



SUBMISSION TO THE MINISTERIAL TASK FORCE

Board of directors
November 2017

Dear Task Force members:

On behalf of WorkSafeNB's board of directors, I am pleased to submit our recommendations and thoughts to the Ministerial Task Force examining the New Brunswick workers' compensation system. With the current environment top of mind, this submission focuses strongly on restoring sustainability to the system and striking the right balance for a fair and equitable system.

The concepts of fairness and equity are framed by the historic compromise brokered through the 100-year-old Meredith Principles, which continue to be the foundation of the workers' compensation system in New Brunswick and across Canada. Both workers and employers compromised. As such, the system must be examined using the approach that "we're all in this together" with workers and employers continuing to be partners in this historic compromise and the government optimizing its legislative role to ensure a system is in place that will endure over the long term.

The Task Force asks, "Have recent changes reflected the kind of workers' compensation system that New Brunswick needs?" There is no doubt that WorkSafeNB is a complex organization with diverse responsibilities under multiple pieces of legislation. The organization has multiple, inter-related levers that are used to prevent injuries, support workers and employers, and help with return to work. As we have seen, changes to legislation, policies and the system as a whole, can achieve their intended objectives, but may also pull an unintended lever and have unintended consequences on the system.

While this submission offers the board's views and experiences on the topics under consideration by the Task Force, the board believes the parameters of the system and the resulting cost must be determined by the system's stakeholders. Once this compromise is determined, WorkSafeNB will then professionally and fairly administer the system.

If you require any additional information or clarification, please contact me at your convenience.

Yours truly,

Dorine P. Pirie
WorkSafeNB Chairperson

A. THE CURRENT FINANCIAL ENVIRONMENT

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

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

Question

What do you think has contributed to these changes?

Answer

In the 10 years from 2005-2015, the New Brunswick workers' compensation system experienced relative stability with the exception of the global financial crisis in 2008. WorkSafeNB's board of directors believes the organization's current financial changes (characterized by increased claims, duration, costs, and assessment rates) are, in a large part, due to system changes resulting from decisions rendered by the Workers' Compensation Appeals Tribunal (WCAT). The policy implications of the decisions rendered by the WCAT have had a significant impact on the funded position of WorkSafeNB and, therefore, assessment rates, with WCAT decisions accounting for more than a \$100 million increase, which was not considered when budgeting, to the organization's liabilities since 2015.

It is also important to understand that the complete cost impact resulting from WCAT decisions, and the potential impact of future WCAT decisions, may not yet be fully realized. A major issue that will significantly impact WorkSafeNB's funding level and financial environment is the retroactive application of WCAT decisions. Legislation looks to the future with respect to the collection of assessments and does not contemplate the retroactive payment of shifting benefits.

Details

From 2005-2015, accident frequency and claim duration were declining largely due to investments in occupational health and safety, and emphasis on early and safe return to work, resulting in fewer costs to the system. In turn, assessment rates decreased, while the funded position of the accident fund, which is a fund that serves as security that awarded benefits will be paid to injured workers of today and tomorrow, continued to grow. This was mainly due to strong investment returns, but also accident costs were much lower than expected – a reflection of fewer accidents and shorter claim duration.

Beginning in late 2015, the system started to experience an increase in claim costs, which accelerated and continued into 2017. This has led to a significant decrease in the accident fund.

While the accident fund remains at a funding level of 110.1% as of Q2 2017, if claims costs continue to rise, further strain will lead to an underfunded system. When the cumulative financial results fall below the full funding level of 100%, the *Workers' Compensation Act (WC Act)* requires WorkSafeNB to achieve full funding within five years which results in steep surcharges to employers.

While the decreasing accident fund resulted in the need to increase the 2017 and 2018 assessment rates, the increases were mitigated by several factors. For 2018, WorkSafeNB reduced its administrative budget by 16% and revised the board's funding policy for one year only. However, the most significant mitigating component affecting assessment rates was investment returns. Investment returns over the last five years have generated returns well in excess of the long-term assumption of 6.08%, tempering the effect of rising claims costs on the assessment rate. The outperformance of the portfolio contributed \$145M over the last five years. Investments are discussed further in Section H.

In short, the current financial environment of WorkSafeNB causes challenges for all stakeholders. Employers must pay higher assessment rates with the risk of additional surcharges, while workers may face benefit reductions should the funding position drop below 100%.

Recommendations Related to the Current Financial Environment

1. WorkSafeNB's board of directors recommends that it is truly the stakeholders, workers and employers, who must determine the future of the system (appropriate benefit levels for workers, costs employers can bear, how to manage surpluses) to ensure a stable, reliable and fair compensation system for all parties. This will require a highly consultative process that will require a long-term commitment and compromise from all parties. WorkSafeNB has begun the process of understanding stakeholders' values by hosting quarterly engagement sessions.
2. WorkSafeNB's board of directors recommends that the legislation be amended to explicitly address retroactivity of WCAT decisions.

B. LEGISLATION GOVERNING THE STRUCTURE AND MANDATE OF THE APPEALS TRIBUNAL

Stakeholders have stated that changes in legislation pertaining to the WCAT have resulted in an escalation in compensable injuries which WorkSafeNB did not anticipate. As of April 1, 2015, WCAT was externalized and made independent from WorkSafeNB. WCAT's jurisdiction can now effectively nullify WorkSafeNB policies when deemed inconsistent with the governing legislation. As a result, WorkSafeNB budgeting and funding has been affected.

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

Question

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

Answer

As indicated in Section A, WorkSafeNB's board of directors believes the changes in legislation pertaining to the WCAT have, undoubtedly, affected the sustainability of the system. WorkSafeNB also strongly believes that an effective appeal body is an essential part of the continuum of service provided by a workers' compensation system. As such, the board supports the current structure of the WCAT as outlined in legislation. However, WorkSafeNB believes there are significant challenges related to the WCAT's legislative mandate.

Details

Bill 73 modified the governance of the Appeals Tribunal, creating an external agency that is unlike any other compensation appeals tribunal across Canada. No other jurisdiction has the same stand-alone precedent-setting power as New Brunswick's WCAT to determine that a policy is inconsistent with legislation. Furthermore, parameters detailing what constitutes "inconsistent" are not defined, and there is no mechanism for the board to reconsider its policy following a WCAT decision. This erodes the Meredith Principle that exclusive jurisdiction be given to the board of directors. In short, this principle, entrenched in the *WC Act*, gives WorkSafeNB exclusive legal authority to make all decisions arising under the Act, subject to the rules of natural justice.

In many instances where the WCAT has determined a board policy to be inconsistent with legislation, WorkSafeNB ascertains that it is simply a differing interpretation of non-prescriptive legislation. The *WC Act* is notoriously difficult to read and is ambiguous in many sections and silent on other important issues where the WCAT has taken a position different than that of the board. In fact, some sections date back to the original *Compensation Act* from 1918, while others have endured since significant changes in 1982.

Since April 1, 2015, the WCAT has rendered at least 15 decisions indicating, either explicitly or implicitly, that WorkSafeNB policy (or parts of policy) is inconsistent with legislation. These decisions have added over \$100 million to the organization's liabilities since 2015. For a full list of these decisions, please refer to Appendix A.

WorkSafeNB has a well-developed process to research, evaluate and cost policy options. These policies are also posted online for stakeholder consultation prior to approval. The issue of policy-making authority threatens to compromise the fiduciary role of the board of directors to ultimately act in the best interest of WorkSafeNB (subsection 8(4) of the *WHSCC & WCAT Act*). It also creates significant risk in the areas of accountability and sustainability of the system. The ability for the WCAT to find a policy "inconsistent" with legislation without concrete parameters means the board is now unable to fully exercise its fiduciary responsibility with respect to the balance, stability and predictability of the system.

Other jurisdictions' appeals tribunals, in disagreement with their board's policies, must refer the policy back to the board for internal review (AB, BC, NS and ON). Some jurisdictions (MB, NL, NT/NU, PE and SK) have no known power to overturn board policy or force an internal review; their appeals tribunals can only make decisions regarding single cases under appeal and can be ordered to

rehear appeals by their WCBs (NT/NU, MB and YU) if the board believes the appeals tribunal did not correctly apply board policy.

In New Brunswick, the balance in the system and allocation of significant financial resources is being determined by WCAT decisions, with no mechanism to review differing interpretations of legislation at the board level. If the legislation governing the WCAT remains in its current state, unpredictability within the workers' compensation system will continue with both benefits and system costs being determined by the WCAT. It is our informed view that system costs will continue to escalate in this environment.

Recommendations Related to the Legislation Governing the Structure and Mandate of the Appeals Tribunal

1. WorkSafeNB's board of directors recommends that legislation be amended to give greater deference to board authority to make policy decisions, aligning with the Meredith principle of exclusive jurisdiction. This legislative change would include explicit instructions in legislation for resolving differing interpretations of legislation between the board and the WCAT that preserves the board's authority and fiduciary role and aligns the New Brunswick WCAT with other compensation appeals systems across Canada. This may involve:
 - a. Using a standard for striking down a policy that is already understood in law, similar to British Columbia, where the policy must be found so patently unreasonable that it cannot be supported by the law;
 - b. Adjourning the hearing until the policy issue can be resolved;
 - c. Requiring the board to review and decide on the policy issue in question; or
 - d. The role of the WCAT is limited to determining whether an appellant received the appropriate benefit and that policy was applied correctly.

C. GOVERNMENT AND THE SELF-INSURED

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

Question

Is there a resulting impact on stakeholders? Are the provincial and federal governments paying their fair share?

Answer

As a self-insured employer, the Government of New Brunswick (GNB) pays its costs dollar for dollar plus an administration fee. Therefore, they are paying their fair share as it relates to

compensation services. It should be noted that with respect to workers' compensation benefits, some parts of GNB have a different compensation system than assessed employers. For those employees where full salary is continued throughout the claim, the provisions of the *WC Act*, including a three-day waiting period and benefits at 85% of the worker's loss of earnings, do not apply.

With respect to occupational health and safety (OHS) services, in 2012, GNB stopped contributing financially to these services. While the government is required to comply with the *OHS Act*, like all New Brunswick employers, inspections, investigations, and any prevention or educational services provided to GNB by WorkSafeNB are paid for through the revenue collected from assessed employers. This is inherently unfair to the assessed employers of New Brunswick as these stakeholders are subsidizing OHS services to GNB.

WorkSafeNB and GNB are working together to establish a service agreement that, among other things, would address GNB's cost of OHS services.

Details

New Brunswick's self-insured (not assessed) employers consist of GNB (including schools and hospitals), Marine Atlantic Inc., Via Quebec/Atlantic and the Canadian National Railway. GNB alone employs over 45,000 civil servants¹ (including its education and health corporation employees) and is the largest self-insured employer of WorkSafeNB, accounting for about 90% of all self-insured employers. The provincial public service comprises a sizeable percentage of the New Brunswick workforce and includes the high-risk industries of transportation and health authorities.

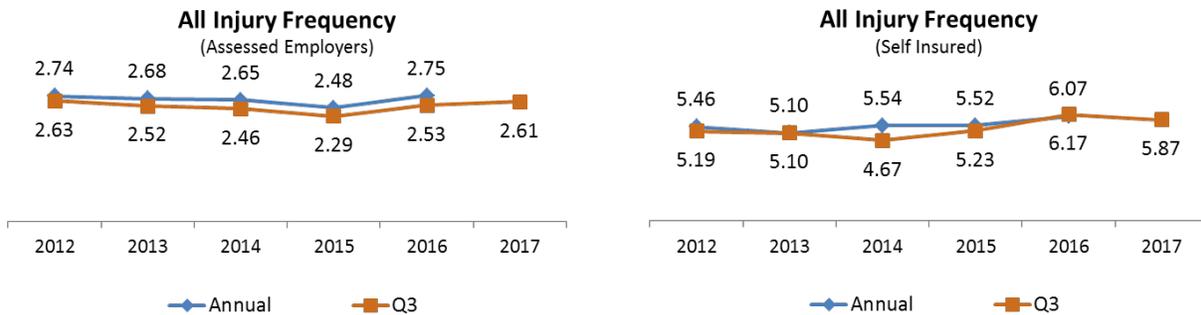
While self-insured employers are responsible for the cost of their claims plus an administration fee, they do not pay for any OHS activities provided by WorkSafeNB. Before WorkSafeNB assumed the mandate of the Occupational Health and Safety Commission, the government provided an annual grant to that entity to cover OHS activities. After the merger in 1995, the government continued this annual grant to WorkSafeNB in the amount of \$1,677,000 which decreased over the years until the grant was discontinued in 2011. OHS services are still provided to self-insured employers, however, the cost of these activities are funded through assessments paid by assessed employers (mostly private sector).

The implementation of safety practices, accident prevention efforts, OHS education and awareness campaigns have been beneficial to assessed employers and have resulted in reduced accident frequency and lower premiums. However, for GNB, there does not appear to be the same emphasis on safety and this is evidenced in the statistics – higher accident frequency and longer claims for self-insured compared to assessed employers.

¹ <http://www2.gnb.ca/content/dam/gnb/Departments/ohr-brh/pdf/other/WorkforceProfile2016.pdf>

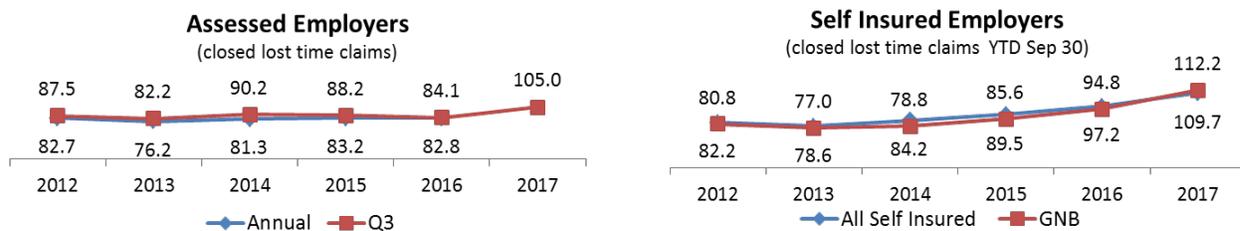
Claim Frequency

As shown below, at year end in 2016, claim frequency for self-insured employers was more than double that of assessed employers (6.07 and 2.75 respectively).



Claim Duration

A 2015 WorkSafeNB study shows that workplace accidents taking place at self-insured employers consistently have longer recovery periods and remain off work longer². Differences in claim duration can be explained in different disability management practices. GNB practices, such as continuing full salary and stacking of benefits, can be a disincentive to safely returning to work. As shown below, claim duration for self-insured employers is longer than that of assessed employers.



WorkSafeNB is working in partnership with GNB to help reduce claim volume and duration. Initiatives to date include sharing quarterly claim information, developing a service agreement with target key performance indicators to facilitate recovery and return to work, and rolling out direct referral to all GNB departments. A new unit has been established in government to address workplace injury prevention and disability management.

Recommendations Related to Government and the Self-Insured

1. WorkSafeNB's board of directors recommends that an annual amount to cover OHS activities for self-insured employers, including the costs of prevention, compliance, enforcement and investigations, be determined and reinstated so that these costs are being paid by government and not by assessed employers.

² Year End Safety Goal Presentation to the Board of Directors, 2015

D. WORKSAFENB'S REHABILITATION CENTRE

Some presenters identified that the rehabilitation centre, in terms of overall costs and return to work rates, does not compare with similar outsourcing services in other jurisdictions.

Question

Does WorkSafeNB need its own rehabilitation centre and does it provide value for money?

Answer

WorkSafeNB's Rehabilitation Centre (WRC) exists to provide multidisciplinary services to workers who have not recovered or returned to work after receiving treatment in their home area. Many of the professional health care providers and services offered at WRC are not available in all parts of the province. There is one clinic in Moncton providing similar services. If the WRC did not exist, the services provided may or may not be available to workers or WorkSafeNB would continue to pay for workers to travel away from their home either to Moncton or outside the province.

The province's auditor general will likely be performing a value-for-money audit on the programs provided at the WRC.

Details

The WRC is a world-class treatment centre where WorkSafeNB has provided rehabilitative services to injured workers since 1977. The WRC consistently meets the stringent requirements for the highest level of accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF) International. To reach this accreditation, the WRC meets more than 1,000 internationally-recognized standards through a rigorous peer-review process. CARF commended the WRC for its well-developed treatment protocols, highly-skilled clinicians, and client-centered services. CARF also gave high praise to WorkSafeNB on supporting our core value "the client is the priority". CARF said this was "*clearly evident in all aspects. Reinforcing this core value leads to creating an exceptional service experience for the clients*". For the full CARF report, please see Appendix B – CARF Survey Report for WorkSafeNB's Rehabilitation Centre.

WorkSafeNB refers about 18% of all lost-time claims to the WRC when injured workers do not recover using treatments available in their home area, and subsequently require a multidisciplinary-team approach to successfully manage their complex issues. The WRC also provides injury-specific treatment difficult to obtain in all parts of the province including mild- traumatic brain injury.

During their tenure at the WRC, injured workers arrive on Monday, either first thing in the morning or at lunch time to begin treatments that continue until Friday at 11:30 am, so that they may travel home for the weekend. Injured workers receive an access code and are able to sign in and sign out of the building for all breaks. At one point, the WRC was an in-patient facility where workers spent the night. However, workers now spend the nights at designated hotels in Saint John. In 2016, a client-exit survey indicated 86.7% were mostly or completely satisfied with the services they received at the WRC. By far, the most common complaint is being away from home.

GNB’s Office of the Comptroller (OOC) recently conducted an audit of the WRC that was shared with the Task Force. In it, they concluded: “Our analysis supports outsourcing the service now provided by the WRC. We recommend that GNB advise WorkSafeNB to consider a pilot project to outsource the services now provided by the WRC. The results of the pilot project should be evaluated with the objective of providing the most efficient, effective and economical service to injured workers and their employers”.

While we understand that it is not always easy to gather information that allows direct and equal comparisons, it may be important to note where these discrepancies exist. For example, the OOC presentation included travel for New Brunswick when calculating the cost per claim at the WRC, but did not include travel in the cost per claim for Nova Scotia. The actual cost per claim at the WRC is \$9,700 per patient (not \$11,800 as stated in the OOC presentation) and the cost per claim in Nova Scotia was \$9,500 (not \$9,200). For all claims in the system, the administration cost per injury is \$1,796 (rather than \$4,485) and the average claim cost per injury is \$13,174 (instead of \$29,923 as was reported).

Also, when comparing outcomes, New Brunswick services a client population that has more chronic conditions and the WRC accepts all referrals, without pre-judging the client’s ability at success. In Nova Scotia, the referral criterion is different and the outcome statistics do not include clients who leave the program in the first several weeks.

		Nova Scotia	WRC
Average chronicity (days from accident to program admission)		376	589
Accepted referrals	#	131	556
	% lost-time claims	2.2%	71%

When comparing return to work outcomes, in 2016, 91% of NS participants returned, or were ready to return to work, compared to New Brunswick’s 71%.

Return-to-work outcomes	2016 Nova Scotia	2016 WRC
Total	91%	71%

However, it is important to note that before 2016, the WRC had much higher return to work outcomes. For example, in 2014, the return to work outcome was 87.5%. The recent drop in return to work outcomes is most likely a result of a transforming system. When benefits can be stacked rather than integrated, there is less of a financial incentive to return to work. Furthermore, recent policy changes have made it more challenging for WorkSafeNB to close claims when personal conditions are the primary barrier to return to work.

With the change in the policy framework over the last two years, the duration of claims has increased and claim closure rates have declined.

Recommendation Related to WorkSafeNB's Rehabilitation Centre

1. The board is not prepared to make a recommendation with respect to WRC until the auditor general completes its work. In the interim, staff will continue to explore ways to provide outreach for some aspects of the WRC treatment, thereby minimizing the time workers spend away from home.

E. INJURIES/SAFETY CONCERNS

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

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

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

Question

How can safety standards be improved around the province?

Answer

In an ideal future, workers would never need to access the workers' compensation system because we would prevent all workplace-related injuries or illnesses. Unfortunately, reality would suggest there may always be a need for a compensation system in New Brunswick.

Safety standards and practices can be further improved by continuing to work together – multiple parties have roles in prevention. WorkSafeNB's role is, in part, regulating, ensuring compliance and encouraging safe workplaces. Government's role is to establish the expectations and obligations for all workplace parties through legislation and regulations. Employers' role is to manage their workplaces, not only in accordance with regulations, but also in proactive ways that embrace best practices. Workers and their representatives are critical in fostering workplace safety, in following safe practices, rules and protocols, and in calling attention to concerns where safety issues arise in their workplaces. Indeed, all citizens have their own roles to play in fostering health and safety at work.

WorkSafeNB remains committed and steadfast in doing our part and, as such, believes that safety standards in New Brunswick can be further improved by more timely updates of referenced Canadian Standards Association (CSA) standards and other industry standards and practices contained in the regulations to the *Occupational Health and Safety (OHS) Act*. Unfortunately, due to the government's significant legislative amendment agenda, there have been cases where it has

taken seven years from the time the board of directors recommends a change to government and the regulation or legislation is enacted.

Details

The *OHS Act* is based on the internal responsibility system which requires all individuals in the workplace to take primary responsibility for the health and safety of themselves and others. The *OHS Act* details workers' rights: the right to know or to be informed about actual and potential dangers in the workplace; the right to participate in health and safety initiatives; and the right to refuse dangerous work. All employers and workers in the province must comply with the *OHS Act* – large employers, small employers, contractors operating in NB and every worker including temporary foreign workers.

Building a work safe culture and focusing on injury prevention is one of the best ways to achieve a stable and financially sustainable system. Workplace-based injury prevention is known to effectively minimize human and financial cost. In 2014, WorkSafeNB allocated significant resources to develop an enhanced approach to safety called Safety Leadership. This new model promotes building and investing to change workplace safety culture from the top down to create shared attitudes, beliefs, perceptions and values related to safety in the workplace.

For many years, WorkSafeNB and employers have invested heavily in occupational health and safety and, as a result, injury frequency rates were declining. Despite the increase in accepted claims and longer durations over the past two years, there is no data that indicates New Brunswick workplaces are any less safe or have experienced an increase in accidents.

Recommendations Related to Injuries and Safety Concerns

1. WorkSafeNB has a long-standing and comprehensive practice of using technical committees to facilitate industry agreement on regulatory changes. However, often, by the time these regulations have been updated by government, new standards have been released, resulting in New Brunswick referencing inferior safety standards. To mitigate this problem and continue to build on our stakeholder engagement methodology for building consensus, the board believes it would be in the best position to ensure OHS regulations are updated regularly with the most relevant CSA standards and best practices. As such, WorkSafeNB's board of directors recommends that WorkSafeNB be provided with the authority to create and approve occupational health and safety regulations, similar to the process used in BC, to ensure the most current standards are being followed in New Brunswick.
2. To continue as a leader in occupational health and safety, WorkSafeNB recommends that New Brunswick continue to deliver on a proven multi-pronged safety strategy that emphasizes:
 - Investments in compliance and enforcement resources;
 - Increased access to and modernization of OHS education and awareness;

- Safety leadership and consultation resources to support the development of OHS systems at the workplace level; and
- Engaging youth in building a safety culture.

F. COMPENSABLE INJURIES AND BENEFITS

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

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

Question

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

Answer

A central function of the workers' compensation system is providing benefits to workers who experience workplace injuries or illnesses. When benchmarked against other jurisdictions, Morneau Shepell has indicated that WorkSafeNB compares favourably in the long term and provides fair benefits. However, as previously noted, the board of directors strongly believes that it is crucial that our system provides both appropriate benefits for injured workers and stable, affordable assessment rates for employers. With that spirit of compromise, we believe the stakeholders of the system, workers and employers, must work together to determine a reasonable level of benefits.

Question

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

Answer

The workers' compensation system is very complex and, therefore, communicating applicable benefits to workers is a very important service element. While many benefits (loss of earnings, medical aid) are available to all workers who experience a workplace injury, there are other benefits that require specific eligibility criteria such as benefits related to prostheses, quality of life grants, and home modifications. Although all WorkSafeNB benefits are posted on the corporate website, case managers and other professional staff are trained to decipher which benefits each client may be eligible to receive and to discuss these benefits with the clients directly at the appropriate time.

In addition to benefits, it is important that workers and employers, if they disagree with a

WorkSafeNB decision, are aware of their right to appeal and the advocate services available to help them. Both the employer guide and the worker guide, communication produced by WorkSafeNB, provide information to stakeholders regarding advocate services. Furthermore, while not explicitly mentioning advocates, WorkSafeNB decision letters include the following statement:

Under our present legislation, either the worker or the employer can appeal any decisions rendered by WorkSafeNB. A Notice of Appeal form must be completed and submitted, within one year from the date of this letter, to the Workers' Compensation Appeals Tribunal (WCAT), P. O. Box 5001, 3700 Westfield Road, Saint John, New Brunswick, E2L 4Y9. If you require additional information about the appeal process or how to appeal, please contact the WCAT toll free at 1 844 738-6444.

However, understanding this is a complicated system and difficult to navigate, WorkSafeNB sees room for improvement in this regard and is planning to better communicate the range of benefits and services, including those of the advocates, available through MyServices. For example, the above statement included on letters could also include details about advocate services and their contact information.

Question

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

Answer

WorkSafeNB applies income offsets appropriately (CPPD, private pensions, etc.) as indicated explicitly in the legislation or through decisions rendered by the New Brunswick Court of Appeal (Douthwright). However, a broader discussion around benefit offsets is important. Many benefit systems are designed with waiting periods and to integrate other benefit types. This means that one type of benefit will be offset when receiving money from another source – EI, Social Assistance, Old Age Security, and military pensions reduce benefits when the person receives money from another source. Limiting the amount of combined benefits creates an incentive to return to work and earn more income.

Details

Benefit systems aim to provide the financial support people need without creating disincentives for citizens to contribute to society (Ragan & Lipsey, 464-467). This principle is evident in the types of eligibility criteria, benefit caps, and offsets that are common in many benefit systems, including workers' compensation.

There is strong evidence that the workers' compensation system intended to integrate benefits:

- There is a requirement to offset benefits by CPPD; and
- Subsection 38.11(9) of the *WC Act* requires an offset of other money when the combined benefit and remuneration exceeds 85% of pre-accident net earnings.

However, over the last 30 years, the system has been modified to either include or eliminate certain types of remuneration as supplements. Also, recent WCAT decisions have limited the amount of CPPD offset allowed, as well as WorkSafeNB's ability to end benefits when a non-compensable condition prevents someone from going back to work – even though there are other benefit systems intended to help people in those circumstances. The system now allows more benefits and remuneration to be stacked on top of compensation benefits rather than an integration of benefits. This creates a financial disincentive to return to work.

The authority and guidance for paying compensation to injured workers is found in several places. Some aspects of benefits are expressly provided for in the *WC Act*, some are provided for in regulations under the *WC Act*, and some are outlined, particularly discretionary benefits, in WorkSafeNB policies. Over the years, the board of directors has opted to focus on providing discretionary benefit improvements, through policy, to workers with the most severe, long-term injuries. These discretionary benefits include, for example, those related to vehicle and home modifications – both benefits provided entirely at the board's discretion.

While our board understands that regulations and policies enable changes to be made more nimbly, due to differing interpretations of legislation between WorkSafeNB and WCAT, the board would suggest that more explicit or clearer legislation is needed to ensure that the benefits and limits are commonly understood by all parties. In particular, the benefit issues that should be addressed through legislation include:

- Supplements to compensation;
- Three-day waiting period;
- Non-work-related conditions;
- CPP disability offsets;
- Annuities – basis of calculating the amount to set aside;
- Estimated capable earnings process (deeming); and
- Survivors' benefits.

Recommendations related to each of these are detailed below. As previously noted, the board of directors strongly believes the system belongs to the stakeholders and, as such, while the areas of concern are discussed, any explicit legislative recommendations must involve a thorough consultation with all stakeholders.

Recommendations Related to Compensable Injuries and Benefits

Some of these recommendations were made to government as part of Phase II of the Legislative Review. In these instances, it has been noted, and more detailed information on these can be found in our document, [Phase II Legislative Review - Board Recommendations](#) which is posted on our website worksafenb.ca.

1. **Supplements to Compensation** – WorkSafeNB’s board of directors recommends that the provisions related to supplements to compensation for the *WC Act* and the *FC Act* be repealed and replaced with legislation that expressly indicates those types of remuneration that are to be deducted from loss of earnings benefits.

To determine what should be considered a supplement to compensation, the board of directors recommends undertaking a meaningful consultation with stakeholders. For more context on this recommendation, please see recommendation #12 of Phase II Legislative Review - Board Recommendations.

2. **Three-day Waiting Period** – WorkSafeNB’s board of directors believes that stabilizing the current funding situation is a greater priority. However, the board would support removing the three-day wait with the support of stakeholder consultation.
3. **Transitional Benefits** – WorkSafeNB’s board of directors recommends the legislation be explicit, in that benefits are for work-related conditions and add provisions to the *WC Act* outlining transitional benefits when other conditions that are not medically related to the workplace injury arise. To determine the provisions surrounding transitional benefits, the board of directors recommends undertaking a meaningful consultation with stakeholders. For more context on this recommendation, please see recommendation #14 of Phase II Legislative Review - Board Recommendations.
4. **Canada Pension Plan Disability (CPPD) Offset** – The legislation requires the CPPD benefit be taken into account when determining the compensation or benefits paid by WorkSafeNB. However, WorkSafeNB and the WCAT have had differing interpretations of how this should be calculated. The board of directors recommends that legislation be amended to specify the formula to be used to calculate the CPPD reduction of benefits received for the same period of entitlement to workers’ compensation benefits. It is also recommended that the legislation clarify that if WorkSafeNB determines the CPPD benefits were paid solely for a condition other than the compensable workplace injury, they are to be excluded from the application of the formula.

To determine the appropriate calculation method, the board of directors recommends undertaking a meaningful consultation with stakeholders.

5. **Annuities** – The board of directors recommends the legislation be amended to make it clear on whether the amount set aside for an annuity should be calculated on the compensation paid before or after the loss of earnings benefit has been reduced by CPPD.

In addition, the board of directors recommends changing the requirement from a minimum annuity amount to a minimum lump sum payment amount. The lump sum payment should be determined following a consultation with stakeholders. For more context on this recommendation, please see recommendation #19 of Phase II Legislative Review - Board Recommendations.

6. **Survivors' Benefits** – The board of directors recommends that the existing survivors' benefits be replaced by a new benefit. While the details of this new benefit should be developed following consultation with stakeholders, the board believes survivor benefits should no longer be subject to a family means test in the event of remarriage or be offset by CPP benefits, that this benefit should be simplified for surviving spouses, provide a greater benefit than the current legislation, and align with the compensation benefits available for injured workers. For more context on this recommendation, please see recommendation #24 of Phase II Legislative Review - Board Recommendations.
7. **Estimated Capable Earnings (ECE) / "Deeming"** – It is important to note that approximately 85% of injured workers return to employment with their pre-accident employer. However, the deeming process is typically used when WorkSafeNB considers a worker ready to return to work, but the worker does not have a job to which they can return. Under the deeming process, WorkSafeNB adjusts the worker's benefits by identifying a job that it believes the worker could be doing and the level of income which the worker could be earning from that job. The worker is deemed to be capable of earning that income and their benefits are reduced by that amount. It is safe to say that the deeming process is one of the most contentious issues across all Canadian compensation boards. The subjectivity in the process drives dissatisfaction of workers and results in numerous appeals. This has created a two-tiered system where workers who appeal receive a greater benefit than those who do not.

WorkSafeNB's board of directors believes a legislative change to the process would address the dissatisfaction among workers with the deeming process. The board of directors suggests that options, such as a more objective proxy, be explored that consider the job market in New Brunswick and improve autonomy of the workers. Consultation with stakeholders and an analysis of options should be completed to determine an appropriate application of the concept of estimated capable earnings that does not compromise the financial incentive to return to work, and the responsibility in its entirety is not placed on the injured worker, but is rather a responsibility of all parties involved.

G. RETURN TO WORK

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

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

Question

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

Answer

Physicians have multiple roles within the patient/physician relationship. Primarily, the physician is trained to assess, diagnose, and treat illnesses and injuries of the whole person. However, the physician's role must change during disability management. In addition to the normal assessment and treatment physicians provide to their patients, the treatment plan for an injured worker must include a return to work component.

Through this process, the physician becomes a participant and not the owner of the process, providing assessments and emphasis on the worker's abilities and capacity related to job functions rather than simply prescribing "off work". In almost all circumstances, abilities and capacities should be provided unless the worker is hospitalized or house bound. The list of restrictions allows the employer to identify, if appropriate, work available for the worker while they are recovering. The onus is on the employer to match work to the restrictions the physician has outlined.

Also, the thinking around disability management is changing. While managing disability and return to work continues to be critical, preventing work disability needs to become a key part of the dialogue. Disability Management is not the same as Work Disability Prevention. The word "management" gives a feeling of the process of dealing with or controlling things or people. The word "prevention" means the action of stopping something from happening or arising. For most people recovery occurs as would normally be expected. When a person is not recovering as expected it is imperative to uncover root causes that may not be apparent. All parties have a role to play and must work together in uncovering and addressing these causes in a way that does not create further disability. Studies have shown that clinical severity is not strongly related to work disability. Work disability is a separate psychosocial condition, has a unique set of causes, associated factors, and also responds to effective treatments.

Details

Helping workers to recover from workplace injuries and return to work is one of the primary reasons WorkSafeNB exists and return to work is a foundational part of the workers' compensation system in New Brunswick. It is recognized that early and safe return to work is an important component of rehabilitation for most workers. WorkSafeNB uses best practices, scientific literature, and medical research to guide and facilitate return to work activities.

Physicians and allied professionals play a pivotal role in facilitating return to work as they are usually the first point of contact following a workplace injury, and the most up-to-date on their patient's physical, psychological, and social well-being. When physicians see their role as part of a team working toward a safe and timely return to work for injured workers, their patient is better supported in recovery from their workplace injury and their return to work efforts.

The Canadian Medical Association has developed a consensus statement on the therapeutic value of work while recovering from injury or illness. This consensus is not evident in the information that WorkSafeNB often receives from family physicians, which is primarily “off work” notes with little detail. During an injured worker’s initial visit, the physician has the greatest ability to help a worker understand that continuing to work as a means of therapy is physically, psychologically, and financially beneficial. In these instances, physicians could help WorkSafeNB facilitate return to work by:

- Stressing the importance of being as active as possible within any restrictions the worker may have; and
- Reassuring the worker that discomfort from recommended activity is a normal part of the recovery process.

As noted above, physicians need to advise injured workers about their restrictions and/or capabilities. Rather than authorizing absence from work, the physicians should provide the injured worker with a list of restrictions resulting from the injury to be shared with the employer, which would significantly help prevent workplace disability. In instances where physicians find it difficult to identify specific restrictions or capabilities (because of a number of reasons – skill set, time limitations, etc.), they should make a referral to a physiotherapist who is skilled at this assessment.

Once the worker shares the list of restrictions with them, the employer can determine, in consultation with the worker, if the worker’s duties can be modified or other accommodation can be made to allow return to work. If the employer cannot accommodate the worker’s restrictions, then absence from work may be required even though any return to the workplace has been shown to have positive effects on recovery. This process would work best if physicians assume that employers can and will accommodate, even if workers think otherwise. The advantage of this approach, for both the worker and employer, is that it encourages both to keep the dialogue open regarding accommodation. Continuing communication between the worker and employer is a vital part of successful recovery and return to work. Despite the injury occurring at work, WorkSafeNB would like to see New Brunswick employers and workers embrace the concept of recovering while at work in the same manner we seem to see if the injury had occurred on personal time.

Return to work must be a collaborative process to be successful. It must involve WorkSafeNB, the injured worker, the employer, physicians and allied professionals to explore all reasonable, creative and flexible solutions that will help prevent disability. This integrates the injured worker’s needs for medical aid, return to work assistance and compensation benefits.

For many years, WorkSafeNB has focused on medical best practices as it relates to return to work. This best-in-class approach includes an award-winning shoulder program, back program, and direct referral to a select network of physiotherapists for workers with soft tissue injuries. There are currently 134 employers registered for the direct referral service including six GNB departments. The program has resulted in a decreased number of lost-time claims and a decrease in time off work for those employers who send their appropriate workers.

WorkSafeNB is in the process of expanding awareness and education on the disability management services, recognizing this is a gap in many workplaces in New Brunswick. The focus is on increasing awareness and educational materials for employers to develop disability management services, with a focus on the seven principles of effective disability management from the Institute for Work and Health:

1. The workplace has a strong commitment to health and safety, which is demonstrated by the behaviours of the workplace parties.
2. The employer makes an offer of modified work (also known as work accommodation) to injured/ill workers so they can return early and safely to work activities suitable to their abilities.
3. Return-to-work planners ensure the plan supports the returning worker without disadvantaging co-workers and supervisors.
4. Supervisors are trained in work disability prevention and included in return to work planning.
5. The employer makes early and considerate contact with injured/ill workers.
6. Someone has the responsibility to co-ordinate the return to work.
7. Employers and health care providers communicate with each other about the workplace demands as needed, and with the worker's consent.

As previously noted, most workers recover from their injury and return to work as expected. However, there are some workers who may be at a higher risk of disability and not returning to work. This is not necessarily due to the severity of the workplace accident, but may be influenced by other elements such as psychosocial factors. In fact, we could have two workers with the same injury, experience very different outcomes. Technology, the use of predictive analytics and other risk based methodologies, should be used by all workplace parties to categorize levels of risk of work disability. Assessment results should direct appropriate intervention. Early intervention models and resources should be directed to targeted interventions for known predictors of work disability based on medium and high risk. For injured workers with a low risk of disability, fewer interventions should be implemented, as research finds these workers will be more successful when we do not overcomplicate the process with assessments and turning RTW into a medical process.

Stakeholder Engagement

As the Task Force discussion paper noted, stakeholders believe WorkSafeNB lacks familiarity with the details of employer workplaces and available jobs in these workplaces; therefore, WorkSafeNB recognizes there is room for improvement in this facet of the workers' compensation system.

For greater understanding of the return to work process from all perspectives (physicians, employers, injured workers and WorkSafeNB), the fourth and final stakeholder engagement session of 2017, will focus on this topic. This meeting will take place in Saint John on December 13, 2017, and will be an opportunity for WorkSafeNB's board of directors and staff to learn from our stakeholders about their experiences with return to work, what they believe are the barriers, and what solutions they would like to see implemented.

Recommendations Related to Return to Work

1. The board of directors recommends amending the *WC Act* to clearly state:
 - a. Explicit and reasonable expectations around rehabilitation and return to work to prevent prolonged or permanent withdrawal from the workforce;
 - b. Requirements of health care providers to provide more than “off-work” prescriptions and to support a functional capability assessment outlining the worker’s restrictions.
2. The board of directors realizes there is work to be done as it relates to the culture and perceptions surrounding injured workers returning to employment while they recover. As such, it recommends a campaign that clearly communicates with New Brunswickers the advantages of proactive early and safe return to work but also spreading awareness related to work disability prevention as noted in the answer above.
3. WorkSafeNB will hear from stakeholders in December on their ideas for improving return to work. At a minimum, it is imperative that all parties in return to work, understand how they can contribute to the process to maximize workers’ success in returning to work and preventing disability.

H. INVESTMENTS, SYSTEMS SUSTAINABILITY AND AFFORDABILITY

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

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

Question

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

Answer

Over the past 25 years, the board’s funding policy has been effective in mitigating risk, and stabilizing the assessment rate and the funded level of the accident fund during periods of time when there have not been extraordinary external pressures on the system. The most recent success of the discipline was demonstrated after the 2008 global financial crisis when the fund lost 17.98% in 2008, dropping to 89.1% funded and then rebounded in 2009 returning 18.08% to push the accident

fund to 101.6% funded. Current pressure on the fund is stemming from rapidly increasing claims costs and not market fluctuations.

Question

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

Answer

Currently, rates are segregated into the suggested components and presented in this way when the board approves the assessment rate. WorkSafeNB, over the past two years, has become more proficient at communicating these components to stakeholders and the public.

Question

Are rate-setting procedures appropriate?

Answer

Rate-setting procedures are consistent with how rates are set in other jurisdictions.

Details

The *Workers' Compensation Act*, at sections 52, 54(1), and 54(1.1), requires that WorkSafeNB collect enough money each year to meet its financial obligations and to maintain full funding – 100%. This money is collected from employers through assessment rates that are established annually by the board of directors. Once collected, some of this money is spent to pay the cost of claims, while the remaining portion is invested to secure future benefit payments for injured workers and to keep the assessment rate stable. These invested monies make up WorkSafeNB's accident fund.

The funded level of WorkSafeNB's accident fund is affected by various factors, including volatile investment markets. To ensure full funding of the system most of the time, before 2005, the funding target was 105%. The board changed its target in 2006 to 110% where it remains today. Over the years, the funded level has been both above and below the target of 110% (for example, 87.7% in 2008 and % in 2013).

Jurisdiction	Funding target
Yukon	125%
Saskatchewan	105% - 120%
Manitoba	130%
PEI	100% - 110%
British Columbia	138%
Alberta	114% - 128%
New Brunswick	110%
Newfoundland	100% - 120%
NT / NU	125%
Quebec	100% - 110%
Nova Scotia	100%
Ontario	115% - 125%

The board's funding policy is informed by its regular asset liability study, which was completed in 2016, and is designed to keep the funded position in a reasonable range around the 110% target. Over the next 10 years, the board expects the funded position may vary between 85% and 150%, driven by market fluctuation alone. The funded position will also be affected if claims or administration costs are higher or lower than projected. The rebates and surcharges applied to the assessment rate aim to keep the funded position in a range around the 110% target.

Funding levels vary across other Canadian workers' compensation commissions. Yukon was funded at 150% by the end of 2016, whereas both Ontario and Nova Scotia remain underfunded.

Funding Level by Year (%)					
Jurisdiction	2016	2015	2014	2013	2012
Yukon	150.0	155.0	160.4	152.6	145.8
Saskatchewan	118.7	152.8	153.3	148.8	136.9
Manitoba	145.9	143.3	137.8	134.0	126.6
Prince Edward Island	138.0	141.4	147.2	135.3	124.6
British Columbia	142.0	137.9	129.7	124.6	118.2
Alberta	133.8	134.3	136.0	134.3	130.2
New Brunswick	112.1	123.2	137.3	138.2	126.7
Newfoundland	126.1	118.8	112.0	106.5	91.7
NT / NU	110.0	117.3	115.9	116.4	107.0
Quebec	110.0	105.8	99.5	95.3	88.5
Nova Scotia	84.1	80.6	76.9	71.4	66.4
Ontario	87.4	79.4	74.6	66.0	55.3

WorkSafeNB's funding policy plays a key role in achieving sustainability by ensuring sufficient funds are available to pay benefits. Any funds in excess of the 110% target are amortized over eight years through a rebate applied to the average assessment rate. Shortfalls between 100% and 110% are also amortized over eight years via a surcharge added to the average assessment rate. Shortfalls below 100% are amortized over five years in accordance with section 54(1.1) of the *WC Act*. Historically, WorkSafeNB had not communicated well to stakeholders how these amounts above and below 110% impact the assessment rate. In late 2016 and 2017, WorkSafeNB began to provide numerous resources and to better explain these rate rebates and surcharges.

With concern escalating over the increasing assessment rates and the multiple reviews of the workers' compensation system ongoing, the board decided to suspend the application of its 110% funding target for its 2018 rate setting decision only; and chose instead to fund the system to its legislated minimum of 100%. While the board's funding policy target of 110% is informed by its 2016 Asset Liability Study, the current environment may warrant a review of alternatives.

Long-Term Strategy

As financial markets are inherently volatile over the short to medium term, WorkSafeNB has taken a long-term, disciplined approach to achieve good and lasting investment results at an acceptable level of risk. The portfolio targets a long-term nominal return of 6.08%. Short-term performance is expected to vary widely from this objective as it moves with markets (both positively and negatively), but longer-term results are expected to be close to this objective. In the 20-year period ending December 31, 2016, the portfolio returned 6.57% annualized. For the most recent eight year period ending December 31, 2016, the portfolio returned an average of 9.85% per year.

Recently, WorkSafeNB's board of directors has engaged an independent third party to review the current investment management model and any alternative models that might exist, including an examination of Vestcor Investment Management Corporation. The review is underway and the findings

will be available by year-end 2017.

Funds Above Target

When WorkSafeNB has a funding status greater than the target of 110%, it has a policy in place to amortize the surplus over a period of no more than eight years. This “target funding level adjustment” would result in a reduction of assessment rates. There are a variety of approaches across Canada to manage the funds above target. Similar to WorkSafeNB, the use of funds above the target tends to be in the area of reducing assessments or refunds to employers, however Manitoba and Newfoundland and Labrador consider benefit improvements and prevention programs. It may also be reasonable to consider leaving these excess funds in the system or use them to build reserves against future market corrections (in excess of the target), provide funds to improve the functioning of the compensation system or provide funds to improve workplace safety. WorkSafeNB could explore other options for managing future surpluses in the accident fund.

Recommendations Related to Investments, Systems Sustainability and Affordability

1. The board of directors will be reviewing its long-term fiscal strategy policy with a lens to further mitigating risks from a variety of sources including market fluctuations, sudden claim costs pressure, catastrophic events, and changes in legislation or policy, to name a few.
2. The board of directors will consult with stakeholders and explore options for managing the surpluses in the accident fund.
3. The board of directors is expecting the results from an independent review of WorkSafeNB’s investment model. Recommendations from this review will be examined by the board.

I. WORKSAFENB’S TECHNOLOGY / OTHER ISSUES

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

Stakeholders have concerns regarding the technology system in place at WorkSafeNB. There is evidence WorkSafeNB requires a major technological overhaul to support its operational and customer service goals. Stakeholders require transparency and accountability, independence and self-governance within WorkSafeNB.

Question

How can technology better serve stakeholders and clients?

Answer

As the rapid pace of technological innovation continues to take form, it’s shaping new ways for industries to conduct their business and better serve clients, including opportunities at WorkSafeNB. Several years ago, WorkSafeNB began work on its service transformation, developing a five-year roadmap that focused on people, processes, and technology. In planning the service

transformation, WorkSafeNB recognized that its technology needed to be modernized and leveraged to provide clients more options to interact with WorkSafeNB.

WorkSafeNB plans to improve its technology related to adjudication and case management to provide more timely and efficient services to its clients. This means that its workers would be provided with information needed in the channel of their choice (face to face, self-serve, online portal) and financial payments more quickly leading to, hopefully, higher client satisfaction levels. In turn, this technology will also allow WorkSafeNB to gather information in a timelier manner allowing for better and more relevant data collection and, ultimately, better results such as improved return to work outcomes.

For employers, technology can help them access their information in a self-serve manner – view their assessments, claims, clearance certificates, etc. Furthermore, as technology improves, and WorkSafeNB is able to collect data in a more meaningful way, it will allow the organization to develop online tools such as data sharing and business intelligence models to serve its clients.

Details

WorkSafeNB has been working to continuously advance its service culture since 2008, when a new goal was established to advance service delivery that would be effective, prompt, efficient, fair, caring and compassionate; supported by a high level service policy. Over the next six years, WorkSafeNB continued to build service delivery capacity by allocating resources to evaluate and define the service model needed to achieve the service goal.

With the current environment and priorities changing, the board of directors realigned the service goal and organizational values to focus on an enterprise-wide service transformation. WorkSafeNB focused on the Mayo Clinic model of service delivery as a best-in-class method to further inform and define how our client-centred service culture should evolve.

The Department of Service Excellence was established in 2016, to provide vision and change leadership to move the enterprise through its service transformation. Its mandate is to leverage proven best practices, design innovative systems, modernize processes, and align values and behaviours that instill a client-centred service culture that is inspiring and responsive to people's needs, by implementing the Client Experience Improvement Roadmap. This roadmap is a high-level, multi-year plan to advance WorkSafeNB's service excellence maturity through people, processes, and technology. Overhauling the IT structure at WorkSafeNB is not an easy or quick solution, instead this requires a long term, 10-year commitment with improvements being made annually.

While WorkSafeNB understands that service transformation is more challenging in a shifting environment, the board of directors has fully supported this initiative as essential to a modern workers' compensation system. Projects completed include the electronic filing of *Form 67* and launching online self-serve portal, MyServices. An interesting project underway involving technology includes the acceptance of electronic filing and payments for physicians. This will mean moving away from paper records, and physicians will be able to upload their forms and reports automatically to our

system and bill WorkSafeNB the same way they currently bill Medicare.

In the future, WorkSafeNB hopes to use technology to implement automated adjudication for certain claims. Claims processing would be done in real-time and eliminate unnecessary paperwork. When paper is eliminated instead of lengthy explanations, videos can be watched instead to better understand things. Virtual chat options also help answer stakeholders' questions in clear language that help keep people away from long wait times on the phone.

Today, WorkSafeNB continues to implement foundational strategies including a project management office, change management discipline, and a continuous improvement discipline using Lean Six Sigma. This work is on-going and will transform the way WorkSafeNB does business.

Recommendation Related to Technology / Other Issues.

1. To continue to improve technology to best serve the needs of clients, WorkSafeNB board of directors will make an annual budgetary commitment to technology enhancements to advance our service delivery to meet the needs of the client.
2. The board of directors will ensure the organization continues to improve our service delivery through technology, and communicate and showcase our improvements to our stakeholders to raise awareness of services and tools available.

J. MEDICAL ISSUES

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

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

Question

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

Answer

This question was specifically answered in Section G under the discussion on return to work.

However, in the Task Force's introduction to this question, pain management, particularly opioids, were noted as an area of worry. WorkSafeNB continues to be concerned with opioid abuse and emerging issues around cannabis. Unfortunately, WorkSafeNB's best efforts to limit and monitor,

along with advocacy for safe prescribing practices, are generally overturned by the WCAT.

Details

With respect to pain management, stakeholders are concerned that injured workers are part of the growing opioid abuse issue. WorkSafeNB is taking proactive measures with both its cannabis and opioids policies. WorkSafeNB is establishing a new policy outlining guidelines for the management of medicinal cannabis to treat compensable injuries based on current scientific evidence. While this policy is still being proposed, WorkSafeNB undertook an extensive consultation with stakeholders on its development including contacting more than 7,000 physicians within the province.

In 2007, WorkSafeNB adopted a disciplined opioid management approach for both short and long-term use of this type of medication. Policy 25-012 Medical Aid – Opioids communicates this discipline and best practice for the management of opioids. Since the policy was originally approved, research in the area of opioid addiction has significantly matured and now indicates that dependency can develop in less than three days. With this more thorough understanding, due diligence exists on WorkSafeNB's part to ensure opioids are only being prescribed to those injured workers who will most benefit from the treatment and at a level that minimizes the risk of dependency and harm.

This increased knowledge into dependency, addiction and opioids has also led to changes in best practices and guidelines to both limit payment for initial prescriptions of opioids, and their long-term use as treatment. WorkSafeNB will be actively engaging stakeholders such as physicians, nurse practitioners, and workers on a revised opioids policy in early 2018.

WorkSafeNB Partnerships with Medical Community

As previously iterated in Section G – Return to Work, the role of physicians, including family doctors, is to work together toward a safe and timely return to work with their patient alongside WorkSafeNB. Family doctors can work with WorkSafeNB doctors to each fulfill these elements as treating physicians of injured workers by:

1. Providing to the patient medically necessary services related to the injury or illness to achieve optimum health and functionality;
2. Providing objective, accurate and timely medical information for the consideration of eligibility of insurance benefits; and
3. Providing objective, accurate and timely medical information as part of the timely return-to-work program.

Recommendations Related to Medical Issues

See recommendations under Section G. In addition to those:

1. WorkSafeNB's board of directors will review its current Policy 25-012 Medical Aid – Opioids in accordance with the organization's policy discipline, medical best practices and a robust stakeholder consultation. The revised policy will aim to ensure opioids that are prescribed

by physicians and paid for by WorkSafeNB are only being used by those injured workers who will most benefit from the treatment and at a level that minimizes the risk of dependency and harm.

2. WorkSafeNB's chief medical officer is actively working with all parts of the medical community to promote education and awareness in relation to occupational medical issues and associated best practices. It is recommended that this work continue.

K. INDEPENDENCE OF ADMINISTRATION

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

Question

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

Answer

The board of directors understands that government entertains multiple legislative priorities, with limited resources for drafting and approving Bills. There have been instances where government has not pursued recommendations from the board for legislative change in a timely manner or at all. There have been other instances where government has proceeded with other changes without consulting the board.

Question

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

The board composition of equal representation between worker and employer members, both groups always having a voice at the table, inherently reflects the Meredith Principles and the historic compromise. The legislation requires the board chairperson and vice chairperson be neither a representative of employers nor workers – this is not unique to New Brunswick but rather consistent across the country. Because the board of directors functions on consensus, this neutrality helps with decision-making. Furthermore, the neutral chairperson and vice-chairperson can represent the public interest rather than a particular stakeholder group.

The process for board appointments follows the agencies, boards and commissions process established by the GNB. While there may be room for improvement in this process by additional advertising of vacancies and clear identification on the application of their representation of larger groups, the current process is effective. Vacancies are posted six months in advance on the GNB's website. Following the closure of the competition, the information submitted by all applicants is forwarded to WorkSafeNB's board of directors for review. As of February 2017, the board screens all applicants and interviews the top candidates. The board then recommends their appointment choice

to GNB for approval.

Question

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

The board strongly urges stakeholder groups to identify suitable candidates and encourage and support them in their application. However, the board does not believe members should be chosen exclusively from specific stakeholder groups. This is because a large majority of New Brunswick's workers (particularly non-unionized) and employers (small and medium-size) may not have a chance to be represented on the board should this model be adopted. Furthermore, once board members are selected, regardless of their affiliation, as per section 8(4) of the *WHSCC & WCAT Act*, they are required to act in the best interest of WorkSafeNB:

8(4) Members of the board of directors shall at all times act in the best interest of the Commission notwithstanding the appointment of a member as representative of workers or employers.

Details

WorkSafeNB is both a Crown body and Crown corporation. As per subsection 5(1) of the *WHSCC & WCAT Act*, the minister is responsible for the administration of this Act, except in respect of those powers and responsibilities that this Act confers or imposes on WorkSafeNB. The Act provides that the governing board of directors, appointed by government, carry out its legislated mandate (section 7 *WHSCC & WCAT Act*) and notwithstanding, the organization's legislative responsibilities to government - such as providing an annual report, the chairperson meeting with the minister to brief the lieutenant-governor in council, and getting approval from government for WorkSafeNB's annual plan, the board of directors is confident in our ability to operate independently.

The system is entrusted to the board to make decisions in the compensation system's best interest, recognizing there are two diverse stakeholder interests. WorkSafeNB's board of directors takes its role within the system very seriously and has developed a policy governance framework to guide it in the fulfillment of its obligations under the *WC Act*. The board has developed solid discipline around many aspects of its responsibility including rate-setting, investments, policy-making, and oversight.

To fulfill the Meredith Principle of exclusive jurisdiction, the board needs to have the authority to determine the system's direction, responsible use of its resources, and the appropriate balance between employer and worker interests. The board of directors is the ultimate steward of the workers' compensation system with the overall responsibility to ensure that the organization fulfills the purposes for which it was created.

The board's legislated mandate includes making recommendations to government for legislative change. It is not uncommon for the board to make a recommendation to government that is either

rejected or not pursued. Alternately, there have been occasions when amendments or new legislation is enacted without consultation with WorkSafeNB. Both these scenarios have impacts on the board's ability to solve identified issues using legislation, or plan for resourcing when new legislation is enacted without consultation with the board, or contrary to the board's advice.

Board Composition

WorkSafeNB recognizes that board composition is imperative to effective governance, and also recognizes there may be additional opportunities for workers and employers to be more connected to the overall governance of the organization. Stakeholders have indicated that they would like WorkSafeNB's board of directors to be more truly representative of stakeholders and be more proactive in reaching out to stakeholder groups when a vacancy becomes available on the Board.

Jurisdictions across Canada advertise board vacancies in a variety of ways, including posting on their government equivalent of GNB's agencies, boards and commissions website, newspapers, radio, external websites, and, in the case of Alberta, engagement of an external firm to help in the recruitment process. Some jurisdictions across Canada request names from stakeholder groups for consideration, including Nova Scotia, Saskatchewan, Manitoba and Yukon. Many of these jurisdictions also use a competency matrix when appointing and reappointing members. WorkSafeNB does not use a competency or skills matrix but recognizes this could be a valuable governance tool.

WorkSafeNB follows GNB's process for filling board vacancies. Government standardized its approach for filling vacancies on agencies, boards and commissions and WorkSafeNB participates in that process. This includes working with government to identify skills needed to include in a position description, reviewing applications, interviewing potential candidates and as the appointment is done by government, making a recommendation on which candidate would best serve the interests of WorkSafeNB.

Recommendations Related to Independence of Administration

1. WorkSafeNB board of directors recommends the current application process for board members be enhanced to communicate more broadly about vacancies to key stakeholder groups and to adjust the process so that applicants representing larger stakeholder groups can be more readily identified.
2. WorkSafeNB board of directors recommends the current process, where government forwards all applicants to the board of directors for vetting, interviewing and selection, be formalized.
3. WorkSafeNB board would like to have the opportunity to recommend their choice for both the chairperson and vice-chairperson positions to government, similar to the process for worker and employer representatives.
4. WorkSafeNB's board of directors is committed to enhancing the training and education board members receive to help them in their role as stewards of WorkSafeNB.

L. COMMUNICATIONS AND STAKEHOLDER RELATIONS

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

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

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

Question

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

Answer

Over the past year, WorkSafeNB has made stakeholder communication and engagement a core business component. We believe stakeholders have recognized this shift in business philosophy and want to be involved in influencing decisions at WorkSafeNB.

WorkSafeNB will continue to connect with stakeholders to promote a greater degree of dialogue, engagement and collaboration with decision-makers so stakeholders will have greater trust and confidence in the workers' compensation system.

Details

As a stakeholder-driven organization, WorkSafeNB has a responsibility to build relationships with stakeholder groups and to integrate stakeholder views and opinions into its decision-making process. A new corporate goal focused solely on stakeholder engagement now states *"We will engage our stakeholders in meaningful dialogue, relationships, partnerships and decision-making to ensure a sustainable workplace health, safety and compensation system."* The board also approved a comprehensive stakeholder engagement plan as a means to exceed our commitment to this goal.

WorkSafeNB uses different approaches to consult with employers, workers, injured workers, and their families. These include discussion papers, questionnaires, opportunities to submit feedback through WorkSafeNB's website, in-person focus group meetings and forums, ad hoc stakeholder advisory meetings, industry-specific technical committees and stakeholder committees such as the Injured Workers' Advisory Committee, to name a few.

Across Canada, with the exception of Saskatchewan, workers' compensation boards are committed to consulting stakeholders on issues of policy development as a regular part of the review process. Online consultation is the main channel for collecting feedback for the majority of jurisdictions.

Part of implementing WorkSafeNB's new stakeholder engagement goal includes a more robust policy consultation process, which is in development, to enhance the current practice of posting policies and also to implement a new two-tier policy consultation protocol. Another recent initiative was to engage employer and worker communities in meetings across the province to outline the rate-setting process with an objective of creating more transparency to the system.

WorkSafeNB is committed to remaining transparent and accountable to its stakeholders. Recently, to improve these efforts, WorkSafeNB has released more data to stakeholders through our corporate website, and has begun publishing quarterly expense reports for all board members. The board has also committed to externally publishing minutes beginning January 2018.

Privacy

WorkSafeNB is committed to protecting the privacy and personal health information of clients, as required by law. However, this also means that WorkSafeNB is unable to provide employers with necessary information to help them accommodate an injured worker's return to the workplace. It becomes the responsibility of the worker to share this information with the employer. For return-to-work to be successful, all parties must be communicating openly to find the best solutions so that a worker can stay at work during recovery or return in as timely a manner as possible.

Direction from the Privacy Commissioner has also limited WorkSafeNB's ability to evaluate the effectiveness of its programs and services, and clients' satisfaction with service delivery.

Recommendations Related to Communications and Stakeholder Relations

1. WorkSafeNB's board of directors remains steadfast to ongoing stakeholder engagement. It is recommended that this engagement, transparency and accountability continue to improve. The board is committed to:
 - Regularly communicating with individual stakeholders and stakeholder groups as necessary;
 - Hosting quarterly engagement sessions with stakeholders;
 - Publishing Board expenses on WorkSafeNB's corporate website;
 - Publishing board minutes on WorkSafeNB's corporate website;
 - Enhancing WorkSafeNB's policy consultations; and
 - Disclosing WorkSafeNB staff salaries on WorkSafeNB's corporate website.
2. WorkSafeNB's board of directors recommends holding an annual public meeting to hear the concerns of all New Brunswickers as they relate to workers' compensation in this province.

M. OTHER LEGISLATIVE AMENDMENTS

In responding to the emerging issues identified by the Task Force, WorkSafeNB's board of directors identified legislative changes to be considered to address some of these issues. In addition to the legislative changes proposed above, the board of directors also considered other issues that, if

addressed by legislative amendments, could improve the workers' compensation system. These issues fall into:

1. Defining the purpose of the workers' compensation system;
2. Definition of accident and injury; and
3. Standard of evidence.

These legislative recommendations are detailed below and would impact the *Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act (WHSCC&WCAT Act)*, the *WC Act*, and the *Firefighters' Compensation Act (FC Act)*.

1. Defining the Purpose of the Workers' Compensation System

Details

As noted in this submission, the WCAT often interprets legislation differently than WorkSafeNB's board of directors. The *WC Act* is notoriously difficult to read, is ambiguous in many sections, and silent on other important issues where the WCAT has taken a position different than the board. In fact, some sections date back to the original *Compensation Act* from 1918, while others have endured since the significant changes in 1982.

In the absence of rewriting the entire *Act* to make it more user-friendly, clear and understandable (an objective of the three phase legislative review), the board of directors believes it may be useful to better define the purpose of the system in legislation. Is the primary purpose to provide loss of earnings benefits – to replace the need to work? Or, is it to provide appropriate financial support to promote certain return to work behaviours? These types of statements may affect the overall culture and understanding of the system. This statement of purpose also provides context for interpreting the legislation. Ontario, Quebec, Northwest Territories and Yukon have statements of purpose in their legislation. Ontario states its purpose in legislation as follows:

Purpose

The purpose of this Act is to accomplish the following in a financially responsible and accountable manner:

1. To promote health and safety in workplaces.
2. To facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease.
3. To facilitate the re-entry into the labour market of workers and spouses of deceased workers.
4. To provide compensation and other benefits to workers and to the survivors of deceased workers.

The purpose in the Yukon legislation also states the Meredith Principles and that the Government has confidence in the Yukon Workers' Compensation Board to independently administer the system.

Where there are gaps in legislation, the purpose may also help with shaping policy on specific issues.

One of the most profound gaps in the current *WC Act* relates to how loss of earnings benefits are managed when there is a non-compensable condition that becomes the reason a person cannot return to work. If the purpose of this system is to compensate for work-related injuries and to help people return to work, then legislation should clearly state the rules around transitioning a person to a social benefit system that compensates for non-work-related injuries and illnesses.

Recommendations Relating to the Purpose of the System:

WorkSafeNB's board of directors recommends that the legislation define the overall purpose of the system.

2. Definition of Accident and Injury

Details

The current definition of accident causes confusion in adjudicating claims for entitlement, in particular when determining whether the personal injury (disablement) is caused to a worker by a work-related accident (event). Because the definition of accident includes a disablement, the provision can be read *did the disablement cause the disablement*.

"accident" includes a wilful and intentional act, not being the act of a worker, and also includes a chance event occasioned by a physical or natural cause, as well as a disablement caused by an occupational disease and any other disablement arising out of and in the course of employment, but does not include the disablement of mental stress or a disablement caused by mental stress, other than as an acute reaction to a traumatic event;(accident)

British Columbia's *Workers' Compensation Act* contains a clear definition of accident, limiting it to an event.

"accident" includes a wilful and intentional act, not being the act of the worker, and also includes a fortuitous event occasioned by a physical or natural cause;

While a new definition of accident would provide clarity, the definitions around disablements would no longer be captured with this amendment alone. Defining these disablements is necessary and should be done in a separate definition within the legislation.

Recommendation

It is recommended that the definition of *accident*, in the *WC Act*, be amended to only reflect an event, rather than including *disablements* as part of the definition as it currently does; and that a separate definition of *injury* be created to capture the disablements currently under the definition of accident. Namely:

- Disablement caused by an occupational disease; and
- Any other disablement arising out of and in the course of employment, not including the

disablement of mental stress or a disablement caused by mental stress, other than as an acute reaction to a traumatic event.

3. Standard of Evidence

Details

A legislative amendment is needed to introduce more consistency among decision makers with respect to applying section 7 of the *WC Act* including the standard of evidence. Clarity to ensure consistency of all decision-makers is required in three areas:

- The meaning of evidence to the contrary to rebut the presumption;
- The meaning of preponderance of evidence when weighing evidence in section 7 of the *WC Act*; and
- The standard of evidence to be used throughout the management of a claim.

Clarify the evidence needed to rebut the presumption clause

Under section 7 of the *WC Act* all accidents are presumed to be work-related unless there is any evidence to the contrary:

7(2) When the accident arose out of the employment, in the absence of any evidence to the contrary, it shall be presumed that it occurred in the course of the employment, and when the accident occurred in the course of employment, in the absence of any evidence to the contrary, it shall be presumed that it arose out of the employment.

The system has recently changed from a fairly literal interpretation of “any evidence to the contrary” to the WCAT interpretation that evidence must actually show that the employment was not the cause of the accident. This has led to the presumption being rebutted less and therefore the presumption becomes, more often, the standard of evidence needed to accept that the accident was work-related and ultimately acceptance of the claim.

Using the “presumption” as a standard of evidence rather than the “preponderance of evidence” has a significant impact on the number of claims accepted and, in turn, on the cost of the workers’ compensation system

The current presumption wording came into effect in 1992. At the end of 1991, WorkSafeNB had an unfunded liability of \$92.9 million (a funded level of 72.5%) and further deficits were projected. The board of directors was seeking ways to ensure the financial sustainability of the organization and, after consulting with stakeholders, proposed a number of legislative amendments. In 1992 the *WC Act* was amended with our present legislation on entitlement that indicates “any evidence to the contrary” could be used to rebut the presumption then leading to a weighing of the evidence using a preponderance of evidence.

Before 1992, the wording of the presumption section used “unless the contrary is shown” as the evidence needed to rebut the presumption:

7(a) When the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and when the accident occurred in the course of employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

Clarify what preponderance of evidence means in section 7 of the WC Act

The legislation sets out the use of preponderance in section 7(2.1) in instances where the presumption has been rebutted:

7(2.1) Where there is any evidence that an accident did not arise out of or in the course of the employment, the Commission shall weigh all the evidence before it and determine, on a preponderance of evidence, whether the accident arose out of or in the course of the employment, as the case may be.

To help with the weighing of information, the board approved policy 21-113 Decision-Making. The policy outlines that preponderance of evidence means determining “is it more likely than not”. The policy outlines that when weighing on a preponderance of evidence, the decision-maker considers:

...the most persuasive and impressive evidence on one side of a case, which outweighs the evidence on the other side. A preponderance of evidence is not decided on the quantity of evidence alone, but on the significance and strength of the evidence as well.

The policy further addresses weighing medical evidence which is often a key consideration for determining if there is a causative link or relationship between an injury and the accident. As outlined in the policy, WorkSafeNB’s medical advisor’s opinion is supported by “objective and evidence-based rationale”. Despite a policy in place on weighing evidence, there is often a discrepancy between WorkSafeNB and the WCAT on the weight given to medical evidence/opinion. WorkSafeNB often gives more weight to its own medical advisor’s opinion and specialists and the WCAT gives more weight to the opinion of the injured worker’s attending physician. WorkSafeNB’s board of directors believes this could be mitigated if the WCAT retained an independent medical advisor to help in their decision-making.

Clarify the standard of evidence to be used throughout the management of a claim

While the legislation sets out the decision-making principles for the acceptance of a claim in section 7, how decisions are made throughout the life of the claim is left to the exclusive jurisdiction of the board through section 34 of the WC Act.

As such, the board’s policy 21-113 Decision-Making guides decision making throughout the life of the claim. The policy sets out that these decisions should be made on the preponderance of evidence, the same as the statutory standard for claim entitlement decisions.

As mentioned in the recommendation above, there is often a discrepancy between WorkSafeNB and the WCAT on the weight given to medical evidence/opinion. This is true of medical decisions

throughout the life of the claim. WCAT decisions regarding WorkSafeNB's coverage of medical marijuana demonstrate this difference as the WCAT usually supports the evidence provided by the worker's physician over that of WorkSafeNB's medical advisor and Canada Health Solutions. It may be useful to have a mechanism in place for the WCAT vice-chairs to be able to clarify questions of a medical nature which were used in making the claim decisions under appeal.

Recommendation

It is recommended that the legislation change to:

- Clarify the meaning of evidence to the contrary needed to rebut the presumption clause;
- Clarify what preponderance of evidence means in section 7 of the *WC Act*; and
- Clarify the standard of evidence to be used throughout the management of a claim.

WorkSafeNB's board of directors believes this change would provide certainty to the process introducing more consistency among decision makers.

Appendix A: WCAT Decisions

Policy affected (Issue)	WCAT decision	WCAT direction
21-010 R5 Definition of Worker (casual worker example)	20167869	The Commission's example or explanation as stated in paragraph 3.0 of policy 21- 010 is ultra vires, in that the policy attempts to improperly restrict the intention of the legislation by incorrectly defining the definition of a worker.
21-112 Conditions for Entitlement - Hearing Loss – WCAT Amendment (PPI)	20157728 & 20157729	On cover page of Decision: Policy 21-112 Conditions for Entitlement–Hearing Loss, section 5, and Regulation 82-165 <i>Permanent Physical Impairment Rating Schedule Regulation–Workers' Compensation Act</i> Loss of Hearing section found non-compliant with the <i>Workers' Compensation Act</i> (the WC Act)
21-211 R2 Three-day Waiting Period (recurrence)	20167784	I find that the practice of implementing the three-day waiting period each and every time unduly harsh and in conflict with the mandate of the workers' compensation system.
21-215 R4 Supplements to Compensation (sick leave benefits)	20167879	...it is clear that the paid sick days are considered remuneration received from the employer and that the amount was paid for the same period during which compensation was paid.
21-290 R5 Recovery of Claim-related Overpayments (Commission mistakes are not overpayment)	20167810	I note that the Workers' Compensation Act (the WC Act) does not refer to either of the words "overpayment" or "repayment". I adopt the text of Dr. Ison and find that a mistake made by the Commission is not an overpayment within the context of the legislation.
21-290 R5 Recovery of Claim-related Overpayments (Reasonable period of time)	20167778	Inferred from WCAT Decision: WorkSafeNB "ought reasonably to have known" (under ss 5(2) of the Limitation of Actions Act that an overpayment had been made.) (20167778)
25-003 Home Care and Independence (min level)	20167971	I find that the fact that Level 1 care allowance is being interpreted a minimum of 30 minutes per day is contrary to the provisions of subsection 41(1) of the WC Act.
21-300 R4 Allocation of Claim Costs (apportionment)	20157736	Finally in decision 20147496, the Tribunal said: It is trite to say that the Act cannot be amended through the Commission's policies. The legislation governing this issue does not have any limitation in time. Therefore, cost relief must always be granted fully and completely as partial cost relief is not allowed by legislation. [page 7 of decision 20147496]
21-300 R4 Allocation of Claim Costs (2.7 Long-term/multiple exposures)	20167929	Pursuant to subsection 21(12.2) of the Act, the Appeals Tribunal finds policy 21- 300 Allocation of Claim Costs, sections 2.7, 4.0 and 4.2, to be inconsistent with the WC Act.
21-230 R7 Deduction of CPP Disability Benefits (apportionment of CPPD)	20157744	That is why WorkSafeNB must determine the amount of CPP disability benefits that can be reasonably attributed to his compensable injury of November 3, 2011 as provided in subsection 38.91(1) of the Act.

Policy affected (Issue)	WCAT decision	WCAT direction
21-100 C4E General Principles & 21-113	20157682 & multiple	<p>Inferred from WCAT Decision:</p> <ul style="list-style-type: none"> • "... must actually show that the employment was not the cause" (20157682); • The "risk factor analysis is not affirmative evidence to the contrary, no alternative cause suggested" (20167933); • "... the opinion of a medical advisor is not affirmative evidence to the contrary" (20167987); • "... no evidence that employment was not a contributory factor. No evidence exists that contradicts or refutes the presumption" (20167969); and • "There must exist evidence to the contrary, indicating that the employment did not materially contribute to the appellant's injury" (20167980).
21-215 R3 Supplements to Compensation (ECE step 2)	20167776	Directs the Commission to cease the practice of employing a 2-step process to determine benefits where only a single step is authorized by law.
21-206 R5 Funding Annuity Benefits (negative interest)	20157737	Direct WorkSafeNB to immediately reimburse the appellant for negative interest that was deducted when her pension benefits were calculated to reflect the true intent of section 38.22 of the Act.
21-206 R5 Funding Annuity Benefits (amount set aside re CPPD)	20167839	I direct the Commission to recalculate the appellant's pension benefits under subsection 38.22 of the WC Act and provide him with the amount that he would have received without deduction of CPPD benefits.
25-010 R3 Personal NCIC During Rehabilitation (no suspension)	20157681	Section 41 of the WC Act sets out the limited instances whereby the Commission has authority to suspend claimant benefits, and on the basis of a "personal, non-compensable intervening condition" is not included.

**CARF
Survey Report
for
WorkSafeNB's
Rehabilitation
Centre**

Organization

WorkSafeNB's Rehabilitation Centre
3700 Westfield Road
Saint John NB E2M 5Z4
CANADA

Organizational Leadership

Eileen P. Keating, B.A., M.Sc.
Manager, Work Recovery Program

Tim O. Petersen, CPA, CA, CIA, CISA
Vice-President, Corporate Services

Survey Dates

July 14-15, 2016

Survey Team

Maria S. Crescini, PT, Administrative Surveyor

Robert J. Verkins, M.S., CVE, LPC, Program Surveyor

Sharon Meixner, M.Ed., CRC, LSW, Program Surveyor

Programs/Services Surveyed

Occupational Rehabilitation Programs (Adults)

Occupational Rehabilitation Programs - Comprehensive Services (Adults)

Comprehensive Vocational Evaluation Services

Previous Survey

July 25-26, 2013

Three-Year Accreditation

Survey Outcome

Three-Year Accreditation

Expiration: August 31, 2019



Three-Year Accreditation

SURVEY SUMMARY

WorkSafeNB's Rehabilitation Centre (WRC) has strengths in many areas.

- The organization's executive leadership, program, and team managers guide the promotion of the mission and value in the programs and services provided by WRC. The organization's core value, "the client is the priority," is clearly evident in all aspects. Reinforcing this core value leads to creating an exceptional service experience for the clients.
- WRC has a dynamic and ongoing program evaluation, outcomes management, and performance improvement program. The programs conduct a comprehensive and detailed analysis and trending of the outcomes data collected. As a result, action plans are identified toward further improvement. Outcomes indicators are determined based on current occupational practices and program challenges.
- The longevity of the program leadership and team members contribute to the program's stability. The experience of the staff members in the field of occupational rehabilitation program and vocational evaluation services contributes to the high quality of care provided to the clients.
- The organization is recognized for its well-developed strategic plan and risk management plan that show well-defined goals and associated risks, such as stewardship, safety, service, support, sustainability, and staff member engagement goals. Strategies are established and implemented toward achievement of program goals. The plans also address awareness, education, outcomes, and performance improvement opportunities.
- In addition to satisfaction surveys and suggestion boxes, client focus groups are regularly conducted by the program manager with the purpose of ensuring that clients feel welcome to the programs, identifying accessibility challenges and opportunities, and sharing information and ideas with the clients.
- The program managers are complimented for the completeness of the staff members' performance reviews. It is clearly evident in the performance reviews that managers take time in completing these reviews so that that staff members get valuable feedback regarding their accomplishments and areas of opportunities. Clinical skill sets are addressed with the use of measurable data, such as return to work, abilities to educate clients, and health and safety data. Chart reviews, with focus on timeliness and content, are conducted by managers, and results are incorporated into the reviews. All these performance data measures are taken into consideration when establishing performance goals. In addition, peer reviews are performed on every associate to identify opportunities for improving clinical skills.
- One notable practice that the programs do is, when an employee indicates a body discomfort while in their work environment, a body discomfort survey is completed by the employee and an ergonomic evaluation is completed to provide safety while performing their job tasks. The managers do regular follow-up with employee, as evidenced in their personnel files.
- The physical plant for the occupational rehabilitation program is clean, well maintained, and comfortable and appears to be safe for the clients and staff members. The wide variety of job-simulation equipment allows the program to simulate the types of occupations found in the local economy.
- The occupational rehabilitation program employs staff members who are enthusiastic and motivated to provide quality rehabilitative care.

- The clients in the occupational rehabilitation program express satisfaction with the staff members and state that the staff members are caring, helpful, and accessible.
- Referral sources for the occupational rehabilitation program express satisfaction with the services provided, indicate that the organization offers a quality program, and comment on the excellent communication and attention to detail provided by the program.
- The occupational rehabilitation program offers a variety of effective education programs, such as understanding pain, the benefits of exercise, understanding safe work practices, stress management, nutrition, and restful sleep, to the clients. Several of the clients commented that they found the groups to be very helpful and felt that they received information they could apply to their particular situation.
- There is evidence of ongoing effective formal and informal lines of communication among all team members and leadership.
- Weekly team conferences are held for the clients in the occupational rehabilitation program where the treatment plans and progress toward goals are discussed. These conferences are attended by the occupational rehabilitation team, and the client and external case managers are also invited to attend.
- The occupational rehabilitation program's brochure provides information to clients, family members, and/or the clients' support system regarding the services offered by the organization. It also encourages and promotes family members and/or support system involvement in the rehabilitation process.
- The staff members are dedicated to the clients and are recognized as consummate professionals by clients, employers, and referral sources. The staff members go beyond what is required and are accessible to the clients throughout the day. In addition, the staff members demonstrate extraordinary creativity in thinking outside of the box by utilizing non-standard methods for evaluating clients. WRC has generated an exhaustive list of outcomes measurement details that are extensively analyzed for the purpose of identifying trends and developing strategic directions. This analysis enables the organization to capitalize on opportunities identified in the ever-changing world of rehabilitation.
- Managers create a positive environment through team-building exercises and facilitate the development of strong teams that are better able to meet the organization's ever-growing needs.
- The clients' express great satisfaction with the experiences they have had working with therapists in the vocational assessment program. The therapists are compassionate, intuitive, well organized, and understanding and made the clients feel very comfortable.
- Employers express high levels of satisfaction in working with WRC's staff members, stating that they are pleased with the therapists who consulted with the worksite when doing a job analysis and that the program has been very helpful and timely with communication and was great to work with. The vocational evaluation services program staff members know what they are doing, and the employers have absolute confidence in the staff members' expertise.
- The organization is applauded for its interest in promoting staff members. WRC established a new initiative in which staff members could potentially move forward in the organization by offering educational opportunities and promoting from within.
- Referral sources express satisfaction with the vocational evaluation services and stated that reports are timely and communication is excellent.

- WRC hosts an annual health and safety conference that generally has several hundred attendees over the two-day conference. Employers present on best practices. This is an excellent way to make corporations aware of WRC and increase business opportunities.
- Although challenges with staff member shortages have been pervasive, outcomes have been exceptional and wait times kept to a minimum.
- Staff members express great appreciation that upper management provides what is needed to allow the programs to be the leading edge and for their support. This includes providing resources, such as educational opportunities; allowing time and budget to complete initiatives, such as the creation of risk factor analysis; and a 12-hour day evaluation.
- Staff members have developed methods to increase the clients' level of participation, from 75 percent to 95 percent, during vocational evaluations.

WRC should seek improvement in the area(s) identified by the recommendation(s) in the report. Any consultation given does not indicate non-conformance to standards but is offered as a suggestion for further quality improvement.

On balance, WRC is a comprehensive organization that provides client-centred and interdisciplinary occupational rehabilitation and vocational evaluation services to the clients and other stakeholders. The program managers and the treatment team are dedicated and committed to assisting clients in achieving their work-related goals, as evidenced by a high percentage of return-to-work outcomes. Referral sources, employers, clients, and other stakeholders express the value of having these programs available to the workforce of the New Brunswick area.

Opportunities for improvement exist in the areas of health and safety, as related to conducting unannounced tests of emergency procedures annually, annual analysis of critical incidents, and educating clients on the use of a record of personal health information. WRC, with the support of the board, executive leadership, and program managers, demonstrates a strong commitment to ongoing quality improvement and appears to have the resources needed to address these opportunities as part of an overall quality improvement plan.

WorkSafeNB's Rehabilitation Centre has earned a Three-Year Accreditation. The executive leadership, program managers, and team members have demonstrated a commitment to providing quality programs and services and optimal client care. The organization is congratulated for this achievement and for providing services that are highly valued by the clients, referral sources, and other community stakeholders. The organization is encouraged to utilize the CARF standards in its effort to provide excellent programming to achieve optimal outcomes.

SECTION 1. ASPIRE TO EXCELLENCE[®]

A. Leadership

Description

CARF-accredited organizations identify leadership that embraces the values of accountability and responsibility to the individual organization's stated mission. The leadership demonstrates corporate social responsibility.

Key Areas Addressed

- Leadership structure
 - Leadership guidance
 - Commitment to diversity
 - Corporate responsibility
 - Corporate compliance
-

Recommendations

There are no recommendations in this area.

C. Strategic Planning

Description

CARF-accredited organizations establish a foundation for success through strategic planning focused on taking advantage of strengths and opportunities and addressing weaknesses and threats.

Key Areas Addressed

- Strategic planning considers stakeholder expectations and environmental impacts
 - Written strategic plan sets goals
 - Plan is implemented, shared, and kept relevant
-

Recommendations

There are no recommendations in this area.

D. Input from Persons Served and Other Stakeholders

Description

CARF-accredited organizations continually focus on the expectations of the persons served and other stakeholders. The standards in this subsection direct the organization's focus to soliciting, collecting, analyzing, and using input from all stakeholders to create services that meet or exceed the expectations of the persons served, the community, and other stakeholders.

Key Areas Addressed

- Ongoing collection of information from a variety of sources
- Analysis and integration into business practices
- Leadership response to information collected

Recommendations

There are no recommendations in this area.

E. Legal Requirements

Description

CARF-accredited organizations comply with all legal and regulatory requirements.

Key Areas Addressed

- Compliance with all legal/regulatory requirements

Recommendations

There are no recommendations in this area.

F. Financial Planning and Management

Description

CARF-accredited organizations strive to be financially responsible and solvent, conducting fiscal management in a manner that supports their mission, values, and annual performance objectives. Fiscal practices adhere to established accounting principles and business practices. Fiscal management covers daily operational cost management and incorporates plans for long-term solvency.

Key Areas Addressed

- Budget(s) prepared, shared, and reflective of strategic planning
 - Financial results reported/compared to budgeted performance
 - Organization review
 - Fiscal policies and procedures
 - Review of service billing records and fee structure
 - Financial review/audit
 - Safeguarding funds of persons served
-

Recommendations

There are no recommendations in this area.

G. Risk Management

Description

CARF-accredited organizations engage in a coordinated set of activities designed to control threats to their people, property, income, goodwill, and ability to accomplish goals.

Key Areas Addressed

- Identification of loss exposures
 - Development of risk management plan
 - Adequate insurance coverage
-

Recommendations

There are no recommendations in this area.

H. Health and Safety

Description

CARF-accredited organizations maintain healthy, safe, and clean environments that support quality services and minimize risk of harm to persons served, personnel, and other stakeholders.

Key Areas Addressed

- Inspections
 - Emergency procedures
 - Access to emergency first aid
 - Competency of personnel in safety procedures
 - Reporting/reviewing critical incidents
 - Infection control
-

Recommendations

H.7.a.(1) through H.7.d.

The organization should conduct unannounced tests of all emergency procedures at least annually on each shift at each location that include complete actual or simulated physical evacuation drills. In addition, tests of all emergency procedures should be analyzed for performance that addresses areas needing improvement, actions to be taken, results of performance improvement plans, and necessary education and training. In addition, tests of all emergency procedures should be evidenced in writing, including the analysis.

H.10.a. through H.10.b.(8)

A written analysis of all critical incidents should be provided to or conducted by the leadership at least annually that addresses causes, trends, actions for improvement, results of performance improvement plans, necessary education and training of personnel, prevention of recurrence, and internal and external reporting.

Consultation

- It is suggested that WRC place a thermometer in its hydrocollator pack machines to monitor the temperature of the water so that treatment is provided according to therapeutic level.
-

I. Human Resources

Description

CARF-accredited organizations demonstrate that they value their human resources. It should be evident that personnel are involved and engaged in the success of the organization and the persons they serve.

Key Areas Addressed

- Adequate staffing
- Verification of background/credentials
- Recruitment/retention efforts

- Personnel skills/characteristics
 - Annual review of job descriptions/performance
 - Policies regarding students/volunteers, if applicable
-

Recommendations

There are no recommendations in this area.

J. Technology

Description

CARF-accredited organizations plan for the use of technology to support and advance effective and efficient service and business practices.

Key Areas Addressed

- Written technology and system plan
 - Written procedures for the use of information and communication technologies (ICT) in service delivery, if applicable
 - Training for personnel, persons served, and others on ICT equipment, if applicable
 - Provision of information relevant to the ICT session, if applicable
 - Maintenance of ICT equipment in accordance with manufacturer recommendations, if applicable
 - Emergency procedures that address unique aspects of service delivery via ICT, if applicable
-

Recommendations

There are no recommendations in this area.

K. Rights of Persons Served

Description

CARF-accredited organizations protect and promote the rights of all persons served. This commitment guides the delivery of services and ongoing interactions with the persons served.

Key Areas Addressed

- Communication of rights
 - Policies that promote rights
 - Complaint, grievance, and appeals policy
 - Annual review of complaints
-

Recommendations

There are no recommendations in this area.

L. Accessibility

Description

CARF-accredited organizations promote accessibility and the removal of barriers for the persons served and other stakeholders.

Key Areas Addressed

- Written accessibility plan(s)
 - Requests for reasonable accommodations
-

Recommendations

There are no recommendations in this area.

M. Performance Measurement and Management

Description

CARF-accredited organizations are committed to continually improving their organizations and service delivery to the persons served. Data are collected and analyzed, and information is used to manage and improve service delivery.

Key Areas Addressed

- Information collection, use, and management
- Setting and measuring performance indicators

Recommendations

There are no recommendations in this area.

N. Performance Improvement

Description

The dynamic nature of continuous improvement in a CARF-accredited organization sets it apart from other organizations providing similar services. CARF-accredited organizations share and provide the persons served and other interested stakeholders with ongoing information about their actual performance as a business entity and their ability to achieve optimal outcomes for the persons served through their programs and services.

Key Areas Addressed

- Proactive performance improvement
 - Performance information shared with all stakeholders
-

Recommendations

There are no recommendations in this area.

SECTION 2. THE REHABILITATION AND SERVICE PROCESS FOR THE PERSONS SERVED

A. Program/Service Structure for all Medical Rehabilitation Programs

Key Areas Addressed

- Scope of the program and services
- Admission and transition/exit criteria
- Team communication
- Provision of services to any persons who require ventilatory assistance

Recommendations

There are no recommendations in this area.

B. The Rehabilitation and Service Process for the Persons Served

Key Areas Addressed

- Scope of the program services
 - Appropriate placement in and movement through the continuum of services
 - Admission and ongoing assessments
 - Information provided to persons served for decision making
 - Team composition
 - Team responsibilities and communication
 - Medical director/physician providing medical input qualifications and responsibilities
 - Discharge/transition planning and recommendations
 - Family/support system involvement
 - Education and training of persons served and families/support systems
 - Sharing of outcomes information with the persons served
 - Physical plant
 - Records of the persons served
-

Recommendations

B.35.

The occupational rehabilitation program should educate each client about the importance of developing and updating a record of personal health information that addresses his or her needs.

SECTION 3. PROGRAM STANDARDS

M. Occupational Rehabilitation Program

Occupational Rehabilitation Program (Adults)

Occupational Rehabilitation Program - Comprehensive Services (Adults)

Key Areas Addressed

- Admission and discharge/transition criteria
 - Assessment process
 - Program-specific information-gathering requirements
 - Individual program plan
-

Recommendations

There are no recommendations in this area.

Standards from the 2016 *Employment and Community Services Standards Manual* were also applied during this survey. The following sections of this report reflect the application of those standards.

SECTION 2. QUALITY INDIVIDUALIZED SERVICES AND SUPPORTS

A. Program/Service Structure

Description

A fundamental responsibility of the organization is to provide a comprehensive program structure. The staffing is designed to maximize opportunities for the persons served to obtain and participate in the services provided.

Key Areas Addressed

- Services are person centred and individualized
 - Persons are given information about the organization's purposes and ability to address desired outcomes
 - Documented scope of services shared with stakeholders
 - Service delivery based on accepted field practices
 - Communication for effective service delivery
 - Entrance/exit/transition criteria
-

Recommendations

There are no recommendations in this area.

Consultation

- Although the organization's brochures state that services last two days, it was reported that the schedule can be adjusted up to five days, depending on the clients' needs. It is suggested that this variance be included in the brochure to illustrate that WRC is client driven and focuses on the clients' specific needs.
 - Although the brochure that is specific to the vocational evaluation program states that reports are sent to the case manager and family doctor at the end of the evaluation, it may be a good practice to state that the results are shared with the client before leaving the program in addition to these other entities. This could demonstrate the sensitivity and concern for the client that staff members exhibit.
-

D. Employment Services Principle Standards

Description

An organization seeking CARF accreditation in the area of employment services provides individualized services and supports to achieve identified employment outcomes. The array of services and supports may include:

- Identification of employment opportunities and resources in the local job market.
- Development of viable work skills that match workforce needs within the geographic area.
- Development of realistic employment goals.
- Establishment of service plans to achieve employment outcomes.
- Identification of resources and supports to achieve and maintain employment.
- Coordination of and referral to employment-related services and supports.

The organization maintains its strategic positioning in the employment sector of the community by designing and continually improving its services based on input from the persons served and from employers in the local job market, and managing results of the organization's outcomes management system. The provision of quality employment services requires a continuous focus on the persons served and the personnel needs of employers in the organization's local job market.

Some examples of the quality results desired by the different stakeholders of these services and supports include:

- Individualized, appropriate accommodations.
- A flexible, interactive process that involves the person.
- Increased independence.
- Increased employment options.
- Timely services and reports.
- Persons served obtain and maintain employment consistent with their preferences, strengths, and needs.
- Person served obtains a job at minimum wage or higher and maintains appropriate benefits.
- Person served maintains the job.

Key Areas Addressed

- Goals of the persons served
- Personnel needs of local employers
- Community resources available
- Economic trends in the local employment sector

Recommendations

There are no recommendations in this area.

SECTION 3. EMPLOYMENT AND COMMUNITY SERVICES

Description

An organization seeking CARF accreditation in the area of employment and community services assists the persons served through an individualized person-centred process to obtain access to the services, supports, and resources of their choice to achieve their desired outcomes. This may be accomplished by direct service provision, linkages to existing generic opportunities and natural supports in the community, or any combination of these. The persons served are included in their communities to the degree they desire.

The organization provides the persons served with information so that they may make informed choices and decisions. Although we use the phrase *person served*, this may also include *family served*, as appropriate to the service and the individual.

The services and supports are arranged and changed as necessary to meet the identified desires of the persons served. Service designs address identified individual, family, socioeconomic, and cultural preferences.

Depending on the program's scope of services, expected results from these services/supports may include:

- Increased inclusion in community activities.
- Increased or maintained ability to perform activities of daily living.
- Increased self-direction, self-determination, and self-reliance.
- Self-esteem.
- Housing opportunities.
- Community citizenship.
- Increased independence.
- Meaningful activities.
- Increased employment options.
- Employment obtained and maintained.
- Competitive employment.
- Employment at or above minimum wage.
- Economic self-sufficiency.
- Employment with benefits.
- Career advancement.

B. Evaluation Services

Comprehensive Vocational Evaluation Services

Description

Comprehensive vocational evaluation services provide an individualized, timely, and systematic process by which a person seeking employment, in partnership with an evaluator, learns to identify viable vocational options and develop employment goals and objectives. A vocational evaluator or vocational specialist provides or supervises the services.

An accredited comprehensive vocational evaluation service is capable of examining a wide range of employment alternatives. The following techniques are used, as is appropriate to the person being assessed, to provide comprehensive vocational evaluation services:

- Pre-evaluation assessment of assistive technology needs.
- Assessment of functional/occupational performance in real or simulated environments.
- Work samples.
- Employment exploration model.
- Psychometric testing.
- Preference and interest inventories.
- Personality testing.
- Extensive personal interviews.
- Other appropriate evaluation tests, depending on the individual.
- Analysis of prior work and/or volunteer experience and transferable skills.

Some examples of the quality results desired by the different stakeholders of these services include:

- Realistic job opportunities are explored and identified for individuals.
- Employment barriers are identified and ways to overcome these are suggested.
- Assistive technology or other accommodations needed are identified.
- The evaluation is completed within the authorization period.
- The person served understands the results.
- The cost per evaluation is acceptable.
- Interests of the persons served are thoroughly explored.
- Evaluation reports lead to job goals.
- Transferable skills are identified.

Key Areas Addressed

- Vocational options identified
- Various exploratory techniques used by qualified evaluators
- Screenings are based on and answer referral questions
- Information obtained is shared
- Employment goals
- Personnel meet applicable qualifications for the work

Recommendations

There are no recommendations in this area.

Consultation

- Although evaluators meet the qualifications defined by provincial law, referral sources indicated that new evaluators at times seem to be reluctant to ask difficult questions during evaluations. This is indicated in the reports generated. WRC might consider doing role-play scenarios during staff trainings in which challenging scenarios are portrayed and questions are asked of the client in an objective manner.