Comparative Analysis of Workers’ Compensation Systems
in Select Jurisdictions

JURISDICTION:  NEWFOUNDLAND

ENVIRONMENT

Population Size  455,000 (1995, Stats Canada)
Labour Force  242,000 (1995, Stats Canada)

Demographic and Economic Indicators

In recent years the economy of Newfoundland has been subjected to a number of major shocks. The economic effect of the groundfish closures continue to be significant and pervasive. The recent winding down of the Hibernia oilfields construction has also dealt a blow to the economy. In 1996, real GDP fell by an estimated 2.1%. Retail sales and investment was down but strength in the export sector, particularly of fish products and minerals partially offset declines on the domestic side. The outlook for 1997 is continued economic adjustment with an estimated reduction of about 2.7 % in overall output.

The population of Newfoundland declined slightly between 1991-1995 from 580,300 to 575,400 at a rate of -0.21.

The average annual wage rate in Newfoundland for 1995 was $537.59. In 1995, the unemployment rate in Newfoundland was 18.3% rising to 19.4% in 1996.
GOVERNANCE & ADMINISTRATION

Nature of System
An exclusive provincial fund.

Principles and Mandate
The goals of the Worker's Compensation Commission of Newfoundland and Labrador are:
- to be a client centered organization, providing the highest quality service to all workers, workers' dependents and employers through
  - a committed, well trained and experienced staff
  - a timely, appropriate and effective response to client needs
  - equity in treatment of all workers' dependents and employers across the province
  - the use of consistent, clear and easily understood policies and procedures, and
  - a demonstrated respect for clients in all aspects of the day-to-day operations of the Commission
- to provide leadership in addressing occupational health and safety issues, working in partnership with workers and employers to ensure healthy and safe workplaces;
- to be a fully funded organization in which there is an adequate an fair payment of both compensation to workers/dependents and assessments by employers;
- to demonstrate accountability in its management of the Injury Fund and delivery of services to workers and dependents;
- to be recognized, within and beyond Newfoundland, as a public sector organization that is innovative, flexible, client-centered and dedicated to continuous improvement.

Access to Litigation
Newfoundland is an exclusive remedy jurisdiction.

A worker has the option of electing to claim compensation or pursue an action against a third party. Recently, the right of action was extended to cases where the injury or death involved a motor vehicle even if the person responsible was a worker or employer covered under the Act. There is a six month time limit for making this election. Where an action is taken, the Commission is subrogated to the rights of the party taking the action. If the worker decides to claim compensation the
Commission has the right to sue the third party.

**Scope of System**

**Who is Covered?**

The Act covers all employments; for incorporated businesses this means that all workers, including the owner, even if the owner is the only worker, the director and managers must be covered; for unincorporated enterprises this means that as soon as an employee is hired they must be covered (partners or proprietors may voluntarily apply for Optional Personal Coverage). Coverage includes employees of the government or crown.

Certain select types of employments or employees are excluded by regulation.¹ Excluded types of employments include employment by a person in respect of construction or renovation of a private residence, where the residence is or will be used as a private residence of that person; employment by a person in respect of a function in a private residence of that person; and professional sports competitors. The Commission may, at its discretion, accept excluded types of employment or employees for coverage.

The scheme covers 91.9% of the workforce in Newfoundland (1994 estimate). There were 13,442 employers registered with the Commission in 1996 (up by 124 accounts from 1995).

**What is Covered?**

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

Coverage is also provided for "industrial diseases". Industrial disease includes any disease listed in the schedule to the Act and any other disease peculiar to or characteristic of a particular industrial process, trade or occupation.

Stress/psychological problems that develop as a direct result of physical injury are covered, but coverage for other stress claims is limited to cases that have been exposed to "unusual" job stress and where job stress is the "predominant cause".

¹ There are penalties, maximum of $2,000 for failure to submit statement of wages. Failure to pay assessments may result in a penalty equal to the cost of collection and a percentage penalty. A negligent employer may be held liable for claims or injuries during period of default.
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Self Insurance
Self insurance is permitted in Newfoundland with the specific permission of the Commission.

As of April 1997, seven organizations have entered into separately negotiated agreements with the Commission with respect to self insurance.

Organizational Framework
The Workers' Compensation Commission of Newfoundland and Labrador is responsible for administration of An Act Respecting Compensation To Workers For Injuries Suffered In The Course of Their Employment (short name, the Workers' Compensation Act).

In 1997, the Commission employed 223 full-time equivalent staff.

Governance Structure
The Commission is governed by a board of directors appointed by the LGIC. The board is composed of a Chairperson, two members representing employers, two members representing workers, two member at large, and the Chief Executive Officer and the Assistant Deputy Minister of the Department of Environment and Labour as a non-voting or ex officio members.

Policy Development
There is an established internal policy development process at the Commission. The Corporate Policy and Research Department is responsible for the process. Policy proposals are channeled through a staff working committee, the Management Committee of the Commission, then to the Compensation Policy Committee (a subcommittee of the board of directors) for pre-approval before being submitted to the board for final approval.

Accountability
One of the specific responsibilities of the board of directors of the Commission is to review the Act and regulations, and the Commission's administration, and make recommendations for change to the Minister and the LGIC (section 126 of the Act). This review must occur at least once every five years. The Commission must also report submit an Annual Report to the Minister each year.

There is an organizational reporting relationship with the
Performance Assessment

Newfoundland does not have a formal, set ongoing performance assessment and evaluation process, though it does monitor and report on a number of statistical measures.

Claims Adjudication Process

Claims processing, management and adjudication is through the Commission. An injured worker must provide notice of their injury as soon as practicable and an employer must notify the Commission within three days of receiving notice or learning of an accident. The claimant is responsible for contacting the Commission to report any change in condition and medical reports. The Commission must give written notice of their determination to the worker, including, on request, reasons for the determination.

The Act allows for an objection to a filed claim. The objection must be made in writing within 10 days of the claim being reported to the person objecting and a copy must be sent to the worker.

There is an office of Workers' Advisor operated through the Newfoundland and Labrador Federation of Labour. The Workers' Adviser is available to assist workers on matters related to workers' compensation, including providing information and advice and assistance in the claims process. The Adviser will also liaise between the injured worker and the Commission and its appeal division.

Dispute Resolution Mediation/Conciliation

There are no express provisions relating to mediation or conciliation in Newfoundland.

The office of the Workers' Adviser plays an informal role in dispute resolution by advising workers on the claims process and acting as their advocate in the internal appeals process.
**Appeals Process**

Workers dissatisfied with a decision on their claim and employers dissatisfied with their classification or assessment rate may request an Internal Review of that decision. A request for an Internal Review must be filed within 90 days of the original decision. An Internal Review decision is the final decision of the Commission. There is no requirement for a hearing unless significant new evidence comes to light or there is a substantive issue.

Any decision of the Commission can also be appealed to the external review body, the Workers' Compensation Review Division. The WCRD consists of a Chief Review Commissioner and up to seven Review Commissioners appointed by the LGIC for five year terms. A worker or employer has 90 days from the date they were notified of a decision of the Commission to appeal it to the WCRD. The Commission has standing and may be heard and make representations itself or through an agent acting on its behalf on a matter bearing reviewed by the WCRD. The review process, from application date to final decision must be completed within six months.

Newfoundland also provides that the Commission, on its own motion or application, may bring a question of law to the Trial Division of its provincial court system for an opinion.
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ASSESSMENTS / FINANCING

Assessment or Premium Setting Process

For assessment purposes, employers are classified by the industry in which they operate. Industries are then categorized into rate groups and based on the claims cost experience of that groups assessment rates are determined. The rates are per $100 of assessable payroll. There are 592 industry and 84 rate groups in Newfoundland.

In 1995, Newfoundland also introduced an experience rating plan. Participation is compulsory for any firm in an eligible rate code, provided that it has three consecutive years of history and a minimum of $3,000 in total assessments over those three years ($1,000 per year average). The ERP is a prospective plan: individual firms can receive a surcharge or rebate of up to 20% depending on their variance from the average claims cost experience for the rate group.

Assessment/Premium Rates

In 1997, the average assessment rate was $2.96 with a low of $0.34 and a high of $20.80 (in 1996, the average assessment rate was $3.05, with a low of $0.34 and a high of $19.81. In 1997, maximum assessable earnings were $45,500.

Second Injury Funds / Disaster Funds

Newfoundland provides supplemental coverage for all enhanced disabilities that occur because of similar or other disabilities and subsequent injuries during a rehabilitation program. Coverage for second or subsequent injuries is provided through a reserve fund.

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2 Only a few rate codes are ineligible for experience rating: those with only one eligible firm and those few rate codes that do not easily lend themselves to experience rating due to the nature or their assessments or operations.
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COMPENSATION

BENEFITS

Claim Rate

In 1996, 12,091 claims were reported, of which 5,136 resulted in time loss (as compared to 14,186 reported claims in 1995 of which 6,183 resulted in time loss). In 1996, nine fatalities were accepted (in 1995, 12 fatalities were accepted).

Medical Aid

Nature of Aid

The Commission pays all reasonable medical and health care expenses for an injured worker. Medical aid covered by the system includes doctor's fees, chiropractic fees, hospital costs, costs of prescription drugs, physiotherapy and appliances. The Commission will also cover the reasonable expenses of travel and accommodation associated with medical treatment.

Choice of Provider

The injured worker controls choice of physician. Any changes should be discussed with the Commission staff person handling the claim.

In certain cases, the Commission may request the injured worker be examined by a specific medical practitioner. If an injured worker is referred to physiotherapy they must contact a physiotherapist within 72 hours.

Medical Cost Containment Initiatives

The Commission has established fee schedules for various doctor, physiotherapy, chiropractic and occupational therapy services, as well as travel and accommodation expenses associated with medical treatments. Hospital fees are set by the provincial Department of Health.
Rehabilitation

Vocational rehabilitation is discretionary. The Commission may provide vocational rehabilitation services, if it is believed that this will assist the worker in returning to work; each case is determined on its own merits. Case managers are responsible for developing written return to work plans in consultation with the worker, the employer and the worker's physician. Where, in the judgment of the Commission, a worker is not applying him or herself to the goals of the rehabilitation program, the Commission may withhold, suspend, or terminate benefits and services.

Vocational rehabilitation services include counseling (the Career Exploration Support program helps workers with significant injuries and few transferable skills to develop alternate employment goals), return to work programs (modified work, trial work periods and "ease back to work" programs) and on-the-job training. Costs of tuition fees, books, travel and boarding costs may also be covered by the Commission. The Commission may also pay the cost of worksite modification if this will aid the employee in returning to work and in special cases, where the worker is unable to benefit from other employment or training programs, may offer entrepreneur assistance.

Social

In select cases, the Commission will provide academic upgrading and formal training not to exceed three years.

Rehabilitation Incentives

The Commission may pay for on-the-job training programs or formal training if an employer will accommodate a returning worker in an alternate position. The Commission also offers the Workplace Re-entry Assistance (WFRA) program. Designed for workers who have to look for work, this program provides financial assistance for up to 10 weeks for workers looking for work. Following a Commission sponsored training program, workers qualify for at least two weeks of WFRA.
Trends in Treatment of Subjective Complaints

The Commission may accept entitlement for chronic pain disability when it results from a work related injury and there is sufficient credible evidence to establish the disability. The Commission recognizes the consequences of chronic pain and chronic pain syndrome and will provide necessary intervention and treatment. In rating permanent functional impairment, the Commission may consider continued chronic pain that has been treated in addition to other symptoms.

Disability Benefits

Short-Term Benefits - Temporary Disability

Weekly "loss of earnings or wage loss" compensation:
Rate: For the first 39 weeks, Temporary Earnings Loss benefits, equal to 75% of average weekly net earnings to a maximum of $434.88 and a minimum of $200 per week, or 100% of net earnings if less than $200 per week are provided. After 39 weeks, benefits increase to 80% of net earnings to a maximum of $463.87 and a minimum of $200 or 100% if less (1997 rates). The government plans to pass legislation for 1998 that will establish the earnings loss rate at 80% of net earnings for all workers regardless of duration.
Indexed: No.
Duration: Term of disability.
Taxable: No.
Employer's Excess / Waiting Periods: The employer pays for the first day.
### Long-Term Benefits - Permanent Partial and Total Disability

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<th>Loss of earnings or wage loss awards or pensions:</th>
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<tr>
<td>Rate: Extended Earnings Loss (E.E.L) benefits are available to workers who can not earn as much after the injury as they earned before the injury. E.E.L benefits are 80% of the difference between the net income earned before the injury and the net income the worker is capable of earning after recovery.</td>
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<tr>
<td>Indexed: E.E.L. benefits are reviewed annually and the CPI for Canada applied to the pre-injury earnings.</td>
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<tr>
<td>Duration: Age 65.</td>
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<td>Taxable: No.</td>
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<td>Offset Against Other Social Security Benefits: Wage loss benefits are offset against C.P.P disability benefits and any employer sponsored pension plan benefits.</td>
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**Award for permanent physical impairment:**

- Periodic (pension or annuity): None.
- Lump-sum: Newfoundland has a dual award system. As well as entitlement to wage loss benefits, workers with Permanent Functional Impairment (PFI) are entitled to a lump-sum of between $1,000 and $45,500 (1997 rates).
- Covers Disfigurement: Yes, specifically covered.

**Impairment Schedule:** Based on impairment rating schedule approved by the board of directors of the Commission.

**Supplemental Awards:** Special allowances for personal care from $100 to $1,250 per month (based on five levels) and clothing allowances for wear due to appliances or prosthetics of up to $300 per year are provided by the Commission.

### Hearing Loss

No special provisions for hearing loss.

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3 Prior to January 1, 1993, 90% was provided.

4 Unless the worker is 63 or over at the commencement of disability, in which case wage loss benefits may be paid up to two years for the date of the injury.
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**Death Benefits**

*Funeral Expense Benefits*

*Funeral Costs:* When the deceased has no dependents, the Commission will pay the expenses related to the burial of the worker to a maximum of $4,500.00.

*Emergency Lump-sum:* None.

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<th>Survivor Category</th>
<th>Lump-sum</th>
<th>Pension</th>
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<tbody>
<tr>
<td>Dependent spouse, without or without children</td>
<td>26 times the worker's average weekly net earnings at the time of injury or $15,000 whichever is greater (1997 rate).</td>
<td>80% of the deceased worker's average weekly net earnings, less C.P.P., to the maximum earnings covered by the Act ($45,500, 1997) available until age 65. Continues after remarriage.</td>
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<tr>
<td>Dependent children, no surviving parent</td>
<td>Equal share in lump-sum payment described above.</td>
<td>Guardian entitled to 80% of worker's average weekly earnings, less C.P.P. survivor pension, until child reaches 18 years or 25 if pursuing post secondary education (indefinite if child an invalid).</td>
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HEALTH & SAFETY
& PREVENTION

Organization Structure

Agencies Responsible

Occupational health and safety is the responsibility of Occupational Health and Safety division of the Department of Environment and Labour.

The mandate of the Occupational Health and Safety division is to "strive to improve the health and safety of workers and encourage accident and illness prevention by establishing and enforcing workplace standards and procedures". Under the occupational health and safety legislation it is recognized that all workers have fundamental right to a safe and healthy working environment. The legislation is based on an internal responsibility approach which makes responsibility for workplace health and safety a joint effort of government, employers and workers in the province.

Source of Funding

Funding for the occupational health and safety administration and activities of the Department of Environment and Labour is provided by employers' assessments through the workers' compensation fund.

Accident Reporting

Accidents that result in serious injury or a fatality must be reported immediately to the OHS division. Fines may be levied for non-compliance.

OHS Representatives & Committees

OHS committees are required for every workplace with 10 or more employees; workplace safety representatives are required for any workplace with under 10 employees.

Offenses & Penalties

Contraventions of the Legislation

Types of Offenses and Maximum Fines:
Any person violating the act or regulations, or failing to comply with an order is liable upon conviction to a fine of up to $50,000 and $5,000 for each day the offense continues AND/OR up to six months imprisonment.
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**Convictions:**
1995 - one conviction (employer); amount of fine - $1,000.
1996 - six convictions; total amount of fines unavailable.

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<th><strong>Administrative Penalties</strong></th>
<th>There is no provision for administrative penalties in Newfoundland.</th>
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<tr>
<td><strong>OHS Legislative Review</strong></td>
<td>There is no legislated review requirement for the act or regulations; however there is a formal process in place to provide for the ongoing and periodic review of the regulations. The government leads this review process with extensive consultation with the stakeholders.</td>
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<tr>
<td><strong>Health and Safety and Loss Prevention Initiatives</strong></td>
<td>The 1996 Worksafe Program is a joint initiative of the Commission and the Occupational Health and Safety division of the Department of Environment and Labour. The purpose of the voluntary Worksafe program is to promote occupational health and safety, thereby reducing workers compensation claims costs, through financial incentives (interest free loans of up to $50,000) to support safety proposals or initiatives to be undertaken by the company. If the firm's claim cost experience is positively affected by the implementation of the safety initiative, and the firm passes a safety audit, the firm is eligible for an assessment refund. To be eligible to participate in the program firms must incur an average of $75,000 in new claims cost for a three year period.</td>
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FRAUD PREVENTION

In 1995, the Commission introduced an Investigations Policy dealing with abuse of the system and established an Investigations Unit. There are four investigators and one Director of Investigations.

In 1996, the Unit carried out 448 investigations, in 1995, 335 investigations were carried out. There were 5 successful prosecutions in 1996, and 6 in 1995. The estimated savings to the Commission as a result of the Investigation Unit's activities is about $800,000 in 1997 (as compared to $626,000 in 1996 $625,00 in 1995).