Comparative Analysis of Workers’ Compensation Systems in Select Jurisdictions

JURISDICTION: NORTHWEST TERRITORIES

ENVIRONMENT
Population Size 65,800 (1995, Stats Canada)

Demographic and Economic Indicators
The total area of the Northwest Territories is about one-third of Canada's total land mass. The territory extends from the Yukon border in the west to Baffin Island in the east, and form the arctic, south to the 60th parallel.

The major industry in the Northwest Territories is mining; 95% of total goods exported are mineral products. Construction, transportation, retail services and public administration are the other key industrial sectors. There is potential for great mineral development and timber and agricultural development in the NWT.

The Northwest Territories is sparsely populated, but the population has grown steadily over the last five year period, from 61,300 in 1991 to 65,800 in 1995, at a rate of 1.80.
GOVERNANCE & ADMINISTRATION

Nature of System
An exclusive territorial fund.

Principles and Mandate
The goal of the Workers' Compensation Board of the Northwest Territories is
• to be representative and sensitive to the needs of clients
• is to maintain a compensation system which is fair and equitable
• to be effective, efficient and committed to providing excellent services
• to be committed to communicating effectively and efficiently with stakeholders
• to be committed to maintain benefits in a cost effective manner; and be committed to accident prevention.

Access to Litigation
In the Northwest Territories, workers' compensation is not the sole remedy for work injuries. Although the Act stands in lieu of all rights against the worker's employer or fellow workers, there is provision for an action against other employers and workers of those other employers. Where an action is taken, the WCB is subrogated to the rights of the party taking the action.

Scope of System
Who is Covered?
Coverage is compulsory for employers in all industries, including employees of the territorial government\(^1\). Federal government employees working in the NWT are excluded. Corporate officers and independent contractors may apply for optional coverage. The Board has the power to exempt a specific industry, employer or worker.

There were 3,063 employers registered in 1997. It is estimated that 90.9% (1997) of the labour force is covered by the workers compensation regime.

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\(^1\) An employer is liable for compensation payable and assessment plus a percentage of the assessment as penalty for failure to submit statement of wages or pay assessment.
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 caused by the conditions in a place where an industrial process, trade industry or occupation is carried on. The Northwest Territories does not recognize any claim for a stress related illness or disability.

Self Insurance Not permitted.

Organizational Framework The Workers' Compensation Board of the Northwest Territories is responsible for the administration of the Workers' Compensation Act, the Safety Act, the Explosives Use Act, and the Mine Health and Safety Act.

The board's mission is to serve injured workers and employers in an effective and efficient manner by promoting accident prevention in the workplace and by providing quality rehabilitation services and fair compensation to injured workers throughout the NWT.

In addition to providing safety education services to employers and workers and providing compensation to workers disabled on the job, the Board is responsible for issuing letters of good standing and interim and final clearances for project contracts.

The Board employed 93 employees in 1997 (87.5 full-time equivalent positions).

Governance Structure The WCB NWT is governed by a board of directors appointed by the Minister Responsible for Workers' Compensation. The board is composed of seven directors: the Chairperson and CEO, and up to two representatives each of workers, employers and the general public.
Policy Development

Policies may be identified by staff, board members, or members of the general public. Issues are referred to the Policy section in the Corporate Services division for research and development. Draft policies are circulated to relevant divisions in the WCB for review and comment. Once this input has been assessed and incorporated, draft policy is referred to the Policy Committee, a subcommittee of the board for review. Depending on the content, a draft policy may also be referred to the Finance subcommittee before going to the full board for approval.

The board may decide to consult with stakeholders on a particular policy initiative but this is not required.

Accountability

There is no specific accountability or reporting relationship established in the legislation, but the Board reports organizationally to the Minister Responsible for Workers' Compensation and the Minister is responsible for appointing the board of directors and the members of the Appeals Tribunal. Additionally, there are specific provisions requiring the board to report to the minister on specific matters (for example, pension benefit rates and recommendations for increases).

Performance Assessment

There is no formal, systematic performance assessment and evaluation process. The NWT board does, however, monitor a number of statistical measures, including using statistics to target accident prevention.

One of the objectives established for 1998 is to establish a plan for the systematic performance/program assessment and evaluation of the board. The NWT board has conducted reviews and preliminary evaluations.
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**Claims Adjudication Process**

Staff of the NWT board are responsible for all functions related to claims processing, adjudication and management. The Board must give written notice of their determination to the worker, including, on request, reasons for the determination.

To qualify for compensation, an injury or death must be reported to the board and a claim made within 12 months. Dependents have three years to file a new claim if the worker had already filed before death.

There is an office of workers' advisor to assist workers in the workers' compensation claims process. The workers' advisor is a non statutory position; the advisor is appointed by and reports to the minister. The worker must request the advisor to act on their behalf and give authorization for the release of their information to the advisor.

**Dispute Resolution**

*Mediation / Conciliation*

There is no formal conciliation / mediation process in NWT.

The workers' advisor does, however, play an informal role in dispute resolution by communicating and acting on behalf of the worker in appeals matters.

**Appeals Process**

Disputed claims can first be referred to an internal Review Committee of the WCB and then to a separate Appeals Tribunal.

The Review Committee is composed of two chairs, one representing workers and one employers (if there is a conflict with one the co-chairs a member of the senior management of the WCB will act as the second member of the Review Committee). A decision cannot be appealed to the Appeals Tribunal without first going through the internal review process. The Chair of the Appeals Tribunal is a member of the board of directors of the WCB; of the other three members of the Appeals Tribunal who are appointed by the Minister, one must be a representative of labour and one a representative of employers.

In NWT, a decision of the board can be appealed to the courts where there is a denial of natural justice or an excess of the
board's jurisdiction. There is no appeal to court of a decision of the Tribunal.

**ASSESSMENTS / FINANCING**

**Assessment or Premium Setting Process**

Assessment rates are set by the Board on the basis of classifying firms into industry groups and establishing assessment rates by group based on the industry group's claims cost experience.

In 1996, 2967 employers were registered in 30 rate groups. In 1997, there was no change in the number of rate groups; the number of registered employers increased to 3,063.

The NWT Safety Incentive and Rate Reduction Program (SIRR) is a form of experience rating plan. Introduced in 1996, after a test year in 1995, the program is designed to reduce individual firm's claims costs through financial disincentives. The SIRR applies to employers who have an average assessment of over $1,000. Special assessments or surcharges are applied to any qualifying firm whose claim cost experience is higher than a three year floating average. Twenty-five percent of the special assessment surcharge paid to the Board is used to fund safety programs with the remainder held in reserve to offset costs of the annual rate setting process.

**Assessment/Premium Rates**

The average assessment rate in NWT in 1997 was $2.10 with a low of $0.50 and a high of $9.00 (trucking industry). In 1996, the average rate was $2.33 with a low of $0.50 and a high of $9.75. In mid 1996, maximum assessable earnings in NWT moved from $47,500 to $49,000. Effective January 1, 1998, the maximum increased to $52,000.

**Second Injury Funds / Disaster Funds**

The NWT system provides supplemental coverage for all disabilities due to preexisting disease, condition or disability to the extent of the difference between the second injury and total cost. This coverage is funded through the general Accident Fund.
COMPENSATION
BENEFITS

Claim Rate
In 1994, there were 3,866 claims reported in 1995, 3,879 claims were reported and in 1994, 3,909. In 1994, 15 fatalities were reported of which six were accepted.

Medical Aid

Nature of Aid
All necessary medical aid is covered by the WCB, this includes coverage for expenses and travel when receiving medical treatment.

Choice of Provider
The worker has freedom in initial choice of physician; any changes must be approved by the board.

Medical Cost Containment Initiatives
None identified.

Rehabilitation

Vocational
Rehabilitation is at the discretion of the board. Where, in the board's judgment a injured worker will benefit form rehabilitation services, the board will require participation by the injured worker in a rehabilitation program, including continuing benefits while a worker in undergoing rehabilitation and on the job retraining. The board offers "work hardening" programs through private service delivery providers which are geared to early return to work programs.

Social
Though the board's preference is return to work, it will cover the costs of academic retraining. It will also cover the costs of home and car modifications.

Rehabilitation Incentives
The board will cover the costs of modifying the worksite.

Trends in Treatment of Subjective Complaints
The board does not recognize chronic pain as a compensable disability, but will provide treatment for chronic pain syndrome.
Disability Benefits

**Short-Term Benefits - Temporary Disability**

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

*Rate:* For TTD, 90% of net earnings\(^2\) (in 1998, to a maximum of $680.54 for a worker with a spouse and two children, and a minimum of $329.10 per week, or 100% of earnings if less).

*Indexed:* Ad hoc.

*Duration:* Term of the disability.

*Taxable:* No.

*Employer's Excess / Waiting Periods:* There is a one day waiting period for the injured worker.

**Long-Term Benefits - Permanent Partial and Total Disability**

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

*Rate:* As above, lifetime pensions based on 90% of net earnings are awarded for permanent impairment. For PTD, to a maximum of $2,957.13 per month (for a worker with a spouse and two children) to a minimum of $1,430.00 (1998 rates). For PPD, lump-sum payments are normally awarded where degree of permanent impairment is 10% or less.

*Indexed:* Ad hoc - the board of directors is required to undertake an annual review of the pension levels and make recommendations to the minister.

*Duration:* Life.

*Taxable:* No.

*Offset Against Other Social Security Benefits:* No offset.

*Award for permanent physical impairment\(^3\):*

*Periodic (pension or annuity):* No.

*Lump-sum:* No.

*Covers Disfigurement:* N.A.

*Impairment Schedule:* NWT Disability Rating Guide.

*Supplemental Awards:* Special allowances of between $350 to $1,900 per month are provided to cover the necessary costs of personal or attendant care (three categories). There is also an independence allowance of $160 per month and a clothing allowance of a maximum of $100 per year (1997 rates).

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\(^2\) Net earnings calculated by deducting U.I., C.P.P. contributions and Income tax.

\(^3\) Though not specifically considered a distinct, separate award for functional impairment, the PPD award is often an award for physical impairment.
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**Hearing Loss**

The board will assess injured workers with hearing loss, but will not compensate until the worker has left the offending worksite.

**Death Benefits**

**Funeral Expense Benefits**

*Funeral Costs:* A funeral expense grant of 4% Yearly Maximum Insurable Remuneration (YMIR) to a maximum of $2,080 (1998) is provided to cover funeral costs; additional payments are available to cover the necessary costs related to transportation of the body.

*Emergency Lump-sum:* None.

**Survivor Benefits**

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<th>Survivor Category</th>
<th>Lump-sum</th>
<th>Pension</th>
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<td>Dependent spouse with or without children</td>
<td>Only on remarriage, a lump-sum equal to one year's pension to a maximum of $17,160 (1998).</td>
<td>2.75% of deceased's YMIR, less C.P.P., to a maximum of $1,430.00 per month (1998) until age 65 or remarriage.</td>
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<tr>
<td>Dependent children, with or without surviving parent</td>
<td>None.</td>
<td>.625% of deceased's YMIR to a maximum of $325.00 per month (1998) per child, available until age 16 or receipt of first education degree or vocational certificate.</td>
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<tr>
<td>Other dependents, where no spouse or children</td>
<td>None.</td>
<td>Provided on the basis of need as determined by Board, subject to a maximum of $1,430.00 per month (2.75% YMIR).</td>
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### HEALTH & SAFETY & PREVENTION

#### Organization Structure

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<th>Agencies Responsible</th>
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The WCB NWT is responsible for the *Safety Act* which governs occupational health and safety in NWT, except for the mining industry. The board is also responsible for the administration and enforcement of the *Mine Health and Safety Act*. Responsibility for occupational health and safety was transferred to the Board in 1996 from the Department of Safety and Public Services.

#### Source of Funding

By 1999, the WCB will be totally responsible for funding occupational health and safety program and activities\(^4\).

#### Accident Reporting

Section 35 of the General Safety Regulation, requires employers to report serious accidents to the Chief Safety Officer. The Mine Health and Safety Regulation requires employers to report both accidents and dangerous occurrences. Under the *Workers' Compensation Act*, employers are required to notify the board of any accidents within three days of being notified of its occurrence.

#### OHS Representatives & Committees

Under the *Mines Health and Safety Act*, an OHS committee is required for every worksite where there are 15 or more employees. There is no mandatory requirement for OHS committees under the *Safety Act* for other workplaces; committees are only required on order of the Chief Safety Officer.

Regulations under the *Safety Act* require that all employers have an accident prevention program and as part of this program there must be a mechanism for employers to voice their concerns.

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\(^4\) With the transfer of responsibility for OHS from the disbanded Department of Safety and Public Services to the WCB, the government and the WCB entered into a three year transitional funding arrangement; in 1996/97 the government will contribute 75% of the approved OHS Department budget to the WCB, in 1997/98 the government will contribute an amount equal to 50% of the 1996/97 OHS budget to the WCB and in 1998/99 it will contribute 25% of the amount of the 1996/97 OHS budget. Thereafter the government will no longer provide any funding for OHS and OHS programs will be completely supported through employers' assessments and the workers' compensation fund.
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concerns respecting health and safety issues.

**Offenses & Penalties**

**Contraventions of the Legislation**  
*Types of Offenses and Maximum Fines:*

Under the *Safety Act*:

- any employer contravening the act or regulations or failing to comply with an order is liable on conviction to a fine of up to $500,000 AND/OR one year imprisonment;
- any employee who commits an offense is liable to a fine of up to $50,000 AND/OR up to six months imprisonment and any employee who condones an employer's offenses is liable to a $25,000 fine AND/OR one month imprisonment.

Under the *Mine Health and Safety Act* any person found guilty of contravening the Act or regulations is subject to a fine of up to $50,000 for an individual, and $500,000 for a corporation. Each day the offense continues is deemed to be a separate offense.

**Convictions:**

1995 - none.
1996 - one conviction (employer offense); total amount of fine - $2,000.

**Administrative Penalties**

There is no provision for administrative penalties in NWT.

**OHS Legislative Review**

There is no legislated review requirement for the *Safety Act* and regulations; under the 1995 *Mine Health and Safety Act* a bipartite committee (five employer representatives and five worker representatives) is responsible for reviewing the implementation of the new legislation.

**Health and Safety and Loss Prevention Initiatives**

The board is currently sponsoring an education program that is being taught in NWT secondary schools. The Safety and Young Worker Program is designed to make young workers aware of occupational health and safety and what they can do to ensure a safe and healthy work environment.
FRAUD PREVENTION
The NWT board developed a fraud prevention strategy in 1996 and employed an Investigations Coordinator in November 1996 to review employer accounts, suspected claimant fraud and the suppliers of goods and services. Where fraud is suspected, private investigators are hired. If evidence to support a criminal charge is identified, it is turned over to the RCMP for follow-up.