

Who wants to finish last?



Recommendations to end two decades of the highest workers' compensation insurance premiums in Canada

SUBMISSION TO THE 2012-2013
STATUTORY REVIEW ON WORKERS'
COMPENSATION
APRIL 2, 2013

WHO WANTS TO FINISH LAST?

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**NL Employers' Council Submission to the
2012-2013 Statutory Review on Workers' Compensation**

April 2, 2013

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ACKNOWLEDGEMENTS

Pulling together a submission to the Statutory Review on Workers' Compensation that reflects the varied and sometimes competing interests of all employers in the province requires a tremendous effort. Many bright and dedicated individuals on our Workplace Safety and Compensation Committee gave significant time over the past number of years to develop the recommendations contained in this document.

In addition, the Board of Directors of the Newfoundland and Labrador Employers' Council (NLEC) spent many hours debating the various recommendations that came forward from that Committee, weighing the pros and cons of each, and finely settling on recommendations that they believed are achievable and responsible. The employer community of our province owes all of these volunteers a debt of gratitude for their efforts to make the workers' compensation system better for all.

Although this submission was a team effort, the staff of the NLEC contributed significantly to this report and deserves special mention.

All those involved in the creation of the document believed strongly in this project and their commitment and dedication is reflected in the quality of this submission.

Richard Alexander

Executive Director, Newfoundland and Labrador Employers' Council

A MESSAGE TO NEWFOUNDLANDERS AND LABRADORIANS

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 always guaranteed. Thousands of workers have been supported financially by this system since its establishment in 1950.

But while it is an important system, it is also an extremely expensive one. According to the Association of Workers' Compensation Boards of Canada, employers in Newfoundland and Labrador have been paying the highest workers' compensation insurance premiums of any province in the country for two decades. It costs employers here, on average, 42% more to fund the system than what the average employer pays elsewhere in Canada. And no worker or taxpayer contributes to the system -- it is paid for entirely by employers.

“So what,” you might ask? “Who cares if employers in this province pay much more than they would in other provinces?”

Consider the following:

- What does that uncompetitive rate mean when a company bids on a job against a firm from another province?
- What does it mean to the business that operates in two jurisdictions, one of which is Newfoundland and Labrador, and is deciding where to locate their head office?
- What does it mean to a supplier of one of the province's mega projects who can have the work done outside our provincial borders?

What does it mean? It means less employment, lower wages, and less economic growth for Newfoundland and Labrador. Being uncompetitive affects everybody.

It costs an employer in NL, on average, 42% more to fund the system than what the average employer pays elsewhere in Canada.

As you read the recommendations contained in this submission keep in mind the following:

- Do the people of our province deserve a workers' compensation system that is cost competitive?
- If so, is two decades too long for to wait for a competitive system?
- And finally, why has our province been so unwilling to do what needs to be done to fix the problem?

Let us be clear: we are **NOT** asking for cuts to injured worker benefits. In fact, the recommendations in this report are designed to ensure that money needed to pay injured worker benefits will be secured well into the future – something that hasn't been achieved in more than two decades.

We are also **NOT** attacking the current Commission or our Government. They did not create the problems of Workers' Compensation – they inherited them.

And we are **NOT** asking for insurance premiums that will make us the best in Canada. What we **ARE** asking for is to simply move us out of last place! We don't think that is too much to ask.

SECTION A

TWO DECADES OF WORKERS' COMPENSATION IN NEWFOUNDLAND AND LABRADOR (1990 – 2010)

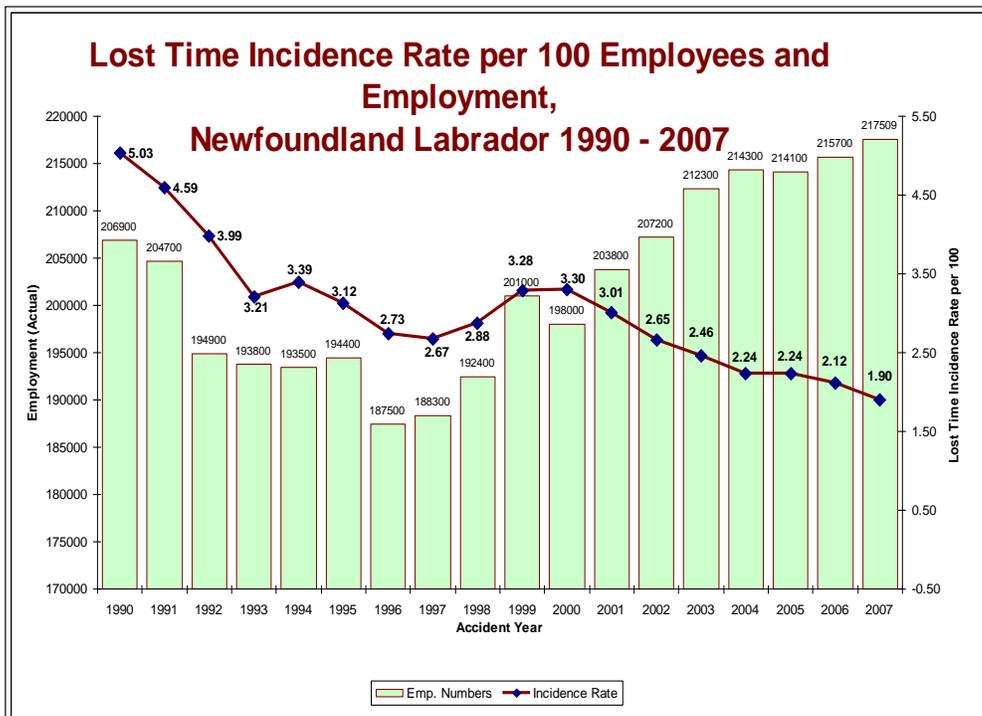
FOUR REALITIES OF NEWFOUNDLAND AND LABRADOR'S WORKERS' COMPENSATION SYSTEM

REALITY #1:

In two decades the injury rate in Newfoundland and Labrador has dropped 64%

This is positive news for our province. The lost time incident rate in Newfoundland and Labrador in 1990 was 5.03 per 100 workers. In 2010, thanks to the millions invested by employers into health and safety, together with the initiatives of the Commission and the government's OH&S enforcement division, that rate was reduced to an astounding 1.8. This shows that 20 years ago, our lost time incident rate was 2.8 times higher.

FIGURE 1



Source: Workplace Health, Safety and Compensation Commission

Even more impressive is that during the same time, the number of people employed in the province grew to its highest level in our history. We have been increasing the workforce and still lowering the number of injuries on a per capita basis. Thousands of workers in this province have gone home alive and without injury thanks to our efforts toward safety. It has been a significant achievement for this province.

Newfoundland and Labrador, is today, one of the safest provinces in which to work in Canada.

REALITY #2:

For two decades, worker benefits have been as good as, or better than, the rest of Canada

Despite a long history of financial difficulty in our workers’ compensation system, difficulties that in many cases threatened the security of payments to workers, no statutory review on workers’ compensation since 1991 has recommended any reduction in worker benefits.

FIGURE 2: Sampling of Injured worker benefits in Atlantic Canada (2010)

Province	% of earnings received	Maximum Earnings	Workforce Covered	Wait for benefits?
NL	80% net	\$51,595	98%	No
NB	85% loss of earnings	\$56,700	92%	Yes
NS	75% net	\$52,000	73%	Yes
PEI	80% net	\$47,800	95%	Yes

Source: Association of Workers’ Compensation Boards of Canada

As the table demonstrates,

- The Maximum Compensable Earning ceiling in our province is higher than PEI and comparable to Nova Scotia;
- the percentage of earnings received is higher than Nova Scotia and the same as PEI;
- our percentage of the workforce covered is not only the best in Atlantic Canada, it is the best in the entire country;
- there is no waiting period for benefits in this province.

Currently, benefit levels provided to workers in this province are comparable and in many cases better than the rest of Canada.

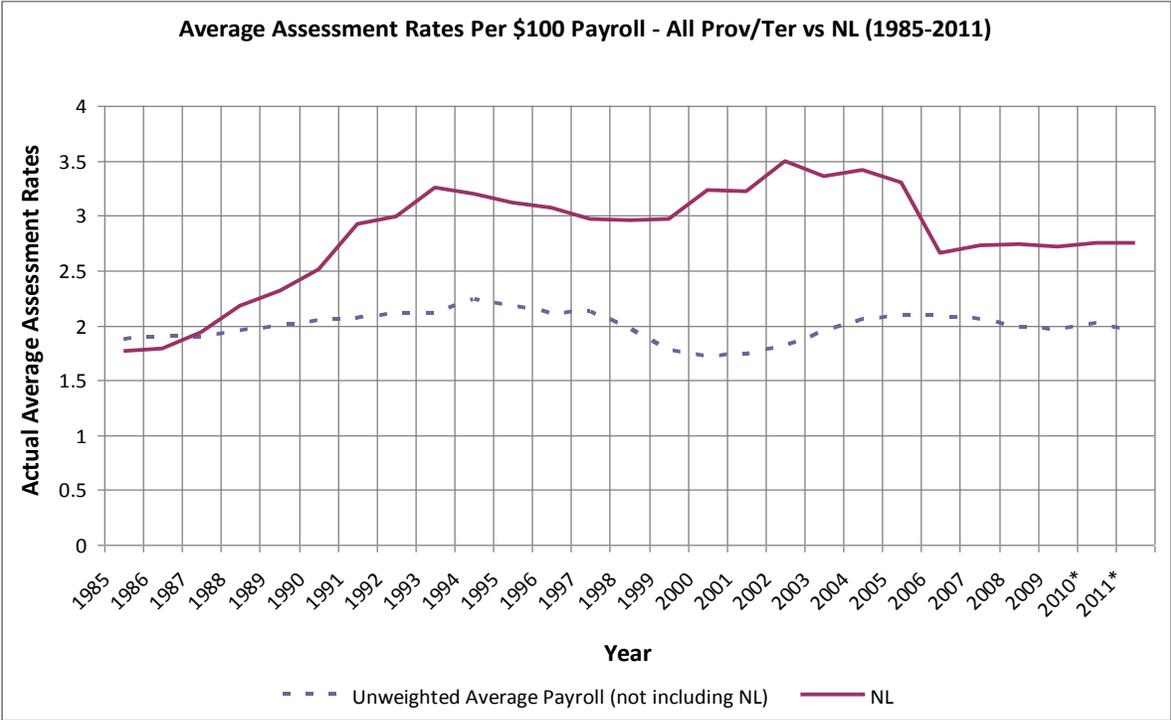
REALITY #3:

For two decades, employer workers' compensation insurance premiums have remained the worst in Canada

Employers in Newfoundland and Labrador have been paying the highest workers' compensation employer insurance premiums of any province in Canada for nearly two decades. The gap between what employers pay in this province compared to other provinces has been staggering. Between 2000 and 2010 the gap between the Canadian Average and what employers in Newfoundland and Labrador were required to pay was anywhere from 33% to 89% more in insurance premiums.

Although some improvement has been made, the workers' compensation rate charged to the payrolls of employers in Newfoundland and Labrador as of 2012 remains a full 42% higher than the average of Canada. That is a staggering difference and represents millions in excess workers' compensation employer insurance premiums over those two decades.

FIGURE 3



Source: Association of Workers' Compensation Boards of Canada

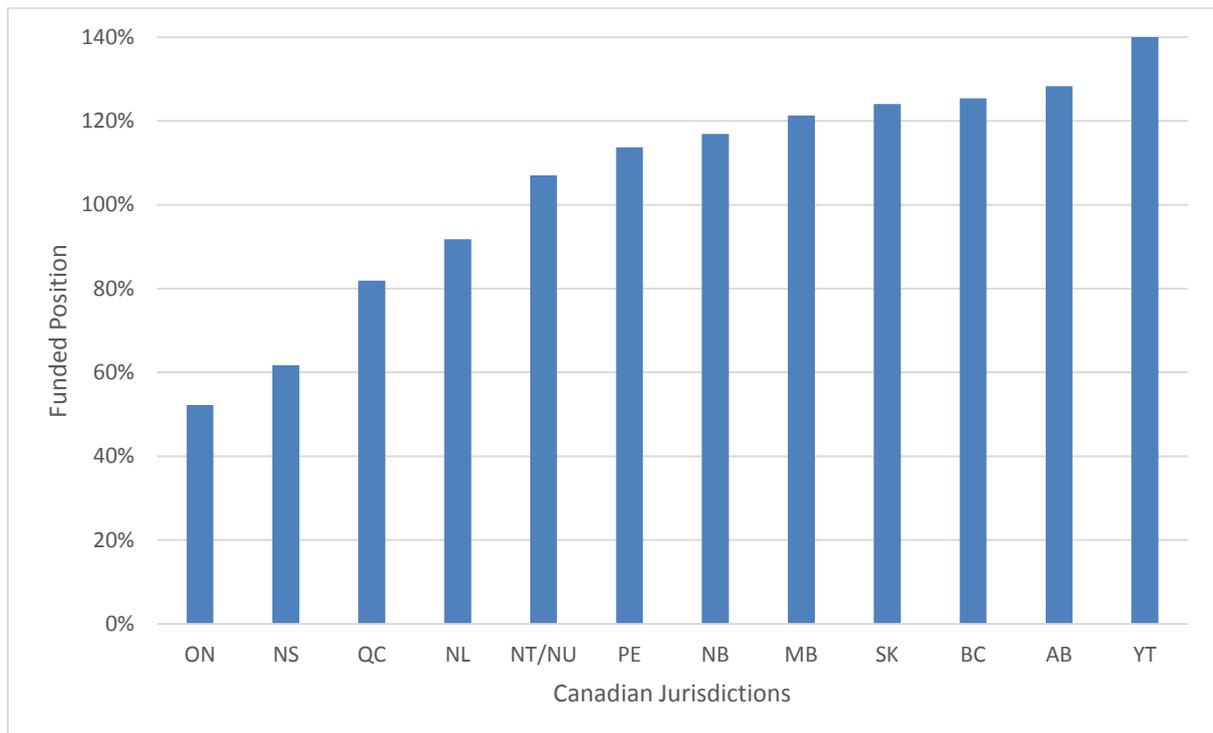
REALITY #4:

For two decades, workers' compensation benefits in Newfoundland & Labrador have not been secure

Newfoundland and Labrador is only one of four jurisdictions in Canada whose workers' compensation system is currently underfunded, meaning not enough revenue has been collected through insurance premiums to cover off the costs of current benefit levels promised to recipients. This is despite the fact that the current average insurance premium is 42% higher than the Canadian average.

The funded position of Newfoundland and Labrador has been a challenge. Despite numerous attempts, a 100% funded position has not been achieved over the last two decades and at one time was as low as 66.89% funded. At the end of 2011, the system was approximately 91.8% funded. Other provinces such as Alberta, British Columbia, and Manitoba have been able to generate surpluses or overfunded positions with assessment rates that are the lowest in Canada.

FIGURE 4: 2011 Funded Positions of Workers' Compensation Boards



Source: Association of Workers' Compensation Boards of Canada

THE IMPACT OF WORKERS’ COMPENSATION ON OUR ECONOMY, JOBS, AND COMMUNITIES

An excessively expensive workers’ compensation insurance premium has a significant impact on the competitiveness of our province. Such an uncompetitive tax on employee wages is not merely an inconvenience; it is detrimental to the well being of employers, workers, communities and our province as a whole.

Economists have long identified taxes on labour, such as workers’ compensation insurance premiums, as counterproductive taxes. Increasing the cost of labour by such taxes puts negative pressure on employment levels, and the frequency and amount of wage increases that employers can offer. It also leads to a host of other negative economic impacts including increases in the costs of goods and services sold to the public, reduced investment in the province, and poor business retention and attraction.

To quantify the impact of these excessive workers’ compensation premiums on Newfoundland and Labrador, the NLEC commissioned award winning University of Toronto economist Dr. Morley Gunderson. His study entitled, “The Impact of High Workers’ Compensation Premiums on Newfoundland and Labrador – Economy, Jobs, Communities” was released in August 2012.

The entire study is available at www.nlec.nf.ca/media/uploads/FINAL_Gunderson_Report.pdf

KEY FINDINGS OF THE GUNDERSON REPORT

Gunderson states in his report, “Somewhere the system has to absorb these excessive regulatory costs”. Excessive regulatory costs, he says, have implications not only for business but also for workers and communities.

Faced with excessive regulatory costs, and trying to compete in a global economy, employers who are unable to absorb these costs have to pass them on in one of two ways – either to consumers through increased prices, or to employees through reduced wages or employment.

Some employers will pass these excessive costs on to the consumer through increases in prices, which will in turn impact workers and communities. However, in a world of greater competition,

consumers may simply “shop elsewhere” and make purchases from producers in jurisdictions that do not have excessive regulatory costs. This may cause businesses to lose sales or market share.

The demand for labour is a derived demand – derived from the demand for the product or service produced by business. Because of this fact, if firms lose market share due to excessive costs, there is a direct impact on employment levels and wages.

Gunderson concludes that due to the competitive nature of our global economy and the difficulty for firms to pass these excessive regulatory costs onto consumers and maintain market share, the majority of payroll taxes (such as workers’ compensation premiums) are shifted backwards to workers, in the long run, through decreased wages and employment levels.

Regardless of how employers choose to manage these excessive costs, our communities are impacted by decreased employment and increases in unemployment. High employer workers’ compensation premiums discourage job creation. Gunderson refers to them as “killers of jobs”, or “killers of wages”, pick your poison.”

Gunderson states that when it comes to financing the worker’s compensation system in Newfoundland and Labrador, employers are hit with a “double whammy” with direct costs to finance the system and indirect costs stemming from labour shortages. Excessive premiums mean employers are unable to offer wages as high as necessary to attract workers and fill labour shortages. Gunderson states that for Newfoundland and Labrador the shortage issue is particularly acute since it can inhibit taking advantage of unprecedented opportunities in mega projects and resource developments.

High employer Workers’ Compensation premiums discourage job creation. Gunderson refers to them as “killers of jobs” or “killers of wages” pick your poison.

Gunderson also notes that communities will feel the effects of excessive regulatory costs through lost investment opportunities and the jobs associated with those investments as businesses relocate to jurisdictions that do not have such excessive regulatory costs. The communities of Newfoundland and Labrador may develop an image and reputation as being “unfriendly” to business opportunities.

A prevalent theme in Gunderson’s research is that Newfoundland and Labrador is competing in a global economy and **internal efficiency is a precondition to be competitive externally.**

“Having workers’ compensation costs that are out-of-line with those of other jurisdictions may serve as a signal to perspective employers that a province is unable to contain its costs in this area, and if that is so, they may not be able to contain them in other areas.” (Gunderson, 2012: 4)

In the study, Gunderson reviews a large number of business surveys that have documented the negative perceptions that employers have of payroll taxes relative to other taxes. And, as he notes, it is perceptions that can influence investment and the associated job creation. It is important that investors perceive NL as a good place to do business. Gunderson is clear that if worker’s

compensation employer insurance premiums were cut, our communities would benefit from further investment and job creation.

So what is the magnitude of this impact?

In this study, Gunderson uses an economic forecasting model developed by the Policy and Economic Analysis Program at the University of Toronto. This model has been used to simulate the impact of a wide-range of policy initiatives on the Canadian and Ontario economies -- including the impact of increasing the worker's compensation employer insurance premiums in Ontario, the causes of recessions, and the harmonization of the Ontario sales tax with the GST.

Gunderson utilizes this model to illustrate the impact of a DECREASE in Newfoundland and Labrador's workers' compensation employer insurance premium to the Canadian average (not the best in Canada just the average rate). The effect of doing this, according to the model, would positively impact multiple measures including Gross Domestic Product (GDP), consumption, investment, Consumer Price Index (CPI), employment, wages, productivity, capital stock, unemployment rate, and the fiscal balance of the province government.

The simulation illustrates that reducing Newfoundland & Labrador's worker's compensation employer insurance premiums to the Canadian average would result in multiple positive impacts including, but not limited to:

- A \$60 million increase in investment;
- the creation of nearly 2000 jobs, and;
- a \$330 million increase in the province's Gross Domestic Product (GDP).

No doubt the historical negative economic impact of these excessive premiums on Newfoundland and Labrador are significant in light of the study and the fact that premiums in Newfoundland and Labrador have been anywhere from 33% to 89% higher than the Canadian average for the past 20 years.

Excessive workers' compensation premiums impact the province's future

Today, employers of the province are faced with both the biggest opportunity and the biggest challenge that they have ever faced. On the one hand, employers are confronted with unprecedented economic opportunity thanks to investment into mega projects (like the Genesis expansion by IOCC in Labrador West, the Long Harbour development, Voisey's Bay underground, the Lower Churchill project and Hebron). On the other hand, employers are also faced with a shrinking global supply of labour needed to supply those projects. In *Labour Market Outlook 2020*, the provincial government projected that the province will need to fill 77,000 job vacancies in the next 7 years.

Newfoundland and Labrador is not the only jurisdiction with such challenges. Other provinces have their own labour demands and many of the job skills in demand by employers in this province will also be in demand by our competitors across the country. Just one example of this is the \$25 billion shipbuilding contract announced for Halifax. This project will require many of the same skills as our province's mega projects.

This increased demand for workers together with the shrinking supply of labour will result in significant upward pressure on wages, leading to wage inflation. This wage inflation will occur regardless of an employer's ability to pay. Memorial University economist Dr. Wade Locke has stated publicly that we can expect to see wage inflation in this province similar to what has been experienced in Alberta. And because many of the skill sets in demand in this province are also in demand in Alberta, employers in this province will have to compete with employers in Alberta on those wages.

Gunderson agrees and states in his paper that the most comparable jurisdiction in terms of competition and labour force is Alberta, given the similar reliance on resource extraction. Comparing Newfoundland and Labrador to Alberta's workers' compensation insurance rates demonstrates the magnitude of this problem. Employers in this province pay, on average, \$2.75 per \$100 of assessable payroll. In Alberta employers pay only an average of \$1.22 per \$100 of assessable payroll. Not only do Newfoundland and Labrador employers have to match the wages offered in Alberta, they have to pay a workers' compensation tax rate on that wage that is 125% higher.

This uncompetitive insurance premium represents millions in lost revenue that could be used by employers in this province to help attract and retain workers in order to maximize the economic prosperity these projects represent. Our provincial workers' compensation employer insurance rate damages our province's competitiveness.

Not only do Newfoundland and Labrador employers have to match the wages offered in Alberta, they have to make up a workers' compensation tax rate that is 125% higher.

PAST ATTEMPTS AT PROVIDING COMPETITIVE EMPLOYER INSURANCE PREMIUMS HAVE FALLEN SHORT

During the last 20 years there have been multiple attempts to make the system financially secure and provide employers with competitive insurance premiums.

All of these attempts have fallen short.

- In 1990 two comprehensive actuarial studies indicated that costs at WHSCC were escalating so dramatically that the system was in danger of collapsing if serious measures were not taken.
- In 1991 the statutory Review Committee on Workers' Compensation recommended reductions to injured worker benefits in an attempt to bring the costs of the system under control.
- In 1998 following modest improvements in the financial position, but before the Commission had reached its financial targets -- government improved worker benefits. Following the increase in benefits, costs increased rapidly in the system and again threatened the viability of the workers' compensation system.
- In 2000, in reaction to the precarious financial position of the Commission, government called another statutory review.
- The 2001 review committee issued a report entitled "Changing the Mindset" and recommended the most extensive array of legislative change to our Workplace Health, Safety and Compensation and Occupational Health and Safety Acts. Those changes included the addition of early and safe return to work and re-employment obligation provisions in the Workers' Compensation Act. It also included the most aggressive requirements for training and safety committee structures of any jurisdiction in Canada under our Occupational Health and Safety Act. The provincial government subsequently accepted those recommendations.
- These changes did make some modest improvements to the financial position of the workers' compensation system but by the time the next statutory review on workers' compensation was called in 2005, employers in the province were still paying the highest insurance premiums of any province in Canada – a full 54% higher than the Canadian Average.
- The 2005 Statutory Review on Workers' Compensation made 44 recommendations to government. Of those 44 recommendations, none were designed to address the problem of employers paying the highest premiums of any province in Canada. Most recommendations were designed to increase costs and erode the gains that had been made since 2001. Fortunately, government rejected many of the most costly recommendations.

The NLEC has worked diligently with and supported the efforts of the Commission and government to address the long-standing concern of uncompetitive employer insurance premiums. Employers have been assured by all those involved that the system is being run in the most efficient manner possible given our current legislative and regulatory framework. There is no reason to doubt the skill and commitment of the Commission's Board and senior management to run the workers' compensation system as it is structured under our legislation.

However, at the start of the 2013 public hearings portion of statutory review on workers' compensation, employers in this province are still paying a full 42% higher workers' compensation insurance premium than the Canadian average. The problem persists.

After nearly two decades of paying the highest employer Workers' Compensation insurance premiums of any province in Canada, together with four statutory reviews designed to fix this problem, multiple WHSCC strategic plans and multiple consultations with business and labour to find solutions to the system's problems, 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 in Newfoundland & Labrador to finally focus on reducing the cost of the system. The NLEC is calling on the 2013 Statutory Review Committee to go beyond policy and administrative changes as recommended by previous Statutory Reviews, as they have proven ineffective at truly reducing the key cost drivers within our system.

**THE NLEC MAKES THE FOLLOWING BOTTOM-LINE
RECOMMENDATION:**

**THE WORKERS' COMPENSATION
SYSTEM REQUIRES
FUNDAMENTAL LEGISLATIVE
STRUCTURAL CHANGES TO MAKE
THE ATTAINMENT OF
COMPETITIVE INSURANCE
PREMIUMS A POSSIBILITY.**

The remainder of this paper will outline recommendations for fundamental legislative change that close loopholes, eliminate inefficiencies, correct inequalities, and reduce key cost drivers within the worker's compensation system in Newfoundland & Labrador.

SECTION B

RECOMMENDATIONS FOR FUNDAMENTAL LEGISLATIVE STRUCTURAL CHANGE

RECOMMENDATION 1:

Reduce political influence on the workers' compensation system

How it currently works

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)

Under Newfoundland and Labrador's Workers' Compensation system, government maintains significant control over Commission decision making such as setting of benefit levels and the political appointment of WHSCC directors. Members of the House of Assembly routinely provide assistance to and / or represent constituents (workers) at workers' compensation appeal hearings.

Under Newfoundland and Labrador's workers' compensation legislation the Lieutenant-Government in Council establishes a statutory review of the system every five years. This review is responsible for considering, reporting and making recommendations to government on matters respecting the Workplace Health, Safety and Compensation Act and the regulations and the administration of each. This process yields a significant number of recommendations every five years that the government must consider and publicly accept or reject.

Insurance systems, like workers' compensation, need to be managed by insurance principles. To do this requires, at times, difficult decisions that may be politically unpopular. Political influence makes such decision making difficult if not impossible.

Rationale for change

Workers' compensation is not a social program funded by tax payers. It is an employer funded insurance system. 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.

Insurance systems, like workers' compensation, need to be managed by insurance principles. To do this requires, at times, difficult decisions that may be politically unpopular. Political influence makes such decision making difficult if not impossible.

The most obvious example of political decision making in the province's workers' compensation system occurs during the statutory review process.

The history of statutory review outlined in the introduction of this document points out the need for the removal of politics in the workers' compensation system. That process has resulted in wild swings in the funded position of the Commission based on political decision making of the day.

Statutory Reviews held in Newfoundland and Labrador for the past 20 years have been unsuccessful in providing a workers' compensation system with competitive employer premiums. Statutory Review committees have historically been extremely reluctant to recommend cost saving measures and in almost all cases, the majority of recommendations did or would have increased costs had government acted on those recommendation.

In addition, the process of statutory review provides a public forum for anyone with a perceived grievance against the Commission, regardless of the legitimacy of that claim, to attack the staff and management of the Commission in the media. From a human resources viewpoint, such public attacks do more harm to the Commission than good.

Statutory reviews are not universal in Canadian jurisdictions. There are five jurisdictions in Canada with no legislative requirement for a statutory review. Manitoba and the Yukon have a review every ten years and Nova Scotia and Nunavut do one as needed.

Such a highly politicized process has no place in what is supposed to be an independently run insurance system.

The Commission also engages in strategic planning every three years. The recommendations made through the statutory review process often conflict with the strategic priorities set out in the Commission's strategic plan.

Political appointments to the WHSCC Board of Directors also threaten the independence of the workers' compensation insurance system. Currently almost all appointments to the WHSCC Board are political appointments. This sets up a possible conflict of interest between the appointing body

and the stakeholder the director is supposed to represent. It is essential that WHSCC Board members not only represent a stakeholder but be accountable to that stakeholder. The stakeholder must have the ability to remove its board member if it feels that the individual is not adequately representing their interests. Employer representatives on the WHSCC Board should be chosen only from nominations from recognized business associations that operate provincially.

Political oversight and influence is one of the fundamental reasons Newfoundland and Labrador has a legislative structure that results in the most expensive workers' compensation system in Canada. Reducing that influence will be essential to the attainment of nationally competitive insurance premiums and secured benefits for workers.

Recommendation B.1.1

The WHSCC ACT be amended to increase the ability of WHSCC to make decisions independent of government approval, including, but not limited to the elimination of statutory review and political appointments to the WHSCC Board of Directors.

RECOMMENDATION 2

Legislate expectation setting in early and safe return to work

How it currently works

When a worker is injured in the workplace, the attending physician provides the injured worker with functional abilities information (essentially the injured worker's restrictions on what they can and cannot do physically). The employer and injured worker are required by section 89 of the Workplace Health Safety and Compensation Act to utilize those functional abilities to develop a plan to return the injured worker to full employment. The goal is to return the injured worker to full pre-injury duties as early and as safely as possible.

The length of time that it takes an injured worker to return to full pre-injury duties is called "claim duration" and is a key cost driver of the workers' compensation system. In the 2006 report of the statutory review committee entitled, *Finding the Balance*, the committee concluded that "claims duration is the key to lower assessment rates and increased benefits."

Rationale for change

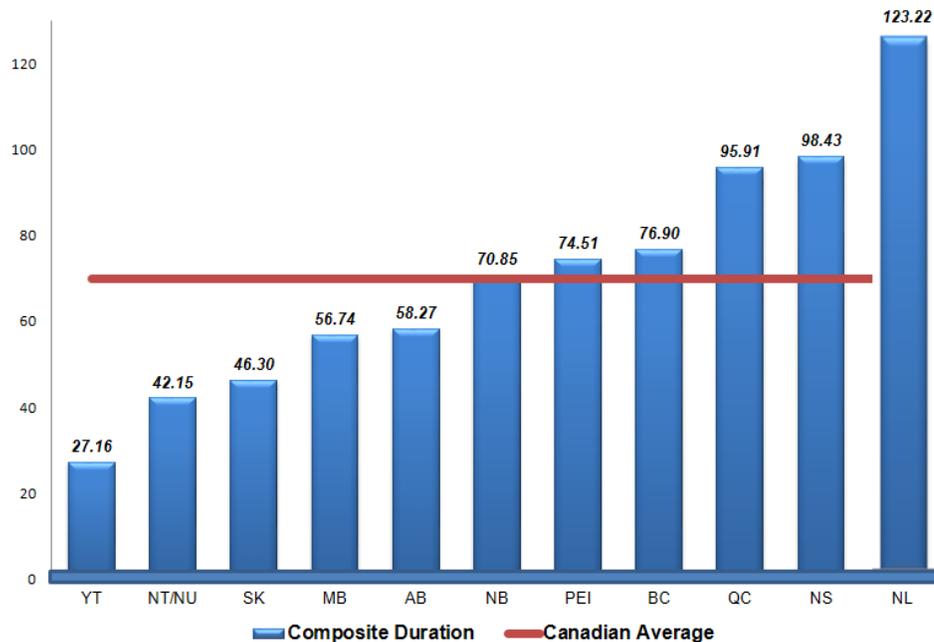
Reducing claim duration was addressed following the 2001 statutory review report, *Changing the Mindset*, with an amendment to the legislation to include section 89 and 89.1 – a legal requirement for employers and employees to work together under the early and safe return to work model and for employers to re-employ injured workers following an injury.

Claim duration was again addressed following the 2006 statutory review report, *Finding the Balance*, with the start of implementation of a new case management model, a model designed to reduce claim duration.

The first attempt to reduce claim duration had modest success. The second attempt beginning in 2006 has not yet yielded any appreciable reduction in average composite duration. In fact, the average composite duration for Newfoundland and Labrador in 2006, as reported by the Association of Workers' Compensation Boards of Canada, was 121 days. Five years later in 2011, it is 123 days.

Newfoundland and Labrador remains an extreme outlier on claim duration when compared to all other provinces in Canada.

FIGURE 5: 2010 Average Composite Duration of Claim



Source: Association of Workers' Compensation Boards of Canada

2010 claim duration numbers from the Association of Workers' Compensation Boards of Canada show the Canadian Average duration is 65 days, while Newfoundland and Labrador's duration is 123.22 days, more than 57 days longer than the Canadian average. It therefore takes, on average, an injured worker in Newfoundland and Labrador nearly twice as long to return to work than the average Canadian.

A comparison of Newfoundland and Labrador's numbers with those of Nova Scotia, the province with the second longest average claim duration, demonstrates the extreme nature of our duration. Injured workers in Newfoundland and Labrador take on average 24 more days away from the workplace following an injury than do injured workers in Nova Scotia.

This duration statistic speaks volumes to potential investors. The impact of negative perceptions about our province as a place to do business is significant and our province needs to be concerned about it.

One of the most commonly cited reasons to explain this statistic is that we provide benefits to more injured workers in this province than almost any other province in Canada, particularly those in seasonal industries. Whatever the reason, the numbers are staggering.

It takes an injured worker in Newfoundland and Labrador about 90% longer to return to work than the average Canadian.

Every worker's compensation system in this country has its own challenges, and ours is no different. It is **BECAUSE** of our challenges we should be working **harder** to reduce this extreme outlier in our system. If you have the most **extensive** system, you will have the most **expensive** system, unless you have the most **aggressive** legislation governing that system.

We need to be more aggressive.

We need stronger legislation around duration.

All previous attempts to bring the Newfoundland and Labrador's duration measures in line with the rest of Canada have failed. The current legislative structure is incapable of providing claim duration statistics comparable with the rest of Canada.

The practice of disability management (returning an injured worker to work in a timely manner) is a well developed discipline and many of the fundamental principles in that discipline that successfully reduce claim duration are best practice and well proven. One of the most fundamental of these principles is expectation setting for injured workers. Where a specific and expected recovery time is communicated to an injured worker, the likelihood of his or her return to full duties within that timeframe is greatly increased. The challenge with legislation governing workers' compensation expectations for entitlement in this province is that there is currently no end point established for particular injuries, or entitlement expectations communicated to injured workers.

The expectations for claim duration based on medically accepted timelines for recovery are known as "disability management guidelines" and are commonly employed in both private and public disability insurance programs. In some private and public disability insurance programs these "disability management guidelines" are used, in the absence of objective medical evidence to support continued intervention, to determine the end point of a claim. This end point becomes a "goal" that all parties to strive for and provides motivation for the successful resolution of the claim.

Without a legislative recognition of disability management guidelines, workers' compensation in Newfoundland and Labrador will continue to experience excessive claim duration far greater than any other province in Canada.

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.

On the basis of the foregoing, the NLEC therefore makes the following recommendations for legislative amendment:

Recommendation B.2.1

That the Workplace Health, Safety and Compensation Commission be required to publish, on an annual basis, a comparison of Commission performance on claim duration times for the top 25 injuries against medically accepted disability duration guidelines for the same injuries.

Recommendation B.2.2

Section 60 of the Workplace Health, Safety and Compensation Act be amended to reflect that disability management guidelines establishing expected claim durations are considered evidence for the purpose of determining claim entitlement and cessation, and that, in the absence of objective medical evidence of equal weight to the contrary, claim duration issues shall be decided in accordance with the established disability management guidelines.

Recommendation B.2.3

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.

RECOMMENDATION 3

Reduce administrative costs for Occupational Health and Safety education and enforcement

How it currently works

The legislated responsibility for occupational health and safety education lies with WHSCC. The enforcement responsibility rests with the Department of Service NL. The separation of these two responsibilities requires separate ministerial offices, infrastructure and administrative supports to deliver those functions. All of this is paid for through workers' compensation employer insurance premiums. In 2011, the national average administrative cost per claim was \$6,938; however Newfoundland and Labrador's average administrative cost per claim was 25% higher at \$8,655.

In 2009, the national average administrative cost per claim was \$5,837; however Newfoundland and Labrador's average administrative cost per claim was 30% higher at \$7,562.

Rationale for change

A proven strategy to increase efficiencies and help ensure prudent spending is the amalgamation of related and/or similar functions under one department or agency.

This strategy has been successfully employed many times in this province. In the fall of 2011 Premier Dunderdale reduced the size of her Cabinet from 19 to 16 members. A new Department of Advanced Education and Skills was established incorporating most of the old Department of Human Resources, Labour and Employment, and the Advanced Studies component of the Department of Education. A merged secretariat was established for Intergovernmental and Aboriginal Affairs. All business and economic development programs were amalgamated under a single banner in the new Department of Innovation, Business and Rural Development.

The history of health care delivery in this province also demonstrates the merits of this strategy. Healthcare boards in this province were combined in 2005 to reduce the then 14 provincial health boards into the four consolidated boards we have today.

Other provinces have realized efficiencies and reduced spending by combining the agencies or departments responsible for OH&S education and enforcement. Currently British Columbia, Quebec, New Brunswick, Prince Edward Island, Northwest Territories and Nunavut and the Yukon have combined the responsibilities for education and enforcement under their workers' compensation commissions.

Recommendation B.3.1

The Workplace Health, Safety and Compensation Commission be given the legislative responsibilities for both education and enforcement of occupational health and safety in order to achieve greater efficiency and prudent spending.

RECOMMENDATION 4

Adjudicate all claims based on current medical opinion

How it currently works

The workers' compensation system is an insurance system. It collects insurance premiums from employers and pays benefits to workers who suffer injuries arising out of and in the course of employment. Any injuries and illnesses that do not arise out of and in the course of employment are legally, non-compensable.

Currently there exists in our Newfoundland and Labrador Workplace Health, Safety and Compensation Act one contradiction to this fundamental principle of our workers' compensation system. That is, section 91, commonly referred to as the presumptive non-rebuttable clause for the fluorspar mine in St. Lawrence.

This section provides that workers previously employed in the fluorspar mining operation in St. Lawrence, upon the development of any type of carcinoma, are presumed to have developed that disease as a result of employment at that mine, without any medical opinion or investigation into family history or lifestyle of any kind. Section 91 takes away any requirement for the Commission to exercise any due diligence in the adjudication of claims from former employees of the fluorspar mine. Any carcinoma, whether or not it is recognized by the medical community as being associated with exposure to fluorspar or not is automatically accepted.

Rationale for change

There is no medical or scientific reason to remove due diligence in the adjudication of occupational disease claims for one class of workers over another. Such a clause provides preferential treatment for one set of workers at the expense of every other worker in the system. Section 91 can provide benefits to workers at the fluorspar mine in St. Lawrence for non-work related diseases when workers never employed by the fluorspar mine would never be eligible.

As an example, an individual with a 30 year history of tobacco use and a family history of cancer is assumed, under this section to have developed a cancer as a result of employment at the fluorspar mine in St. Lawrence even if that employment was as short as one day.

Since this clause was added to our legislation by the provincial government, presumably for non-medical / scientific reasons, other groups have come forward, looking for similar non-rebuttable presumptive clauses. Specifically, the United Steel Workers Union and the province's firefighters have both lobbied for such legislation that would benefit their own constituencies at the expense of other workers.

Such non-rebuttable presumptive clauses are unfair, unsound, and unethical.

Recommendation B.4.1

Occupational disease claims 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. Section 91 of the Workplace Health, Safety and Compensation Act must be repealed.

Recommendation B.4.2

Future requests from special interest groups for presumptive clauses that serve to adjudicate occupational disease claims based on non-medical factors such as occupation, employer or geographic location must be rejected and prohibited in the Workplace, Health, Safety & Compensation Act.

RECOMMENDATION 5

Focus the PRIME program on true cost drivers of the system

How it currently works

Experience rating is a fundamental principle of insurance systems. Workers' compensation is no different. This province's experience rating system was changed in 2005 from a system that provided refunds and surcharges based solely on costs incurred by that employer to a system that considered both performance and costs experience. The system is called prevention, return to work, insurance management for employers and employees, or PRIME.

Under the performance incentives of the PRIME program, employers are provided a 5% reduction in their workers' compensation insurance rate for implementing and executing several elements of occupational health and safety and return to work programs. Those elements for large PRIME assessment employers include:

- OH&S and RTW policy statement signed and posted in a prominent place in the workplace;
- OH&S committee established, trained and active;
- injury reporting system established in the workplace;
- foundations of an OH&S program established in the workplace, and;
- foundations of a Return to Work program.

This practice incentive has been significant in assisting the reduction of injuries in this province. Although some employers may be critical of the requirements of the practice incentive, the NLEC has seen firsthand many examples of the practice incentive playing a major role in the 52% reduction in workplace injuries (8,483-4,012) in this province since the introduction of PRIME. Also of significance is that during the time of this drop in injuries, the workforce in our province grew from 214,000-219,000.

Rationale for change

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. Those PRIME requirements for small employers are:

1. OH&S and RTW policy statement established, signed and posted in a prominent place in the workplace
2. OH&S worker health and representative / designate established and trained
3. Injury reporting system established in the workplace.

Requirements 1 and 3 are paper documents that can be downloaded from the Commission’s web site, filled in and posted in the workplace. Requirement #2 is a day and a half training program for one employee.

Unfortunately, and although well-intentioned, the return on investment for both the workers’ compensation system and small employers for implementing PRIME has been poor. The reasons are twofold.

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. 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 to begin with.

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.

As an example, the NLEC is a small PRIME employer with an annual workers’ compensation employer insurance premium of approximately \$2,000 with a refund under the PRIME practice incentive of \$98. Motivation for the NLEC to practice OH&S in the workplace is not achieved by a \$98 financial incentive. Further evidence that the PRIME practice incentive for small employers provides little incentive for these firms is indicated by their pass rate on the practice incentive. According to WHSCC the annual success rate for small employers to achieve the PRIME practice incentive is anywhere between 19% and 31% -- a very small uptake.

Approximately 350 employers in the province account for approximately 80% of the entire cost of the system. Those 350 employers are medium to large organizations.

The Newfoundland and Labrador Employers’ Council questions whether the costs of running the PRIME program for small employers is worth the returns. A much better return on investment would be achieved by redirecting the resources required to administer PRIME for small employers toward larger employers. With limited resources, it is imperative that the Commission re-focus its resources on areas where they will have the most impact.

Recommendation B.5.1

WHSCC discontinue the PRIME system for small employers and redirect those resources toward the true cost drivers of the system – medium and large PRIME assessment employers.

RECOMMENDATION 6

Increase employer accountability in the fish harvesting industry

How it currently works

In the fish harvesting industry the WHSC ACT designates the buyer of the fish caught – i.e. a primary processor or fish buyer – as the entity to pay the workers’ compensation insurance premium. Processors are then barred in regulations from deducting this premium from the payment to the vessel/crew.

Premiums are also calculated as a percentage of the landed value of the catch and not as a percentage of the actual wages earned by the employee (as is the case for almost all other employers in the province). The rate is calculated based on the gross revenue and not the actual wage of the fish harvester and because of this the true cost of workers’ compensation is hidden. If the rate were calculated based on the wage rate as is the case with other workplaces, the rate would be much higher and the cost of the system would be much more apparent.

The result is the fish harvesting “employer” does not see the cost of workers’ compensation in their operation as they do with other costs that are deducted from the landed value of the catch. Workers’ Compensation employer insurance premiums are hidden in the overall price he/she is paid for the catch.

There is one exception to this method of remittance in the fish harvesting industry. Fishing vessels historically classed as 65’ in length are required to remit their workers’ compensation insurance premiums directly to WHSCC.

Claim duration in the Fish Harvesting Industry is a full 160% more than the NL average, already the worst in the country.

Another anomaly in the application of WHSCC in our province is that all enterprises are covered under our workers’ compensation legislation. This is unique in Atlantic Canada. In Nova Scotia, coverage is extended only in instances of three crew or more. PEI has a system of optional coverage for both captain and crew. In NB, it is optional for vessels with less than twenty five crew, i.e. the inshore fishery.

Only in Newfoundland and Labrador is it mandatory for all vessels, irrespective of size, and only in this province are fish buyers deemed responsible for premiums for a workplace not their own.

Rationale for change

The way in which harvesting enterprises submit workers’ compensation employer insurance premiums is unique, and fundamentally compromises the application of WHSCC principles in an industry that is one of the most dangerous – and injury prone – of all sectors.

Our fish harvesting industry is a major cost driver of our workers' compensation System costs; it representing 10% of all costs at the Commission. As was mentioned earlier, between 2008-2010 the province as a whole has seen a decrease in its incidence rate of 11% (2.0 to 1.8) while the fish harvesting industry has experienced an increase of 55%. Fish harvesting has dramatically bucked the provincial accident trend.

Claim durations in the fish harvesting industry are another area of concern. The average length of time it takes someone to return to work following a workplace injury in fish harvesting in 2010 was 162 weeks. This is a 160% longer than the Newfoundland and Labrador average. The fact that claim durations in Newfoundland and Labrador are the longest in Canada means that the fish harvesting industry likely has the worst return to work performance of any Workers' Compensation system in the country.

Clearly, the current approach is not working. The statistics bear it out: 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.

WHSCC has refused to change the current collections process on the grounds that it would be administratively too complex to require all enterprises to register with the Commission (about 3000 in the province). The question of administrative complexity is no basis to have someone else pay the bill for a different workplace. A fundamental principle of any insurance system is financial incentive and feedback as a result of accidents and injuries.

Most people are familiar with this principle through their vehicle insurance policies. If an individual has a car accident, he/she expects the premium to go up – he/she sees the increase and feels its impact. The Workers' Compensation system should be no different.

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. That can be achieved while recognizing the administrative burden individual registration and assessment would reportedly cause the Commission.

The NLEC believes that fish harvesters can be made aware of the costs they incur simply by treating the collection of workplace compensation premiums in the same manner that processors deduct other costs per \$100 of fish payroll, such as EI premiums, CPP premiums, and other expenses such as ice and bait. That is, the cost can be deducted as a line item on the payment given to the fish harvester by the fish processor. Under this scenario, collection responsibility would remain with the processor but a greater transparency on costs would be achieved.

In addition, the size of vessel required to remit workers' compensation employer insurance premiums directly to WHSCC could easily be lowered from the current 64'11" vessel to 45' vessel size. There are fewer larger boats in the industry, and many are incorporated, and use the services of professional accountants. They are like any other business and should be treated as all other

employers under the Workplace Health, Safety and Compensation Act, and make their own payments directly to WHSCC.

Due to the high injury rate and claim duration, the costs of the fish harvesting industry to the workers' compensation system are astounding. Workers' compensation employer insurance premium in the fish harvesting industry are 99% higher, or nearly double, the Newfoundland and Labrador average.

These premiums are extremely onerous on small boat fisherman, and the high costs are decreasing the competitiveness and sustainability of operating as a small boat fisherman in this province. Small boat operators should have the option of not having WHSCC premiums deducted from their payments from processors. PEI and NB both provide examples for how a different workers' compensation assessment regime could work for that sector.

Recommendation B.6.1

WHSCC permit fish processors to deduct fish harvester Workers' Compensation employer insurance premiums as a separate line item on the landed value of the catch and forward same to WHSCC on behalf of the enterprise.

Recommendation B.6.2

The size of vessel in the fish harvesting industry required to register with the Commission and remit workers' compensation employer insurance premiums directly be reduced from 64'11" to 45'. This would include their participation in the PRIME system of practice and experience incentives.

Recommendation B.6.3

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.

RECOMMENDATION 7

Increase return to work incentives in seasonal operations

How it currently works

Some of the longest claim durations occur in occupations with seasonal employment. The reasons for this are varied and reflective of any economic system where the availability of work is sometimes limited to a specific time of year. The purpose of the workers' compensation system is to restore benefits to the worker at a rate no greater than what the injured worker would have received had the injury not occurred.

Unfortunately the way the current system of benefits is structured, seasonal workers can be better off financially on workers' compensation than had the injury not occurred. The reason this happens is because the benefit the worker earns on workers' compensation is calculated based on the earnings for the four pay periods immediately prior to the date of injury. The rate is then recalculated at 13 weeks past the date of injury, to reflect the yearly, or sometimes longer, earnings of the worker. At the end of seasonal employment, when an injury occurs, the worker will receive 13 weeks of earnings at a higher level than what he or she would have earned had the injury not occurred.

Based on the way the current system of benefits is structured, seasonal workers can be better off financially on Workers' Compensation than had the injury not occurred.

Under the current system, if the opposite occurs and the injury takes place at a time when the pay is low and the recalculation at 13 weeks results in more income for the worker, then there is a retroactive payment to the worker for the "underpayment". In essence, it is possible to receive a higher benefit for the first 13 weeks but not a lesser benefit.

If a seasonal worker was not injured prior to the seasonal end of employment, the individual would have collected employment insurance (EI) benefits at the EI benefit level. If the seasonal worker is injured before the end of the season, then workers' compensation not EI provides income supplement. There is no "claw back" of the accumulated EI benefit.

Rationale for change

This system of benefit calculation represents an un-intended loophole in the system.

When the seasonal employment ends, the EI benefit should be used to offset lost wages. The Commission already does a similar offset with regard to Canadian Pension Plan benefits. The Commission's argument against offsetting workers' compensation benefits with EI benefits is that the injured worker is not capable of working at another job as a result of the injury and therefore they may be losing the opportunity for other work. However, most people would agree that where there is a long-standing history of seasonal employment, the benefit should reflect the norm, not the possible exception. If in this scenario, the injured worker is offered work and accepting the offer

of employment is impossible due to the worker's functional limitations, then the wage loss benefit from workers' compensation would be the determining factor in the calculation of benefits. The system of benefit calculations should never be based on the "hypothetical" earning of an injured worker.

Many other provinces have dealt with this issue of seasonal work and calculation of benefits. The best scenario to provide fairness and equity to seasonal workers occurs in the Alberta system. Under that system, workers whose jobs are subject to seasonal or work shortage lay-offs are considered to be non-permanent workers. The Workers' Compensation Board sets a short-term rate, using earnings from the seasonal employment, and continues to pay compensation based on this rate until the end of the season (or the time the job was expected to end). The Workers' Compensation Board of Alberta then adjusts the rate to a permanent rate that is usually based on a minimum of 12 months earnings before the date of accident. The annual earning of a similarly employed worker is used when there is no employment/earnings history.

It is important to note that these two options do not represent a reduction in entitlement to injured workers. They are simply a way of more accurately reflecting the wage replacement entitlement of the injured worker and possibly shifting some of the costs of the wage loss benefits to Employment Insurance.

There are other social systems designed to support seasonal income. The workers' compensation system was never intended and should never be used in a similar way.

Currently the Commission has legislation and policies in place for classifying workers as seasonal to determine the extent of the injury employers' re-employment obligation. This formula for classifying a worker as seasonal could be used in the same manner to determine benefits as a seasonal worker. This would ensure consistency of treatment of seasonal workers under the system.

There is another issue arising from the calculation of benefits based on income associated with Employment Insurance benefits. Employers do not pay workers' compensation insurance premiums on an employee's Employment Insurance income yet wage loss benefits on Employment Insurance are applied to the cost history. In essence, injured workers can receive a benefit based on their EI earnings in the previous year, but no insurance premium based on those EI earnings has ever been paid. This is an unintended loophole in the system.

Recommendation B.7.1

WHSCC offset of 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.

Recommendation B.7.2

WHSCC immediately implement 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.

Recommendation B.7.3

WHSCC 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 C

NLEC RESPONSES TO RECOMMENDATIONS MADE BY OTHER INDIVIDUALS AND ORGANIZATIONS

INCREASE IN NET BENEFITS

No jurisdiction in Canada provides benefits levels at 100% of net earnings. No system in Canada is designed or financially able to extend benefits at such a level. That includes jurisdictions that are over-funded, have claim duration of 46 days and have an average employer assessment rate half that of Newfoundland and Labrador's. The greatest net benefit any jurisdiction in Canada extends is 90% of net benefits. Given the fact the workers' compensation system in Newfoundland and Labrador remains unfunded (meaning currently benefit levels are not secured financially) even with the highest workers' compensation insurance premiums in the country for two decades, it would be irresponsible to provide an increase in net benefits at this time.

Recommendation C.1.1

Given the current financial state of the Workers' Compensation system in Newfoundland and Labrador, it would be irresponsible for the Statutory Review Committee to recommend an increase in net benefits at this time.

REMOVAL OF THE CAP ON MAXIMUM COMPENSABLE EARNINGS

Every jurisdiction in Canada has a cap on maximum compensable earnings. The current formula for maximum compensable earnings has created a maximum level in this province competitive with the rest of Atlantic Canada.

In 2010, the cap on maximum compensable earnings was increased from \$51,235 to \$51,595 and in 2012 it increased again to \$52,885. This means an increase in benefits to injured workers and an increase in assessment revenue generated from employers.

These increases are based on a formula in regulation 21 of the Workplace Health, Safety and Compensation Regulations that bases maximum compensable earning on the consumer price index and industrial aggregate wage.

Recommendation C.2.1

Given the current financial state of the workers' compensation system in Newfoundland and Labrador, it would be irresponsible for the Statutory Review Committee to recommend an increase in maximum compensable earnings at this time.

SECTION D

REVIEW OF RECOMMENDATIONS, RATIONALE & IMPLICATIONS

THE NLEC’S BOTTOM-LINE RECOMMENDATION

Recommendation	Rationale	Implications
<i>The workers’ compensation system requires fundamental legislative structural changes to make the attainment of competitive insurance premiums a possibility.</i>	<i>After nearly two decades of paying the highest employer workers’ compensation insurance premiums of any province in Canada, together with four statutory reviews designed to fix this problem, multiple WHSCC strategic plans and multiple 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.</i>	<i>Diminish the negative impacts created by workers’ compensation employer insurance premiums on employment, wages and communities in the province and secure the payment of benefits for workers’ compensation recipients.</i>

SECTION B -- RECOMMENDATIONS FOR FUNDAMENTAL LEGISLATIVE STRUCTURAL CHANGE

Recommendations	Rationale	Implications
Recommendation #1 - Reduce political influence on the workers’ compensation system		
B.1.1 - <i>The WHSCC ACT be amended to increase the ability of WHSCC to make decisions independent of government approval, including, but not limited to the elimination of statutory review and political appointments to the WHSCC Board of Directors.</i>	<i>Insurance systems, like workers’ compensation, need to be managed by insurance principles.</i> <i>Political influence and control has made long-term decision making in the best interests of the system exceedingly difficult.</i>	<i>Decisions made in the long-term best interests of employers and workers.</i>
Recommendation # 2 – Legislate expectation setting in early and safe return to work		
B.2.1 - <i>The Workplace Health, Safety and Compensation Commission be required to publish, on an annual basis, a comparison of Commission performance on claim duration times for the top 25 injuries against medically accepted disability duration guidelines for the same injuries.</i>	<i>Workers’ compensation claim duration in Newfoundland and Labrador is the longest in the country and 90% longer than the Canadian average.</i> <i>The use of “disability management guidelines” is considered best practice by the disability management community.</i>	<i>Enhanced motivation for the Commission to reduce Newfoundland and Labrador’s excessive workers’ compensation claim duration leading to an improved financial position of the workers’ compensation system.</i>

Recommendations	Rationale	Implications
B.2.2 - Section 60 of the Workplace Health, Safety and Compensation Act be amended to reflect that disability management guidelines establishing expected claim durations are considered evidence for the purpose of determining claim entitlement and cessation, and that, in the absence of objective medical evidence of equal weight to the contrary, claim duration issues shall be decided in accordance with the established disability management guidelines.	<p>Workers' compensation claim duration in Newfoundland and Labrador is the longest in the country and 90% longer than the Canadian average.</p> <p>The use of "disability management guidelines" is considered best practice by the disability management community.</p>	A reduction in Newfoundland and Labrador's excessive workers' compensation claim duration statistics leading to an improved financial position of the workers' compensation system.
B.2.3 - The Workplace Health, Safety and Compensation Act be amend to include a waiting period for benefits similar to legislation in the other Atlantic Provinces.	A waiting period has proven effective in all other Atlantic Provinces in maintaining the worker's connection to the workplace immediately following the occurrence of an injury.	A reduction in Newfoundland and Labrador's excessive workers' compensation claim duration leading to an improved financial position for the workers' compensation system.
Recommendation # 3 – Reduce administrative costs for occupational health and safety education and enforcement		
B.3.1 - The Workplace Health, Safety and Compensation Commission be given the legislative responsibilities for both education and enforcement of occupational health and safety in order to achieve greater efficiency and prudent spending.	<p>Combining these functions under one organization will increase efficiencies and help ensure prudent spending.</p> <p>Other provinces have realized efficiencies by combining the agencies or departments responsible for OH&S education and enforcement.</p>	Enhanced efficiencies and lower cost to operation of the workers' compensation system in Newfoundland and Labrador.
Recommendation # 4 – Adjudicate all claims based on current medical opinion		
B.4.1 - Occupational disease claims 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. Section 91 of the Workplace Health, Safety and Compensation Act be repealed.	There is no medical or scientific reason to remove due diligence in the adjudication of occupational disease claims for one group of workers over another.	Closure of a loophole in legislation and enhanced equality and fairness for all workers' compensation recipients.

Recommendations	Rationale	Implications
B.4.2 - Future requests from special interest groups for non-rebuttable presumptive clauses that serve to adjudicate occupational disease claims based on non-medical factors such as occupation, employer or geographic location must be prohibited in the Workplace, Health, Safety & Compensation Act.	Such presumptive clauses are unfair, unsound, and unethical.	Prevention of future loopholes in the workers' compensation system that benefit one group of workers over another.
Recommendation # 5 – Focus the PRIME program on true cost drivers of the system		
B.5.1 - WHSCC discontinue the PRIME system for small employers and redirect those resources toward the true cost drivers of the system – medium and large PRIME assessment employers.	350 large / medium sized employers account for approximately 80% of the entire costs of the workers' compensation system. The financial incentives provided to small PRIME assessment employers do not have an appreciable impact.	Better allocation of resources toward true cost drivers in the workers' compensation system leading to greater efficiencies and fewer workplace injuries in the province as a whole.
Recommendation # 6 – Increase employer accountability in the fish harvesting industry		
B.6.1 - WHSCC permit fish processors to deduct fish harvester workers' compensation employer insurance premiums as a separate line item on the landed value of the catch and forward same to WHSCC on behalf of the enterprise.	The workers' compensation rate paid by fish harvesters is currently hidden from the fish harvesting employer thereby providing little financial incentive to prevent injuries.	A reduction in the number of injuries and fatalities in the fish harvesting industry.
B.6.2 - The size of vessel in the fish harvesting industry required to register with the Commission and remit workers' compensation employer insurance premiums directly be reduced from 64'11" to 45'. This would include their participation in the PRIME system of practice and experience incentives.	The benefits of direct payment of assessment and participation in the PRIME program can easily be extended to a broader range of fish harvesting employers.	A reduction in the number of injuries and fatalities in the fish harvesting industry.

Recommendations	Rationale	Implications
B.6.3 - <i>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.</i>	<i>Alternative models of workers' compensation for the fish harvesting industry utilized in other jurisdictions have been less onerous on the fishing industry.</i>	<i>Increased competitiveness and sustainability of the fish harvesting industry in Newfoundland and Labrador.</i>
Recommendation # 7 – Increase return to work incentives in seasonal operations		
B.7.1 - <i>WHSCC offset of 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.</i>	<i>Employment insurance benefits represent an additional source of revenue for funding the workers' compensation system.</i>	<i>Reduced costs to run the workers' compensation system leading to an improved funded position for the Commission.</i>
B.7.2 - <i>WHSCC immediately implement 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.</i>	<i>The current system of calculation of benefits for seasonal workers provides income for the seasonal workers at a rate greater than had the injury not occurred.</i>	<i>Enhanced fairness and equality for all workers under the workers' compensation system.</i>
B.7.3 - <i>WHSCC 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.</i>	<i>Insurance benefits should not be paid on income for which a workers' compensation insurance premium was not paid.</i>	<i>Enhanced fairness and equality for all workers under the workers' compensation system.</i>

SECTION C – NLEC RESPONSES TO RECOMMENDATIONS MADE BY OTHER INDIVIDUALS AND ORGANIZATIONS

Recommendations	Rationale	Implications
Increase in net benefits		
<i>C.1.1 - Given the current financial state of the workers' compensation system in Newfoundland and Labrador, it would be irresponsible for the Statutory Review Committee to recommend an increase in net benefits at this time.</i>	<p><i>Benefit levels in Newfoundland and Labrador are competitive or, in some cases, better than those provided in other Atlantic Canadian Provinces.</i></p> <p><i>The first priority of WHSCC must be to secure the payment for current levels of benefit.</i></p>	<i>Securing the payment of benefit levels currently promised under the workers' compensation system.</i>
Removal of the cap on maximum compensable earnings		
<i>C.2.1 - Given the current financial state of the workers' compensation system in Newfoundland and Labrador, it would be irresponsible for the Statutory Review Committee to recommend an increase in maximum compensable earnings at this time.</i>	<i>Maximum compensable earning levels in Newfoundland and Labrador are competitive with other Atlantic Canadian Provinces.</i>	<i>An increase in the maximum compensable earnings level in Newfoundland and Labrador would make the most expensive workers' compensation system in Canada even more expensive.</i>

SECTION E

A CHOIR FOR CHANGE: SUPPORT FROM THE BUSINESS COMMUNITY

A CHOIR FOR CHANGE

“The **Newfoundland and Labrador Business Coalition** is pleased to support the NLEC submission to the 2013 Statutory Review on Worker’s Compensation. The worker’s compensation system in Newfoundland & Labrador as it is currently structured is **not sustainable** and is a **barrier** to business expansion and labour force development in the province. We must **lower the costs** to reflect the decrease in claims and address the fact that **duration is much longer** in this province than anywhere else in Canada, in order to ensure our Workers Compensation system is sustainable into the future.”

Lisa Pike, Chair & Director of Business
Newfoundland & Labrador Business Coalition

“**The Association of Seafood Producers** is pleased to **support the NLEC submission** to the 2013 Statutory Review on Worker’s Compensation. The NLEC submission is grounded in **careful analysis** and an **intimate understanding** of the worker’s compensation system in our province. Our costs, duration times and assessments are **out of step** with the rest of the country, and risk **undermining** the current system. If workers and employers together are to rely on WHSCC, we must ensure – by working together – that the model is **sustainable**, in terms of safe work places and costs.”

Derek Butler, Executive Director
Association of Seafood Producers

“The position put forward by NLEC highlighted the **same concerns** that we, and **all employers** in this province, currently have. The statistics and recommendations presented by NLEC should certainly result in an “**eye opener**” for this review committee, and provide them with the **knowledge** and **fuel** required to format changes in the WHSCC system.”

Gerry Dowden, President,
East Can Transport Services Ltd.

“**Merit Contractors Association of NL** is supportive of the initiatives **led by NLEC** on the Statutory Review on Workers Compensation. Our workers’ compensation costs are at levels that **cannot be realistically sustained** which negatively affect our **competitiveness**. Stronger management of the system without political influence and lower employer premiums require immediate attention. **Now is the time for change and action.**”

Paul Dube, Executive Director
Merit Contractors Association of NL

“To achieve our province’s **uncommon potential** as a tourism destination requires operators to **invest significantly** in their businesses. Our **excessive workers’ compensation costs** are inhibiting that from happening to the extent it must. If the system is not made competitive in terms of costs our **communities**, both urban and rural, will miss out on the **economic benefits** the tourism industry has to offer. We **support the NLEC’s recommendations** for responsible legislative change to achieve that end.”

Darlene Thomas, Chair
Hospitality Newfoundland and Labrador

"**Country Ribbon Inc.** is in **support of the NLEC's position** at the Worker's Compensation Statutory Review. It is very important that worker's compensation rates in our Province are competitive in order to **compete** and **survive** in our global economy."

Ian Pittman, Chief Executive Officer
Country Ribbon Inc.

“The **Canadian Manufacturers and Exporters Newfoundland and Labrador Division (CME NL)** **backs the NLEC 100%** in its advocacy role on statutory review of Workers Compensation. With employers cost being on average 42% higher than what the average Canadian employer is paying and our average duration time an employee is off being **double that of the national average** it **directly affects a company’s productivity** and ability to complete and win but also **affects our ability to attract foreign investment**. CME NL will put its shoulder to the wheel to support NLEC on this critical issue”.

David Haire, Vice President, NL Division & Vice President, Best Practices and Lean Management, Atlantic Region
Canadian Manufacturers and Exporters

“**Home Care** provides some of society’s most vulnerable citizens with **respect** and **dignity** when they need it the most. To provide this service is a **costly endeavour** made **even more so** by our workers’ compensation insurance premiums. These **excessive costs** are now threatening the **viability** of many home care operations. My company fully **supports the positions of the NLEC** on workers’ compensation and encourages the statutory review committee and government to do what needs to be done to **fix the system** once and for all.”

Anne Whelan, Chief Executive Officer
CareGivers Home Care and Nursing

ABOUT THE NLEC

The Newfoundland and Labrador Employers' Council (NLEC) is the core business stakeholder for the Workplace Health, Safety and Compensation Commission (WHSCC or the Commission) in the Province of Newfoundland and Labrador. This fact is reflected in section 4 of the Workplace Health, Safety and Compensation Act that provides the NLEC with the legislated right to appoint an employer representative to the Board of Directors of WHSCC.

The NLEC is composed of employers from all sectors and regions of the province. The organization's membership employs greater than 50% of non-government workers in the province. The organization is widely recognized as the lead business advocate on Workers' Compensation and Occupational Health and Safety in the province.

MISSION

The Newfoundland & Labrador Employers' Council advocates on behalf of employers on matters that enhance their ability to contribute to the economic growth and prosperity of Newfoundland & Labrador.

APPROACH

Building on a history of employers helping employers, the NLEC serves its members by:

- Developing strong employer positions
- Representing employer interests to government and governmental agencies
- Informing public opinion regarding employment policy issues
- Providing employers the opportunity to learn, discuss and engage on employment policy issues
- Offering individual employers employment related advocacy, assistance and advice.