



Consultation on Stage 2 of the Legislative Review of Workers' Compensation in New Brunswick

Brief submitted by
The New Brunswick Nurses Union
September 2015

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Introduction

The New Brunswick Nurses Union (NBNU) is a labour organization representing 7000 registered nurses in the Province of New Brunswick. The nurses we represent practice in acute care facilities, long term care facilities, correctional facilities and the community.

Ensuring that New Brunswick has a fair and effective Workers' Compensation system is essential to upholding the interests of our members. As an organization, we acknowledge the direction the government is taking on this very important matter and we thank the department of Post-Secondary Education, Training and Labour and WorkSafeNB for the opportunity to contribute to this comprehensive review of the Workers' Compensation system in New Brunswick.

NBNU Recommendations

1. Governance of WorkSafe NB

a. Appointments and Terms

NBNU believes the current terms of up to four years for chairs and members of the board of directors does not require change. We do recommend limiting appointments of all chairs and members to two terms and that reappointments of both the Chair and Vice-Chair be subject to board approval. This approval from the board for Chair positions is necessary to ensure impartiality on the part of the Chair and Vice Chair to avoid unequal bias towards either workers or employers.

While Statistics Canada reported in 2014 that 11.2 % of New Brunswick Employees has union coverage while 88.8% did not, it is still reasonable for worker representatives on the board of directors at WorkSafeNB to be drawn mainly from unionized workers. This is due to the fact that union officials are elected by democratic processes. Efforts can and should be made to select non-union worker representatives who have experience, abilities, perspectives and other attributes that enable them to understand and represent the interests of large groups of non-unionized workers, however such qualifications are difficult to objectify. Labour unions also include in their mandates advocating for *all* workers as well as their own members and they are held to that task by the large number of members they are elected by. For these reasons ensuring worker representatives on the board are able to speak on behalf of the maximum number of workers is best achieved by maintaining a majority of union representatives as worker representatives.

In the recent past there has even been a practice of allowing the labour movement to select one of the worker representatives. When this practice was in place the numbers of worker and employer representatives stood at five of each. Currently there are four of each and while some of the current worker representatives are unionized workers, none were actually selected by the unions themselves. NBNU would support a move back to this practice and even a change to legislation mandating such a practice, but we do not believe it is necessary to go so far as to change legislation as long as worker representative members continue to be drawn mainly from unionized workers.

b. Effectiveness/functionality

As stated in the Meredith Report “the true aim of a compensation law is to provide for the injured workman and his dependants and to prevent their becoming a charge upon their relatives or friends, or upon the community at large.” (Meredith, p.4). This is the foundation on which workers’ compensation legislation in Canada has rested and must be respected in New Brunswick’s consideration of revision to our compensation system.

NBNU is not convinced the board’s Balance Goal “to provide the best possible benefits to injured workers while maintaining the lowest possible assessment rates for employers” (WorkSafeNB 2014-2019 Strategic Plan and Risk Assessment, p.10) is presently being fully achieved. The satisfaction levels quoted in the Phase 2 Legislative Review Discussion Paper show that injured workers are 10% less satisfied with the WorkSafeNB’s services than employers are. While a 70.1% satisfaction rate is not extremely low, it cannot be considered high. Further, there are significant deterrents to reporting injuries to WorkSafe, such as the 3 day waiting period, lengthy waits for services, frequent denials of claims and low compensation rates. These deterrents lead to an artificially low amount of claims being paid out.

Maintaining a fund from which to compensate workers who have been injured does come at a cost to employers. However, this cost is offset by the fact that coverage by workers’ compensation legislation replaces workers’ right to sue their employers in the event of workplace injuries. Such legal action would come at greater cost to employers and would come with higher individual liability for each employer, rather than being a shared risk shouldered equitably by all employers as WorkSafe rates are. Currently, in New Brunswick, funding workers’ compensation benefits is not a strain on employers.

If there is concern that the cost of injured workers being off work and collecting compensation is damaging the fiscal interests of employers, the solution is not to be

found by examining rates of compensation and provision of supports for safe return to work. Reduction of costs to employers must be sought through measures that reduce workplace injuries from occurring in the first place. Once injuries have occurred it is "the duty of the Board at all times to maintain the accident fund so that with the reserves it shall be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable" (sec. 70) (Meredith, p. 6).

Given that New Brunswick has the second lowest provincial assessment rate for employers in the country, the goal to balance the interests of workers and employers can safely be achieved even with a consequent increase in the amount of claims paid out. Whereas the funded liability rate stood at 138.2 at the end of December 2013, even with a current employer rate of \$1.11 per \$100 of payroll, it is not likely rates will need to be raised to afford increases in compensation amounts. If compensation amounts were to increase enough to require an increase to employer rates, those rates could be raised by nearly \$1 per \$100 of payroll and still remain comparatively low across the country.

c. Policy development

NBNU recognizes the WorkSafe board's responsibility for setting policies and direction of WorkSafeNB. Our only caution on this subject is that any policies developed by the board must not contradict what is written in legislation. We support the consultation of stakeholders in the development of new policies and the maintenance of a formal process for engaging stakeholders.

d. Competencies and composition

Ensuring a board with the appropriate personal attributes and mix of competencies to support and advance WorkSafeNB's mission is necessary. NBNU recommends making experience in a field related to health, safety and/or compensation a requirement, as opposed to simply a desire as it is currently, for at least half of the board's membership. We also strongly support the adoption by WorkSafeNB of a list of competencies that a board should possess, similar to that of Manitoba's found on pages 3 and 4 of their document titled, *Workers Compensation Board – Board of Directors* (found here:

http://gov.mb.ca/asset_library/en/abc/li/wcb_board_of_directors.pdf).

We do not believe it is necessary to ensure a member of the general public is appointed to the board; however we do agree that it is useful for the public's interest to be represented by either the Chair or the Vice-Chair. When a public chair or member is appointed, they must be expected to possess the required competencies.

2. Workers' and Employers Advocates Services

In Phase 1 of the Legislative Review of Workers Compensation, NBNU was among those who expressed concern during consultations about the ability of Workers Advocates to meet the demand for service in a timely and effective manner. At that time we recommended the following measures:

- Increase the number of workers' advocates, to create more manageable caseloads.
- Increase training and resources to workers' advocates, to improve their capacity to advocate as effectively as possible.
- Expand mediation sessions between workers' advocates and WorkSafeNB case managers to resolve conflicts without requiring an appeal.

As such, we appreciate and support the enhancements implemented in 2014-15 including:

- Consolidation of the management of the services provided by Workers' Advocates and Employers' Advocates in one administrative unit, Advocates Services, headed by a Director reporting to the Assistant Deputy Minister – Labour and Planning;
- A new case management system (database) has been created to ensure consistency in delivering services to both employers and injured workers; and, to better track the progress of individual cases and of the service overall;
- New service standards for responding to initial calls (48 hours) and file assessment (30 calendar days);
- The number of Workers' Advocates positions increased to 10 to better manage caseload and reduce wait times for file assessment and filing appeals and an additional five advocates being hired to address the backlog; and
- As of September 2, 2014, a new bilingual intake process put in place to address the volume of requests for the services of the Workers' Advocates.

We thank government for taking action on this concern. We will continue to monitor the effectiveness of these new measures as well as planned continued enhancements.

a. Location of service

NBNU recommends retaining the current 6 locations of service for Workers' Advocates. Although Nova Scotia has roughly the same number of injured worker clients as New Brunswick, Nova Scotia covers a significantly smaller geographical area and does not have the same language requirements as New Brunswick. Also, since New Brunswick has relatively high frequency (78%) of use of Workers' Advocates compared to other provinces, in addition to our official bilingual status and our significant rural population, a larger number of locations than the national average is justified.

With regard to Employers' Advocates, given the fact that frequency of use of those advocate services is low, at 24%, and the fact that the current four jurisdictions where the service is offered indicate that employers usually retain their own representation, we believe reducing the number of locations from four to one or two be acceptable.

b. Legislation

The wording of the Advocates' mandate "to assist any worker, or any dependent of a worker, in respect of any claim being advanced by him or her for compensation" (Section 83.1 (1)) and "to assist any employer in respect to any claim being advanced for compensation by a worker employed by the employer, or by a dependent of that worker, and any related concerns of the employer in respect of assessments, charges and similar matters" (Section 83.2 (1)) is sufficient with respect to the goal of services offered by the Advocate. The legislation could be reworded more effectively, however if the minimum number of advocates which may be appointed was increased to greater than one.

3. Provisions of Section 38

a. Loss of earnings benefits:

With regard to the calculation of benefits, NBNU believes consideration should be given during stage 1 of this legislative review to section 38.1(3) of the *Workers Compensation Act*:

38.1(3) The maximum annual earnings shall be set by the Commission as of the first day of January of each year and shall be an amount equal to one and one-half times the New Brunswick Industrial Aggregate Earnings.

The following table (Table 1) illustrates a comparison between the average annual salary of New Brunswick nurses (RN Class A step G) and the maximum annual earnings set by the Commission, based on the New Brunswick Industrial Aggregate Earnings (NBIAE):

Table 1

	Average Annual Nurses Salary (Class A Step G)	NBIAE Maximum Insured Salary (2015)
Gross Income	\$75 559.50	\$60 900.00
CPP contributions	\$2479.95	\$2479.95
EI premiums	\$930.60	\$930.60
Income tax	\$18992.00	\$13594.00
Net loss of earnings	\$53156.95	\$43895.45
85% of net loss of earnings	\$45183.40	\$37311.13

The difference between 85% of a nurse's actual average net earnings and 85% of the maximum insurable earnings based on the NBIAE amount is nearly \$8000 annually. This comparison indicates that nurses receiving Loss of Earnings benefits are only receiving 70% of their average net earnings.

NBNU believes that a significant negative difference between a workers' pre-injury salary and the Loss of Earnings benefit they receive while on workers' compensation is a violation of the principle of security of payment, as a founding principle of workers' compensation laws in Canada. Where compensation benefits are intended as income replacement for a worker who is unable to work due to workplace injury, payment to that worker cannot be considered to be secure when the benefit is unfairly below their working wages. In order to uphold the principle of security of payment, NBNU believes the maximum annual earnings used to calculate Loss of Earnings benefits should be raised to a more fair level.

We also believe that although other Maritime provinces also have NBIAE amounts in a similar range to New Brunswick and pay 85% of net, this does not mean those rates are fair. Where incomes in New Brunswick are low compared to national averages, many New Brunswickers with lower incomes are living closer to poverty levels at their full incomes, therefore we recommend raising the benefits to be paid at 90% would best achieve the goal to "provide for the injured workman and his dependants and to prevent their becoming a charge upon their relatives or friends, or upon the community at large." (Meredith, p.4).

b. Three-day waiting period

The Maritime provinces are the only jurisdictions in Canada that have a waiting period whereby the worker is not paid immediately following an injury. The waiting period in both Prince Edward Island and Nova Scotia is two days. Any waiting period serves as a deterrent to reporting injuries which leads to many negative consequences. Most importantly it means an injured worker may not get the help they need to recover following an injury at work. It also means hazards in the workplace may go unaddressed. In addition to these to serious consequences, there are negative financial implications of unreported injuries. Often lost time may still occur, but as sick time which comes at a much greater cost to the employer. For these reasons, NBNU strongly recommends removing any waiting period before workers are paid following an injury.

c. Collateral benefits (Top-ups)

New Brunswick is only one of four jurisdictions that do not allow for top-ups. NBNU recommends changes to legislation to allow for top-up under free collective bargaining. This will be particularly pressing for NBNU's members if the Maximum Assessable Earnings in New Brunswick is not raised to allow professionals, such as nurses, who earn above those levels to receive benefits closer to their actual net loss of earnings.

d. Permanent physical impairment

The minimum lump sum PPI award of \$500 in New Brunswick is comparatively very low. Aside from Prince Edward Island, minimums for lump sum PPI awards average around \$1500, therefore NBNU recommends setting the New Brunswick minimum to at least \$1500.

NBNU would support a decision to allow the worker to convert the lump sum impairment award to an annuity if the award is greater than a certain significant level (i.e. \$15 400, as in Manitoba).

Conclusion

As an organization representing 7000 nurses, working in high risk workplaces across New Brunswick, the New Brunswick Nurses Union has a great interest in seeing workers receive fair compensation for workplace injury. We strongly support some of the changes made following Phase 1 of the Legislative Review of Workers Compensation, particularly under section 38.11(9) to reflect consistency with the Douthwright Decision as well as improvements to Workers' Advocates services. We are pleased that government is taking action on this important issue and hope that as a result of the opportunity to receive input from stakeholders, much needed improvements will be made. We would like to thank the Department of Post-Secondary

Education, Training and Labour and WorkSafeNB for their attention on this matter and trust that our recommendations will be given full consideration.