Comparative Analysis of Workers’ Compensation Systems in Select Jurisdictions

JURISDICTION: NEW BRUNSWICK

ENVIRONMENT

Population Size 760,100 (1995, Stats Canada)
Labour Force 354,000 (1995, Stats Canada)

Demographic and Economic Indicators

After a recession, the New Brunswick economy began to pick up in 1995. Real GDP grew by 2.5% and 2.3% in 1995 and 1996 respectively. The major industries in New Brunswick include manufacturing, service (including telemarketing), construction, forestry and mining. Employment in the service related industries is on the rise while employment in other sectors remains relatively stable. Tourism is also a growth industry.

The population of New Brunswick has exhibited modest growth over the last five year period, growing by 0.38% between 1991 to 1995.

The average weekly wage rate in New Brunswick in 1995 was $509.24. The unemployment rate for New Brunswick in 1996 was 11.7% up slightly from 11.5% in 1995 and though well above the national average of 9.5% (Stats Canada) is close to the lowest rate since 1980.
GOVERNANCE & ADMINISTRATION

Nature of System  An exclusive provincial fund.

Principles and Mandate  The vision of the Workplace Health, Safety and Compensation Commission is "New Brunswick workers have access to safe and healthy work environment". The mission statement for the commission is "The Workplace Health, Safety and Compensation Commission is dedicated to the promotion of a safe and healthy work environment and the provision of services to workplace, employers and the injured workers of New Brunswick". The WHSCC has a three fold mandate:

• to actively promote prevention of accidents;
• to provide insurance and related services to the employer community; and
• to provide rehabilitation benefits, including compensation, medical, vocational and counseling services to injured workers.

Access to Litigation  Workers' compensation is an exclusive remedy in New Brunswick.

However, a worker can elect to claim compensation or pursue an action against a third party, where this is possible. There is a three month time limit for making this election, but this period can be extended. Where the worker elects compensation, the WHSCC is subrogated to the rights of the worker to the action. Where the worker elects to take action, the worker remains entitled to compensation benefits, if the benefits are greater than the settlement, provided the settlement is approved by the WHSCC before the settlement is accepted by the worker. New Brunswick legislation also provides for a right of action by an employee not covered by the legislation against an employer with less than three employees, another worker, or any other person (contractor or sub contractor with less than three employees) not covered by the legislation.
Comparative Review

New Brunswick

Scope of System

Who is Covered? Employers who have three or more employees, or employers in the fishing industry with more than 25 employees, are required to obtain coverage for their employees. This includes salaried corporate officers and directors; employers may elect coverage for themselves. Certain employees are exempt, such as outworkers, domestic servants and casual employees, who perform work other than for the purpose of the business. Exempt employers can request to be covered by the scheme. The LGIC may pass regulations excluding certain industries.

In 1996, it was estimated that 80.0% of New Brunswick's workforce was covered under its workers' compensation scheme. In 1996, there were 12,865 employers registered under the scheme.

What is Covered? All personal injuries "arising out of" and "in the course of" employment are covered under the scheme.

"Occupational disease" is also covered to the same extent as a personal injury. In New Brunswick, the regulations contain a list or schedule of covered occupational diseases. As well, any other disease peculiar to or characteristic of a particular industrial process, trade or occupation is also considered to be an occupational disease and thus covered under the scheme.

The Act specifically excludes "disablement of mental stress or a disablement caused by mental stress" except a reaction to an acute traumatic event.

Self Insurance Self insurance is permitted in New Brunswick for employees of government or the crown.
Comparative Review

New Brunswick

Organizational Framework

The Workplace Health, Safety and Compensation Commission of New Brunswick\(^1\) is responsible for the administration of the Workers' Compensation Act and the Workplace Health Safety and Compensation Commission Act. It is also responsible for the Occupational Health and Safety Act (see section on Prevention and Health and Safety).

The functions of compensation and prevention and rehabilitation are highly integrated and coordinated in the New Brunswick system\(^2\). The province of New Brunswick is split into four geographical regions for the delivery of prevention, rehabilitation and compensation services with regional offices in Bathurst, Moncton, Grand Falls, and Saint John. The head office is also located in Saint John. The full-time equivalent of staff of the WHSCC was 366 in 1996.

Governance Structure

Governance of the fund is through a Board of Directors consisting of a Chairperson of the Board of Directors, the President and CEO, the Chairperson of the Appeals Tribunal (non-voting member) and three persons representative of workers, three persons representative of employers and one representative of the general public. Members of the board serve part-time, except for the President and CEO and the Chairperson of the Appeals Tribunal. The Chairperson of the Board can be appointed for up to four years and the members for up to three years. Members can be reappointed.

Under the legislation, the Board of Directors is given "complete

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1  Effective January 1, 1995, the Workplace Health, Safety and Compensation Commission of New Brunswick was established by the amalgamation of the former Workers' Compensation Board and the Occupational Health and Safety Commission. The legislation also created an Appeals Tribunal to hear appeal from both compensation and occupational health and safety matters. This change was based on the principle that the best way to reduce the cost of accidents is to prevent them. Workplace safety and accident prevention and effective rehabilitation and return to work will be key priorities of the new system.

Legislation passed January 1, 1993 also overhauled the system of benefits for injured workers, reducing the wage loss benefit rate and introducing a three-day waiting period.

2  The WHSCC has combined all functions to provide a full range of services to clients in all regions of the province, including case management, claims processing, inspections, adjudication, occupational health, education, employer service and risk management.
and final responsibility for the policies and direction of the fund.

**Policy Development**
The Technology and Planning Division of the Commission is responsible for corporate policy development, planning and research and program development. The Public Affairs department is responsible for all communications and relations with both external and internal stakeholders.

**Accountability**
In the legislation, there is a provision that directs the Chairperson of the Board of Directors of the WHSCC, when requested, to report to the LGIC, through the Minister responsible for the legislation (at present, the Minister of Advanced Education and Labour) on matters relating to the administration of the legislation, the financial status of the WHSCC, its collection of revenues, the disposition of its funds and assets, and any other activities of the WHSCC.

**Performance Assessment**
Though the Commission collects, calculates and monitors a number of statistical measures, there is no formal, systematic performance assessment process in place.
Claims Adjudication Process

Claims adjudication is entirely the responsibility of the WHSCC. Case management was introduced in 1994. In March 1996, the Commission, in an effort to improve service delivery, decentralized case management and centralized the adjudication process. All claims are now adjudicated in one centralized area.

An injured worker must provide notice of their injury to their employer as soon as practicable and an employer must notify the WHSCC within three days of receiving notice or learning of an accident.

New Brunswick also has workers' and employer's advisers (appointed by order of the LGIC or minister) to provide advice, information and assistance on workers' compensation issues to both workers and employers.

Dispute Resolution

Mediation / Conciliation

No formal process.

The office of workers' and employers' advisers does however play an informal role in helping injured workers' and employers resolve issues and disputes arising through the workers' compensation process.
**Appeals Process**

The Appeals Tribunal is responsible for "providing fair, consistent, timely, impartial decisions on appeals by those who are not satisfied with a decision rendered on their behalf by the WHSCC".

The Appeals Tribunal is a separate body, but the chairperson of the Tribunal is directly responsible to the board of directors of the WHSCC for the operations of the Tribunal. Membership of the Tribunal includes representatives of workers and employers (formerly representation on the Tribunal was limited to members of the board of directors of the fund). Appeals may be heard by a panel of the Tribunal, consisting of the chair and two other members, one representing employers, one representing workers. In certain circumstances the Chair may act alone.

The Tribunal also hears appeals of decisions made by the chief compliance officer under the *Occupational Health and Safety Act*.

New Brunswick legislation also provides for an appeal to the Court of Appeal. A party wishing to appeal to the court, must request a Statement of Facts within 30 days of receiving a decision of the Commission. Within 30 days of receiving the Statement, the party must file a notice of appeal with the court. The Commission, on its own initiative, may also take a question of law to the Appeal Division of the Supreme Court for an opinion.

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3 The 1995 legislative amendments made significant changes to the structure and administration of the Appeals Tribunal. Prior to the new legislation the Appeals Tribunal had been an internal body and members of the board sat on the tribunal.
ASSESSMENTS / FINANCING

Assessment or Premium Setting Process

The New Brunswick system classifies employers into industries, categorizing industries according to their claims cost experience and sets assessment rates by categories. There were 102 industries, 35 rate groups and 10 sectors/classes in New Brunswick in 1996. The New Brunswick system is the only system that provides the option of monthly assessments being based on actual payroll.

New Brunswick also has an experience rating program introduced in 1990. To be eligible to participate, employers must have a basic average annual assessment of at least $3,000 over the three year period. An employer receives a discount or surcharge of 1% for each 2.5% variance from the rate group ratio up to a maximum discount of 40% and a maximum surcharge of 80%.

Assessment/Premium Rates

In 1997, the average assessment rate was $1.59 with a high of $6.34 and a low of $0.15 (in 1996, it was $1.75, with a high of $5.82 and a low of $0.17). The maximum assessable earnings rate was $43,300 in 1997 ($43,300 in 1996).

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4 One of the key changes in 1995 was the change to the assessment rating system in New Brunswick. Though the experience rating program supported the prevention and health and safety goals of the WHSCC, the classification and rate setting process did not. The intent of changes to the assessment rating system was to more equitably allocate assessments on the bases of industry and employer accident cost history. As a transitional provision the maximum increase in assessment levels applied to any one employer was limited to 75% in 1996.

5 In January 1995, the MAAP system (Monthly Assessments on Actual Payroll) was introduced as a pilot project. The program provides employers with the opportunity to report actual payrolls to the WHSCC on a monthly basis and pay their assessments monthly based on the actual payroll figure. Approximately 50 employers are participants in the program. The actual payroll system is designed to address concerns of employers regarding the difficulties in estimating payrolls and the requirement to pay up front, early in year, thus affecting the employer’s income stream.

6 This means that about 50% of employers, representing about 90% of assessments, participate in experience rating in New Brunswick.

7 The goal of the WHSCC was to reach a fully funded position by 2005. It appears that the fund is well ahead of this schedule and that the long-term fiscal policy goal of 105% funding will be met in 1997.
Second Injury Funds / Disaster Funds

New Brunswick provides supplemental coverage for second injuries which are coupled with other prior injuries or disabilities. If there is no new accident but a disability recurs, the worker must demonstrate that the current disability is connected with, or is similar or compatible, to the original injury. Coverage for second or subsequent injuries is provided through a reserve fund.

COMPENSATION BENEFITS

Claim Rate

In 1996, 26,197 claims were reported; down from a high of 36,446 in 1991. In 1995, 25,023 claims were made and in 1994, 24,449 claims were reported. In 1996, 20 fatality claims were made, in 1995, there were 17 fatality claims and in 1994, there were 24 fatalities reported and 15 accepted.

Medical Aid

Nature of Aid

Medical coverage is comprehensive covering medication, hospitalization, medical services, travel expenses, chiropractic treatments, physiotherapy, and acupuncture. Baby-sitting, homemaking, home care, clothing, appliances, and escorts are also covered as needed.

Choice of Provider

The initial choice of physician is the right of the injured worker as is the continued treatment by that general practitioner. However, any referral to a specialist requires pre-authorization by the WHSCC for payment, but for payment only.

Medical Cost Containment Initiatives

A medical fee schedule sets the costs of medical services. This fee schedule is negotiated between the WHSCC and the New Brunswick Medical Society and is updated as required.
Rehabilitation

Physical/
Occupational/
Vocational

As a way to reduce the overall costs of the system, early return-to-work and rehabilitation are priorities of the New Brunswick system.

Rehabilitation services are delivered through a team approach headed by a case manager and including a rehabilitation specialist, a medical adviser and an occupational therapist. The case management team, in cooperation and consultation with the injured worker, is responsible for developing and implementing a rehabilitation plan based on the goal of early return to work. If an injured worker unreasonably refuses to participate in his or her rehabilitation plan, earnings loss benefits may be suspended.

Unless the injury claim meets the criteria for "early intervention", case management normally begins after the employee is off work for six weeks, or if it is clear that the worker will not be able to return to work in six weeks.

The WHSCC also operates a Workers' Rehabilitation Centre which provides services for workers "who have not found the help they need through conventional channels". The Centre provides the services of a diverse team of specialists including doctors, nurses, physiotherapists, psychologists and occupational therapists. The injured worker is referred to the WRC by his or her case manager. The WRC is an ambulatory facility with accommodations provided by the private sector. The WHSCC covers the cost of the injured worker's treatment at the WRC similar to that of any service provider.

Social

None identified.
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Rehabilitation Incentives

New Brunswick legislation includes a provision regarding the right of the worker to resume their former work upon recovery from their illness or injury. The employer must reinstate the employee without loss of seniority or benefits. The employer is not bound to this requirement if the worker refuses a suitable job.

Companies with less than ten employees are exempt from this provision. There is also a provision requiring that the employer hold a job or suitable job open for one year in the case of an employer with 10 to 19 employees and for two years if they have over 20 employees.

Trends in Treatment of Subjective Complaints

No special policies or treatment programs were identified.

Disability Benefits

Short-Term Benefits - Temporary Disability

Weekly "loss of earnings or wage loss" compensation:

Rate: From the 4th day through 39th week of disability, a temporarily totally disabled worker is eligible to receive a wage loss benefit equal to 80% of their average net earnings\(^8\) to a maximum of $450.69 per week, for worker only, or $474.19 for a worker with a spouse (1997 rates). After 39 weeks, the benefit rate is 85% of average net earnings\(^9\).

Indexed: No.

Duration: Term of disability (until determined permanently disabled).

Taxable: No.

Employer's Excess / Waiting Periods: There is a three day waiting period for benefits. If a worker is disabled and receiving benefits for more than 30 working days, they will be reimbursed for this three day waiting period.

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\(^8\) Average net earnings are calculated by deducting income tax, C.P.P, contributions, and U.I. from gross earnings.

\(^9\) This rate was amended effective January 1, 1993, prior to that compensation was granted at 90% of net average earnings.
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<thead>
<tr>
<th><strong>Long-Term Benefits</strong> - <strong>Permanent Partial and Total Disability</strong></th>
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<tbody>
<tr>
<td><strong>Economic &quot;loss of earnings or wage loss&quot; awards or pensions:</strong></td>
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<tr>
<td>Rate: Since 1992, PPD and PTD were replaced by an earnings loss system. Benefits are paid based on 85% of the net loss of earnings based on the difference between pre-accident and post-accident net earnings and capable net earnings to a maximum of $2,183.05 for 1997. Long-term disability benefits are reduced by any amount by which the worker's combined earnings exceed 85% of the pre-accident earnings.</td>
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<tr>
<td>Indexed: Earnings loss benefits are subject to adjustment in accordance with the annual percentage increase in the New Brunswick Industrial Aggregate Earnings (NBIAE) on the first anniversary of the accident and annually thereafter.</td>
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<td>Duration: Age 65</td>
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<td>Taxable: Yes, offset against other Social Security Benefits: Canada Pension Plan Disability benefits.</td>
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<td><strong>Award for permanent physical impairment:</strong></td>
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<tr>
<td>Periodic (pension or annuity): None.</td>
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<tr>
<td>Lump-sum: New Brunswick is a dual award system. For permanent functional impairment, a lump-sum is payable based on a rating schedule for loss of opportunity from a minimum of $500 to a maximum equal to the maximum annual earnings for year of injury covered which is set at 150% of the NBIAE ($43,300 in 1997).</td>
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<tr>
<td>Covers Disfigurement: No.</td>
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<td>Impairment Schedule: WHSCC rating schedules supplemented by AMA as required.</td>
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<td>Supplemental Awards: Clothing allowances at a rate of $214 to $428 per year are provided for prosthetics wear and a personal care allowance from $224.45 to $748.15 per month (1997 rates) based on five categories is also provided to permanently disabled workers.</td>
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</tbody>
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10 Pre 1982, disability pensions were awarded for life and were based on the percentage of disability under a schedule as established by a physician and 75% paid to the claimant. There were three categories of claimants (PTD 100%, PPD>50% <100%, and PPD 50% or less) and a formula to calculate the award for each type of category.
**Comparative Review**  
**New Brunswick**

**Hearing Loss**  
Covered where due to trauma or exposure to high noise levels for an extended period of time.

**Death Benefits**

**Funeral Expense Benefits**

- **Funeral Costs**: A payment equal to 20% of NBIAE to a maximum of $5,778 (1997 rates) is provided to the spouse or dependents to cover funeral costs, including transportation of the body and other incidentals. This amount is offset against C.P.P. burial benefit.
- **Emergency Lump-sum**: None.

**Survivor Benefits**

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<tr>
<th>Survivor Category</th>
<th>Lump-sum</th>
<th>Pension</th>
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<tbody>
<tr>
<td>Non-working spouse, with or without children</td>
<td>Only on remarriage, payment equal to one year of their pension.</td>
<td>80% of the deceased's average net earnings, less C.P.P. to a maximum of $2,054.67 (1997 rate), available until age 65 or remarriage.</td>
</tr>
<tr>
<td>Working spouse, with or without child</td>
<td>Only on remarriage, payment equal to one year of their pension.</td>
<td>80% of the deceased's average net earnings, less C.P.P. and amount that spouse's income and pension exceed 90% of family income, available until age 65 or remarriage.</td>
</tr>
</tbody>
</table>

11 At age 65 the Act allows for a supplement to an injured worker's C.P.P retirement allowance if there is a reduction in pension benefits due to the compensable injury.

12 For a working spouse the net family income prior to the event is calculated and where the pension benefit and the spouse's net income is greater than 90% of the net family income, the amount in excess is deducted from the pension amount, in addition to a deduction for C.P.P.

13 At age 65, the spouse will collect either a lump-sum or annuity based on funding at 8% of all amounts paid in benefits, with no offset for C.P.P. benefits.
Dependent children None. 10% NBIAE to maximum of $240.77 if aged 0 to 6 years; 12.5% NBIAE to maximum of $300.96 if aged 7 to 13; 15% NBIAE to maximum of $361.15 if aged 14 to 17 and if 18 to 22 and attending school (1997 rates).

Dependent children, no surviving parent None. As above; but paid to guardian or trustee.

Other dependents None. Proportionate to dependent's pecuniary loss, at the discretion of the WHSCC.
HEALTH & SAFETY & PREVENTION

Organization Structure

Agencies Responsible

The WHSCC is responsible for workplace health and safety, including the administration of the *Occupational Health and Safety Act*. The Act is based on the principle that every worker is entitled to a safe and healthy workplace. The Act places primary responsibility for workplace health and safety in the hands of those in the workplace. The Act gives workers three basic rights: the right to know about workplace hazards; the right to participate in solving health and safety problems; and the right of workers to refuse dangerous work.

The Health and Safety division of WHSCC focuses on prevention through the delivery of the following services:

- prevention education and health and safety training, assistance in establishing joint health and safety committees and worksite advice or coaching and counseling;
- hazard identification including worksite inspection and working with employers to identify and correct potential hazards in the workplace;
- leadership in injury prevention through research, development, implementation and coordination of prevention strategies, programs and initiatives.\(^\text{14}\)

Source of Funding

OHS activities and initiatives undertaken by the WHSCC are primarily funded by employers' assessments and the workers' compensation fund. The provincial government provides some funds for OHS activities regarding non-assessed employers.

Accident Reporting

Under the OHS Act, accidents that involve a fatality, a loss of limb, an occupational disease or that require hospitalization must be reported to the Commission immediately. An accidental explosion or exposure must be reported to the Chief Compliance Officer with 24 hours. Failure to comply could result in prosecution.

\(^\text{14}\) In 1995, there were 6,414 workplace inspections; 3,819 orders were written of which 70 were stop work orders; and 165 training sessions or workshops were held.
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OHS Representatives & Committees
The OHS Act requires that every employer with 20 or more employees regularly employed at a place of employment establish a joint health and safety committee. The committee shall consist of equal representation from both employer and employees. Employers with not less than five and not more than 19 employees are required to establish a safety policy which may include a provision for a health and safety representative.

Offenses & Penalties

Types of Offenses and Maximum Fines:
Any person violating the act or regulations is liable upon conviction to a fine of up to $50,000 OR six months imprisonment; every day the offense continues is deemed to be a separate offense.

Convictions:
1995 - 3 convictions, total amount of fines $9,750.
1996 - 10 convictions; total amount of fines - $7,800.

Administrative Penalties
There is no provision for administrative penalties in New Brunswick.

OHS Legislative Review
There is no legislated review requirement for the Act or regulations; there is however a formal process in place for updating and reviewing the regulations (the goal is to establish a two year review cycle) with technical committees formed to review specific regulations. The review process is tripartite in nature with a government representative as chair and employer and employee representatives.

Health and Safety and Loss Prevention Initiatives
The Back in Form Program is geared to musculoskeletal injuries, particularly the back, neck and shoulders. The goal of the program is to help workplaces develop the necessary resources and strategies and to implement an effective injury prevention program at the work site. The Lift and Transfer Training System, a sub-set of the Back in Action Program, is geared to health care workers and is designed to help workplaces develop safe patient handling techniques. A manual material handling sub-set is also provided to industries at large.
Risk Management Services consultants work with companies to evaluate safety policies and procedures and develop safety programs to eliminate workplace hazards. Premium rebates and cash awards are be provided to the companies who demonstrate improvement in their health and safety practices by virtue of scoring as well in an audit as an established set of performance criteria.

**FRAUD PREVENTION**

The WHSCC does not have a organized, formal fraud unit. Investigations of suspected fraud are coordinated through the Office of the General Counsel. The WHSCC generally hires external investigators for fraud investigations. In 1997, the Commission investigated 39 cases of suspected fraud, in 1996, it investigated 22 cases, and in 1995, it investigated 14 cases. During this period there was one prosecution in which the claimant was found guilty.

It is estimated that fraudulent claims account for five to seven percent of benefits paid to injured workers. The impact of fraud investigations on costs savings to the Commission is unknown.