

Ministerial Task Force WorksafeNB

Discussion Paper

A Discussion Paper

The Task Force was announced May 30, 2017 by the Minister of Post Secondary Education Training and Labour (PETL) to review New Brunswick's Worker's Compensation system focusing on short term solutions and long term sustainability. The Task Force consists of nine members, an independent chair and three representatives from the **employer's stakeholder community** and three representatives from the **worker's stakeholder community** together with an employer representative from **WorkSafeNB** Board and a worker representative from the **WorkSafeNB** Board.

Meredith principles

Workers' compensation in New Brunswick is guided by principles formulated by the former Chief Justice of Ontario, Sir William Meredith, a century ago.

No-fault compensation: Workers are eligible to receive benefits for work-related injuries or occupational diseases, no matter who is at fault.

Collective liability: All employers (in covered industries) share responsibility for fully funding the cost of workers' compensation insurance.

Immunity from suit: Participating employers and their workers have universal immunity against lawsuits for work-related accidents.

Exclusive judicial jurisdiction: The *Workers' Compensation Act* gives WorkSafeNB exclusive legal authority to make all decisions arising under the Act, subject to the rules of natural justice.

Fair compensation and premiums: Compensation should be fair, and should account for the nature of the injury as well as the impact on employment earnings. Furthermore, premiums should be fair and competitive, and account for the full cost of the system including claims, reserves and administration.

Benefit of doubt to worker: Adjudication decisions favour the injured worker where all evidence for and against is equally balanced.

Prevention and disability management: In accordance with the *Occupational Health and Safety Act* and associated regulations, WorkSafeNB provides a comprehensive range of services to both prevent injuries and manage disabilities.

Sustainability: The system is operated to ensure its long-term stability, financial security and cost-effectiveness.

(Source: "Workers' Compensation: A Guide for Employers". Revised April 2017)



Terms of reference

The Minister in appointing Task Force members stated: “Workers and labour have expressed a desire for increased benefits to injured workers, employers and industry have expressed concerns about rising compensation premiums. The Task Force will attempt to strike the right balance between compensation for injured workers, employers financial interest and the long-term sustainability of the system”.

Objectives

The objective of the review is to identify short-term solutions, and establish a plan that ensures the system is transparent, accountable, predictable and sustainable in the long-term.

Mandate

The Task Force is mandated to examine WorkSafeNB’s current financial situation, the governing legislation, and overall objectives and effectiveness of the system. The mandate required a **discussion paper** to detail the current environment, facilitate discussion, and seek input from stakeholders on how to address the situation. In preparing this **discussion paper**, the Task Force met with stakeholders, worker’s advocates, employer’s advocates, Morneau Shepell, WorkSafeNB and others.

Change drivers

What HAS NOT changed?

Some stakeholders have dismissed the following as impacting the current situation:

- No major transformation in economy;
- Essentially similar group of employers;
- Essentially similar profile of workers;
- Average age of working population increasing by about 0.1 year each year based on Statistic Canada data;
- Staff at WorkSafeNB essentially the same, and
- Investment Performance – Averaged 10 per cent return over last eight years (2016 – 9.16%).

What HAS changed?

Some stakeholders have raised the following as potential drivers of change:

- Definition of compensable injury or disease expanded;
- Conditions affecting continuation of a lost time claim, benefit level and claim closures;
- Supplemental income list has been narrowed – pensions, insurance, Canada Pension Plan Disability;
- Criteria for receiving long-term disability (LTD) benefits has expanded;
- Expanded benefits pertaining to medical and other support expenses; and
- On appeal, initial decisions are being modified or overturned.

What do you think? Have recent changes reflected the kind of worker compensation system that New Brunswick needs?

(For further reference: <http://www.worksafenb.ca/Stakeholder-engagement>)

Emerging issues for the Task Force

A. The current financial environment

Actuaries at Morneau Shepell have observed that virtually all claims cost factors are showing significant upward trends and have concluded that the system is undergoing a fundamental transformation. WorkSafeNB experienced increases in claims costs, beginning in 2015 and continuing through 2016, and trends in claims and duration led to increases in the 2017 assessment rate.

The recently announced average assessment rate for 2018 reflects a further increase of 15 per cent. This increase would have been larger were it not for revisions to the board's funding policies. Increases are likely to result in a declining funded position.

What do you think has contributed to these changes?

B. Legislation governing the structure and mandate of the appeals tribunal

Stakeholders have stated that changes in legislation pertaining to Workers' Compensation Appeals Tribunal (WCAT) has resulted in an escalation in compensable injuries which WorkSafeNB did not anticipate. As of April 1, 2015, (WCAT) was externalized and made independent from WorkSafeNB.

WCAT's jurisdiction can now effectively nullify WorkSafeNB policies when deemed inconsistent with the governing legislation. As a result, WorkSafeNB budgeting and funding has been affected.

The relevant legislation requires scrutiny and specific legislative amendments will be recommended. WorkSafeNB policies, which had ensured funding stability, may require reinstatement.

Have these changes in the legislation affected the sustainability of the system and do you agree with them?

C. Government and the self-insured

Stakeholders have maintained that while injuries are down in the private sector the same is not true in the public sector. Further, while the private sector for the most part is working diligently to reduce exposure, this is not the case in the provincial public sector. There is a disproportion of public sector claims of 6.5 per 100 full-time workers vs. 2.56 per 100 full-time workers in the private sector.

Is there a resulting impact on stakeholders?

Are the provincial and federal governments paying their fair share?

D. WorkSafeNB Rehabilitation Centre

Some presenters identified that the rehabilitation centre, in terms of overall costs and return to work rates, does not compare with similar outsourcing services in other jurisdictions. The question arises therefore, **does WorkSafeNB require its own rehabilitation centre and is the centre providing value for money?**

E. Injuries/safety concerns

Stakeholders informed that larger workplaces have the most success in continuously improving the safety culture in the workplace. This appears to be less the case with smaller employers and it is not emulated in the provincial public sector.

Construction employers coming from outside the province may not be adopting provincial safety and inspection standards. Employers coming into the province should be required to register with WSNB and comply with New Brunswick safety standards.

If all workplaces are to improve their safety culture, common safety and inspection standards must be implemented throughout the province in every workplace.

How can safety standards be improved around the province?

F. Compensable injuries and benefits

Worker stakeholders are seeking systemic changes to increase the level of benefits available to injured workers. This would include a review of the three-day waiting period which affects some injured workers but not all. Waiting times and claim processing times are an issue.

Once compensation has been approved, recipients do not seem to be provided with a complete list of available benefits within the system.

What are the reasonable benefits that the system can sustain, in keeping with the Meredith Principles?

Is the full range of benefits and advocate services being well communicated to WorkSafeNB clients?

Are the income offsets (CPPD, private pensions, etc.) applied to WorkSafeNB compensation benefits appropriate?

G. Return to work

Employer stakeholders have advocated an immediate willingness to return injured workers to the workplace in modified jobs, but this is not happening consistently. WorkSafeNB appears to lack familiarity with the details of employer workplaces and available jobs in these workplaces. WorkSafeNB's ability to promote early return to work for injured workers in these workplaces is therefore stymied. Any efforts by employers to return injured workers to the workforce in a timely fashion must be pursued.

Employer stakeholders have advocated that WorkSafeNB adopt proactive return to work policies and processes. There is also an apparent need for additional information from medical professionals in order to facilitate return to work in modified jobs.

What is the role that physicians and allied professionals can play in facilitating return to work efforts?

H. Investments, systems sustainability and affordability

WorkSafeNB's actuaries inform that investment income has generated gains of \$309 million since 2008. Legislative requirements set funding levels at 100 per cent. The WorkSafeNB Board policy is to retain a funding level in excess of 110 per cent. Funding levels between December 31, 2015 and December 31, 2016 range from 138 per cent to 112 per cent.

Drivers that affected changes in funding levels include available investment income, rebates to employers, higher costs resulting from new accidents, and higher prior year claims costs. Because investment returns are market driven there is an expectation that market fluctuations will impact the return on investments. This in turn may adversely impact WorkSafeNB funding. Also, WorkSafeNB funding is not designed to sustain large retroactive claims. WorkSafeNB funding policy will be one focus of this Task Force.

Is the funding policy sufficient to withstand potential future market adjustments?

Should assessments be segregated into components? (administration, benefits, fund surcharges / rebates, contingency)

Are the rate setting procedures appropriate?

I. WorksafeNB's technology/other issues

Stakeholders are generally satisfied with worker advocates and employer advocates. However, employer stakeholders have expressed a need for additional awareness of employer advocate services.

Stakeholders have concerns regarding the technology system in place at WorkSafeNB. There is evidence WorkSafeNB requires a major technological overhaul to support its operational and customer service goals.

Stakeholders require transparency and accountability, independence and self-governance within WorkSafeNB.

How can technology better serve stakeholders and clients?

J. Medical issues

Stakeholders inquired into the willingness of the New Brunswick Medical Society to take a greater partnership role in supporting injured workers in returning to work. This might involve improving information shared by family physicians with WorkSafeNB and employers, so that joint planning can be conducted to the benefit of the worker.

One aspect of medical care for injured workers that might also benefit from greater partnership is in pain management. The Task Force heard concerns that injured workers are part of the growing opioid abuse issue. This may require a specific initiative to address solutions.

How can family doctors work with WorkSafeNB doctors and others to ensure the timely return to work for patients / clients?

K. Independence of administration

One of the foundations of the Meredith Principles is the need for the workers compensation system to be separate from government. Stakeholders have brought forward concerns that the Board's ability to independently administer the system is being affected by government.

Is the process for legislative amendments timely and responsive to the needs and decisions of WorkSafeNB and stakeholders?

Does the Board composition and process for making appointments reflect the Meredith Principles?

Should Board members be exclusively chosen from among representative stakeholder groups?

L. Communications and stakeholder relations

Stakeholders have expressed a need for timely, transparent, regular, proactive communications from WorkSafeNB. It was noted that recent Board efforts to hold regular information sessions has been welcomed. However concerns were expressed that this openness may wither as priorities and Board members change.

The Task Force also heard that employer access to information with relation to injured workers is very limited, which hampers the development of return to work plans.

Finally, the absence of standardized and reliable data that would allow stakeholders to make valid comparisons was noted.

How can stakeholders, clients and employers work together to ensure ongoing dialogue and engagement?

Conclusion

These issues will be paramount as the Task Force balances compensation for injured workers with the employers' financial interest and governed by the long term sustainability of the system. We invite you to respond to these issues, and raise any others, which will assist in completing the Task Force's mandate.

We look forward to hearing from you.

- Dennis Browne - Chair
- Sherri Deveau - Employer representative
- Louis Philippe Gauthier - Employer representative
- Heather Hogan - Worker representative
- Joel Richardson - Employer representative
- Gary Ritchie - Worker representative
- Lucien Sonier - WorkSafeNB Board employer representative
- James Stanley - WorkSafeNB Board worker representative
- Glenn Sullivan - Worker representative

We welcome your comments, ideas and suggestions on this discussion paper as well as other ideas for improvement to WorkSafeNB.

Please provide your feedback to the WorkSafe NB Task Force at:

Email: TaskForce2017@gnb.ca

Fax: 506-444-4121

Online: www.gnb.ca/consultations

WorkSafe NB Task Force – c/o Department of Post-Secondary Education, Training and Labour
P.O. Box 6000 Fredericton, NB E3B 5H1

The deadline for submissions is December 7, 2017.

You also have the option of scheduling a meeting with the Task Force during the following public meetings:

- **Grand Falls** – Thursday, Nov. 2, 10 a.m to 3:30 p.m.
Centre E.& P. Sénéchal Center, 60 Ouellette St.

- **Fredericton** – Friday, Nov. 3, 9 a.m to 3:30 p.m.
Fredericton Convention Centre, 670 Queen St.
- **Bathurst** – Tuesday, Nov. 21, 10 a.m to 3:30 p.m.
Best Western Plus, 150 Main St.
- **Moncton** – Wednesday, Nov. 22, 9 a.m to 3:30 p.m.
Delta Beausejour, 750 Main St.
- **Saint John** – Thursday, Nov. 23, 9 a.m to 3:30 p.m.
Delta Brunswick, 39 King St.

Please email the Task Force at TaskForce2017@gnb.ca to reserve a 15 minute discussion time slot.