

DISCUSSION PAPER

2019 Statutory Review – Workers' Compensation System

February 2020

1. Introduction

As directed by the Lieutenant-Governor in Council, a Statutory Review Committee (the Committee) has been established to conduct a review of Newfoundland and Labrador's workers' compensation system. The Committee comprises Judy Morrow, Q.C. (Chairperson and Member-At-Large); Bernadette Coffey Sobol (Vice-Chairperson and Workers' Representative), and Leonard Knox (Employers' Representative).

Pursuant to Section 126 (2) of the **Workplace Health, Safety and Compensation Act** (the Act), the mandate of the Committee is to "...review, consider, report and make recommendations to the Lieutenant-Governor in Council upon matters respecting this Act and the regulations and the administration of each as the committee considers appropriate and upon other matters which the Lieutenant-Governor in Council or the minister may refer to the committee".

The Committee has prepared this Discussion Paper to help focus the consultation process. It outlines three thematic areas which the Government of Newfoundland and Labrador asked the Committee to focus on – efficiencies in the review processes, balance in the provision of benefits, and financial sustainability.

Notwithstanding the three thematic areas which the Government of Newfoundland and Labrador asked the Committee to focus on, the Committee welcomes commentary on matters related to the workers' compensation system not covered by the three thematic areas and reserves the right to consider matters outside the scope of the review.

The Committee recognizes that the success of this review hinges on the participation of workers, employers, key stakeholder organizations, and the general public. To facilitate participation, the consultation process is using a combination of approaches including public in-person sessions and, where deemed necessary, teleconference or videoconference sessions; in-person or teleconference or videoconference sessions in response to requests for accommodation; online and written submissions sent via email or mail; and in-person sessions with key stakeholder organizations as warranted by the Committee.

The Committee looks forward to receiving your input and assures that all input will receive due consideration in preparation of the final report. The Committee intends to report and recommend to the Government of Newfoundland and Labrador by June 30, 2020.

2. Mandate, Principles and Funding

Newfoundland and Labrador's workers' compensation system is a mandatory, employer-funded, no-fault, work-injury insurance system developed to protect workers and employers in the event of workplace injuries.

The Meredith Principles are the foundation of the workers' compensation system and represent an historic compromise between workers and employers. These principles were developed by Judge Sir William Meredith in 1913 and are the hallmarks of a reliable, equitable and manageable compensation system. The principles are summarized in five key areas of focus:

1. No-fault compensation, which means workers are paid benefits regardless of how the injury occurred.
2. Collective liability, so that the total cost of the compensation system is shared by all employers.
3. Security of payment, with a fund established to guarantee that compensation will be available for injured workers when they need it.
4. Exclusive jurisdiction, which means only workers' compensation organizations provide workers' compensation insurance.
5. An Independent Board, that is autonomous and financially independent of government or any special interest group.

The workers' compensation system is paid for through the Injury Fund. This fund is supported entirely by employers and in recent years, the investment revenue generated by the fund. The Act requires all employers with one or more workers to register with WorkplaceNL and pay an annual premium based on their payroll and level of risk. The premium charged is known as the assessment rate. In return for entitlement to benefits under the Act, injured workers and dependents relinquish their litigation rights against the employer for injuries

arising from their employment. A stakeholder-agreed Funding Policy helps ensure the financial sustainability of the Injury Fund.

3. Roles and Responsibilities

3.1. WorkplaceNL

Under authority of the Act, WorkplaceNL (formally known as the Workplace Health, Safety and Compensation Commission) oversees the Province's workers' compensation system. It is an independent agency of Service NL.

WorkplaceNL's three lines of business include (1) education on the prevention of workplace injuries, illnesses, and occupational disease; (2) claims management for injured workers; and (3) employer assessments (insurance coverage). For more details on WorkplaceNL programs and initiatives please visit <https://workplacenl.ca>.

WorkplaceNL also administers an Internal Review process (paper review only). Its purpose is to ensure that decisions made by its operating departments are fair, reasonable, and consistent. The Internal Review can be initiated by a worker, dependent or employer within 30 days of receiving a written WorkplaceNL decision. Requests for an Internal Review outside the 30 day time period are considered in accordance with the provisions of section 64 of the Act. WorkplaceNL issues a written response within 45 days. Applicants who are unsatisfied with the decision can apply to the Workplace Health, Safety and Compensation Review Division (WHSCRD) for an External Review. For more details on WorkplaceNL's Internal Review Process please visit: <https://workplacenl.ca/site/uploads/2019/06/ap-01-internal-review-2017-05-25.pdf>).

3.2. Workplace Health, Safety and Compensation Review Division

The WHSCRD is an independent, quasi-judicial body, consisting of a panel of review commissioners. The WHSCRD is an agency of Service NL and is separate and independent from WorkplaceNL.

On behalf of employers or injured workers and their dependents, the WHSCRD reviews final decisions of WorkplaceNL for errors in the application of legislation, regulations and policies under the authority of the Act. An applicant has 30 days from the date of the final decision of WorkplaceNL to apply to the WHSCRD for an External Review. An extension of time may be provided by the Chief Review Commissioner, but no extension will exceed one year from the date of WorkplaceNL's decision. Section 28 (8) of the Act states the WHSCRD must process an application within sixty days. The decision of the WHSCRD is the final level of review provided by the Act. The only other recourse for a dissatisfied applicant is an Originating Application to the Supreme Court of Newfoundland and Labrador.

In addition to the External Review process, the WHSCRD also provides web-based distribution of its decisions; researches workers' compensation issues; and collects and maintains statistical information relative to the review process. For more details on the WHSCRD please visit <https://www.gov.nl.ca/whscrd/>.

3.3. Worker and Employer Advisors

The Injury Fund covers the costs of two worker advisors and two employer advisors who function independently of the WorkplaceNL and the WHSCRD. All four positions are housed externally, with labour and employer groups.

The two worker advisors are located at the Newfoundland and Labrador Federation of Labour (NLFL) in St. John's and Grand Falls-Windsor. They act as a liaison between an injured worker, WorkplaceNL, and WHSCRD and provide free advisory services to injured workers and dependents (union and non-union). They help with claim issues, the interpretation of legislation and policies, and assist in the preparation for review processes. There is no provision for the worker advisors to represent injured workers at External Review hearings except for cases dealing with former Baie Verte miners.

The two employer advisors are located at the Newfoundland and Labrador Employers' Council (NLEC) in St. John's. They provide free-of-charge, independent assistance and advice to employers on WorkplaceNL's legislation, decisions, appeals, policy, and related matters. One advisor focuses on mid to large employers while the other focuses on small

employers. Employer advisors do not provide representation for employers at External Review hearings.

3.4. Partnerships

Collaboration, communication, and sound working relationships are critical to functioning of the workers' compensation system. WorkplaceNL works with the Occupational Health and Safety (OHS) Division of Service NL to make recommendations and develop programs respecting workplace health and safety. WorkplaceNL also works closely with the NLFL and NLEC who represent injured workers and employers respectively. In addition, WorkplaceNL has established partnerships with various industry associations, government departments and agencies, unions, safety sector councils, and health and safety coalitions at both provincial and national levels. For a listing of these entities including their websites please visit <https://workplacenl.ca/partner-organizations/>.

4. Purpose of Statutory Reviews

Section 126 (2) of the Act provides the Provincial Government with the authority to review the workers' compensation system every five years. This obligation has been in place since the 1950s and refers to the requirement to conduct a review of the workers' compensation system and not solely of the statute itself.

Statutory reviews provide a valuable opportunity to focus stakeholder and public attention on workers' compensation matters with the objective of improving the overall system for both workers and employers.

The five most recent statutory reviews were appointed in 1990, 1996, 2000, 2005, and 2012. The committees have ranged in size from three to six members, always with equal representation from employers and worker stakeholder groups.

The last statutory review represented the most comprehensive review of the province's workers' compensation system. It involved two phases: a clause-by-clause review of the Act (Technical Review), followed by an extensive public consultation. On February 14, 2014, the

Provincial Government received a comprehensive two-volume report entitled **Working Together - Safe, Accountable Sustainable.**

In recent years, several significant changes have been implemented to improve the workers' compensation system including:

- presumptive cancer coverage for career and volunteer firefighters, effective January 1, 2017;
- increase to the Income Replacement Rate for injured workers, or their dependents, from 80 to 85 per cent, announced in February 2018;
- creation of a new joint Injury Prevention Strategy for workers in Newfoundland and Labrador, launched in February 2018;
- creation of a new Retirement Benefit, that was made available to more injured workers, announced in November 2018; and,
- presumptive coverage for post-traumatic stress disorder for all workers covered by the Act, effective July 1, 2019.

5. Scope of the 2019 Statutory Review

In the wake of recent changes to the workers' compensation system and in recognition that it will take time for these changes to have measurable effect, the Government of Newfoundland and Labrador asked the Committee to focus on three thematic areas.

The Committee respectfully asks you to consider these three thematic areas and where applicable provide commentary on the eight accompanying questions. As mentioned previously, the Committee welcomes commentary on matters not covered by these thematic areas and reserves the right to consider matters outside the scope of the review.

5.1. Efficiencies in the Review Processes

As explained earlier, the workers' compensation system has a two-stage review process referred to as the Internal Review and External Review which injured workers or employers can initiate. There continues to be concerns with wait-times, adequate resources, and representation, and clear understanding of review processes and outcomes.

Some issues to consider include:

- resources available to injured workers for External Review hearings;
- how these resources are promoted to injured workers;
- review processes themselves;
- the time it takes to conduct reviews;
- costs of the review processes; and
- any potential enhancements (e.g., covering costs for travel, documentation, and representation).

Questions to Consider:

Question 1: Are any adjustments required to the workers' compensation system's Internal Review and External Review processes? If so, what changes would be beneficial?

Question 2: Are processes and requirements surrounding both Internal Review and External Review clearly communicated to interested parties? If not, how can this be improved upon?

5.2. Balance in the Provision of Benefits

The workers' compensation system is an employer-funded, workplace injury insurance system. No matter how a worker becomes injured or how dangerous an occupation is, when an injury occurs, a worker is entitled to benefits. While the injury and resultant loss of wages for all workers can be devastating, compensation for lost wages needs to be affordable to the system in order to be sustainable.

Ensuring the fundamental principles of a no-fault workplace injury compensation system that is standardized, remains vital.

Questions to Consider:

Question 3: Are worker benefits being provided in a fair and efficient manner? If not, what are possible areas of improvement?

Question 4: How well is the balance between provision of benefits and employer assessment rates being achieved?

5.3. Financial Sustainability

WorkplaceNL's Injury Fund is a legislated fund, separate from the Provincial Government Consolidated Revenue Fund. It is comprised of annual employer assessment fees and investment returns. WorkplaceNL's Board of Directors defines the Injury Fund as being fully-funded when the accumulated assets are 10 per cent greater than total liabilities. The desired range for the Injury Fund is between 100 and 120 per cent, with a target of 110 per cent.

Many factors influence the sustainability of the Injury Fund including (a) the number of injury claims and their duration; (b) costs associated with legislative and policy changes; (c) economic factors that impact accessible employer payrolls; (d) the changing nature of injuries; and (e) changes in the financial market.

Currently, the Injury Fund is fully-funded at 119.5 per cent and the average assessment rate for employers is \$1.90 per \$100 of assessable payroll. A temporary \$0.21 discount is currently in place lowering the rate to \$1.69 per \$100 of payroll. The current lost-time injury rate is at 1.6 per 100 workers representing a slight increase from the three previous years.

Ensuring sustainability of the Injury Fund over the long term remains a priority; guiding the Committee to advance recommendations that support financial sustainability.

Questions to Consider:

Question 5: With regards to maintaining financial sustainability, are there priority areas that need attention?

Question 6: What role can stakeholders play in reducing the cost of the system?

5.4. General Questions to Consider:

Question 7: What recommendations would you make that could improve the overall workers' compensation system?

Question 8: What recommendations should Workplace NL and/or the WHSCRD commence to improve the workers' compensation system?

6. Public Consultation Process

In compliance with the **Inclusive Public Engagement Policy**, the Committee is providing workers, employers, key stakeholder organizations, and the general public with several options to participate in the consultation process (listed below). The Committee respectfully requests that you review the **Discussion Paper** and use it to inform your participation where applicable.

The consultation process will adhere to the following privacy statement:

"The collection of information is done under the authority of section 61(c) of the **Access to Information and Protection of Privacy Act, 2015**, for the purpose of collecting public feedback on Newfoundland and Labrador's workers' compensation system.

It is recommended that you do not include personal information with your submission. However, any personal information that may be received will be governed in accordance with the **Access to Information and Protection of Privacy Act, 2015** and will only be used for the purpose of informing the review of the workers' compensation system."

6.1. Option One: Present at a Public In-Person Session

The Committee will be holding public in-person sessions in the four locations (listed below). If you wish to present at one of the sessions please RSVP by **March 9, 2020**, via email at **info@2019srwcs.ca** or call **Sharmane Allen** at **709-729-6381**. Once all the RSVPs have been received, you will be contacted with a time to present to the Committee. To accommodate presenters, day and evening slots will be available. All presenters will be given a maximum of 30 minutes to present and fifteen minutes for question and answers.

- **St. John's - March 17, 2020 (and 18 and 19 if needed)**
- **Gander - April 23, 2020**
- **Corner Brook - April 28, 2020**
- **Happy Valley - Goose Bay – April 30, 2020.**

On **March 13, 2020**, the schedule of presentations and venues will be posted on **www.engageNL.ca**. While the names of organizations will be publicly identified in the schedule, the names of private citizens will be withheld for privacy reasons.

The Committee requests that presenters submit an electronic copy of their presentation prior to their session (send to **info@2019srwcs.ca**) or bring four printed copies of their presentation to the session for distribution to the Committee and note-taker.

All presenters at the public in-person sessions will be asked in advance of their presentation if they prefer a media blackout during their presentation. Presenters who do not request a media blackout will have to sign a waiver. No recording devices will be allowed to operate at any time during the public in-person sessions.

Please note that if two or less RSVPs are received for Gander, Corner Brook or Happy Valley – Goose Bay, the public in-person session will be cancelled, and the presenter(s) will be given the option to present to the Committee via teleconference or videoconference.

6.2. Option Two: Online and Mail-in Submission

If you prefer to participate with a written contribution, you can send your document in PDF, DOC or DOCX form to **info@2019srwcs.ca** or mail a printed or handwritten copy to:

**2019 Statutory Review Committee – Workers' Compensation System
c/o Sharmane Allen, Department of Advanced Education, Skills and Labour
P.O. Box 8700, 4th Floor, West Block, Confederation Building
St. John's, NL A1B 4J6**

Please note the deadline for online and mail-in submissions is **April 30, 2020**.

6.3. Option Three: Request for Accommodation

If you wish to participate in the consultation process and require accommodation, please email **info@2019srwcs.ca** or call **Sharmane Allen at 709-729-6381** by **March 9, 2020**.

Requests for accommodation will be addressed on a case by case basis in consultation with the Disability Policy Office or applicable government department.