Comparative Analysis of Workers’ Compensation Systems in Select Jurisdictions

JURISDICTION: NOVA SCOTIA

ENVIRONMENT

Population Size 942,800 (1996, Stats Canada)
Labour Force 440,600 (1996, Stats Canada)

Demographic and Economic Indicators

The Nova Scotia economy is now emerging from a period of recession. GDP growth in 1995 was 1.5%. Fishing continues to drive the economy of the coastal communities, however, in terms of GDP output, the key industrial sectors for Nova Scotia are personal services, public administration, finance/insurance, wholesale/retail and manufacturing. Efforts are being undertaken to further diversify the economy and growth areas are technology manufacturing, information technology, aerospace, medical and ocean research, the film industry and tourism.

The population of Nova Scotia has grown at a modest rate of 0.54% between 1991 and 1995 (1995, Stats Canada).

The total labour force decreased slightly in 1995 from 438,000 in 1994 to 437,000. The unemployment rate in Nova Scotia was well above the national average in 1995 at 12.1% and in 1996 at 12.6% (Stats Canada).
GOVERNANCE & ADMINISTRATION

Nature of System
An exclusive provincial fund.

Principles and Mandate
The mission of the Nova Scotia workers' compensation system is to "coordinate the workers' compensation system to assist injured workers and their employers by providing timely medical and rehabilitative support to facilitate the efforts of injured workers to return to work; and by providing appropriate compensation for work-related disabilities."¹

Access to Litigation
Workers' compensation in Nova Scotia is an exclusive remedy.

The Act however specifically provides for actions against third parties. The Act allows the WCB to act on behalf of a worker who is hurt on the job due to the actions or negligence of a third party. The injured worker will receive benefits from the onset of the injury and the board will take legal action against the negligent party. In certain cases, where the board does not plan to proceed with a third party action, the board may give the worker permission to proceed against a third party.

In addition, the Act allows the board to bring an action where a motor vehicle is involved in the accident even if the driver of the automobile is a worker covered under the Act. Nova Scotia legislation also provides for a right of action from an employee not covered by the legislation against the employer or a person contracting with a contractor or subcontractor.

¹ On February 6, 1995, a new Workers Compensation Act was passed. Implementation was phased in between June 1, 1995 and February 1996. This was the first major change to workers compensation legislation in Nova Scotia since the original act was passed in 1915 (except for specific changes to benefit levels). The new Act remains true to the principles of the original legislation: to protect employers and their workers from loss of income due to workplace accidents. However, the new Act, and policies surrounding the new Act, place greater emphasis on prevention and health and safety and on rehabilitation and early return to work as a way to reduce the economic and social toll associated with workplace injury.
Scope of System

Who is Covered? Firms which employ three or more workers at the same time are required to be covered under the Nova Scotia scheme. This includes part-time and casual/seasonal workers, company officers and management who are actively involved in the business and contractors and subcontractors who are not directly assessed by the board but who are hired by the firms covered by the scheme.

There are exceptions to mandatory coverage: fire fighters and police, casual labourers, outworkers, farm labourers, domestic servants are excluded under the legislation and, by order, the board has excluded educational institutions, persons in medical work and dental surgery, veterinarians, athletes, barbers, taxicabs, florists, horticultural employment, entertainers and certain other industries (i.e. banking, insurance, aviation). Coverage for public employments is elective. Employers who fall outside the scope of the legislation, may voluntarily choose to pay for insurance coverage under the scheme through the board's Special Coverage plan.

The WCB estimates that approximately 70% of the labour force is covered by WCB insurance. In 1994, 14,801 employers were registered with the WCB.

What is Covered? All personal injuries "arising out of" and "in the course of" employment are covered under the scheme with the exception of stress which is excluded from compensation unless it is an acute reaction to a traumatic event.

Occupational disease is specifically covered under the legislation. Any disease arising out of and in the course of employment and resulting from causes or conditions characteristic of a particular trade, or occupation or to a particular employment (such as silicosis and pneumonoconiosis) are covered.

Self Insurance Generally not permitted. Only the provincial and federal government and their agencies are permitted to self insure in Nova Scotia.

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2 Figures respecting the extent of the labour force covered by the scheme are not available.
Comparative Review

**Nova Scotia**

**Organizational Framework**

The *Workers' Compensation Act* and provincial fund is administered by the Workers' Compensation Board established under the Act.

The board has broad responsibilities relating to the provision of financial benefits, medical aid, and vocational rehabilitation services to workers injured on the job.

Most functions are centralized at the head office in Halifax, though there is one branch office in Sydney which provides rehabilitation counseling and case management.

**Governance Structure**

The Nova Scotia WCB is governed by a part-time board of directors consisting of no more than 11 members: an independent chairperson, a deputy chairperson, equal numbers of members representing employers and workers and no more than two non-voting members representing the public at large. The board is appointed by the Minister of Labour based on nominations from business and labour groups. A Chief Executive Officer, appointed by the board of directors, is responsible for the day to day administration of the WCB.

**Policy Development**

The board has both an Internal Policy Department and a Legal Department. Both departments are active in the process of research and developing policy proposals. Proposals go through a formal development process with includes final approval of the board of directors. Pursuant to the Act, section 183, an appeal of a policy, on the basis that it is inconsistent with the Act or the regulations, is made to the Nova Scotia Court of Appeal.

**Accountability**

In Nova Scotia there is a specific reporting relationship with government established in the legislation. The board, through the Chairperson, reports to the Minister of Labour. In addition, the Minister is responsible for appointing the board of directors of the WCB.

**Performance Assessment**

The Nova Scotia board, similar to other Canadian boards, collects and calculates a number of statistical measures, intended to assist the Board and management in the monitoring and operation of the system.
Comparative Review

Nova Scotia

Claims Adjudication Process

The board has comprehensive authority for claims processing, adjudication and management. At the initial stages, a claims adjudicator is responsible for assessing and making a determination as to the compensability of the claim. At later stages, the claim may be managed by a case manager and/or a rehabilitation counselor.

All employers are required under the Act to report an accident to the board within five working days of having been notified about the accident. The employer is allowed to participate equally with the employee in the adjudication of the workers' claim or appeal.

The Nova Scotia Workers' Advisers Program, is a legislated government service, operated out of the Department of Labour. The Workers' Advisers Program is separate from the Workers' Compensation Board and is designed to provide legal advice to claimants' under the Act. Advisers are located throughout the province; an injured worker can request assistance through the office of the Chief Workers' Adviser and then will be assigned to a specific adviser located in their region. Costs of this service are reimbursed through the Consolidated Revenue Fund of the province.

Dispute Resolution

Mediation / Conciliation

There is no formal mediation or conciliation process within the board in Nova Scotia. There is a mediation project currently underway at the Appeals Tribunal level.

Workers' Advisers do however play a role in the adjudication of disputes regarding claims in their capacity of assisting claimants in the preparation and presentation of their claim for compensation.
**Appeals Process**

An employer is entitled to appeal a decision made by the board respecting the claim of one of their workers and on a matter related to the employers' assessment. An employee is entitled to appeal a decision made by the board respecting his or her claim. There are two levels of appeal: an Internal Appeals process and an appeal to the independent Workers' Compensation Appeals Tribunal.

The Internal Appeals unit operates within the jurisdiction of the board, but outside its day to day operations. Disputed issues can be referred to a Hearing Officer the decision of the Hearing Officer is the final decision of the Board.

The Workers' Compensation Appeals Tribunal (WCAT), a tribunal independent of the board, will hear appeals of final decisions of the board - that is decisions made by a Hearing Officers. There is a two stage process for having an appeal heard. First the claimant must apply to the Chief Appeals Commissioner for "leave to appeal" (the WCAT has a policy outlining criteria and conditions for granting leave to appeal). If leave is granted, the appeal will be heard by an Appeals Commissioner of the Appeals Tribunal. Funding for the WCAT is provided by the Accident Fund.

A decision of the WCAT may be appealed to the courts, but the WCB, the worker, or the employer must obtain leave to appeal.
ASSESSMENTS / FINANCING

Assessment or Premium Setting Process

Employers are categorized into industry groups, which are in turn categorized into rate groups and for each rate group an assessment rate is calculated based on the group's claims cost experience over the last five year period (in 1998 - 108 industry groups, 40 rate groups and 14 classes/ sectors).

Nova Scotia also introduced an experience rating system in 1996. The system in Nova Scotia is a prospective plan that provides merits (decreases in the employer's base assessment rate of up to 25%) and demerits (increases in the basic rates of up to 40%) depending on the employer's claim cost experience as compared to the claims cost experience of their rate group as a whole over the past three year period³.

Assessment/Premium Rates

The average assessment rate in Nova Scotia in 1997 was $2.54 with a low of $0.45 and a high of $10.08. Maximum assessable earnings for 1997 were $39,300.

Second Injury Funds / Disaster Funds

The board provides coverage for any "injury that aggravates, activates, or accelerates a disease or disability existing prior to the injury; or an injury that results in injury or disease caused partly by employment and partially by other causes"³. This coverage is provided through the Accident Fund.

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³ New firms will not participate in the plan until they have built up sufficient claims cost experience. After one year's claim cost experience, a firm will participate at a 25% level; after two years, at a 50% level and after three years, will fully participate in the program.
Comparative Review

Nova Scotia

COMPENSATION

BENEFITS

Claim Rate

In 1996, there were 30,671 total claims reported of which 7,995 had compensable time loss. In 1995, 33,885 new claims were reported. In 1994, 35,832 claims were reported of which 13,306 were time loss claims. There were 10 fatalities accepted for compensation in 1994.

Medical Aid

Nature of Aid

The board covers the cost of all medical aid required to treat the workplace injury, including hospital care, surgery, physician's care, prescription drugs and orthotics. An allowance for attendant care and food and travel associated with obtaining medical care may also be provided.

Choice of Provider

It is a practice of the Nova Scotia WCB that an injured worker choose their own treating physician. The WCB has the authority under the Act to approve the medical aid a worker will receive.

An employer can request that the injured worker be examined by a doctor of their choice and submit the medical report of this doctor to the board for its consideration in the claim adjudication process. The employer must pay for the cost of this examination. The board itself may request that the worker be examined by one of its own physicians or an independent physician or specialist.

Medical Cost Containment Initiatives

Fees for medical services are paid on the basis of a fee schedule negotiated between the board and the Medical Society. The fee schedule is based on a system of units of work, currently $1.90 per unit (negotiations are on the per unit price).
Rehabilitation

Physical/
Occupational/
Vocational

In Nova Scotia, vocational rehabilitation is discretionary. It is at the board's discretion as to whether they will require an injured worker to participate in a rehabilitation plan.

Vocational rehabilitation services include, but are not limited to counseling, vocational assessment and training and related costs, job search skills and provision of a rehabilitation allowance.

The emphasis of vocational rehabilitation efforts of the Nova Scotia board is on early return to work. Efforts will be directed at those workers most likely to benefit from a rehabilitation plan and who have suffered a permanent impairment as a result of a workplace accident. The nature and extent of any rehabilitation services provided to an injured worker is based on many factors including opportunities for re-employment, the client's transferable skills and functional capabilities, as well as the possibility of mitigating possible loss of earnings.

A rehabilitation plan is developed in consultation with the worker and a "case management" team (may include medical advisors, claim adjudicator or case manager, and therapists), headed by a Vocational Rehabilitation Counsellor. The plan may involve physical rehabilitation and treatments, ease back to work and modified or light work programs and vocational assistance to update skills. A worker participating fully in a rehabilitation program continues to qualify for wage loss benefits.

Social

The board will provide financial support for worksite modifications.
Comparative Review

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Rehabilitation Incentives

The board offers a number of programs designed to encourage rehabilitation and early return to work and reemployment of injured workers.

The Employment Incentives Program (EIP) provides financial and other incentives to encourage employers to help injured workers return to work. These include funding for workplace modifications, technological enhancements, wage assistance\(^4\), and injury cost protection\(^5\).

There are also reemployment requirements under the Act\(^6\). Any employer that regularly employs 20 or more workers is required to offer an employee who was injured on the job reemployment when the employee is ready to return to work for a period of two years following the accident. This does not apply to employers in the construction industry. To be eligible for reemployment, a worker must have been employed continuously by the employer for 12 months before the accident. To return to their pre-accident job, the employee must be capable of substantially filling the requirements of that job. If a worker is unable to perform all the duties essential to their pre-injury employment they must be offered an alternative suitable job; if their condition improves the employer may be required to offer work the more closely matches the employee's abilities.

Trends in Treatment of Subjective Complaints

In 1995, the board commissioned a study on chronic pain from a member of the Department of Medicine at Dalhousie University. On the basis of this study, the board developed a philosophy and approach to the treatment of chronic pain, and a claims and treatment approach, the Functional Restoration

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\(^4\) Wage assistance is a forgivable loan, paid in the form of decreasing amounts over a pre-approved employment period. For example, for the first eight weeks of a 24 week work term the board will cover the full amount of the worker's salary, and then for weeks 8 to 16 will cover 50% and for the last eight weeks will cover 25% of the worker's salary.

\(^5\) Under this incentive program, any payments made by the board to compensate a worker during the EIP period will not be charged against the employer's WCB account.

\(^6\) This provision is new to Nova Scotia. It was introduced with the new 1996 Act. The intent of the provision is to reduce the human and financial toll on injured workers and their employers.
Disability Benefits

**Short-Term Benefits - Temporary Disability**

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

**Rate:** For the first 26 weeks of disability, less the waiting period, Temporary Earnings Replacement Benefits (T.E.R.B) are based on 75% of the worker's net earning up to a maximum in 1997 of $39,300 gross income (maximum assessable earnings). After 26 weeks, the T.E.R.B. increases to 85% of the worker's net earnings loss.

**Indexed:** No.

**Duration:** Term of disability (until considered permanently disabled).

**Taxable:** No.

**Employer's Excess / Waiting Periods:** There is a two day waiting period\(^8\). If the worker is off work for a period extending beyond 5 weeks, the worker will be reimbursed for the waiting period.

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\(^7\) The Chronic Pain Study was undertaken by T.J. Murray, Professor of Medicine, Department of Medicine (Division of Neurology, Dalhousie University).

\(^8\) The amount of time that a worker must be off work without pay before he/she qualifies for short term workers compensation benefits depends on the person's work schedule. To calculate the waiting period the number of days or shifts the employee normally works is multiplied by two-fifths.

This two-fifths worker deductible was introduced as part of the new Act.
Long-Term Benefits - Permanent Partial and Total Disability

Economic "loss of earnings or wage loss" awards or pensions:
Rate: Permanently disabled workers qualify for Extended Earnings Replacement Benefit (E.E.R.B.). The amount of E.E.R.B. is the difference between pre-accident and post accident earnings (actual and estimated) at a rate of 75% for the first 26 weeks after the accident and 85% after 26 weeks. No E.E.R.B. is paid where the economic loss is not greater than the P.I.B. (see below).
Indexed: Indexing is frozen until December 31, 1999.
Duration: Age 65. At age 65, E.E.R.B. is replaced by an annuity equal to 5% of the total E.E.R.B.
Taxable: No.
Offset Against Other Social Security Benefits: Yes - C.P.P. benefits (receiving or entitled to receive - see footnote 9).

Award for permanent physical impairment:
Periodic (pension or annuity): Nova Scotia is a dual award system. A Permanent Impairment Benefit (P.I.B.) is paid for life. The P.I.B. equals 30% x Permanent Medical Impairment Rating multiplied by 85% of pre-accident net earnings.
Lump-sum: None, though, P.I.B. may be paid in a lump sum.
Covers Disfigurement: There is no specific legislative provision, but disfigurement is recognized in making impairment awards.

Impairment Schedule: Permanent Medical Impairment Guidelines, Policy 3.3.2.

Supplemental Awards: The board provides a clothing allowance of up to $750 and an attendant allowance of up to $300 per month, or actual costs of necessary service.

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9 The earnings replacement program was introduced with the new Act. E.E.R.B. is the difference between (a) an amount equal to 75% for 26 weeks, and then 85%, of the worker’s net loss of earnings (LOE) and (b) the amount of any permanent impairment benefit available. LOE is the difference between (a) the worker’s net average weekly earnings before the loss of earnings commenced and (b) the net average weekly amount that the WCB determines the worker is earning, capable of earning in suitable and reasonably available employment, or is receiving, or entitled to receive, as a periodic C.P.P. benefit, in which case the WCB will include 50% of the C.P.P. benefit, after the loss of earnings commences.

10 After this date, long-term workers compensation benefits will be indexed at the rate of one-half of the percentage change in the CPI for the preceding year.
Comparative Review

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**Hearing Loss**
As set out in the board's Permanent Medical Impairment Guidelines.

**Death Benefits**

*Funeral Expense Benefits*

- **Funeral Costs**: Up to $5,000.00 is provided to cover funeral costs; an additional payment of up to $500.00, or actual cost or what the WCB considers reasonable, is also available to cover the 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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<tr>
<td>Dependent spouse, with or without children</td>
<td>$15,000 (1997 rate).</td>
<td>85% of the deceased's pre-accident earnings, available until 65 years of age when replaced by an annuity equal to 5% of the total survivor benefits paid to spouse. Continues after remarriage.</td>
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<tr>
<td>Dependent children, with or without surviving parent</td>
<td>None.</td>
<td>$196.00 per month until 18 years or 25 if attending school.</td>
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<tr>
<td>Other dependents, where no spouse or children</td>
<td>None.</td>
<td>Optional pension at discretion of board for up to 5 years.</td>
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11 The Permanent Medical Impairment rating is an assessment of the degree of physical impairment suffered by a worker as a result of their accident, as determined by a WCB physician.
HEALTH & SAFETY
& PREVENTION

Organization
Structure
Agencies Responsible

The Occupational Health and Safety Division, Nova Scotia Department of Labour is responsible for occupational health and safety in Nova Scotia, including the administration of the Occupational Health and Safety Act. There is also an Occupational Health and Safety Advisory Council, appointed by the Minister, which is responsible for making recommendations on occupational health and safety issues in the province.

The Nova Scotia OHS Act was recently overhauled. A key principle confirmed in the new legislation was the concept of internal responsibility. Under the internal responsibility approach, all parties in the workplace, from owners, professionals, suppliers, employers, management, workers and contractors, are charged with responsibility for ensuring the health and safety of the workplace.

The Division's vision is to create a safe and healthy workplace environment by helping staff and clients to help themselves through continuous review of services and legislation; use of current technology and applying and enforcing laws. The Division acts as a leader to industry in the promotion and implementation of safe and healthy workplace policies and practices.

Source of Funding

The Division is funded through the workers' compensation fund and employers' assessments, between 35 and 50%, and the remainder from general provincial revenues.

Accident Reporting

All employers are required under the Workers' Compensation Act to report an accident to the WCB within five working days of having been notified about the accident. There is also a reporting responsibility under the OHS Act to report serious accidents to the OHS Division.

OHS Representatives & Committees

OHS Committees are required of any workplace that has 20 or more employees; safety representatives are required for any workplace with between five and 19 employees.
Offenses & Penalties

Contraventions of the Legislation

*Types of Offenses and Maximum Fines:*
Any person found guilty of violating a provision of the Act or regulations or failing to comply with an order is liable to a fine of up to $250,000 and $25,000 for each day the offense continues AND/OR up to two years imprisonment. If the offender has profited from the commission of the offense, the court may impose an additional fine equal to the monetary gain. The act also provides for alternative sentencing (for example, educational or community service).

*Convictions:*
1995 - nine prosecutions initiated with five convictions (seven employer cases; two constructors); total amount of fines - $7,501.
1996 - 12 prosecutions initiated with six convictions (four employers; one self employed; five constructors; two employees); total amount of fines - $7,500.

Administrative Penalties

The Act includes a regulation making power to provide for administrative penalties, but no regulations have been passed to date providing for administrative penalties.

OHS Legislative Review

There is no legislated provision requiring the review of the OHS act and regulations. However, as part of a comprehensive legislative review process initiated in December 1992, both the act and regulations are being reviewed. The review process is bipartite in nature is being lead by the OHS Advisory Council.

Health and Safety and Loss Prevention Initiatives

The Division has entered into a number of partnership projects with various industry associations focused on improving OHS in their industry sector. These include acceptance of audit processes developed by the construction and forestry industries to certify firms in their industry and memorandums of understanding in relation to mining and petroleum activities. The branch is also promoting a number of initiatives designed to educate and train people about the new legislation and to enhance service delivery through the use of task teams to improve client services and division processes.
FRAUD PREVENTION

An Investigations Unit, responsible for investigating alleged fraud and misrepresentation, was established in 1994. Details on the activities of the unit were not available.