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*FINDING THE BALANCE*

**WORKPLACE HEALTH, SAFETY &  
COMPENSATION REVIEW  
2005-2006**

*CONSULTATION PAPER  
DECEMBER 12, 2005*

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*“Workers’ compensation law is founded upon five principles.  
These are that there should be:  
(1) compensation without fault, (2) security of payment,  
(3) collective liability on the part of employers,  
(4) an administrative body to collect assessments and disburse benefits and  
(5) an adjudicative body to assess quantum.”*

*Dickson C.J.  
Supreme Court of Canada  
April 24, 1989  
Workers’ Compensation Act 1983 (Newfoundland)  
ss.32 & 43*

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## FOREWORD

As directed by the Lieutenant-Governor in Council, a Committee has been established to conduct a review of Newfoundland and Labrador's workers' compensation system. Pursuant to Section 126 of the *Workplace Health, Safety and Compensation Act*, the mandate of the Committee is to review, consider, report and make recommendations upon matters respecting the *Act* and the Regulations and the administration of each, as the Committee considers appropriate.

The Committee has prepared this Consultation Paper to help focus the public consultations and to invite submissions from workers, employers and others about suggested improvements and changes to the system.

The Consultation Paper is intended to be a means for open, productive and proactive discussion throughout this review process. It outlines some key issues in the system and provides a framework focused on obtaining constructive feedback for the Committee's consideration.

The review process is an opportunity for workers, employers and others to have input into the development and enhancement of the workers' compensation system. To that end, the Committee will conduct a series of Committee meetings, public consultations and round table discussions to ensure it hears the comments and recommendations of the owners of the system, the workers and employers of the province.

The report of the Committee's recommendations must be submitted to the Minister of Human Resources, Labour and Employment by March 31, 2006 for government's consideration.

## INTRODUCTION

In 2004, there were 8,366 new injuries in Newfoundland and Labrador. Approximately 4,800 workers filed claims for wage loss benefits with the Workplace Health, Safety and Compensation Commission (the Commission). The claims cost recorded by the Commission in 2004 was \$131 million. This number merely represents the financial cost of the claims on record at the Commission. The effect of workplace accidents and injuries on individual workers, their families and their employers, by far, exceed this amount in terms of consequence and value.

The Commission has been established to provide the owners of this system, the workers and employers of our province, with the framework to administer this no-fault compensation program. The Commission administers this system; however, it does not entirely control it. Nor does its control rest singularly with workers and employers. It rests with the collaborative efforts of Occupational Health and Safety officials, the Commission and the workers and the employers who own it.

The success of this review hinges on the participation and input of workers, employers and others who have a role in the system. All participants must ensure that their views are expressed and that their recommendations for improvements to the system are understood. As a Committee, we look forward to hearing these views through discussions and submissions. We invite you to attend the sessions throughout the province and we assure you that your input will receive due consideration and analysis as we explore opportunities for recommending changes to further advance the progress of the workplace health, safety and compensation system in Newfoundland and Labrador.

## **T**HE REVIEW PROCESS

The Committee will provide a forum for workers, employers and others to present their views in a manner that is open, independent and conducive to constructive discussion.

In January 2006 the Review Committee will begin public consultation sessions at various centers throughout the province. Following the province-wide consultation process, round table discussions will be conducted with all partners in the workers' compensation system to further explore the ways and means by which the system can better support workers and employers.

The statutory review committee consists of:

E. Bruce Peckford - Chairperson  
Joan Cleary - Vice Chairperson and Employer Representative  
David Burry - Employee Representative  
Stella Mailman - Member At Large Representative  
Reg Anstey - WHSCC Board of Directors Representative

Following the consultation process, the Committee will conduct its analysis of the submissions and submit its recommendations to government.

## **P**ROFILE OF THE SYSTEM

Workers' compensation is a mandatory, employer funded, no-fault system developed to protect workers and employers in the event of workplace injuries. The owners of the system are the workers and employers of the province. Others that play critical roles are Occupational Health and Safety officials, service providers in the health care community and the Commission.

There are many facets of the workers' compensation system and equally many challenges. The fundamental components of today's system involve injury prevention through safe workplaces and return to work strategies for the well-being of all. The system must ensure that for those who are unable to return to work or for those where retraining is not a viable option, that there is an adequate response to their need for ongoing benefits and support. Obviously, the system must also be in a position to financially sustain these benefits now and in the future.

***"...never in the history of this province, has there been a greater need to emphasize safety as the first line of defence against preventable accidents and workers' compensation costs."***

*Workers' Compensation  
Statutory Review Report, 1997*

The partners in the system must commit to providing all the necessary resources to ensure that workplaces maintain and promote sound safety strategies to reduce workplace injuries and illnesses. Efforts toward improved ownership and accountability for the prevention of injuries and early and safe return to work initiatives must continue.

## The Commission

The role of the Commission is to administer the *Workplace Health, Safety and Compensation Act* on behalf of the owners of the system. The Commission is responsible for providing a detailed and comprehensive management approach to addressing the effects of the

***Accident and illness  
prevention is everyone's responsibility.***

*WHSCC Annual Report 2004*

ever-changing dynamics of workplace injuries. This requires building relationships with the partners of the system for improved performance and enhanced service delivery while

maintaining fiscal responsibility. The Commission cannot and should not act alone in the administration of this system. It must continue to draw on the resources of its partners and to explore opportunities which further educate and promote the necessity for collaboration and participation of both workers and employers to ensure success in the system.

## Funding the System

Workers' compensation was created on the premise that there is no linkage between the compensation payable and the ability to find fault. It is a no-fault compensation system. Employers fund the system through assessments and, in return, cannot be sued for injuries arising out of employment in the workplace. Employer registration with the Commission is mandatory for all employers with one or more employees and coverage is extended automatically to all their workers.

Assessments paid by employers go into a common injury fund and overall systems costs are shared through collective liability. More than 14,000 employers and 200,000 workers currently share in the system.

## RECENT GAINS & SUCCESSES

In 2001 the Task Force Report “Changing the Mindset” was presented to government. It contained recommendations for a comprehensive plan to address challenges and to ensure a fair and sustainable system for the future.

Government supported these recommendations and an aggressive implementation plan was developed by the Commission. As a result, changes were made in the areas of injury prevention; early and safe return to work; claims adjudication and claims management; employer assessment rates; accountability and communications.

Recent progress in these areas has presented some positive indicators of significant change.

- The total number of persons participating in Occupational Health and Safety training has increased from 8,744 in 2002 to 14,696 in 2004.
- Lost time incident rates have decreased from 3.0 in 2001 to 2.2 in 2004. (The incident rate is the number of lost time claims per 100 people employed.)
- The average claim duration at the Commission has dropped from 116 days in 2001 to 102 days in 2004.
- Average required assessment rates for employers have decreased from \$3.98 in 2001 to \$2.75 for 2006.
- The funding position of the system has improved to 82.9% in 2004. (New accounting standards for the valuation of long-term investments implemented in 2004 increases the funding position to 91.4 %.)
- *Please refer to the 2004 Annual Report of the Commission for further statistical information.*

## **C**HALLENGES TO BE MET

Though there have been gains in recent years, these have not come without a cost - a cost to workers and employers. While the road ahead must continue to build upon these gains, it must also recognize the need for balance in providing benefits and services as well as ensuring there is a sustainable system.

While recognizing the need for balance, it must still be acknowledged that average employer assessment rates in this province are the highest in Canada. As well, though the maximum ceiling on workers' compensation benefits is \$46,275 per annum, wage loss benefits for workers remains one of the lowest in Canada.

A resolution to these challenges rests in finding a balance of fairness and affordability that must be acquired through accident prevention and efficient service delivery. The Committee invites you to assist in finding that balance by recognizing that you are the owners of the system. As owners, you must partner to ensure this system provides you with a framework that addresses the needs and challenges of today's evolving workplaces.

## Some Topics for Discussion

### Client Service

In administering the system, service to the owners *must* be a priority. The effects of having excellent service do a great deal to advance confidence, credibility and trust in the system. In reviewing service issues and service delivery concerns, the following questions are provided for your consideration and recommendations.

- ⇒ How can the workers and employers of the province be better supported?
- ⇒ Should the roles of the Workers' and Employers' Advisor be further explored?
- ⇒ How can turnaround times be reduced in the areas of review and appeal to provide a more effective and efficient service?
- ⇒ Should an alternative dispute program be offered to address concerns and objections to Commission decisions?
- ⇒ Should a Client Relations Office be established to enhance quality assurance?

### Education

The promotion of injury prevention through education and awareness of safety issues must be seen as the foundation of creating a safety-minded culture not only for the benefit of the workers' compensation system but for society generally. Strategies aimed at bringing forward a strong and clear message that safety must come first is essential to this system in particular. An accident prevented benefits all. Areas to consider with respect to prevention education and awareness should include consideration of the following:

*The percentage of soft tissue injuries to total injuries increased from 59% in 2003 to 63% in 2004.*

*WHSCC Annual Report 2004*

- ⇒ How can the approach to soft tissue injury prevention and return to work strategies be improved?
- ⇒ How can partners work together to identify workplace hazards and to use research knowledge for prevention and planning purposes?
- ⇒ Should the role of the Commission with respect to occupational health and safety and educational awareness be reviewed?
- ⇒ What more could be done to better promote health and safety among the youth in our province?

### **Claims Management**

Claims management represents the largest and most complex functioning interactive area of the workers' compensation system. It is in the management of workers' compensation claims where all partners collectively come together to ensure the spirit and intent of the fundamental principles of the system are applied in the best manner possible.

Claims management issues are diverse and continuously change in response to emerging concerns. Though there are many claims management areas to explore, the following are some questions provided for your consideration. This outline is simply a starting point. It is expected that you will provide further suggestions for enhancements to your system.

- ⇒ What policies of the Commission should be reviewed with respect to changes in the areas of benefit entitlement?
- ⇒ Are there areas where workforce coverage issues need to be reviewed?
- ⇒ How can health care providers play a greater role in the early and safe return to work processes?
- ⇒ Are the mandatory cooperation and return to work obligations effectively reducing the duration of claims and the number of new claims going on long term benefits?

## **Finances**

Sustaining a financially secure system that can withstand the costs of current and future workers' compensation claims is a continuing concern. The Commission is responsible for collecting assessment revenue from employers to cover the cost of injuries and the administration of the system. The strength of the system is evaluated through an analysis of what is owed and how much there is to pay out.

The Commission has identified in their 2004 Annual Report a funding position of 82.9%. This means that it can only pay out 82.9% of its costs if they were all payable at the end of 2004. (New accounting standards for the valuation of long-term investments implemented in 2004 increases the funding position to 91.4 %.)

Long term financial viability of the system will have to be considered throughout the review process. Some issues to consider with respect to finances are:

- ⇒ Is there a need to consider changes to the current method of establishing assessments?
- ⇒ Is there a need to further review the PRIME model recently introduced?
- ⇒ What effects would benefit and assessment changes have upon the financial picture of the system?

## CONCLUSION

There are major areas of common concern shared by the partners of the workers' compensation system. A resolution that focuses on striking a balance between the needs of workers and the needs of employers within a fiscally sustainable system will, undoubtedly, be the ideal solution.

It is hoped that, through this Consultation Paper, we have engaged the partners in the system to provide different perspectives and substantive recommendations that can become the cornerstone of the building blocks of tomorrow's workers' compensation system.

As a Committee, we expect your input and invite you to fully participate in this process. You have an obligation to come forward to help safeguard the integrity of this no-fault, industry-funded compensation program to help make it the best in the country.