



## **New Brunswick Federation of Labour Submission to the WorkSafeNB Ministerial Task Force December 2017**

### **Introduction**

The New Brunswick Federation of Labour (NBFL) represents 324 affiliated union locals and six regional labour councils, which translates into over 40,000 unionized workers. Our affiliated members work in all sectors of the economy. The NBFL is mandated to promote the interests of its affiliates and generally to advance the economic and social welfare of workers in our province. Within this mandate, the NBFL works to promote the interests of workers, both unionized and non-unionized, in a wide range of areas, including labour standards, labour relations, health and safety, and workers' compensation. We also have an interest in other issues such as economic and social development, education, life-long learning, equality and human rights.

Since the founding of the New Brunswick Federation of Labour in 1913, we have been very active in the areas of workplace health and safety and workers' compensation. In fact, the NBFL was represented on the 1917 review committee, which recommended the province's first workers' compensation legislation. And many subsequent improvements to the Workers' Compensation Act have come about because of our efforts on behalf of all workers, union and non-union alike.

The primary purpose of compensation laws is to help workers injured on the job. Workers gave up a very fundamental right – the right to sue – in exchange for a workers' compensation system founded on fairness, respect and equitable treatment of injured workers.

Workers, not employers, pay the heaviest price for workplace accidents and illnesses that often are the result of inadequate training, poor employer safety practices, hazardous equipment, infrequent workplace inspections and weak or poorly enforced safety laws. For workers injured on the job, the pain, suffering and financial loss are all too real. For many employers it is little more than a book entry. It is imperative therefore that our health, safety and compensation laws, programs and services do in fact effectively protect workers and their families and also, treat injured workers fairly and with respect.

## **Recommendations**

The New Brunswick Federation of Labour makes the following recommendations to the WorkSafeNB Ministerial Task Force to protect workers and their families and to treat injured workers fairly and with respect:

### **1. Restore balance between interests of employers and employees**

To understand the current fiscal situation of WorkSafeNB, it is necessary to examine the history that led up to it. Resulting from the recession in the early 1990s, the Worker's Compensation accident fund reached a point of underfunding and the average assessment rates employers were paying to maintain the fund were high. Due to these extenuating circumstances, in 1993 a decision was taken by the board to control costs by reducing benefits to injured workers. This step was meant to be a temporary measure to right the fiscal situation of the time.

In the following years, the rates paid by employers to maintain the accident fund dropped to a point where they remained among the lowest in the country. Since the early 2000s the fund consistently sat above its target funding level with employers receiving rebates on the rates. This means that for years, employers have been paying less than the actual cost of claims and WorkSafeNB administrative expenses. Meanwhile, the benefits to injured workers that were suspended in 1993 have never been fully restored.

Over the same period, the claims appeal process grew long and complicated, effectively acting to discourage workers who had been denied benefits from appealing. For those who did, claims decisions that were reversed and led to benefits being awarded often came after many months, if not years, with little to no income. Injured workers and their families suffered not only from their injuries, but from serious financial hardship.

In 2012, Wayne Douthwright, who was injured in 2002, won a case before the New Brunswick Court of Appeal which revealed that WorkSafeNB had repeatedly been misinterpreting the *Workers' Compensation Act* by clawing back CPP retirement benefits from the compensation they paid to injured workers. The precedent set in this case had implications not only for Douthwright, but for thousands of other workers who had also seen their CPP benefits deducted from their compensation. Despite their awareness of this precedent, the WorkSafeNB board continued to set rates for employers which contained significant discounts (see Table 1).

**Table 1 – WSNB accident fund and assessment rates**

	2012	2013	2014	2015	2016	2017
Funding %	127%	138%	137%	123%	112%*	
Cost of benefits & admin	\$1.72	\$1.55	\$1.47	\$1.55	\$1.54	\$1.71
Funding level drawdown	(\$0.02)	(\$0.11)	(\$0.26)	(\$0.44)	(\$0.43)	(\$0.23)
Average rate	\$1.70	\$1.44	\$1.21	\$1.11	\$1.11	\$1.48

(Source: WorkSafeNB)

Following the Douthwright decision and a wave of public criticism, in 2013, the government announced the launch of a three-phase comprehensive review of Workers' Compensation legislation. Only two phases of consultation have occurred so far. The progress of the review has begun to inch WorkSafeNB back toward balance between the interests of workers and employers, after decades of injustice towards injured workers. However, that balance is not yet achieved.

In 2016, WorkSafeNB announced a rate increase for employers. A first increase after several years of decreases, when all other costs in society are rising. The rate increase was made to ensure the cost of the recent legislative changes and fair appeals tribunal decisions were covered, as well as to cover the cost of the rise in the frequency of workplace accidents and the length of recovery time before workers can return to work.

Employers were swift and loud in their criticism of the rate increase. Their outcry exaggerated the increase, labeling it as a large one. In reality it was below not only the rate paid in 1992, but more recent rates in 2010-12 when employers were already receiving discounts on their rate because the fund was performing at a surplus. In addition, even with this increase, New Brunswick employers were still paying a rate that was among the lowest in the country (see Table 2).

**Table 2 - Average Assessment Rates by Province and Year (per \$100 of payroll)**

Province	2015	2016	2017
Newfoundland and Labrador	\$2.45	\$2.20	\$2.06
Prince Edward Island	\$1.79	\$1.77	\$1.70
Nova Scotia	\$2.65	\$2.65	\$2.65
<b>New Brunswick</b>	<b>\$1.11</b>	<b>\$1.11</b>	<b>\$1.48</b>
Québec	\$1.94	\$1.84	\$1.77
Ontario	\$2.46	\$2.46	\$2.43
Manitoba	\$1.30	\$1.25	\$1.10
Saskatchewan	\$1.46	\$1.34	\$1.24
Alberta	\$0.97	\$1.02	\$1.02
British Columbia	\$1.70	\$1.70	\$1.65
Yukon	\$1.90	\$1.85	\$1.87
Northwest Territories and Nunavut	\$2.00	\$2.00	\$2.00

(Source: Association of Workers' Compensation Boards of Canada. (<http://awcbc.org/>))

WorkSafeNB recently announced the average assessment rate for 2018 would be another increase to \$1.70 per \$100 of payroll. Although employers are unhappy with a second increase, this new rate still includes a significant drawdown of \$0.23, meaning they will continue to pay less than the costs estimated for the coming year. Not only that, but the fund will be allowed to dip to 100% of required costs, so that any buffer which might protect the fund from market fluctuations will be lost.

Looking at the timeline of events described above, it is clear the current fiscal environment could have been avoided by discontinuing or at least reducing the discounts on rates given to employers. Surpluses from recent years could have been used to subsidize the anticipated cost increase that WorkSafeNB is now facing. In 2014 and 2015 the accident fund stood at 137% and 123% respectively. Instead of using the surplus to restore reduced and eliminated benefits or holding the extra funds for the anticipated rise in costs over the coming years, employers were given rebates of \$38.7 million in 2016 and \$20.7 million in 2017 for a total of \$59.4 million.

Government has acknowledged this reality: “Over the past several years, rates were allowed to dip too low, which created the current situation where rate shock is required to make the fund sustainable” (GNB throne speech, 2017). It is the duty of the Task Force to acknowledge this reality as well and to urge WorkSafeNB and New Brunswick employers to accept that rate increases are overdue and discounts on rates should no longer be expected.

Given these facts, the Brunswick Federation of Labour recommends that rebates should only be considered when the funding level reaches 125%, and employers should only be able to access a rebate if there are improvements to the health and safety culture in their workplace as determined by an accredited audit process. The rebated funds should be shared between the stakeholders (workers and employers).

One side effect of the low assessment rate is businesses have little incentive to invest in more preventative measures, some of which could be costly. If a business does a cost-risk assessment and the cost of the risk versus the fix is lower, it's in their interest to go with the cheaper option. This needs to change. We need businesses acting proactively to limit injuries rather than simply seeing them as the cost of doing business.

## **2. Eliminate of the three-day waiting period**

The New Brunswick Federation of Labour recommends eliminating the three-day waiting period. The three-day period was implemented when the workers' compensation system was underfunded and is no longer needed in New Brunswick. We are certainly going against the national trend in Canada by maintaining it. The New Brunswick Federation of Labour has been calling for its elimination for several years.

At best, the three-day waiting period is no more than a cost-saving move for employers and, at worst, forces many employees to conceal injuries or not report them as the potential loss of income is too great. Employers also suffer from the three-day wait period should employees go to work injured to avoid loss of pay for that period. Productivity can suffer, and potential safety issues do not get addressed.

### **3. Improve Governance**

Recent efforts by the WorkSafeNB board to hold quarterly stakeholder engagement sessions have begun to improve communication, information sharing and collaboration. To ensure such engagement continues, we recommend formalizing this process in policy, so that this level of communication cannot diminish over time if commitment at the board level drifts to other focus areas.

The NBFL recommends putting in place transparency and accountability measures such as publishing comprehensive minutes and strategic plan documents of WorkSafe Board of Directors and circulating to stakeholders. Facilitate meaningful consultation with stakeholders when considering significant changes; i.e. provide them with any reports or studies, jurisdictional comparisons, options being considered in advance of meetings when conversations will be held to get input from all stakeholders.

### **4. Balancing the composition of the Board of Directors**

Equality between the employer and worker communities in WorkSafeNB decision-making, the New Brunswick Federation of Labour believes, is only possible with a board of directors comprised solely of worker and employer representatives, in equal numbers and, balanced by a chairperson having the confidence and trust of the two parties.

The New Brunswick Federation of Labour recommends that the WorkSafeNB Board of Directors be comprised of four worker representatives and four employer representatives, in addition to the independent chairperson.

The NBFL being the largest central labour body in the province, we also maintain that one worker representative should be selected by the Federation of Labour. From the origins of the WCB in New Brunswick, the NBFL was involved in the selection of worker representatives. This practice should be restored.

Most unions in this province belong to the New Brunswick Federation of Labour. Moreover, the structure of the NBFL ensures each worker representative on the board of directors is accountable and obligated to report on their activities and biennial NBFL conventions allow for candid discussions of workplace health, safety and compensation matters and the development of policies to help board members in their deliberations – an important consideration in the workings of a stakeholder based organization like WorkSafeNB.

### **5. Keep Appeals Tribunal Independent**

The New Brunswick Federation of Labour recommends keeping the Workers' Compensation Appeals Tribunal (WCAT) as an independent entity. Its independence is needed to uphold the Meredith Principles of Natural Justice for injured workers.

Decisions of WCAT that are contributing to increasing the costs of administering the workers compensation system are simply righting past unfair policies where eligible claims were wrongfully denied. Present decisions of the tribunal that align with the law illuminate these past wrongs. It does not highlight the need to change workers compensation law to either restrict the powers of the tribunal or reduce the benefits to which workers are entitled. It is flawed funding policies and rate setting procedures that have been in place for the past two decades which have threatened the sustainability of the system; not the changes to the WCAT.

## **Conclusion**

For too long, the financial interests of employers, through rebated premiums, have dominated the agenda at WorkSafeNB. Balance has started to be restored and injured workers are starting to receive the benefits to which they are entitled under the law. Premium rebates have kept assessment rates artificially low and had to increase for WorkSafeNB to begin its journey of restoring a balance to protect workers and fairly treat injured workers. The solution is not to change the law to further reduce benefits paid to workers who are injured while doing their job. The best way to curb costs is by investing in injury prevention initiatives to reduce the number of claims filed at WorkSafeNB.