Comparative Review of Workers’ Compensation Systems in Select Jurisdictions

JURISDICTION: QUÉBEC

ENVIRONMENT
Labour Force 3,612,000 (1995, Stats Canada)

Demographic and Economic Indicators
Total GDP for Québec was estimated at $173 billion in 1995; manufacturing alone totalled 461,000 salaried employees and $103 billion in gross product value. In addition to manufacturing, the major industries in Québec are metallurgy and metal forming; pulp and paper; transportation equipment; electrical and electronic products; chemical industries and products and lumber.

The population of Québec is growing at a modest rate, 0.88% between 1991 and 1995. The population of Québec comprises 24.8% of the total population of Canada.

The Québec labour force is 24.2% of the total labour force in Canada. The average weekly wage rate in Québec is $545.12 (1994 Stats Canada). Unemployment in Québec in 1996 was 11.8% up from 11.3% in 1995 (Stats Canada).
**GOVERNANCE & ADMINISTRATION**

<table>
<thead>
<tr>
<th>Nature of System</th>
<th>An exclusive provincial fund.</th>
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<tr>
<td>Principles and Mandate</td>
<td>The principles on which the Québec system is based are: prevention, through a partnership of workers, employers and others working together to promote a safe and healthy working environment; early return to work through provision of necessary supports and rehabilitation services, fair and equitable compensation, all delivered in a cost efficient and effective manner(^1).</td>
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| Access to Litigation      | In Québec, workers' compensation is an exclusive remedy. Québec legislation includes a provision allowing a worker to elect to pursue an action against a third party or claim compensation. There is a six month time limit to claim compensation; if a worker does not make an election within this period it is presumed that the injured worker has renounced their claim to compensation. Where an action is taken, the WCB is subrogated to the rights of the party taking action. |

\(^1\) Québec legislation underwent a complete overhaul in 1985 with the replacement of the Workers Compensation Act with the Act Respecting Industrial Accidents and Occupational Diseases. The new Act introduced sweeping changes including the introduction of a dual award system, enhanced rehabilitation provisions, including worker reinstatement rights, a revamped appeals process with the introduction of both a new tripartite internal appeals system and independent appeal tribunal. Further amendments in 1992 reduced the influence of the worker's physician, facilitated CSST and employer ability to challenge claims and streamlined administration and the dispute resolution process to reduce costs and delays in claims processing.

In November 1992, the CSST launched a realignment process dealing with every aspect of its mission. This review was in response to concerns of workers, employers and CSST partners who were dissatisfied with elements of the system, in particular, the return to work process, prevention and inspection, increase in assessments and the judicialization of the system. The CSST itself was concerned with the fact that the Commission had run at a deficit throughout the 1980s. The goal of the realignment process was to improve clients services and restore the system's financial balance. The focus of the review was service delivery as compared to legislative change: rehabilitation services were refocused on maintaining the employment relationship; compensation services were enhanced to make the system quicker, fairer, more effective, more personalized and expert; and prevention services were adjusted to more involve the workplace and increase consultation between all the parties responsible for health and safety.
Scope of System

Who is Covered?
All workers whose employers maintain an office or business establishment in Quebec are covered by the scheme. Professional athletes are specifically excluded and coverage is voluntary for corporate officers, domestic workers and outworkers, the self employed and volunteer workers.

The percentage of the workforce covered by the Quebec workers' compensation system is estimated at 86.1% (Stats Canada, 1994). In 1996, there were 189,753 employers registered, in 1995, 188,538 and in 1994 there were 185,408 employers registered.

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

As well, the Quebec system covers occupational disease, meaning a disease contracted out of or in the course of work and characteristic of that work or directly related to the risks peculiar to that work.

Quebec specifically recognizes chronic stress as a disability provided the worker can demonstrate a relationship between the illness and the work, or the risk of the work.

Self Insurance
Self insurance is only permitted for employers operating an interprovincial or international railway or marine transport firm (self insured employers are held personally responsible, Chapter X, Industrial Accidents and Occupational Diseases).
Organizational Framework

The Commission de la santé et de la sécurité du travail du Québec (CSST) is responsible for the administration of the workers' compensation system in the province pursuant to the Act Respecting Industrial Accidents and Occupational Diseases. The CSST is also responsible for occupational health and safety in Québec and the administration of An Act Respecting Occupational Health and Safety (see section on Health and Safety/Prevention).

The CSST has three major priorities:
• prevention - by promoting occupational health and safety, assisting workers and employers to create a healthy risk free work environment and inspecting worksites;
• plan administration - providing funding for services through assessments on employers;
• rehabilitation and compensation - compensating workers who suffer a work-related injury, providing medical assistance and rehabilitation for workers who suffer permanent physical and mental impairment.

As well, the CSST is administers the Crime Victims Compensation Act and the Act to Promote Good Citizenship.

The CSST operates through 21 regional branches located throughout the province. In 1996, the CSST employed 3,796 staff (3,447 permanent and 349 casual employees). CSST staff are appointed and paid in accordance with the Public Service Act.

Governance Structure

The board of directors of the CSST is composed of fifteen members, all appointed by the government: a neutral full-time chairperson, who is also the Chief Executive Officer, and seven members each representing labour and employers.

There are also two non-voting observers. one is appointed by the Minister responsible for the workers' compensation legislation and one is appointed by the Minister responsible for

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2 The CSST is also responsible for the administration of claims under the former Workers Compensation Act and Act respecting indemnities for victims of asbestosis and silicosis in mines and quarries which were replaced in August 19, 1985 by the Act respecting industrial accidents and occupational diseases.
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Health and Social Services. The government also appoints the President and Chief of Operations and the Vice Presidents.

Policy Development

There is a formal internal policy development and implementation process. There is broad informal and formal consultation with stakeholder groups (see also "Health & Safety & Prevention, Agencies Responsible").

Accountability

There is no specific accountability or statutory reporting requirements established in the legislation between the board and government or any other body.

However, the Chairman and Chief Executive Officer and the President and Chief Operating Officer and Vice Presidents are appointed by government. The Chairman and President are also generally "accountable to the National Assembly for their administrative management, in particular with respect to the authority and powers of the minister to whom they are responsible" pursuant to the Act Respecting the Accountability of Deputy Ministers and Chief Executive Officers of Public Bodies. Under the Occupational Health and Safety Act, the CSST is also subject to a yearly examination by the Auditor General.

Non-voting observers appointed by the Minister responsible for workers' compensation and the Minister responsible for Health and Social Services "participate in all meetings of the board of directors". There is also an organizational reporting relationship of the CSST to the Minister responsible for workers' compensation.

Performance Assessment

Though the Commission, similar to other Canadian boards, collects and calculates a number of statistical measures, it is not subject to a set, ongoing, and systematic performance assessment process.
Claims Adjudication Process

Claims may be initiated by the injured worker, the employer, or the treating physician. Where an accident occurs the employee must immediately notify his or her employer and the employer must then notify the CSST.

The CSST adjudication staff make the determination as to whether the injury or illness is work related and whether the claim is ultimately compensable, but the employer is required to pay compensation to an injured worker for the day of injury and for the following 14 days of disability based on a medical certificate issued by the claimant's treating physician (these 14 days are reimbursed by the CSST). The treating physician is responsible for determining the extent of the disability caused by the injury or illness.

Dispute Resolution

Mediation / Conciliation

The first step in the review process is to assign a conciliator. When a request for a review is received by the Commission, the Commission appoints a conciliator who will contact the parties to a dispute and if they agree to conciliation will work with the parties to help them reach an amicable agreement. A conciliated agreement must be ratified by the internal review board (see below), to ensure that it conforms to law. Once ratified the decision is final and binding on all parties. If no decision is reached through conciliation, the process continues through the internal review process and is put forward for consideration by the appropriate review body.

"Assessors" also play a role in mediating disputes (see "Appeals Process" below).

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5 Conciliation is not mandatory. The conciliator has no authority to make the decision; they are simply a neutral third party whose role is to try to reconcile the parties.
Quebec has statutory provisions respecting both internal and external appeals process. There is provision for internal review of dispute decisions through independent review boards and access to an external appeal board

The internal review body, the Bureau de révision, or review board, has two divisions: the Financing Division and the Prevention and Compensation Division. The Financing Division hears appeals from employers on financial issues, whereas the Prevention and Compensation Division reviews all other cases, including medical issues. Each regional branch of the CSST has a Financing Division and Prevention and Compensation Division review board. Officers of the Commission manage the review boards, but the Chairs are responsible for the appeal decisions.

The Financing Division review boards are composed of one member acting as chairperson, who is appointed by the Commission from its officers. The Prevention and Compensation review boards are composed of three members appointed by the Commission, including a chairperson, chosen from among its officers, and a member representing workers and a member representing employers chosen from a list provided by the respective members of the CSST's board of directors.

The external appeal body is the Commission d'appel en matière de lésions professionnelles (Board of Appeal). The members of the Board of Appeal are appointed by a selection committee appointed by government. Twelve or more members are appointed for terms up to five years. There is a President and two Vice Presidents. Members of the Board of Appeal are full-time. A single member can decide an appeal. Administrative costs of the Board of Appeal are paid by government.

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4 The Act to establish the Commission des lesions professionnelles, which is expected to come into force about April 1, 1998, will fundamentally alter the current appeals process. The bill establishes a separate employment injuries board to hear appeals from CSST decisions following an administrative review and replaces the review boards under the act respecting occupational health and safety and replaces them with an administrative review process. The Act also amends the procedure for medical assessments and abolishes the conciliation services offered as part of the current internal review process at the CSST.
The Québec legislation also provides for the appointment of "assessors" to assist members of the Board of Appeal and the members of the Financing Division and Prevention and Compensation review boards in performing their duties by providing advice on medical questions and issues. Assessors themselves may attempt to reach an agreement, if consent of the parties is given.
Assessments or Premium Setting Process

Assessment rates are established on the basis of industry rate groups (in 1998 there were 324 industry rate groups) as a percentage of $100 payroll as determined by the rate groups' accident experience.

Québec has three forms of experience rating: the Personalized Plan, the Retrospective Plan\(^5\) and the new Prevention Mutual Groups program:

- the Personalized Plan - only applies to medium to large sized firms with at minimum of two years with the CSST and minimum assessments of $54,000 over a three year period (1998)\(^6\). It is a prospective plan applying surcharges and rebates on premiums by applying a risk index based on a comparison between an employer's past three years' experience and the experience of their unit (this comparison will take into account factors relating to the employer's claim experience).

- the Retrospective Plan, is designed to meet the needs of very large employers; the program is compulsory for all employers who have a minimum assessment of $436,000\(^7\). It has two key features -- it adjusts a posteriori the amount of premium and it allows the employer to choose the limit per claim that best suits it.

- the Prevention Mutual Groups (PMGs) program is designed for small and medium sized employers. By forming PMGs, businesses can benefit from what is known as the personalized-rate plan, which takes into account their experience in the area of occupational health and safety. The only condition is that the PMGs total assessments must exceed a minimum set amount currently about $18,500 (but expected to be reduced to about $5,000 by 1999).

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\(^5\) In 1990, the CSST introduced a new assessment rate system designed to promote prevention and safety, to provide a more equitable plan for employers and to provide improved insurance coverage. As part of the new assessment system these two forms of experience rating were introduced.

\(^6\) Small employers are excluded from experience rating in Québec because their claims rates are so low that there is not sufficient information and date to allow for the effective application of the program.
Assessment/Premium Rates

The average assessment rate in 1997 in Québec is $2.52, with a low of $0.65 - $0.37 if employer under federal legislation - and a high of $36.09 (in 1997 and 1996, the average rate was $2.52 with a low of $0.63 and a high of $38.63). Maximum assessable earnings were $50,000 in 1998 ($49,000 in 1997).

Second Injury Funds / Disaster Funds

There is no second or special injury fund in Québec. The Commission does have the authority to establish a second injury fund.

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7 The Retrospective Plan applies to less than 500 employers, but these employers represent one third of total contributions paid to the CSST.
## COMPENSATION

### BENEFITS

**Claim Rate**

In 1996 there was a total of 157,116 reported claims of which 122,463 were time loss claims. 95 claims for fatalities were accepted in 1996.

**Medical Aid**

**Nature of Aid**

Medical aid coverage is comprehensive. The scheme covers the cost of the services of health professional, hospital care, medication, prosthesis or orthotics and other forms of health care as determined by the Commission.

The CSST has in-house medical staff (the Commission employed 68 doctors in 1995), to advise adjudicators and rehabilitation specialists on medical matters and to serve as a liaison between the CSST and claimant's physicians.

**Choice of Provider**

The injured worker has right of selection of treating physician.

The conclusions of the worker's treating physician concerning the extent of the injury are binding on the CSST.

**Medical Cost Containment Initiatives**

The Department of Health and Social Services sets the fee schedule to cover medical services after consultation with the CSST and agreement from the medical associations. The Québec Health Insurance Board pays medical providers for services provided to claimants and then the CSST reimburses the Board.
## Rehabilitation

### Physical/
### Occupational/
### Vocational

Under the Québec scheme, rehabilitation is a right of a worker who suffers a permanent physical or mental impairment from an industrial injury or disease. There are extensive provisions in the legislation dealing with rehabilitation, including a requirement that every disabled worker undergoing rehabilitation have a personal rehabilitation plan.

Physical rehabilitation services offered by the CSST may include: medical and nursing care, physiotherapy and home care. Vocational rehabilitation may include job evaluation and assessment, counseling, retraining, vocational training programs, and job search support 8.

### Social

The Québec legislation contains provisions specifically providing for social rehabilitation 9. Social rehabilitation services provided by Québec may include psycho-social professional services and counseling, financial assistance for home or vehicle adaptations, personal home help and reimbursement of child care and the cost of ordinary maintenance work on the home.

### Rehabilitation Incentives

The Québec legislation also contains provisions to encourage early return to work by allowing employers to assign injured workers to temporary or modified work assignments until the worker is able to resume his or her normal job or duties.

The CSST will provide subsidies or financial support to employers who hire workers with a permanent impairment or create new positions for previously injured workers. The board

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8 Rehabilitation was the number one priority issue dealt with in the 1992 realignment process undertaken by the CSST. The process reconfirmed the CSST’s commitment to rehabilitation and the maintenance of the employment relationship. The goals of rehabilitation were clarified: to encourage a prompt and lasting return to work; to protect the worker’s ability to work and earn income; and to preserve the employer’s competitive ability. Close consultation with a worker’s physician was also reemphasized to support the maintenance of the employment relationship and a faster return to work.

9 Only the Québec and Alberta Acts specifically mention social rehabilitation. The provisions in the Québec Act are substantive outlining that the purpose of social rehabilitation is to help the worker overcome, to the extent possible, the personal and social consequences of his or her injury and to help the worker adapt to his or her new circumstances and become self sufficient in carrying out his or her daily functions and activities.
will pay for the cost of worksite adaptation. The CCST will also provide subsidies to workers who devise a plan to create and manage an undertaking providing him or her with suitable employment.

As well, the Québec legislation contains a provision requiring an employer to rehire or reemploy an injured worker when that worker is ready to return to work provided it is within a two year period from the date of the accident if the employer has 21 or more employees and within one year if the employer has 20 employees or less. The employer must reinstate the worker without loss of seniority or benefits.

**Trends in Treatment of Subjective Complaints**

No special programs identified.
Disability Benefits

**Short-Term Benefits -**

**Temporary Disability**

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

*Rate:* 90% of weighted net income\(^{10}\) to a maximum of $530.06 per week for a single worker and $593.82 for a worker with a spouse and two dependents and a minimum of $213.90 and $245.18 per week respectively for 1997 (minimum is based on the minimum provincial salary rate). For TPD, a proportion of weighted net income is paid based on the degree of disability.

*Indexed:* Benefits are reviewed annually.

*Duration:* Term of disability.

*Taxable:* No.

*Employer’s Excess / Waiting Periods:* Employer must pay full wages and benefits on day of injury and must pay compensation benefits (90% of weighted net income) for the first 14 days the worker is disabled. The cost of the first 14 days are subsequently reimbursed by the CSST.

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**Long-Term Benefits -**

**Permanent Partial and Total Disability**

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

*Rate:* Wage loss compensation based on 90% of net income is payable for the duration of the income reduction caused by the injury to a maximum of $27,638.98 for a single person with no dependents; a maximum of $29,683.67 for a single parent and two dependents; and a maximum of $30,963.30 for a worker with a dependent spouse and two dependents for 1997 (based on maximum annual gross income of $49,000).

*Indexed:* January 1, each year based on CPI.

*Duration:* Income replacement indemnity is reduced by 25% at age 65, 50% at age 66, and by 75% at age 67, and extinguished at age 68.

*Taxable:* No.

*Offset Against Other Social Security Benefits:* No.

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*Award for permanent physical impairment:*

*Periodic (pension or annuity):* None.

*Lump-sum:* A lump-sum indemnity is payable for permanent impairment from a maximum award of $73,641 for 100% permanent impairment at age 18 or less, ranging downwards, on the basis of age, to $36,820 at age 65 or over (1997 rates). The

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\(^{10}\) Weighted net income is gross income less federal and provincial income tax net of credits established in relation to the family situation of the worker; unemployment insurance premiums; and contributions to the Québec Pension Plan.
minimum lump-sum amount payable for a permanent impairment is $736.00

Covers Disfigurement: Disfigurement recognized in Schedule.

Impairment Schedule: Schedule II, Table of Bodily Injuries.
Supplemental Awards: The CSST will provide personal care allowances from $51 to $1,178 per month depending on severity of the disability, and clothing allowances of up to $443 in 1997 for special clothing as a result of prosthetic or orthotic wear.

Hearing Loss
The CSST recognizes hearing loss caused by physical agents or prolonged exposure to noise as an occupational illness. The extent of the compensation provided is dependent upon the degree of the hearing loss.

Death Benefits
Funeral Expense Benefits
Funeral Costs: A lump-sum of $2,209.00 is provided to cover funeral costs; additional payments are available to cover the actual costs related to transportation of the body (1997 rates). Emergency Lump-sum: $1,473.00 is provided to cover the immediate expenses caused by worker's death.

Survivor Benefits
Survivor Category | Lump-sum | Pension
--- | --- | ---
Dependent spouse, with or without children | For 1997,$73,641 to $147,000 depending on age of the spouse calculated by multiplying worker's gross incomes by a factor based on the age of spouse as set out in Schedule II | 55 - 90% of the net weighted income of the deceased worker, depending on the degree of dependency, to a maximum of $1,469.51 per month available until age 65. Continues after remarriage.

Dependent children | If invalid, at age 18, $73,641 if no other benefits and $13,257 if receiving other benefits; if 18 to 25 and attending school, $13,257 | $369 per month until age 18

Other dependents:
- 10-25% dependency | $4,418. | None.
- 25-50% dependency | $8,839. | None.
<table>
<thead>
<tr>
<th>Dependency</th>
<th>Amount Description</th>
<th>Description</th>
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<tbody>
<tr>
<td>- over 50%</td>
<td>$8,839 if under 35 years; 75% gross annual income of worker if over 35.</td>
<td>None.</td>
</tr>
<tr>
<td>- if invalid</td>
<td>$73,641 if 18 or less to $36,820 if 65; $13,257 if receiving other benefits.</td>
<td>None.</td>
</tr>
<tr>
<td>- mother and father of deceased</td>
<td>$4,418.</td>
<td>None.</td>
</tr>
</tbody>
</table>
HEALTH & SAFETY & PREVENTION

Organization Structure

Agencies Responsible
The CSST is responsible for the administration of occupational health and safety legislation and programs in Québec. The occupational health and safety legislation in Québec makes both workers and employers responsible for workplace health and safety, with the CSST responsible for applying the law and ensuring compliance.

Québec has established an integrated and coordinated role to occupational health and safety in the province. Under the legislation a number of agencies have some responsibility for occupational health and safety and the CSST cooperates with these partners to deliver services. Agencies involved include the Department of Health and Social Services, regional boards and local community service centres which offer preventive health services; twelve joint sector-based associations which provide training, information, research and counseling services in the area of occupational health and safety; trade unions and employer organizations, which provide their members with training and information on occupational health and safety; the Department of Education, which develops occupational health and safety training programs and integrates them into its teaching programs. There is also the Institut de recherche en santé et en sécurité du travail (IRSST) which conducts research, offers laboratory services and trains researchers in occupational health and safety.

The CSST assists these partners by providing prevention training and information, technical assistance and resources. A number of consultation mechanisms and joint committees and forums have been established to ensure continued close contact between all partners in the system.

11 Joint-sector based associations are provided for under legislation. They are set up on agreement between workers and employers associations of a given sector and are funded by assessments on employers who make up that sector under which an association has been formed.
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Source of Funding
The OHS programs and activities of the CSST are fully funded by employers' assessments and the fund.

The CSST provides financial support to outside health and safety associations and programs. In 1996 it provided $13.3 million for joint sector based associations; $50.3 million for occupational health and safety services; $14.1 million for the Institut de recherche; $7.6 million to employers' associations, for the training and education of members; and $0.3 million to other associations.

Accident Reporting
An employee is required to notify their employer immediately when an accident occurs and the employer in turn must notify the CSST.

OHS Representatives & Committees
For specified sectors, a safety representative must be designated for an establishment with more than 20 employees.

Offenses & Penalties

Contraventions of the Legislation

Types of Offenses and Maximum Fines:

- For a first offense:
  - an individual contravening the act or the regulations or violating an order is liable on conviction to a fine between $200 and $500; if harm or injury results, the maximum fine is between $500 and $1,000
  - a corporation contravening the act or the regulations or violating an order is liable to a fine between $500 and $1,000; if harm or injury results, the maximum fine is between $5,000 and $20,000.

- For a second or subsequent offense:
  - an individual is liable to a fine of between $500 and $1,000 and if harm or injury results, $1,000 to $2,000
  - a corporation is liable to a fine of between $1,000 to $2,000; if harm or injury results, the maximum fine is between $10,000 and $50,000

Convictions:
1995 - 977 convictions; total amount of fines unavailable.
1996 - 573 convictions; total amount of fines unavailable.

Administrative Penalties
There is no provision for administrative penalties in Québec.

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<table>
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<tr>
<th>OHS Legislative Review</th>
<th>There is no legislated or formal review requirement for the OHS statute. However, the regulations are subject to regular, systematic review. The review process is carried out by established committees with representation by employers and workers.</th>
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<tbody>
<tr>
<td>Health and Safety and Loss Prevention Initiatives</td>
<td>The CSST participates in many prevention and workplace health and safety education and awareness programs with other partners, including the Ministry of Education which incorporates workplace health and safety into its professional programs, and joint initiatives with the industry sectors such as forest workers, sandblasters, soldering, and professional divers.</td>
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</tbody>
</table>
In about 1995, a special investigations unit was created to look into fraud cases involving workers, employers and service providers (the unit does not investigate OHS related offenses). The unit has nine staff: a manager, five investigators, a lawyer, and 2 support staff.

Both civil law and criminal law recourses are pursued by the unit. In 1995 there were 912 investigations (for six month period) and in 1996 there were 156 investigations. In 1995, five prosecutions were undertaken, three of the successful and in 1996 there were seven prosecutions and four were successful. Estimated savings to the CSST from fraud prevention activities was $1.9 million in 1995 (six month period) and $3.8 million in 1996.