds a provision equal to 3.25% of its regular benefits liability in respect of future presumptive firefighter cancer claims arising from workplace exposure incurred up to the measurement date. This provision is based on a previous study as at Dec. 31, 2015. Given the significant inherent uncertainty and limits on accuracy, these types of costings are generally updated every 3 to 5 years depending on how closely actual claims are following projected. In between updated costings of the presumptive clause, a liability is estimated by applying the fixed percentage load from the last study (3.25%) to the regular benefits liability.

As at December 31, 2019, the current 3.25% provision amounted to \$32.7 million.

In order to get a current estimate of the cost of including the additional conditions requested by the Committee under the presumptive clause, we would need to completely redo the costing with updated data and assumptions. In particular, we would need detailed data on the number of firefighters eligible for coverage in Newfoundland and Labrador including their age, service histories, employment status (active vs.

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retirement) and employee type (volunteer vs. career). Obtaining and validating such data is time consuming and not possible given the Committee's timelines.

Instead, for the current analysis, we have added the requested conditions into the model used for the previous study as at Dec. 31, 2015, re-ran the calculations, and noted the incremental financial impact. The resulting increase in the cost of the presumption can be expressed as a percentage of the benefits liability on the measurement date (Dec. 31, 2015), and then applied to the liability as at Dec. 31, 2019 to give a current estimate of the cost. Given the considerable uncertainty involved in these types of costings, we are satisfied that this approach will provide a reasonable estimated impact for the Committee's purposes. Please note that this approach implicitly assumes that same general terms will be applied to the additional conditions as to the existing conditions, chiefly that both career and volunteer firefighters are covered and any health care costs covered by Medicare will continue to be so.

Finally, we expect that WorkplaceNL may complete an updated costing of the presumptive firefighter coverage in the near future given that it has been 5 years since the original estimates and they have collected some actual experience under the new benefit structure. At that time, updated estimates for the cost of the including the additional conditions could be easily obtained.

General Comment on Model

Costings of this nature do not lend themselves to precise quantitative estimates. The best that can be achieved is general results, based on a broad range of assumptions regarding incidence and cost, to serve as a guide for decision makers to consider. The actual experience could vary materially from the projected results. As an example, for some cancer types the potential number of claims is so small that even a small variation relative to expected would have a high percentage impact.

Similarly, it is impossible to predict the exact cost for each claim or even the average cost per claim. Some claims may lead to a long-term absence from work while others may have a relatively short-term absence. Some claims may lead to a survivor benefit while others may only have a minor loss of earnings benefit but still incur significant health care costs associated with the treatment of the disease.

That being said, we have validated the reasonableness of the model by testing it using the entire population of Newfoundland and Labrador. The cancer counts produced for the entire population are in line with actual reported cancer counts each year in the province. Applying this approach to the sub-group of the population represented by the firefighters (and only the cancers covered under legislation) produces an expected cancer experience that is in line with the general population.

Assumptions

There are many assumptions and factors required to estimate the cost of the presumptive coverage including:

- Economic assumptions (such as future inflation rates and investment returns)
- Demographic assumptions (such as mortality rates)

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- Covered population by age group
- Average cost per claim (income replacement and health care costs)
- Normal incidence rates for specific cancers in Canada

There is no irrefutable data source for any of the elements listed above. The chosen assumptions are derived from the available information and involve the use of considerable judgment. As noted above, the assumptions are based on the original costing as at Dec. 31, 2015. However, additional assumptions were required for the new conditions as they were not included in the original study. A summary of the assumptions used in the calculations is provided in the Appendix.

Methodology

The liability for future claims is based on a projection of the expected number and cost of cancer claims in each future year for the current population of firefighters. The results of this projection are discounted to the valuation date (December 31, 2015) and then pro-rated for active firefighters based on estimated service rendered up to the valuation date over total expected service to the date of retirement. Many assumptions are required to carry out this projection given the limited data available.

A detailed description of the methodology used in our calculations is provided in the Appendix.

Results

The estimated financial impact of expanding the presumptive firefighter coverage to include the conditions noted above is shown in Table 2 below.

Table 2 – Estimated Financial Impacts of Contemplated Changes to Firefighter Presumptive Clause

| Item | Result |
|---|--|
| Additional Provision as % of Regular Benefits Liability | 1.1% |
| Liability as at Dec. 31, 2019 | +\$11 million |
| Cost of New Accidents | +\$0.005 per \$100 of assessable payroll |

The additional liability (\$11 million) is meant to cover the portion of costs of future claims in respect of exposures accrued up to the measurement date, for any of the five conditions under consideration.

The impact on new accident costs would need to be collected annually from assessed employers. It represents the estimated cost of an additional year of firefighter exposure to causative agents that may result in a claim under the presumptive coverage. The impact on new accident costs is relatively small (half a cent on the average rate) because the cost of the coverage is spread over all assessed employers and because most claimants incur numerous years of exposure prior to developing the disease.

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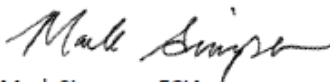
Finally, when interpreting the results in Table 2, please note:

- Prostate cancer accounts for about two-thirds (2/3) of the projected financial impact of covering the new conditions.
- The results are sensitive to the incidence assumptions used, in particular for prostate cancer. For this analysis, we have obtained incidence rates for the new cancers from Statistics Canada. However, use of alternative incidence rates published by the World Health Organization would have produced an estimated liability that is 50% higher than in Table 2.
- The original costing model projected an average of 14 claims per year under the current presumptive coverage for the 2017 to 2020 period. Over these same four years, 24 firefighter cancer claims have been accepted based on figures provided by WorkplaceNL staff. While the historical data is limited, thus far it appears that actual experience for claim counts is about half of what was originally projected. It is not immediately clear why actual claim counts are coming in less than expected, but it is consistent with the trends we have observed in the initial years of similar coverages in other jurisdictions.
- WorkplaceNL may complete an updated costing of its firefighter presumptive clause in the near future. The update would incorporate emerging experience along with new data on the covered population and new assumptions. At that time, the cost of the additional conditions being considered for coverage by the Committee could be easily estimated with relatively little additional effort.

The intent of this letter is to provide the Committee a high-level estimate of the potential financial impacts should the specified conditions be added to the firefighter presumptive coverage. We caution you that actual experience could vary materially from the results presented in this letter. Further, the results could be materially affected depending on the ultimate terms established should the new conditions be added to the presumptive coverage.

We trust this meets your requirements. However, please do not hesitate to contact us if you wish to discuss this further.

Very truly yours,



Mark Simpson, FCIA

This letter has been peer reviewed by Thane MacKay, FCIA.

Appendix – Description of Current Model

Valuation Date

The valuation date for the study is December 31, 2015.

Covered Population by Age Group

WorkplaceNL has provided us with the total number of career and volunteer firefighters currently covered in Newfoundland and Labrador. We have used a total of 374 career and 5,900 volunteer firefighters at December 31, 2015. Note that these figures include an estimate of 25 active members for the number of industrial firefighters in the province at various locations, such as those who are employed on the premises of an oil rig or mine.

We distributed these active firefighters by age using data available in our office for large public sector pension plans. In doing so, we adjusted the population giving more weight to younger ages to produce a lower average age as we would expect that firefighters would retire earlier relative to other employed individuals.

We used data from Statistics Canada on the age distribution of the Newfoundland and Labrador male population to estimate the potential number of retired firefighters by assuming that the ratio of former firefighters aged 60 and over to firefighters under age 60 was the same as the ratio for the general population. We then distributed the retired firefighter population by age using the assumption derived from population statistics.

The calculation was carried out separately for career and volunteer firefighters and the results are presented in Table A.1 below.

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Table A.1 – Distribution of Firefighters by Age Group

| Age Group | Career | Volunteer |
|---|------------|--------------|
| Actively at work or serving as a volunteer firefighter | | |
| Under 30 | 18 | 295 |
| 30 – 39 | 95 | 1,475 |
| 40 – 49 | 149 | 2,360 |
| 50 – 59 | <u>112</u> | <u>1,770</u> |
| Sub-total | 374 | 5,900 |
| Retired | | |
| Under age 70 | 55 | 885 |
| 70 to 79 | 37 | 590 |
| 80 and over | <u>15</u> | <u>236</u> |
| Sub-total | 107 | 1,711 |
| Total | 481 | 7,611 |

Please note that we have assumed that any firefighter who terminated employment prior to retirement also terminated prior to the minimum years of service required to qualify for the presumptive clause. Therefore, this group would not represent an added risk to WorkplaceNL relative to the current risk under the causal link standard for occupational diseases.

Economic Assumptions

Economic assumptions used in our calculations are summarized below. They are consistent with the December 31, 2015 actuarial valuation.

Table A.2 – Economic Assumptions

| Item | Assumption |
|----------------------|------------|
| Discount rate | 5.83% |
| General inflation | 2.25% |
| Healthcare inflation | 3.25% |

Demographic Assumptions

Mortality rates used in our calculations are based on the Newfoundland and Labrador Life Table 2009-2011 (male only) with a two-year age setback. The two-year age setback is meant to approximate the impact of future mortality improvements on a full, generational basis.

We have assumed that firefighters would start their career on average at age 22 and retire at age 60. The entry age assumption is necessary to allow for the calculation of the age at which the presumptive clause would come into effect for the identified occupational diseases. As noted above, we have assumed that there would be no added risk or cost to WorkplaceNL for occupational diseases occurring before the expiry of the minimum period for qualification under the presumptive clause.

Average Cost per Claim

There are several factors that will influence the average cost per claim. These include the earnings level of the firefighter, the duration of the claim, the amount of offsets to the wage loss benefit, the marital status for survivor benefits, the size of the PFI award (if any) and health care costs. None of these factors can be determined with absolute accuracy and there is very little history available from WorkplaceNL's experience to use in developing an assumption. Therefore, we have made some general assumptions regarding the potential cost per case. As a result, the range of potential outcomes is far broader than would be expected for a valuation based on a long and voluminous cost experience history.

Income Replacement

With respect to the wage loss and survivor benefit component, we have assumed that career firefighters would be eligible for a monthly wage loss and survivor benefit based on an annual salary level of \$62,540 (i.e. capped at the MCAE for 2016). For volunteer firefighters, we have assumed that earnings levels are approximately 67% of career firefighters on average. We have also assumed that all claimants would qualify for a CPP disability benefit and that there would be an average offset to the wage loss or survivor benefits of 20% of the net benefit. We have assumed there would be no other offsets. Using 2016 tax tables and CPP and EI contributions, the estimated monthly wage loss or survivor benefit is \$2,430 per month for full time firefighters and \$1,725 per month for volunteer firefighters. In addition to the monthly survivor benefit, we included a lump sum of \$20,000 per fatality.

Since the PFI award is based on the level of impairment and not income, we have used an award of \$8,150 for all claims, both career and volunteer firefighters. This assumption is based on the average PFI used in the December 31, 2015 WorkplaceNL valuation. For claims that result in a fatality as a result of their cancer, we have assumed an additional PFI of \$54,390 (i.e. the remainder of the maximum available benefit) based on historical practice of WorkplaceNL to pay a full PFI in severe occupational disease cases.

We assumed that LTD/Survivor claims would last to age 65.

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A provision for pension replacement benefits for employer sponsored pension plans has not been included in this analysis. There is limited data available regarding prevalence of pension benefits for the firefighter population, especially given that a very small portion of the active group represents career employees. As a result, any provision would be arbitrary at best.

Health Care

Presumptive firefighter claims would be eligible for all benefits defined under the Act. However, any costs regularly provided under the Medical Care and Hospital Insurance Act ("Medicare") are absorbed as regular Medicare expenses by the Province of Newfoundland and Labrador.

Prior to accounting for the portion paid for by Medicare, we used an assumption of \$61,000 per claim. This assumption was developed through previous work in other jurisdictions with an adjustment for medical inflation from the date of that study. We are aware of a large jurisdiction in Canada that did an internal study of the cost of presumptive coverage and the health care cost assumption used in that study was very similar to the amount used in our analysis. We assumed that non-Medicare services represent approximately 30% of total health care costs, or \$18,500.

It should be noted that we have used a similar lifetime treatment cost for all cancer types in the costing. While this assumption may be overly simplified, we felt that using varying costs by cancer type would not add much benefit given the low level of expected incidence for certain cancer types and the relative amount of health care costs when compared to the cost of income benefits under age 65.

Disease Incidence – Current Coverage

The cancer incidence rates used in the costing have been obtained from the Cancer Mondial Statistical Information System from The International Agency for Research on Cancer (IARC) (<http://www-dep.iarc.fr/>), an agency of the World Health Organization (<http://www.who.int/en/>). We have used the 1997 Canadian male general population rates in the calculations.

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Table A.3 – Assumed General Population Incidence (per 100,000 persons)

| Age at Onset | Brain Cancer | Bladder Cancer | Ureter* Cancer | Non-Hodgkin's Lymphoma | Kidney Cancer | Leukemia |
|--------------|-------------------|----------------|-----------------|------------------------|--------------------|----------|
| 25 | 3.5 | 1.1 | 0.7 | 4.9 | 0.7 | 3.1 |
| 35 | 5.1 | 1.7 | 2.9 | 9.2 | 2.9 | 4.1 |
| 45 | 9.3 | 10.4 | 11.8 | 17.4 | 11.8 | 8.1 |
| 55 | 14.1 | 46.7 | 29.4 | 38.0 | 29.4 | 19.7 |
| 65 | 23.4 | 120.2 | 65.8 | 58.8 | 65.8 | 48.7 |
| 75 | 28.3 | 220.1 | 88.5 | 96.3 | 88.5 | 81.8 |
| 85 | 19.7 | 317.3 | 106.1 | 102.3 | 106.1 | 119.2 |
| Age at Onset | Colorectal Cancer | Lung Cancer | Breast Cancer** | Testicular Cancer | Oesophageal Cancer | |
| 25 | 0.7 | 0.8 | 3.4 | 9.8 | 0.1 | |
| 35 | 3.4 | 3.9 | 36.7 | 10.5 | 0.2 | |
| 45 | 13.9 | 27.0 | 128.4 | 4.1 | 3.3 | |
| 55 | 63.7 | 139.2 | 256.7 | 1.9 | 12.6 | |
| 65 | 148.6 | 388.1 | 346.6 | 1.5 | 28.8 | |
| 75 | 277.7 | 577.9 | 350 | 2 | 38 | |
| 85 | 350.2 | 499.4 | 351.4 | 1.9 | 39.4 | |

* no data available for ureter cancer, used the same as kidney cancer.

** female breast cancer incidence rates shown

Note the breast cancer incidence rates included in Table A.3 are for females. For purposes of our estimate, we applied a multiplier of 10% to these rates to account for the small proportion of the firefighter population that is female. Our work with other jurisdictions has shown that this assumption is reasonable, though the actual proportion is often smaller. The extent to which the actual proportion is below this assumption introduces a small measure of conservatism in our estimates. This is balanced by applying a complementary 90% multiplier to the testicular cancer rates.

Disease Incidence – Contemplated Additional Conditions

Incidence rates for the contemplated additional cancers (Prostate, Melanoma, Cervical Cancer and Ovarian Cancer) were obtained from Statistics Canada. They are based Canadian general population experience from 2013 to 2017 inclusive.

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The incidence of cardiac injuries by age in Canada proved difficult to find. Instead, we have used heart attack incidence rates taken from a 1975-1994 study in Swedenⁱ. Overall, we have tested these incidence rates with heart attack statistics provided by the Public Health Agency of Canada and are satisfied with its reasonableness. Incidence rates for retirees are not required as the contemplated terms only covers cardiac injuries during or within 24 hours of an emergency response.

The incidence assumptions for the contemplated additional conditions are shown in Table A.4 below.

Table A.4 – Assumed General Population Incidence (per 100,000 persons)

| Age at Onset | Prostate | Melanoma | Cervical Cancer | Ovarian Cancer | Cardiac Injury |
|--------------|----------|----------|-----------------|----------------|----------------|
| 25 | 0.0 | 2.0 | 3.9 | 2.5 | 0 |
| 35 | 0.2 | 6.7 | 13.2 | 4.5 | 62 |
| 45 | 13.5 | 14.0 | 14.3 | 12.2 | 272 |
| 55 | 132.3 | 28.7 | 11.2 | 22.0 | 687 |
| 65 | 429.7 | 57.3 | 9.2 | 33.3 | n/a |
| 75 | 582.6 | 97.5 | 8.2 | 45.2 | n/a |
| 85 | 506.0 | 133.3 | 8.3 | 48.8 | n/a |

Similar to breast cancer, we applied a 10% multiplier to the rates for Cervical and Ovarian cancer to account for the small proportion of the firefighter population that is female. At the same time, we applied a complementary 90% multiplier to the rates for prostate cancer. It should also be noted that incidence of heart injury in Table A.4 does not take into account the provision that the injury occur within 24 hours of attending an emergency. We have used a multiplier of 3.5% to estimate the portion of overall cardiac injuries that occur within 24 hours of responding to an emergency. This assumption is based on previous work completed for another client.

Proportion of Potential Claims Filed

The level of actual claims being filed under similar presumptive coverage in other jurisdictions has been lower than expected using the incidence rates detailed above, despite communications on the availability of benefits. It is also lower than would be expected when reviewing actual cancer incidence statistics available from Statistics Canada and the Canadian Cancer Society for males. The lower than expected cancer claims may

ⁱ Coronary heart disease attack rate, incidence and mortality 1975 -1994 in Göteborg, Sweden
(<http://eurheartj.oxfordjournals.org/cgi/reprint/18/4/572>)

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be due in part to a lack of awareness of available benefits by active and retired firefighters, or because minimal benefit may be perceived from filing a claim (Medicare covers most of the costs for example).

The claim filing rate assumption has been reduced to 80% and 25% for active and retired firefighters, respectively, to recognize the lower claiming rates that have been experienced to date under similar coverage in other jurisdictions. Previously, claim filing rate assumptions were 100% and 50% for active and retired firefighters, respectively. These reduced claim filing rate assumptions have been reflected in our estimate of the cost of presumptive coverage for WorkplaceNL.

Coverage provided by WorkplaceNL stipulates that firefighters who are smokers at the date of diagnosis of lung cancer, or who has smoked a tobacco product in the 10 years immediately before the date of diagnosis, would not be eligible for benefits. Health Canada claims that about 85% of lung cancers are related to smoking. They also state that the lung cancer risk for former smokers who have not smoked in ten years is about the same as that of non-smokers. On the other hand, most of the lung cancers are expected to occur at advanced ages and it is conceivable that some former smokers will not be smoking at the date of diagnosis. There is also the issue of being able to prove that a certain claimant was a smoker at the date of diagnosis.

Taking all of these factors into account, we have assumed that only 40% of the estimated number of future lung cancer claims for the current active group will turn out to be eligible claims under the new legislation. This allows for the 15% that are not related to smoking plus about 25% of the balance of cancers based on the assumption that while smoking may be the cause for the cancer, the claimant would be able to prove he/she was a non-smoker at the date of diagnosis. Combined with the general claim filing rate assumption, the resulting assumption is that 32% and 10% of lung cancer cases will result in a filed claim for active and retired firefighters, respectively.

Methodology

The model was developed to carry out a calculation for each firefighter. In practice, we do not expect that such a database will be available to WorkplaceNL in the foreseeable future. For the current valuation, the calculation was made for each ten-year age cohort developed from the total count of active firefighters. In effect, a calculation was made at ages 25, 35, 45 and 55 and the results multiplied by the assumed number of active firefighters in each cohort. For the retired population, a calculation was made at ages 65, 75 and 85 and the results multiplied by the assumed number of retired firefighters in each cohort.

The model allows for the minimum number of years of service required for the prescribed diseases to fall under the presumptive clause. This minimum exposure period varies by cancer type and allowing for this would have significantly increased the complexity of the model. Since the cancer incidence rates are very low at early ages, we have used the maximum period of 20 years for all cancer types as a simplifying feature in the development of the model. Since we are assuming an entry age of 22, any cancers prior to age 42 would not be considered in our calculation. Given the very broad based nature of this initial assessment, we feel this is acceptable at this stage.

For each age, the model produces the following calculations:

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- Probability of survival to a given future age and getting cancer in that year;
- The probability of cancer is split between those expected to pass away from cancer and those expected to survive and possibly return to work after treatment. For purposes of this calculation, we have used an expected mortality rate of 34% which represents a weighted average mortality rate of all cancers assumed to be covered under the presumptive clause.
- For those who will survive, we have allowed for a probability of recovery and return to work after two years following the incidence of the claim. The probability varies by disease type and is as follows:
 - Brain cancer, oesophageal cancer, lung cancer: 0%.
 - Non-Hodgkins lymphoma, kidney cancer, leukemia, ovarian cancer and colon cancer: 25%.
 - Bladder, breast, ureter, testicular, cervical and prostate cancers, and melanoma: 50%.
- The incurred costs for any given year in the projection is the appropriate probability of being diagnosed with a prescribed disease in that year multiplied by:
 - For claimants who will survive and recover, the cost of a PFI award and health care costs based on the average cost for all cases;
 - For claimants who will survive but not recover from disability, the cost for a two year TEL benefit, the present value of future payments on an EEL benefit to age 65, a PFI award and health care costs based on the average cost for all cases;
 - For claimants who will pass away, the present value of future survivor benefits based on an 80% of net earnings award, plus a \$20,000 lump sum, plus a PFI award and health care costs based on the average cost for all cases.
 - For the calculations above, the wage loss and survivor benefits component allow for inflation at 2.25% per annum both before and after the occurrence of the disease. Health care costs are inflated at 3.25% each year from the valuation date to the date of occurrence of the disease.
- All of these annual incurred costs are discounted to the valuation date using the gross annual discount rate of 5.83%. For active firefighters, the present value estimates are then pro-rated by the ratio of service to date over the projected years of service accrued to the expected date of retirement.

Appendix E.5



7071 Bayers Road, Suite 3007
Halifax, Nova Scotia B3L 2C2

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Judy Morrow, Q.C.
Chairperson
2019 Statutory Review - Workers' Compensation System
c/o Sharmene Allen, Department of Immigration, Skills and Labour
P.O. Box 8700, 4th Floor, West Block, Confederation Building
St. John's, NL A1B 4J6

RE: Estimated Cost of Changes to Policy EN-18 to include Chronic Stress

Dear Ms. Morrow:

As requested by the Statutory Review Committee ("Committee"), we have estimated the potential cost of updating Policy EN-18 to include coverage for injuries resulting from chronic workplace stress, in particular as it relates to workplace violence and/or harassment.

The data, methodology and assumptions used in our analysis are summarized in the Appendices to this letter. The results of our calculations are shown below. Our cost estimates are in respect of assessed employers only. Updating Policy EN-18 would also have an impact on self-insured employers (including the Government of Newfoundland & Labrador), but this was not part of our mandate.

Background

WorkplaceNL's current approach to adjudicating claims for mental stress is outlined in Policy EN-18: Traumatic Mental Stress. Policy EN-18 has the following main features:

- Coverage is limited to injuries resulting from one or more **traumatic** events in the workplace.
- Events are required to be clearly identifiable and objectively traumatic (whether the event could be considered inherent to the worker's occupation is irrelevant).
- The injury is described in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders and is diagnosed by an appropriate regulated health care professional.
- There is a presumption for any claims diagnosed with post-traumatic stress disorder (PTSD) so long as the worker experienced a traumatic event at work.

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- Stress-related conditions following physical injuries are addressed under other policies.
- Mental stress that develops gradually over time due to general workplace conditions and chronic work-related stressors that do not fit the definition of a traumatic event, is not compensable. Claims associated with an employer's normal work-related actions (e.g. employment termination, demotion, discipline, schedule changes or performance expectations) are not acceptable.

The Committee is contemplating recommending that WorkplaceNL expand Policy EN-18 to include coverage for injuries resulting from chronic workplace stress, in particular as it relates to workplace violence and/or harassment.

Several workers' compensation boards in Canada have implemented coverage for injuries resulting from chronic stress. The details of the coverage would vary among the boards but in general expand from only considering injuries resulting from traumatic events to considering injuries that are caused by excessive work-related stress over time. The contemplated revisions would alter the types of stress claims that are currently compensable. For example, psychological injury resulting from workplace harassment may be eligible for compensation under a new gradual chronic stress policy but potentially not under WorkplaceNL's current policy. Similarly, jobs with a high-degree of routine stress (e.g. danger and/or life and death situations) may result in claims that are compensable under a chronic stress coverage but not under the current traumatic event criteria.

We have assumed that any updated policy will continue to exclude stress claims associated with specified labour relations issues (e.g. employment termination, demotion, discipline, schedule changes or performance expectations). As well, psychological injuries caused by a compensable physical injury will continue to be compensable under the original physical injury as per the existing practice.

Results

We proceeded by estimating the number of additional claims accepted each year due to the expanded stress coverage and their associated cost. Full details of our methodology can be found in Appendix C. As discussed in Appendix C, two scenarios are examined based on a jurisdictional analysis conducted using Association of Workers' Compensation Boards of Canada ("AWCBC") data. Scenario 1 (Low) corresponds to the average difference in observed stress claim incidence between jurisdictions that compensate for reactions to traumatic events only versus those that also compensate for reactions to chronic stress. Scenario 2 (high) corresponds to the average difference in observed stress claim incidence between NL and those jurisdictions that compensate for both reactions to traumatic events and chronic stress. Both scenarios implicitly assume that any update to WorkplaceNL's mental stress policy will establish entitlement and adjudication criteria similar to those used at other jurisdictions in Canada offering coverage for conditions arising from chronic workplace stress.

The results of our calculations are shown below.

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Table 1 – Increase in Annual Stress Claims – Best Estimate Scenarios

| Scenario | Base Value | Incidence Factor | Projected Total | Current Average | Additional Claims |
|------------------------------------|------------|------------------|-----------------|-----------------|-------------------|
| 1. Low - Traumatic Only to Chronic | 30 | 120% | 36 | 30 | 6 |
| 2. High - NL to Chronic | 30 | 210% | 63 | 30 | 33 |

* LT stands for "Lost-time"

The incidence factors used in Table 1 are based on the expansion factors calculated in Table C.1 of Appendix C. The base value in Table 1 refers to WorkplaceNL's annual stress claims in the 2018 to 2020 period. Using a historical average provides a more stable, realistic estimate of WorkplaceNL's typical experience given the considerable year-over-year variation in its stress claims volume. Subtracting the current average experience gives a measure of the expected increase in annual claims due to the expansion. Claims figures in the table have been rounded to the nearest whole number of claims.

In Table 2 below, we present the estimated cost of these scenarios, which correspond to our best estimate of the financial impact of the contemplated changes to EN-18 if implemented in accordance with our understanding.

Table 2 – Annual Cost Impact – Best Estimate Scenarios

| Scenario | Additional Claims* | Average Cost (\$) | Projected Total Cost (\$) | Rate Impact (\$) |
|------------------------------------|--------------------|-------------------|---------------------------|------------------|
| 1. Low - Traumatic Only to Chronic | 6 | 90,000 | 540,000 | 0.01 |
| 2. High - NL to Chronic | 33 | 90,000 | 2,970,000 | 0.04 |

* From Table 1

The average cost (\$90,000) used in Table 2 is based on the average stress claim cost derived from Table C.2 described in Appendix C. The rate impact is rounded to the nearest cent per \$100 of assessable payroll.

The results in Table 2 suggest a potential increase in new accident costs of between to \$0.01 and \$0.04 per \$100 of assessable payroll. This represents our best estimate of the financial impact of the contemplated changes to the policy EN-18.

As described in Appendix A, there are significant challenges associated with a costing of this nature and there is a potential for significant costs above the best-estimate range determined above. Given this, we also analyzed high cost scenarios to give the Committee an idea of the potential high end of the range of possible results. In order to do so, we examined various studies of mental health disability and stress prevalence, both within Canada and United States, and among workers' compensation organizations as well as the economy as a whole. We then developed high cost scenarios using reasonable assumptions supported by data in the underlying studies. A detailed

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explanation is provided in Appendix C. The results of these high cost scenarios are summarized in the table below.

Table 3 – Annual Cost Impact – Upper Bound Scenarios

| Scenario | Proportion Work-related | Additional Claims | Average Cost (\$) | Projected Total Cost (\$M) | Rate Impact (\$) |
|----------|-------------------------|-------------------|-------------------|----------------------------|------------------|
| 3 | 1 in 250 | 134 | 60,000 | 8.0 | 0.10 |
| 4 | 1 in 125 | 268 | 45,000 | 12.1 | 0.15 |
| 5 | 1 in 40 | 838 | 30,000 | 25.1 | 0.31 |

Scenarios 3 through 5 are meant to illustrate the potential high end of the range of possible results. They do not represent our best-estimate of the cost of the contemplated expanded stress coverage. They are provided to give Committee member's an appreciation of the scale of potential costs associated with chronic stress. These high costs may occur as the result of a very broad application of the coverage to a wide range of conditions that could be deemed to be work-related using a reasonable inference or similar lenient adjudication criteria. Alternatively, such high costs may occur from appeal or legislative decisions that result in the application of a broader definition of compensable stress claims than originally intended.

Liability Impact

We would expect that any liability impact associated with changes to the mental stress policy will be limited and largely related to claims currently under appeal. However, there may be a potential for chronic mental stress claims that were not accepted in the past to be re-filed under the revised policy, or for former workers who have been out of work to file a claim for conditions now acceptable as compensable. It is difficult to estimate the potential liability impact for such past claims. However, in order to provide the Committee with an assessment of the potential liability impact, we calculated the increase in liability assuming that claims that were not accepted or filed in the past are re-filed and accepted at the same rate as expected for new claims. That is, we assumed that the increase in incidence projected for scenarios 1 and 2 in Table 2 would also apply historically.

For this calculation we again focused on WorkplaceNL's stress claim experience in the past 3 years (2018 to 2020) to estimate the liability impact under the best estimate scenarios. The calculations are the same as those shown in Table 2 and produce an estimated liability impact of between \$0.5 million and \$3.0 million per year of retroactivity. The ultimate liability impact depends on the degree of retroactivity, if any, applied to the policy and is a one-time cost upon policy adoption that would be handled according to the WorkplaceNL's funding policy.

Other Considerations

We believe the following points should be kept in mind when considering expanding WorkplaceNL's mental stress policy to cover injuries resulting from chronic workplace stress:

- The figures presented in this costing are estimates that should be interpreted with care. As noted in Appendix A, there are numerous challenges associated with a costing of this nature.
- Policy EN-18 was updated in 2018 to allow mental stress claims resulting from cumulative exposure to traumatic events, and to remove risks inherent to the worker's occupation as a potential barrier to receiving compensation. It was further updated in 2019 to add a presumptive clause for PTSD claims where workers had experienced a traumatic event at work. The changes in claiming patterns resulting from these updates may still be working their way through the system.
- The immediate impact of any policy change on claim numbers and costs can be different than its ultimate impact. Observations from other jurisdictions (notably Alberta) have shown that changes in claiming patterns from expanded mental stress coverage often can take a few years to fully emerge.
- The ultimate cost of a broader mental stress policy will be influenced by the entitlement and adjudication criteria applied in a revised policy. Any changes to Policy EN-18 may benefit from review by legal counsel to assess the potential interpretations of the updated policy and the associated risks.
- Claims for mental stress which would have been traditionally covered by private disability insurance could be directed to WorkplaceNL as insurers become aware of the expanded coverage.
- An increase in mental stress claims may lead to higher administrative costs for the Board. Adjudication of stress claims generally involve more complex considerations than a physical injury. Mental stress claims are often multifactorial and determining whether a worker's injury is work-related may require some degree of subjective evaluation. As a result, decisions on stress claims may be more likely to be appealed. These factors could result in higher administrative costs for adjudicating stress claims.
- Awareness of the negative impact and prevalence of stress in society is increasing. Even without a change in practice, the frequency of mental stress claims registered with WorkplaceNL may increase due to increased awareness. In fact, the lost-time stress claim incidences calculated from AWCBC for this costing generally exhibit an increasing trend over time, as well as WorkplaceNL's own accepted claim counts (Table B.1 in Appendix B).
- Our best-estimate cost scenarios assume that the stress claim experience of Newfoundland and Labrador will follow that of other jurisdictions who have adopted coverage of conditions resulting from chronic stress. Implicit in that assumption is that the policy provisions

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contemplated by the Committee will be similar to those enacted in the other jurisdictions. Important provisions affecting the cost of any chronic stress coverage are:

- the definition of chronic stress and significant stressors;
- the standard used to assess whether the chronic stress is work-related (e.g. predominant cause versus significant cause); and
- any exclusions for specified labour relations issues (e.g. employee discipline, schedule changes, etc).

Final Comments

The Committee has asked us to estimate the financial impact of broadening WorkplaceNL's current stress policy to include coverage for injuries resulting from chronic workplace stress, including harassment. We have estimated the potential cost of such a change by applying the experience of other Canadian jurisdictions that cover chronic stress injuries to WorkplaceNL's current claiming patterns.

Based on our analysis, we estimate the annual cost of the contemplated expansion is between \$0.01 and \$0.04 per \$100 of assessable payroll. This best-estimate assumes that the stress policy is changed and applied consistent with that understanding as outlined in this report.

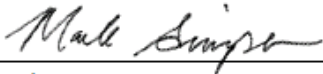
We also estimate a possible one-time impact on liabilities of between \$0.5 and \$3.0 million per year of retroactive application of the expanded coverage.

As outlined in this report, there are a variety of factors that could lead to costs significantly higher than our best-estimate. In particular, very lenient adjudication criteria, or subsequent appeal or legislative decisions that expand the definition of compensable stress, could lead to higher numbers of claims than expected. Under extreme, yet still plausible scenarios, the ultimate cost of the expanded coverage could be in the range of \$0.10 to \$0.30 per \$100 of assessable payroll (see "Upper Bound Cost Estimate" in Appendix C). Please note that such scenarios are not expected to be the case based on our understanding of the intention of the contemplated policy changes and the limited data available. However, the contemplated expansion involves exposure to significantly higher costs and it is important for decision-makers to be aware of this risk.

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We trust that the information provided in this report is useful as the Committee considers potential updates to WorkplaceNL's mental stress policy. If you have any questions, or if we can be of further assistance, please do not hesitate to contact us.

Respectfully submitted,



Mark Simpson, FCIA

This report has been peer reviewed by Thane MacKay, FCIA.

Appendix A - Costing Challenges

A costing of this nature presents numerous unique challenges. First off, it is difficult to find relevant, credible data on which to base cost projections. Compensation for these types of injuries is relatively new in Canada and historical data is limited and difficult to compare across jurisdictions. Secondly, given the low number of claims filed to date and recent changes to EN-18, it is difficult to precisely define WorkplaceNL's current practice in terms of the types of stress claims it accepts as compensable. The current practice forms the reference point for measuring the increase in claims under the proposed coverage. Finally, the actual interpretation and administration of an updated policy could differ markedly from its original intentions with potentially significant cost effects. It is not possible to predict such things in advance. As a result, the precision of the analysis is limited and care should be taken when interpreting the results given the significant level of inherent uncertainty.

The required calculation is to determine the changes that will occur in the claiming patterns (i.e. the number and cost of accepted claims) for workplace stress under the expanded coverage. In effect, we need to assess "Where is WorkplaceNL today?" in the adjudication of workplace stress claims and "Where will the expanded coverage take it?" if the contemplated changes were introduced. The financial impact is then the difference in costs under the current approach and the contemplated approach.

The first difficulty is to determine where WorkplaceNL is today in terms of its compensation of workplace stress claims. This is not a straightforward question to answer. We understand that WorkplaceNL has implemented a distinct process for identifying and reviewing mental stress claims due to their complexity and unique nature. Despite this enhanced tracking process, it is still difficult to determine the proper reference point from which we should measure potential changes given the volatility in annual claim numbers and the changes that have already been made to EN-18 in recent years. In addition, adjudicating mental stress claims can often require more judgement on the part of case managers compared to physical injuries. For instance, some claims resulting from workplace bullying or harassment would have been accepted in the past as being severe enough to be considered traumatic on the basis of a subjective evaluation of the claim. However, in other cases, workplace bullying may have been deemed to be a labour relations issue and not constitute a traumatic event as defined under EN-18. Given the challenges noted above, it is difficult to determine the reference point from which we should measure changes that could arise with the implementation of an expanded policy.

The second variable, where will the proposed stress policies take WorkplaceNL, is even more difficult to measure. First off, we have very little direct information on the current frequency of mental health injuries owing to chronic workplace stress (e.g. bullying) because most of these injuries are not currently covered by WorkplaceNL. The potential for chronic stress claims within the covered worker population is unclear. Further, even if this exposure was known, it is unclear how claiming

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patterns would react to an expansion in coverage. Finally, the volume of chronic stress claims accepted over time would be influenced by how adjudication practices develop in the future and how they are shaped by appeal and court decisions challenging the practices of WorkplaceNL.

A third source of difficulty is the lack of relevant, credible data on which to base estimates of financial impact. While several workers' compensation boards have adopted a workplace stress policy that includes certain injuries resulting from chronic stress, detailed experience data is not readily available to determine the impact of the policy on the board's claim costs. In any event, mental stress coverage is a relatively new development in workers' compensation in Canada and historical data is limited. Further, the value of data from other jurisdictions is somewhat limited given that it is highly dependent on that jurisdiction's adjudication practice which can vary greatly for psychological injuries complicating comparisons across jurisdictions.

In summary, we are in a position where a costing is needed, the reference starting point cannot be measured with precision and the ending point is dependent on numerous factors that cannot be fully assessed at this stage. There are two potential moving targets and the added cost is the difference between the two. In a situation like this, the range of results for potential cost can be very broad. The best that can be achieved is a reasonable estimate of the range for potential costs to assist the Committee in understanding and assessing the risk.

Appendix B - Data

Data from several different sources were used for this costing. They are broken down by category and described below.

Historical Stress Claim Details

The main data file for the costing is a listing of historical stress claims filed with WorkplaceNL. This data was provided in two pieces. The first piece was obtained from a previous costing completed for WorkplaceNL and included stress claims filed from 2007 to the end of September 2017. These claims were identified by reviewing claims with Nature of Injury (“NOI”) coding indicating stress (NOI codes beginning with 52). The data for these claims included a manual review of event description fields from claim files on WorkplaceNL’s systems.

The second piece was a listing of all claims accepted for mental stress from 2018 to 2020 inclusive. This information was obtained from WorkplaceNL, where the Entitlement department has been separately tracking mental stress claims beginning in 2018.

The main data elements extracted for the claim were:

- Claim number
- NOI description
- Accident date
- Claim acceptance flag
- Claim comments
- Rejection reason and closure details (if claim was closed)

We have no means of independently verifying the accuracy of this data. However, the stress claim data up to Sept. 2017 was validated as part of the previous costing. As a rough check of the post 2017 data, we extracted all claims during this period with a stress-related NOI code from a master file obtained as part of the year-end actuarial valuation (LT140MA). These claims were then compared to the mental stress dataset and differences were investigated and explained. A handful of new claims were added to the mental stress dataset as a result of this check. The claims master file (LT140MA) was also used to fill in claims during the last quarter of 2017, update certain demographic data such as accident date, and separate claims from assessed and self-insured employers.

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Based on these rough checks and our discussions with Entitlement, we are satisfied with the historical claim data provided for the purpose of this costing. The historical claim information is summarized below.

Table B.1 – Accepted Stress Claims

| Accident Year | Count |
|---------------|------------|
| 2007 | 7 |
| 2008 | 10 |
| 2009 | 5 |
| 2010 | 9 |
| 2011 | 3 |
| 2012 | 9 |
| 2013 | 13 |
| 2014 | 6 |
| 2015 | 6 |
| 2016 | 16 |
| 2017 | 21 |
| 2018 | 33 |
| 2019 | 33 |
| 2020 | 24 |
| Total | 195 |

We next used the Global Payment File (AV41MP) provided as part of the 2019 year-end actuarial valuation to obtain historical claim payments made on the stress claims shown in Table B.1. These payments are summarized in Table B.2 below.

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Table B.2 – Payments on Stress Claims

| Accident Year | Count | Wage-Loss | Other than Wage-Loss | Total |
|---------------|-------|-----------|----------------------|-----------|
| 2007 | 7 | 11,822 | 4,968 | 16,790 |
| 2008 | 10 | 722,997 | 228,088 | 951,086 |
| 2009 | 5 | 580,617 | 189,164 | 769,781 |
| 2010 | 9 | 416,357 | 58,792 | 475,149 |
| 2011 | 3 | 152,241 | 81,696 | 233,937 |
| 2012 | 9 | 214,652 | 40,096 | 254,748 |
| 2013 | 13 | 470,286 | 109,158 | 579,445 |
| 2014 | 6 | 159,463 | 47,403 | 206,865 |
| 2015 | 6 | 88,043 | 18,232 | 106,274 |
| 2016 | 16 | 573,136 | 201,807 | 774,943 |
| 2017 | 21 | 611,087 | 173,295 | 784,382 |
| 2018 | 33 | 641,393 | 71,977 | 713,370 |
| 2019 | 33 | 152,832 | 34,326 | 187,158 |
| Total | 171 | 4,794,927 | 1,259,003 | 6,053,930 |

Data from Other Jurisdictions

The number of lost-time stress claims accepted by workers' compensation boards in Canada for accident years 1998 to 2017 inclusive was obtained from the Association of Workers' Compensation Boards of Canada ("AWCBC"). The extract included compensable lost-time claims for all employer types (i.e. self-insured and assessed) with the NOI codes beginning with "52" (i.e. stress-related nature of injury codes):

This data is summarized in the table below.

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Table B.3 – Lost-Time Claims Coded to Psychological Injury NOI's (NOI 52xxx)

| Jurisdiction | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|--------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| AB | 88 | 115 | 102 | 118 | 136 | 192 | 247 | 313 | 368 | 481 |
| BC | 270 | 253 | 285 | 362 | 480 | 391 | 356 | 404 | 539 | 572 |
| MB | 55 | 27 | 85 | 58 | 71 | 83 | 82 | 109 | 144 | 207 |
| NB | 21 | 24 | 23 | 30 | 46 | 36 | 44 | 37 | 76 | 53 |
| NL | 8 | 2 | 6 | 2 | 11 | 13 | 10 | 5 | 16 | 16 |
| NS | 20 | 21 | 25 | 21 | 22 | 17 | 26 | 34 | 21 | 44 |
| NT/NU | 5 | 4 | 2 | 7 | 7 | 2 | 7 | 2 | 6 | 18 |
| ON | 451 | 478 | 512 | 582 | 602 | 579 | 657 | 751 | 1,061 | 1,536 |
| PE | 2 | 4 | 0 | 2 | 0 | 0 | 0 | 2 | 1 | 2 |
| QC | 1,137 | 980 | 951 | 1,013 | 983 | 915 | 913 | 933 | 936 | 1,158 |
| SK | 55 | 86 | 97 | 58 | 46 | 50 | 57 | 81 | 86 | 139 |
| YT | 0 | 2 | 2 | 2 | 0 | 2 | 7 | 4 | 13 | 12 |
| Total | 2,112 | 1,996 | 2,090 | 2,255 | 2,404 | 2,280 | 2,406 | 2,675 | 3,267 | 4,238 |

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When interpreting the data it is important to keep in mind that coding practices differ between organizations. In addition, there are likely some workplace stress claims that are not coded to these categories. While not perfect, the AWCBC data does provide a useful indication of the volume of accepted lost-time claims due to workplace stress in jurisdictions across Canada.

In addition to the stress claim data, we updated a jurisdictional review of the workplace stress policies used at workers' compensation boards in Canada. The original jurisdictional review was prepared for a similar costing completed previously. While each jurisdiction's definition of compensable stress varies, the types of workplace stress claims that are eligible for compensation generally fall into one of two categories:

1. Reactions to one or more traumatic events - "Traumatic Only"
2. Reactions to traumatic events or gradual onset stress – "Traumatic & Gradual Onset"

The following table summarizes the results of the jurisdictional review using the categories defined above.

Table B.4 – Types of Compensable Stress

| Category | Jurisdiction |
|---------------------|-----------------------------|
| Traumatic Only | NB, NL, NS, PE, ON*, MB, YT |
| Traumatic & Chronic | AB, QC, SK, BC, NT/NU |

** The policy of ON was updated in 2018 to include conditions resulting from gradual onset or chronic stress. Its categorization in Table B.4 reflects their approach to workplace stress prior to their recent policy revisions as historical claims data would reflect the previous policy.*

Finally, we obtained data on certain key statistical measures ("KSM") that is available to the public from the AWCBC. In particular, we obtained data on KSM 2.1 (assessable lost-time claims) and KSM 21 (injury frequency) for all jurisdictions.

Miscellaneous Information

Other miscellaneous data and information used in the costing includes various studies on stress, its health effects and financial impacts. Unfortunately, many of the studies are not directly applicable to the costing. Stress can result from a variety of factors, one of which is the workplace. The majority of studies available do not focus specifically on the types workplace stress noted in Table B.4. However, there are some studies available that illustrate the potentially high costs of psychological injuries. Data from these studies is cited when used in this report.

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Appendix C – Methods and Assumptions

The approach used to estimate the financial impact of expanding policy EN-18 to include chronic stress consisted of two main steps: estimating the increase in claims under a revised policy (incidence) and estimating the average cost of the new claims accepted under the revised policy (severity). These steps are discussed below.

Incidence

A number of methods were used to estimate the potential increase in the number of stress claims compensated under the new policy. The first approach involved using the AWCBC stress claim data to compare experience for jurisdictions with different adjudication policies to that of WorkplaceNL. Specifically, the stress claim data for each jurisdiction and accident year summarized in Appendix B was combined with the jurisdiction's corresponding injury frequency and number of lost-time claims to obtain an estimate of its lost-time ("LT") stress claim incidence.

Next, the results for jurisdictions were grouped according to the types of stress that is considered compensable as categorized in Table B.4 and an average claim incidence was determined for each category. We used the experience of jurisdictions with broader stress coverage to estimate the potential increase in claim incidence resulting from a revised policy. Specifically, we compared the estimated stress incidence for WorkplaceNL and the average for jurisdictions with "Traumatic Only" coverage to the average for jurisdictions that compensate for traumatic and chronic stress. The results of these calculations are presented below.

Table C.1 – Estimated Lost-time Stress Claim Incidences

| Category | Calculated Incidence | Increase to include Chronic Stress |
|--------------------------------|----------------------|------------------------------------|
| Newfoundland and Labrador (NL) | 0.56% | 227% |
| NL Adjusted for Recent Trends | 1.13% | 108% |
| Traumatic Only | 1.94% | 21% |
| Traumatic & Chronic | 2.35% | n/a |

Please note that the results in Table C.1 are based on stress claim experience in the 2015 to 2017 period.

The results in the above table show that NL has had a significantly lower stress claim incidence rate than other jurisdictions in Canada with similar coverage (0.72% vs. 1.94%). However, Table C.1

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shows that NL has seen a significant increase in the number of mental stress claims accepted in recent years. We have adjusted the NL incidence in order to account for the higher stress claim incidence observed recently that is not yet reflected in the AWCBCB data. Accepted mental stress claims in NL have increased from an average of 14 claims per year in the 2015-2017 period, to an average of 30 claims per year for the 2018-2020 period. To account for this trend, we have doubled the incidence measured from the 2017 AWCBCB data ("NL Adjusted for Recent Trends").

For the purpose of this costing, we have examined scenarios using the increase in average incidence based on broad coverage type (+21%), along with the increase assuming NL's adjusted recent incidence moves to the average for those jurisdictions covering chronic stress (+108%). Consequently, we have assumed increases of 20% (low) and 110% (high) in stress claims based on this analysis.

In addition, we have reviewed the experience of specific jurisdictions that have recently updated their stress policies to include conditions resulting from chronic stress. In particular, WorkSafeBC and Saskatchewan WCB incorporated gradual onset stress into their stress policies in 2012 and 2016, respectively. Comparing stress claim incidence before and after the introduction of chronic stress coverage can give some idea of the potential increase in claims. Data following the policy change at WorkSafeBC suggest an increase of around 25% in lost-time stress claim incidence. Similarly, preliminary results following the change at Saskatchewan WCB suggest an increase of about 100% in lost-time stress claim incidence. While other factors are also impacting the incidence of stress claims in both jurisdictions, we feel this rough comparison is useful to illustrate the range of possibilities for WorkplaceNL and provide some background on the reasonableness of the increases shown in Table C.1.

Severity

To estimate the average cost of mental stress claims, we combined the historical payments made on these claims with projected future payments based on the results of WorkplaceNL's 2019 actuarial valuation. We also incorporated a provision for future medical payments on these claims based on the liability for future wage-loss payments and the average ratio of medical to wage-loss payments exhibited historically. We then discounted all payments and liabilities back to their respective accident years and inflated them into 2019 dollars to provide consistent dollar figures. With the total costs (both projected and historical) and claim counts, we were able to calculate the average cost per claim for each accident year in 2019 dollars. The results of this analysis are summarized in the next table for accident years 2007 to 2017. Accident years 2018 and 2019 have been excluded from the analysis because they are not mature enough to provide reliable average cost figures. In particular, the liability for future payments, which should comprise a large portion of the overall cost for recent claims, is driven by future earnings loss payments and it typically takes a couple of years before a claim is transferred to EEL.

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Table C.2 – Calculated Claim Severities by Accident Year

| Accident Year | Accepted Stress Claims | Historical Claims Payments | Liability for Future Payments as of 31/12/2019 | Total Discounted to Accident Year in 2019 Dollars* | Average Cost Per Claim* |
|--------------------|------------------------|----------------------------|--|--|-------------------------|
| 2007 | 7 | 16,790 | 0 | 23,287 | 3,327 |
| 2008 | 10 | 951,086 | 1,037,591 | 1,802,577 | 180,258 |
| 2009 | 5 | 769,781 | 470,019 | 1,173,309 | 234,662 |
| 2010 | 9 | 475,149 | 62,597 | 579,340 | 64,371 |
| 2011 | 3 | 233,937 | 205,947 | 426,129 | 142,043 |
| 2012 | 9 | 254,748 | 191,576 | 448,552 | 49,839 |
| 2013 | 13 | 579,445 | 769,513 | 1,285,402 | 98,877 |
| 2014 | 6 | 206,865 | 0 | 240,040 | 40,007 |
| 2015 | 6 | 106,274 | 174,708 | 271,700 | 45,283 |
| 2016 | 16 | 774,943 | 1,131,142 | 1,939,017 | 121,189 |
| 2017 | 21 | 784,382 | 82,607 | 923,563 | 43,979 |
| Total | 105 | 5,153,400 | 4,125,700 | 9,112,916 | 86,790 |
| 2008 - 2017 | 98 | 5,136,612 | 4,125,700 | 9,089,629 | 92,751 |

*Includes future administrative expense provision

Inspection of Table C.2 shows that the average cost per claim varies greatly from year to year. This is to be expected given the limited number of claims involved.

We have focused on the ten most recent reliable accident years (2008 to 2017) to estimate the average cost of a mental stress claim. This period ensures that we have sufficient number of claims to mitigate some of the volatility observed in the year-to-year figures. It also excludes the unreliable recent years and outlier years (i.e. 2007) that may not be reflective of expected experience moving forward.

Based on this analysis, we have assumed an average cost per stress claim of \$90,000 for this costing.

Estimated Cost

The estimated financial impact of changes to the mental stress policy is calculated by multiplying the expected number of additional stress claims under the revised policy by the appropriate average

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cost per claim. The projected number of stress claims is determined by multiplying the incidence adjustment factor for the scenario by the WorkplaceNL's current average volume of stress claims. The estimated average cost per claim is based on Table C.2. Finally, the estimated rate impact is determined by dividing the estimated additional cost by WorkplaceNL's assessable payroll (\$8.2 billion for 2019) and multiplying by 100. The details and results of these calculations are presented in the body of this letter.

Upper Bound Cost Estimate

As noted earlier, there are significant challenges associated with a costing of this nature and there is a potential for significant costs above the best-estimate range determined above. Given this, we have analyzed high cost scenarios to give the Committee an idea of the potential high end of the range of possible results. In order to do so, we examined various studies of mental health disability and stress prevalence, both within Canada and United States, and among workers' compensation organizations as well as the economy as a whole. We then developed high cost scenarios using reasonable assumptions supported by data in the underlying studies.

Based on the 2010 General Social Survey¹, 27% of Canadians feel their lives are very stressful. Of those individuals, 62% feel that their primary source of stress is work-related. Applying these percentages to the estimated 2019 NL assessed worker population translates into about 54,000 covered NL workers who feel highly stressed, and about 33,500 who would attribute their stress primarily to work-related causes. To put this in perspective, WorkplaceNL typically has between 3,000 and 3,500 lost-time claims annually for assessed employers.

However, it is difficult to determine a precise estimate of how many of these 33,500 assessed workers with high degrees of workplace stress would ultimately end as an accepted work-related stress claim by WorkplaceNL. There are numerous factors to consider:

- Not all of those highly stressed workers will develop a disabling mental health condition.
- Mental health conditions often accompany physical disabilities so some of the highly stressed population may already be entitled to compensation for other injuries and do not represent a new source of claims to WorkplaceNL.
- Not all of those highly stressed workers that develop a disabling mental health condition will be accepted as a work-related disability in accordance with WorkplaceNL's policy. Mental stress is

¹ Statistics Canada, General Social Survey, 2010

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often multi-factorial and it is likely a proportion of claims would be deemed to not be work-related during adjudication. Further, some claims resulting from specified labour relations issues may be excluded from coverage.

While it is difficult to determine what proportion of those that are highly stressed due to work will ultimately result in a compensable claim, the key point here is that the exposure to costs could be very high.

For example, if 1 in 250 of the 33,500 had a work-related disability and the average cost per claim was two-thirds of the average for the current stress claim population, this would translate into a cost of about \$0.10 per \$100 of payroll. We have also tested other combinations of claim frequency and average cost to get an appreciation of the level of potential upper bound on costs. The scenarios are outlined in Table 3 in the body of letter. Each of these scenarios can be rationalized based on underlying disability studies. The average cost per claim assumed in the scenarios reflects the expectation that a smaller number of claims would generally be made up of more severe conditions with a higher average cost all else equal, and vice versa.

Appendix E.6



Memo

Date: April 9, 2021 Code: NFWCCWC
 To: Statutory Review Committee c/o Sharmane Allen
 From: Morneau Shepell
 Copy:
 Re: Additional Comments on Committee's Draft Proposed Recommendations

As requested by the Statutory Review Committee (the "Committee"), we have reviewed the proposed draft recommendations as provided to us ("Proposed Recommendations Draft November 24, 2020.docx") for purpose of adding relevant information where appropriate. This memo summarizes our comments resulting from this review.

Our comments are limited to those recommendations where we believe we may be able to add useful information for decision-makers to consider based on our experience and expertise. Please note that certain questions included in the draft document were addressed during our preliminary meetings with the Committee (Nov. 10th and Dec. 7th) and are not revisited here. Further, actuarial costings were completed in response to certain requests within the draft document. Any commentary associated with these costings is included in the costing report and is not repeated here.

Our comments are listed below using the same numbering system as used in the Committee's document.

Thematic Area 2 (Balance in the Provision of Benefits), Recommendation 2:

The Statutory Review Committee recommends amending the provision of the legislation that prohibits employer top-ups to allow employers the ability to top-up income and benefits as follows:

- a. *top-ups shall be allowed to the level of the IRR that is in place at any given time based upon the injured worker's actual net income, as opposed to the Maximum Compensable and Assessable Earnings (MCAE);*
and
- b. *top-ups shall be allowed regarding employment and/or other collateral benefits that a worker was entitled to under their employment contract.*

Morneau Comments: We are not in a position to provide an estimated rate impact of allowing employer top-ups, mainly because the number of assessed employers that would actually offer this type of benefit is unknown. Furthermore, since the current Act prohibits employer top-ups in the Newfoundland & Labrador system, the data tracked by WorkplaceNL on the prevalence of injured workers with access to this benefit would be sparse at best.



In these types of situations, the best we can do is provide qualitative comments on the potential implications. We have included some comments below for the Committee's consideration. In our experience, employer top-ups can encompass a wide variety of benefits and the underlying details and ultimate cost impact can be very complicated. The Committee should contact staff at WorkplaceNL to get their perspective on the various issues and practical considerations associated with employer top-ups.

In the area of employee benefit programs, the reference to a "top-up" can take many different forms. We believe that the original references to top-ups within workers' compensation organizations referred to a benefit offered by some employers that provided an incremental payment layered on top of a workers' compensation income replacement benefit. These "incremental" top-ups were mostly found in public-sector union plans, and we believe that these types of benefits are not very common today. In general, there is a trend among employers towards short-term disability and long-term disability (STD/LTD) plans instead of legacy plan types such as top-ups or sick day banks.

We believe that it would be helpful to clearly define what is meant by "top-ups" because the ultimate implications may vary based on type of arrangements that are included. More specifically, the reference in 2.b above to "...any other collateral benefits that a worker was entitled to under their employment contract..." could have material implications to benefits paid by WorkplaceNL. For instance, continuing to pay the salary of an injured worker under a self-insured STD plan may be included under a broad definition of top-up, in the context of being a collateral benefit under the employment contract. Also, an insured employer disability plan that provides a higher income replacement rate than WorkplaceNL may be considered a top-up plan going forward given the recommendation. Such determinations can have real implications to WorkplaceNL as discussed below. In the absence of detailed definitions of what constitutes a top-up and what does not, employer-sponsored disability plans and other such arrangements may be considered as top-up plans under a broad definition.

There are several potential cost impacts associated with employer top-ups. Ultimately, the costs would depend on the actual arrangements that are considered as part of a top-up definition and the prevalence of those programs in NL workplaces. However, the following potential cost impacts should be considered:

- In cases where an injured worker qualifies for income benefits from WorkplaceNL and is paid a top-up by their employer, the current wording of the Act effectively results in WorkplaceNL's income benefit being reduced to zero while the employer plan picks up the full cost of the income award. If top-up benefits are no longer prohibited, income benefits paid by WorkplaceNL will increase from zero to 85% of net pre-accident earnings in some cases. We have provided a simple example in the Appendix to illustrate this scenario.
- There may be some cases where the end result of allowing top-ups is no material change in the amount of benefits received by the injured worker, but rather a change in the source of the income. What was originally one income benefit provided by their employer top-up or disability plan, is now two income benefits provided by different administrators (the employer plan and WorkplaceNL) whose total is not materially different amount originally paid by just the employer plan. In such cases, there may be little additional benefit from the perspective of the injured worker (i.e. the worker's take home amount is relatively unchanged) but there may be significantly more administrative complexity for all parties involved. (See example in Appendix)
- Even in the absence of direct cost impacts, allowing employer top-ups can have an indirect impact on costs through an increase in the number or average duration of claims. This would likely occur in a scenario where the combined award (WorkplaceNL award + top-up) is materially higher than the income award paid from all sources under the existing practice. For example in the case of employer top-ups, injured workers receiving top-up may have a longer claim duration than would be the case if the top-up was not available. Such impacts may be more relevant in cases where an employer who does not currently offer a top-up benefit decides to offer this benefit under amended legislation that permits the practice. Any indirect costs incurred due to top-ups would eventually be collected from all assessed employers through WorkplaceNL's rate-setting process.

- Keeping track of the injured workers that are receiving employer top-ups, confirming that the top-up being paid is correct and consistent with their wage-loss benefit, and reporting all income correctly would likely be an additional source of administration expense for WorkplaceNL. Staff at WorkplaceNL could better advise the Committee of the administrative ramifications of this recommendation.
- In regards to part b. of the recommendation, it would be important to develop a detailed policy to guide which employment/collateral benefits are eligible as a top-up based on WorkplaceNL's overall principles and philosophy regarding top-ups and offsets.

In the table below, we have summarized the treatment of employer top-ups of income benefits for a couple of comparable jurisdictions. This information is based on our knowledge of the practice in these jurisdiction and conversations with Staff at each board. WorkplaceNL has been included for reference.

| Jurisdiction | General Approach to Top-ups | Other Notes |
|--------------|--|---|
| WorkplaceNL | Employer top-up is prohibited by Legislation | Prohibited since 1993 Prior to 1993, it was relatively rare to have assessed employers pay top-up. Though not expected to be occurring, it is difficult to monitor if top-up is being paid. |
| WorkSafeNB | Employer top-up is allowed up to 85% of net income | Similar to Committee's recommendation - Top-up limited by IRR but not MCAE. An all-source maximum of 85% pre accident net earnings is applied. Has a comprehensive Supplements policy for determining what can and cannot be offset from wage-loss benefits (policy considerations are broader than just employer top-up). |
| WCB of NS | Employer top-up is allowed | Not constrained by MCAE or by IRR – Employers can offer top-ups to 100% of income. Not uncommon for employers to top-up beyond 75% of net (IRR payable for first 26 weeks off work). |

Thematic Area 2, Recommendation 3:

The Statutory Review Committee recommends that the Injury Fund always be maintained at a minimum of 110%.

Morneau Comments: WorkplaceNL's funded ratio is measured by dividing its assets (mostly investments in Injury Fund) by its liabilities (mostly its benefits liability) and reserves. The funded ratio is measured at the end of each

year, and it fluctuates from year to year for various reasons: investment returns different from expected, experience gains/losses on existing claims, revenue gains/losses on new claims and operations, etc. Given the regular volatility in financial results, it is very difficult (and costly) to maintain a minimum funding level at all times. Instead, what most workers' compensation boards do is target a specific funding level that they deem prudent, and adopt policies that specify the actions taken to get the funding level back to its target when it deviates outside a specified range. For instance, WorkplaceNL's funding policy (IF-01) specifies a target of 110% funded and documents the steps to take if the funding level moves outside the 100% to 120% range.

In our view, the recommendation can be potentially interpreted three different ways:

1. Is the intention to restrict the proposed benefit improvements if they would cause WorkplaceNL's funding ratio to fall below 110%?
2. Is the intention to move the system to an environment where the likelihood of the actual funding level dropping below 110% is significantly reduced? Or,
3. Is the intention to signify the Committee's support for the existing funding target of 110% used by WorkplaceNL?

We suggest some clarification may be helpful in order to avoid confusion among stakeholders.

If #3 was the intent, we recommend that the Statutory Review Committee adjust the wording to say "...recommends that the target funding level always be maintained.....".

If the spirit of the recommendation was more in line with #2 above, this would have a significant impact on the WorkplaceNL's funding strategy. Without going into an in-depth analysis, such a recommendation would require the Fund's asset allocation to shift towards lower volatility asset classes (i.e. reducing the Fund's allocation to equities) in order to reduce the likelihood of incurring an investment loss that would cause the funding level to go below 110%. This shift would result in lower investment returns over the long-term, particularly in today's environment of low interest rates and low expected future returns on fixed income securities. Since the Fund only has two sources of revenue (assessments and investment earnings), any decrease in investment revenue would have to be offset by an increase in premiums charged to employers. If this is the intention of this recommendation, then an updated asset-liability study should be completed to assess the impact of any adjusted investment strategy on expected returns, liabilities and the average rate.

Finally, if interpretation #1 was the intent, this has some important interactions with the average rate that are discussed below.

Thematic Area 2, Recommendation 4:

The Statutory Review Committee recommends the average assessment rate of \$1.90 not increase, as a result of any proposed recommendations in this report.

Morneau Comments: A current, best-estimate of the cost of new accidents plus administrative expenses ("cost of the system") for WorkplaceNL is \$1.90. In essence, the cost of today's system is already at \$1.90.

WorkplaceNL's current average rate of \$1.69 is based on a current best-estimate cost of the system (\$1.90) and a discount to amortize its existing surplus according to its funding policy (\$0.21). The funding discount is a **temporary** adjustment in place until WorkplaceNL's funded ratio returns to its target of 110%. At that point, the average rate will increase to \$1.90 since the funding policy adjustment will no longer be required.

Is this recommendation intended to restrict benefit changes if they would cause the cost of the system to go above \$1.90? If so, then any **ongoing** benefit improvement would require offsetting savings or additional revenue in other areas of the organization (e.g. lower administrative expense, lower claims experience, stronger investment earnings) that reduces the required rate by enough to absorb the cost of the improvement. Based on the current environment, there is no room for WorkplaceNL to improve benefits for new accidents going forward without increasing the cost of the system above \$1.90.

Thematic Area 2, Recommendation 5

The Statutory Review Committee recommends that no rebates and/or discounts be provided to employers subsequent to 2021 until the IRR benefit to injured workers is increased as recommended above. (These discounts and rebates do not include PRIME or other safety incentives.)

Morneau Comments: This recommendation has a couple of implications that are important to consider. Our comments are not meant to be an opinion on whether this recommendation is achievable or not. Rather, we are trying to summarize the various factors that WorkplaceNL would need to consider in order to move forward with this recommendation:

- All else equal, removal of the existing funding discount will result in a 12% average increase to employers' assessment rates in 2022 as the average rate increases from \$1.69 to \$1.90.
- Based on current cost levels of WorkplaceNL, any increase in the IRR would result in an average rate above \$1.90. This would present an immediate constraint in the context of Recommendation 4.
- Increasing the IRR will require that sufficient savings can be found in other areas to absorb the increased costs without causing the average rate to rise about \$1.90.
- If there is no opportunity to lower WorkplaceNL expenses (either claims-related or operational expenses) to absorb the cost of the IRR improvement, the only alternative would be to increase investment revenue by a commensurate amount in order to allow the average employer rate to remain at \$1.90.
- Increasing investment revenue comes with accepting more investment risk, which presents some challenges in the context of Recommendation 3 if (depending on the intention) there is a need to reduce investment volatility.

As you can appreciate, there is a delicate balancing act here for WorkplaceNL to manage if the goal is to improve benefits, keep the average rate at \$1.90 and ensure a minimum funding level for the Injury Fund moving forward.

Appendix

Example 1: Suppose a worker suffers a workplace injury and his employer offers a disability plan with the following details:

- Pre-injury Gross Salary: \$100,000 (\$72,000 net)
- Employer Disability Benefit: 75% of Gross Salary
- WorkplaceNL MCAE (2021): \$68,000

The table below outlines the post-injury income for the worker under both the current legislation and assuming employer top-up plans are subsequently allowed.

| Component | Current Situation – No Top-ups | | Allow Employer Top-Ups | |
|-------------------------------|--------------------------------|--------|------------------------|--------|
| | Gross | Net | Gross | Net |
| ER Disability Benefit/Top-up | 75,000 | 56,000 | | 12,000 |
| Workers' Compensation Benefit | | 0 | 68,000 | 44,000 |
| Benefit to Injured Worker | | 56,000 | | 56,000 |

Under the "Current Situation", the employer (ER) disability plan effectively acts as a "top-up" but provides the entire benefit to injured worker because income benefits normally payable by WorkplaceNL are reduced to \$0 due to the prohibition on employer top-ups. Once employer top-up plans are allowed, WorkplaceNL will become the first payer, and the employer disability plan will simply provide a top-up to WorkplaceNL benefits.

Please note the following implications of this example:

- WorkplaceNL's costs have increased – Under the current situation, no income benefit is payable by WorkplaceNL. Once top-ups are allowed, WorkplaceNL provides income benefits in accordance with its benefit terms (85% of net income).
- The net income payable to the injured worker has not changed. However, they are now dealing with two administrators (employer plan and WorkplaceNL) rather than one.

The example above makes several simplifying assumptions and is not meant to be interpreted as definitive on how all disability plans will interact with WorkplaceNL. Nor is it meant to suggest that the situation outlined above is somehow representative of employer benefit plans in NL. Its main purpose is to illustrate the idea that, in some circumstances, allowing employer top-ups can lead to higher costs for WorkplaceNL, no material change in post-injury income for the worker, and some additional complexity for all parties.

Example 2: Suppose a worker suffers a workplace injury and his employer offers a disability plan with the following details:

- Pre-injury Gross Salary: \$100,000 (\$72,000 net)
- Employer Disability Benefit: 100% of Gross Salary
- WorkplaceNL MCAE (2021): \$68,000

The table below shows a potential scenario for the worker's post-injury income if employer top-up plans are subsequently allowed consistent with the Committee's recommendation.

| Component | 1. Current Situation | | 2a. Allow Top-ups | | 2b. WPNL applies All-Source Max | | 3a. Worker returns for Top-up | | 3b. WPNL applies All-Source Max | | 4. End Result | |
|----------------------------------|----------------------|--------|-------------------|--------|---------------------------------|--------|-------------------------------|--------|---------------------------------|--------|---------------|--------|
| | Gross | Net | Gross | Net | Gross | Net | Gross | Net | Gross | Net | Gross | Net |
| ER Disability Benefit / Top-up | 100,000 | 72,000 | 56,000 | 44,000 | 56,000 | 44,000 | 83,000 | 61,000 | 83,000 | 61,000 | 100,000 | 72,000 |
| WC Benefit Before All-Source Max | | | 68,000 | 44,000 | 68,000 | 44,000 | | 17,000 | | 17,000 | | |
| All-Source Max | | | | | | 61,000 | | | | 61,000 | | |
| WC Benefit After All-Source Max | | | | | | 17,000 | | | | 0 | | |
| Benefit to Injured Worker | | 72,000 | | 88,000 | | 61,000 | | 78,000 | | 61,000 | | 72,000 |

1. Under the "Current Situation", the employer (ER) disability plan effectively acts as a "top-up" but provides the entire benefit to injured worker because income benefits normally payable by WorkplaceNL are reduced to \$0 due to the prohibition on employer top-ups.

2a. Once employer top-up plans are allowed, WorkplaceNL will become the first payer, and the employer disability plan will simply provide a top-up to WorkplaceNL benefits. The gross top-up benefit here is determined by subtracting the worker's net workers' compensation (WC) benefit from the original full gross benefit payable from the employer plan (\$100,000).

2b. However, the combined net benefit payable to the injured worker in 2a. (\$88,000) exceeds "all source maximum" of 85% of the injured worker's net pre-injury earnings (\$61,000), WorkplaceNL will reduce their income benefit to bring the total to the all source maximum.

3a. The worker could then return to their employer plan for an additional top-up based on the terms of their plan, as the income award from WorkplaceNL has now been reduced.

3b. WorkplaceNL could then further reduce their income benefit as the combined net benefit payable in 3a (\$78,000) once again exceeds the all source maximum (\$61,000). At this point, the income benefit payable by WorkplaceNL is \$0.

4. With the income benefits payable by WorkplaceNL reduced to zero, the injured worker could return to their employer top-up plan, which effectively becomes first payer again.

Example 2 makes several simplifying assumptions and is not meant to be interpreted as definitive on how all disability plans will interact with WorkplaceNL. Nor is it meant to suggest that the situation outlined above is somehow representative of employer benefit plans in NL. The example is simply meant to illustrate some of the complexities that may result if top-ups are allowed. The key point here is that in some circumstances, allowing employer top-ups may potentially lead to a complicated, iterative process of benefit changes as the top-up plan interacts with the all source maximum used by WorkplaceNL.

Appendix F

List of Consultation Participants and Roundtable Sessions

Consultation Participants

Thirty-three entities participated in the consultation process (thirteen in-person, four by videoconference, five by teleconference, nine on-line submissions and two mail-in submissions)

In-person Sessions (in order of appearance)

- Newfoundland and Labrador Federation of Labour
- Private Citizen - Injured Worker
- IAFF Local 1075, St. John's Fire Fighters Association
- Newfoundland and Labrador - Fish Harvesting Safety Association
- Workplace Health, Safety and Compensation Review Division
- Fish, Food and Allied Workers (UNIFOR)
- Ray Connolly - Injured Worker
- Canadian Federation of Independent Business
- Private Citizen - Advocate
- Dallas Mercer Consulting
- Newfoundland and Labrador Employers' Council
- Newfoundland and Labrador Association of Public and Private Employees
- Private Citizen - Injured Worker

Videoconference (in order of appearance)

- Stephanie Dohey - Injured Worker
- SafetyNet, MUN
- St. John's Fire Fighters Association and Royal Newfoundland Constabulary Association
- Regional Health Authorities (Eastern Health, Central Health, Western Health and Labrador-Grenfell Health)

Teleconference (in order of call)

- United Canadian Transportation Employees, Local 0915
- Private Citizen - Injured Worker
- Private Citizen - Injured Worker
- Private Citizen - Ernest Elliott

On-line Submissions (in order of date received)

- Newfoundland and Labrador Teachers' Association
- Canadian Postmasters and Assistants Association
- Longshoremen's Protective Union (I.L.A.) Local 1953
- Harbour Grace Ocean Enterprises
- Public Service Alliance of Canada
- International Brotherhood of Electrical Workers Local 1620
- Jarrett Carter - Injured Worker
- Teamsters Union Local 855
- Private Citizen - Injured Worker
- NunatuKavut Community Council

Mail-In Submissions (in order of date received)

- Tina Warford - Injured Worker
- Private Citizen - Injured Worker

Roundtable Discussions

- WorkplaceNL
- Workplace Health, Safety and Compensation Review Division (WHSCRD)
- Occupational Health and Safety Division, Department of Digital Government and Service NL (OHSD)
- Advisory Council on Occupational Health and Safety
- Forestry Safety Association of Newfoundland and Labrador
- Newfoundland and Labrador Construction Safety Association
- Manufacturing and Processing Safety Sector Council

Appendix G

List of Supplementary Research Topics Utilized

- Analysis of 2019 Internal Review Issues Denied
- Assessment and Adjudication of Occupational Diseases
- Benefits Below Minimum Wage
- Cost of External Service Providers
- Duty to Accommodate
- Early and Safe Return to Work Program
- Employer Claims of Undue Hardship
- Extended Earnings Loss
- Factors Impacting Claims Duration
- Financial Sustainability
- Funding to Safety Sector Councils
- Injury Fund Policy
- Internal and External Review Statistics
- Jurisdictional Comparison of Average Assessment Rates
- Jurisdictional Comparison of Claims Duration
- Jurisdictional Comparison of Claims Received and Claims Denied
- Jurisdictional Comparison of Coverage of Mental Stress
- Jurisdictional Comparison of Definition of First Responder
- Jurisdictional Comparison of Income Replacement Rates
- Jurisdictional Comparison of Internal Reviews Processes
- Jurisdictional Comparison of Labour Market Re-entry Processes
- Jurisdictional Comparison of Maximum Compensable and Assessable Earnings
- Jurisdictional Comparison of Pension Benefits
- Jurisdictional Comparison of Physio Therapy, Chiropractic and Massage Sessions
- Jurisdictional Comparison of Policies Related to COVID-19 Coverage
- Jurisdictional Comparison of Presumptive Cancer Coverage for Firefighters
- Jurisdictional Comparison of Statistics on Duration of Claims
- Jurisdictional Comparison of Statutory Reviews
- Jurisdictional Comparison of “Top-up” Policies
- Jurisdictional Information on Occupational Health Clinics
- Linkage Between PRIME and Incentives
- Linkage Between PRIME and OHSD Requirements
- Mapping WorkplaceNL Stakeholders
- Monitoring of Employer Registration at WorkplaceNL
- Newfoundland and Labrador Employers’ Council Data Regarding Employer Advisors
- Newfoundland and Labrador Federation of Labour Data Regarding Worker Advisors
- Occupational Health and Safety Committees and Processes
- Pension Offsets
- Pension Replacement Benefit
- Rationale and Analysis for the Physical Separation of the OHSD and WorkplaceNL

- Rebates and Discounts to Employers
- Research Funding to Universities and Other Research Entities
- Safety Sector Councils
- Self-insured Employers
- Staff Training Protocols at WorkplaceNL and WHSCRD
- Statistics on COVID-19 Related Claims in Newfoundland and Labrador
- Statistics on Internal and External Review Cases, Decisions and Timelines
- Statistics on Non-compliance of Injuries Workers and Employers
- Status of Baie Verte Miners' Claims
- Traumatic Mental Stress
- WorkplaceNL Caseloads
- WorkplaceNL Consultation Policies and Processes
- WorkplaceNL Funding to External Service Providers
- WorkplaceNL Implementation Process of WHSCRD Decisions

Appendix H

Summary of Jurisdictional Review of Pension Benefits

Source: WorkplaceNL (May 2021)

| WCB | Type | Benefit |
|-----|----------------------|---|
| AB | Defined Benefit | <p>For accidents on or after January 1, 2018, the retirement adjustment is an annual amount equal to 2% of the worker's total wage loss compensation.</p> <p>Total wage loss compensation is the sum of all wage loss benefits paid from the date of accident up to the month in which the worker reaches retirement age. It will normally be paid in twelve monthly payments for the lifetime of the worker but may be commuted to a lump sum if conditions are met. It includes temporary wage loss benefits as well as economic loss payments/temporary economic loss benefits (ELP/TEL). See Policy 04-04, Part II, Application 3, Q.16:</p> <p>https://www.wcb.ab.ca/assets/pdfs/public/policy/manual/printable_pdfs/0404_2_app3.pdf</p> |
| BC | Defined Contribution | <p>5% EEL Benefit</p> <p>In BC retirement benefits are based on actual benefit payments. Under section 204 of the https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19001_00, the Board sets aside an amount towards the establishment of a retirement benefit. A worker may also apply to the Board under section 205 to contribute a portion of the worker's permanent disability periodic payments, in addition to the amounts set aside by the Board.</p> <p>https://www.worksafebc.com/en/resources/law-policy/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii/chapter-18?lang=en provides guidance on the establishment of amounts for retirement benefits.</p> <p>Commencing the effective date of permanent disability benefits, the Board will set aside an amount equal to 5% of a worker's permanent disability periodic payment. This amount is in addition to the permanent disability periodic payment. As well, the amount set aside is based on the worker's permanent disability periodic payment prior to any deductions for Canada Pension Plan disability benefits paid to the worker and any deductions made in accordance with section 120 of the Act.</p> |

| WCB | Type | Benefit |
|-----|----------------------|---|
| | | <p>The amounts set aside by the Board are deposited in a reserve in the Accident Fund. The benefit will be provided as a lump sum when the worker reaches age 65, or on the date of the worker's last monthly periodic payment, if after age 65.</p> <p>Further policy on retirement benefits (including information on commuted amounts, voluntary contributions, and retroactive benefits) can be found in chapter 18 of the <i>Rehabilitation Services & Claims Manual</i>, which can be accessed.</p> <p>https://www.worksafebc.com/en/law-policy/claims-rehabilitation/compensation-policies/rehab-claims-volumeii</p> |
| MB | Defined Contribution | <p>Annuities are paid as a lump sum at the time of retirement. However, a monthly payment option is available if the annuity has reached a certain level.</p> <p>If the employer's contribution rate before the accident is 5% or less, the percentage of future wage loss benefits is the difference between 5% and the employer's contribution rate after the qualifying period.</p> <p>If the employer's contribution rate before the accident is > 5% but ≤ 7%, the percentage of future wage loss benefits is the difference between the employer's contribution rate before the accident and the employer's contribution rate after the qualifying period.</p> <p>If the employer's contribution rate before the accident is > 7%, the percentage of future wage loss benefits is the difference between 7% and the employer's contribution rate after the qualifying period.</p> <p>The contribution rate means the contribution made by an employer to a pension plan for the benefit of a worker as a percentage of the worker's pre-accident earnings. Qualifying period means a total period of 24 months during which a worker receives wage loss benefits.</p> |
| NB | Defined Contribution | <p>10% EEL benefit</p> <p>In order for injured workers entitled to receive loss of earnings benefits for 24 consecutive months or more, WorkSafeNB sets aside an amount of money to offset potential deficits in pensions at retirement. This amount is used to fund the purchase of an annuity at age 65. The amount set aside is 10% of the amount of benefits the injured worker is entitled to receive from WorkSafeNB, after having been reduced by disability benefits under the Canada Pension Plan. For more information, please see https://www.worksafenb.ca/policy-and-legal/policy/view-our-policies/funding-the-purchase-of-an-annuity the policy manual.</p> |

| WCB | Type | Benefit |
|-----------|----------------------|--|
| NL | Defined Contribution | 5-10% of the extended earnings loss subsequent to the reduction for appropriate offsets (EEL) paid to the worker, plus accrued interest. This is paid as a lump sum at age 65. |
| NT/ NU | Lifetime | Lifetime benefit No change but currently under review. |
| NS | Defined Contribution | 5% extended earnings replacement benefit As per Policy 3.6.1: "When a worker becomes entitled to an extended earnings replacement benefit (EERB), an amount equal to five percent of the combined value of the EERB and the worker's permanent impairment benefit (PIB) will be set aside by the Board to provide an annuity for the worker." NOTE: While the policy and legislation state that the 5% set aside is paid out as an annuity, it was advised that it is usually paid as a lump sum at age 65 when the EERB ends. The calculation of the EERB that is defined in Policy 3.4.1. See https://www.wcb.ns.ca/Portals/wcb/WCB%20Policy%20Man%20-%20Final%20-%20PDF.pdf?ver=2020-06-05-102936-990 for further details. |
| ON | Not specified | 5% EEL benefit If a worker receives Loss of Earnings (LOE) benefits for 12 continuous months, the WSIB sets aside an additional amount of 5% of every subsequent LOE payment for the LRI benefit. A worker may also voluntarily contribute 5% of their LOE payment toward the LRI benefit. Workers are not eligible to receive payment of the funds in their LRI account until their entitlement date on or after age 65. At that time, workers are entitled to the LRI benefit based on the amount of contributions made, and the accumulated investment income. If the worker's LRI benefit account balance is less than the actual amounts contributed due to investment income losses, then the WSIB will pay out a balance equal to the contributions made. Depending on the amount, LRI benefits may be paid out as a lump sum, or as monthly payments. LRI benefits are paid to workers when they reach 65 years of age. For more information on LRI benefits please refer to OPM document https://www.wsib.ca/en/operational-policy-manual/loss-retirement-income-benefits-accidents-or-after-january-1-1998 or the https://www.wsib.ca/en/operational-policy-manual/loss-retirement-income-benefits-accidents-or-after-january-1-1998 on the WSIB website. |

| WCB | Type | Benefit |
|-----|----------------------|---|
| PEI | Defined Contribution | <p>In 2019, PEI introduced an annuity policy. http://wcb.pe.ca/DocumentManagement/Document/pol154_annuity.pdf. It is a defined contribution plan, with an amount equal to 5% of the extended wage loss (EWL) benefits set aside, and the option for the worker to contribute an additional 5% deducted from their EWL. The fund and interest is paid to the worker in a lump sum at age 65.</p> <p>Difference between estimated pension if not injured and actual pension – still applies to those in receipt of EWL prior to 2019.</p> |
| QE | Special | Continuation to age 68 with 25% reduction each year |
| SK | Defined Contribution | <p>10% EEL benefit</p> <p>Section 73 of the SK WC Act directs that 10% of the compensation paid to a worker who received earnings loss benefits for more than 24 consecutive months will be set aside to provide an annuity at age 65.</p> <p>The amount set aside is based on the amount of compensation paid (i.e., actual benefit payments). The annuity equals these set aside amounts plus accrued interest.</p> |
| YK | Defined Contribution | <p>10% EEL benefit</p> <p>Workers are entitled to an annuity payment if they have received compensation benefits for at least 24 months for the same injury. 10% of the total compensation for loss of earnings plus accrued interest will be paid to the worker when they become eligible to apply for benefits under the Old Age Security Act.</p> <p>Annuity benefits are covered in Section 32 of the Act. The Act can be found here: https://legislation.yukon.ca/acts/woco2008_c.pdf</p> |

Appendix I

Overview and Status of Labour Market Re-entry Recommendations Source: WorkplaceNL

| # | Status as Shared with 2019 Statutory Review Committee September 2020 (with timelines included) | Status as of April 2021 |
|---|---|--|
| 1 | 2019 - Introduce employment readiness services earlier in the claim | (complete) New contract finalized with Bluedrop to customize an online employment readiness portal whenever an injured worker requires assistance (i.e., resume building, cover letter, as well as courses for job searching and workplace productivity training) that can be accessed at any stage of the claim to support and assist injured workers. As well, two providers (Key-in and College of the North Atlantic) continue to provide basic computer training to injured workers. Offered up to 20 hours of one-on-one employment readiness supports including mock interview preparation, resume assistance, job search support, etc., at any point in the claim, to support return to work goals. |
| 2 | 2019 - Ensure employers comply with accommodation to the point of undue hardship | (complete) Provided four webinars with 135 participants to address issues regarding claims management, return-to-work, and roles and responsibilities of workplace parties. Released industry-specific information sheets for construction and manufacturing sectors explaining how workplace parties are to communicate throughout the disability management and return-to-work process. |
| 3 | 2019 - Incorporate LMR as part of workplace re-integration with pre-injury employer | (complete) Identified a process to review claims to assess the extent of injured worker involvement in early and safe return to work (ESRTW), as well as a supervisors' understanding of the ESRTW process. The goal was to obtain insight on materials to provide education to employers on accommodating injured workers and the importance of communication and engagement with the worker throughout the process. |
| 4 | 2020 [Q4] - Provide relocation assistance to help worker achieve vocational goals and seek realistic employment opportunities | (complete) Conducted research on parameters for a relocation procedure. |
| 5 | 2020 [Q4] Develop a relocation procedure | (complete) Procedure 50 Relocation Assistance became effective September 2020 and is available on www.workplacenl.ca . |

| # | Status as Shared with 2019 Statutory Review Committee September 2020 (with timelines included) | Status as of April 2021 |
|----|---|---|
| 6 | 2020 [Q4] - Review existing key performance indicators (KPIs) for the LMR program and develop new, measurable and meaningful KPIs which reflect the early intervention concept | [delayed] Obtained data on existing timelines in 2020 and completed analysis on claim distribution in 2021 – new KPIs planned for Q4 2021. |
| 7 | 2020 [Q4] - Review and revise Policy RE-17 (Labour Market Re-entry Expenses) and Procedure 48.00 (Return to Work and Labour Market Re-entry Expenses) to ensure benefits are appropriate, fair and consistent | [delayed] Planned for Q4 in 2021 – Commitments are outlined in the internal policy work plan and public strategic plan. Drafting changes to expenses outlined in Policy RE-17 Labour Market Re-entry Expenses and Procedure 48.00 (Return to Work and Labour Market Re-entry Expenses) to align with other expenses provided by WorkplaceNL. The draft proposal will be shared in consultation with primary stakeholders given this results in additional benefits to injured workers; pending changes to LMR policies and procedures are subject to stakeholder consultations. Also reviewing RE-05 Re-employment Obligation and Procedure 39.00 (i.e., to ensure consistency with Caron Supreme Court of Canada decision). |
| 8 | 2020 [Q4] - Review existing LMR policies and procedures to reflect any potential changes/recommendations as noted in the report | [delayed] Strategic Plan goal indicator for 2022 has been published to 'enhance policies and procedures to support labour market re-entry'. Further, nine policy and procedure changes are planned for 2022: <ul style="list-style-type: none"> • Policy RE-12 LMR Overview • Policy RE-13 LMR Cooperation and Procedure 44.00 • Policy RE-14 LMR Assessments and Procedure 45.00 • Policy RE-15 Determining Suitable Employment and Earnings and Procedure 46.00 • Policy RE-16 LMR Plans and Procedure 47.00 Additional policy and procedure changes are planned from 2023-25 to rescind or modernize the suite of re-employment policies and procedures. |
| 9 | 2020 [Q4] - Update existing LMR external documentation to reflect policy and procedure revisions | [delayed] Planned for Q4 2021 - To follow once policies and procedures (RE-17 expenses and procedure 48-00) are complete. |
| 10 | 2021 [Q1] - Review/build on existing resources in case management team to support workplace re-integration | [delayed] – Planned for Q3 2021 - As a result of the review of the ESRTW facilitator role and job description, it was identified that WorkplaceNL could utilize positions to assist employers in identifying suitable and available positions for temporary or permanent accommodation earlier, in line with the Caron decision. |

| # | Status as Shared with 2019 Statutory Review Committee September 2020 (with timelines included) | Status as of April 2021 |
|----|--|--|
| | | <p>In Q1 2021 the position description was revised and a reclassification review was completed.</p> <p>For Q2 2021 further training is to be completed with the facilitators on accommodation, LMR, PRIME and connect.</p> |
| 11 | 2021 [Q2] - Expand service contract requirements with external LMR providers to network with employers to establish a fluid database of existing on-the-job training (OJT) opportunities | <p>Planned for Q4 2021</p> <p>Going to tender to seek a provider to develop and deliver on-the-job training opportunities and a database.</p> |
| 12 | 2021 [Q4] - Develop new branding for the LMR program that is consistent with the theme of workplace re-integration that supports a strong, diversified province with a high standard of living through workforce stability | <p>Planned for Q4 2021</p> <p>The early concept of rebranding is to focus on workplace reintegration, to support return to work. This is to encourage keeping injured workers connected with the pre-injury employer, whether in a modified, accommodated or new position that may involve access to re-training resources earlier, if it would assist with attachment to employment.</p> |

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Appendix J

2013 Statutory Review Technical Report Summary as Presented Recommendations from the 2019 Statutory Review Committee

| Section | Current Wording of the Section in the Workplace Health, Safety and Compensation Act ("Act") | Proposed Change Recommended by the 2013 Statutory Review Technical Reviewers | Recommendation from the 2019 Statutory Review Committee |
|-------------|---|--|--|
| New | Consider a section that authorizes the Commission to prescribe mandatory forms for submitting information to the Commission by workers, employers and health care providers. | Recommended accepting the change for the reasons identified by the Technical Advisors. | Proceed with proposed change with modifications if necessary |
| 2, 7, 8, 13 | 2, 7.(2), 8 and 13 of regulation 1117/96. | Add the word "review" in front of "Commissioner". | Proceed with proposed change with modifications if necessary |
| 2 | NEW Definitions to be added. | Add definition of Health Care Provider; add definition of Department; define Medical Practitioner. | Proceed with proposed change with modifications if necessary |
| 2 | 2.(1)(j)(vi) "employer" means an employer to whom this Act applies and who is engaged in, about or in connection with an industry in the province and includes the Crown and a permanent board or commission of the Crown where the province may in its capacity of employer submit itself or a board or commission to the operation of this Act. | Definition of "employer"- Provincial Crown as "employer"; delete the word "permanent"; consider using language similar to the definition of "public body" in the Financial Administration Act "a board, corporation, commission or similar body established by, or under an Act ..."; style the provincial Crown as "the Crown in Right of Newfoundland and Labrador"; delete the reference to having to submit to the operation of the Act as unnecessary red-tape. | Proceed with proposed change with modifications if necessary |

| Section | Current Wording of the Section in the Workplace Health, Safety and Compensation Act ("Act") | Proposed Change Recommended by the 2013 Statutory Review Technical Reviewers | Recommendation from the 2019 Statutory Review Committee |
|---------|--|--|---|
| 2 | 2.(1)(s) "member of the family" includes spouse, cohabiting partner, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister and a person who stood in place of a parent to the worker or to whom the worker stood in place of a parent, whether related to him or her by consanguinity or not, and where the worker is the parent or grandparent of an illegitimate child, includes that child and where the worker is an illegitimate child, includes his or her parents and grandparents. | Definition of "member of the family" Eliminating "illegitimacy" from the definition – this is a legal concept that has been abolished in NL. | Proceed with proposed change with modifications if necessary. |
| 2 | NEW Should be in section 2. | Add a definition for the word "Department" to section 2 of the Act. | Proceed with proposed change with modifications if necessary |
| 2.01 | 2.01(1) A provision of this Act or the regulations, or a decision or policy made under this Act or the regulations that requires or authorizes a distinction because of age shall apply notwithstanding sections 5, 6 and 9 of the Human Rights Code. | Applicability of Human Rights Act, 2010 The reference to the Human Rights Code should be updated to the Human Rights Act, 2010. | Proceed with proposed change with modifications if necessary |
| 3 | NEW Should follow section 3 in existing Act. | Add a provision that provides natural person powers to the Workplace Health, Safety and Compensation Commission ("WHSCC"). | Proposed change not recommended |
| 4.(1) | 4.(1) The Lieutenant-Governor in Council shall appoint a board of directors of the commission who shall be responsible for the administration of this Act. | Amend the subsection to remove reference to "administration of this Act" and clarify that the WHSCC Board of Directors ("Board") is responsible for ensuring that the WHSCC fulfills its mandate, duties and responsibilities under the Act. | Proceed with proposed change with modifications if necessary |

| Section | Current Wording of the Section in the Workplace Health, Safety and Compensation Act ("Act") | Proposed Change Recommended by the 2013 Statutory Review Technical Reviewers | Recommendation from the 2019 Statutory Review Committee |
|---------|--|--|--|
| 4.(4) | (4) The terms of office, remuneration, benefits and expenses of the directors shall be determined by the Lieutenant-Governor in Council and the remuneration, benefits and expenses shall be part of the administrative expenses of the commission. | Amend the subsection to codify current practice of 3 year terms. | Proceed with proposed change with modifications if necessary |
| 5 | NEW Duties and Powers: section 5. | Amend the section to add a specific list of duties for the Board of Directors. | Proceed with proposed change with modifications if necessary |
| 5 | NEW To follow section 4, possibly included in new section related to 5. | Add a provision regarding the appointment of a vice-chair, in the absence of a chair (not intended to change overall structure of Board, whereby a vice-chair is Lieutenant-Governor in Council ("LGIC") appointed, or the position is considered in a vacancy profile). | Proceed with proposed change with modifications if necessary |
| 5 | NEW Should follow section 5 in existing Act. | Add a provision that specifies the standard of care to be exercised by members of the Board in discharging its directorial duties. | Proceed with proposed change with modifications if necessary |
| 5.(1) | 5.(1) The board of directors shall establish policies and programs consistent with this Act and regulations in relation to (a) compensation benefits to injured workers and dependents; (b) rehabilitation and return to work of injured workers; (c) assessments and investments under this Act; and (d) Part I.1 and the policies shall ensure the intent of this Act and regulations is being applied to provide services to injured workers and dependents and shall promote adequate funding for the services through sound financial management. | Add "Medical Aid" to list under 5.(1). | Proceed with proposed change with modifications if necessary |

| Section | Current Wording of the Section in the Workplace Health, Safety and Compensation Act ("Act") | Proposed Change Recommended by the 2013 Statutory Review Technical Reviewers | Recommendation from the 2019 Statutory Review Committee |
|---------|--|---|--|
| 6 | 6. The Lieutenant-Governor in Council shall appoint, after consultation with the board of directors, a chief executive officer of the commission who shall devote the whole of his or her time to the performance of duties under this Act. | Delete sections/subsections in the Act which establish Government approval requirements. 6, 9, 10(c), 11.(1) and (2), 53.(2), 96.(3) and (4), 116.(1)(d) | Proposed change not recommended |
| 6 | 6. The board of directors shall, subject to the prior approval of the Lieutenant-Governor in Council, appoint a chief executive officer of the commission who shall devote the whole of his or her time to the performance of duties under this Act. | Chief Executive Officer Delete reference to "who shall devote the whole of his or her time to the performance of duties under this Act". This requirement seems unnecessarily restrictive and the Board, in any event, will make decisions about the CEO's performance. | Proceed with proposed change with modifications if necessary |
| 7 | 7.(1) The board of directors shall appoint as employees of the commission, and prescribe the duties of, those persons that the board of directors considers necessary for carrying out this Act. (2) The board of directors shall designate the classifications of persons appointed under subsection (1) and may pay their salaries out of the injury fund. | Delete the delegation power outlined in 7.(2) and remove the human resources function from the Board. These functions, including the power to hire and employ the employees necessary to carry out the administration of the Act, should be assigned to the WHSCC and the CEO be specifically assigned all functions related to human resources for the Commission. | Proceed with proposed change with modifications if necessary |
| 9(c) | Property of commission 9. The commission may (a) acquire by purchase, gift or otherwise property; (b) erect the buildings that it considers necessary for its purposes; and (c) sell, lease or deal in another manner with its real property, but in relation to real property, where an acquisition, sale, lease or dealing has a value greater than the amount prescribed the approval of | Delete sections/subsections in the Act which establish Government approval requirements. 6, 9, 10(c), 11.(1) and (2), 53.(2), 96.(3) and (4), 116.(1)(d) | Proposed change not recommended |

| Section | Current Wording of the Section in the Workplace Health, Safety and Compensation Act ("Act") | Proposed Change Recommended by the 2013 Statutory Review Technical Reviewers | Recommendation from the 2019 Statutory Review Committee |
|-----------|--|---|--|
| | the Lieutenant-Governor in Council is required. | | |
| 10.(1)(c) | 10.(1) The commission may (c) with the approval of the Minister of Finance, borrow, by way of overdraft or otherwise, from a chartered bank sums that, in the opinion of the commission, may be considered expedient for the proper carrying out of this Act. | Delete sections/subsections in the Act which establish Government approval requirements. 6, 9, 10(c), 11.(1) and (2), 53.(2), 96.(3) and (4), 116.(1)(d) | Proposed change not recommended |
| 10.(3) | 10.(1)(a) The commission may invest funds arising under this Act and other money under its control in accordance with subsection (3) and sell securities and reinvest the proceeds in accordance with subsection (3) or use the proceeds for other purposes authorized by this Act; (3) Funds of the commission may be invested only in investments and loans in which an insurance company governed by the Insurance Companies Act (Canada) may invest its funds under sections 86, 88, 91, 92 and 97 of that Act. | Delete subsections which constrain the investment powers of the Board, and replace it with a model that imposes the legal standard of a "reasonably prudent person" on the Board in its investment activities 10.(3). | Proceed with proposed change with modifications if necessary |
| 11 | Audits of commission and appeal tribunal 11.(1) The Lieutenant-Governor in Council may appoint an auditor to audit the accounts of the commission and the review division and the remuneration of the auditor shall be paid by the commission or the review division. (2) The auditor general shall audit the accounts of the commission and the review division whenever he or she | Delete sections/subsections in the Act which establish Government approval requirements. 6, 9, 10(c), 11.(1) and (2), 53.(2), 96.(3) and (4), 116.(1)(d) | Proposed change not recommended |

| Section | Current Wording of the Section in the Workplace Health, Safety and Compensation Act ("Act") | Proposed Change Recommended by the 2013 Statutory Review Technical Reviewers | Recommendation from the 2019 Statutory Review Committee |
|---------|--|---|--|
| | considers it expedient to do so. | | |
| 12 | 12.(1) The commission shall before June 1 in a year make a report to the minister of its transactions during the preceding calendar year and the report shall contain those particulars which the Lieutenant-Governor in Council may order. | Amend the subsection to set out in the Act the required content of the annual report. | Proposed change not recommended |
| 15 | <p>Power of directors</p> <p>15.(1) The directors have the powers that are conferred on a commissioner under the Public Inquiries Act.</p> <p>(2) The commission may enter into agreements with other persons that are, in the opinion of the board of directors, advisable for carrying out this Act.</p> | Amend these sections to clarify that employees and agents of the Commission, as opposed to members of the Board, have the operational role of conducting inquiries and investigations under the Act. Specific sections include: Power of Directors: 15.(1), Inquiries by commission: 16 and Power re: examinations: 17. | Proceed with proposed change with modifications if necessary |
| 16 | <p>Inquiries by commission</p> <p>16.(1) The board of directors may act upon the report of an employee of the commission, and an inquiry which it considers necessary to make may be made by 1 of the directors or by an employee of the commission or some other person appointed by the board of directors to make the inquiry, and the board of directors may act upon his or her report as to the result of the inquiry.</p> <p>(2) A person appointed under subsection (1) to make an inquiry has for the purposes of the inquiry the powers conferred upon the directors by subsection 15.(1).</p> | Amend these sections to clarify that employees and agents of the Commission, as opposed to members of the Board, have the operational role of conducting inquiries and investigations under the Act. Specific sections include: Power of Directors: 15.(1), Inquiries by commission: 16 and Power re: examinations: 17. | Proceed with proposed change with modifications if necessary |

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| 17 | <p>Power re: examinations</p> <p>17.(1) A director or person authorized by the commission may make the examination or inquiry into a matter that the commission considers necessary for the purpose of this Act.</p> <p>(2) A person acting under subsection (1) may</p> <p>(a) at reasonable times enter a premises; (b) require the production of books, records or other documents applicable to the examination or inquiry and may examine those books, records or documents or remove them for the purpose of making copies of them; and (c) require and take affidavits, affirmations or declarations as to a matter of the examination or inquiry and administer oaths and affirmations and take declarations and certify that they have been made.</p> <p>(3) Where a director or other person removes books, records or other documents under paragraph (2)(b), he or she shall give to the person from whom those items were taken a receipt for them and shall immediately make copies of them and return the originals to the person who was given the receipt.</p> | <p>Amend these sections to clarify that employees and agents of the Commission, as opposed to members of the Board, have the operational role of conducting inquiries and investigations under the Act. Specific sections include: Power of Directors: 15.(1), Inquiries by commission: 16 and Power re: examinations: 17.</p> | <p>Proceed with proposed change with modifications if necessary</p> |
| 18 | <p>Information confidential</p> <p>18.(1) An employee of the commission or a person authorized to make an inquiry under this Act shall not divulge, except in the performance of his or her duties or under the authority of the board of directors,</p> | <p>Replace section 18: Information confidential; replace section 58.1: Medical information; replace and consolidate this section and subsection into a provision dealing with confidentiality of information.</p> | <p>Recommend further review</p> |

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| | <p>information obtained by him or her or which has come to his or her knowledge in making or in connection with an inspection or inquiry under this Act.</p> <p>(2) Notwithstanding subsection (1), the board of directors may permit the divulging to legal counsel or another authorized representative either of a person seeking compensation or of another interested party of information referred to in subsection (1) or other information contained in the records or files of the commission.</p> | | |
| 18.1 | Section dealing with Electronic registry. | Move the section to be in closer proximity to the lien and priorities section, and potentially repeal 18.1(1) as the task is completed and 18.1(2) as the Board has the authority to make policy regarding disclosure of information. | Proceed with proposed change with modifications if necessary |
| 18.(2) | 18.(2) Notwithstanding subsection (1), the board of directors may permit the divulging to legal counsel or another authorized representative either of a person seeking compensation or of another interested party of information referred to in subsection (1) or other information contained in the records or files of the commission. | Amend the subsection to change the responsible body for approving requests for claimant file information from the Board to the Commission itself. | Proceed with proposed change with modifications if necessary |
| 19 | NEW Should follow section 19 and section 26.(1). | Add a provision which sets out that the WHSCC and the Review Division do not have jurisdiction over constitutional questions, Canadian Charter of Rights and Freedoms issues and/or questions arising under the Human Rights Act, [2010]. | Proposed change not recommended |

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| 19.(1) | 19.(1) The commission has exclusive jurisdiction to examine, hear and determine matters and questions arising under this Act and a matter or thing in respect of which a power, authority or distinction is conferred upon the commission, and the commission has exclusive jurisdiction to determine (a)-(n). | Amend this subsection to clarify that the WHSCC has exclusive jurisdiction on all matters and things arising under the Act and to remove the enumerated list currently outlined in 19.(1) (a) through (n). | Proceed with proposed change with modifications if necessary |
| 20.04 | Cooperation between commission and Canada-Newfoundland and Labrador Offshore Petroleum Board 20.04 The commission shall co-operate with the Canada-Newfoundland and Labrador Offshore Petroleum Board, including the provision of information to the board, where it is necessary to give effect to this Part and Part III.1 of the Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act. | The words "and shall provide" be substituted for the words "including the provision of". | Proceed with proposed change with modifications if necessary |
| 20.2 | 20.2(e)(f) In order to promote health and safety in workplaces and to prevent and reduce the occurrence of workplace injuries and diseases the commission shall: (e) develop standards for the certification of persons required to be certified under the Occupational Health and Safety Act and approve training programs for certification; and (f) certify persons who meet the standards referred to in paragraph (e). | Amend subsection 20.2(e) to specify that the WHSCC shall set requirements for training of occupational health and safety committees established under section 37 of the Occupational Health and Safety Act ("OHSA") or co-chairpersons of such safety committees, worker health and safety representatives designated under section 41 of the OHSA, or workplace health and safety designates under section 42.1 of the OHSA, as well as training programs established under the Occupational Health and Safety Regulation 2009 and persons who provide training of such programs. | Proceed with proposed change with modifications if necessary |

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| 20.2 | NEW Should follow section 20.2(h) in the existing Act. | Add a provision to specify that the WHSCC shall promote and provide funding for industry specific safety councils. | Proceed with proposed change with modifications if necessary |
| 20.2 | NEW Section 20.2 – add a new subsection. | Amend section 20.2 to add a new subsection setting out the authority of the WHSCC to conduct audits and offer services to promote safety in the workplace. | Proceed with proposed change with modifications if necessary |
| 20.2 | 20.2(g) In order to promote health and safety in workplaces and to prevent and reduce the occurrence of workplace injuries and diseases the commission shall (g) foster commitment to workplace health and safety among employers, workers and other persons. | Amend this subsection to add the words "a high standard of" before the phrase "workplace health and safety". | Proceed with proposed change with modifications if necessary |
| 20.3 | Cooperation between commission and division 20.3 The commission shall co-operate with the occupational health and safety division of the department, including the provision of information to the division, where it is necessary to give effect to this Part and the Occupational Health and Safety Act. | The words "and shall provide" be substituted for the words "including the provision of". | Proceed with proposed change with modifications if necessary |
| 20.3 | 20.3 The commission shall co-operate with the occupational health and safety division of the department, including the provision of information to the division, where it is necessary to give effect to this Part and the Occupational Health and Safety Act . | The words "and shall provide" be substituted for the words "including the provision of". This is a stylistic amendment to provide grammatical accuracy and improve clarity. | Proceed with proposed change with modifications if necessary |
| 20.4 | NEW Additional subsection should follow section 20.4 in the existing Act. | An additional subsection be added in a form similar to section 20.5 to set out the maximum percentage of its total income that the Commission may allocate to fund industry specific safety councils or sector councils | Proceed with proposed change with modifications if necessary |

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| | | and expressly provide the Commission may charge the classes or subclasses of employers which in the opinion of the Commission correspond with the industry covered by a given sector council, a surcharge to cover the cost of funding the sector council where the Commission is satisfied that the work of the sector council provides a benefit to that class or subclass. | |
| 20.7 | New definition for term "party". | Add a provision to define the term 'party' as including the worker, the employer and the Commission. These would be identified as parties with standing as a matter of right. | Proceed with proposed change with modifications if necessary |
| 21, 22, 24, 24.1, 25, 27, 28, 30, 2, 11 | 21, 22.(1), 24.(1) and (2), 24.1, 25, 27.(1), 28.(1.4), 30, 2(v.2), and 11.(1) and (2) | Amend the Act to change the name of the "Review Division" to indicate that it is a body external to and independent of the WHSCC and a stand-alone agency. | Proceed with proposed change with modifications if necessary |
| | PART II APPEALS | The title of this Part be amended to: "Reviews and Stated Questions". The title "Appeals" appears to be a vestige of the pre-2003 appeal system when the external appeal body was called the Appeal Tribunal. Although the Interpretation Act specifies that headings do not form part of the Act, this heading is confusing and misleading. The title should be amended to reference the current Review Division as well as the power of WorkplaceNL and the LGIC to refer questions to the Trial Division as a stated case. | Proceed with proposed change with modifications if necessary |

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| 22 | <p>22.(1) The Lieutenant-Governor in Council shall on the recommendation of the minister appoint to the review division a panel of persons to act as review commissioners.</p> <p>(2) A panel appointed under subsection (1) shall not exceed 7 persons, 1 of whom shall be appointed by the Lieutenant-Governor in Council as chief review commissioner.</p> <p>(3) The terms of office, remuneration, benefits and expenses of the review commissioners shall be determined by the Lieutenant-Governor in Council.</p> <p>(4) A review commissioner shall hold office during good behaviour for a term that the Lieutenant-Governor in Council may establish.</p> | <p>Amend the section to provide review commissioners with authority to continue to exercise their powers, after they resign their appointment or the appointment expires, for any proceeding over which they had jurisdiction immediately before the end of their term of appointment.</p> <p>Amend the section to provide review commissioners with authority to continue to serve until reappointed or replaced.</p> <p>Amend the section to allow for up to 10 review commissioners.</p> <p>Amend the subsection to give the LGIC the power to re-appoint the Chair and review commissioners for one or more successive terms.</p> | <p>Proceed with proposed change with modifications if necessary. Consider the implications of the Independent Appointments Commission ("IAC").</p> |
| 26 | <p>26.(1) Upon receiving an application under subsection 28.(1) a review commissioner may review a decision of the commission to determine if the commission, in making that decision, acted in accordance with this Act, the regulations and policy established by the commission under subsection 5.(1) as they apply to (a) compensation benefits; (a.1) rehabilitation and return to work services and benefits; (b) an employer's assessment; (c) the assignment of an employer to a particular class or group; (d) an employer's merit or demerit rating; and (e) the</p> | <p>Amend the section to codify the current practice of the Review Division that is not clear in legislation, including authority to decide: i) merits of the case; ii) factual matters; and iii) procedural fairness.</p> | <p>Proceed with proposed change with modifications if necessary</p> |

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| | obligations of an employer and a worker under Part VI. (2) An order or decision of a review commissioner is final and conclusive and is not open to question or review in a court of law and proceedings by or before a review commissioner shall not be restrained by injunction, prohibition or other process or proceedings in a court of law or be removable by certiorari or otherwise in a court of law. | | |
| 26.(1) | NEW Should follow section 19 and section 26.(1). | Add a provision which sets out that the WHSCC and the Review Division do not have jurisdiction over constitutional questions, Canadian Charter of Rights and Freedoms issues and/or questions arising under the Human Rights Act, [2010]. | Recommend further review |
| 26.(1)(c) | 26.(1)(c) Upon receiving an application under subsection 28.(1) a review commissioner may review a decision of the commission to determine if the commission, in making that decision, acted in accordance with this Act, the regulations and policy established by the commission under subsection 5.(1) as they apply to (c) the assignment of an employer to a particular class or group. | Add the word "withdrawal" after "assignment" and remove the words "subclass or group" and substitute "industry". | Recommend further review |
| 26.1 | 26.1 A review commissioner shall be bound by this Act, the regulations and policy. | Add words to the effect that a review commissioner shall not apply a policy established by the Commission under subsection 5.(1) that is inconsistent with the Act or regulations. | Recommend further review |
| 27 | 27.(2) For the purpose of the review of a decision as referred to in section 26, a review commissioner has | Amend the section to provide authority to examine and cross-examine witnesses generally, not just those called to bring forward | Proceed with proposed change with modifications if necessary |

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| | the powers that are conferred on a commissioner under the Public Inquiries Act, and a review commissioner is considered to be an "investigating body" for the purpose of the Public Investigations Evidence Act, and there shall be full right to examine and cross-examine witnesses called to bring forward evidence in response and reply, and section 3 of the Public Inquiries Act shall apply to those witnesses. | evidence in response and reply, and to provide that section 8 of the Public Inquiries Act 2006 shall apply to those witnesses. | |
| 28 | 28.(1.2) An application under subsection (1) shall be in writing and shall identify how the decision is contrary to this Act, regulations and policy. | Amend to provide that the application shall identify the decision being reviewed, how the decision is contrary to the Act, regulations or policy. In order to make this section clear and remove any ambiguity, a disjunctive "or" is preferable to a conjunctive "and" because "or" makes it clear that the decision only needs to be contrary to any one of the Act, regulations or WorkplaceNL policy and not all three. Section 28.(4.2) should also be amended such that the word "and" is replaced by "or". [BC, s. 242(2)(b) and (e); ON, s. 125(2); AB, s. 134(3)] | Proceed with proposed change with modifications if necessary |
| 28 | NEW Should be added as a subsection to section 28. | Add a provision giving the Review Division explicit authority to disclose to participants information necessary to participate in a hearing and providing that any person receiving a worker's or employer's information under the new section may only use that information for the purpose of that review. | Proceed with proposed change with modifications if necessary |
| 28 | NEW To follow section 28. | Add a provision to give the Review Division the authority to dismiss a review without a hearing in certain prescribed circumstances. | Recommend further review |
| 28.(4) | 28.(4) A review commissioner to which a | Amend this subsection to provide the Review Division the discretion to | Proceed with proposed change |

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| | matter has been referred for review shall (a) notify the person seeking the review and the commission of the time and place set for the review; and (b) review the decision of the commission and determine whether it was in accordance with this Act, the regulations and policy. | conduct hearings orally, electronically or in writing. | with modifications if necessary |
| 28.(6) | 28.(6) Where a person other than a person applying for a review under subsection (1), has an interest in a matter before the review commissioner, that person has the right to appear before the review commissioner either personally or to be represented by counsel or an agent and shall, after indicating in writing to the review commissioner an intention to appear, be notified of the time and place of the review of the matter. | Amend the subsection to provide the Review Division the discretion to decide who is an interested party and require that the party have a direct interest in the matter being decided. | Recommend further review |
| 28.(8) | 28.(8) A review commissioner shall communicate his or her decision, with reasons, to the person seeking the review, the commission and a person who appeared or made a submission on the review, within 60 days of the date of the application for review. | The technical review recommended to provide that the decision shall be made within 60 days after the hearing of the appeal ends. | Proceed with proposed change with modifications if necessary. Refer to Recommendation 3.2 of the 2019 Statutory Review Final Report. |
| 35 | 35. The commission may, of its own motion, or upon the application of a party and upon security being given as the commission directs, state a case in writing for the opinion of the Trial Division upon a question which in the opinion of the | Amend the section to change the words "Commission's jurisdiction or a question of law" to "Commission's authority to decide a matter or a question of law outside the Commission's jurisdiction". | Proposed change not recommended |

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| | commission is a question as to the commission's jurisdiction or a question of law, and a similar reference may also be made at the request of the Lieutenant-Governor in Council, and the Trial Division shall hear and determine the questions arising in a case so stated and remit the matter to the commission with the opinion of the court on the matter. | | |
| 36 | 36.(1) The Judicature Act and the Rules of the Supreme Court, where they can be applied and are consistent with this Act, shall apply to a proceeding with respect to an appeal or stated case under section 35. (2) A notice or other document required to be served on the commission may be served on the chairperson or, in his or her absence, the chief executive officer of the commission. | Remove sections 35, 36 and 37 as these are all related to previous sections 33 and 34 that were repealed in 1994. | Proposed change not recommended |
| 36, 37 | 36 and 37 Rules for appeal and Notification of appeals, etc. | Heading Amendment Amend the heading of this section to "Rules for Stated Cases". | Proposed change not recommended |
| 37 | Notification of appeals, etc. 37. The Trial Division has power, with respect to stated cases referred to in section 35, to direct that a person interested, or, where there is a class of persons interested, 1 or more persons as representatives of that class, shall be notified of the hearing and those persons are entitled to be heard. | Amend the title to "Notification of Stated Case" and amend section 37 to provide that the trial division has the power to direct that a person who the trial division determines has a direct interest be notified of the hearing. | Proposed change not recommended |

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| 41 | 41. An independent operator, not being an employer or a worker but performing work of a nature that would be within the scope of this Act, may be admitted by the commission as being entitled for himself or herself and his or her dependents to the same compensation as if he or she were a worker within the scope of this Act. | Amend this section to provide for: (1) a definition of "independent operator"; (2) the coverage of all independent operators as either deemed workers or workers with optional coverage; and (3) setting the amount of coverage. | Recommend further review |
| 42 | <p>Work training programs</p> <p>42.(1) Where a student is enrolled in an educational institution and is participating in a work training program he or she shall, while participating in the work training program, be considered to be a worker employed by the province.</p> <p>(2) Where a student is injured while participating in a work training program and is entitled to compensation the amount payable to him or her shall be based on the current rate paid to a worker engaged in the same or similar work provided that the maximum amount payable does not exceed that set by this Act.</p> <p>(3) The age for admission to a work training program shall be 15 years or over but in exceptional circumstances the commission may, at the request of the Minister of Education, rule a student to be entitled to the benefits of this section.</p> | Amend this section to delete 42.(3). | Proceed with proposed change with modifications if necessary |

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| 45 | 45.(2) The worker or his or her dependents shall make an election under subsection (1) within 3 months of the injury and an application for compensation is a valid election for the purpose of this section. | Time limit for election by dependents. The timeframe allotted to dependents for electing between benefits and bringing an action in this section (3 months) should be changed to 6 months in order to be consistent with the timeframe for claiming compensation under section 53.(1)(b)(iii). | Proceed with proposed change with modifications if necessary |
| 45 | 45.(8) to (13) Where Action Allowed | Amend this section to by converting "subrogation" to "vesting" where the WHSCC seeks third party recovery. | Proposed change not recommended |
| 46 | Consider a section that permits the Commission to issue evidentiary certificates as a means of getting decisions of the Commission or other information of the Commission before the Court or other tribunal. This would be particularly useful for certifying the status of parties under the Act in cases under s. 46 where the bar to suit is in question [AB s. 149 - WCB may certify any information; BC, s. 257 - tribunal may certify information relating to an action; ON, s. 182 - Board may certify anything; MB, s. 109.6(9) - Board may certify information for prosecution of other proceedings under the Act.] | The 2013 Statutory Review Committee agreed with including a new section. | Proposed change not recommended |
| 46 | 46. Where an action in respect of an injury is brought against an employer or a worker by a worker or his or her dependent, the commission has jurisdiction upon the application of a party to the action to adjudicate and determine whether the action is prohibited by this Act. | No suggested rewording | Proposed change not recommended |

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| 48 | 48 to 51 | Consolidate the residency sections of the Act under one provision. | Proceed with proposed change with modifications if necessary |
| 52 | 52. A worker shall not agree with his or her employer to waive benefits to which he or she or his or her dependents are or may become entitled under this Part and an agreement of that nature is void. | <p>No waiver of benefits</p> <p>This section is currently worded as focusing on the worker's behaviour. It is, rather, a provision that protects the worker. Make the language more neutral and instead of saying "A worker shall not agree ...", say "No agreement between an employer and a worker that waives or purports to waive ..."</p> <p>See AB, section 140.</p> | Proceed with proposed change with modifications if necessary |
| 53.(2) | 53.(2) The Lieutenant-Governor in Council may, by order, extend the limitation period for making a claim for compensation in respect of an injury described in the order, with effect from the date of the order or an earlier or later date that may be set out in the order. | <p>Delete sections/subsections in the Act which establish Government approval requirements.</p> <p>6, 9, 10(c), 11.(1) and (2), 53.(2), 96.(3) and (4), 116.(1)(d)</p> | Proceed with proposed change with modifications if necessary |
| 56 | <p>56.(1) An employer shall, within 3 days after the occurrence of an injury to a worker in his or her employment as a result of which the worker is disabled from earning full wages or the worker is entitled to medical aid, notify the commission in writing of (a) the occurrence of the injury and nature of it; (b) the time when the injury occurred; (c) the name and address of the worker; (d) the place where the injury occurred; (e) the name and address of the doctor who looks after the injury; and (f) other particulars required by the commission.</p> <p>(2) An employer shall make further and other reports</p> | Amend the subsection to clarify that an employer has a duty to report an injury even if it is disputed by the employer and to delete subsection 3 as redundant. | Proceed with proposed change with modifications if necessary |

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| | respecting the injury and workers that may be required by the commission. (3) Where an employer fails to notify the commission of the occurrence of an injury the commission may in relation to compensation paid in respect of that injury charge the cost of the claim against the experience record of that employer. | | |
| 57, 58, 89.3 | Replace section 57. Duties of health care provider, section 58 Medical records and section 89 Duty to co-operate in return to work. | Add a definition of "health care provider" and consolidate these three sections into provision containing the duties of health care providers. | Proceed with proposed change with modifications if necessary. Review in conjunction with the Personal Health Information Act. |
| 58.1 | Medical information 58.1(1) Where the commission receives a request from a worker's employer for medical information related to an injured worker and the commission believes that providing the information to the employer is reasonably necessary for the determination of the worker's fitness to return to work, the commission may provide the information to the employer. (2) Where the commission provides an employer with information about a worker under subsection (1), the worker is considered to have consented to the provision of the information. (3) The commission shall inform a worker where it provides information about him or her to his or her employer under subsection (1). | Replace section 18: Information confidential; replace section 58.1: Medical information; replace and consolidate this section and subsection into a provision dealing with confidentiality of information. | Proceed with proposed change with modifications if necessary |

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| 68 | 68. The commission may withhold compensation payable to a parent with respect to the death of a child where the employment of the child was unlawful under a statute. | <p>Death of child</p> <p>This section allows the Commission to disallow a compensation claim where a child is unlawfully employed and killed at work. It appears to be aimed at the regulation of child labour. It seems unnecessarily punitive and is perhaps an historical artifact. Modern labour laws already deal with illegal underage employment.</p> | Proceed with proposed change with modifications if necessary |
| 70 | 70. Where a worker in relation to whom section 65 applies does not leave a spouse or cohabiting partner or where the spouse or cohabiting partner of the worker dies, and in the opinion of the commission it is desirable to continue the existing household and where a relative of the worker or of the spouse or cohabiting partner or other suitable person acts as foster parent in keeping up the household and maintaining and taking care of the children entitled to compensation in a manner which the commission considers satisfactory, the foster parent, while so doing, is entitled to receive the same monthly payments of compensation for himself or herself and the children as if he or she were the spouse or cohabiting partner of the deceased. | <p>Continuation of household</p> <p>Substitute a more modern term for "foster parent" i.e. "guardian".</p> | Proceed with proposed change with modifications if necessary |
| 74.1 | 74.1 (1.1) Where a worker is in receipt of extended earnings loss benefits, the Consumer Price Index for Canada as published by Statistics Canada shall be applied annually to his or her estimated annual | Add the words "prior to the commencement of his or her loss of earnings" as follows: (1.1) Where a worker is in receipt of extended earnings loss benefits, the Consumer Price Index for Canada as published by Statistics Canada shall be applied annually to his or | Proceed with proposed change with modifications if necessary |

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| | earnings resulting from the injury and the benefits shall be recalculated in accordance with subsection 74.(2). | her estimated annual earnings prior to the commencement of his or her loss of earnings resulting from the injury and the benefits shall be recalculated in accordance with subsection 74.(2). | |
| 75 | <p>Annuity at age 65</p> <p>75.(1) Where a worker who is eligible for benefits as a result of an injury that occurred after December 31, 1983 reaches the age of 65, an amount equal to the amount of a benefit that the worker demonstrates to the commission, that he or she has lost as a result of an injury for which he or she is receiving compensation under this Act, under the Canada Pension Plan or the Quebec Pension Plan or from a registered employer sponsored pension plan covering the worker and which is registered with and certified by the Superintendent of Pensions in accordance with the Pension Benefits Act, 1997 or an equivalent Act of another province or of the Parliament of Canada shall be paid to him or her by the commission.</p> <p>(2) All the money that the commission has set aside in reserves of the commission on behalf of a worker to provide an annuity shall, after December 31, 1992, revert to the injury fund of the commission.</p> <p>(3) After December 31, 1992 a right that a worker may have had to receive the money set aside in reserves of the commission prior to January 1, 1993 or to have</p> | WorkplaceNL to propose new model for pension replacement benefit. | Completed |

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| | the money paid into an established superannuation fund is extinguished. | | |
| 82 | 82.(3) Where a person entitled to compensation is committed to a mental hospital or to a jail, penitentiary or place of detention, compensation is not payable for the period of confinement but the commission may pay the whole or a part of the compensation so withheld to dependents of the person confined or to other persons who in the opinion of the commission are best qualified to administer the payments. | Payment of compensation to confined person Update the "mental hospital" terminology. While the Statutory Review Committee agrees that the language of "mental hospital" should be updated, it also notes that the reference to "committed to a mental hospital" in this section should only include those persons committed to a mental hospital under the Criminal Code i.e. for a psychiatric evaluation. If a person is admitted or committed to a "mental hospital" for any other reason this would be addressed under sections 54.1 and 64. | Proceed with proposed change with modifications if necessary |
| 83.1 | 83.1(1) Where the commission determines that an amount of compensation paid to a worker, or to another person, as a result of an injury to the worker, by the commission exceeds the amount to which the worker, or other person, is entitled, the commission may recover the overpayment from the worker or the worker's estate as a debt due the commission by action in a court. (2) In an action begun as a result of a determination by the commission that it has made an overpayment of compensation, the court does not have jurisdiction to determine whether an overpayment occurred or the amount of the overpayment. | Amend this section to permit the WHSCC to collect the overpayment through filing a certificate as opposed to commencing a court action. | Proceed with proposed change with modifications if necessary |
| 84 | 84.(1) The commission shall provide a worker who is entitled to compensation | Remove the words "or who would have been entitled had he or she been disabled longer than the day of | Proposed change not recommended |

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| | under this Act or who would have been entitled had he or she been disabled longer than the day of the injury with the medical aid that in the opinion of the commission may be necessary as a result of the injury. | <p>the injury" from the provision</p> <p>Section 43 provides that compensation is payable if an injury arises out of and in the course of the worker's employment and section 47 makes it clear that only medical aid is paid for by WorkplaceNL where an injury disables a worker for only the day on which the injury occurred. Therefore, the words "or who would have been entitled had he or she been disabled longer than the day of the injury" are unnecessary in section 84.(1) and make the provision cumbersome and difficult to read.</p> | |
| 84, 85, 86, 2 | Title - sections 84, 85, 86, 2.(1)(r), and sections 84 to 87 | Replace the term "medical aid" with "health care" in the title of Part V and throughout the Act. | Proceed with proposed change with modifications if necessary |
| 86 | 86.(2) Where, in conjunction with or apart from the medical aid to which workers are entitled free of charge, further aid or other service or benefit is or is proposed to be given or arranged for, a question arising as to whether a contribution from workers is prohibited by this Act shall be determined by the commission. | <p>Questions concerning payment for health care</p> <p>Remove this section because it is redundant as section 85.(1) provides that all questions as to the necessity, character and sufficiency of medical aid shall be determined by the Commission.</p> | Proceed with proposed change with modifications if necessary |
| 86, 87 | 86.(1) An employer shall not directly or indirectly collect, receive or retain from a worker contributions towards the expense of medical aid. | Consolidate this subsection into section 87.(1). | Proposed change not recommended |
| 87 | 87.(1) Where a worker has been so seriously injured within the meaning of this Act that he or she cannot continue at his or her regular work, the employer shall at his or her own expense as soon as reasonably possible after | <p>Remove "within the meaning of this Act" from the subsection</p> <p>This provision is concerned with an employer's duty to obtain medical aid for a worker seriously injured or to transport the worker to a place where the worker can receive medical aid. The provision refers to</p> | Proceed with proposed change with modifications if necessary |

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| | the injury obtain necessary medical aid or convey the worker to a place where the worker may receive medical aid, and the employer at his or her own expense shall, upon the occurrence of an injury to 1 of his or her workers, provide immediate transportation to a hospital should that be necessary or to a place where proper medical aid can be given and shall also provide the giving of medical aid that may be necessary to the injured worker upon the journey. | a worker "so seriously injured within the meaning of this Act." This is unnecessary language that makes the provision confusing and difficult to read. "Seriously injured" is not a defined term in the Act. "Injury" is a defined term in section 2. Use of that word is presumed to be as it's defined within the Act. In the Interpretation Act, section 22.(i) provides that where a word is defined, other parts of speech tenses of the same word have corresponding meanings. | |
| 89.1 | 89.1(7) An employer to whom this section applies shall accommodate the work or the workplace for the worker to the extent that the accommodation does not cause the employer undue hardship. | Change the wording to make "the worker" the object of the verb "accommodate" The subsection as worded contains a grammatical error, which alters the meaning of the sentence. It is the worker that is the object of the accommodation. The provision should read something like: "modify the work or workplace to accommodate the worker". The return to work and duty to accommodate provisions in the NL Act are almost identical to those in the Ontario Act. It is noted that section 41.(6) of the Ontario Act contains an identical error. | Proceed with proposed change with modifications if necessary |
| 89.1 | 89.1(13)(b) Where the commission decides that an employer has not fulfilled the employer's obligations to a worker, the commission may, (b) make payments to the worker for a maximum of one year as if the worker were entitled to payments under section 74. | Amend this subsection to prevent double recovery by adding that the WHSCC shall have regard for an amount paid to a worker in a common law claim for wrongful dismissal in determining any payments under this subsection and that a court shall have regard for an amount paid to a worker under this subsection in a common law claim for wrongful dismissal. | Proceed with proposed change with modifications if necessary |

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| 89.3 | 89.3(3) A person who receives the information in subsection (1) on behalf of an employer shall not disclose that information except to a person who is assisting the employer in returning the worker to work. | Amend to provide that any person other than the worker, who receives the worker's functional abilities information shall not disclose that information except for the purpose of returning the worker to work. | Proceed with proposed change with modifications if necessary. |
| 89.4 | 89.4(2) Notwithstanding subsection (1), a worker who performs construction work and an employer who is engaged primarily in construction shall be required to comply with the requirements respecting the duty to co-operate and the re-employment of those workers that may be prescribed in regulations made under section 123. | Amend the section to provide that workers and employers engaged primarily in construction shall be required to comply with the duty to co-operate and re-employment requirements that may be prescribed in the policy of the Commission or regulations made under section 123. | Proposed change not recommended |
| 90 | 90.(1)(b) Where (b) the disease is due to the nature of the employment in which he or she is engaged, whether under 1 or more employments, the worker or his or her dependents are entitled to compensation as if the disease were an injury, and the date of disablement were the date of injury, subject to the modifications mentioned in this section, unless at the time of entering into the employment he or she had falsely represented himself or herself as not having previously suffered from the disease. | Amend the subsection from "the disease is due to the nature of the employment in which the worker is engaged" to "the disease is due to the nature of any employment in which the worker was employed". | Proceed with proposed change with modifications if necessary |

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| 90 | 90. (3.1) Where a worker referred to in subsection (1), who, at or immediately before the date of the disablement was employed in a process involving asbestos, is suffering from the industrial disease known as asbestosis, the disease shall be conclusively considered to have been due to the nature of that employment. | Amend the subsection to remove the requirement that the worker be employed in a process involving asbestos "at or immediately before the date of disablement" to expressly incorporate a long latency period, which is known to exist between the exposure and onset of the disease. | Proceed with proposed change with modifications if necessary |
| 90, 90.1, 2, 53, 92, 124 | Title - Industrial disease 90.(1)(a), 90.1 Heading - Industrial disease compensation 2(m), 2(o)(iv), 53(b)(ii), 92.(2), 124(b) | Replace the term "industrial disease" with "occupational disease". | Proceed with proposed change with modifications if necessary |
| 90.(5) and 90.(6) | 90.(5) The commission may by written order require a worker in an employment to undergo a medical examination for the purpose of determining whether the worker is affected with an industrial disease or, where so affected, the progress of the disease. (6) Where a worker, required under this section to undergo a medical examination, fails or refuses to do so the employer of the worker shall not continue or maintain the worker in his or her employ until the worker has undergone the required medical examination. | Delete these sections as this authority corresponds more with the Occupational Health and Safety Branch (OHS) of Service NL. | Proceed with proposed change with modifications if necessary |
| 92 | 92.(6) A committee has the powers conferred on a commissioner by section 3 of the Public Inquiries Act and the power of the commission under section 90 to require the workers concerned to undergo a medical examination. | Change the reference to "section 3 of the Public Inquiries Act" to "sections 9 through 11 of the Public Inquiries Act 2006" Section 92.(6) provides that a Committee has the powers conferred on a Commissioner by section 3 of the Public Inquiries Act. The Public Inquiries Act was | Proceed with proposed change with modifications if necessary |

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| | | repealed and replaced by the Public Inquiries Act 2006. Section 3 of the Public Inquiries Act 2006 outlines the power of the LGIC to appoint a Commission of Inquiry. The provisions of the Public Inquiries Act 2006 which confer powers on a Commission appointed under section 3 are sections 9 and 10. Reference to these sections will elucidate the powers of the Committee. | |
| 92 | <p>92.(1) In this section "committee" means a committee of medical referees constituted and appointed under this section.</p> <p>(2) The commission (a) shall constitute a committee of medical referees upon the written request of a worker or the personal representative of a deceased worker made not later than 90 clear days after the making of a medical decision by the commission or, where, in the opinion of the commission, exceptional circumstances exist, a longer period that the commission may prescribe; or (b) may constitute a committee of medical referees where the commission feels it is desirable to constitute such a committee, for the purpose of investigating and determining in relation to a claim made by a worker or the dependents of a deceased worker, the nature of an industrial disease and its relationship to the processes directly associated in the</p> | <p>Replace the term "medical referee" in sections 92.(1) and 92.(2)(a) and (b) with "medical practitioner" and define "medical practitioner".</p> <p>Replace the term "doctor" used in sections 55 and 56 with "medical practitioner".</p> | Recommend further review |

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| | regulations with the disease and a committee may be constituted to make an investigation and determination in respect of a number of cases based on death or disability alleged to be caused by that disease. | | |
| 93 | 93.(2) Compensation, medical aid and other expenses under this Act and the regulations shall be paid out of the injury fund. | <p>Payment from Injury Fund – clarification</p> <p>Replace "... and other expenses under this Act ..." with "... and all expenses incurred in the administration of this Act ..." or otherwise be more explicit about what be paid out of the Injury Fund [MB, s. 81(1); NB, s. 52(c); NS, 115(1)(c); NT/NU, s. 67(4)(b) & (c); ON, 96(1)&(2); PEI, s. 35; QC, s. 281].</p> | Proceed with proposed change with modifications if necessary |
| 94 | <p>94.(1) For the purpose of creating and maintaining the injury fund the commission may (a) divide into classes all industries; (b) rearrange the classes of industry provided for in paragraph (a); and (c) transfer an industry to another class.</p> <p>(2) The commission shall assign an industry to its appropriate class and, where an industry includes several departments assignable to different classes, the commission may assign the industry to the class of its principal department or may divide the industry into 2 or more departments, assigning each to its proper class.</p> | Does the Commission wish to update the statutory terminology for classification (classes, subclasses and departments) to reflect its current practice (industries and industry groups)? The 2013 Statutory Review Committee agreed with the suggestion of the Technical Advisors. | Proceed with proposed change with modifications if necessary |
| 95 | 95.(1) The commission may establish those different sub classifications and different rates among the different kinds of industry in the | Does the Commission wish to update the statutory terminology for classification (classes, subclasses and departments) to reflect its current practice (industries and industry groups)? The 2013 | Proceed with proposed change with modifications if necessary |

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| | <p>same class or subclass that it considers just.</p> <p>(2) It is not necessary that the assessment upon the employers in a class or subclass be uniform but it may be fixed or graded in relation to the hazard of each or of any of the industries included in the class or subclass.</p> | <p>Statutory Review Committee agreed with the suggestion of the Technical Advisors.</p> | |
| 96.(3) and (4) | <p>(3) Notwithstanding subsection (2), where the commission believes it would be appropriate to apply a program established under subsection (1) to an industry in a different manner, the commission shall seek the approval of the Lieutenant-Governor in Council to consult with the industry concerning the application by the commission of the program to the industry in a different manner.</p> <p>(4) Where the Lieutenant-Governor in Council approves a consultation under subsection (3), and where, following the consultation, the commission proposes to apply a program established under subsection (1) to the industry with which it has consulted in a different manner, the application shall be subject to the approval of the Lieutenant-Governor in Council, but the Lieutenant-Governor in Council's approval shall only be given where the application to the industry would result in the setting or adopting of requirements by the commission equivalent</p> | <p>Delete sections/subsections in the Act which establish Government approval requirements.</p> <p>6, 9, 10(c), 11.(1) and (2), 53.(2), 96.(3) and (4), 116.(1)(d)</p> | <p>Proceed with proposed change with modifications if necessary</p> |

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| | to or greater than those contained in a program established under subsection (1). | | |
| 97 | 97. The commission shall every year assess and levy upon and collect from the employers in each class by an assessment rated upon the payroll, or otherwise as the commission considers appropriate, sufficient funds to meet claims payable during the year. | Amend the section to ensure it aligns with the WHSCC's objectives in collecting the annual assessment for both the current and future benefit costs associated with new injuries occurring during the year. | Proceed with proposed change with modifications if necessary |
| 101 | NEW Follows section 101. | Add a provision allowing the WHSCC to apply to the court for an order compelling an employer to produce the records required under section 101. | Proceed with proposed change with modifications if necessary |
| 109 | 109. The commission may make or carry out arrangements with the Workers' Compensation Board of another province to avoid duplication of assessment on the earnings of workers protected at the same time under the laws of 2 or more provinces relating to workers' compensation and may make an adjustment in assessments by the employers of the workers that the commission considers equitable and may repay another Workers' Compensation Board for payment of compensation made by it under those arrangements. | Agreements with other provinces Add a reference to "territories" in addition to "provinces". NL is party to an agreement with the three territories of Canada (the Interjurisdictional Agreement). | Proceed with proposed change with modifications if necessary |

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| 111 | 111. Where an employer engages in an industry, the commission, where it is of the opinion that the industry is to be carried on only temporarily, may require the employer to pay, or to give security for the payment to the commission of a sum which in the opinion of the commission may be sufficient to pay assessments that the commission may make with respect to that industry, and the payment of the sum may be enforced in accordance with section 117. | Amend the section to allow the WHSCC to require security, not just from temporary employers, but also from any employer where appropriate. | Recommend further review |
| 113 | <p>NEW</p> <p>113.(1) Where the business or undertaking, or a part of the business or undertaking, of an employer in relation to which an assessment is unpaid (a) is sold, leased, transferred or disposed of; (b) has changed ownership or reincorporated, or restructured in another way; or (c) has been dealt with in another manner which, in the opinion of the commission, is intended to avoid obligations under this Act, the commission may (d) determine that a person is the successor of the employer; and (e) levy and collect from the person the amount of an assessment unpaid by the employer at the time of an event referred to in paragraph (a), (b) or (c).</p> <p>(2) An amount required to be paid under paragraph (1)(e) may be collected by the commission in the same manner as an assessment</p> | Add a provision that would extinguish the personal liability of the successor when the employer selling the business in a bona fide transaction delivers a clearance certificate before the transaction closes. | Proceed with proposed change with modifications if necessary |

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| | may be collected under this Act and section 122 applies in respect to that amount. | | |
| 116 | 116. Reserves within fund | Repeal this section and add "any reserves that the commission deems necessary" to section 97 as one of the purposes for which assessments can be collected. | Proceed with proposed change with modifications if necessary |
| 116.(1) (d) | (d) subject to the approval of the Lieutenant-Governor in Council, by way of providing a special fund to be used to meet the costs of particular needs of the commission that it considers necessary. | Delete sections/subsections in the Act which establish Government approval requirements. 6, 9, 10(c), 11.(1) and (2), 53.(2), 96.(3) and (4), 116.(1)(d) | Proceed with proposed change with modifications if necessary |
| 118, 118.2, 122, 18.1 | Where default - section 118, Amount in default - section 118.2 and Assessment as lien - section 122 | Consolidate the statutory lien provisions and integrate the lien suspension "window" in section 18.1; along with other amendments to move, condense and streamline the lien provisions. | Proceed with proposed change with modifications if necessary |
| 123. (2.1)(b) | (b) prescribing the obligations of an employer engaged primarily in construction and a worker who performs construction work in respect of a worker's early and safe return to work and the re-employment of a worker. | Delete subsection. | Proceed with proposed change with modifications if necessary |
| 126 | 126.(7) The chairperson and, in the absence of the chairperson, the vice-chairperson of the committee have the powers which may be conferred upon a commissioner under section 2 of the Public Inquiries Act and which a commissioner has under subsection 3(1) of that Act and subsections 3(2) and (3) of that Act apply to persons required to give evidence before the committee. | Change the reference in section 126.(7) from the Public Inquiries Act to the Public Inquiries Act, 2006 and refer to the appropriate sections of the current Act. The Public Inquiries Act was repealed and replaced with the Public Inquiries Act, 2006. The reference to subsection 3.(1) in section 126.(7) should be changed to sections 9 through 11, references to subsection 3.(2) and (3) should be changed to section 8.(1) and (2), and the reference to section 2 should be changed to section 3. | Proceed with proposed change with modifications if necessary |

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| 126 | 126.(2) The Lieutenant-Governor in Council shall at least once in every 5 years appoint a committee of at least 3 members which shall review, consider, report and make recommendations to the Lieutenant-Governor in Council upon matters respecting this Act and the regulations and the administration of each as the committee considers appropriate and upon other matters which the Lieutenant-Governor in Council or the minister may refer to the committee. | <p>Amend the subsection to lengthen the maximum timeframe between statutory reviews.</p> <p>The 2013 Statutory Review Committee Recommendation 39: retain the current committee model for the statutory review process with the addition of a fourth committee member as an independent non-voting chair.</p> <p>Recommendation 40: ensure that the WHSCC and the two prime stakeholders be represented by decision-makers who are knowledgeable about the workers' compensation system.</p> <p>Recommendation 41: extend the term of the statutory review to six years with pre-consultation between the WHSCC and the prime stakeholders to commence in the fifth year.</p> <p>Recommendation 42: ensure a technical review of the legislation is conducted every 12 years or every second statutory review.</p> <p>Add a provision that some of the review committee members must be representative of workers and employers.</p> | Refer to Recommendation 16.1 to 16.6 of the 2019 Statutory Review Final Report. |

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