

**Presentation**

**to the**

**Independent Review Panel**

**New Brunswick Workplace Health, Safety and  
Compensation System**

**By**

**CUPE New Brunswick**

CUPE RESEARCH  
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## Introduction

The New Brunswick division of the Canadian Union of Public Employees (CUPE) represents more than 20,000 workers in New Brunswick. Our members work directly for the provincial government in school boards, hospitals, nursing homes, municipalities, in home care and in group homes. We welcome the creation of the Independent Review Panel New Brunswick Workplace Health, Safety and Compensation System by the provincial government. The last meaningful review was completed 27 years ago and it was known as the Boudreau Commission and the final report was titled *Report of the Workers' Compensation Study Committee*, Fredericton, February 1980. This report was comprehensive and received the approval of the labour movement in New Brunswick. A number of fundamental changes were made in the system. The provincial government implemented the recommendations and there was improvement in the health and safety of workers and the compensation system in New Brunswick. Subsequently, a number of changes took place to roll back the clock and make things more difficult for workers.

Our presentation will touch on many aspects of the health and safety and compensation system in the province. We are not going to re-invent the wheel and we are in agreement with the recommendations put forth by the New Brunswick Federation of Labour.

## Negative impact of changes in the compensation system

As already mentioned in our introduction, things have changed for injured workers. Those many changes have resulted in dramatic impacts on the workers in New Brunswick. When changes to the compensation system were implemented in 1993, there was a drastic drop in the number of people who were able to access the workers' compensation system in New Brunswick. This is illustrated in **Table I**.

**Table I**

Total Number of Lost-Time Claims in N.B. 1989-2005		
Year		NB
2005	Total number of Lost-Time Claims	4,439
2004	Total number of Lost-Time Claims	4,185
2003	Total number of Lost-Time Claims	4,604
2002	Total number of Lost-Time Claims	4,685
2001	Total number of Lost-Time Claims	5,162
2000	Total number of Lost-Time Claims	5,354
1999	Total number of Lost-Time Claims	6,480
1998	Total number of Lost-Time Claims	5,937
1997	Total number of Lost-Time Claims	5,554
1996	Total number of Lost-Time Claims	5,290
1995	Total number of Lost-Time Claims	4,310
1994	Total number of Lost-Time Claims	4,784
1993	Total number of Lost-Time Claims	5,647
1992	Total number of Lost-Time Claims	10,018
1991	Total number of Lost-Time Claims	11,670
1990	Total number of Lost-Time Claims	12,508
1989	Total number of Lost-Time Claims	13,083
	Difference in number 1989-2005	-8,644
	Difference in percentage 1989-2005	-66.07%

Source: Association of Workers' Compensation of Canada

As you can see from **Table I**, the number of Lost-Time Claims has steadily declined since the major changes took place in 1993. There were 8,644 less Lost-Time Claims in

2005 than there was in 1989, for a negative difference of 66.07%. At the same time as the Lost-Time Claims have gone down, we can see from **Table II** that the number of claims have declined also after 1989 and took a big dip after 1993, and were around 25,500 in 2005. We know from experience that it is not because we have safer workplaces. Going from 33,657 in 1992 to 27,717 in 1993 for a negative change of 5,940 cannot be explained by safer workplaces. It was and it is the impact of the changes brought in 1993.

**Table II**

Claims Reported in N.B. 1989-2005		
Year		NB
2005	Number of Claims Reported	25,553
2004	Number of Claims Reported	25,409
2003	Number of Claims Reported	26,410
2002	Number of Claims Reported	27,151
2001	Number of Claims Reported	27,974
2000	Number of Claims Reported	30,028
1999	Number of Claims Reported	27,714
1998	Number of Claims Reported	25,375
1997	Number of Claims Reported	24,443
1996	Number of Claims Reported	24,656
1995	Number of Claims Reported	25,023
1994	Number of Claims Reported	24,449
1993	Number of Claims Reported	27,717
1992	Number of Claims Reported	33,657
1991	Number of Claims Reported	36,446
1990	Number of Claims Reported	39,905
1989	Number of Claims Reported	41,370

Source: Association of Workers' Compensation of Canada

When you combine the data in **Table I** and the data in **Table II**, you can see the percentage of claims that were accepted by the Workplace Health, Safety and Compensation Commission of New Brunswick. This data can be seen in **Table III** where we indicate the percentage of successful claims from 1989 to 2005 in New Brunswick. Again, it shows the dramatic shift for injured workers. In 1989, the percentage of

successful claims was 31.62% and in 2005, it was only 17.37% for a negative difference of 14.25%.

**Table III**

<b>Claims and Lost-Time Claims and Percentage of Successful Claims 1989-2005, N.B.</b>					
Year		NB	Year		NB
2005	Number of Claims Reported	25,553	1997	Number of Claims Reported	24,443
2005	Total number of Lost-Time Claims	4,439	1997	Total number of Lost-Time Claims	5,554
2005	Percentage of successful claims	17.37%	1997	Percentage of successful claims	22.72%
2004	Number of Claims Reported	25,409	1996	Number of Claims Reported	24,656
2004	Total number of Lost-Time Claims	4,185	1996	Total number of Lost-Time Claims	5,290
2004	Percentage of successful claims	16.47%	1996	Percentage of successful claims	21.46%
2003	Number of Claims Reported	26,410	1995	Number of Claims Reported	25,023
2003	Total number of Lost-Time Claims	4,604	1995	Total number of Lost-Time Claims	4,310
2003	Percentage of successful claims	17.43%	1995	Percentage of successful claims	17.22%
2002	Number of Claims Reported	27,151	1994	Number of Claims Reported	24,449
2002	Total number of Lost-Time Claims	4,685	1994	Total number of Lost-Time Claims	4,784
2002	Percentage of successful claims	17.26%	1994	Percentage of successful claims	19.57%
2001	Number of Claims Reported	27,974	1993	Number of Claims Reported	27,717
2001	Total number of Lost-Time Claims	5,162	1993	Total number of Lost-Time Claims	5,647
2001	Percentage of successful claims	18.45%	1993	Percentage of successful claims	20.37%
2000	Number of Claims Reported	30,028	1992	Number of Claims Reported	33,657
2000	Total number of Lost-Time Claims	5,354	1992	Total number of Lost-Time Claims	10,018
2000	Percentage of successful claims	17.83%	1992	Percentage of successful claims	29.76%
1999	Number of Claims Reported	27,714	1991	Number of Claims Reported	36,446
1999	Total number of Lost-Time Claims	6,480	1991	Total number of Lost-Time Claims	11,670
1999	Percentage of successful claims	23.38%	1991	Percentage of successful claims	32.02%
1998	Number of Claims Reported	25,375	1990	Number of Claims Reported	39,905
1998	Total number of Lost-Time Claims	5,937	1990	Total number of Lost-Time Claims	12,508
1998	Percentage of successful claims	23.40%	1990	Percentage of successful claims	31.34%
			1989	Number of Claims Reported	41,370
			1989	Total number of Lost-Time Claims	13,083
			1989	Percentage of successful claims	31.62%

Source: Association of Workers' Compensation of Canada

This is New Brunswick with the roll-backs in compensation coverage. We wanted to know how we compared with other provinces and territories. We checked three years from 2003 to 2005. This is illustrated in **Table IV**. New Brunswick comes last in the percentage of successful claims compared to all other provinces and territories, and compared to the total for Canada. In 2003, we had only 17.47% of successful claims, 16.47% in 2004 and 17.37% in 2005.

**Table IV**

<b>Claims and Lost-Time Claims in Provinces and Territories 2003-2005</b>								
Year		AB	BC	MB	<b>NB</b>	NL	NS	NT
2005	Number of Claims Reported	168,685	164,443	42,062	<b>25,553</b>	14,010	34,017	3,321
2005	Total number of Lost-Time Claims	36,305	60,340	17,785	<b>4,439</b>	4,821	8,998	950
2005	Percent of successful claims	21.52%	36.69%	42.28%	<b>17.37%</b>	34.41%	26.45%	28.61%
2004	Number of Claims Reported	154,377	156,798	41,077	<b>25,409</b>	14,002	34,166	3,069
2004	Total number of Lost-Time Claims	35,969	58,289	17,260	<b>4,185</b>	4,834	9,173	817
2004	Percent of successful claims	23.30%	37.17%	42.02%	<b>16.47%</b>	34.52%	26.85%	26.62%
2003	Number of Claims Reported	153,098	152,097	42,494	<b>26,410</b>	14,774	33,674	3,349
2003	Total number of Lost-Time Claims	37,335	56,946	17,586	<b>4,604</b>	5,247	8,849	936
2003	Percent of successful claims	24.39%	37.44%	41.38%	<b>17.43%</b>	35.52%	26.28%	27.95%
		ON	PE	QC	SK	YT	CANADA	
2005	Number of Claims Reported	352,996	4,153	144,824	38,999	1,823	994,886	
2005	Total number of Lost-Time Claims	89,734	876	99,067	14,170	445	337,930	
2005	Percent of successful claims	25.42%	21.09%	68.41%	36.33%	24.41%	33.97%	
2004	Number of Claims Reported	352,474	4,257	152,799	37,023	1,667	977,118	
2004	Total number of Lost-Time Claims	90,397	1,037	104,209	13,880	452	340,502	
2004	Percent of successful claims	25.65%	24.36%	68.20%	37.49%	27.11%	34.85%	
2003	Number of Claims Reported	354,926	4,562	155,358	38,194	1,491	980,436	
2003	Total number of Lost-Time Claims	93,234	1,241	107,160	15,135	442	348,715	
2003	Percent of successful claims	26.27%	27.20%	68.98%	39.63%	29.64%	35.57%	
Source: Association of Workers' Compensation of Canada								

All of these negative numbers for injured workers can only be explained by the negative changes to the compensation system. All of this took place when there was an increase in employment in New Brunswick as illustrated in **Table V**. Employment went from 261,100 in 1991 to 304,800 for a positive difference of 43,700 more workers in New Brunswick.

**Table V**

<b>Employment in N.B.</b>	
	(000)
Year	AVG.
1991	261.1
1992	253.6
1993	255.7
1994	257.4
1995	262.4
1996	266.2
1997	270.0
1998	273.5
1999	277.6
2000	283.3
2001	290.9
2002	294.3
2003	298.7
2004	297.8
2005	298.3
2006	304.8
Source: Statistics Canada, Labour Statistics Division, <i>Employment,            Earnings and Hours,</i> July 2007, p.212.	

## Reasons for the denial of claims

There are a number of reasons for the dramatic changes in the number of claims that are denied. During the sweeping changes that occurred in 1993, the *Workers' Compensation Act* of New Brunswick was amended with a change in the definition of accidents. Before 1993, the definition of "Accident" was:

"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 arising out of and in the course of employment, and where the disablement is caused by occupational disease, the date of the accident shall be deemed to be the date of the disablement."

After 1993 it became:

"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;"

The words "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" were added and the end result is that it eliminated a number of potential claims that resulted from stress at work.

At the same time, there was another important change that impacted the number of successful claims. Prior to 1993, section 7(2) of the *Act* read:

“ 7(2) When the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of 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.”

After 1993 it became:

“ 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 words “unless the contrary is shown”, which existed before 1993, were replaced with the words “in the absence of any evidence to the contrary” after 1993. At the same time, section 7(2.1) was added and it reads:

“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.”

From this amendment to the *Act*, a policy was written that defines “preponderance of evidence” and it reads:

**“Preponderance of evidence** – the most persuasive and impressive information on one side of a case that outweighs the information on the other side. A preponderance of evidence is not decided on the quantity of

information alone, but on the significance and strength of the evidence as well.”<sup>1</sup>

These are not only words, these definitions have had profound implications on the way claims are dealt with. Before 1993, the burden was to prove that the accident was not related to the employment in order to deny the claim. Since 1993, it is “in the absence of any evidence to the contrary” along with the concept of “preponderance of evidence”. This is a complete switch on the burden for workers. It also introduces the notion that there is another side to the story or the accident and that this should be considered. These changes were designed to deny claims and they have met those vicious objectives.

In other jurisdictions, the definition is more similar to the one we had prior to 1993. The Ontario act reads:

“13. (1) A worker who sustains a personal injury by accident arising out of and in the course of his or her employment is entitled to benefits under the insurance plan.

#### Presumptions

(2) If the accident arises out of the worker’s employment, it is presumed to have occurred in the course of the employment unless the contrary is shown. If it occurs in the course of the worker’s employment, it is presumed to have arisen out of the employment unless the contrary is shown.”

The Nova Scotia act reads:

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<sup>1</sup> WHSCC; Policy No.21-106, *Accident Reporting and Application for Benefits*, p3.

“10(4) Where the accident arose out of employment, unless the contrary is shown, it shall be presumed that it occurred in the course of employment, and where the accident occurred in the course of employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.”

New Brunswick has fallen behind most jurisdictions when it comes to workers' compensation. If employers or government officials think that the problem has gone away, they are mistaken. When workers do get injured at work and they don't trust the compensation system, they have to find other means to survive this traumatic experience. They have to hide the accidents, take sick leave, go on the workplace long-term disability system, use the employment insurance sick benefits, plus they use their health insurance programs for drugs and other coverage. None of this is free and it is usually cost-shared by the employers and the workers.

## Benefits paid

The benefit level has been 85% of net since 1998. We feel that it should be increased to 90% of net as per the pre-1993 level. A three-day waiting period was also established in 1993. The impact can be disastrous for a worker. If a worker makes \$40,000.00 (net salary) a year and gets injured, he or she should receive 85% of net for the first month. If he or she is injured for a period of three weeks, he or she should get \$653.85 a week (85% of \$40,000.00 divided by 52) or \$1,961.54 for the three weeks. But because of the three-day waiting period formula, he or she will only get \$1,569.23 for the three weeks, a loss of \$392.21 or 20.0% loss of earnings.

Benefits can also be reduced or completely eliminated by what is commonly known as the deeming system. Deeming continues to be an area where workers have suffered extensively. Reduction of benefits, when you have already been out of the workplace for a period of time because the WHSCC feels there is a non-existent job out there, is both unjust and unfair. We are particularly concerned that the deeming system, as we know it now, has been put in place by the WHSCC through changes in policies and not through legislative changes. This is clearly an abuse of power on the part of the Commission. The principle of the workers being covered for any loss in income, both before and after the return to work, should be reinstated. The Canadian Union of Public Employees recommends that "loss of earnings" be defined as average net earnings less the earnings that the worker is receiving from employment, thereby eliminating the practice of deeming other than in special situations. We further recommend that Section

38.1(1) of the *Workers' Compensation Act* be amended by deleting the words “the earnings the worker is estimated to be capable of earning at a suitable occupation after sustaining the injury” and substituting the words “the earnings that a worker is receiving from employment”.

## Health and Safety

When the Workplace Health, Safety and Compensation Commission of New Brunswick was created, the Occupational Health and Safety Commission was dismantled. The Occupational Health and Safety Commission had been created following the *Report of the Workers' Compensation Study Committee* in 1980. It was a good structure with equal representation from the labour movement and the business community. It focused only on health and safety. A new act was adopted and a number of regulations were adopted by that Commission. These numerous regulations are based on health and safety standards and they are updated by organizations such as the American Conference of Governmental Industrial Hygienists, American National Standards Institute, American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., American Society of Mechanical Engineers, Canadian General Standards Board and the Canadian Standards Association.

It did very good work in the promotion of health and safety in the workplaces of New Brunswick. It was financed by the Workers' Compensation Board and the provincial government. CUPE New Brunswick would like to see a return of the Occupational Health and Safety Commission with the same structure it had and the same type of financial arrangement. We need a commission that will focus only on prevention of accidents and updating the regulations.

When it comes to health and safety the public sector can be as vulnerable as the private sector. An example of the phenomena is the case of nursing homes in New Brunswick. The provincial government financed 62 nursing homes that are operated by members of the New Brunswick Nursing Homes Association. In the last ten years, there have been serious health and safety problems in those nursing homes. When you have a workload problem in nursing homes, you also have health and safety problems. These have translated in a number of injuries and time lost for workers. For the provincial government who finances nursing homes, it has translated into more money being paid to the WHSCC. **Table VI** shows the evolution of the rate that the employer has had to pay since 1992.

**Table VI**

<b>Year</b>	<b>Basic Rate</b>
2007	\$6.67
2006	\$6.73
2005	\$6.84
2004	\$7.11
2003	\$7.11
2001	\$4.16
2000	\$3.83
1999	\$4.05
1998	\$3.73
1997	\$3.77
1996	\$3.93
1995	\$3.99
1994	\$3.68
1993	\$3.07
1992	\$1.60

The employer is now paying \$5.07 more per \$100.00 of payroll in 2007 compared to 1992. It has to be noted that changes made to the compensation system in New Brunswick in 1993 made the access to the system more difficult. The end result has been an increase in the number of people injured and the overall number of claims accepted has decreased, but not in the nursing home sector as illustrated by **Table VI**. The increase in the rate for employers can only be explained by more accidents and more dangerous conditions in the workplaces.

The number of injuries is high and between 2003 and 2006, there were 464 back/neck/shoulder injuries and a total of 979 lost-time injuries. The result could be an increase for next year in the base rate to \$9.20 from the \$6.67.<sup>2</sup> This would bring additional costs to the government. Money aside, we have to think of the human elements in this important health and safety matter.

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<sup>2</sup> *Health and Safety in Nursing Homes*, Nursing Home Services, June 2007.

**Table VII**

<b>WHSCC Rates for Different Sectors in New Brunswick</b>					
<b>Year</b>	<b>SIC Code</b>	<b>Sector</b>	<b>Rate Group</b>	<b>Basic Rate</b>	
2007	327	Shipbuilding, Boatbuilding and Repair	34	\$8.49	
2007	256	Wooden Box and Pallet	34	\$8.49	
2007	455	Services Incidental to Water Transport	34	\$7.87	\$8.49 *
2007	860	Nursing Homes	29	\$6.67	
2007	100	Meat Products	33	\$6.61	
2007	430	Sheet Metal Sheet Metal And Built-Up Roofing	9	\$6.48	\$4.37 *
2007	301	Boiler and Tanks Industry	42	\$6.04	\$11.78 *
2007	251	Mills, Veneer and Plywood	31	\$6.03	
2007	302	Fabricated Metal Products	28	\$5.82	
2007	259	Other Wood Products	28	\$5.82	
2007	101	Poultry Products	28	\$5.82	
2007	302	Fabricated Metal Products	28	\$5.82	
2007	41	Logging	32	\$5.49	
2007	105	Other Food Products	41	\$5.38	
2007	182	Yarn and Fabric	42	\$5.06	\$11.78 *
2007	399	Broom, Brush and Mop	19	\$4.77	\$4.32 *
2007	291	Primary Metal	19	\$4.32	
2007	61	Metal Mines	25	\$3.82	
2007	308	Welding And Machine Shops	22	\$3.24	
2007	80	Non-Metal Mines, Sand and Gravel Pits	4	\$1.00	\$1.14 *

Source: WHSCC rates for 2007

\* As part of the process of establishing assessment rates, the Commission reviews the structure of industry and rate groups each year. These groups are restructured if emerging cost experience indicates that this would be appropriate. The impact of any change in industry and the rate groups on the basic rate is limited to a 20% increase or decrease.

For an observer who does not know the facts on health and safety in the nursing homes, you would probably believe it is a fairly safe place to work. When compared to other industries in New Brunswick, we get the following picture as illustrated in **Table VII**. Nursing homes are in fourth place for having one of the highest rates in the province when it comes to accidents. This table tells us that it is more dangerous to work in a nursing home than to work in a slaughter house for beef and pork (\$6.61 rate), in a poultry plant (\$5.82 rate), or logging (\$5.49 rate), or in a heavy metal mine (\$3.82 rate), or in a welding and machine shop (\$3.24 rate).

Because we represent workers in health and social services, which include hospitals, nursing homes, home care, group homes and our groups in Part I, Rehabilitation and Therapy and Recreation and Culture Program Officers, and Institutional Services and Care, we are very concerned with new types of infections coming into the workplaces. We need the best health and safety to prevent infection or viruses such as *Clostridium difficile*, SARS (Severe Acute Respiratory Syndrome), or superbugs such as VRE (*Vancomycin- Resistant Enterococci*), MRSA (*Methicillin-Resistant Staphylococcus Aureus*) and VRSA (*Staphylococcus aureus*). Superbugs are bacteria which are resistant to most antibiotics. These infectious diseases and superbugs are very severe threats to the health and safety and the lives of workers, but also of patients or people our members are working with. Prevention and cleanliness in workplaces are very, very important. Workplaces have to be monitored and inspected very rigorously.

All of this needs a good health and safety system that is focused solely on prevention.

## Conclusion

The New Brunswick division of the Canadian Union of Public Employees wants to restore the balance in workers' compensation and health and safety. We strongly believe that this balance was achieved when the government adopted the recommendations of the *Report of the Workers' Compensation Study Committee* in 1980. In 1993 and afterwards, injured workers have been losing in terms of having access to compensation. When they do get compensation, their benefits are reduced. The Workplace Health, Safety and Compensation Commission of New Brunswick has to stop penalizing workers who are receiving compensation. More emphasis needs to be put on prevention and we call on the Independent Review Panel New Brunswick Workplace Health, Safety and Compensation System to recommend that the Occupational Health and Safety Commission be reinstated.

Again, we fully support the position taken by the New Brunswick Federation of Labour on Preventing Workplace Accidents and Illnesses, Restoring the Balance in Workers' Compensation, Appeals System, WHSCC Structure, Improvements Affordable, Future Reviews and Forging a New Relationship.

In closing, we would like to thank the Independent Review Panel New Brunswick Workplace Health, Safety and Compensation System for considering our views.

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