Comparative Analysis of Workers’ Compensation Systems in Select Jurisdictions

JURISDICTION: MANITOBA

ENVIRONMENT

Population Size 1,144,000 (1996 Stats Canada)
Labour Force 568,000 (1996 Stats Canada)

Demographic and Economic Indicators

Manitoba has a relatively balanced economy (light to medium manufacturing, trucking, health care, agriculture, construction, mining and forestry) with a well established record of stability and an absence of the "boom and bust" cycle experienced in other Canadian regions. Economic growth in 1996 grew at almost twice the national average; the prediction for 1997 is continued strong growth, particularly in the export sector.

Manitoba's population grew by 0.56% between the years of 1991 to 1995 as compared to the national average of 1.30%.

Manitoba's average wage rate in 1996 was $515.95. Its unemployment rate was 7.5% in 1996, the same as the 1995 rate.
GOVERNANCE & ADMINISTRATION

Nature of System
An exclusive, provincial fund.

Principles and Mandate
The mission of the Manitoba WCB is "to provide superior services to Manitoba workers and employers in a manner that is sensitive, responsive and effective ... in order to minimize the impact of workplace injuries".

Access to Litigation
Manitoba is an exclusive remedy jurisdiction.

No action may be taken against a covered employer. However, in circumstances that may entitle him or her to a tort action against a party not covered by the WCA, (see Section 9 of the WC Act), a worker covered by the scheme can elect to claim compensation or pursue an action against a third party. Where the worker claims compensation benefits, the WCB is vested with the right of action. The WCB can proceed with the action in its own name or in the worker's name. Where settlement is achieved, the WCB recovers its compensation and legal costs, and the excess is paid to the worker.

Where the worker elects to attempt tort action on their own, compromise settlements must be approved by the WCB. Settlement funds are applied towards any further compensation payable.

Parties to a tort action can apply to the Appeal Commission for a final determination whether the right of action is removed by the Act.

In motor vehicle accidents involving Manitoba residents, an injured worker may elect to receive benefits, no-fault insurance benefits from the Manitoba Public Insurance.
Scope of System
Who is Covered?
Coverage under the Manitoba scheme is compulsory for all employers as set out in the Act (section 73) and the Schedule to the Act. This includes coverage for all provincial and municipal employment, except educational institutions. Coverage is voluntary for directors, employers, independent contractors and certain family members. As well, the board may include or exclude any industry by regulation, and the LGIC may pass regulations to include additional industries.

Industries that are not required to be covered by the scheme include farm labourers; outworkers; casual employees employed for reasons other than the employer’s business or trade; and workers who ordinarily reside outside of Canada, are employed by the trucking industry and the employer's principal place of business is outside of Canada, or is only temporarily working in or passing through the province.

As of December 21, 1996, 63% of the Manitoba workforce was covered by the workers’ compensation scheme and 21,114 employers were registered.\(^1\)

What is Covered?
All personal injuries to covered workers "arising out of" and "in the course of" employment are covered. This does not include horseplay, unless the injured party was an innocent third party to the accident.

The Manitoba scheme covers "occupational diseases" that arise out of and in the course of employment and resulting from causes and conditions that are a) peculiar to or characteristic of a particular trade or occupation; or b) peculiar to a particular employment, but does not include an "ordinary disease of life" and stress, other than an acute reaction to a traumatic event ("maladie professionnelle"). To be compensable, work must be dominant cause of occupational disease.

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\(^1\) Manitoba has recently changed its method of calculating workforce coverage to be consistent with AWCB standard method to calculate degree of coverage. In 1994, under the former system for calculating degree of coverage, it was estimated that 80.8% of the Manitoba workforce was covered under the scheme.
### Comparative Review

**Manitoba**

#### Self Insurance

Self insurance is permitted in Manitoba for employees of the government, or crown. There are four categories or classes of employers or industries that are permitted to self insure. Only about 1% of employers insured by the Manitoba fund are public sector entities.

#### Organizational Framework

The Workers Compensation Board of Manitoba is the statutory body responsible for the administration of the *Workers Compensation Act*. The board offers a full range of services including claims adjudication, compensation, rehabilitation (medical and vocational) and employment services. The Manitoba WCB is also responsible for the administration of the *Criminal Injury Compensation Act*.

The board is responsible for hiring its own employees on the basis of a merit system subject to a collective agreement. Salaries are established by joint job evaluation. Increases are subject to collective bargaining.

The operations of the Manitoba WCB are completely centralized; the only office is in Winnipeg. The Manitoba WCB employs about 390 full-time equivalent staff (1996).

#### Governance Structure

The Manitoba WCB is governed by a board of directors appointed by order of the LGIC after consultation with workers, employers and the public. There are 10 board members: a Chair, three members who are representative of workers, three who are representative of employers and three who are representative of the public interest. Board members sit for a maximum term of five years (there is no express provision either way respecting the reappointment of board members).

The C.E.O is hired by the board and is an ex officio or non-voting member of the board. The board is responsible for establishing policy and direction and the C.E.O is responsible for implementing this policy and the day to day operations of the board.

#### Policy Development

The board has a formal "policy" on the development and approval of board policies (WCB Manitoba policy 10.30 - Policy and Procedures of the WCB; and 10.35 - Policy Development Process at the WCB).
### Accountability
The WCB must present an Annual Report and Five Year Plan regarding the operations of the WCB to the Minister responsible for the Workers Compensation Act. The report and plan are laid before legislative assembly and referred to Standing Committee on Public Utilities and Natural Resources.

### Performance Assessment
The Manitoba Workers Compensation Board has a formal strategic plan that sets out 11 key performance areas (KPAs) to guide its operations. "Specific measures of success have been established to support the WCB in monitoring progress within each KPA" (excerpt, Reaching for New Levels of Service: The Workers Compensation Board of Manitoba Five Year Strategic Plan, 1997).

### Claims Adjudication Process
Claims adjudication is a function of officers of the WCB. Notice of a claim must be given as soon as practicable after the injury or death. In Manitoba, the claim must be made within 12 months to qualify for entitlement under the Act, though there is provision for excusing the delay.

The office of the Workers' Advisers is an agency external to the WCB that assists claimants in negotiating the workers compensation system. This is a legislated service and advisers are appointed by the minister or LGIC. Expenses of the office of the workers' adviser are reimbursed from the Accident Fund.

In Manitoba, there is also provision for the Minister to appoint a physician to assist claimants with medical aspects of their claims.
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Dispute Resolution

Mediation / Conciliation

There are no formal mediation or conciliation mechanisms in the Manitoba system.

The Workers' Adviser's office plays an informal role in helping injured workers' resolve issues and disputes arising through the claims process.

The Fair Practices Office was established by the WCB to help employers and injured workers when they identify issues of fairness or natural justice. When a concern is raised the office initiates a thorough investigation. Where decisions or actions are found to be unreasonable, a recommendation is made.

Appeals Process

The Manitoba legislation provides specifically for an internal appeal process for disputed claims and cases. Disputed cases regarding a claims can be referred in writing for reconsideration to the Claims Services Review Committee and assessment related appeals can be referred to the Assessment Review Committee.

Disputed claims can subsequently be referred to adjudication by an independent Appeal Commission. Members of the Appeal Commission are appointed by the LGIC.

There is no time limit for making an appeal to either the internal bodies or the independent tribunal. An Appeal Commissioner can charge costs to the appellant if the appeal is considered vexatious or frivolous.

An Appeal Panel is made up of a neutral presiding officer, one representative of workers, and one representative of employers. As of December 31, 1996, the Appeal Commission consisted of four full-time, and 17 part-time appeal commissioners.
ASSESSMENTS / FINANCING

Assessment or Premium Setting Process
Assessment or premium rates are calculated on the basis of group category assessment and individual claims cost experience. There are 247 industry classes or sub-groups based on long term cost experience. The assessment rate for an individual employer can vary from plus 40% to minus 40% of the category average. In any one year, an employer's assessment rate is limited to a specific maximum increase or decrease to avoid "rate shock" (in 1997 the limits were a 15% increase or a 15% decrease).

Experience rating was discontinued in 1996.

Assessment/Premium Rates
The average assessment rate in Manitoba in 1997 was $2.08 with a low of $0.49 to a high of $19.97. In 1998, maximum assessable earnings were $50,380.

Second Injury Funds / Disaster Funds
Manitoba supports a special fund, financed from the general Accident Fund, to provide cost relief for second or subsequent injuries, including preexisting or underlying conditions, occupational disease with exposure outside Manitoba, loss of earning from an employment other than worker's employer and some increase in benefits due to recurrences or age of worker, or any other circumstances or situation which the board determines would unfairly burden a particular group or class.
### COMPENSATION BENEFITS

#### Claim Rate
Total new claims in 1996 were 41,535, down slightly from total claims reported in 1995 of 42,414. In 1996, 49 fatalities were reported and 27 accepted.

#### Medical Aid

##### Nature of Aid
The Manitoba system covers all medical and healthcare costs attributable to the compensable condition. Medical coverage includes coverage for personal appliances, clothing allowance, attendant or personal care, and renovation cost associated with paraplegic or quadriplegic injuries.

The board has several staff physicians (11 full-time equivalents in 1996) who provide advice to case managers. Their duties also include the supervision of healthcare and treatment plans for injured workers; permanent impairment assessment ratings for injured workers; and the provision of advice on healthcare policies and practices.

##### Choice of Provider
The worker has initial free choice of treating physician, but any subsequent change must be approved by the WCB Manitoba.

##### Medical Cost Containment Initiatives
The WCB pays the same medical fees as those set by the Health Department for use by physicians in billing the government for all healthcare services.

#### Rehabilitation

##### Physical/Occupational/Vocational
Rehabilitation is provided at the discretion of the WCB. The criteria for an injured worker being eligible for rehabilitation is that there be a favourable cost-benefit balance. Rehabilitation services include vocational assessment, occupational and vocational training and development, employment search, job placement and ergonomic evaluations. These services are continued until the maximum employment potential is reached.

##### Social
Manitoba may provide home or vehicle modifications to facilitate independent living and cover the costs of academic or vocational training or other such assistance to the dependent spouse of an injured or deceased worker.
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**Rehabilitation Incentives**
The board has a program called the "Hiring Solution" that provides rehabilitation incentives to encourage the early return to work of injured employees.

**Trends in Treatment of Subjective Complaints**
The board does not have a formal policy on handling, treating or compensating for chronic pain, though it has guidelines defining chronic pain and outlining how to deal with chronic pain cases. If the pain is disabling, and the result of a work-related injury, it is compensable.

**Disability Benefits**

**Short-Term Benefits - Temporary Disability**

*Weekly "loss of earnings or wage loss" compensation:*

*Rate:* For workers injured on or after January 1, 1992, wage loss benefits are paid for loss of earning capacity at 90% of net average earnings for the first 24 months, to a maximum of $540.71 for a worker with no dependents and $560.92 for a worker with spouse and two dependents (there is no absolute minimum payable as all awards are at 90% of net earnings, though a worker earning minimum wage with a spouse and two dependents will receive $184.49 per week). After 24 months of cumulative benefits, the rate is reduced to 80% net average earnings.

*Indexed:* Benefits are indexed on the first day of the month following the second anniversary of the accident and annually thereafter.

*Duration:* Duration of loss of earning capacity or the worker reaches 65 years of age. Where a worker is 63 years of age or older, wage loss benefits will not be paid for a period greater than 24 months.

*Taxable:* No.

*Employer's Excess / Waiting Periods:* There is no employer's excess or waiting period for benefits in Manitoba.

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2 Before January 1, 1992, the rate was 75% of average gross earnings.

3 Net average earnings is the rate arrived at after subtracting probable deductions for income tax, CPP, and EI premiums from average earnings.
Long-Term Benefits - Permanent Partial and Total Disability

**Economic "loss of earnings or wage loss" awards or pensions:**

**Rate:** Wage loss benefits are paid for loss of earnings capacity as above to a maximum of $2,342.90 per month for a single worker and maximum of $2,430.47 for a worker with a spouse and two dependent children (1997 rates). If a worker receives wage loss benefits for longer than 24 months, the WCB will contribute up to 5% of worker's wage loss toward an annuity payable at age 65. The worker can elect to match this amount. After 24 months, injured workers are also covered under a group life insurance plan.

**Indexed:** Annually on the basis of changes in the industrial average wage.

**Duration:** Duration of loss of earning capacity or the worker reaches 65 years of age.

**Taxable:** No.

**Offset Against Other Social Security Benefits:** C.P.P. disability pension, other disability benefits, any payment made by an employer and U.I. benefits.

**Award for permanent physical impairment:**

**Periodic (pension or annuity):** None.

**Lump-sum:** Manitoba has a dual award system. In addition to wage loss benefits, a permanently injured worker is eligible for a lump sum payment based on the degree of impairment. If degree of impairment is 1% to 4.99% award is $540; 5% to 9.99% award is $1,090; and 10% or greater, award is $1,090 plus $1,090 for each full 1% of impairment above 10% to a maximum of $99,190 (1997 rates). Amounts are reduced by 2% for each year the worker is over 45, total reduction not to exceed 40%.

**Covers Disfigurement:** Yes.

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4 Accidents before January 1, 1992, minimum monthly amounts of $891.47 to a maximum of $2,594.47. Survivors’ benefits and permanent disability awards are indexed on a biennial basis. Temporary disability benefits are indexed on an annual basis. The CPI is used to index these benefits.

5 If a covered worker died in 1997, the worker’s dependent would receive a lump-sum payment of $29,930. If there are no dependents the estate gets $5,440.

6 Where a worker is 63 years of age or older, wage loss benefits will not be paid for a period greater than 24 months.

7 If the lump-sum if above a certain amount (in 1997, $10,900) the worker can elect to receive it in an annuity. If the lump-sum is greater than $27,250 the worker is eligible for financial advice at WCB.
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Impairment Schedule: Policy 44.90.10, Permanent Impairment Rating Schedule.

Supplemental Awards: Special allowances from $175 to $1,215 per month are provided for personal or attendant care (based on seven classes of disability) and a clothing allowance of $186 per year for upper limb and $373 for lower limb or orthotic devices.

Hearing Loss

No special provisions.

Death Benefits

Funeral Expense Benefits

Funeral Costs: A lump-sum of $5,440.00 (1997) is provided to cover funeral costs; additional payments are available to cover reasonable costs related to transportation of the body.

Emergency Lump-sum: None.

Survivor Benefits

<table>
<thead>
<tr>
<th>Survivor Category</th>
<th>Lump-sum</th>
<th>Pension</th>
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</thead>
<tbody>
<tr>
<td>Dependent spouse without or with children</td>
<td>$29,930 to $49,530 (1997 rates); 2% reduction for each year spouse over age of 45 to the minimum amount ($29,930)⁸</td>
<td>90% of the deceased worker's net average earnings, less C.P.P. and other dependent benefits, available for 5 years or until youngest child reaches 18 or spouse turns 71. Continues after remarriage.</td>
</tr>
<tr>
<td>Dependent children, surviving parent</td>
<td>None.</td>
<td>$270 a month each child ($1,090 all children).</td>
</tr>
<tr>
<td>Dependent children, no surviving parent</td>
<td>None.</td>
<td>$540 a month per child ($1,090 total).</td>
</tr>
</tbody>
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expense to make an informed choice among the [annuity options under the Act]. The maximum fee payable for financial advice is $400.

⁸ This lump-sum amount is further reduced by the value of any previous impairment award received by the deceased for the same injury.
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Other dependents

None. (maximum $2,180 all dependents).

### HEALTH & SAFETY & PREVENTION

**Organization Structure**

**Agencies Responsible**

The Workplace Safety and Health Division of the Manitoba Department of Labour is responsible for occupational health and safety and administers the *Workplace Safety and Health Act*. The mission or goal of the Division is to "create an environment that will cause employers, workers, and the public to integrate safety and health into their work as a basic right and responsibility". The Division has three branches: the Workplace Safety and Health Branch, the Occupational Health Branch, and the Mines Inspection Branch.

Another agency involved in workplace health and safety in Manitoba is the Advisory Council on Workplace Safety and Health. Established in 1977, under the *Workplace Safety and Health Act*, the Advisory Council reports to the Minister of Labour and advises and makes recommendations to the Minister on general workplace health and safety issues, protection of workers in specific situations, and the appointment of consultants and advisers.
Source of Funding
All activities and initiatives of the Workplace Health and Safety Division of the Department of Labour are fully funded by employers' assessments through a transfer from the workers' compensation fund.

Accident Reporting
Under the occupational health and safety legislation, an employer must immediately report any serious injury or accident to the OHS Division.

OHS Representatives & Committees
OHS Committees are required for workplaces that have 20 or more employees. Safety representatives are required in workplaces with 10 to 19 employees.

Offenses & Penalties
Types of Offenses and Maximum Fines:
Any person found guilty of contravening specified provisions of the legislation is liable on the first offense of a fine of up to $150,000 and $25,000 for each day the offense continues. For a second or subsequent offenses, the maximum fine is $300,000 and $50,000 for each day the offense continues.

Convictions:
1995 - nine convictions (seven for employers and two for employees); total amount of fines unavailable.
1996 - 14 convictions (13 for employers and one for employees); total amount of fines unavailable.

There is no provision for administrative penalties in Manitoba.

OHS Legislative Review
There is no legislated or formal review requirement for the OHS act or regulations; there is a legislated requirement that the mines safety regulation be reviewed every five years. The review process is tripartite involving the Advisory Council on Workplace Safety and Health, which represents employers and employees, and Department of Labour officials.

Health and Safety and Loss Prevention Initiatives
Periodically, the Workplace Safety and Health Division will undertake partnerships or joint projects with various employer and labour associations and the board. One such project currently underway is a study of ergonomics.
FRAUD PREVENTION

An investigation unit of the board was established in 1990. At present the branch has two investigators and 0.5 FTE support staff. In 1995, the unit undertook 194 investigations and in 1996, 230 investigations were undertaken. In 1995, there was one successful criminal prosecution and a number of cases dating from 1995 and 1996 are still being prepared for court. A system is currently being implemented to measure the degree of impact and the estimated savings to the board as a result of fraud prevention activities.