

Finding the Balance:
The Report of the 2006
Statutory Review Committee on
The Workplace
Health Safety and Compensation Act



May 31, 2006

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EXECUTIVE SUMMARY

On November 12, 2005, the Hon. Paul Shelley, Minister of Human Resources, Labour and Employment, announced the commencement of the review of the *Workplace Health, Safety and Compensation Act* (the *Act*) as per the requirements outlined in Section 126 of the *Act*.

This report is the result of the Review Committee's examination of the *Act*, the *Regulations* and the administration of each. Throughout its public consultations, the Committee heard from an extensive group of stakeholders, who raised many issues for consideration. This report contains the Committee's conclusions and recommendations for moving the Commission forward in finding its balance between creating a responsive system for injured workers and employers while maintaining an open and accountable administration of that system.

The Committee considered employer/worker input and participation as critical and essential pieces of the review process necessary for completing the Committee's purpose. The Committee provided several forums through which individuals and employers could present their views relating to issues affecting the workers' compensation system. These included participating in public hearings and/or submitting briefs to the Committee. The Committee met with employer and labour groups, heard 169 presentations, and reviewed 126 written submissions.

As part of its responsibility to assess the system's status, the Committee considered the outcomes resulting from the Task Force established in 2000. In its final report, *Changing the Mindset* (2001), the Task Force mapped out the design of a comprehensive plan for the future of the workers' compensation system. The Task Force recognized the need to place substantially increased responsibility upon the workplace parties (workers and employers), if escalating costs and increased claim duration were to be controlled. Government, workers, employers, and the Commission's Board of Directors endorsed the framework put forward in *Changing the Mindset*.

With the early implementation of many of the Task Force recommendations, claim duration was reduced to 116 days by the end of 2001, from 133 days in 2000. There were also changes in the number of lost time claims per 100 people employed. At the beginning of the Task Force review in 2000, this rate was 3.3 per 100 people employed. By the end of 2001, it had decreased to 3.0 per 100 people employed. These slight shifts in numbers were key indicators that a change in mindset was slowly taking place. Subsequently, the provincial government enacted the core legislative amendments needed to support the extensive recommendations for change.

Interest concerning changes to the workers' compensation system continues to be high in all sectors with whom the Committee met. The consultations provided an opportunity for participants to discuss specific issues relating to the Commission. It was not surprising those individuals whose experiences with the Commission were challenging, complex, or difficult felt most strongly the need to appear before the Committee. Participants readily offered suggestions regarding service delivery and many shared their personal experiences to support further improvements in the system.

During the consultation process, participants representing divergent points of view expressed frustration, doubt, and anger with the processes and staff associated with the workers' compensation system. Workers and employers referred to the many levels of management within the Commission, noting they impeded the organization's ability to manage the organization efficiently. Generally, the areas of greatest concern were: Governance, Client Service, Accountability, Administrative Costs, and Communications and Advisors.

Since the submission of the 2001 Task Force report, there have been many organizational changes within the Commission. As a result, there have been significant strides made in advancing the development and implementation of progressive programs that focus on prevention, return to work, and medical management. The Commission has also developed a comprehensive web strategy designed to provide employers and workers with online services and e-business applications as part of improving its delivery of services with online access to information, which will contribute to reduced claim duration.

The Commission's list of accomplishments since the Task Force report indicates that notable progress has occurred in the development and delivery of programs. The Committee recognizes that much of this success resulted from collaboration and consultation with stakeholders throughout the Commission's change process. The Committee notes that in the recent past, there has been a decrease in the level of consultation, and stakeholders have reported a lack of involvement in the Commission's activities.

While there have been significant reductions in claim duration, the Committee has noted that the rate of decline has leveled out, and today, claim duration remains at 30% above the national average. ***In its review, the Committee has concluded that claim duration is the key to lower assessment rates and increased benefits.*** The absence of more effective performance indicators made it difficult for the Committee, and by extension, the Commission, and the key stakeholders to identify factors affecting claim duration, assess their influence, and implement changes that will produce the desired outcomes or results.

The Committee's 44 recommendations focus on the following areas:

- Accountability and Responsibility
- Client Service
- Occupational Health and Safety
- Benefits
- Review Processes

The Committee believes that collaboration among all stakeholders is essential to implementing the vision of a responsive, responsible workers' compensation system in this province. The Commission, employers, and workers working together can make a difference in claim duration. The Committee heard evidence from employers and workers demonstrating the effectiveness of several interventions in supporting a safety-focused work culture and a sensitive support process for injured workers. These initiatives included training and education, collaborative workplace/sector committees, and improved data collection and use of performance indicators.

In carrying out its work, the Committee also identified the benefits of a regular statutory review process on all aspects of the workers' compensation system as governed by the *Act* in this province. The Committee's composition, with Commission board members and employer and labour representatives, created an environment where the Committee members could examine and discuss issues relating to the system from multiple perspectives. The richness of discussion and debate furthered the understanding and appreciation for stakeholder issues with respect to workers' compensation. The Committee believes strongly that regular reviews of the *Workplace, Health, Safety and Compensation Act* using this collaborative and multi-disciplinary model permits accountability, scrutiny, and consideration of the evolving and challenging work environments of the 21st century while upholding the principles that underpin our compensation system.

I. INTRODUCTION

On November 12, 2005, the Hon. Paul Shelley, Minister of Human Resources, Labour and Employment, announced the next legislated review, as per the requirements outlined in Section 126 of the *Workplace Health, Safety and Compensation Act* (the *Act*). This statutory review occurs every five years and the Lieutenant Governor appoints a Committee to manage it. The *Act* requires the Committee 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.

Periodic reviews or audits are effective tools in monitoring progress, identifying problems, and assessing initiatives. They are also part of ensuring transparency and accountability on the part of the institution or organization. Reviews, especially those with a consultation component, inspire and maintain trust and confidence in stakeholders and the community at large. They also provide an avenue for the presenting of concerns. Reviews can be narrow, such as financial audits, which examine closely the financial resources, or they can be broad, examining with great breadth the financial, ethical, philosophical, and practical program functions of an organization.

This report is a review by the Committee of all programs legislated by the *Act*. Throughout its public consultations, the Committee heard from an extensive group of stakeholders, who raised many issues for consideration. This report contains the Committee's conclusions and recommendations for moving the Commission forward in finding its balance between creating a responsive system for injured workers and employers while maintaining an open and accountable administration of that system.

II. METHODOLOGY

The Lieutenant Governor in Council appointed a Committee to carry out the review. The committee membership reflected the interests of key stakeholders – workers and employers as well as a representative of the Board of Directors of the Commission. The members were:

- E. Bruce Peckford, Chairperson
- Joan Cleary, Vice-Chairperson and Employer Representative
- Reg Anstey, Board of Directors Representative, the Commission
- David Burry, Worker Representative
- Stella Mailman, Member at Large
- Louis Puddister, Employer Representative

The Committee embarked upon an extensive consultation and review process including researching thoroughly issues relating to workers' compensation and collecting the necessary information with which to develop its analysis and recommendations. The information collected from these processes is presented in Section IV. These initiatives included:

- Public Consultation Paper
- Public Consultations
- Roundtable Discussion with Key Stakeholders
- Key Informant Interviews and Meetings

2.1 Consultation Paper

On December 13, 2005, the Committee released its consultation paper: *Finding the Balance*. The purpose of the document was to focus the public consultation process and to outline the status of the system today, five years after the last review. The Committee wanted to seek input from employers, workers, and others who were affected by the system. The Committee used fax and electronic mail to distribute approximately 100 copies of the paper to stakeholders. The paper was posted on the websites of both the Labour Relations Agency and the Commission. A copy of the paper is included as Appendix A.

2.2 Public Consultations

The Committee considered employer/worker input and participation as critical and essential pieces of the review process necessary for completing the Committee's purpose. The Committee provided several forums through which individuals and employers could present their views relating to issues affecting the workers' compensation system. These included participating in public hearings and/or submitting briefs to the Committee.

The Committee held 11 public hearings from January 9-31, 2006 in the following communities: Labrador City, Happy Valley-Goose Bay, Plum Point, Corner Brook, Stephenville, Baie Verte, Grand Falls-Windsor, Gander, Clarenville, Marystow, and St. John's. A significant number of individuals

participated in the review process and represented a variety of perspectives. The Committee met with employer and labour groups, heard 169 presentations, and reviewed 126 written submissions. The breakdown of participants is provided in Appendix B.

2.3 Roundtable Discussion with Key Stakeholders

In addition to the public forums, the Committee also organized a roundtable discussion on February 20, 2006 with 32 representatives of injured worker, labour, and business associations. The facilitated discussion focused on six critical issues facing the compensation system, which represented key areas where the Committee felt it could benefit from further discussion with key stakeholders. The Committee identified these issues through the public consultations held in January 2006. These critical issues focused on:

- Claim Duration
- Incident Rate
- Early and Safe Return to Work
- Labour Market Re-Entry Programs
- Internal and External Review
- Deficit (unfunded liability)
- Accountability and Communications

2.4 Key Informant Interviews and Meetings

The Committee also met with and collected extensive information and data from key informants who provided detailed briefings and material on specific issues of concern to the Committee because of the public consultations and submissions. These individuals included the following:

- Staff of the Commission
- Conrad Ferguson, Morneau Sobeco (Actuarial firm)
- Professional Fish Harvesters Certification Board
- WHSCRD Review Commissioners
- Assistant Deputy Minister – Occupational Health and Safety Branch, Department of Government Services
- Chairperson and Chief Executive Officer, Labour Relations Board
- Director, Red Tape Reduction Initiative, Government of Newfoundland and Labrador
- Representatives, Workplace Safety and Insurance Board, Ontario

2.5 References

In this report, we have shortened group titles for ease of reading. Thus references to

- *Workers* mean individual workers and worker groups
- *Employers* mean individual employers and employer groups
- the *Committee* means the Review Committee responsible for the review and report
- the *Commission* means the Workplace Health, Safety and Compensation Commission
- the *Act* means the *Workplace Health, Safety and Compensation Act*

III. CHANGING THE MINDSET: WHERE WE WERE THEN

As part of its responsibility to assess the system's status, the Committee considered the outcomes resulting from the Task Force established in 2000. Six years ago, the Workplace Health, Safety and Compensation Commission (the Commission) faced a financial crisis. Externally, stakeholder trust in the organization was shaky, while internally, the Commission faced many challenges. In recognition of the crisis, and in response to requests from key stakeholder groups, the provincial government appointed a Task Force on October 27, 2000 to undertake a complete review of the workers' compensation system.

The primary focus of the review was to address the financial sustainability of the Commission and to map a course for change throughout the whole of the workers' compensation system. The Task Force described the system as being at a crossroads, facing a critical period in its future:

Assessment revenue is no longer sufficient to meet rapidly increasing costs; as a result, the viability of the system is uncertain... If costs are not curtailed or assessment rates are not significantly increased, the Commission's injury fund will be wiped out within 15 years.

Two key issues further complicated the Task Force's dilemma: workers saw benefit levels as inequitable and employers were paying the highest average assessment rates in the country. The Task Force called for a cooperative and responsive strategy by encouraging workplace parties to take greater ownership through greater emphasis on preventing injuries and returning workers safely back to meaningful employment.

In its final report, *Changing the Mindset* (2001), the Task Force mapped out the design of a comprehensive plan for the future of the workers' compensation system. The Task Force recognized the need to place substantially increased responsibility upon the workplace parties (workers and employers) and recommended legislative requirements for occupational health and safety training, early and safe return to work, and re-employment obligations. The Task Force believed these recommendations were necessary if escalating costs and increased claim duration were to be controlled. Government, workers, employers, and the Commission's Board of Directors endorsed the framework put forward in *Changing the Mindset*.

With the early implementation of many of the Task Force's recommendations, the Commission was able to reduce claim duration from 133 days in 2000 to 116 days by the end of 2001. There were also changes in the number of lost time claims per 100 people employed. At the beginning of the Task Force review in 2000, this rate was 3.3 per 100 people employed. By the end of 2001, it had decreased to 3.0 per 100 people employed. These slight shifts in numbers were key indicators that a change in mindset was slowly taking place. Subsequently, the provincial government enacted the core legislative amendments needed to support the extensive recommendations for change.

In 2002, following the launch of the *Changing the Mindset* recommendations, the Commission released its strategic plan for 2002 – 2006. The plan focused on prevention and early and safe return to work. It also defined a new mission for the Commission and established six key goal areas:

- Prevention focus achieving results
- Injured workers and employers better served
- Financially secure

- Stakeholders sharing responsibility for changes
- Commission operating more efficiently
- Knowledgeable employees satisfied and retained

The Commission also implemented *The Balanced Scorecard* in 2002 as an accountability tool to monitor and report on the progress of its strategic plan. *The Balanced Scorecard* was meant to provide meaningful and useful information to stakeholders.

3.1 Key Initiatives Arising From Changing the Mindset

Early and Safe Return to Work Model – In January 2002, the Commission implemented the policies that would guide the legislative requirements with respect to the early and safe return to work of injured workers. This cooperative program requires workplace parties to participate in the worker's early and safe return to suitable, available employment with the injury employer.

Re-Employment Obligations and Accommodation – Employers who regularly employ 20 or more workers are required to re-employ an injured worker if they were in an employment relationship for a continuous period of one year prior to the injury. The re-employment period is the earliest of two years after the date of injury, one year after the date the worker has been cleared for the pre-injury job, or until age 65.

Labour Market Re-entry – Where early and safe return to work does not result in a return to work that is suitable, available, and restores the worker's pre-injury earnings, the Commission provides the worker with a labour market re-entry assessment and, if necessary, a labour market re-entry plan.

Assessment Rate Setting – The Commission made changes to the rate setting structure in 2002, which included a new classification system, reorganization of industry group(s), and the use of Newfoundland Industrial Classification Codes (NIC). The Experience Rating system was also changed to allow surcharges of up to 40%.

Health Care Service Providers – In 2002, the Commission and the Newfoundland and Labrador Medical Association implemented the first-ever agreement that outlined the roles and expectations of physicians in the early and safe return to work process. The Medical Association also worked with the Commission to develop guidelines for the treatment of soft tissue injuries.

Prevention Strategy – In keeping with the Task Force recommendation “*that a provincial accident prevention strategy be developed on a priority basis,*” the Commission released, in June 2003, *Promoting Safe and Healthy Workplaces – A Provincial Strategy*. The strategy is based on a partnership approach where all stakeholders take responsibility for changing the mindset and encourage the development of a positive health and safety culture in the workplace.

Occupational Health and Safety Training – In January 2002, employers, labour organizations, and the Commission announced jointly the details of a comprehensive training initiative calling for mandatory training for occupational health and safety committee members and representatives. Because of this initiative, more than 19,000 people have been trained and 1600 active Occupational Health and Safety Committees have registered with the Commission.

3.2 Results of Key Initiatives

The implementation of the Task Force recommendations further demonstrated the change in attitude and approach among the stakeholders. Improvements in prevention, return to work initiatives and training resulted in the following successes:

- A reduction in the average assessment rates from \$3.24 to \$3.19 for 2005 followed by a further reduction to \$2.75 for 2006.
- A reduction in lost-time claims from 6,132 in 2001 to 4,787 in 2005, a 21.9% reduction.
- Decreased claim duration from 116 days in 2001 to 103 days in 2005.
- The province's lost-time incidence rate declined by 26.7%. The rate recorded in 2001 was 3.0 versus 2.2 at the end of 2005. The incident rate is the number of lost time claims for 100 people employed.
- Funded ratio has improved from 67.5% in 2001 to 92.6% in 2005 and the unfunded liability has dropped from \$200 million to \$139.2 during the same period.
- As of the end of 2005, there are now 90% of the province's employers paying their fair share of system costs compared to only 21% in 2002.

IV. THEMES AND TRENDS: WHERE WE ARE TODAY

Interest concerning changes to the workers' compensation system continues to be high in all sectors with whom the Committee met. The consultations provided an opportunity for participants to discuss specific issues relating to the system. It was not surprising those individuals whose experiences with the Commission were challenging, complex, or difficult felt most strongly the need to appear before the Committee. Participants readily offered suggestions regarding service delivery and many shared their personal experiences to support further improvements in the system.

In this section, we will report on the themes and trends identified during the information gathering process described earlier. Our analysis and recommendations will follow in the next section. For ease of reporting, we have grouped the findings by general headings.

4.1 Administration

During the consultation process, participants representing divergent points of view expressed frustration, doubt, and anger with the processes and staff associated with the workers' compensation system. Workers and employers referred to the many levels of management within the Commission, noting they impeded the organization's ability to manage the organization efficiently. Generally, the areas of greatest concern were identified as follows:

- Governance
- Client Service
- Accountability
- Administrative Costs
- Communications and Advisors

Governance – Employers felt that they should have a seat at the Board of the Commission and injured workers felt they should be represented as well. Employers believe that employer groups should have the option of forwarding appropriate candidates for the government's consideration. Other suggestions brought forward included reserving one seat on the Board of Directors for the Employer's Council and another for an injured worker.

Client Service – Many workers and employers expressed a great deal of frustration about what they described as inadequate and poor service received from Commission staff. Employers and workers reported that the Commission needed to provide more support as it had failed to recognize that its role was to assist workers and employers. Though there were occasional references to recent improvements in client service, the overriding belief was that the organizational culture within the Commission was not conducive to fostering positive working relationships with workers and employers. Presenters also identified issues with communications, describing them as difficult and time consuming, and they provided the following examples:

- There is a perception that staff members were not accessible to discuss claims and were slow to respond, particularly in complex areas.
- Decisions on recurrences, reinstatement, or medical aid, for example, were unnecessarily prolonged in many instances.

- Documentation was often slow to follow verbal confirmations, thus affecting the timing for review applications both internally and externally.
- Response time for phone calls and email, requests and receipt of functional abilities information, and subsequent decision-making was overly long and inefficient.
- The volume of paper coming from the Commission was great and its contents largely difficult to understand. Many individuals reported difficulties in reading correspondence that cited continuous sections of legislation and regulation.

Accountability – Presenters identified a key priority in administration, claim/medical management, and funding to be greater accountability. In particular, the absence of meaningful performance indicators from the Commission means employers and workers are not able to make use of pertinent information. Stakeholders indicated a need for more substantive and responsive information, and they supported an evaluation of the effectiveness of current performance indicators as well as roundtable discussions and collaborative consultative mechanisms among workers and employers. Many believed that there should be more consultation with a view to providing sector based consultation for the purposes of understanding the issues and drivers of costs in various industries.

Administrative Costs – Many individuals and groups reported that the Commission’s administrative costs continue to rise without explanation or accountability. For example, the number of claims processed at the Commission has been decreasing since 2000, with a decrease of 35% in new claims from 2000 to 2004. The costs of processing these claims, however, increased by 36%. Employers feel the Commission is spending more to do less. They also raised concerns about the lack of a public tendering process for training contracts awarded directly to the Newfoundland and Labrador Federation of Labour.

Communications and Advisors – Both employers and workers reported they need assistance to maneuver their way through and comprehend the many components of the workers’ compensation system. They described the system as complex, troublesome and unfamiliar. Workers suggested that their own lack of knowledge and understanding of the system contributed to many of the problems they experienced. Workers and employers at the consultations called for initiatives, campaigns, and programs to educate workers and employers on how the system worked as well as to inform them on sources of help and support.

Some participants also referenced the roles of Employer and Worker Advisors. Many workers and employers identified the Advisors as their only available resource in the system. Many suggested that the role of the Advisors was too restrictive as they are limited to matters respecting claim issues, training, and promotional activities, for example. Participants recommended increasing the number of advisors and expanding their role to include the ability to provide representation throughout the external review process.

4.2 Case Management

Interactive, collaborative case management is essential to controlling claims duration and unnecessary costs. Presenters believe the Commission has lost its focus with respect to effective case management strategies. Many feel that it is the Commission’s responsibility to ensure that workers, employers, and health care providers are working toward the common goal of returning a worker safely back to meaningful work. While there were comments on many aspects of case management, the major concerns were in the following areas.

Case Managers – Many workers reported they had negative experiences with the system, mostly arising from their interactions with Case Managers. They suggested that these staff needed additional training and education to be more sensitive and compassionate with injured workers. This issue was a particular source of emotional pain and anger for some of the presenters, as the perceived lack of sensitivity from the Case Managers made it difficult for them to cope with their injury. Participants also expressed significant concerns with the high turnover in Case Managers. Many injured workers reported dealing with many different Case Managers during the course of their involvement with the Commission. The workers believed that the lack of continuity greatly affected the decision-making process on their cases and led to additional frustrations in their dealings with the Commission.

Decision-Making – Both employers and workers identified slow decision-making and gaps in communication between the various stakeholders as issues needing immediate attention. Employers said the lack of adequate and timely information relating to functional abilities impairs their ability to facilitate effective Return to Work Plans. Workers said the lack of appropriate decision-making authority at the Case Manager level meant reduced or delayed access to services.

Early and Safe Return to Work (ESRTW) – Generally, employers commented positively on this program's goals. Employer issues included:

- Greater collaboration amongst workers, employers, and the Commission in managing early and safe return to work
- More information on return to work programs
- More transparent information regarding a worker's functional abilities, so that effective early and safe return to work plans could be formulated.

Many injured workers presenting to the Committee felt that early and safe return to work programs were not working effectively for them. Their issues included:

- Feeling abandoned by the Commission once they had returned to work
- Wanting more post-injury support and increased monitoring of Return to Work Plans
- Assessing the appropriateness and risk associated with returning to work too soon post-injury.

Labour Market Re-Entry (LMR) – Some employers reported that the Commission should provide more information to injured workers concerning the Labour Market Re-Entry process as an increased awareness of this program could potentially get more injured workers back to work, and thus reduce duration time and costs within the system. Other suggestions for reducing timeframes between the injury and return to work also included improved working relationships between LMR planners, workers, employers, and the Commission.

As with the ESRTW program, injured workers presenting to the Committee also indicated their concern with the effectiveness of the Labour Market Re-Entry program. Most of the injured workers who presented said this program was a replacement for the former “deeming” process. Many workers felt that their post-injury job placements were not comparable in any way to their pre-injury employment in terms of duties and wages.

4.3 Medical Management of Claims

An important aspect of the workers' compensation system is the medical management of claims.

Medical Management – Both workers and employers recommended improvements to the medical support and services mechanisms of the system. Employers identified several areas needing review. Specifically, there were problems with acquiring and accessing timely functional abilities information. Employers noted the need for improved communications and further training on the workers' compensation system for health care providers. Employers also noted that there were difficulties with the *Physician's Report (Form 8/10)*. Specifically, employers noted that it is not appropriate to expect a physician to answer the question in *Section D – Not Capable of Work at This Time*, as most physicians may not be aware of the various aspects of the workers' employment including the nature of their workplace.

Employers and health care providers emphasized that early intervention could help a worker return to work more quickly. They suggested that by improving the information flow on a worker's progress, or lack thereof, the parties involved in the claim process could look at new options for treating the injured worker, or returning them to work. Workers wanted treatment that is more effective more quickly. Many injured workers recommended that the Case Manager should have more authority to grant them more timely access to medical services.

Independent Medical Evaluations (IMEs) – Employers who discussed IMEs agreed that the Commission should allow employers the right to request them. They suggested the *Act* be amended to provide a provision permitting employers in this province the right to refer workers for IMEs. Most employers believe that since they fund the system, they should have some input into the medical management of a claim. Some employers reported some other provinces already allow these referrals, thus this province should update its legislation to bring the province in line with the other compensation systems across the country.

Medical Services – A number of employers and workers identified concerns with medical aid. Employers noted there should be more monitoring of medical aid costs and services, performance indicators, and a review of treatments to ensure appropriateness.

Workers felt that medical coverage should be readily available to them, and many workers stated that this is not the current case, citing regular use of the appeals process to obtain their medical services and aids. Other concerns included making available a drug coverage plan and addressing the management and treatment of chronic pain.

4.4 Benefits

During the public consultations, benefits emerged consistently as a concern. For workers, the priorities were improving entitlement, increasing wage loss benefits, and ensuring long-term benefits to those who were unable to return to work. For employers, the priorities were ensuring the system could provide affordable benefits and maintaining financial stability. Many submissions provided details and recommendations on all areas of benefits.

Earnings Loss Benefits – Workers expressed their opinions that the benefit levels for Temporary Earnings Loss (TEL) benefits and Extended Earnings Loss (EEL) benefits are inadequate and in some cases, inappropriately calculated. Workers expressed concern that the benefits levels have not

increased in recent years. In addition, they referenced the Commission's improved financial condition and attributed these improvements to the Commission's significant reductions in benefits and restrictions on entitlement practices in recent years. Many workers suggested that they had done their part to help sustain the system's financial health by forfeiting increases to wage loss benefits in recent years.

Many workers expressed their frustration with the absence of benefit increases and they stated that wage loss benefits for workers in this province are among the lowest in Canada. Workers noted recent reductions in employers' assessment rates and suggested that employers would continue to benefit financially, as the PRIME program rewards employers for safe workplaces. Specific suggestions from workers respecting improved benefits included:

- Increase to 85 – 90% and 100% of net earnings
- Increase to 100% of net earnings for police officers, career firefighters, and correctional officers injured while performing emergency duties
- Payment of minimum compensation
- Increase benefits annually using the Consumer Price Index
- Provide benefits equivalent to pre-injury earnings.

Employers placed great emphasis on the potentially negative financial consequences of hastily increasing benefits without the presence of a secure system. This group of stakeholders indicated that increases would send the system into crisis, and ultimately, workers and employers would pay the price for this action. Employers recommended that benefit levels and structure remain unchanged, as they believed any systemic deviations from the current benefits structure would very easily put the system back on the road to financial uncertainty.

Canada Pension Plan Offset – Many workers who presented to the Committee disagreed with the practice of offsetting Canada Pension Plan (CPP) benefits and they called for its complete elimination. Workers noted that:

- CPP benefits are a worker's benefit, and not a means by which entitlement to compensation benefits should be reduced.
- The amounts deducted from compensation benefits through the CPP offset provisions were a direct contribution to assessment revenue. Workers believed this was a violation of the fundamental principles of the workers' compensation system.
- Since workers have contributed 50% of the premiums for this benefit, it is wholly theirs, or alternatively, only 50% should be deducted from the compensation benefits.
- It is inappropriate to include the CPP benefits of workers who are self-employed and have contributed 100% of the premiums in the calculation of their compensation benefits.

Employers viewed the offset of CPP benefits as necessary to ensure the system does not provide compensation beyond pre-injury earnings. Employers recommended that the offset formula and the requirement of the legislation remain unchanged.

Waiting Periods – Waiting periods currently exist in all provinces of Atlantic Canada except in Newfoundland and Labrador. Many employers recommended the introduction of a waiting period as a

means of controlling costs through reduced claim duration. They also suggested that a waiting period would reduce the possibility of fraudulent claims and enhance the employee's attachment to the workplace. Workers said they were opposed to waiting periods, as they believe benefits levels are already significantly less than other provinces.

Maximum Compensable Earnings – The current amount on which compensation is payable and payroll assessed is a maximum compensable amount of \$47,245. Many of the workers who participated presented concerns respecting the inequity faced by workers whose earnings exceeded the maximum. They noted these workers receive compensation benefits significantly less than *80% of net* earnings. Some participants suggested many workers are forced to access other sources of compensation such as sick leave or private insurance because of what they see as inadequate earnings replacement. Workers called for an increase in the maximum compensable earnings amount to ensure high wage earners are adequately compensated.

Proportionate Compensation – When non-work related factors contribute to ongoing disability, the provisions of proportionate compensation apply. Proportionate compensation is compensation payable following a work injury that is reduced by the degree of disability unrelated to a work injury. Employers and workers both shared significant concerns with the application of the proportionate compensation provisions of the *Act* and Commission Policies.

Employers cited two specific areas of concern with proportionate compensation: *when* it is applied and to *what* it is applied. Employers reported that the existing practice of applying the provisions of proportionate compensation only in the EEL stage of entitlement is inadequate. Employers said the system is not meant to provide benefits for non-work related conditions. They recommended that proportionate compensation also become effective during the TEL stage of entitlement.

Employers also have concerns respecting the Commission's policy of not proportioning health care costs. For example, when the Commission decides to proportion compensation benefits by 50%, employers said the Commission should also proportion by 50% the health care costs charged to employers. They said it was inappropriate for them to carry the full cost of health care services for injuries affected by non-work related conditions. Employers recommended that the provincial health care program accept responsibility for the additional costs.

Workers also shared their concerns that the proportionate compensation provisions are not working as they were originally intended. Workers noted that the Commission applies proportionate compensation inappropriately thus reducing entitlement to benefits when not warranted. For example, some workers reported that they had worked symptom free prior to their injury; however, once injured, the presence of a non-work related condition, such as degenerative disc disease, suddenly prejudiced their right to full compensation. While some workers acknowledged that there was merit in the concept of proportionate compensation, they believed, however, that the Commission applied its provisions inappropriately. The majority of workers recommended the elimination of proportionate compensation.

Recurrences – Commission policy defines a recurrence as a return of disabling symptoms directly related to an original injury where the symptoms are compatible with the original injury. Workers expressed their concerns with the Commission's recurrence policy, established in 2001, in that they believe the policy imposes significant obstacles to workers who seek compensation for recurrence injuries. Workers recommended revising the policy after stakeholder consultations.

4.5 Occupational Disease

The consultation process offered an opportunity to express concerns regarding occupational disease. The concern for fair and equitable awards of compensation for occupational disease came from four main groups – the Baie Verte Miners, the St. Lawrence Miners, the Newfoundland and Labrador Professional Firefighters, and plant workers affected by Crab Asthma. These groups agreed with the position that the Commission must improve the adjudication procedures, claim administration, and actual compensation for those affected by occupational diseases. The specific concerns are outlined in detail below.

Baie Verte Miners –District 6 of the United Steelworkers of America (USWA), as well as former miners and their dependents, provided extensive information respecting the effects of exposure to asbestos as a result of employment in the asbestos mine. The USWA provided a history of the issues and outlined a summary of the action taken to secure compensation for the individuals affected.

The USWA expressed frustration with respect to the entitlement criteria, established under Commission policy, to qualify for benefits. The USWA objected specifically to the Commission's practice of considering lifestyle and family history as relevant factors particularly when adjudicating claims for gastro-intestinal cancer. The USWA disagrees with the extent of coverage former miners currently receive stating that broader coverage should be extended to provide additional compensation for all cancers associated with exposure to asbestos.

The USWA also noted that a lack of progress over recent years is frustrating for those individuals affected by asbestos. They noted the growing number of cancer victims in Baie Verte, the advancing age of those exposed, and the continued open presence of tailings and other asbestos contaminated areas to be issues of major concern.

The USWA requested the following:

- Assistance with establishing claims for compensation for former miners and their families
- Expansion of the role of the Worker Advisor to include representation throughout the appeals processes
- A comprehensive health study
- Fair compensation entitlement criteria and policies
- Legislative amendments to provide non-rebuttable presumptive legislation similar to the St. Lawrence provisions
- A comprehensive review of all past asbestos claims relating to employment in Baie Verte mines.

The Newfoundland and Labrador Employers' Council submitted a brief outlining its position on compensability issues relating to Baie Verte. The Council believes the Committee should not consider the issue as it has already been adequately addressed through research and consultation at the Commission.

St. Lawrence Miners – Representatives of the Town of St. Lawrence presented a history of occupational disease in their community. They referenced the findings of the Royal Commission of 1969 as well as the presumptive legislation currently in the *Act*. The Town representatives noted there

were about 128 miners and dependents receiving compensation because of industrial disease related to employment at the fluorspar mines. They requested that the *Act* be amended to include coronary heart disease, pulmonary hypertension, and psychological disorders, caused by over-exposure to radon daughters – radiation poisoning. In addition, they called for changes to the benefits to permanent functional impairment awards, CPP offset, and minimum compensation. The Town representatives also requested increasing coverage to include surface-only employees and to provide coverage for all miners who were employed underground before 1960 and who developed cancer of any type. They also supported the 1996-1997 Statutory Review Committee's recommendation that the provincial government establish a multi-stakeholder research and policy committee to guide the Commission in this area.

Newfoundland and Labrador Professional Firefighters – The Newfoundland and Labrador Professional Firefighters presented a detailed report to the Committee that contained considerable research on certain cancers related to the occupation of professional firefighting. Their report indicated that many jurisdictions were already recognizing certain cancers as being compensable. They called for an amendment to the *Act* to provide presumptive non-rebuttable legislation for all cancers contracted by a person in the occupation of firefighting. The firefighters said the amendment is necessary because there is:

- Relevant medical data available linking firefighting and cancer diagnosis
- Identification of the chemicals that firefighters are exposed to
- Support of the medical community by the publication of scientific information with respect to those chemicals and carcinogenicity
- Reported incidents of cancer among firefighters
- Legislative support provided by six other Canadian provinces to extend comprehensive coverage for a list of cancers including brain, kidney, colon, bladder, non-Hodgkin's, and leukemia.

Shellfish Asthma – In Newfoundland and Labrador, many plant workers have developed shellfish asthma. However, while the Commission has accepted shellfish asthma as an industrial disease, workers noted that the established criteria for claim acceptance made it difficult for workers to obtain benefits. The workers recommended that the Commission become more flexible and provide additional benefits and coverage to more workers who suffer from shellfish asthma, including puffers and medications for those who remain in the workplace.

Employer representatives recommended creating clearly defined adjudication practices regarding shellfish asthma cases, including limiting compensation only to those with work-induced asthma or allergies, and not for those who already had asthma or allergies before commencing work.

Occupational Health Clinics – Some participants believe occupational health clinics are needed to help facilitate the early and safe return of injured workers to the workplace. Presenters felt that occupational health clinics would:

- Help injured workers deal with their individual conditions
- Acknowledge the seriousness of occupational disease
- Implement the necessary steps to prevent the development of occupational diseases or minimize their impact on workers.

4.6 Assessments

Employers expressed concerns that their assessment rates were higher than the other Atlantic Provinces, which they believe, placed them at a disadvantage with their competition. As well, there were concerns with the way the Commission requires payroll reporting from employers. Some employers also suggested imposing a minimum assessment fee.

Payroll Reporting – Employers expressed concern that the Commission required them to submit estimated payroll amounts as opposed to actual payroll amounts for the purposes of establishing annual assessments. They believed this to be inappropriate. They called for the adoption of a more flexible system such as a monthly assessment payment plan based on actual payroll rather than estimated payroll. Some employers also noted that the Commission was inconsistent in how it carried out assessment collection among different employers based on size and payroll threshold. Employers also indicated their preference for reporting payroll electronically.

Minimum Assessment Fee – Some presenters reiterated the belief that all stakeholders should share responsibility for an effective workers' compensation system, and recommended exploring what changes could be made to the current method of assessment to ensure fairness and equity. Participants recommended the introduction of a flat assessment rate in recognition of this shared responsibility. They also recommended that the Commission should ensure that those industries now paying below \$2.75 per \$100 of assessable payroll should have their rates raised to the average rate.

Fish Harvesters Assessment and Collection – The processors requested a change to the current method of assessing and collecting assessments for fish harvesters. The processors recommended that individual incorporated fishing enterprises register with the Commission as an employer and report to the Commission on an annual basis, as all other employers are required to do. Processors feel that the industry suffers from a lack of occupational health and safety awareness. Processors also say they have no authority over the operations of fish harvesters therefore, they have no control over injury costs. In contrast, the fish harvesters recommended maintaining the existing method of assessment and collection.

4.7 Review Processes

Many participants recognized that a review or appeal mechanism within the compensation system is an essential part of a fair process. Workers and employers require an appeals process that functions efficiently, independently, timely, and responsibly to meet their needs. They considered the current review processes to be inadequate in meeting the needs of either group. Some of the experiences shared at the consultations revealed it could take 12 to 14 months for a worker or an employer to finalize an issue through the current review processes.

Internal Review – Many participants commented that internal review is an unnecessary and ineffective process that delays a more thorough review of their claim. Employers and workers were both concerned with the time allotted for reviews, but for different reasons. Employers wanted more time to prepare their response to a worker's application. Conversely, workers wanted shorter periods as there were lengthy delays in getting answers or resolving issues during a time when workers were experiencing financial hardship.

Many workers reported they did not see the internal review process as independent or fair. A number of participants also recommended its complete elimination as the review process was redundant and

ineffective. Workers argued that the existing review process did not serve any useful purpose for workers as many of the decisions coming out of the review process had little or no effect on the original decision.

Further, since Commission staff rarely overturn very few decisions at the internal review level, workers concluded that decision makers in the internal review process do not have sufficient authority to make changes. These workers said that the internal review process is a rubber-stamping of the Case Manager's decision.

External Review (WHSCRD) – Workers and employers also raised concerns regarding the processes within the Workplace Health, Safety and Compensation Review Division (WHSCRD). These issues focused on timing, formality, and impartiality. Many participants provided details of waiting extremely long periods for decisions following their hearing at the Review Division. The Division rarely meets the legislated deadline of 60 days from application to a final decision. Even though many cases extend for six months without any regard for consequence or impact, there is no enforcement of the legislated deadline. Participants also indicated that they believed a more equitable distribution of cases among Review Commissioners would address some of the problems associated with the lengthy timeframes.

As well, there were also concerns expressed about the length of time it took to receive files and information related to the claim under review. There was a great deal of frustration with respect to the difficulties in preparing for WHSCRD hearings, which had become judicial in format and were intimidating to many workers. In addition, some participants expressed the view that they were unprepared for the forum of the hearing. Some individuals were unaware that the Commission or their employers would be present at their hearing and had a right to participate in the hearing process. There were many recommendations for increased assistance with reviews and appeals.

The *Act* also provides a process whereby an affected party can request reconsideration of a Review Commissioner's decision. Some participants said reconsiderations resulted from unclear or unsupported decisions of the WHSCRD. Many workers said the Commission itself is the greatest user of the reconsideration provisions since the Commission could prolong or complicate implementation of a Review Commissioner's decision. Many workers said they view the WHSCRD's process as the system's final opportunity for review and recommended that no further reconsideration should exist beyond it.

4.8 Occupational Health and Safety

Another important concern to emerge from the consultations was the need to uphold the principles of occupational health and safety in workplaces. The maintenance of current occupational health and safety programs is the core requirement for promoting the prevention of work related injuries and illness. Some participants said the Commission should review these programs, and workers' awareness of them, and make any necessary revisions, if the system is to achieve a culture that is health and safety focused.

Prevention – Participants said an improved emphasis on the promotion of prevention would have the greatest effect in the quest to reduce workplace injuries if combined with the area of enforcement of health and safety. Stakeholders described the Commission's occupational health and safety education and promotion initiatives as successful; however, they said much more work remained. Given the decline in injury rates since 2001, many said existing prevention programs are working and should

result with greater effect in the future. Workers and employers said a true safety culture would only emerge by focusing on enhanced employer and worker participation and collaboration in all areas of OHS programming.

Participants also agreed the Workplace Safety high school program should continue. Since the program is an opportunity to support the continued growth of a positive safety culture among youth, expanding the current curriculum would be an important investment in their education.

Enforcement – Participants shared the opinion that the Commission should have a role in the enforcement of occupational health and safety requirements. Some participants said that the approach to enforcement of occupational health and safety requirements is reactive instead of proactive. Enforcement in workplaces was described as inadequate in part because there are not enough inspectors. Even though there has been an increase in the number of inspectors since the 2001 Task Force review, the probability of a random workplace inspection remains extremely low.

Participants believed that increased inspection would result in increased compliance for safer workplaces. They noted that greater positive results would be more likely when prevention initiatives and enforcement programs were combined. They said that a collaborative effort and common vision would help create safer workplaces. Among their recommendations for increased accountability in the enforcement of occupational health and safety requirements in workplaces was subjecting workplaces to periodic occupational health and safety audits and inspections to identify safety concerns and to ensure the maintenance of minimum standards.

Some participants expressed the need for a better correlation between injury information and enforcement strategies. They felt that improved joint management and resource sharing between prevention services and enforcement services would lead to a more effective approach to reducing workplace injuries and illness. They recommended that the Occupational Health and Safety Services Division of the Department of Government Services merge with the prevention services of the Commission.

V. FINDING THE BALANCE: COMMITTEE ANALYSIS & RECOMMENDATIONS

Since the submission of the 2001 Task Force report, there have been many organizational changes within the Commission. As a result, there have been significant strides made in advancing the development and implementation of progressive programs that focus on prevention, return to work and medical management. The Commission has also developed a comprehensive web strategy designed to provide employers and workers with online services and e-business applications as part of improving its delivery of services with online access to information, which will contribute to reduced claim duration.

The Commission's list of accomplishments since the Task Force report indicates that notable progress has occurred in the development and delivery of programs. The Committee recognizes that much of this success resulted from collaboration and consultation with stakeholders throughout the Commission's change process. The Committee notes that in the recent past, there has been a decrease in the level of consultation, and stakeholders have reported a lack of involvement in the Commission's activities. Given the successes that the Commission achieved with the collaborative model, the Committee supports strongly a renewed focus on involving stakeholders in making improvements to the workers' compensation system.

5.1 Understanding Meredith Principles

The workers' compensation system in Canada is founded on the principles developed by Judge Sir William Meredith. In 1910, the Ontario government asked Judge Meredith to design a system of compensation which would be payable to individuals who were injured during the course of their employment. His report, submitted on October 31, 1913, identified five core concepts that are today the hallmarks of a reliable, equitable, and manageable compensation system. The five Meredith Principles¹ are:

1. **No-fault compensation:** *Workplace injuries are compensated regardless of fault. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury. Fault becomes irrelevant, and providing compensation becomes the focus.*
2. **Collective liability:** *The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.*
3. **Security of payment:** *A fund is established to guarantee that compensation monies will be available. Injured workers are assured of prompt compensation and future benefits.*
4. **Exclusive jurisdiction:** *All compensation claims are directed solely to the compensation board. The Board is the decision-maker and final authority for all claims. Nor is the Board bound by legal precedent; it has the power and authority to judge each case on its individual merits.*

¹ Saskatchewan's Workers' Compensation Board. http://www.wcbsask.com/About_Us/Meredith_Principles.html.

5. ***Independent board:*** *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 labour clients, providing service with efficiency and impartiality.*

In its analysis, the Committee has reflected on these concepts, given their importance to maintaining the vision for workers' compensation. Indeed, both workers and employers mentioned the Meredith Principles as a way to bring forward the core values of workers' compensation as the benchmarks against which the Commission may measure or assess existing and new initiatives.

5.2 Accountability And Responsibility

Claim Duration - The Committee's review identified many improvements in the Commission's work since it began implementing the recommendations of the 2001 Task Force report. However, while there have been significant reductions in claim duration, the Committee has noted that the rate of decline has leveled out, and today, claim duration remains at 30% above the national average. ***In its review, the Committee has concluded that claim duration is the key to lower assessment rates and increased benefits.***

The Committee also recognizes that many factors influence claim duration rates. Unfortunately, the absence of more effective performance indicators made it difficult for the Committee, and by extension, the Commission, and the key stakeholders to identify these factors, assess their influence, and implement changes that will produce the desired outcomes or results. Through performance measuring, the Commission should be able to secure the degree of change required to address the unnecessary financial and human burdens associated with prolonged and costly claim duration. Though there has been much progress in some areas, the Commission needs to continue its self-analysis.

The Committee has reviewed with interest the performance indicators developed in British Columbia to guide the operation of its workers' compensation system. These indicators arose from the Royal Commission² review in 1999 as well as work carried out previously by that province's Auditor General. The indicators are significant for their breadth and for their critical value in managing performance, assessing effectiveness, and providing clarity to program goals and objectives. With respect to workers' compensation programs, British Columbia developed indicators in five categories: inputs, outputs, efficiencies, outcomes, and client satisfaction. The Committee believes developing strong performance indicators will help the Commission manage its responsibilities more effectively and responsively.

Recommendation #1: The Committee recommends that the Commission develop, through stakeholder consultation, an enhanced system of performance indicators to allow it to more effectively manage and measure the various components of claim duration.

² "Performance Indicators," Vol. II, Chapter 7. **For the Common Good: Final Report of the Royal Commission on Workers' Compensation in British Columbia**, (Queen's Printer: British Columbia: 1999).

Administrative Costs – The portion of the Commission’s assessment revenue directed to administrative costs is 13.7%; the national average is 14%. The costs of the Commission have stabilized. The Committee has found that the Commission, in an effort to contain expenditures has deferred investment in some areas, to its detriment. The Committee identified improvements in information technology as an area in need of immediate investment.

Accountability – Over the past decade, workers and employers have demanded greater accountability from the Commission. Pleas for financial and operational audits of the Commission’s activities echoed throughout an overwhelming number of presentations made during the public consultations. These demands for greater accountability are, in the Committee’s view, rooted in the lack of confidence the stakeholders have with the current system with respect to the management of administrative costs. However, the Committee has reviewed the processes put in place by the Commission and found that its efforts to manage its administrative operations are sound.

Nonetheless, the Committee recognizes that Section 11 of the *Act* provides the authority to the Auditor General to audit the accounts of the Commission whenever he or she considers it expedient to do so. The Committee recognizes that an external accounting firm already conducts proper financial audits of the Commission on an annual basis, and that this work is, without question, meeting the standards for accepted accounting practices. However, workers and employers wish to see a comprehensive audit focused on operations, conducted in addition to the financial audit.

Recommendation #2: The Committee recommends that the Auditor General should include the operations of the Commission as part of his or her regularly scheduled routine of audits.

Governance – Section 4 of the *Act* prescribes the current structure of the Board. It indicates that the Board shall be comprised of three employer representatives, three worker representatives, three public representatives, and one person who shall be chairperson. The Lieutenant Governor in Council appoints board members to the Commission. The role of the Board of Directors is to establish policies and programs consistent with the *Act* and *Regulations* with respect to compensation benefits, rehabilitation, and assessments.

The Committee notes many participants reported concerns with the current composition of the Board, particularly the public representative positions. There were also concerns respecting the selection process for appointments to the Board. The Committee recognizes that the owners of the system are the workers and employers of the province. Thus, the Committee finds the current requirement of appointing representatives of the public to be inappropriate. The Committee concludes that the most effective representation on the Board would be an equal number of worker and employer representatives whose commitment must be to the overall success of the workers’ compensation system, and not to their respective constituencies.

Recommendation #3: The Committee recommends that the composition of the Board of Directors consist of four employer representatives, four labour representatives, and an independent Chairperson. The Committee also recommends that appointments to the Board be selected from nominees submitted by the two stakeholder groups listed.

5.3 Client Service

The Committee believes that client service is a challenging area for the administration of the Commission. The Committee notes that the *2005 Workers and Employers Survey*, conducted for the Commission, found overall that the organization offers quality service to workers and employers. However, the Committee also notes that employers, workers, and health care providers participating in the public consultations reported a remarkably high degree of dissatisfaction and frustration with the Commission.

The *2005 Workers and Employers Survey* also found that Extended Earnings Loss claimants view the system much more critically than other claimants do. This is consistent with the observations of the Committee. Many of the workers who participated in the public consultations sessions were long-term claimants who provided significant details of their interactions with the Commission. The Commission appears to manage short-term claims much better than its long-term claims.

The Committee also noted the concerns related to the Commission's on-going challenge in retaining Case Managers. There is no doubt that the high turnover with its accompanying lack of continuity contributes to the dissatisfaction of workers and employers involved with claims that are complex.

The Committee has concluded that the Commission must work collaboratively with workers, employers, and health care providers in managing claims that return workers safely back to work or which provide meaningful labour market re-entry plans. The Committee believes that claim duration will increase if the Commission fails in this objective.

Recommendation #4: The Committee recommends that the Commission establish a protocol for improving client service. The protocol should include:

- a) guidelines respecting inquiry response times*
- b) a review of current standard correspondence for clarity and readability*
- c) a review of the telephone system*
- d) specialized training to frontline employees.*

Case Managers – From a claims point of view, the Case Manager is the face of the Commission. An injured worker is a worker under stress, with a significant condition requiring medical intervention, coupled with a loss in income. The employer in a different way is also feeling the effects of the injury: they have lost an employee, their workplace may be affected, and they are required to work with the Commission in facilitating the worker's recovery and return to work. The worker, the employer, and the Commission are all responsible for disability management, with the Case Manager as the lead in managing this process.

To facilitate this, and to manage, in some cases, competing agendas, the Case Manager requires a unique skill set. Unlike other positions, it may not always be possible to find an individual with all the skills required at the point of hiring. The Committee considers the position of Case Manager as the elite of the system, in that they require unique skills and competencies.

The Committee believes that not everyone can be a Case Manager; case management is a demanding and evolving role. The Committee recognizes that the Commission has experienced a significant turnover in this position for an extended period. Clearly, this should be a priority area for the Commission in its staffing responsibilities.

The Commission, in filling positions, needs to identify those qualities that define excellence in case management. It is essential that the Commission provides opportunities to train and support individuals who will develop their expertise to meet the obligations of their role with sensitivity, proficiency, and compassion.

The Committee also feels that the Commission must strengthen the positions of Intake Adjudicator and Case Manager to provide a decision-making capacity not impeded by any other levels of decision-making within the Commission.

Recommendation #5: Given the ever-increasing complexities of the system, the Committee recommends that the Commission recognize Intake Adjudicators and Case Managers as the most important facet of the Commission's interface with workers and employers. The Committee recommends that the Commission take all the necessary action to ensure that candidates for these positions are well selected, well trained, and well qualified.

Recommendation #6: The Committee recommends that the Commission take immediate steps to provide Intake Adjudicators and Case Managers with substantially increased support in the areas of training, communications, medical management, and decision-making.

Early and Safe Return to Work (ESRTW) – The implementation of the recommendations contained within *Changing the Mindset* led to the Commission's introduction of the Early and Safe Return to Work Program. The goals are to develop opportunities to bring workers back to work in an early and safe manner and to facilitate the rehabilitation of workers, while lowering the costs of the system. The Commission adapted this program from one introduced in Ontario.

During its consultations, the Committee heard a number of comments from employers and workers on the success of the program to date. While there have clearly been some successes, the Committee also recognizes that the program's implementation has not yielded the results originally anticipated. The Committee's discussion with Commission staff confirmed that the program's rollout has not been simple either internally or externally.

While the Commission and its staff are working diligently to improve its effectiveness, they also recognize that they can do more with the program. The Committee recognizes that this has an impact on the length of claim duration, and thus contributes to higher costs for the Commission. The Committee also recognizes that the success of the ESRTW program is achievable only with the collaboration of all system stakeholders – the workers, the employers, and the Commission.

In its review, the Committee also consulted with program staff from Ontario who shared their experiences with program implementation. We learned that they too have experienced similar difficulties. Consequently, the Committee believes that despite the delay in achieving the anticipated results, the program is valuable, and the Commission should continue its efforts in this regard. The Committee believes the philosophy supporting the program is sound, and that the Commission has opportunities to make improvements and to attain its desired objectives. Within that context, the Committee makes the following recommendations.

Recommendation #7: The Committee recommends that Early and Safe Return to Work Committees be mandatory in workplaces under the Act. Large employers, defined currently by the Commission as those with assessments of \$54,000 per year

or more, shall establish an Early and Safe Return to Work Committee separate from their Occupational Health and Safety Committee. The Committees should include a minimum 50 per cent worker representation chosen by co-workers similar to the structure of their existing Occupational Health and Safety Committee. Small employers, currently defined as those with assessments less than \$54,000, shall designate the responsibilities of Early and Safe Return to Work to their already established Occupational Health and Safety Committees.

Recommendation #8: *The Committee recommends that mandatory training be required for a minimum of two representatives, one worker and one employer, on the Early and Safe Return to Work Committee or the Occupational Health and Safety Committee. The mandatory training should be in the area of early and safe return to work, its principles, and the policies of the Commission.*

Recommendation #9: *The Committee recommends that the Commission, with the implementation of mandatory Early and Safe Return to Work Committees, provide greater support and assistance to workplace parties to build a capacity within their workplace to manage better their return to work programs.*

Recommendation #10: *The Committee recommends that the Commission develop detailed performance indicators in the management of early and safe return to work. The performance indicators should monitor aspects of the process in sufficient detail to provide reliable benchmarks and data to measure desired outcomes and targets and the effect on claim duration.*

Currently, employers are obliged to apply the Early and Safe Return to Work program for a two-year period. On occasion, lost time because of injury occurs after the actual injury date. To ensure that the employer meets its obligation in such cases, the Committee recommends that the starting date for this two-year period be from the date of disability, not the date of actual injury.

Recommendation #11: *The Committee recommends that the provincial government amend Section 89.1 of the Act to state from date of disability rather than from date of injury.*

Labour Market Re-entry (LMR) – Where the *Early and Safe Return to Work Plan* does not result in a return to work that is suitable, available, and restores the worker's pre-injury earnings, the Commission shall provide the worker with labour market re-entry services.

The Committee understands there has to be a balance of providing rehabilitation to meet the needs of the worker to become productive and independent in the workplace at a pre-injury level with the costs of achieving that. The questions the Committee considered in addressing labour market re-entry were:

- To what extent is it the Commission's responsibility to rehabilitate an injured worker?
- To achieve this objective, what is the level of investment that the Commission must provide?

The Committee was presented with some evidence that costs of providing rehabilitation and education are sometimes more dominant than the requirement to reintegrate the injured worker into successful employment. For example, the Committee heard that the Commission has carried out its cost benefit analysis using the maximum compensable earnings instead of the worker's pre-injury earnings. While

the Commission has limits to its efforts to rehabilitate, the evidence we received indicates that there is too great an emphasis on cost and not enough on truly assessing the opportunities to reintegrate an individual as a productive employee. The Committee believes the Commission should re-examine this stance. The Committee believes that if we have successful Labour Market Re-entry programs, then claim duration will decrease, thus leading to a reduction in costs overall.

In keeping with our earlier discussion relating to performance indicators and increased monitoring of costs and operations, the Committee also believes that the Commission should develop a framework to monitor more closely the LMR program and the LMR outside service providers.

The Committee believes the Commission should establish benchmarks, in consultation with the stakeholders, for both ESRTW and LMR programs. These benchmarks should clearly define the goals of the programs and identify concretely the roles of the worker, the labour market re-entry planners, and the case management staff. Again, Commission staff should develop and apply performance indicators to assess progress, or lack thereof, in these programs, and evaluate the policies governing the programs.

Recommendation #12: *The Committee recommends that the Commission provide greater flexibility in its approach to labour market re-entry. The Commission must adopt a practice that evaluates a worker's labour market re-entry options beyond an evaluation prescribed entirely by the costs to the system.*

Recommendation #13: *The Committee recommends that the Commission ensure that Labour Market Re-Entry Planners conduct an adequate and comprehensive analysis of labour market re-entry options that takes into account the best interests of the worker while restoring, where possible, pre-injury earnings. Labour market re-entry analysis must give due diligence to the physical, emotional, and psychological health of the worker.*

Recommendation #14: *The Committee recommends that the Commission develop a framework to monitor the labour market re-entry program and the labour market re-entry service providers.*

Medical Services – An injured worker is a person in need of medical care. Most injured workers require intervention from the medical establishment, and some, significantly so, for long periods. External providers, such as doctors, chiropractors, physiotherapists, and pharmacists, all provide medical services.

In Newfoundland and Labrador, we face geographic challenges with the provision of physician care. For example, specialist care is often only available in major centres. This causes long delays in waiting for appointments or requires extensive travel by injured workers to access these specialty services. As a result, the access, availability, and delivery of medical services is a prime driver of the Commission's costs, not only the medical costs themselves, but the compensation costs associated with delays in receiving medical services.

Further, the Committee also recognizes that there are costs to the workers. Delays in accessing medical services affect workers' recovery and their continued physical and emotional well-being. For many workers, delays affect their financial status, as their income is reduced and their access to benefits is limited, thus adding additional stress.

The Committee also heard, however, that the Commission's relationship with all medical services has historically been less prescriptive and more relaxed than perhaps it ought to be. Specifically, the Commission does not have with these providers an established, formal protocol that promotes a collaborative approach and monitors the quality and effectiveness of the services to be provided.

The Committee believes the Commission needs formal service agreements which extend far beyond the fee schedules and which speak to the value, effectiveness, appropriateness, and timeliness of the services provided. In particular, the Committee suggests the Commission establish an arrangement with professional bodies or associations whereby formal meetings are held to review the status of progress toward the goals and objectives outlined in the service agreements.

Recommendation #15: The Committee recommends that the Commission recognize the integral role of the medical community in the successful management of claims by taking a more proactive role in developing formal and collaborative relationships with all professional medical service providers.

Recommendation #16: The Committee recommends the creation of a formal protocol between the Commission and all professional medical service providers beyond that already established through the joint Committees, Memorandums of Understandings, service agreements, etc. This would include regularly scheduled meetings, agenda items, formal communications, et cetera.

Independent Medical Examinations (IMEs) – There was strong representation from employer groups that they have the opportunity to request that their injured worker submit to an independent medical examination (IME). Existing legislation or policies do not contain any provisions to permit this. The Commission holds exclusively the prerogative for the IME. While employers can request that the Commission order such examination, the final decision is with the Commission.

Many other facets of disability management use the concept of IMEs. Further, it is common generally in society to get second opinions on medical matters. The Committee feels that the ability to ensure provision for full medical assessments should be permitted but that the Commission must manage the process.

Recommendation #17: The Committee recommends that the Commission, in consultation with the stakeholders, develop a policy to manage the process for independent medical examinations and it should be guided by the following:

- a) The process must be managed solely by the Commission.***
- b) IMEs are permitted for functional abilities information only.***
- c) A written request may be made to the Commission for an IME by either an employer or a worker.***
- d) The IME will be conducted at the expense of the worker or employer making the request.***
- e) The process must be coordinated by the Commission through a physician of the Commission's choice.***
- f) The final report on the examination will be forwarded to the Commission.***

The Commission has exclusive jurisdiction to determine the degree of diminution of earnings capacity because of an injury. Currently, Form 8/10, which is completed by the physician, contains *Section D – Not Capable of Work at this Time*. Given the diversity of employment and workplace requirements, it

is not appropriate for physicians to make the determination on the worker's ability to work. Instead, the physician's responsibility is to assess the worker's functional abilities, and the Commission will determine how these abilities will affect the worker's return to work.

Recommendation #18: The Committee recommends that the Commission amend Form 8/10 to delete Section D – Not Capable of Work at This Time.

Recommendation #19: The Committee recommends the provincial government amend Section 89.1 of the Act to delete references to the term “medically” from the phrase “medically able.”

Advisors –The Committee considers the Offices of the Employer and Worker Advisor an important part of providing services to workers and employers. The submissions of the Newfoundland and Labrador Federation of Labour and the Newfoundland and Labrador Employers' Council acknowledge the Advisors' significant role in providing advice and direction to workers and employers on many aspects of the workers' compensation system. These Advisors assist with case management and occupational health and safety programs through advice and guidance on statutory and policy requirements, enhancing general awareness through written materials, and discussions, to name a few.

The Committee notes that the Offices of the Worker Advisor respond to hundreds of enquiries from workers on an annual basis. Worker Advisors interact with, and provide information, to workers on many aspects of the workers' compensation system in a user-friendly and understandable way. The Committee believes this approach helps workers to participate effectively in the management of their claim by enhancing their knowledge of the system.

The terms of the contract between the Commission and the Advisors are such that they do not permit the Advisors to act as representatives at the external review process. The scope of their contract states Advisors “*provide an advisory service on workers' compensation to injured workers and dependents in the province and educational training and promotional activities to benefit all workers in the province.*”

The Committee notes that the Workplace Health, Safety and Compensation Review Division's statistics show approximately 50% of the claimants who appeared before the Review Commissioners either represented themselves or appeared with their Member of the House of Assembly. In the Committee's view, this demonstrates the need for additional assistance to a considerable number of workers at this level of review.

In addition, the Committee notes the high number of workers who addressed the need for additional support and assistance. The Committee concurs with the view that the workers' compensation system at the appeal level is very difficult to navigate. It is obvious that much of the dissatisfaction in the system arises from a lack of knowledge about the appeal structure.

The Committee finds workers need information and representation with respect to their rights in a system based on statutory entitlement. The Committee believes the services of the Offices of the Worker Advisor should be expanded to include representation throughout the external review process, including the hearing process. While the Committee heard only specific concerns relating to the mandate of the Office of the Workers' Advisor, the Committee's opinion is that both advisory roles are equally valuable to the support framework of workers and employers. Given the shared responsibility between workers and employers for the workers' compensation system, the Committee believes it would be appropriate for the Newfoundland and Labrador Federation of Labour and the

Newfoundland and Labrador Employers' Council to work collaboratively to develop the parameters for this increased role, including criteria for increased support at different levels in the appeals process.

In keeping with the expanded mandate for the roles of Worker and Employer Advisors, the Committee feels there should be greater accountability associated with the functions of these positions.

Consequently, the Committee recommends that the Commission revise existing contracts to provide a mechanism for a formal reporting process.

Recommendation #20 *The Committee recommends that the scope of the services provided by the Worker and Employer Advisors be expanded to include representation at the external appeal process including participation in the hearing process. Further, the contracts for these positions should include a formal reporting requirement with regular documented meetings between the Commission, the Newfoundland and Labrador Federation of Labour and the Newfoundland and Labrador Employers' Council.*

5.4 Occupational Health and Safety

Training – The Committee notes that the Commission, in response to the recommendations of the 2001 Task Force Review, has developed a partnership with the Newfoundland and Labrador Federation of Labour to provide workers' compensation training. In 2002, the provincial government enacted return to work legislation, outlining the obligations of employers and workers regarding the workers' compensation system. Intensive training offers opportunities for both stakeholders to learn and take ownership for their roles and responsibilities under the new legislation. Training helps all stakeholders work collaboratively to establish a work culture that emphasizes safety.

The Committee notes that many employers referenced the contract with the Newfoundland and Labrador Federation of Labour for training. These employers perceive a lack of proper diligence in awarding the contract. They argue that the Commission should have put the contract to tender publicly using the *Public Tender Act*, as it falls in the area of administrative procurement. The Committee recognizes the employers' position, but on further examination, the Committee concludes that this activity is outside the normal administrative procurement activities. The training in question was training activities for workers and to some extent employers, not training of Commission staff.

The Committee understands that employees tend to accept more readily information shared or transmitted by peers as a first step in undertaking workplace changes. To this end, in a unionized environment, training provided by the union's administration will find greater acceptance than training provided by outside contractors. As a result, the Committee feels that this training activity has been more successful and accepted by the workplace, resulting in an expanded safety culture. The Committee notes that employers have also availed of this training and the Committee feels that should employers wish to develop training activities oriented to employers and management that they should be able to enter into a similar contract with the Commission.

Recommendation #21: *The Committee recommends the continuation of the current training model proposed by the Newfoundland and Labrador Federation of Labour for workers' compensation training for unions and unionized employees.*

Occupational Diseases & Occupational Health Clinics – The Committee recognizes occupational disease as being one of the most complex emerging issues in the area of workers' compensation. As a

result, the Committee is concerned about the Commission's lack of proactive initiatives to address this area. It currently appears that the Commission is managing occupational disease claims on a case-by-case basis. This type of management does not provide the Commission with the ability to establish a framework to address adequately occupational disease claims. To ensure that the Commission is adequately prepared to address the implications related to the emergence of occupational disease, the Committee recommends the following:

Recommendation #22: The Committee recommends that the Commission immediately establish an Occupational Disease Advisory Panel consisting of representatives from workers, employers, health care providers, and a representative from the Commission to review the area of occupational disease. The work of the Committee should be strategic and guided by the following:

- a) to define Occupational Disease***
- b) to revise and amend the current regulatory framework***
- c) to establish a protocol for policy making and adjudication***
- d) to review Occupational Health Clinics and make recommendations for establishing them.***

Baie Verte Miners – The Committee heard moving testimony documenting the impact of industrial disease in Baie Verte, where an open pit asbestos mine operated for more than 30 years. The Committee heard from union and community representatives who described the desperation and anxiety consuming miners, families, and other members of the town. Today, we know much more about the hazards of asbestos; the Committee references the extensive training delivered and the care taken with asbestos abatement.

The Committee heard of the efforts to have other cancers and diseases, in addition to asbestosis and mesothelioma, linked to asbestos exposure accepted as compensable. The province has conducted an environmental study of the abandoned mine site and the Committee is aware that it is considering further studies. The Committee believes an extended study presents an opportunity to merge the examination of general effects of asbestos exposure with those associated with work-related asbestos exposure. The Committee therefore recommends:

Recommendation #23: The Committee recommends proceeding with a comprehensive health study on the former miners of Baie Verte. The Committee also recommends that the study be established as a partnership between the Government of Newfoundland and Labrador and the Commission.

Shellfish Asthma – The processing of shellfish within the province has produced conditions whereby workers have developed and confirmed allergic reactions while processing. These reactions are usually confined to the time when the workers are working in the plant in the course of employment. Inhalers can often alleviate these symptoms. The symptoms are frequently not present outside the processing plant. The Committee recommends that the Commission continue exploring strategies to address the consequences of this occupational disease.

Recommendation #24: The Committee recommends that the Commission continue current initiatives aimed at exploring strategies to address shellfish asthma. This issue should be referred to the Occupational Disease Advisory Panel for further analysis and direction.

Recommendation #25: The Committee recommends that the Commission recognize the extensive use of inhalers/puffers in shellfish processing environments and provide medical aid coverage accordingly.

Sector Committees – The Committee received a presentation from the Newfoundland and Labrador Construction Safety Association (NLCSA) outlining their activities since their inception. The Committee was impressed with the successes achieved by this organization in increasing safety awareness and practices in their industry. The Committee believes their experience serves as an excellent example of what Sector Committees can accomplish.

The Committee notes that the 2001 Task Force made recommendations on sector committees. While there have been some areas, such as construction and forestry that have moved forward in developing sector committees, other areas have not. The NLCSA established a Construction Industry Sector Committee with representation from industry stakeholders. The result has been a collaboration that introduced Early and Safe Return to Work legislation in the construction industry, something no other jurisdiction in Canada has been able to accomplish.

The NLCSA has taken responsibility for the awareness, implementation, and verification of the PRIME Practice Incentive Requirements. Since the NLCSA began this work with the Sector Committee, there has been a decrease in the incidence rate, from 5.72 in 2002 to 2.68 in 2005. The same trends have been observed in assessment rates paid by employers. On average, employers in the construction industry pay about 31% lower assessment rates. The Committee notes that there are several reasons for the success of the approach:

- The Sector Committee has a stake and ownership in the industry through its programs.
- The self-directed approach allows the industry to determine what is appropriate under the circumstances to ensure the best interests of the industry are maintained.
- The Sector Committee fosters effective and mutually beneficent working relationships.
- The industry manages programs, sets standards, develops curriculum, and delivers training that is industry focused.
- There is a process for consulting with industry representatives when changes are proposed or warranted.

Recommendation #26: The Committee recommends that in addition to existing Sector Committees, the Commission assist with the development and coordination of Sector Committees in key sectors such as manufacturing, health care, fishery, and mining. The Sector Committees should be established in accordance with the model used by the Newfoundland and Labrador Construction Safety Association.

Fish Harvesters Assessment and Collection Structure – The Commission assesses and collects premiums for coverage of fishers from fish processors/buyers using the value of fish purchases. Fish processors raised many concerns with this assessment method. Fish harvesters feel that the current system is adequate and provides an efficient method by which to collect assessment revenue associated with fish harvesting. The processors, on the other hand, believe that fish harvesters, in many cases, are independent enterprises with the capacity to carry out the collections of premiums as any other employer would. The processors emphasized that while they collect the premiums, they have

no control over the harvesting workplace, and therefore are in no position to be able to influence workplace safety.

The Committee recognizes this, and realizes too, that safety in the harvesting sector is paramount, as it is in all other workplaces. The harvesting sector has many unique features, not found in traditional workplaces, including being governed by both federal and provincial jurisdictions. For example, in this province, harvesters have universal compensation coverage, unlike other provinces, which do not. The Committee also notes that harvesters in this province, unlike other provinces, are all unionized.

The Committee also notes that the accident rate in the harvesting industry has declined from 2.3 per 100 people employed in 2003 to 1.7 per 100 people employed in 2004. The Committee, in its analysis of the safety aspect of fish harvesting, met with the provincial Professional Fish Harvesters Certification Board and determined that this body, through its licensing of individual harvesters, now conducts emergency safety training. It would appear that this group, given its current involvement in this area, would be a natural vehicle through which to extend safety training beyond what is currently offered.

While many fishing enterprises today are sophisticated operations and capable of assessing and remitting premiums, there are still a large number of open boat fishers to which the same capacity does not exist. In fact, there are approximately 4000 fishing vessels employing approximately 15,000 harvesters; most of these enterprises are small boat operators. Consequently, if the payment of premiums were to transfer to all fish harvesters, it would add to the administrative costs of the Commission, and would likely result in revenue leakage. The Committee also notes that the system in place in this province is very similar to the system that exists in British Columbia, the other Canadian province with a large fishing industry. Because of the foregoing, the Committee still believes that the system in place today should remain.

Recommendation #27: *The Committee recommends that the assessment and collection process for fish harvesters remain as it is currently structured.*

Recommendation #28: *The Committee recommends that the Commission and the proposed Fishery Sector Committee collaborate with the Professional Fish Harvesters Certification Board to establish safety training programs for fish harvesters.*

Out-of-Province Fish Buyers – The Committee heard concerns that local fish buyers face a competitive disadvantage when out-of-province fish buyers fail to register and remit assessment premiums on fish purchases within the province. The Committee recognizes that additional enforcement of licensing practices are required to ensure out-of-province fish buyers comply with the Commission requirements to register and remit assessments.

Recommendation #29: *The Committee recommends that the Commission collaborate with the Department of Fisheries and Aquaculture to manage proactively the assessment and collection of workers' compensation premiums on out-of province fish buyers when they purchase a license to operate in the province.*

Payroll Reporting – The Committee notes that some employers and employer groups have indicated their preference for payroll reporting on a monthly basis, based on actual payroll costs. The Committee, in discussions with the Commission, has learned that the Commission has already begun making changes in this area. The Committee believes the Commission should continue with this

process, in consultation with stakeholders, so that the payroll reporting system can meet the current needs.

Occupational Health and Safety – The Commission’s Injury Fund supports the operations of both the Commission’s Prevention Services Division and the provincial government’s Occupational Health and Safety Branch with the Department of Government Services. The Committee recognizes that initiatives aimed at promoting a safety culture in today’s workplace may have greater impact when coordinated by one organization responsible for workplace safety. In the Committee’s view, prevention and enforcement are the fundamentals of an overall strategy aimed at creating safe workplaces and embedding a strong safety culture. The Committee notes the following with respect to the current structure of Prevention Services of the Commission and Occupational Health and Safety with the Department of Government Services:

- There is a lack of a formal relationship or protocol for data sharing, trend monitoring and reporting.
- There is a lack of a coordination process for strategic and operational planning.
- The provincial government has an overall climate of streamlining and consolidating services for improved accountability and efficiency, through consolidation of information technology – Office of the Chief Information Officer, reducing unnecessary regulatory burdens through the Red Tape Reduction project, and the streamlining and consolidation of services through the Program Renewal initiative.
- The Board of Directors of the Commission lacks the ability to control or have any input into the budget for the Occupational Health and Safety Branch yet is accountable for its funds.
- There is not a clearly defined mandate distinguishing the role of one entity from another, which may be confusing and burdensome to workers and employers.
- Six provinces currently provide prevention and enforcement services under their respective workers’ compensation boards.

Recommendation #30: The Committee recommends that the provincial government undertake the merging of the Occupational Health and Safety Branch of the Department of Government Services with the operations of the Commission.

Workplace Safety for Youth Workers – Workplace safety must be introduced early in one’s working life. The secondary education system offers the best vehicle through which instruction in this area can be provided. The Committee notes that over the past year, there has been significant media coverage on workplace injuries and deaths among youth workers. The Committee notes that the 2001 Task Force recommended courses on workplace safety be included as a mandatory component of secondary and post secondary education. The Committee concurs with the 2001 Task Force’s recommendations and reiterates the need for education in this population.

Recommendation #31: The Committee recommends that the high school program Workplace Safety 3220, be introduced to high school students beginning in Level I as a mandatory part of the high school curriculum.

Recommendation #32: The Committee recommends that workplace safety programming be a mandatory requirement of all post secondary educational programs in the province.

5.5 Benefits

Earnings Loss Benefits – In *Changing the Mindset*, considerable discussion focused on the financial sustainability of the Commission. The Task Force documented the fragile state of the Commission’s financial operations and identified the steps necessary to improve them. While the situation has improved since then, the system is still vulnerable. In 2001, the organization operated at 67.55% funded, while today it operates at 92.6% funded.

Funded means there are sufficient amounts in the Accident Fund to pay all claims that are on the books should the Commission cease operations on any given day. Using the guidelines of the *Insurance Companies Act (Canada)*, the Commission invests a significant portion of its Accident Fund in the stock market. Given the volatile nature of the stock market, funding levels will vary with the value of the Commission’s investment portfolio. To ensure adequate financial resources are always available, the targeted funding level should be in excess of 100%.

Without additional reserves, the Commission may not be able to support the costs associated with an unanticipated disaster or catastrophic developments in occupational diseases. Other jurisdictions in Canada maintain additional reserves for such contingencies, including fluctuations in values of investments, future occupational diseases or disasters, in addition to having a funding target level in excess of 100%.

In light of this, together with our high claim duration and the breadth of coverage available to workers in this province, the Committee feels that the financial position of the Commission does not warrant an increase in benefits at this time.

Increased benefits can come from three sources: increases in revenues, reductions in the number of claims, reductions in claim duration, or a combination of all three. It is the Committee’s view that the best opportunity to increase benefits is to reduce claim duration. As has been noted earlier, claim duration for Newfoundland and Labrador is 30% higher than the national average; for every 10 days reduction in claim duration, the Commission would save about \$2 million per year. This means that if claim duration declined by 10 days, the Commission could increase benefits by an additional \$2 million and still maintain the same financial position.

Recommendation #33: The Committee recommends that the Commission maintain wage loss benefits at their current level. The Commission’s Board of Directors should consider changes to wage loss benefits on an annual basis similar to the manner in which the Board considers changes to assessment rates.

All workers have the right to refuse work assignments that are dangerous or unsafe. For police officers, career firefighters, and correctional officers, the work they do in protecting the public poses health and safety risks not inherent in other professions. In particular, emergencies, because of their unpredictability and volatility, expose workers to extreme risks for their health and safety by placing them directly in harm’s way. In light of this increased risk assumed by this class of workers, the Committee feels that this group should receive increased compensation benefits.

Recommendation #34: The Committee recommends the provincial government amend the Act to provide wage loss benefits at 100 per cent of net pre-injury earnings for police officers, career firefighters, and correctional officers when injured while responding or engaged in an emergency situation where the potential for injury exceeds the normal protection offered under the Occupational Health and Safety Act.

Maximum Compensable and Assessable Earnings (MCAE) – Section 21(1) (2) of the *Regulations* prescribes the formula that governs the maximum ceiling for workers' compensation assessments and benefits. It states:

(1) For the purposes of section 102 and subsection 80(8) of the Act, the maximum compensable and assessable earnings shall be \$45,500 in annual gross wages until the time that the annual Industrial Aggregate Wage Index for the province multiplied by 150% equals or exceeds that amount.

(2) Once the annual Industrial Aggregate Wage Index for the province multiplied by 150% equals or exceeds \$45,500 in annual gross wages, the Commission shall then review the maximum compensable and assessable earnings amount annually and the Consumer Price Index for Canada as published by Statistics Canada shall be applied and the amount adjusted accordingly.

The current level covers the total employment related earnings of about 86 % of workers in the province. Stated in another way, about 14% of workers are negatively affected by the current maximum. There were many years when the ceiling had not changed. It was set at \$45,500 in 1984, and did not rise again until 2005. The ceiling reached its threshold in 2003, but the provincial government modified the *Regulations* to maintain it at \$45,500 for 2003 and 2004. In 2005, the ceiling increased to \$46,275 and increased again in 2006 to \$47,245. The intent is to apply the formula as specified in the *Regulations*. As the Commission did not make the CPI calculation in 2003 and 2004, the Committee recommends making this adjustment as soon as possible.

Recommendation #35: The Committee recommends that the Commission apply a retroactive CPI adjustment to the maximum compensable earnings ceiling for 2003 and 2004 to be applied to future claims only. The Committee believes the Commission should apply future increases to the ceiling using the formula prescribed by Section 21(1) (2).

Canada Pension Plan Offset – The reasons behind and approach to the Canada Pension Plan Disability (CPPD) benefit offsets are complex and, in the view of the Committee, largely misunderstood. CPPD offset is not intended to prevent the worker from retaining a reasonable level of income after the injury. Of all the issues brought forward to the Committee, the Commission's approach to managing the CPPD offset received the most attention. A common argument is that since workers contribute 50% of the cost of the CPP, then only 50% of the CPPD benefit should be considered as an offset. In arriving at its recommendations, the Committee examined:

- The basic principles behind a wage loss insurance system
- The current situation for injured workers receiving an Extended Earnings Loss (EEL) benefit in Newfoundland and Labrador
- The approaches used in other jurisdictions

- The financial implications for the workers' compensation system and for injured workers of considering a change in approach.

Disability income replacement insurance systems ensure a pre-disability income replacement that is sufficient after considering the effect of certain work related expenses, to allow a disabled individual to maintain a comparable standard of living as he/she had before the disability. In effect, disability income insurance programs walk the fine line between adequacy of income replacement and a compensation level that takes away the incentive to return to work. The vast majority of disability income insurance programs limit the total income from various sources either by using:

- Direct offsets (i.e., reduce the disability benefit by amounts received from identified other sources of income), or
- By limiting total income from all sources to a percentage of the net income of the individual before the disability. This is referred to as an "all source limit." Under this approach, the disability benefit is reduced by any amount in excess of the limit so that the total income from all sources, including the disability insurance program, do not exceed the pre-determined limit, usually 85% of net pre-disability income.

The intent of the income replacement or wage loss benefits is to compensate for loss of income. It is not intended to compensate for other impairments or costs associated with a disability. In effect, under workers' compensation, there is no need to use the wage loss benefit level as a replacement for other injury related expenses as these are largely covered by the system.

The Committee undertook a review of the current income level situation of all injured workers in receipt of an EEL benefit at December 31, 2005 who are affected by the current approach to CPPD offsets to determine if the current approach led to an unfair situation for injured workers.

For each such injured worker, the Commission calculates an ***Income Replacement Rate*** as follows:

$$\text{Income Replacement Rate} = \frac{\text{Net WHSCC benefit} + \text{Net CPPD} + \text{Net Other Income}}{\text{Net Pre-Accident Earnings}}$$

An Income Replacement Rate of 100% means that an injured worker is receiving the same net income (take home pay) after the injury than he/she was receiving before the injury. An Income Replacement Rate in excess of 100% means that an injured worker is receiving more net income after the injury than he/she was receiving before the injury and vice versa for those below 100%.

The following table contains a summary of the ***Income Replacement Rates*** for those with gross incomes lower than the 2005 Maximum Compensable and Assessable Earnings of \$46,300.

| Gross Annual Earnings (2005 Level) | Count | Average Pre-Accident Net Weekly Earnings (2005 level) | Average Replacement Ratio | Minimum Replacement Ratio | Maximum Replacement Ratio |
|---|--------------|--|----------------------------------|----------------------------------|----------------------------------|
| Less than or equal to \$46,300 | 792 | \$391 | 91% | 83% | 107% |

This table shows that there are no injured workers with gross pre-accident earnings up to \$46,300 having income of less than 83% of his/her net take-home pay before the accident. An injured worker who does not qualify for CPPD benefits would get the 80% benefit rate specified in the *Act*. Stated in another way, workers in receipt of CPPD benefits have better total net income after their injury than workers who do not. The average ***Income Replacement Rate*** is 91% compared to 80% for those who do not qualify for a CPPD benefit.

As income increases, the replacement ratio becomes progressively lower. This is caused by the effect of the MCAE and not by the approach used for CPPD offsets. However, altering the CPPD offset for injured workers at higher earnings level can help mitigate the effect of the MCAE on their income replacement levels. Further, the Commission does not make any deductions for the portion of the CPPD benefits that are paid in relation to dependent children of the injured worker.

The practices with regards to CPPD offsets are as complex as they are varied when conducting a review of other provincial systems. The workers' compensation boards of Canadian Territories were excluded from this review as they do not operate under a wage loss system. There are at least five different approaches to applying CPPD offsets in Canada with some unique variations among jurisdictions using a similar approach. For example, Ontario and Newfoundland and Labrador use the same approach. However, Ontario deducts 85% of the net CPPD benefit whereas Newfoundland and Labrador deducts 75% of the net CPPD benefit.

Determining which approach produces the best benefits overall is not an easy exercise. In some injured worker circumstances, one approach will make one jurisdiction look better than another but for a different set of injured worker circumstances, the situation will be reversed. It became clear to members of the Committee that inter-jurisdictional comparisons of workers' compensation benefits are fraught with difficulty and that isolation of one element of the benefits in one jurisdiction to conclude that the overall benefit package is better or worse than another is not sufficient to reach such a conclusion. In conducting its review, the Committee concluded that:

- It is important to adhere to the basic principles behind a disability income insurance system to support rehabilitation and return to work efforts.
- The CPPD offset approach used in Newfoundland and Labrador is competitive with that used in other jurisdictions and would rank it first or second for most, if not all injured worker circumstances, when compared to other jurisdictions in Atlantic Canada.
- The income replacement levels of injured workers affected by the current CPPD offset approach, except for those earning above the MCAE, is adequate with a minimum of 83% and an average of 91% compared to a benefit of 80% for an injured worker who does not qualify for CPPD.
- The impact of changing the current approach on the cost of the system and on the benefits paid to certain injured workers was not warranted based on the result of the review.

As a result, the Committee recommends the following:

Recommendation #36: The Committee recommends that the Commission retain the current approach to CPPD offset for injured workers earning less than the MCAE at the time of injury.

Recommendation #37: *The Committee recommends that the portion of the CPPD offset to be deducted from the workers' compensation benefit of an injured worker earning more than the MCAE be adjusted such that the deduction of the CPPD benefit does not result in the total post accident income of the injured worker from all sources (including disability income benefits from a group insurance program) to fall below 80% of net pre-accident income before considering the application of the MCAE. This recommendation is intended to mitigate the effect of the MCAE on higher earners who end up with a long term disability.*

Recommendation #38: *Given the complexity of the issue, the Committee recommends the Commission develop a brochure that specifically addresses the issues relating to the application of CPPD offsets.*

Proportionate Compensation – Following the 2001 Task Force Review, the Commission adopted a policy to reduce or proportion compensation benefits where there was impairment unrelated to a work injury. The Committee heard from individuals who believe the Commission is penalizing workers for conditions that were asymptomatic prior to an injury. They believe that if the condition did not affect or impair their ability to do their work pre-injury, then it should not impair or affect compensation received after the injury. It is the Committee's view that the Commission should continue to proportion benefits when appropriate; however, the Commission should not use conditions that did not affect a worker's earnings capacity prior to the injury, as a proportioning factor in calculating a worker's benefits post-injury.

Recommendation #39: *The Committee recommends that the Commission not proportionately factor in pre-existing conditions, which did not previously impair a worker's earning capacity, in calculations for temporary earnings loss benefits or extended earnings loss benefits.*

Coverage for Domestic Workers – In a province where universal coverage of all workers is a hallmark of our compensation system, domestic workers remain excluded. The Committee considers this an anomaly, such that this is probably the only class of workers not covered. The Committee recognizes this is a difficult area, but other jurisdictions have developed a means to address it. In keeping with the principles of universal coverage, the Committee recommends the following:

Recommendation #40: *The Committee recommends that the provincial government amend the Act to recognize domestic workers in private residences as workers under the definition of worker in the Act and thus be entitled to compensation benefits.*

Recommendation #41: *The Committee recommends that the Commission, in consultation with all stakeholders, develop the guidelines, which describe the requirements of private residents to register as employers with the Commission for the purposes of assessment, coverage, and definition of domestic workers.*

Firefighters' Cancers – Many jurisdictions across Canada have recognized cancers in career firefighters as occupational diseases. The Committee heard presentations documenting the variance in the types of compensable cancers across these jurisdictions. However, there is a common core of compensable cancers recognized by many jurisdictions except Newfoundland and Labrador. Given this broad recognition across the country, the Committee believes the Commission should recognize these cancers as an occupational disease for firefighters in this province.

Recommendation #42: The Committee recommends that the Commission undertake to submit to the provincial government the respective change to the Act to allow for presumptive non-rebuttable coverage for cancers contracted by persons in the occupation of firefighting. The extent of the coverage is to be determined based on a review of cancers recognized by other jurisdictions as related to the occupation of firefighting.

5.6 Review Processes

There are two recognized levels of review within the workers' compensation system, internal review and external review. A single review specialist or Review Commissioner conducts both review processes. The function of these processes is to ensure that Commission decisions are consistent with the *Act*, its regulations, and its policies. Within the Commission, policy establishes the process of internal review while the *Act* governs the processes for external review.

The Committee has extensively considered the effectiveness and efficiencies of both processes. It has reviewed the presentations from the public consultations and reflected on the views expressed at the roundtable discussion. The Committee concludes that both processes fail to meet the minimum standards of independence, fairness, and administrative justice.

Internal Review – In reviewing the Internal Review process, the Committee notes the following:

- The turnaround time for internal review is 45 days.
- The annual caseload is approximately 1100 cases.
- The overturn rate on the original decision is 12%.
- The same body that made the decision initially reviews the decision.
- A paper review is conducted often in isolation of the worker and employer.
- Workers have concerns about the requirement to proceed through internal review when the likelihood of a successful review is very low.
- Employers have concerns about insufficient time to prepare for cases in the internal review process.
- It does not meet the overall needs of workers and employers for a fair process.

The Committee believes it is critical to ensure that the first decision is the correct and final decision. The Committee has offered commentary and made recommendations concerning the role and responsibilities of the Case Managers as a means of facilitating effective decisions for injured workers and employers. The Committee recognizes there are occasions when a review or appeal is necessary. However, the Committee also believes that there should not be another internal level of review beyond the Case Manager. The Commission must provide the framework and the support to ensure a correct and well-reasoned initial decision in the timeliest manner possible.

The Committee notes that a considerable percentage of internal review issues relate to benefit entitlement and costs. These issues can have a profound impact on the lives of the individuals affected by the decisions. These individuals have a right to an independent process and an objective review in the most efficient manner possible. The Committee concludes that the internal review as it exists today does not fulfill this requirement, nor is it perceived as such.

The Committee recommends the Commission develop and implement quality control processes and performance indicators to ensure the correctness of the initial decision.

Recommendation #43: The Committee recommends that the Commission eliminate the internal review process as the decisions of Intake Adjudicators and Case Managers will represent the final decision of the Commission.

External Review (Workplace Health, Safety and Compensation Review Division) – The external review process is the final review of a Commission decision under the Act for workers and employers. The Committee notes the following in its review:

- Approximately 25% of Review Commissioner decisions do not result in a “final” decision.
- The average turnaround time on cases is in excess of 150 days.
- There is a statutory turnaround time of 60 days, which is currently not being met.
- The annual caseload is approximately 500 cases.
- There is a lack of adequate representation of workers and employers.
- All cases are reviewed through a hearing process by a single adjudicator.
- The right of reconsideration and the reconsideration process is unclear.

The Committee has considered the issues respecting the external review process. Simply stated, the purpose of the external review is to review and decide. The process by which this is conducted must bring closure for workers and employers. Based on the evidence it reviewed, the Committee does not believe the current process serves this purpose, nor does it meet the standards for prompt compensation, efficiency, and impartiality as defined within the Meredith Principles.

The Committee notes that there are a considerable number of cases referred back to the Commission by Review Commissioners. As well, current legislative provisions permit additional review through a reconsideration process. This has created a process where an initial decision can be reviewed several times.

The Committee finds the single Review Commissioner model to be an inappropriate structure given the complexity and sensitivity of claims brought forward for review. Regardless of the diligence and good intentions of a Review Commissioner, his/her review is still the conclusion of a single person. Given the significance of a decision at this level of review, the Committee believes that more than one opinion should influence the decision-making process.

The Committee finds that a tripartite system of review, established from a panel of representatives and chaired by a neutral Chief Appeal Commissioner, is necessary. In the interests of time and efficiency, there must also be a consultative intermediary level of review by an Appeal Resolution Officer without a hearing process. This level of review will ensure earlier resolution to issues that are less complex and will identify appeals that may be without merit. This also provides an opportunity for collaboration between the parties. This model of review would also provide the option of proceeding to a full hearing should the parties be dissatisfied with the outcome at the intermediary level. In addition, there must be an administrative position that works with the Panel and the Chief Appeal

Commissioner to provide the support necessary to manage adequately the administrative and adjudicative work of the Tribunal.

The Committee believes significant efforts must be exerted to ensure that the principles of administrative justice are applied diligently and proficiently. The Committee is clear that this cannot be accomplished under the current framework.

Recommendation #44: The Committee recommends moving to a tripartite appeal system designed to operate with a Panel of Commissioners consisting of representatives from worker and employer groups. The Panel of Commissioners should also include an independent, salaried Chief Appeal Commissioner and a part-time Vice-Commissioner position. The tripartite system should be established within the following framework:

- a) Members appointed to the Tribunal should be equally represented through worker and employers' nominees who have significant background and experience in the area of workers' compensation.***
- b) The Tribunal's operations are guided by a Chief Executive Officer, responsible to ensure the efficient and consistent operation of the adjudicative and administrative functions of the Tribunal.***
- c) The new appeal process include the provision of appeal resolution officers who would conduct a preliminary review, in consultation with the worker, employer, and Commission to assist in resolving the matter without a hearing. If there is no resolution, a hearing before a panel of the Tribunal may be held.***
- d) The Commission's Board of Directors has the sole right to apply for reconsideration of a Tribunal decision.***

VI. CONCLUSION

The Committee believes that collaboration among all stakeholders is essential to implementing the vision of a responsive, responsible workers' compensation system in this province. The Commission, employers, and workers working together can make a difference in claim duration. The Committee heard evidence from employers and workers demonstrating the effectiveness of several interventions in supporting a safety-focused work culture and a sensitive support process for injured workers. These initiatives included training and education, collaborative workplace/sector committees, and improved data collection and use of performance indicators.

In carrying out its work, the Committee also identified the benefits of a regular statutory review process on all aspects of the workers' compensation system as governed by the *Act* in this province. The Committee's composition, with Commission board members and employer and labour representatives, created an environment where the Committee members could examine and discuss issues relating to the system from multiple perspectives. The richness of discussion and debate furthered the understanding and appreciation for stakeholder issues with respect to workers' compensation.

The Committee believes strongly that regular reviews of the *Workplace, Health, Safety and Compensation Act* using this collaborative and multi-disciplinary model permits accountability, scrutiny, and consideration of the evolving and challenging work environments of the 21st century while upholding the principles that underpin our compensation system.

VII. SUMMARY OF RECOMMENDATIONS

Accountability and Responsibility

Recommendation 1: The Committee recommends that the Commission develop, through stakeholder consultation, an enhanced system of performance indicators to allow it to more effectively manage and measure the various components of claim duration.

Recommendation 2: The Committee recommends that the Auditor General should include the operations of the Commission as part of his or her regularly scheduled routine of audits.

Recommendation 3: The Committee recommends that the composition of the Board of Directors consist of four employer representatives, four labour representatives, and an independent Chairperson. The Committee also recommends that appointments to the Board be selected from nominees submitted by the two stakeholder groups listed.

Client Services

Recommendation 4: The Committee recommends that the Commission establish a protocol for improving client service. The protocol should include:

- a) guidelines respecting inquiry response times
- b) a review of current standard correspondence for clarity and readability
- c) a review of the telephone system
- d) specialized training to frontline employees.

Recommendation 5: Given the ever-increasing complexities of the system, the Committee recommends that the Commission recognize Intake Adjudicators and Case Managers as the most important facet of the Commission's interface with workers and employers. The Committee recommends that the Commission take all the necessary action to ensure that candidates for these positions are well selected, well trained, and well qualified.

Recommendation 6: The Committee recommends that the Commission take immediate steps to provide Intake Adjudicators and Case Managers with substantially increased support in the areas of training, communications, medical management, and decision-making.

Recommendation 7: The Committee recommends that Early and Safe Return to Work Committees be mandatory in workplaces under the Act. Large employers, defined currently by the Commission as those with assessments of \$54,000 per year or more, shall establish an Early and Safe Return to Work Committee separate from their Occupational Health and Safety Committee. Small employers, currently defined as those with assessments less than \$54,000, shall designate the responsibilities of Early and Safe Return to Work to their already established Occupational Health and Safety

Committees. The Committees should include a minimum 50 per cent worker representation.

Recommendation 8: The Committee recommends that mandatory training be required for a minimum of two representatives, one worker and one employer, on the Early and Safe Return to Work Committee or the Occupational Health and Safety Committee. The mandatory training should be in the area of early and safe return to work, its principles, and the policies of the Commission.

Recommendation 9: The Committee recommends that the Commission, with the implementation of mandatory Early and Safe Return to Work Committees, provide greater support and assistance to workplace parties to build a capacity within their workplace to manage better their return to work programs.

Recommendation 10: The Committee recommends that the Commission develop detailed performance indicators in the management of early and safe return to work. The performance indicators should monitor aspects of the process in sufficient detail to provide reliable benchmarks and data to measure desired outcomes and targets and the effect on claim duration.

Recommendation 11: The Committee recommends that the provincial government amend Section 89.1(2) of the Act to state from date of disability rather than from date of injury.

Recommendation 12: The Committee recommends that the Commission provide greater flexibility in its approach to labour market re-entry. The Commission must adopt a practice that evaluates a worker's labour market re-entry options beyond an evaluation prescribed entirely by the costs to the system.

Recommendation 13: The Committee recommends that the Commission ensure that Labour Market Re-Entry Planners conduct an adequate and comprehensive analysis of labour market re-entry options that takes into account the best interests of the worker while restoring, where possible, pre-injury earnings. Labour market re-entry analysis must give due diligence to the physical, emotional, and psychological health of the worker.

Recommendation 14: The Committee recommends that the Commission develop a framework to monitor the labour market re-entry program and the labour market re-entry service providers.

Recommendation 15: The Committee recommends that the Commission recognize the integral role of the medical community in the successful management of claims by taking a more proactive role in developing formal and collaborative relationships with all professional medical service providers.

Recommendation 16: The Committee recommends the creation of a formal protocol between the Commission and all professional medical service providers beyond that already established through the joint Committees, Memorandums of Understandings, service agreements, etc. This would include regularly scheduled meetings, agenda items, formal communications, et cetera.

Recommendation 17: The Committee recommends that the Commission, in consultation with the stakeholders, develop a policy to manage the process for independent medical examinations and it should be guided by the following:

- a) The process must be managed solely by the Commission.
- b) IMEs are permitted for functional abilities information only.
- c) A written request may be made to the Commission for an IME by either an employer or a worker.
- d) The IME will be conducted at the expense of the worker or employer making the request.
- e) The process must be coordinated by the Commission through a physician of the Commission's choice.
- f) The final report on the examination will be forwarded to the Commission.

Recommendation 18: The Committee recommends that the Commission amend Form 8/10 to delete Section D – Not Capable of Work at This Time.

Recommendation 19: The Committee recommends the provincial government amend Section 89.1 of the Act to delete references to the term “medically” from the phrase “medically able.”

Recommendation 20: The Committee recommends that the scope of the services provided by the Worker and Employer Advisors be expanded to include representation at the external appeal process including participation in the hearing process. Further, the contracts for these positions should include a formal reporting requirement with regular documented meetings between the Commission, the Newfoundland and Labrador Federation of Labour and the Newfoundland and Labrador Employers' Council.

Occupational Health and Safety

Recommendation 21: The Committee recommends the continuation of the current training model proposed by the Newfoundland and Labrador Federation of Labour for workers' compensation training for unions and unionized employees.

Recommendation 22: The Committee recommends that the Commission immediately establish an Occupational Disease Advisory Panel consisting of representatives from workers, employers, health care providers, and a representative from the Commission to review the area of occupational disease. The work of the Committee should be strategic and guided by the following:

- a) to define Occupational Disease
- b) to revise and amend the current regulatory framework
- c) to establish a protocol for policy making and adjudication
- d) to review Occupational Health Clinics and make recommendations around establishing them.

Recommendation 23: The Committee recommends proceeding with a comprehensive health study on the former miners of Baie Verte. The Committee also recommends that the study be established as a partnership between the Government of Newfoundland and Labrador and the Commission.

Recommendation 24: The Committee recommends that the Commission continue current initiatives aimed at exploring strategies to address shellfish asthma. This issue should be referred to the Occupational Disease Advisory Panel for further analysis and direction.

Recommendation 25: The Committee recommends that the Commission recognize the extensive use of inhalers/puffers in shellfish processing environments and provide medical aid coverage accordingly.

Recommendation 26: The Committee recommends that in addition to existing Sector Committees, the Commission assist with the development and coordination of Sector Committees in key sectors such as manufacturing, health care, fishery, and mining. The Sector Committees should be established in accordance with the model used by the Newfoundland and Labrador Construction Safety Association.

Recommendation 27: The Committee recommends that the assessment and collection process for fish harvesters remain as it is currently structured.

Recommendation 28: The Committee recommends that the Commission and the proposed Fishery Sector Committee collaborate with the Professional Fish Harvesters Certification Board to establish safety-training programs for fish harvesters.

Recommendation 29: The Committee recommends that the Commission collaborate with the Department of Fisheries and Aquaculture to manage proactively the assessment and collection of workers' compensation premiums on out-of province fish buyers when they purchase a license to operate in the province.

Recommendation 30: The Committee recommends that the Provincial government undertake the merging of the Occupational Health and Safety Branch of the Department of Government Services with the operations of the Commission.

Recommendation 31: The Committee recommends that the high school program Workplace Safety 3220, be introduced to high school students beginning in Level I as a mandatory part of the high school curriculum.

Recommendation 32: The Committee recommends that workplace safety programming be a mandatory requirement of all post secondary educational programs in the province.

Benefits

Recommendation 33: The Committee recommends that the Commission maintain wage loss benefits at their current level. The Commission's Board of Directors should consider changes to wage loss benefits on an annual basis similar to the manner in which the Board considers changes to assessment rates.

Recommendation 34: The Committee recommends the Provincial government amend the Act to provide wage loss benefits at 100 per cent of net pre-injury earnings for police officers, career firefighters, and correctional officers when injured while responding or engaged in an emergency situation where the potential for injury exceeds the normal protection offered under the Occupational Health and Safety Act.

Recommendation 35: The Committee recommends that the Commission apply a retroactive CPI adjustment to the maximum compensable earnings ceiling for 2003 and 2004 to be applied to future claims only. The Committee believes the Commission should apply future increases to the ceiling using the formula prescribed by Section 21(1) (2).

Recommendation 36: The Committee recommends that the Commission retain the current approach to CPPD offset for injured workers earning less than the MCAE at the time of injury.

Recommendation 37: The Committee recommends that the portion of the CPPD offset to be deducted from the workers' compensation benefit of an injured worker earning more than the MCAE be adjusted such that the deduction of the CPPD benefit does not result in the total post accident income of the injured worker from all sources (including disability income benefits from a group insurance program) to fall below 80% of net pre-accident income before considering the application of the MCAE. This recommendation is intended to mitigate the effect of the MCAE on higher earners who end up with a long term disability.

Recommendation 38: Given the complexity of the issue, the Committee recommends the Commission develop a brochure that specifically addresses the issues relating to the application of CPPD offsets.

Recommendation 39: The Committee recommends that the Commission not proportionately factor in pre-existing conditions, which did not previously impair a worker's earning capacity, in calculations for temporary earnings loss benefits or extended earnings loss benefits.

Recommendation 40: The Committee recommends that the provincial government amend the Act to recognize domestic workers in private residences as workers under the definition of worker in the Act and thus be entitled to compensation benefits.

Recommendation 41: The Committee recommends that the Commission, in consultation with all stakeholders, develop the guidelines, which describe the requirements of private residents to register as employers with the Commission for the purposes of assessment, coverage, and definition of domestic workers.

Recommendation 42: The Committee recommends that the Commission undertake to submit to the provincial government the respective change to the *Act* to allow for presumptive non-rebuttable coverage for cancers contracted by persons in the occupation of firefighting. The extent of the coverage is to be determined based on a review of cancers recognized by other jurisdictions as related to the occupation of firefighting.

Review Processes

Recommendation 43: The Committee recommends that the Commission eliminate the internal review process as the decisions of Intake Adjudicators and Case Managers will represent the final decision of the Commission.

Recommendation 44: The Committee recommends moving to a tripartite appeal system designed to operate with a Panel of Commissioners consisting of representatives from worker and employer groups. The Panel of Commissioners should also include an independent, salaried Chief Appeal Commissioner and a part-time Vice-Commissioner position. The tripartite system should be established within the following framework:

- a) Members appointed to the Tribunal should be equally represented through worker and employers nominees who have significant background and experience in the area of workers compensation.
- b) The Tribunal's operations are guided by a Chief Executive Officer, responsible to ensure the efficient and consistent operation of the adjudicative and administrative functions of the Tribunal.
- c) The new appeal process includes the provision of appeal resolution officers who would conduct a preliminary review, in consultation with the worker, employer, and Commission to assist in resolving the matter without a hearing. If there is no resolution, a hearing before a panel of the Tribunal may be held.
- d) The Commission's Board of Directors has the sole right to apply for reconsideration of a Tribunal decision.

Appendix A
Consultation Paper

Finding the Balance

FINDING THE BALANCE

**WORKPLACE HEALTH, SAFETY &
COMPENSATION REVIEW
2005-2006**

***CONSULTATION PAPER
DECEMBER 12, 2005***

“Workers’ compensation law is founded upon five principles.

These are that there should be:

- (1) compensation without fault, (2) security of payment,***
- (3) collective liability on the part of employers,***
- (4) an administrative body to collect assessments and disburse benefits and***
- (5) an adjudicative body to assess quantum.”***

*Dickson C.J.
Supreme Court of Canada
April 24, 1989
Workers’ Compensation Act 1983 (Newfoundland)
ss.32 & 43*

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FOREWORD

As directed by the Lieutenant-Governor in Council, a Committee has been established to conduct a review of Newfoundland and Labrador's workers' compensation system. Pursuant to Section 126 of the *Workplace Health, Safety and Compensation Act*, the mandate of the Committee is to review, consider, report and make recommendations upon matters respecting the *Act*, the *Regulations*, and the administration of each, as the Committee considers appropriate.

The Committee has prepared this Consultation Paper to help focus the public consultations and to invite submissions from workers, employers and others about suggested improvements and changes to the system.

The Consultation Paper is intended to be a means for open, productive and proactive discussion throughout this review process. It outlines some key issues in the system and provides a framework focused on obtaining constructive feedback for the Committee's consideration.

The review process is an opportunity for workers, employers and others to have input into the development and enhancement of the workers' compensation system. To that end, the Committee will conduct a series of Committee meetings, public consultations and round table discussions to ensure it hears the comments and recommendations of the owners of the system, the workers and employers of the province.

The report of the Committee's recommendations must be submitted to the Minister of Human Resources, Labour and Employment by March 31, 2006 for government's consideration.

INTRODUCTION

In 2004, there were 8,366 new injuries in Newfoundland and Labrador. Approximately 4,800 workers filed claims for wage loss benefits with the Workplace Health, Safety and Compensation Commission (the Commission). The claims cost recorded by the Commission in 2004 was \$131 million. This number merely represents the financial cost of the claims on record at the Commission. The effect of workplace accidents and injuries on individual workers, their families and their employers, by far, exceed this amount in terms of consequence and value.

The Commission has been established to provide the owners of this system, the workers and employers of our province, with the framework to administer this no-fault compensation program. The Commission administers this system; however, it does not entirely control it. Nor does its control rest singularly with workers and employers. It rests with the collaborative efforts of Occupational Health and Safety officials, the Commission and the workers and the employers who own it.

The success of this review hinges on the participation and input of workers, employers and others who have a role in the system. All participants must ensure that their views are expressed and that their recommendations for improvements to the system are understood. As a Committee, we look forward to hearing these views through discussions and submissions. We invite you to attend the sessions throughout the province and we assure you that your input will receive due consideration and analysis as we explore opportunities for recommending changes to further advance the progress of the workplace health, safety and compensation system in Newfoundland and Labrador.

THE REVIEW PROCESS

The Committee will provide a forum for workers, employers and others to present their views in a manner that is open, independent and conducive to constructive discussion.

In January 2006 the Review Committee will begin public consultation sessions at various centers throughout the province. Following the province-wide consultation process, round table discussions will be conducted with all partners in the workers' compensation system to further explore the ways and means by which the system can better support workers and employers.

The statutory review committee consists of:

E. Bruce Peckford - Chairperson
Joan Cleary - Vice Chairperson and Employer Representative
David Burry - Employee Representative
Stella Mailman - Member At Large Representative
Reg Anstey - WHSCC Board of Directors Representative

Following the consultation process, the Committee will conduct its analysis of the submissions and submit its recommendations to government.

PROFILE OF THE SYSTEM

Workers' compensation is a mandatory, employer funded, no-fault system developed to protect workers and employers in the event of workplace injuries. The owners of the system are the workers and employers of the province. Others that play critical roles are Occupational Health and Safety officials, service providers in the health care community and the Commission.

There are many facets of the workers' compensation system and equally many challenges. The fundamental components of today's system involve injury prevention through safe workplaces and return to work strategies for the well-being of all. The system must ensure that for those who are unable to return to work or for those where retraining is not a viable option, that there is an adequate response to their need for ongoing benefits and support. Obviously, the system must also be in a position to financially sustain these benefits now and in the future.

“...never in the history of this province, has there been a greater need to emphasize safety as the first line of defence against preventable accidents and workers' compensation costs.”

*Workers' Compensation
Statutory Review Report, 1997*

The partners in the system must commit to providing all the necessary resources to ensure that workplaces maintain and promote sound safety strategies to reduce workplace injuries and illnesses. Efforts toward improved ownership and accountability for the prevention of injuries and early and safe return to work initiatives must continue.

The Commission

The role of the Commission is to administer the *Workplace Health, Safety and Compensation Act* on behalf of the owners of the system. The Commission is responsible for providing a detailed and comprehensive management approach to addressing the effects of the ever-changing dynamics of workplace injuries. This

Accident and illness prevention is everyone's responsibility.

WHSCC Annual Report 2004

requires building relationships with the partners of the system for improved performance and enhanced service delivery while maintaining fiscal responsibility. The

Commission cannot and should not act alone in the administration of this system. It must continue to draw on the resources of its partners and to explore opportunities which further educate and promote the necessity for collaboration and participation of both workers and employers to ensure success in the system.

Funding the System

Workers' compensation was created on the premise that there is no linkage between the compensation payable and the ability to find fault. It is a no-fault compensation system. Employers fund the system through assessments and, in return, cannot be sued for injuries arising out of employment in the workplace. Employer registration with the Commission is mandatory for all employers with one or more employees and coverage is extended automatically to all their workers.

Assessments paid by employers go into a common injury fund and overall systems costs are shared through collective liability. More than 14,000 employers and 200,000 workers currently share in the system.

RECENT GAINS & SUCCESSES

In 2001 the Task Force Report “Changing the Mindset” was presented to government. It contained recommendations for a comprehensive plan to address challenges and to ensure a fair and sustainable system for the future.

Government supported these recommendations and an aggressive implementation plan was developed by the Commission. As a result, changes were made in the areas of injury prevention; early and safe return to work; claims adjudication and claims management; employer assessment rates; accountability and communications.

Recent progress in these areas has presented some positive indicators of significant change.

- The total number of persons participating in Occupational Health and Safety training has increased from 8,744 in 2002 to 14,696 in 2004.
- Lost time incident rates have decreased from 3.0 in 2001 to 2.2 in 2004. (The incident rate is the number of lost time claims per 100 people employed.)
- The average claim duration at the Commission has dropped from 116 days in 2001 to 102 days in 2004.
- Average required assessment rates for employers have decreased from \$3.98 in 2001 to \$2.75 for 2006.
- The funding position of the system has improved to 82.9% in 2004. (New accounting standards for the valuation of long-term investments implemented in 2004 increases the funding position to 91.4 %.)
- *Please refer to the 2004 Annual Report of the Commission for further statistical information.*

CHALLENGES TO BE MET

Though there have been gains in recent years, these have not come without a cost - a cost to workers and employers. While the road ahead must continue to build upon these gains, it must also recognize the need for balance in providing benefits and services as well as ensuring there is a sustainable system.

While recognizing the need for balance, it must still be acknowledged that average employer assessment rates in this province are the highest in Canada. As well, though the maximum ceiling on workers' compensation benefits is \$46,275 per annum, wage loss benefits for workers remains one of the lowest in Canada.

A resolution to these challenges rests in finding a balance of fairness and affordability that must be acquired through accident prevention and efficient service delivery. The Committee invites you to assist in finding that balance by recognizing that you are the owners of the system. As owners, you must partner to ensure this system provides you with a framework that addresses the needs and challenges of today's evolving workplaces.

Some Topics for Discussion

Client Service

In administering the system, service to the owners **must** be a priority. The effects of having excellent service do a great deal to advance confidence, credibility and trust in the system. In reviewing service issues and service delivery concerns, the following questions are provided for your consideration and recommendations.

- ⇒ How can the workers and employers of the province be better supported?
- ⇒ Should the roles of the Workers' and Employers' Advisor be further explored?
- ⇒ How can turnaround times be reduced in the areas of review and appeal to provide a more effective and efficient service?
- ⇒ Should an alternative dispute program be offered to address concerns and objections to Commission decisions?
- ⇒ Should a Client Relations Office be established to enhance quality assurance?

Education

The promotion of injury prevention through education and awareness of safety issues must be seen as the foundation of creating a safety-minded culture not only for the benefit of the workers' compensation system but for society generally. Strategies aimed at bringing forward a strong and clear message that safety must come first is essential to this system in particular. An accident prevented benefits all. Areas to consider with respect to prevention education and awareness should include consideration of the following:

The percentage of soft tissue injuries to total injuries increased from 59% in 2003 to 63% in 2004.

WHSCC Annual Report 2004

- ⇒ How can the approach to soft tissue injury prevention and return to work strategies be improved?

- ⇒ How can partners work together to identify workplace hazards and to use research knowledge for prevention and planning purposes?
- ⇒ Should the role of the Commission with respect to occupational health and safety and educational awareness be reviewed?
- ⇒ What more could be done to better promote health and safety among the youth in our province?

Claims Management

Claims management represents the largest and most complex functioning interactive area of the workers' compensation system. It is in the management of workers' compensation claims where all partners collectively come together to ensure the spirit and intent of the fundamental principles of the system are applied in the best manner possible.

Claims management issues are diverse and continuously change in response to emerging concerns. Though there are many claims management areas to explore, the following are some questions provided for your consideration. This outline is simply a starting point. It is expected that you will provide further suggestions for enhancements to your system.

- ⇒ What policies of the Commission should be reviewed with respect to changes in the areas of benefit entitlement?
- ⇒ Are there areas where workforce coverage issues need to be reviewed?
- ⇒ How can health care providers play a greater role in the early and safe return to work processes?
- ⇒ Are the mandatory cooperation and return to work obligations effectively reducing the duration of claims and the number of new claims going on long term benefits?

Finances

Sustaining a financially secure system that can withstand the costs of current and future workers' compensation claims is a continuing concern. The Commission is responsible for collecting assessment revenue from employers to cover the cost of injuries and the administration of the system. The strength of the system is evaluated through an analysis of what is owed and how much there is to pay out.

The Commission has identified in their 2004 Annual Report a funding position of 82.9%. This means that it can only pay out 82.9% of its costs if they were all payable at the end of 2004. (New accounting standards for the valuation of long-term investments implemented in 2004 increases the funding position to 91.4 %.)

Long term financial viability of the system will have to be considered throughout the review process. Some issues to consider with respect to finances are:

- ⇒ Is there a need to consider changes to the current method of establishing assessments?
- ⇒ Is there a need to further review the PRIME model recently introduced?
- ⇒ What effects would benefit and assessment changes have upon the financial picture of the system?

CONCLUSION

There are major areas of common concern shared by the partners of the workers' compensation system. A resolution that focuses on striking a balance between the needs of workers and the needs of employers within a fiscally sustainable system will, undoubtedly, be the ideal solution.

It is hoped that, through this Consultation Paper, we have engaged the partners in the system to provide different perspectives and substantive recommendations that can become the cornerstone of the building blocks of tomorrow's workers' compensation system.

As a Committee, we expect your input and invite you to fully participate in this process. You have an obligation to come forward to help safeguard the integrity of this no-fault, industry-funded compensation program to help make it the best in the country.

Appendix B

List of Participants in Public Consultations

Monday January 9, 2006

Labrador City, Two Seasons Inn

- Iron Ore Company of Canada
- United Steelworkers of America, Local 5795
- United Steelworkers of America, Local 6285

- Green Bay Fibre Products
- United Steelworkers of America (District 6)
- Margaret Foster
- Mervin Regular
- Anthony Shea
- Gary Rideout

Monday January 9, 2006

Goose Bay, The Labrador Inn

- John Thomas
- Robert Pasha

Tuesday January 10, 2006

Plum Point, Plum Point Motel

- Clyde & Clift Intrust Ltd.
- Anita Samson
- James Samson
- Fish Food and Allied Workers Union
- Israel Genge

Wednesday January 11, 2006

Corner Brook, Greenwood Inn & Suites

- Fish Food and Allied Workers Union
- Harold Evans
- Kimberly Austin for Lindy Austin
- Pauline Tessier
- Way's Transport
- Newfoundland and Labrador Injured Workers' Association – West Coast
- Humber Valley Construction
- Todd Byrne

Thursday January 12, 2006

Stephenville, Holiday Inn

- Aloysius Gallant
- Bay St. George Residential Support Board
- Jamie Snow
- Jerome Bennett
- Gulf Massage & Physiotherapy Ltd.
- Gerry Clarke
- Anthony March

Monday January 16, 2006

Grand Falls-Windsor, Robin Hood Hotel

- Neil Batstone
- Harold Peckford
- Fish Food and Allied Workers Union
- Central Newfoundland Injured Workers' Support Group

Monday January 16, 2006

Gander, Hotel Gander

- Kirk Manuel
- Donna Hoff
- Willis Earle
- Cooperative Retail Sector – Gander Co-op
- Angus McLoughlin
- Fish Food and Allied Workers Union

Tuesday January 17, 2006

Clarenville, St. Jude Hotel

- Jean Philpott on behalf of Dominic Philpott
- Fish Food and Allied Workers Union
- Annie Baker
- Clarenville Drydock Ltd.
- BJ Roxon
- North Atlantic Petroleum
- Melvin Purchase
- United Steelworkers of America Local 9316
- Newfoundland and Labrador Lumber Producers Association
- D&D Transport
- Fish Food and Allied Workers Union
- Fish Food and Allied Workers Union
- St. Jude Hotel

Monday January 23, 2006

Marystown, Hotel Marystown

- Christine Evans
- Mary Abbott

Friday January 13, 2006

Baie Verte, Baie Vista

- Fish Food and Allied Workers Union

- Bernice Martin
- Town of St. Lawrence
- Wesley Crocker
- Canadian Autoworkers Union Local 20
- Fish Food and Allied Workers – Marystow St. Lawrence
- Fish Food and Allied Workers – Offshore Fleet Division

Tuesday January 24, 2006

St. John's, Battery Hotel and Suites

- Shawn Sullivan
- Newfoundland and Labrador Teachers' Association
- Newfoundland and Labrador Injured Workers' Association
- Wayne Crane
- Cathy Kean
- Linda Lee
- Jean Hurley
- Paul Hurley
- Jim Walsh
- Elizabeth Corcoran
- Hilda Whelan on behalf of Surviving Spouses of Deceased Workers
- Newfoundland and Labrador Construction Safety Association
- United Steelworkers of America
- College of Physiotherapists
- Leslie McGrath
- Len Sparks
- Thomas Murphy
- Association of Seafood Producers – Processing
- William Hanlon
- Donna Angel
- Josephine Thompson
- Newfoundland and Labrador Carriers Association

- Gail Brockerville
- Barry Paul
- Country Ribbon Inc.
- Safety Net, MUN
- Newfoundland and Labrador Chiropractic Association
- Newfoundland and Labrador Federation of Labour
- Hospitality Newfoundland and Labrador
- Fishery Products International
- St. John's Firefighters Association
- Mike Murphy
- Eileen Husk
- Shirley Peddle
- Terry Brennan
- Jerome Lawlor
- Delores Hynes for Patrick Hynes
- Bill Dodd
- Rodney Thompson
- Barbara Frizzell

Thursday January 26, 2006

St. John's, Battery Hotel and Suites

- Canadian Union of Public Employees
- Colin Foley
- Jacques Perrot
- Pamela Wheaton for Craig Gosse
- Raymond Pardy
- Wade Mahoney
- Safety Engineering Technologists
- Canadian Federation of Independent Business
- Terry Lawrence
- Garfield Best
- Olympic Construction
- St. John's Board of Trade
- City of Mount Pearl
- Newfoundland and Labrador Firefighters Association
- Association of Seafood Producers - Harvesting
- Herbert Spurrell
- Garfield Bursey
- Hilda White for Leo White
- Fred Palmer
- Longshoreman's Protective Union, Local 1953
- Canadian Restaurant & Food Services Association

Wednesday January 25, 2006

St. John's, Battery Hotel and Suites

- Ed Keller
- Florence Morgan
- Physiotherapy Private Practice Owners
- Mike Guilfoyle
- Robert Thistle
- Angus Campbell
- Maxine Stevens

Friday January 27, 2006

St. John's, Battery Hotel and Suites

- Fish Food and Allied Workers
- Newfoundland and Labrador Health Boards
- Gerard Power
- Evelyn Porter
- Tony Cumby
- Trevor Humby
- The Powell Group of Companies
- Penney Group of Companies
- Newfoundland and Labrador Safety Council
- Concorde Paving
- Trevor King

- United Food and Commercial Workers Union
- Royal Newfoundland Constabulary Association
- DMC Incorporated

Additional Submissions

- Sarah Sharpe
- Patricia Peddle
- Robert Thistle
- Ben Warford
- Donald Gordon
- Edward Best
- Roland Darby
- Frances Hallingham
- Roy Williams
- Patsy Fitzgerald
- Bill Burfitt
- Clyde Jackman, M.H.A.
- Tavel Limited
- Port Meister Inc.
- Sexton Lumber
- Shanahan's Investigation & Security Ltd.
- Katsheshuk Fisheries Ltd.
- San-I-Kleen Maintenance
- The Coleman Group of Companies
- Cottles Island Lumber Company
- Superior Pipe Services Ltd.
- Eastern School District
- St. Anthony Seafoods Limited Partnership
- Newfoundland and Labrador Nurses' Union
- Association of Heritage Industries
- Boucher Holdings
- Beltone Hearing Service

Monday January 30, 2006

St. John's, Battery Hotel and Suites

- Mike Grace
- Frank Picco
- Clement Drake
- Leonard McCormack
- Healthy Workplace Initiative
- Patricia Dodd
- Maurice Hearn
- Newfoundland and Labrador Association of Public and Private Employees
- Provincial Correctional Officers
- Harold Baker
- Gordon Penney
- James Kennedy
- Fortis Properties
- Newfoundland and Labrador Employers' Council
- Fred Lake
- Avalon Homework
- Christine Pardy-Bragg

Tuesday January 31, 2006

St. John's, Battery Hotel and Suites

- Winston Kean
- Sobeys
- Anna White
- Eileen Barren
- Lane Johnson
- Patrick Sheehan
- Thomas Sheehan
- Anita Rowe