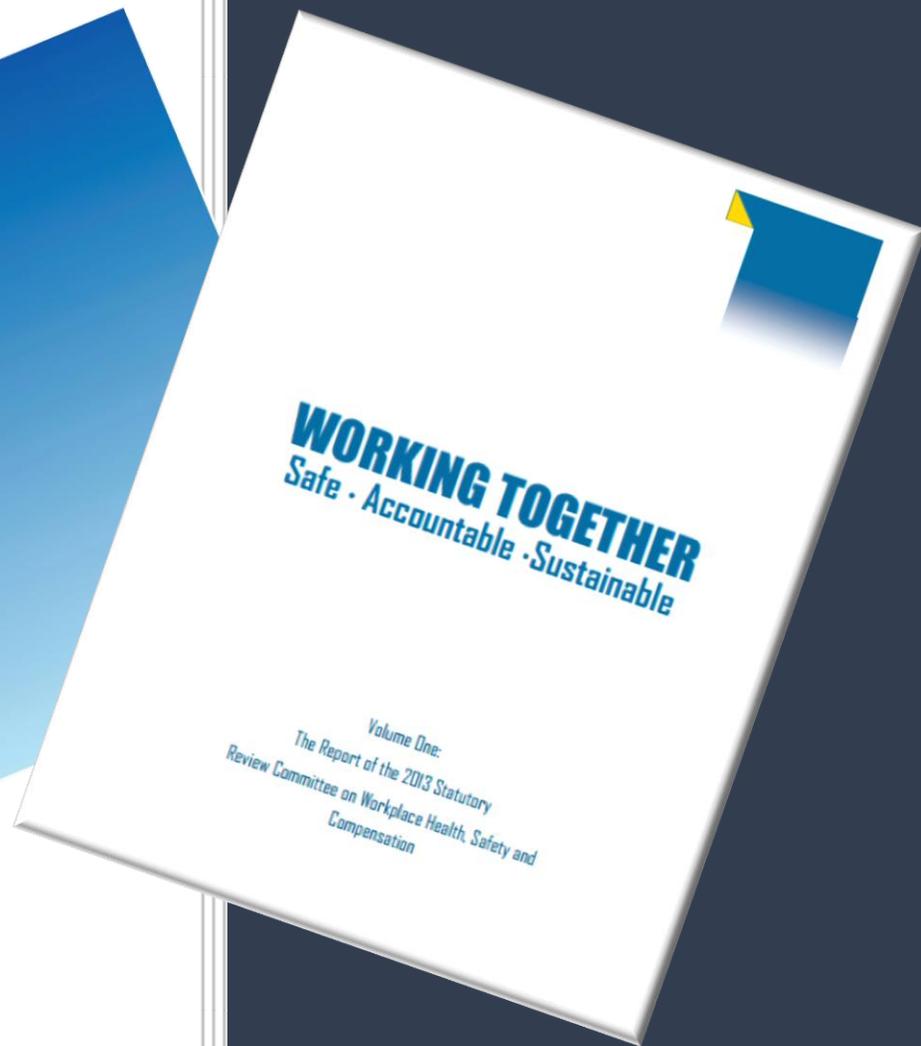


*NLEC response to the report of the 2013 Statutory  
Review Committee on Workplace Health, Safety and  
Compensation*



NEWFOUNDLAND & LABRADOR  
**employers'**  
COUNCIL

APRIL 24, 2014

NL EMPLOYERS' COUNCIL RESPONSE TO  
THE REPORT OF THE 2013 STATUTORY REVIEW  
COMMITTEE ON WORKPLACE HEALTH, SAFETY  
AND COMPENSATION

**April 24, 2014**

# INTRODUCTION

Workers' Compensation is one of the most important insurance systems we have. It provides guaranteed financial support for injured workers without subjecting them to the costs and time required to achieve compensation through our legal system. In this system, it matters not who was at fault in an accident – financial support to the injured worker is guaranteed.

But while it is an important system, it is also an extremely expensive one. Despite a significant investment in prevention by the WHSCC, workers, employers and other stakeholders resulting in massive drops in the injury rate, for two decades, employer workers' compensation insurance premiums have remained the worst in Canada. According to the Association of Workers' Compensation Boards of Canada, in 2013 it cost Newfoundland & Labrador (NL) employers, on average, 42% more to fund the system than what the average employer pays elsewhere in Canada.

In September 2012, the NLEC released a study conducted by award winning economist Dr. Morley Gunderson, Professor at the Centre for Industrial Relations and the Department of Economics, University of Toronto. Gunderson studied the impact these worker's compensation premiums are having on our province. Gunderson's concluding comment was:

***“Newfoundland and Labrador is perched on the opportunity for a permanent transition from a ‘have-not’ economy to a ‘have’ economy given the new developments that are occurring.***

***Reforming the workers' compensation system will be important in that transition not only in its own right, but also because of the signal it will send to perspective employers and the job creation associated with that signal. There seems no better time for action in this important area.”***

Why would Gunderson say this?

After studying the 20 year history of the worker's compensation system in this province, Gunderson called our Worker's Compensation premiums “excessive” and said that the inability to control these excessive costs gives our province the reputation of being “unfriendly” to business opportunities. These excessive regulatory costs negatively impact not just employers but they cause Newfoundland & Labrador communities to suffer from lost investment opportunities and the jobs associated with those investments. Gunderson said that having workers' compensation costs that are out-of-line with those of other jurisdictions serves as a signal that a province is unable to contain its costs in this area, and therefore, that they may not be able to contain them in other areas.

We are competing in a global economy and internal efficiency is a precondition to be competitive externally. Newfoundland & Labrador's systems must be efficient and promote productivity. This system tarnishes our reputation as a province and is holding us back. In fact, in his study, Gunderson quantified what the effect would be three years after bringing our worker's compensation premiums down to just the Canadian average. He found multiple positive impacts, three most significant are:

- 60.6 million increase in investment
- The creation of nearly 2000 new jobs
- And a \$330 million increase in GDP

Imagine then, what the economic impact has been on our province after 20 years of these high premiums? Yet, despite these high premiums, our system remains underfunded. For two decades, workers compensation benefits in Newfoundland & Labrador have not been secure.

Entering the 2013 Statutory Review of the WHSCC, it was the NLECs bottom line position that the workers' compensation system requires **fundamental legislative structural changes** to reduce the cost of the worker's compensation system in NL and make the attainment of competitive insurance premiums a possibility.

The 2013 Statutory Review Committee (SRC) on Worker's Compensation states that their report provides a "blueprint for ensuring the workers' compensation system is proactive and prevention-focused, and driven by stakeholder collaboration and partnership to improve workplace health and safety and financial sustainability."

While the NLEC is supportive of the overall objectives as indicated in the SRC report, some recommendations made by the committee do not go far enough in facilitating the large-scale top down cultural shift that must occur within the worker's compensation system in Newfoundland & Labrador. That said, the NLEC is pleased that the SRC recognized and recommended that the cost of the system and ensuring financial accountability and sustainability should be a priority for the WHSCC. The NLEC is also pleased that in December 2013, following our lobby for reduced Worker's Compensation Employer Insurance Premiums throughout the statutory review, government chose to implement the first reduction in employer WHSCC premiums since 2006. However, despite the recent reduction in average premiums, rates in NL remain the second highest in the country.

In considering recommendations of the Statutory Review Committee, government MUST focus on bringing the cost of the system in line with the Canadian average, and securing payment of worker's compensation benefits for injured workers.

In the coming pages the NLEC will comment on recommendations made by the SRC Committee. While the NLEC may support the acceptance of some recommendations in theory, in many cases detail on cost and financial implications are not available. If the true goal is sustainability, government MUST consider the cost and financial implications of implementing all recommendations and share this information with key stakeholders prior to accepting.

The following document provides the NLECs initial feedback on each of the SRC's recommendations, placed in priority as they relate to our recommendations to the SRC, as outlined in our submission "***Who wants to finish last? Recommendations to end two decades of the highest workers' compensation insurance premiums in Canada***":

### **Bottom-line recommendation:**

The workers' compensation system requires fundamental legislative structural changes to make the attainment of competitive insurance premiums a possibility.

### **Recommendations for Fundamental Legislative Change:**

- 1) Reduce political influence on the workers' compensation system
- 2) Legislate expectation setting in early and safe return to work
- 3) Reduce administrative costs for occupational health and safety education and enforcement
- 4) Adjudicate all claims based on current medical opinion
- 5) Focus the PRIME program on true cost drivers of the system
- 6) Increase employer accountability in the fish harvesting industry
- 7) Increase return to work incentives in seasonal operations

# SECTION A

## ISSUES OF IMPORTANCE TO THE NL EMPLOYERS' COUNCIL

### Make the attainment of competitive insurance premiums a possibility

***SRC Recommendation 32: That the WHSCC develop a plan to achieve and/ or maintain parity with Atlantic Canada at the earliest opportunity within a 5-year period:***

- a) That is based on a balanced approach to decreasing assessments and increasing benefits annually reviewed by the WHSCC's actuary to determine the assessment rate adjustment and/or benefit improvements***
- b) That maintains the financial sustainability of the workers' compensation insurance system by setting clear financial targets including the funding ratio and injury reduction rates being achieved prior to a reduction in assessment rates or benefit improvements***
- c) That the Income Replacement Rate (IRR) achieve parity with New Brunswick, Nova Scotia and Prince Edward Island (the current IRR in the Maritimes are 85%)***
- d) That the maximum compensable accessible earnings (MCAE) achieve parity with the province in Atlantic Canada having the highest rate ( the highest MCAE currently in Atlantic Canada is \$59,500)***
- e) That the average assessment rate in Newfoundland and Labrador achieve parity with the average assessment rate of Atlantic Canada (the average assessment rate of Atlantic Canada is \$2.20).***

NLEC Position: Since the completion of this report, government announced a reduction to average employer insurance premiums by \$0.30 to \$2.45 per \$100 of payroll, as well as an increase to the maximum compensable and assessable earnings (MCAE) limit by more than \$6000 to \$60,760. This places the MCAE at the highest in Atlantic Canada, well above five year target recommended by the SRC of parity with the province in Atlantic Canada with the highest rate. The same does not hold true for the reduction in premiums. With a reduction of \$0.30, the premiums paid by employers in this province is still the second highest in Canada, behind only Nova Scotia and still **well above** the Atlantic Canadian average of \$2.20 and the Canadian average of \$1.95 (for 2012). While the NLEC agrees with a continued, targeted plan to reduce worker's compensation employer insurance premiums, the NLEC disagrees that the target indicated above of the Atlantic Canadian average is sufficient. The NLEC would like to see targets set from this Statutory Review to reduce worker's compensation premiums paid in this province to the Canadian average.

The NLEC also does not agree with any increase in IRR, or any further increase in MCAE, given the fact that despite two decades of the highest premiums in the country, **and** a 64% drop in the injury rate, Newfoundland & Labrador is one of only 4 jurisdictions in Canada whose Worker's Compensation system is underfunded. When comparing benefits provided to workers through WHSCC to other worker's compensation systems, all aspects of those benefits need to be considered. Newfoundland &

Labrador has the highest percentage of workforce covered of any province in Canada. Ninety-eight percent of all workers in the province are covered by worker's compensation insurance. This high percentage of coverage contributes to our excessive premiums, and must be considered when evaluating injured worker benefits provided in this province. If you have the most extensive system in the country, you will also have the most expensive system, unless you have aggressive legislation and targets in place to keep costs in line. A more stringent effort needs to be made to reduce the costs of our Worker's Compensation system to bring the premiums paid by employers in this province down to the Canadian average.

Government's legislated reduction in premiums in December 2013 shows that, after twenty years, government finally realizes that these high premiums are a problem in our province. While employers are pleased with this realization, there are concerns that these recently legislated changes are unsustainable. There are still inefficiencies, inequities and loopholes within the system that must be addressed to ensure this rate reduction is sustainable, and to allow for further reductions, particularly in light of the recent government legislated increase in benefits. Some of these issues are addressed in this report, but as stated previously many of the SRC recommendations provided to address these issues do not go far enough.

After two decades of paying the highest workers' compensation premiums in the country, with four statutory reviews designed to fix the problem, multiple WHSCC strategic plans and consultations to find solutions, the only reasonable conclusion is that the workers' compensation system, as it is currently structured in our legislation, is incapable of providing competitive employer insurance premiums. A large scale top down cultural shift must occur within the worker's compensation system to finally focus on reducing the cost of the system.

### Reduce political influence on the workers' compensation system

***"Part Two: The 2013 SRC Response to the Legal Review of the WHSC Act"*** contains several recommendations of the technical advisors and acceptance of those recommendations by the SRC that deal with ensuring the clear separation of the provincial government and the Commission in legislation, specifically recommendations 1-14.

NLEC Position: In our submission to the SRC, the NLEC recommended that the WHSCC ACT be amended to increase the ability of WHSCC to make decisions independent of government approval.

Workers' compensation in Canada is designed on principles known as "Meredith Principles" -- five basic cornerstones to the original Canadian workers' compensation laws that have survived since 1913. The independent management of the workers' compensation system was enshrined as one of these principles:

*"The governing board is both autonomous and non-political. The board is financially independent of government or any special interest group. The administration of the system is focused on the needs of its employer and worker clients, providing service with efficiency and impartiality."* **(Emphasis added)**

The Meredith principle cited above recognizes the need for a workers' compensation board to be non-political to ensure that decision making adequately considers the long-term best interests of the system as opposed to the short term political interests of a ruling government. To do this requires, at times, difficult decisions that may be politically unpopular. Political influence makes such decision making difficult if not impossible.

Workers' compensation is not a social program funded by tax payers. It is an employer funded insurance system. "Public Money" as defined in the NL Financial Administration Act is not at stake in the case of the workers' compensation system and are not part of the public accounts as the system is funded through employer assessments and not "tax dollars." Furthermore, the Commission is neither a government department nor Crown Corporation. Commission employees are not part of the public service of Newfoundland and Labrador and belong to a separate bargaining unit.

A governance structure with decision making policies and procedures at the Commission separate from the political process helps ensure the system is run on "insurance principles" rather than "political principles". The NL Employers' Council strongly supports recommendations 1 -14 in Part Two of the SRC report.

### Legislate expectation setting in early and safe return to work

Of extreme importance to employers is reducing the average length of time it takes an injured worker to return to work in this province. Average composite duration of claim in Newfoundland & Labrador is 122.33 days - 57 days, or nearly double, the Canadian average. While reducing premiums is important, employers want reductions that are sustainable and that our system can afford. Without addressing our alarming duration numbers reducing the costs of the system will never be possible long term.

Current claim duration statistics are a black eye on not only our worker's compensation system, but our entire province. Multiple attempts to address claim duration, including a new case management model, have failed. There is no medical explanation for recovery times for workplace injuries in Newfoundland & Labrador that are so far outside what is standard in other provinces. There is clearly a problem with managing the duration of claims in Newfoundland & Labrador under current policy and legislation.

### Use of guidelines

***SRC Recommendation 18: That the WHSCC discuss Disability Management guidelines with injured workers and employers on the initiation of a claim to facilitate planning for early and safe return to work and to ensure the injury is understood in terms of normal recovery times while recognising individual recovery times may vary from the guidelines.***

NLEC Position: The NLEC strongly supports the discussion of disability management guidelines with workers and employers upon the initiation of the claim, but contends that this recommendation does not go far enough. The NLEC continues to advocate for our recommendation of including disability management guidelines in legislation for the purpose of determining claim entitlement and cessation, in the absence of objective medical evidence of equal weight to the contrary.

In the absence of the inclusion of disability management guidelines in legislation, stronger policy on use of these guidelines is needed beyond what is included in this recommendation. Expectation setting is an essential part of disability management and early and safe return to work. Disability management

guidelines not only need to be discussed with workers, they need to be provided in writing and communicated in such a way that a clear expectation for accepted recovery time is set.

As the SRC report states, the more quickly the worker can return to work, the better the outcomes for long term recovery. Returning an injured worker to full duties as quickly and as safely possible must be the goal of all parties. As the SRC report also states, disability management guidelines are based on best available medical evidence and established practice. Recovery times outside of these recognized guidelines should be the *exception*, not the norm. It is the understanding of the NLEC that the current case management model already includes discussion with workers regarding accepted recovery times as an encouraged practice, and that this practice is not being followed in the majority of cases nor is it resulting in a decrease in claim duration. The NLEC believes flexibility and responsiveness to the health and recovery needs of each injured worker should be allowed for, but believes that average claim duration in NL provides proof that stronger decision making regarding claim entitlements and cessation of claims is needed within the WHSCC. There must be an expectation amongst all parties (the employer, employee, physician and WHSCC case managers) that *in the absence of objective medical evidence to explain why recovery is delayed*, the worker should be able to return to work in accordance within medically accepted guidelines.

### **Public targets regarding claim duration**

The NLEC recommended that the WHSCC be required to publish, on an annual basis, a comparison of performance on claim duration times for the top 25 injuries against medically accepted guidelines for these injuries. The NLEC is disappointed that this recommendation was not addressed in the SRC report. There are currently no set goals or targets for recovery times within WHSCC. This must change. Reducing claim duration to be in accordance with medically accepted recovery times should be a top-down focus of the WHSCC. Not doing so continues to foster inefficiencies, inequities and loopholes within the system that allow claims to continue unchecked, driving up the cost of the system and eroding efforts surrounding early and safe return to work.

### **Waiting period**

In the NLEC submission to the SRC the NLEC recommended that the Workplace Health, Safety and Compensation Act be amend to include a waiting period for benefits similar to legislation in the other Atlantic Provinces. Attachment to the workplace by the injured worker immediately following an injury is another best practice of disability management. In their respective workers' compensation statutes, New Brunswick, Nova Scotia and Prince Edward Island have all recognized the importance of maintaining the worker's connection to the workplace immediately following the occurrence of an injury by, among other things, implementing a waiting period for benefits for workers' compensation benefits.

The waiting period for compensation ranges up to three days post-injury with compensation for those days typically returned to the injured worker when the claim duration exceeds a specific timeframe. This acts as a financial incentive for the worker to maintain an attachment with the workplace, and dramatically increases the likelihood of a successful return to work plan being developed early in the claim.

### **Functional Abilities Information**

In the report, the SRC discusses but makes no recommendation around Functional Abilities Information. They state that based on their discussion with WHSCC they are satisfied that WHSCC has initiatives in place to address issues regarding functional abilities information. The NLEC respectfully disagrees. Insufficient functional abilities information provided by physicians on the 8-10 form continues to be a significant problem for employers. Employers report that WHSCC in many cases is not, as the report states, contacting the physician to request additional information when insufficient information is provided to facilitate ESRTW. The NLEC supports the MOA with the NLMA and any efforts to raise awareness of ESRTW within the medical community, however the WHSCC needs to take more of a leadership role in ensuring that physicians are contacted to provide more detailed information when it is not provided.

### Employment Obligations of Pre-injury Employers

***SRC Recommendation 24: That the WHSCC evaluate the ESRTW program in light of the new information available and revise the program to ensure there is a meaningful cooperation between the employer and the worker in the development of an effective ESRTW plan, to ensure:***

- a) That the ESRTW plan be implemented on a timely basis as the workers functional abilities allow, with the objective being to progress through the Hierarchy of Return to Work***
- b) That employers are meeting the legislative requirements to re-employ up to the point of undue hardship.***

NLEC Position: The NLEC believes the WHSCC should take a more active, results based role in driving ESRTW and reducing claim duration.

The NLEC supports the use of reporting data to monitor ESRTW programs to measure results and establish key performance indicators and targets. The NLEC feels that these targets and performance measures should be made public and regularly reported. The NLEC agrees that the WHSCC should use this information to review and revise the ESRTW program to address problem areas.

While the concept of the Hierarchy of Return to Work is simple, the policy is complicated. Support from the WHSCC throughout the ESRTW process to ensure the ESRTW plan is progressive in nature by not only monitoring duration and changes in priority levels, but ensuring they are on target with both current functional ***abilities and disability management guidelines*** is extremely important in ensuring the success of the return to work plan. For this process to work effectively, it is extremely important that functional abilities provided be sufficient and updated as the injury heals and the worker's abilities progress.

### Reporting Outcomes of the ESRTW Program

***SRC Recommendation 25: That the WHSCC develop key performance indicators for return to work outcomes and at a minimum track and report on each of the following outcomes: the level of return to pre-injury job, return to essential duties of pre-injury job, return to suitable work, return to alternate work, and did not return to work but had the capacity to work.***

NLEC Position: The NLEC supports this recommendation, but feels tracking and reporting is not sufficient. ***Goals and targets*** around these KPIs must be set to improve outcomes. As stated previously,

the NLEC would like also like to see an overall KPI developed to track, report and set targets for average composite claim duration for the top 25 injuries as compared to the Disability Duration Guidelines.

## Reduce administrative costs for occupational health and safety education and enforcement

### Organizational Structure of the OHS Branch

***SRC Recommendation 6: That the OHS branch remain separate from the WHSCC.***

***SRC Recommendation 7: That the provincial government determine the potential for the OHS branch to be an independent agency as a branch of the public service under the management and control of a Chief Operating Officer, similar to the Government Purchasing Agency and the Labour Relations Agency.***

NLEC Position: As the report indicates, more research and analysis is required to identify and evaluate the benefits and disadvantages of establishing the OHS Branch as an agency of government. In our Statutory Review submission the NLEC recommended that the WHSCC be given the legislative responsibilities for both education and enforcement of occupational health and safety in order to achieve greater efficiency and prudent spending. The 2012 Auditor General's report highlighted inefficiencies that exist due to the lack of sharing of employer information collected and maintained by both divisions. While the SRC determined, in their opinion, that combining of the two divisions is not required to increase **collaboration**, there was little mention of how the proposed model would eliminate such inefficiencies and increased administrative cost, which was the basis for the NLEC recommendation. The SRC report states that combining of the two divisions would be a challenging undertaking from an organizational perspective and the benefits to be derived from it are unclear. The NLEC argues that the same is true of the SRC's proposal of establishing the OHS Branch as a separate agency of government. The NLEC has seen no evidence to suggest that lack of independence is inhibiting the ability of the OHS division to engage in enforcement activity at provincial government workplaces.

As evidenced by the SRC report and the Auditor General's report, the current structure has created significant challenges and "uncertainty" for both the OHS Branch and the WHSCC that are preventing efficient information sharing, use of resources, and targeted and prioritized enforcement and prevention activity. The NLEC maintains its recommendation that the WHSCC be given the legislative responsibilities for both education and enforcement of occupational health and safety in order to achieve greater efficiency and prudent spending.

### Collaboration and Coordination between the WHSCC and the OHS Branch

***SRC Recommendation 8: That the Chief Executive Officer of the WHSCC and the and the Assistant Deputy Minister responsible for the OHS Branch collaborate to develop a framework for the efficient use of both organizations resources, in coordinating a targeted approach to high risk, high priority workplaces resulting in improved occupational health and Safety outcomes and addressing service delivery issues common to both organizations.***

***SRC Recommendation 9: That the WHSCC and the OHS branch establish a committee to address joint initiatives targeting high risk, high priority workplaces and that the WHSCC Chief Executive Officer and***

***the Assistant Deputy Minister responsible for the OHS Branch should report on these initiatives to the WHSCCs Board of Directors and the Ministers responsible semi-annually.***

***SRC Recommendation 10: That an evaluation of the effectiveness of the OHS branch and the WHSCC’s collaboration be conducted by an independent consultant within 2 years of establishing the framework and the committee identified in recommendations 8 and 9.***

NLEC Position: The SRC report states that “a coordinated and planned approach to the WHSCC’s and the OHS Branch’s respective roles in prevention and enforcement and the overlap between the two would achieve greater results.” The NLEC agrees that increased collaboration and coordination between WHSCC and the OHS Branch is necessary. The fact that the SRC felt the need to recommend the establishment of a committee and an evaluation by an independent consultant to ensure collaboration and coordination of a government department and government agency clearly demonstrates a disconnect between the two departments that must be addressed. Such coordination and collaboration is common sense, and should not result in any additional administrative cost to employers through the establishment of a committee and hiring of an outside consultant for evaluation. Any barriers to increased collaboration and coordination between OHS and WHSCC, be they administrative, bureaucratic or political must be eliminated through an organizational restructure and point clearly to the need for amalgamation of both responsibilities under one department.

### **Adjudicate all claims based on current medial opinion**

***SRC Recommendation 20: That the Government of Newfoundland and Labrador enact a separate firefighters’ compensation act applicable to career (employed/paid) firefighters , and***

- a) Include in the act a rebuttable presumptive clause for recognised cancers and latency periods and that the government be guided by the list presented in Schedule A from the New Brunswick’s Firefighters’ Compensation Act as attached***
- b) Outline that a claim be adjudicated under the WHSCC Act first, and if rejected, the claim should be adjudicated under the Firefighters Compensation Act as attached***
- c) Establish a separate, sustainable fund that is fully funded by the municipalities that employ career firefighters and is based on an actuarial assessment***
- d) Support the fund with the existing occupational disease fund until such time as it is fully funded by the municipalities***
- e) Establish an appropriate Fund Policy with the assistance of the WHSCC’s actuary which includes subjecting the fund to the annual review by the WHSCC’s actuary and which requires the WHSCC to administer the fund.***

#### **Schedule A: New Brunswick Regulation under the Firefighters’ Compensation Act**

Disease and conditions	Length of service
Primary site brain cancer	10 years
Primary site bladder cancer	15 years
Primary site colorectal cancer	20 years
Primary site oesophageal cancer	25 years

Primary site leukemia	5 years
Primary site lung cancer (in a person who has not smoked cigarettes for a minimum of 10 years before the initial diagnosis)	15 years
Primary site kidney cancer	20 years
Primary site non-Hodgkin's lymphoma	20 years
Primary site testicular cancer	20 years
Primary site ureter cancer	15 years

NLEC Position: The NLEC is fundamentally opposed to implementation of a presumptive clause in any case. All workers' compensation claims should be adjudicated based on medical evidence and current medical opinion. The NLEC stands behind our recommendation that occupational disease claims should be adjudicated similarly for all workers of the province based on current medical opinion and not on non-medical factors such as occupation, employer or geographic location.

Worker's compensation is an insurance system providing benefits to workers who suffer injuries or illness arising out of the course of employment. Injuries and illnesses that do not arise out of the course of employment are legally, non-compensable. Presumptive clauses, by nature, provide benefit without any medical opinion or investigation into other causes for the injury or illness, including family history or lifestyle. Such a clause provides preferential treatment for one set of workers at the expense of every other worker in the system. Workers covered by such clauses receive benefits for non-work related illnesses in situations where workers, insured by the same system but not covered by such a clause, would not be eligible.

Career firefighters with work related injuries or illnesses, including known occupational diseases such as the cancers listed in the SRC report, are currently provided worker's compensation benefits. Claims are adjudicated on a case-by-case basis and due diligence is exercised by the WHSCC in determining a medically proven work related cause. There is currently an internal appeals process if an applicant isn't satisfied with the results of their claim, and an additional independent external appeals process following that. The NLEC believes this process provides for compensation for work related illnesses as intended by worker's compensation without jeopardizing coverage provided to other workers, and that a presumptive clause is unnecessary and unprincipled.

Implementing a presumptive clause for career firefighters could result in a massive cost to the worker's compensation system. If government does choose to ignore this principle of fairness and legislate a presumptive clause for career firefighters, it should not jeopardize funding for other potential incidences of occupational disease in the province. If the municipalities are in agreement to provide such coverage as a benefit of employment, a separate, sustainable fund must be developed to provide such compensation (as recommended by the SRC). To support funding for a presumptive clause using the occupational disease fund (even if only until it is fully funded by the municipalities) is unfair to other employers in the system, and their workers - whose own coverage for work related occupational disease, not to mention funding for prevention of future occupational disease, would be impacted.

### Focus the PRIME program on true cost drivers of the system

***SRC Recommendation 33: That the WHSCC review PRIME to identify ways to continue to increase the participation of small and medium sized business in the program.***

***SRC Recommendation 34: That the WHSCC re-align PRIME requirements to meet the OHS Act and its regulations.***

NLEC Position: Overall the NLEC is supportive of the PRIME program, as experience rating is a fundamental principle of insurance systems and PRIME has been significant in assisting the reduction of injuries in this province. The NLEC agrees that PRIME should align with the OHS Act and regulations. The NLEC disagrees with a review of PRIME to increase participation amongst small employers. The NLEC supports a review to increase participation amongst medium sized employers.

The NLEC stands behind our recommendation that WHSCC discontinue the PRIME system for small employers and redirect those resources toward medium and large PRIME assessment employers. A review of PRIME to increase participation of small employers with under 10 employees, particularly in non-safety sensitive environments, would be a waste of resources. Despite the overall success of PRIME, it is not having the same impact on every employer in the province. Small PRIME employers, defined by the Commission as workplaces with less than 10 employees, have much less stringent requirements to achieve the practice incentive. The lesser requirements are a reflection of the OH&S needs in small workplaces and the requirements outlined for small organizations in the OH&S Act.

Unfortunately, and although well-intentioned, the return on investment for both the workers' compensation system and small employers, with under 10 employees, for implementing PRIME has been poor. First, small employers are not cost drivers of the workers' compensation system. Approximately 350 employers in the province account for approximately 80% of the entire costs of the system. Those 350 employers are medium to large organizations. On average, small employers only have a workplace accident once every seven years. Second, even if small businesses had injury frequencies significant enough to influence the costs of the entire workers' compensation system, the financial incentives of both the practice and experience incentives under PRIME are not significant enough to motivate small workplaces to focus on its implementation.

While the SRC reports that PRIME has been successful in decreasing claims and increasing experience refunds for small and **medium** employers, the NLEC has seen no evidence to suggest that the three practice incentive criteria are having, or could have, any impact on such a low incident rate amongst small employers with under 10 employees, particularly those that operate in non-safety sensitive environments. A much better return on investment would be achieved by redirecting the resources required to administer PRIME for small employers toward large and medium sized employers -- the true cost drivers of the system. With limited resources, it is imperative that the Commission re-focus its resources on areas where they will have the most impact.

### **Increase employer accountability in the fish harvesting industry**

***SRC Recommendation 35: That the fish processors identify workers' compensation assessments as a separate line item on the value of the catch but it should not result in any portion of payment of the fisher. Section 9 of the WHSCC Regulations states: "A sum payable in assessments shall not be deducted from a payment due to a commercial fisher."***

NLEC Position: The NLEC supports breaking out workers' compensation assessments as a separate line item on the value of the catch so that fish harvesters can be made aware of the cost of unsafe workplaces and long claim duration within the fish harvesting industry. However, the SRC

recommendation does not go *nearly* far enough given the high rate of injuries and deaths occurring in the fish harvesting industry. Greater and more direct financial accountability for fish harvesters is needed than is provided for in this recommendation.

The way in which harvesting enterprises submit workers' compensation employer insurance premiums is unique. It fundamentally compromises the application of WHSCC principles in an industry that is one of the most dangerous, injury prone, and costly of all sectors. Our fish harvesting industry is a major cost driver of our workers' compensation system, representing 10% of all costs at the Commission. Between 2008-2010 the province as a whole saw a decrease in its incidence rate of 11% (2.0 to 1.8), while the fish harvesting industry experienced an increase of 55%. The average length of time it took someone to return to work following a workplace injury in fish harvesting in 2010 was 162 weeks -- a full 160% longer than the Newfoundland and Labrador average. Since 2005, a total of \$98 million in claim costs and claim liabilities have been paid or accrued in the fish harvesting sector by WHSCC (as of 2012). From 2005-2012 there were 23 deaths related to the fishing industry and more than 1,000 accidents resulting in time away from work over that period. It is not a matter of if someone will be injured or die in the fishery this year, it is a matter of when, and how many.

The statistics are clear: the lack of financial incentive to practice Occupational Health & Safety in the fish harvesting industry is contributing to extremely high incident rates and claim duration in the industry. Something *must* be done to address high injury rates and fatalities in the fish harvesting industry. Not to do so would be irresponsible and immoral. The development of a safety sector association a good first step, but promotion of safety education and awareness initiatives are inadequate in the face of such alarmingly high numbers of workplace injuries and fatalities. Financial accountability and incentive is a key principal in any insurance system and, as demonstrated by the PRIME program, will reduce workplace injuries and increase safety. If injuries are to be prevented and lives saved in the fish harvesting industry, then direct financial accountability for injuries and fatalities must be implemented.

In order to ensure a true financial incentive to reduce injury rates and claim duration, **regulations must be changed** to allow worker's compensation premiums to be **deducted** from the landed value of the catch in the same fashion as other deductions such as union dues, CPP and EI. Without this there will be no direct financial incentive or accountability for harvesters and high rates of injury and deaths in the industry will continue.

In addition, the NLEC recommends that larger vessels that employ larger numbers of people should be treated as all other employers under the Workplace Health, Safety and Compensation Act, and make their own payments directly to WHSCC. Collection of premiums from these vessels would not place an unreasonable administrative burden on the WHSCC, given the potential return on this investment. There are fewer larger boats in the industry, and many are incorporated, and many use the services of professional accountants. The size of vessel required to remit workers' compensation employer insurance premiums directly to WHSCC should be lowered from the current 64'11" vessel to 45' vessel size. This would include their participation in the PRIME system of practice and experience incentives, increasing their financial accountability and decreasing injuries and deaths in the industry.

Finally, the NLEC disagrees that optional coverage for small fish harvesting operations would weaken the gains made in prevention and expose workers to greater risk. As the statistics show, the current system of collection has done very little to promote awareness. Safety awareness and education initiatives to all fish harvesters could still be conducted through the Fish Harvesting Safety Association regardless of

whether some small fish harvesting operations choose to opt out of worker's compensation coverage. Under a new system, small boat operators should have the option of not having WHSCC premiums deducted from their payments from processors, as in other provinces, if they would prefer to do so. The NLEC stands by our recommendation that the Workplace Health, Safety and Compensation Act be amended to provide optional coverage for fish harvesting operations conducted in vessels under 45' in length in a similar manner as workers' compensation coverage is currently provided in the fish harvesting industry in Prince Edward Island.

### Increase return to work incentives in seasonal operations

***SRC Recommendation 38: That the WHSCC review its practice and policy if necessary to ensure that seasonal and other non-permanent workers are compensated on a fair and equitable basis including during the first 13 weeks of the claim.***

NLEC Position: The NLEC supports such a review, but does not think this recommendation goes far enough in ensuring compensation for seasonal workers that is fair and equitable to all workers. A recognized principal in worker's compensation legislation in all jurisdictions is to restore benefits to the worker at a rate no greater than what they would have received had the injury not occurred. Our legislation allows, in some cases, for seasonal workers to actually be better off financially on worker's compensation than if they had they not been injured by calculating benefits for seasonal workers the same as they do for non-seasonal workers, regardless of their employment history. This is an unintended loophole that is contributing to the excessive costs of the worker's compensation system in this province and jeopardizing the security of benefits for all other workers. Workers compensation systems in other provinces recognize that, in fairness to all workers, seasonal workers should not be better off financially on worker's compensation than if they had not been injured. Our province must do the same in legislation, not simply in WHSCC practice and policy.

The NLEC stands behind our recommendation that government implement legislation providing a system of calculation of benefits for seasonal workers similar to what the workers' compensation board has done in the Province of Alberta to remove the loophole of seasonal workers being better off financially on Workers' Compensation than had an injury not occurred. The NLEC also recommends that WHSCC offset any Employment Insurance benefits the workers' compensation recipient may be entitled to receive from the temporary earnings loss of the recipient, similar to the Commission's offset of CPP. Finally, WHSCC should not include any income earned upon which workers' compensation employer insurance premiums were not required to be paid in the calculation of an earnings loss benefit. This includes Employment Insurance earnings.

# SECTION B

## RECOMMENDATIONS OF CONCERN TO THE NL EMPLOYERS' COUNCIL

### Disputed Claims

***SRC Recommendation 17: That the WHSCC identify ways to resolve disputes regarding medical aids when the cost variance is minimal and the result will be more expeditious, efficient, and cost effective resolution of a claim.***

NLEC Position: The NLEC strongly opposes this recommendation. While the NLEC is supportive of improving the timeliness of decisions, and more expedient and cost effective decision-making, this recommendation as it stands is too broad for the NLEC to support. This recommendation allows for interpretations on a case-by-case basis that may set precedent and increase future cost. While on a case-by-case basis cost variance may seem minimal the big picture impact has to be considered. If enough exceptions are made, over time the exception becomes the rule, increasing the cost of an already expensive system. Existing policies must be held firm and precedents should not be set that could allow costs to unnecessarily escalate and open up Commission decisions to being overturned at external review.

### Independent Medical Examinations

While no recommendation was made regarding Independent Medical Examinations, the SRC concluded that the current process for IMEs is adequate. The NLEC does not agree. Currently, Newfoundland and Labrador is the only province in Canada where employers do not have the right to an Independent Medical Examination for an injured worker. Every other province has recognized the need and the right of employers, as the financiers of the system, to a second physician's opinion on a work related injury. A second opinion has the ability to progress claims that have become stalled and re-invigorate inactive claims. Further medical opinion on a worker's recovery is a benefit to injured workers. Employers also recognize that physicians are not the only health care practitioner (HCP) that can provide support with difficult return to work issues. The right of a second medical opinion should include the option to use other HCPs as the employer deems necessary. Allegations that IMEs could be used to obtain other health information unrelated to the workplace injury and violate privacy requirements are completely unfounded. The NLEC sees no reason to preclude the right of employers to request an IME in our legislation, and continues to advocate that the WHSC Act be amended to include the right of an employer to require an employee to submit to an independent medical assessment from physicians and other HCPs.

### Support for Employers to Implement the ESRTW Program

***SRC Recommendation 22: That the WHSCC, in consultation with the NLEC and NLFL, develop an ESRTW education program they would jointly promote along with the Safety Sector Councils. This program***

***should convey the importance of ESRTW to workers and employers and clearly identify the roles of the workers, employers, health care providers, and WHSCC in the ESRTW program. This program should be available to employers and workers without a course fee.***

***SRC Recommendation 23: That the WHSCC consider the development of a training certification standard for early and safe return to work.***

NLEC Position: The NLEC does not support these recommendations. The NLEC does not agree that the development of a training certification standard is necessary, nor that a blanket education program should be developed. The NLEC believes that education and training initiatives should be needs based and industry specific. The cost of implementing a training certification standard is significant for both the employer and the WHSCC, and attending training can be burdensome for both the employer and employee. The NLEC has seen no evidence to support a demonstrated demand for such a program, and has concerns about uptake of such a program based on uptake for ESRTW training that already exists. There are currently a large number of education and communication resources already in place, including ESRTW facilitators and case managers. Education on ESRTW could be better accomplished by utilizing existing resources and targeting education and training initiatives towards specific employers, workers or industry groups who need it.

## Occupations identified in the LMR Assessment

***SRC Recommendation 26: That the WHSCC review the occupational classification component of the Labour Market Re-entry (LMR) Assessment and ensure service providers clearly communicate the process to injured workers. Further, the WHSCC should ensure that recommended occupational classifications and the occupations that are identified within those classifications are suitable for the injured worker and are relevant to where the injured worker lives in the province.***

***SRC Recommendation 27: That the WHSCC continue building on the improvements implemented through the 2010 Labour Market Re-entry Program quality improvement plan, and embark on a second phase to ensure a thorough review of the services and assistance available to workers referred to the Labour Market program is carried out and to make any necessary improvements which arise from the review.***

NLEC Position: The NLEC strongly disagrees with these recommendations. WHSCC is an insurance program, and insurance programs must have limits to ensure sustainability. LMR is designed to ensure workers have the skills, knowledge and abilities to re-enter the labour market and reduce or eliminate their loss of earnings resulting from the injury. The goal of LMR is employability - it is not the role of the WHSCC to find relevant employment opportunities for LMR clients. As the SRC report indicates, the LMR Assessment is meant to identify occupations, not employment opportunities. While clear communication and provision of realistic information is appropriate, it is not the responsibility of the WHSCC to ensure that occupations identified by the LMR Assessment are relevant to where the injured worker lives in the province.

Furthermore, the lack of a relevant employment opportunity in the region in which the injured worker resides (or other factors impacting “suitability” that are unrelated to the workplace injury) must NOT impact the LMR process. Individuals move for work on a regular basis. Labour mobility is essential in maintaining a productive workforce in this province that is responsive to labour market needs. An

individual living in a specific area should not be able to stay on worker's compensation indefinitely due to lack of employment in that area, when suitable employment exists in another part of the province and they are reasonably able to perform this work. At this point, the decision to relocate or not becomes a choice of the worker unrelated to the insurance system.

# SECTION C

## NL EMPLOYERS' COUNCIL RESPONSE TO REMAINING SRC RECOMMENDATIONS

### Affordability and accessibility

***SRC Recommendation 1: That the WHSCC a) adopt a broader approach to deliver education and training for prevention and including using technology, b) encourage awareness of occupational health and safety in post-secondary programs, and c) integrate Occupational Health and Safety (OHS) standards in all OHS programs.***

NLEC Position: No objection. The NLEC supports prevention education and training as a means to increase the safety culture of our province and therefore decrease the incidence of workplace injuries. The NLEC also supports any efforts to deliver this training more efficiently and cost effectively.

***SRC Recommendation 2: That the WHSCC collaborate with the Safety Sector Councils to identify opportunities to develop and deliver sector-based safety training.***

NLEC Position: The NLEC supports collaboration with Safety Sector Councils as training providers to achieve efficiencies, and would argue the Commission is already doing this. The development of any additional sector-based training could only be supported provided the training 1) addresses an actual sector specific need for training 2) can be delivered efficiently and is not onerous to employers and 3) is not mandatory.

***SRC Recommendation 3: That the WHSCC organize an annual series of learning symposia to provide an opportunity for knowledge sharing, to recognise the innovative approaches implemented by employers and workers, and to promote champions of workplace health and safety in the Province.***

NLEC Position: The NLEC is not opposed to opportunities for knowledge sharing amongst stakeholders regarding prevention, and believes many such opportunities currently exist within in the province. The NLEC is uncertain of the need for the development of an additional annual series of learning symposia. Further information, including a needs assessment and cost benefit analysis, would be required to either support or oppose the implementation of a new series of events.

### Training Certification Standards

***SRC Recommendation 4: That the WHSCC and OHS branch develop a supervisory training certification standard including competency requirements for hazard recognition, evaluation and control.***

NLEC Position: More information on the need for, and specifics of, this training is required. The NLEC does not support mandatory supervisory training certification across all employers regardless of industry sector or need. The development and delivery of mandatory certification is time consuming, costly and onerous on employers and potentially takes focus off of higher priority areas in a workplace. Such mandatory training also does not take into account sector specific needs, training already provided by

the employer or undertaken by supervisors prior to implementation of the standard. The NLEC could potentially support the development of a supervisory training certification standard, with more information including a needs assessment and cost-benefit analysis, provided this training does not become mandatory.

## Safety Sector Council

***SRC Recommendation 5: That the WHSCC continue to promote the development of safety sector councils as an important component of prevention and to encourage collaboration among safety sector councils to explore increased strategic mandates for prevention and safety in the workplace.***

NLEC Position: To be effective, the development of safety sector councils and their business plans must be industry driven. The NLEC is supportive of safety sector councils as a component of prevention, but industry ownership of programs and initiatives are key to their success. The WHSCC must be cognizant of the fact that each safety sector council need not be structured the same, as industry needs vary. Furthermore, the safety sector council model may not be relevant to all industry groups and should be developed based on industry need and buy-in.

## Monitoring Occupational Health and Safety Committees

***SRC Recommendation 11: That the WHSCC make the oversight and the assessment of OHS Committee activity and minutes a priority. The WHSCC should monitor closely whether risks identified by the OHS Committee have been appropriately addressed in a timely manner by the employer and if not, intervene, or request that the OHS Branch intervene.***

NLEC Position: The NLEC is opposed to another layer of “policing” of OH&S committees by WHSCC. As it reads, this recommendation blurs the roles established by WHSCC and the OH&S branch of Service NL. WHSCC is responsible for education, not enforcement.

This recommendation also adds an unnecessary administrative and financial burden to WHSCC that employers feel will not help the issue of committee effectiveness, but rather convolute its processes. Workplace safety is the responsibility of the workplace parties. This extra layer of policing of OHS Committees diminishes the principle of the Internal Responsibility System, a system that should be respected, protected and defended.

Current legislation provides ample opportunity for the workplace parties to address issues identified by OH&S committees. The Occupational Health & Safety Act, section 4(f.1) & (f.2) outlines the requirement of the employer to respond in writing within 30 days to a recommendation of occupational health and safety committee at the workplace, indicating that the recommendation has been accepted or that it has been rejected, with a reason for the rejection; and shall provide periodic written updates on the implementation of a recommendation accepted by the employer until the implementation is complete. Employees also have the right to refuse unsafe work. Workplace parties must be given full responsibility for workplace safety and must learn to work together under the Internal Responsibility System.

***SRC Recommendation 12: That the requirement of OHS Committees for an employer with multi-site workplaces which are in close proximity with each other (e.g. in the same building or adjacent***

***buildings) be practically applied so that the number of OHS Committees are not so numerous that they become ineffective and inefficient.***

NLEC Position: The NLEC strongly supports this recommendation.

***SRC Recommendation 13: That the WHSCC and the OHS Branch ensure hazard recognition, evaluation and control are emphasized in the OHS Committee training certification standard.***

NLEC Position: Hazard recognition, evaluation and control is already part of OHS Committee training. The NLEC has no opposition to an increased emphasis on this area.

## OHS Committee Program

***SRC Recommendation 14: That the review of the OHS Committee Program include the following:***

- a) Develop a memorandum of understanding between the WHSCC and the OHS Branch with a clear definition of the roles and responsibilities, jointly and severally, in supporting OHS Committees.***
- b) Implement appropriate refresher training for OHS members.***
- c) Revise the OHS Committee minutes form in a manner that ensures that longstanding issues or those critical for the health and safety of workers in the workplace are flagged and can be appropriately monitored by the WHSCC and/or OHS Branch.***
- d) Identify opportunities and approaches to support the engagement of OHS Committees by providing health and safety information such as bulletins on hearing loss/noises on a regular basis to them.***
- e) Identify key performance indicators that measure the effectiveness of OHS Committees and report them to the WHSCC's board of Directors within 6 months after receiving direction from the provincial government regarding this recommendation.***

NLEC Position: The NLEC supports the review of and improvements to the OHS Committee Program to increase the efficiency and effectiveness of the program but does not necessarily agree with all of the SRCs recommendations:

- a) While the NLEC is not opposed to the development of an MOU between WHSCC and OHS Branch, we feel this is an unnecessary administrative step to ensure collaboration and coordination that should already be taking place. Again the more effective method of addressing these types of concerns would be to eliminate barriers to increased collaboration and coordination between OHS and WHSCC through an organizational restructure such as the amalgamation of both responsibilities under one department.
- b) The NLEC does not support mandatory OHS refresher training, and predicts a strong negative reaction to this recommendation from the business community. The cost of providing mandatory training is significant for the employer, and attending training can be burdensome for both the employer and employee. The NLEC believes that education and training initiatives should be needs based and industry specific. While some OHS committee members may benefit from refresher training, not all committee members have a need for a refresher course, nor would they benefit equally from blanket refresher training. The NLEC feels continued engagement and education of committee members could be better accomplished through other avenues, including increased communication as per recommendation d.

c) The NLEC is supportive of the flagging of longstanding or critical health and safety issues in OHS Committee minutes. If improvements to the form will improve the efficiency of monitoring, the NLEC is not opposed to this, provided there is a demonstrated need.

d) The NLEC believes the Commission should have a responsibility for ensuring OHS Committees have access to updated and relevant health and safety information as it becomes available. The NLEC supports increased communication to and engagement of OHS Committees, provided it is done efficiently and in a cost effective manner through the use of technology.

e) The NLEC is not opposed to the identification of key performance indicators to measure the effectiveness of OHS Committees but more information would be required to support this recommendation. In the absence of specific information on what these key performance indicators would be and how/by who they will be measured, employers have concerns that this recommendation may be impractical.

## Client Service and Communications

***SRC Recommendation 15: That the WHSCC emphasize face-to-face or telephone communication as the first approach for providing information to injured workers with the use of electronic (web-based) and printed material as a supplement.***

NLEC Position: The NLEC supports this fully as setting goals and expectations, as early as possible, is a best practice approach. The fact that this recommendation even had to be made is concerning to employers.

As of 2010, Newfoundland & Labrador has an average composite duration of 123 days, 57 day higher than the Canadian average or nearly twice the Canadian average. Even when compared to the second worst province in the country, Nova Scotia, NL has an average claim duration of 24 days (nearly five work weeks) longer. Claim duration is of major concern to employers. Recovery times for workplace injuries in this province should not take, on average, twice as long as the rest of Canada. Early intervention and expectation setting are known to be key components to the success of both recovery and early and safe return to work. These high duration statistics provide the greatest area of opportunity for improvement through the statutory review process. While the NLEC believes that duration is best targeted through a fundamental legislative change such as legislating expectation setting in early and safe return to work, any policies, procedures and practices that could be contributing to our high duration of claims should be addressed in this review.

## Video Surveillance

***SRC Recommendation 16: That the WHSCC amend its policy EN-11 Investigations to codify current practice of the WHSCC as informed by the guidelines from the Office of the Privacy Commission of Canada (OPCC) on the collection and use of video evidence.***

NLEC Position: The NLEC has no opposition to this recommendation, designed to codify what is already current practice.

## Occupational Disease Claims Adjudication

***SRC Recommendation 19: That the WHSCC assess and improve information and communications approaches with respect to occupational disease, and this would include the WHSCC:***

***Reviewing its information materials regarding the claims process for occupational disease and update its website and printed materials accordingly***

***Evaluating its process to identify barriers to communication and information sharing to ensure clients can navigate the workers' comp system as early as possible***

***Using a collaborative approach, with industry employers, labour, the OHS branch, and related safety sector councils, develop and deliver to employers, workers and their families, targeting information sessions on occupational disease risks industries and regions in the province where there is a history of occupational disease or an identified risk of occupational disease.***

NLEC Position: The NLEC has no opposition to this recommendation. Methods of communication should be based on need and targeted towards specific industry groups and audiences. Information sessions, if developed, should consider information or training sessions that already exist, whether provided by WHSCC or other providers to avoid duplication. Other methods of increased communication, including the use of technology, should also be explored and utilized where appropriate.

## Prevention

***SRC Recommendation 21: That the WHSCC and the OHS Branch continue surveillance and monitoring of high risk environments including the collection and analysis of data to ensure an evidence-based foundation for the development of strategic initiatives targeting the prevention of occupational disease.***

NLEC Position: The NLEC is not opposed to surveillance and monitoring of high risk environments for the prevention of occupational disease. Employers inform the NLEC that this sort of analysis and data collection is already happening. More information would be required on this recommendation to fully support.

## Internal Review Process

***SRC Recommendation 28: That the WHSCC should use its discretion to determine the scope of the internal review process regarding the use of interviews, meetings, and requests for further details on a case-by-case basis, and that the WHSCC should undertake a review of its Internal Review Policy, work process, accountability and resourcing to ensure it is aligned with this initiative.***

NLEC Position: The NLEC has no opposition to discretionary use of interviews, meetings and requests for further details, provided due diligence continues to be followed in this investigation and the goal is improved client service and efficiency. While the NLEC supports regular reviews of policies and procedures to ensure efficiency, more information would be needed regarding the necessity of a review of the Internal Review Policy for the NLEC to support this initiative.

## Timeline/Schedule for External Review

***SRC Recommendation 29: That the provincial government amend section 28(8) of the WHSC Act to include: That a hearing must be held within 60 days of the application and the decision must be rendered and communicated within 30 days after the hearing, where there is no delay caused by any of the parties involved in the review, or the introduction of new evidence.***

NLEC Position: Timeliness of decisions in the External Review Process is in everyone's best interest. The current timeline of 60 days to decision is unrealistic, and is not being adhered to and there is a backlog of cases in the system. The NLEC has no opposition to the extension of the timeline to hearing to 60 days, with 30 days to decision, provided it is possible to actually meet this legislated timeline. The NLEC is also supportive of efforts to address/eliminate the backlog of hearings.

## Representation

***SRC Recommendation 30: That the WHSCRD and the WHSCC undertake an educational initiative to raise the awareness of the workplace parties regarding available resources to assist and represent them at external reviews.***

NLEC Position: The NLEC has seen no evidence to indicate a costly "educational initiative" is necessary, considering the number of workers and employers who appear unrepresented is declining. The NLEC has no opposition; however, to increased communication to stakeholders of the resources available to assist with external review, particularly the worker and employer advisors. This can be accomplished through low/no cost means such as increased visibility on the website and through other methods of communication that are already being utilized. The NLEC is strongly opposed to political interference within the Worker's Compensation system. Government intervention through the use of Hearing Officers from the Members of the House of Assembly Office is inappropriate and unnecessary when other, non-political resources exist.

## Interface between Internal and External Review

***SRC Recommendation 31: That the WHSCC and WHSCRD develop a formal mechanism whereby WSCRD's Chief Review Commissioner and WHSCC's Chief Executive Officer meet no less than twice a year to discuss matters that effect client service delivery. This would include:***

- a) Developing and implementing a process to review the effectiveness and efficiency of the interface between the WHSCRD and the WHSCC***
- b) Reviewing any common, emerging areas of concern which contribute to delays in information or decisions***
- c) Reviewing trends which may indicate any required changes, and***
- d) Reporting results of the foregoing to the WHSCC Board of Directors and the appropriate government authority.***

NLEC Position: The NLEC supports collaboration and information sharing as a means to increase efficiencies, improve client service and ensure consistency in decision making processes. The NLEC has no opposition to this recommendation.

## Self-insured Employers

***SRC Recommendation 36: That the WHSCC ensure that the new contracts negotiated with self-insured employers result in paying their proportionate share of all applicable administration costs.***

NLEC Position: The NLEC is supportive of this recommendation. Employers insured under WHSCC should not have to bear additional administrative costs incurred by self-insured employers.

## Pension Replacement Benefits

***SRC Recommendation 37: That the WHSCC undertake, in consultation with stakeholders, a review of the current Pension Replacement Benefit (PRB) program including an actuarial review and an analysis of other pension replacement models, and identify if changes are necessary to the program to ensure a pension replacement benefit that is fair and reasonable to injured workers, and financially sustainable and practical to administer.***

NLEC Position: The NLEC has no opposition to such a review.

## Governance

***SRC Recommendation 39: That the provincial government retain the current committee model for the statutory review process with the addition of a fourth committee member as an independent non-voting chair.***

***SRC Recommendation 40: That the provincial government ensure that the WHSCC and the two prime stakeholders be represented by decision-makers who are knowledgeable about the workers' compensations system.***

***SRC Recommendation 41: That the provincial government extend the term of the statutory review to six years with pre-consultation with the WHSCC and the prime stakeholders to commence in the fifth year of the review cycle.***

***SRC Recommendation 42: That the provincial government ensure a technical review of the legislation is conducted every 12 years or every second statutory review.***

NLEC Position: The NLEC is supportive of all of these recommendations, with the exception of the addition of a fourth committee member as an independent non-voting chair. The current committee structure of a WHSCC, NLFL and NLEC representative ensure that all committee members are knowledgeable about the workers' compensation system. It also ensures that all parties are accountable to the system and the outcomes of statutory review. The NLEC sees no value in the addition of an independent chair with no accountability to the system.

Cross province public consultations in 2013 had low attendance and the NLEC questions the return on investment. Future reviews should utilize other more cost effective methods of public consultation and ensure that all parties have equal opportunity for representation.

## Modernizing the WHSC Act

***SRC Report Part Two: Recommendation 1: The SRC recommends that the provincial government rewrite the WHSC Act to incorporate the changes and updates with which the SRC has agreed.***

**NLEC Position:** The NLEC supports the recommendation of the SRC to rewrite the Act as recommended by the SRC.

This was the first review of the *Act* since 1983 and the first expert technical review since its inception in 1952. The technical advisors contracted to provide to conduct the legislative review and provide recommendations on the *WHSC Act* concluded that previous amendments and consolidations of the *Act* have occurred on a piecemeal basis and this leads to a “disjointed, inconsistent statute that contains inaccuracies, errors, and anachronism.”

The NL Employers Council has reviewed the recommendations and suggestions of the technical advisors, and the responses to those recommendations by the Statutory Review Committee. Upon first glance the NLEC perceives them as primarily housekeeping or administrative in nature. Further consultation would be required if any proposed changes would significantly impact policies or procedures at WHSCC, beyond the positions referenced above in this report.

