2013 – 2016

COMPREHENSIVE REVIEW OF NEW BRUNSWICK WORKERS' COMPENSATION LEGISLATION

Consultant's Report

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FOREWORD

1. WorkSafeNB (“WSNB”) and the Government of New Brunswick have begun a three-year, multi-stage, comprehensive review of workers’ compensation legislation. Stage One began in May 2013. The process will be a collaborative effort between WSNB and the Department of Post-Secondary Education, Training and Labour (“DPETL”), co-sponsored by the President and Deputy Minister, respectively.

2. The objective of the review is to ensure that the New Brunswick workers’ compensation system appropriately addresses the needs and realities of current and future workplaces and strikes the appropriate balance between adequate compensation for injured workers and employers’ fiscal interests. It has been more than 20 years since the legislation has undergone a comprehensive review.

3. A steering committee was established to oversee the review. The President and Chief Executive Officer and the General Counsel for WSNB and the Deputy Minister and Assistant Deputy Minister of DPETL form the steering committee. Consultants and a Subject Matter Expert were retained

4. The final Report of the Consultants, Ms. Ellen Barry and Mr. Brian Bruce, will be presented to the Steering Committee and the Subject Matter Expert, Mr. Doug Mah, Secretary and General Counsel of the Workers' Compensation Board of Alberta. Mr. Mah has been involved in a number of legislative reform projects pertaining to workers' compensation and will provide recommendations on best practices related to Stage One of the review.

STAGE ONE - CONSULTATION PROCESS

5. The first stage of the review had as its objective to gather input from stakeholders. Two independent consultants were engaged to meet with stakeholders and to report back to the steering committee. Their mandate was to capture the comments made and summarize these in this report without passing judgment on the opinion expressed by the stakeholders.

6. The department contacted 220 stakeholders and invited them to submit comments and to meet with the two consultants. The Department and WSNB published a discussion paper entitled the "2013-2016 Legislative Review of Workers' Compensation 2013 Discussion Paper". This paper is available on the Department of Post-Secondary Education, Training and Labour web site.

7. Stakeholder meetings were held in five regions – Bathurst, Grand Falls, Fredericton, Moncton and Saint John. In total, 37 briefs/comments were received representing workers, employers, professional health associations, injured workers and others. 26 meetings were held with individuals representing these same groups and 17 injured workers met with the consultants. Appendix 1 identifies the stakeholders.

8. The first stage of the review focused on a review of the following:

- The calculation of benefits under section 38.11(9) in the *Workers Compensation Act* ("*WC Act*").

- The determination of the merits of introducing a dispute resolution mechanism relating to processes and procedures in the *WC Act*.

- The governance structure and mandate related to the Appeals Tribunal in the *Workplace Health, Safety Compensation Commission Act* ("*WHSCC Act*").

9. This Report provides a high-level summary of the comments received from stakeholders relating to each of the above-noted items during the consultation process.

10. Comments were also received on other topics ranging from the impact of workplace injuries on individuals to suggestions to improve operational efficiencies. These comments are valuable but are outside of the mandate for Stage One. Comments whether submitted through briefs or captured in notes from oral presentations will be retained and brought forward for consideration in subsequent stages of the review.

THE CALCULATION OF BENEFITS UNDER SECTION 38.11(9) IN THE *WORKERS COMPENSATION ACT*

Introduction

11. Section 38.11(9) of the *WC Act* reads as follows:

> "38.11(9) Notwithstanding subsection (2). where a worker has not received remuneration from the employer or any income replacement or supplement benefit from the employer or from an employment-related source in respect of the injury or recurrence of the injury for a period of time after the injury or recurrence of the injury that is equivalent to three working days and where the worker commences to receive compensation under subsection (2), there shall be payable to the worker only that portion of compensation which, when combined with the amount of any remuneration received by the worker from the employer or any income replacement or supplement benefit received by the worker from the employer or from an employment-related source, does not exceed eighty-five per cent of the worker's pre-accident net earnings calculated for the same period of time as that during which compensation is paid."

12. The 2013 Discussion Paper identifies the following possible ways of improving section 38.11(9):

(1) Redrafting the section in "plain language" so that it is easier to understand;

(2) Clarifying what types of employment–related income referred to in the section should be used to reduce a worker's loss of earnings benefits; and

(3) Ensuring that the section maintains a balance between proper and just compensation, rehabilitative support and the employer's fiscal interest.

Background

13. Controversy respecting the interpretation of section 38.11(9) developed in 2008 when the Appeals Tribunal started to reverse rulings made by WSNB which deducted what it considered to be employment-related income (CPP retirement pensions, in particular) from a worker's loss of earnings benefits under the *Act*. WSNB made these deductions in accordance with written policies which it had established but which the

Appeals Tribunal found to be in breach of the legislation. Over 200 rulings by WSNB in this area were reversed by the Appeals Tribunal.

14. Finally, in 2011, one of the decisions of the Appeals Tribunal was appealed to the New Brunswick Court of Appeal ("NBCA"). A decision, rendered by the NBCA on April 5, 2012, affirmed the Appeals Tribunal's decision that CPP retirement benefits should not be used to reduce a worker's compensation entitlement under the *WC Act* (*J.D. Irving Limited (Sussex Sawmill) v. Wayne Douthwright and Workplace Health, Safety and Compensation Commission*, 2012 NBCA 35).

15. In paragraph 55 of the NBCA decision, the Court endorsed the following formula for determining when remuneration, income replacement or a supplement benefit received from the employer or an employment-related source should be deducted from a worker's loss of earnings benefit pursuant to s. 38.11(9) of the *Act*:

> "1. Is the amount sought to be deducted either:
>
> (a) remuneration received from the employer;
> (b) income replacement received from either the employer or an employment-related source; or,
> (c) a supplement benefit received from either the employer or an employment-related source? AND,
>
> 2. Was the amount received paid <u>for the same period during which compensation is paid?</u>"

16. The NBCA in paragraph 62 of its decision addressed the intent of the Legislature in enacting section 38.11(9) as follows:

> "I simply cannot conceive how it might have been the intent of the Legislature in enacting s. 38.11(9) to reduce compensation payments when a worker draws on his or her savings, whether it is in the form of money in a savings account, funds held in an RRSP, a vested pension or CPP retirement benefits. None of any such monies drawn would be meant to supplement the 85% of the pre-accident net earnings, the worker is entitled to receive under the *Workers' Compensation Act*, and none would constitute monies received for the same period during which compensation is paid."

17. It should be noted that WSNB amended Policy No. 21-215, entitled "Supplements to Compensation" (See Appendix 2), on July 26, 2013 to reflect the decision of the NBCA. This Policy is now in effect with respect to the current wording of s. 38.11(9). It is very comprehensive in explaining how s. 38.11(9) is to be applied

and, in particular, in explaining when remuneration received is not to be deducted from loss of earning benefits. The Policy identifies the following examples of remuneration earned prior to the compensation period that are not to be deducted: vacation pay, bonuses, and sick leave benefits. Further, the Policy clarifies that retirement pensions are not supplements and should not be used to reduce compensation benefits. The Policy provides examples of retirement pensions but states that the list is not exclusive. It is noted that Policy 21-230, which became effective on the same date as Policy 21-215, outlines when Canada Pension Plan Disability ("CPPD") benefits are to be deducted from loss of earnings benefits. The deduction of CPPD benefits from any loss of earnings benefits payable under s. 38.11 is addressed in s. 38.91(1) of the *WC Act*.

18. It should be noted that many of the stakeholders that made presentations to us would not have been aware of these recent amendments to Policy No. 21-215.

Input From Stakeholders

19. In most cases, the representations made by stakeholders with respect to s. 38.11(9) fall into one of the following three categories:

- No changes in wording of s.38.11(9);
- Limited change in wording; or
- Rewrite, in clear, plain language.

No change in wording of s. 38.11(9)

20. A large number of stakeholders, including both workers and employers, supported the interpretation which the NBCA placed on s. 38.11(9).

21. A majority of the worker stakeholders took the position that they did not want to see s. 38.11(9) rewritten in plain language out of fear that any amendment could dilute the meaning which the NBCA had placed on the current wording of the section. Their comments were not in response to any draft legislation presented for their consideration but rather out of a belief that the NBCA decision added the clarity that s. 38.11(9) required.

> "The existing legislation is clear and fully understood by injured workers, employers, workers and employers advocates, the Appeals Tribunal and the Courts, and has been for some time."
>
> New Brunswick Building and Construction Trades Council

Limited change in wording

22. Some stakeholders, who initially expressed concern that s. 38.11(9) not be amended out of fear that it could reduce the impact of the NBCA's findings, when questioned, were supportive of the suggestion that the current wording could be maintained while adding a further subsection that would identify, without being exclusive, specific examples of supplements that should not be deducted from loss of earnings benefits. In particular, there was some limited discussion with some of the stakeholders as to whether the revised Policy No. 21-215 could be used to identify specific examples that are being applied in practice. There may be other examples however, that are controversial and need to be addressed as well. The only specific ones raised in discussions with stakeholders related to private insurance coverage for the 3-day waiting period and for replacing or offsetting reductions WSNB has made under the authority of s. 38.11(9). These will be addressed at a later point in this Report.

> "The New Brunswick federation of Labour supports ensuring plain and understandable language. The revisions should clarify that pension savings are not employment-related income and must not be deducted from benefits to injured workers, In short, the revisions must include wording that adheres to the *J.D. Irving v. Douthwright and the WHSCC* case decision."
>
> New Brunswick Federation of Labour

Rewrite in clear, plain language

> "It is not believed this is so much an issue of "plain language" as of clarifying the policy (and possibly legislation) regarding treatment of supplements. It is CME's position that an injured worker should not be able to receive wc benefits and other types of payments that could not be accessed by the worker if he/she had not been injured and had continued to be employed by the accident employer. The Court's ruling regarding CPP retirement benefits is clear."
>
> Canadian Manufacturers and Exporters

23. Although, as noted earlier, a large number of stakeholders supported the NBCA's interpretation of s. 38.11(9), some stakeholders did not. Those stakeholders wanted the section to be rewritten as they thought the Court's ruling had not reflected the intention of the Legislature. These stakeholders believed the Legislature's intention was to place reasonable limitations on the compensation available to an injured worker. They saw the providing of high quality rehabilitation and medical services, which would assist employees to return to work, as equally as important as compensation. This group of stakeholders did not provide specific details as to the extent that they would rewrite the section so as to restrict the deduction of supplements from earnings benefits. Their

concern appeared to be related to having to transfer funds that could be used for rehabilitation and medical services to compensation benefits or to having to significantly increase the assessment rates employers pay.

> "We therefore propose that WorkSafe be assigned the responsibility of provider of first resort for medical rehabilitative services BUT payer of last resort for financial compensation. A completely new section 38.11(9) would authorise and set out the mechanics of the revised payer of last resort proposition…Consistent with our position above concerning pension plans, we propose that 50% of earnings from any registered retirement savings plan would be deducted."
>
> New Brunswick Construction Labour Relations Alliance

24. Stakeholders, in general, were not provided with any information as to the additional cost that would be incurred in implementing the decision of the NBCA. They were not in a position, therefore, to reflect on whether any shortfall in funding would result in a reduction of other benefits such as rehabilitation services or whether assessment rates for employers would be increased.

25. Some employer stakeholders were also concerned that workers should not be compensated to the point where they are discouraged from returning to work following rehabilitation. They were concerned about injured employees receiving supplements that, when combined with their loss of earning benefits, would mean they would be receiving more money than they earned prior to their accident.

> "Without a proposed draft for comment…it is difficult for retailers to provide an opinion …other than to agree the language is complicated. In taking a broader view of section 38.11…ensure that if it does simplify the language it should safeguard the following:
>
> - Injured workers are treated fairly.
> - There must be a differential between pre-injury earnings and an injured worker's compensation in order to ensure the injured workers is motivated to return to work."
>
> Retail Council of Canada

26. Some members of the Canadian Life and Health Insurance Association questioned the application of s. 38.11(9) to an employer–sponsored group plan containing an integration of benefit clause offsetting workers' compensation benefits to the insured worker and limiting benefits to an 85% all-source maximum. Even though, in examples cited, the insurance company reduced its payments under the policy to reflect the workers' compensation benefits received, so that there was no double indemnity of

benefits, and both benefits were under the 85% all-source maximum allowed under the group policy, the employees were forced to choose between the insurance policy and the compensation payments. More specifically, the problem appears to arise when partial benefits or reductions are applied to the workers' compensation benefits and the insurance company recalculates the monthly group benefits entitlement as per the terms of the insurance plan. This results in an increase payable under the group plan so that the worker is not financially disadvantaged due to the decrease in benefits received under the *WC Act*. According to the insurance companies, WSNB on learning of the increased benefit payable under the insurance plan then reduces the workers' compensation benefits plan by the amount of the increase. This is followed by further increases and decreases until the workers' compensation benefits are reduced to zero.

27. As well, the Canadian Life and Health Insurance Association made reference to standard plans across Canada that have come into conflict with this 3-day waiting period. Their submissions suggest that injured workers are reluctant to apply for group disability benefits through their employer for these first three days of absences as it might jeopardize their entire entitlement to workers' compensation benefits under the *WC Act* unless it is found to be a permitted supplement. The insurance companies felt that they should have the option to pay the 3-day waiting period.

28. It should be noted that a number of stakeholders, representing both workers and employers, raised the issue of whether there should be a 3-day waiting period. The 3-day waiting period is created in s. 38.11(3), not 38.11(9), of the *WC Act*. For that reason, their representations on the existence of the 3-day waiting period have been noted and will be brought forward when s. 38.11(3) is considered in one of the following review stages.

THE DETERMINATION OF THE MERITS OF INTRODUCING A DISPUTE RESOLUTION MECHANISM RELATING TO PROCESSES AND PROCEDURES IN THE *WC ACT*

Introduction

29. The 2013 Discussion Paper states:

> "New Brunswick's legislation provides access to an Appeals Tribunal, Workers' and Employers' Advocates and the provincial Ombudsman office to assist the parties. There is no ombudsman-like mechanism to assist stakeholders in administrative and communication matters. Other provincial jurisdictions provide an internal fair practice office (ombudsman-like office) within the workers' compensation structure."

The Discussion Paper suggests that there may be merit to introducing such a mechanism here in New Brunswick. Two questions were asked:

> "1. Is there merit to introducing a fair practice office within the workers' compensation structure in New Brunswick? 2. If so, what option(s) do you suggest to change the legislation regarding a "fair practices" mechanism and why?"

Background

30. A worker who submits a claim to WSNB and whose claim is rejected and who wishes to have the matter reviewed must initiate an appeal. Employers must also proceed to the Appeals Tribunal for resolution of issues impacting them. The Appeals Tribunal is the first and final level of appeal for claims under the *WC Act*. In December 2012, appeals were taking 202 days from the beginning of the appeal process to the communication of the decision to the appellant. Eighty per cent (80%) of the appeals were accepted having a hearing or paper review. There were 799 appeals initiated in 2012 of which 8% were employer initiated. In 2012, there were 407 appeals resolved by the Appeals Tribunal by oral hearing or paper review.

31. Although, Workers' and Employers' Advocates are employed by the Department of Post-Secondary Education, Training and Labour, WSNB makes an annual grant to the Department equal to the cost of salaries and administration. There are currently 7 Workers' Advocates and 4 Employers' Advocates. In 2012-13, Workers' Advocates received 809 new files; closed 765 files; and went to 322 appeal hearings. Workers' Advocates provide assistance to claimants once they have decided to proceed to the appeal stage. During the same timeframe, the Office of Employers' Advocates (OEA)

received 320 new cases; closed 317 cases; and maintained a balance of 735 active cases. Employers' Advocates represented employers on 137 appeals before the Appeals Tribunal.

32. The Ombudsman, an office created by an act of the New Brunswick Legislature, has investigated complaints upon the request of injured workers against WSNB. Investigations are carried out after any appeal process has been exhausted.

Input From Stakeholders

33. The comments made by stakeholders who made representation on this subject could be summarized as either wanting some type of dispute resolution mechanism or believing that establishing another bureaucratic level would be costly and unnecessary. The majority of stakeholders recognized that the lack of some form of dispute mechanism resulted in many issues advancing to the appeal stage that might otherwise have been resolved with the help of some type of mediation between the parties.

> "…the lack of any form of dispute resolution at most stages of the process has been a significant factor in the delay in processing disputes that arise on a day to day basis and in fact facilitate the necessity to file an appeal to the appeals tribunal..If there was some form of required resolution process to bring parties face to face to resolve any misunderstandings or to reemphasize their responsibilities then many cases would not need to take up the time of the appeals tribunal."
>
> Worker Appeals Services

> "If properly resourced and empowered, such an entity could have merit: It must have the ability to either order changes in the administration approach to a claimant's matter or, at the very least, refer problem areas to the Board of Directors of WorkSafeNB or identify problem areas to the Legislature in the form of periodic reports."
>
> Chair, Appeals Tribunal

> "The APPFFA would be in favour of a more employee friendly dispute resolution mechanism that individuals could access without having to be a lawyer. The current process is convoluted…An act with clear language and a means to resolve disputes would benefit all parties involved."
>
> Atlantic Provinces Professional Fire Fighters' Association

34. Those stakeholders in favour of some form of dispute resolution did refer to the creation of a fair practice office or some form of review process. Few saw the review process as an internal mechanism. Of most concern to those who supported a form of dispute resolution was the need for the structure to be impartial, independent and confidential. Many believed that such a mechanism would need to have sufficient power to either order changes in the administration of a claim or mediate disagreements between the claimant and WSNB. All insisted that a dispute resolution mechanism must not add delay to the appeal process.

> "We recommend and support the establishment of a Fair Practices Office. Addition of this mechanism provides potential to increase the confidence of employees and unions in the impartiality and fairness of the system, reduce the case load of the Appeals Tribunal, improve service to employers as well as to injured employees and increase the level of overall satisfaction with the system."
>
> City of Saint John

35. Stakeholders who made representation and were familiar with the appeal process, believed that a dispute resolution mechanism would be beneficial in reducing the number of low cost issues that currently proceed to a full tribunal hearing. Many stakeholders believed that there was a need to improve communication between WSNB and claimants.

36. Stakeholders representing injured workers expressed the need to have some mechanism in place to quickly and easily contact someone who could, for example, clarify issues with their claims, provide them with information as to what benefits they are entitled to or even to help them access crisis intervention experts. Some suggested that a 1-800 line would be welcomed.

37. One employer stakeholder believed that the establishment of a fair practice office would also improve service to employers as well as to injured workers and increase the level of overall satisfaction with the system. An injured worker representative believed that some type of required early resolution process would cause a healthier relationship to exist between the worker and WSNB.

38. A stakeholder representing employees, who did not oppose the creation of a fair practice office, did state that it should be independent and not report to WSNB, the process should be voluntary, should be funded separately and should be required to report publicly while respecting the privacy of individuals.

39. Some of the stakeholders who did not see merit in the creation of a dispute resolution mechanism believed that improvements could be made to the current system whether it was to WSNB, the Advocates employed by DPETL or the Ombudsman. Some of these stakeholders suggested that these organizations were under-resourced. An injured worker representative recommended that Advocates be made available to workers from the beginning of the claims process, not only at the time of initiating an appeal.

> "…strongly recommend that serious consideration be given to providing additional staff and funding for the Offices of the Workers and Employers Advocates as well as the Appeals Tribunal…in the final analysis, this would be the first and best use of funds it would otherwise take to staff and operate a "fair practice office" which would not be dealing with substantive issues in any event."
>
> New Brunswick Building and Construction Trades Council

> "Members did not see merit in introducing a new office into the workers compensation structure in New Brunswick. Rather, they felt that improvements to the existing Appeals tribunal structure, and possible changes to the existing advocate and ombudsman office could achieve the same result with less cost and bureaucracy."
>
> New Brunswick Business Council

40. Another stakeholder was of the opinion that there were a number of options available currently to review decisions such as requesting a review by the case worker, by their superior or even by officials at the DPETL or to the Chair of the Board of Directors. They did not support establishing a dispute resolution mechanism.

41. None of the stakeholders provided specific details regarding how the legislation might be amended to incorporate a dispute resolution mechanism.

THE GOVERNANCE STRUCTURE AND MANDATE RELATED TO THE APPEALS TRIBUNAL IN THE *WORKPLACE HEALTH, SAFETY COMPENSATION COMMISSION ACT*

Introduction

42. The *Workplace Health, Safety and Compensation Commission Act* ("*WHSCC Act*") provides that there is a final right of appeal to an Appeals Tribunal from any decision, order or ruling of any officer of the Commission affecting the rights of an employer, a worker or a dependant (s. 21(1)(b)). Some of the more important provisions of the *WHSCC Act* relating to the Appeals Tribunal and the referral of cases to the NBCA provide as follows:

(i) The Appeals Tribunal is appointed by the Commission. (s. 20(1))

(ii) The Appeals Tribunal consists of a Chairperson, a number of Vice-Chairpersons and members who are representative of workers and employers. (s. 20(1))

(iii) The Chairperson of the Appeals Tribunal is responsible to the Board of Directors for the operations of the Appeals Tribunal. (s. 20(2))

(iv) The Chairperson of the Appeals Tribunal is a non-voting member of the Board of Directors of the Commission. (s. 8(1)(f))

(v) With the consent of all parties and the Chairperson, appeals may be heard by the Chairperson or a Vice-Chairperson of the Appeals Tribunal acting alone. Otherwise appeals are heard by a Tribunal consisting of the Chairperson or Vice-Chairperson and a representative of workers as well as a representative of employers. (s. 21(4))

(vi) Any decision of the Appeals Tribunal shall be upon the real merits of the case; and, the Appeals Tribunal is not bound to follow precedent. (s. 21(9))

(vii) Any decision of the Appeals Tribunal is deemed to be a decision or ruling of the Commission. (s. 21(11))

(viii) Any decision of the Appeals Tribunal shall be final and only subject to an appeal to the Court of Appeal on any question as to its jurisdiction or any question of law. (s. 21(12))

(ix) Any party directly affected by a decision of the Appeals Tribunal may file an appeal to the Court of Appeal. (s. 23(1))

(x) The Commission is entitled to be represented by counsel on the hearing of an appeal. (s. 23(6))

(xi) "The Commission may on its own motion state a case in writing for the opinion of the Court of Appeal upon any question that in the opinion of the Commission is a question as to its jurisdiction or a question of law". (s. 23(7))

Background

43. The 2013 Discussion Paper identifies the Government's structure and mandate related to the Appeals Tribunal as the third item to be considered for review during Stage One. It asks the general question as to how the legislation relating to the Appeals Tribunal might be improved to better serve the stakeholders. The following two areas have been identified in the Discussion Paper for consideration:

1. How can the question as to whether the policies created by WSNB are in compliance with its governing legislation be resolved?

2. Should the Appeals Tribunal continue as an internal tribunal with the Chairperson of the Appeals Tribunal as a non-voting member of the Board of Directors or should an external Appeals Tribunal be created as has occurred in most other provincial jurisdictions?

The Discussion Paper goes on to solicit input from stakeholders as to changes they would like to see in the appeal system.

44. The conflict between WSNB and the Appeals Tribunal in resolving the issues raised as a result of challenges to WSNB's decisions and policies respecting the application of s. 38.11(9) have obviously generated discussions respecting challenges to Board policy and a need to be able to expeditiously resolve any conflicts.

Input From Stakeholders

45. Comments on the Appeals Tribunal were received from a wide range of stakeholders. Many workers and worker related organizations described their

experiences in using the appeal process. Often their concerns related to delays and frustrations in resolving relatively minor issues. Although they had comments with respect to the Appeals Tribunal, these comments were generally of a more general nature and did not go into a detailed examination of the intricacies of the appeal process.

46. In contrast, the Chair of the Appeals Tribunal presented a detailed brief on many of the concerns he had with the appeals process. As well, WSNB provided an independent study prepared by the firms of Stewart McKelvey and KPMG, which examines the very question as to whether the current Appeals Tribunal system meets the needs of its stakeholders and whether changes in the legislation, governance, operations or structure would improve the appeal process. Both of these submissions are extensive and, in large part, not in conflict with one another with respect to improvements that might be made.

47. For purposes of summarizing submissions received from stakeholders, it might be most helpful to address them in relation to the following specific questions:

- Should the Appeals Tribunal be internal or external?
- Should there continue to be employer and worker representatives on the Appeals Tribunal?
- Are there processes or procedures that could improve the system?
- Should there be an expedited process for referring questions related to the interpretation of the legislation to the NBCA?

Should the Appeals Tribunal be internal or external?

48. The Chair of the Appeals Tribunal and the Stewart McKelvey document both propose that the Appeals Tribunal be made external to the Commission, which is the current situation in all other Canadian jurisdictions except Saskatchewan. There were several stakeholders who were in agreement with the Appeals Tribunal being external to the Commission.

> "The Appeals Tribunal should be both External, and the Final Adjudicator of all individual appeals with a continuing right of appeal for stakeholders to the Court of Appeal of New Brunswick…While the current model is appropriate, an External Tribunal would at least be perceived from the 'outside' as being even more independent.."
>
> Chair, Appeals Tribunal

> "*An external appeal tribunal, rather than the current hybrid model would best serve the stakeholders. An external appeal tribunal should be at arm's length with WSNB and be responsible for making decisions in accordance with the legislation and WSNB policy*."
>
> Canadian Manufacturers and Exporters

> "The New Brunswick Federation of Labour supports the current Appeals Tribunal Structure. The only improvement would be for the Appeals Tribunal to be completely independent and external to WorkSafeNB."
>
> New Brunswick Federation of Labour

49. Some of the individual stakeholders however, indicated that they favoured the Appeals Tribunal being internal to the Commission. In fact, they saw some advantage to the Chair of the Appeals Tribunal being a non-voting member of the Board of Directors as they felt this would assist the Chair to more clearly understand some of the philosophy and objectives as seen from the Board's perspective. At the same time, this would allow the Board to appreciate concerns raised at the Appeals Tribunal level which need to be addressed by the Board.

> "…the removal of the Chair of the Appeals Tribunal from a non-voting position on the WorkSafeNB Board of Directors will deprive the Board of the benefit of feedback from the Appeals Tribunal which might enable the Board to formulate policies that are consistent with the legislation and thereby reduce the number of appeals."
>
> UNIFOR

50. These comments from individual stakeholders reflect that, in spite of recent difficulties respecting the interpretation and application of s. 38.11(9), there has been some advantage to the Board and the Appeals Tribunal having an established method of communicating concerns to one another. It also suggests that, in spite of the Appeals Tribunal not being formally recognized as being independent in the legislation, the Board and the Appeals Tribunal have respected the independent decision-making role played by the Appeals Tribunal.

51. Whether the creation of some communication opportunities between the Appeals Tribunal and the Board would be appropriate should the Appeals Tribunal be made independent might be considered. The Stewart McKelvey report does acknowledge the importance of creating and maintaining a close and effective working relationship between WSNB and the Appeals Tribunal.

Should there continue to be employer and worker representatives on the Appeals Tribunal?

52. Many of the worker and employer stakeholders saw an advantage to having designated worker and employer representatives on the Appeals Tribunal as it gave them some comfort to know that their position would be understood by such individuals and would be addressed in the decision-making process. Most of these comments appeared to be based upon the stakeholders' intuition and no specific examples were given as to how it may have been important in any particular case. It was recognized by some stakeholders that there are worker and employer representatives on the Appeals Tribunal who have developed an expertise in matters coming before them and who have always been objective in their decision making.

> "The Appeals tribunal must be composed of representatives from workers and employers. Representatives must be selected by recognized and credible representative organizations."
>
> New Brunswick Federation of Labour

53. Others stakeholders favoured cases being heard by a single individual noting that it would be more efficient, less costly and impartial.

54. One suggestion from stakeholders that did emerge was that a medical physician should be on each panel of the Appeals Tribunal, particularly when medical issues are involved. This suggestion was made without any discussion as to whether a physician's input might more appropriately come through testimony as a witness. There appeared to be a concern, however, that many of the cases heard by the Appeals Tribunal relate to medical determinations and that Tribunal members may not always appreciate the nuances of such medical evidence.

Are there processes or procedures that could improve the system?

55. Many stakeholders made passing reference to suggestions that they viewed might make for a better and more efficient system of resolution of disputes. Many of these related to the creation of a review process prior to a dispute being referred to the Appeals Tribunal. It was suggested that this might be accomplished through a Fair Practice Office or an Internal Review Process that would allow for minor issues to be resolved without the need for a formal hearing. Many of these suggestions have been reviewed earlier in this report under the dispute resolution mechanism heading.

56. One suggestion made by some stakeholders was that issues involving the determination of a relatively minor monetary issue could be addressed in an abbreviated hearing with no right of appeal from it.

57. Another concern expressed by stakeholders, particularly organizations representing workers, was that if the Appeals Tribunal becomes external, with the right of WSNB to appeal decisions to the NBCA, more cases may end up going before the Court. If this were to happen, it was suggested that a fund should be established to assist with the cost of processing such appeals.

58. Another proposal made by stakeholders was that WSNB staff should be present at an appeal so as to make it easier to ensure that the facts surrounding the appeal are known to the Appeals Tribunal.

Should there be an expedited process for referring questions related to the interpretation of the legislation to the NBCA?

59. There were many stakeholders frustrated by the delay in resolving the issue of supplements under s. 38.11(9). Many stakeholders suggested that WSNB could have expedited the resolution of this issue by referring the matter to the Court of Appeal under the current provisions of s. 23(7) of the *WHSCC Act*. The position of counsel for WSNB was that this type of reference has limitations. The Stewart McKelvey report has reviewed processes followed in other provincial jurisdictions and proposes an expedited method of having legislative interpretation issues resolved. This proposed method, it is argued, would recognize the right of WSNB to have its voice heard and the right of the Appeals Tribunal to interpret the legislation on which a "compensation" policy may be based.

SUPPLEMENTARY COMMENTARY: INJURED WORKERS

60. We would be remiss in our report if we did not convey to the Steering Committee some of the comments we heard from injured workers.

61. The injured workers we met ranged from individuals currently receiving long term compensation to individuals who have never succeeded in claiming compensation or who have had their compensation halted. Many have been at odds with WSNB for a number of years.

62. Most see the loss of their ability to work, as not only a loss of wages, but a loss of dignity, social standing in their community and of self-esteem. Many have lost their homes, their way of life and in some cases even their life. Their stories are poignant.

63. Injured workers believe that WSNB sees itself as an insurance company representing the employer with the goal of minimizing the number of claims and limiting compensation to workers. As such, they are mistrustful of WSNB.

64. The rehabilitation center in Grand Bay was referred to frequently by injured workers and described in very unflattering terms. Examples were given of treatment that did not seem appropriate to the injury incurred or being threatened with benefit cessation if they did not try harder or if they could not attend on certain days through no fault of their own. They spoke of the toll it took on them and their families to be away from home while at the Rehabilitation Center and how they were fearful of mentioning the emotional impact this was having on them. Many felt very unsafe in the Center.

65. As acknowledged at the beginning of this report, many comments from injured workers referred to issues outside of the mandate of Stage One. Nonetheless, some of the comments in the main body of this report, such as supporting some form of dispute resolution; reducing the time for appeals to be heard and the decision to be communicated; as well as, improving communication between workers and WSNB, were made by injured workers.

APPENDIX 1: CONSULTATIONS

Briefs and Comments

The following is a list of briefs/comments received representing workers, employers, professional health associations, injured workers and others.

Employer Organizations:

1. New Brunswick Business Council
2. Canadian Restaurant and Foodservices Association – Atlantic region
3. Fredericton Chamber of Commerce
4. Horizon Health
5. Canadian Life and Health Insurance Association
6. Retail Council of Canada
7. Construction Association of New Brunswick
8. Canadian Manufacturers and Exporters
9. Agricultural Alliance
10. New Brunswick Road Builders and Heavy Construction Association
11. City of Saint John - Solicitor General Office
12. New Brunswick Automobile Dealers' Association
13. Tourism Industry Association of New Brunswick
14. Atlantic Chamber of Commerce
15. Construction Association of New Brunswick
16. Saint John Construction Association
17. NB Power

Worker Organizations:

18. Association of Land Surveyors
19. NB Midwifery Council
20. Fredericton City Police
21. NB Physiotherapy Association
22. NB Medical Society
23. Labourers' Training Institute of NB Inc.
24. International Brotherhood of Electrical Workers
25. NB College of Dental Hygienists

26. NB Nurses Union
27. CUPE NB
28. NB Association of Chiefs of Police
29. Bathurst and District Labour Council
30. UNIFOR – joining of Canadian Auto Workers union (CAW) and the Communications, Energy and Paper workers union (CEP)
31. NB Building and Construction Trades Council
32. NB Construction Labour Relations Alliance
33. NB Federation of Labour
34. International Association of Fire Fighters and Atlantic Provinces Professional Fire Fighters Association

Other:

35. WorkSafeNB Board of Directors
36. NB Energy and Utilities Board
37. Green Party of New Brunswick
38. Office of the Ombudsman
39. CCNB
40. Canadian Life and Health Insurance Association Inc.
41. Appeals Tribunal
42. Injured Workers Advisory Committee
43. le Front Commun pour la Justice Sociale
44. Worker Appeal Services
45. Independent Representative assisting an injured worker in Appeal Tribunal process.
46. BarronT Labour Relations Inc.
47. Injured Workers (17)

APPENDIX 2: WORKSAFENB POLICY 21-215: SUPPLEMENTS TO COMPENSATION

PURPOSE

The purpose of this policy is to provide the Board of Directors' interpretation of subsections 38.2(2.5) and 38.11(9) of the *WC Act*, based on the New Brunswick Court of Appeal decision J.D. Irving, Limited (Sussex Sawmill) v. Wayne Douthwright and Workplace Health, Safety and Compensation Commission.

OBJECTIF

Cette politique a pour objectif de donner l'interprétation du conseil d'administration des paragraphes 38.2(2.5) et 38.11(9) de la *Loi sur les accidents du travail*, fondée sur la décision de la Cour d'appel du Nouveau-Brunswick dans l'arrêt J. D. Irving, Limited (scierie de Sussex) c. Wayne Douthwright et Commission de la santé, de la sécurité et de l'indemnisation des accidents au travail.

SCOPE

This policy applies to injured workers who have a compensable workplace injury, or recurrence of injury, on or after January 1, 1993, and who receive both compensation benefits and remuneration from an employment-related source.

This policy does not apply:

- To the three-day waiting period;
- To estimated capable earnings;
- When injured workers receive Canada Pension Plan Disability benefits. For more information, see Policy No. 21-230 Deduction of CPPD Benefits from Loss of Earnings Benefits; or
- When determining average earnings for calculating loss of earnings benefits. For more information, see Policy No. 21-210 Calculation of Benefits.

APPLICATION

Cette politique s'applique aux travailleurs blessés qui subissent une lésion indemnisable liée au travail ou la réapparition d'une lésion à compter du 1er janvier 1993, et qui reçoivent à la fois des prestations d'indemnisation et une rémunération d'une source liée à l'emploi.

La politique ne s'applique pas :

- à la période d'attente de trois jours;
- aux gains estimatifs que le travailleur est en mesure de tirer;
- lorsque les travailleurs blessés reçoivent des prestations d'invalidité du Régime de pensions du Canada. Pour obtenir plus de renseignements, voir la Politique no 21-230 – Prestations d'invalidité du Régime de pensions du Canada déduites des prestations pour perte de gains;
- à la détermination des gains moyens utilisés pour le calcul des prestations pour perte de gains. Pour obtenir plus de renseignements, voir la Politique no 21-210 – Calcul de l'indemnité.

GLOSSARY

Average earnings - the daily, weekly, monthly, or regular remuneration that the worker was receiving at the time of the injury *or recurrence of the injury, or receiving previously, or at the time of the loss of earnings, or at the time of death, as may appear to the Commission best to represent the earnings of the worker, unless the worker was at the date of the accident under twenty-one years of age and it is established to the satisfaction of the Commission that under normal conditions the earnings would probably increase, in which case this fact should be considered in determining the worker's average earnings and in no case shall average earnings exceed the maximum annual earnings. (WC Act)*

Average net earnings *- the average earnings of the worker minus any income tax and premiums under the Employment Insurance Act and contributions under the Canada Pension Plan that would be payable by the worker based on those earnings. (WC Act)*

Employer *- (a) every person having in his service under contract of hire or apprenticeship, written or oral, express or implied, any worker engaged in any work in or about an industry, (b) a municipal corporation, commission, committee, body or other local authority established or exercising any powers or authority with respect to the affairs or purposes, including school purposes, of a municipality, (c) a person who authorizes or permits a learner to be in or about an industry for the purposes mentioned in the definition "learner". (adapted from the WC Act)*

Estimated capable earnings *- earnings that the injured worker is estimated to be capable of earning, at a suitable occupation, after the injury or recurrence of injury. (adapted from the WC Act)*

GLOSSAIRE

Salaire moyen – Le salaire quotidien, hebdomadaire, mensuel ou le salaire habituel que le travailleur recevait au moment de la *lésion ou de la réapparition de la lésion ou avant ou encore à l'époque de la perte de gains ou du décès et que la Commission estime mieux traduire ses gains à moins qu'il n'ait eu moins de vingt et un ans au moment de l'accident et qu'il n'ait été établi à la satisfaction de la Commission que, dans des circonstances normales, le salaire augmenterait probablement, auquel cas ce fait doit être pris en considération pour déterminer le salaire moyen qui ne doit en aucun cas excéder le salaire annuel maximum. (Loi sur les accidents du travail)*

Salaire moyen net *– Le salaire moyen du travailleur moins l'impôt sur le revenu et les cotisations qu'il doit payer conformément à la Loi sur l'assurance-emploi et au Régime de pensions du Canada du fait de ces gains. (Loi sur les accidents du travail)*

Employeur *– a) toute personne qui utilise, en vertu d'un contrat de louage de services ou d'apprentissage, écrit ou verbal, exprès ou implicite, les services d'un travailleur engagé dans un travail quelconque se rattachant à une industrie, b) les corporations municipales, les commissions, comités et autres organismes des municipalités ou les autres autorités locales, constitués ou exerçant des pouvoirs ou une compétence, relativement aux affaires ou aux fins d'une municipalité, y compris celles des écoles, c) une personne qui donne à un stagiaire l'autorisation ou la permission de faire un travail se rattachant à une industrie dans le but qui est mentionné à la définition « stagiaire ». (Adaptation de la Loi sur les accidents du travail)*

Gains estimatifs que le travailleur est en mesure de tirer *– Les gains que le travailleur devrait être en mesure de tirer d'un emploi convenable après avoir subi une lésion ou la réapparition d'une lésion. (Adaptation de la Loi*

sur les accidents du travail)

Loss of earnings *- average net earnings minus the net earnings the worker is estimated to be capable of earning at a suitable occupation after sustaining the injury. (adapted from the WC Act)*

Perte de gains *– Le salaire moyen net moins les gains estimatifs nets que le travailleur est en mesure de tirer d'un emploi convenable après avoir subi une lésion. (Adaptation de la Loi sur les accidents du travail)*

Maximum annual earnings *- an amount equal to 1.5 times the NBIAE, which is set by the Commission as of the first day of January of each year. (adapted from the WC Act)*

Salaire annuel maximum *– Désigne un montant qui est une fois et demie le salaire pour l'ensemble des activités économiques au Nouveau-Brunswick qui est fixé par Travail sécuritaire NB au premier janvier de chaque année. (Adaptation de la Loi sur les accidents du travail)*

Net estimated capable earnings *- estimated capable earnings minus any income tax and premiums under the Employment Insurance Act and contributions under the Canada Pension Plan that would be payable by the injured worker based on those earnings. (WC Act)*

Gains estimatifs *nets que le travailleur est en mesure de tirer – Les gains estimatifs que le travailleur est en mesure de tirer moins l'impôt sur le revenu et les cotisations qu'il doit payer conformément à la Loi sur l'assurance-emploi et au Régime de pensions du Canada du fait de ces gains. (Adaptation de la Loi sur les accidents du travail)*

New Brunswick Industrial Aggregate Earnings (NBIAE) *- the amount set by the Commission as of January 1st each year which is equal to $27,323 for the year 1993 and which is increased thereafter by the percentage increase in the Consumer Price Index for Canada for all items for the twelve month period ending the 30th day of June in each year as determined by the Commission in August of each year on the basis of monthly reports published in that respect by Statistics Canada for that period. (WC Act)*

Salaire pour l'ensemble des activités économiques au Nouveau-Brunswick *– Le montant fixé par la Commission au premier janvier de chaque année, qui est égal à 27 323 $ pour l'année 1993 et qui sera par la suite augmenté par le pourcentage d'augmentation de l'indice des prix à la consommation du Canada de tous les articles pour la période de douze mois qui s'achève le trente juin de chaque année qu'elle détermine chaque année au mois d'août en fonction des rapports mensuels publiés à cet égard par Statistique Canada pour cette période. (Loi sur les accidents du travail)*

Pre-accident earnings *- the daily, weekly, monthly or regular remuneration that the worker was receiving at the time of the injury or recurrence of the injury, as may appear to the Commission best to represent the earnings of the worker. (WC Act)*

Gains avant l'accident *– La rémunération quotidienne, hebdomadaire, mensuelle ou régulière que le travailleur recevait au moment de la lésion ou de la réapparition de la lésion qui, d'après la Commission, peut le mieux représenter les gains du travailleur. (Loi sur les accidents du travail)*

Pre-accident net earnings *- the pre-accident earnings of the worker minus any income tax and premiums under the Employment*

Gains nets avant l'accident *– Les gains avant l'accident du travailleur moins l'impôt sur le revenu et les cotisations qu'il devrait payer*

Insurance Act and contributions under the Canada Pension Plan that would be payable by the worker based on those earnings. (WC Act)

***Remuneration** - all income, earnings, or money from an employment-related source. Retirement pensions / income - the payments a person receives upon retirement under pre-determined legal and/or contractual terms. These pensions may be set up by employers, insurance companies, the government or other institutions such as employer associations or trade unions.*

***WorkSafeNB** - means the Workplace Health, Safety and Compensation Commission or "the Commission" as defined by the WHSCC Act.*

POLICY STATEMENTS
1.0 General

WorkSafeNB adjudicates all claims using Policy No. 21-100 Conditions for Entitlement – General Principles. Once a claim is accepted, WorkSafeNB provides a range of benefits to injured workers, as required. These benefits may include:

- *Loss of earnings benefits;*
- *Lump sum impairment awards;*
- *Medical aid; and*
- *Rehabilitation services.*

WorkSafeNB has a legal responsibility to determine an injured worker's loss of earnings because of a workplace injury. When WorkSafeNB determines that an injured worker is experiencing a loss of earnings due to a temporary or permanent work restriction, WorkSafeNB pays loss of earnings benefits

conformément à la Loi sur l'assurance-emploi et au Régime de pensions du Canada du fait de ces gains. (Loi sur les accidents du travail)

***Rémunération** – Tout revenu, gain ou argent provenant d'une source liée à l'emploi. Pensions et revenu de retraite – Les versements qu'une personne reçoit au moment de sa retraite selon des modalités contractuelles ou légales prédéterminées. Un employeur, une compagnie d'assurance, le gouvernement ou d'autres organismes, comme une association d'employeurs ou un syndicat, peuvent établir les pensions.*

***Travail sécuritaire NB** – La Commission de la santé, de la sécurité et de l'indemnisation des accidents au travail ou la « Commission », telle qu'elle est définie dans la Loi sur la Commission de la santé, de la sécurité et de l'indemnisation des accidents au travail.*

ÉNONCÉS DE LA POLITIQUE
1.0 Généralités

Travail sécuritaire NB prend des décisions sur toutes les réclamations en se fondant sur la Politique no 21-100, intitulée Critères d'admissibilité – Principes généraux. Une fois qu'une réclamation est acceptée, il offre une gamme de prestations aux travailleurs blessés, au besoin. Ces prestations peuvent comprendre :

- *des prestations pour perte de gains;*
- *des allocations globales pour diminution physique;*
- *de l'aide médicale;*
- *des services de réadaptation.*

Travail sécuritaire NB a la responsabilité légale de déterminer la perte de gains d'un travailleur qui a subi une blessure au travail. Lorsqu'il détermine qu'un travailleur blessé connaît une perte de gains à la suite d'une restriction de travail temporaire ou permanente, il verse des prestations pour perte de gains en fonction de

based on the following legislated formula:

Loss of earnings = average net earnings – net estimated capable earnings

The compensation payable for new accidents is 85% of loss of earnings. For more information, see Policy No. 21-210 Calculation of Benefits.

2.0 Reducing Compensation Benefits

Subsections 38.11(9) and 38.2(2.5) of the WC Act provide limits to the compensation that injured workers can receive. When injured workers receive remuneration from sources other than WorkSafeNB, loss of earnings benefits may be reduced.

WorkSafeNB reduces loss of earnings benefits when:

- *The remuneration is earned and received by the injured worker for the same period during which compensation is paid;*
- *The remuneration is from the employer or an employment-related source;*
- *There is no requirement to reimburse the remuneration; and*
- *The combination of benefits and remuneration exceeds 85% of pre-accident net earnings.*

All four parts of this test must be satisfied to reduce benefits.

2.1 Specific Reductions in Benefits

WorkSafeNB shall deduct from compensation benefits:

- *Estimated capable earnings;*

la formule suivante prévue par la loi :

Perte de gains = salaire moyen net - gains estimatifs nets que le travailleur est en mesure de tirer

Les prestations payables pour les nouveaux accidents se chiffrent à 85 % de la perte de gains. Pour obtenir plus de renseignements, voir la Politique no 21-210 – Calcul de l'indemnité.

2.0 Réduction des prestations d'indemnisation

Les paragraphes 38.11(9) et 38.2(2.5) de la Loi sur les accidents du travail précisent les limites à l'indemnité qu'un travailleur blessé peut recevoir. Lorsque ce dernier reçoit une rémunération de sources autres que Travail sécuritaire NB, ses prestations pour perte de gains peuvent être réduites.

Travail sécuritaire NB réduit les prestations pour perte de gains lorsque :

- *le travailleur blessé a gagné et reçu une rémunération pour la même période visée par l'indemnité;*
- *la rémunération provient de l'employeur ou d'une source liée à l'emploi;*
- *le travailleur n'est pas tenu de rembourser la rémunération;*
- *le total des prestations et de la rémunération dépasse 85 % des gains nets avant l'accident.*

Les quatre critères plus haut doivent être satisfaits pour que les prestations soient réduites.

2.1 Réductions particulières touchant les prestations

Travail sécuritaire NB déduit également des prestations d'indemnisation :

- *les gains estimatifs que le travailleur est*

- *Employment Insurance benefits; and*
- *Employer-sponsored disability benefits (when there is no undertaking to reimburse the insurer).*

3.0 When Not to Reduce Benefits

Remuneration received during the worker's compensation period but earned prior to the compensation period shall not be deducted from loss of earning benefits. Examples include but are not limited to:

- *Vacation pay;*
- *Bonuses; and*
- *Sick leave benefits.*

3.1 Retirement Pensions / Income

Retirement pensions / income are not supplements to compensation under the Workers' Compensation Act and are not used to reduce compensation benefits. Some examples of retirement pensions / income may include, but are not limited to:

- *A pension arising out of employment or service in any armed forces;*
- *Canada Pension Plan retirement;*
- *Quebec Pension Plan retirement;*
- *United States Social Security;*
- *Pensions paid by Veterans Affairs Canada;*
- *Any provincial pension plan;*

en mesure de tirer;

- *les prestations d'assurance-emploi;*
- *les prestations d'invalidité parrainées par l'employeur (lorsqu'il n'existe aucun engagement de rembourser l'assureur).*

3.0 Rémunération non déduite des prestations

La rémunération reçue pendant la période d'indemnisation du travailleur, mais gagnée avant cette période ne doit pas être déduite des prestations pour perte de gains. En voici des exemples :

- *la paie de vacances;*
- *les primes;*
- *les prestations pour congé de maladie.*

3.1 Pensions et revenu de retraite

Les pensions et le revenu de retraite ne représentent pas des suppléments à l'indemnité en vertu de la Loi sur les accidents du travail et ne sont pas déduits des prestations d'indemnisation. Voici des exemples de pensions et de revenu de retraite :

- *une pension liée à l'emploi ou à un emploi à titre de membre des forces armées;*
- *des prestations de retraite du Régime de pensions du Canada;*
- *des prestations de retraite du Régime de rentes du Québec;*
- *des prestations de sécurité sociale des États-Unis;*
- *des pensions versées par Anciens combattants Canada;*
- *tout régime de pension provincial;*

- *Registered Retirement Savings Plans, Registered Retirement Income Fund, or similar programs;*

- *Retirement allowances; and/or*

- *Other remuneration diverted into a program or plan for retirement.*

- *des régimes enregistrés d'épargne-retraite, des fonds enregistrés de revenu de retraite ou des programmes semblables;*

- *des allocations de retraite;*
-
- *autre rémunération détournée à un programme ou à un régime en vue de la retraite.*

REFERENCES

Case Law

J.D. Irving, Limited (Sussex Sawmill) v. Wayne Douthwright and Workplace Health, Safety and Compensation Commission

The Court concluded that Canada Pension Plan retirement was not a supplement under the current legislation. Although not the subject of appeal, it was also indicated that the

Court might not consider other types of retirement income, as defined by the Supreme Court of Canada in Clarke v. Clarke, a supplement to compensation.

RÉFÉRENCES

Jurisprudence

J. D. Irving, Limited (scierie de Sussex) c. Wayne Douthwright et Commission de la santé, de la sécurité et de l'indemnisation des accidents au travail

La Cour a statué que les prestations de pensions du Régime de pensions du Canada ne constituaient pas un supplément en vertu de
la législation actuelle. Bien que l'appel n'avait pas trait à ce point, elle a également précisé qu'il se pourrait qu'elle ne considère pas d'autres types de revenu de retraite comme des suppléments à l'indemnité, tel que la Cour suprême du Canada l'a défini dans l'arrêt Clarke c. Clarke.

Legislation

Workers' Compensation Act (WC Act)

38.11*(9) - Notwithstanding subsection (2), where a worker has not received remuneration from the employer or any income replacement or supplement benefit from the employer or from an employment-related source in respect of the injury or recurrence of the injury for a period of time after the injury or recurrence of the injury that is equivalent to three working days and where the worker commences to receive compensation under subsection (2), there shall be payable to the worker only that portion of compensation which, when combined with the amount of any remuneration received by the worker from the employer or any income replacement or supplement benefit received by the worker from the employer or*

Législation

Loi sur les accidents du travail

38.11*(9) Nonobstant le paragraphe (2), lorsqu'un travailleur n'a pas reçu de rémunération de son employeur ou de revenu de remplacement ou de prestation de supplément de son employeur ou d'une source liée à son emploi relativement à la lésion ou à la réapparition de la lésion pendant une période qui suit la lésion ou la réapparition de la lésion qui correspond à trois jours de travail et lorsque le travailleur commence à recevoir l'indemnité prévue au paragraphe (2), le travailleur ne doit recevoir que la partie de l'indemnité qui, combinée au montant de toute rémunération reçue de son employeur ou de tout revenu de remplacement ou de toute prestation de supplément reçue de son*

from an employment-related source, does not exceed eighty-five per cent of the worker's pre-accident net earnings calculated for the same period of time as that during which compensation is paid.

38.2*(2.5) Notwithstanding subsection (2.1), where a worker has not received remuneration from the employer or any income replacement or supplement benefit from the employer or from an employment-related source in respect of the injury or recurrence of the injury for a period of time after the injury or recurrence of the injury that is equivalent to three working days and where the worker commences to receive compensation under subsection (2.1), there shall be payable to the worker only that portion of compensation which, when combined with the amount of any remuneration received by the worker from the employer or any income replacement or supplement benefit received by the worker from the employer or from an employment-related source, does not exceed*
(a) in the first thirty-nine weeks from the day of the injury or recurrence of the injury, eighty per cent of the worker's pre-accident net earnings calculated for the same period of time as that during which compensation is paid, and

(b) thereafter, eighty-five per cent of the worker's pre-accident net earnings calculated for the same period of time as that during which compensation is paid.

Policy-related Documents

Policy No. 21-100 Conditions for Entitlement – General Principles
Policy No. 21-210 Calculation of Benefits

Policy No. 21-230 Deduction of CPP Disability Benefits from Loss of Earnings and Income Tax Reimbursement

RESCINDS

Policy No. 21-215 release 001 Supplements to Compensation approved 12/09/2008.

employeur ou d'une source liée à son emploi, ne dépasse pas quatre-vingt-cinq pour cent des gains nets avant l'accident du travailleur calculés pour la même période que celle pendant laquelle l'indemnité est payée.

38.2*(2.5) Nonobstant le paragraphe (2.1), lorsqu'un travailleur n'a pas reçu de rémunération de son employeur ou de revenu de remplacement ou de prestation de supplément de son employeur ou d'une source liée à son emploi relativement à la lésion ou à la réapparition de la lésion pendant une période qui suit la lésion ou la réapparition de la lésion qui correspond à trois jours de travail et lorsque le travailleur commence à recevoir l'indemnité prévue au paragraphe (2.1), le travailleur ne doit recevoir que la partie de l'indemnité qui, combinée au montant de toute rémunération reçue de son employeur ou de tout revenu de remplacement ou de toute prestation de supplément reçue de son employeur ou d'une source liée à son emploi, ne dépasse pas*
a) au cours des premières trente-neuf semaines qui suivent la date de la lésion ou de la réapparition de la lésion, quatre-vingts pour cent des gains nets avant l'accident du travailleur calculés pour la même période que celle pendant laquelle l'indemnité est payée, et

b) par la suite, quatre-vingt-cinq pour cent des gains nets avant l'accident du travailleur calculés pour la même période que celle pendant laquelle l'indemnité est payée.

Documents liés aux politiques

Politique no 21-100 – Critères d'admissibilité – Principes généraux
Politique no 21-210 – Calcul de l'indemnité

Politique no 21-230 – Prestations d'invalidité du Régime de pensions du Canada déduites des prestations pour perte de gains et remboursement d'impôt

RÉVOCATION

Politique no 21-215 – Les suppléments à l'indemnité, diffusion no 001, approuvée le 12 septembre 2008.

APPENDICES

N/A

HISTORY

1. This document is release 002 and replaces release 001. It was updated to be consistent with the New Brunswick Court of Appeal Decision (Douthwright).

2. Release 001 approved and effective 12/09/2008 was the original issue and provided principles that interpret ss. 38.11(9) and ss. 38.2(2.5) of the WC Act. It replaced Policy No. 21-215(305) approved 1992/09/02.

RELEASE CRITERIA

Available for public release.

REVISIONS

60 months

APPROVAL DATE

26/07/2013

ANNEXES

Sans objet

HISTORIQUE

1. Ce document est la diffusion no 002 et remplace la diffusion no 001. Il a été mis à jour pour être conforme à la décision de la Cour d'appel du Nouveau-Brunswick (Douthwright).

2. La diffusion no 001, approuvée et en vigueur le 12 septembre 2008, était la version initiale et présentait des principes qui interprétaient les paragraphes 38.11(9) et 38.2(2.5) de la Loi sur les accidents du travail. Elle remplaçait la Politique no 21-215(305

CRITÈRES DE DISTRIBUTION

Il s'agit d'un document public.

RÉVISION

60 mois

DATE D'APPROBATION

Le 26 juillet 2013