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**INSTITUTIONALIZING FAILURE:
The Evolution of the Worker's Compensation System
in Nova Scotia**

By

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A thesis submitted in partial fulfilment of the requirements for the
Master of Arts in
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Institutionalizing Failure: The evolution of the workers' compensation system in Nova Scotia

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Abstract

This thesis takes a strategic look at the evolution of the compensation system in Nova Scotia placing contemporary policy debates in their historical context. Where did the system come from? How and why has it evolved? The origins of the compensation system combine the complexity of medical research and practice, with tort and statute law, economic growth, social policy, political science and labour relations. This thesis is titled *Institutionalizing Failure*. The title reflects the author's concern that the Nova Scotia compensation system has become so dominated by its insurance subsystem that it has become disconnected from its social policy role and its injury prevention function. The government with the exception of its legislative and oversight roles has become disengaged from the system. It defers to groups of labour and management representatives who steer and finance the individual boards, tribunals and advisory bodies that administer the subcomponents of the system. The focus has become short-term and issue-oriented preventing a comprehensive understanding of the system and its effectiveness.

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Introduction Historical Origins and Contemporary Debates

Workers' compensation systems provide medical aid, rehabilitation services and income support to workers or their survivors in cases of injuries or fatalities arising out of or in the course of employment. The systems operate as insurance programs with the premiums paid by employers. Benefits are awarded on a no-fault basis. Workers' compensation insurance systems operate in over 100 countries. Both state-owned and private insurance companies are used to deliver services.

Legislation requiring employers to participate in workers' compensation systems began to be introduced in the 1880s. The first Canadian legislation was introduced in the early 1900s. In 1925, the International Labour Organization (ILO) adopted the first in a series of conventions on workers' compensation.¹

This thesis takes a strategic look at the evolution of the compensation system in Nova Scotia placing contemporary policy debates in their historical context. Where did the system come from? How and why has it evolved? The origins of the compensation system combine the complexity of medical research and practice, with tort and statute law, economic growth, social policy, political science and labour relations. In Nova Scotia, the system is affected by the division of responsibilities between the federal and provincial governments under the Canadian constitution.

The thesis identifies the main themes emerging from a review of the historical development of the system. The issues as debated in Nova Scotia are assessed for changes and deviations from the international models on which they were based.

Despite its hundred plus years of history, contemporary debates can be linked to fundamental questions about the objectives of the system. Is the compensation system primarily concerned with the historic trade-off that provided funding from employers for

compensation in exchange for employees forgoing the right to sue their employer for failing to provide a safe workplace? Or is the system the forerunner to the social safety net, an income replacement program achieved at the bargaining table by progressive unions and employers embraced by communities as a way to keep the property taxes lower? A third rationale not as frequently cited uses the system to direct the cost of industrial accidents back to the responsible employer as an economic deterrent to those who consistently place employees at risk.

Few major enterprises, whether public or private, operate in the 1990s without a corporate vision, mission, goals, objectives, strategic plans and more recently corporate performance measures. The compensation boards, as administrative agencies, have embraced this approach. The vision and mission of the organization are intended to provide the strategic direction for all decision making. What insight can the vision and mission of the key administrative body overseeing the compensation system provide on the origin question?

In Nova Scotia, this vision consists of

[A] healthy, working Nova Scotia. The mission of the WCB [Workers' Compensation Board] is to co-ordinate the workers' compensation system to assist injured workers and their employers by providing timely medical and rehabilitative support to facilitate the efforts of injured workers to return to work; and by providing appropriate compensation for work-related disabilities.²

Such statements make no reference to the historic legal trade-off or the method of entitlement to benefits although it is clear that they are tied to workplaces. The statements also imply the system is universally applicable to all Nova Scotians. The vision uses the word healthy while the mission refers primarily to efforts to restore and return injured workers to the labour force and to providing compensation for their disabilities. The economic consequences to employers responsible for funding the system and reference to accident prevention are so muted that a casual reader would not understand them. Is this vision and mission consistent with the philosophy that was

embraced by the politicians of Nova Scotia in the early 1900s? How has the system evolved to this point?

This thesis reviews and reflects on the developmental process that produced the compensation system familiar to most Nova Scotians. The thesis assesses the agency of employers and of the employees, their ability to control and influence the workers' compensation system and to participate in decision making. The relationship between the system and the community as a whole, expressed through the political process will be examined.

The first chapter reviews the evolution of the structural components of the compensation system in each of the major jurisdictions that would impact on decisions taken in Nova Scotia. The second chapter traces the early debates and experience of people living in Nova Scotia while workers, employers and politicians attempted to address the human toll of industrialization. The response of the government to pressure from organized labour and industrial interests both from within and outside Nova Scotia is assessed.

The third chapter surveys the changes to the Nova Scotia system between 1920 and 1999. This chapter relies heavily on the reports of royal commissions and select committees created by various legislative bodies to trace the changes taking place and to identify the specific influences at work. The final section of the chapter places the Nova Scotia system in a Canadian context.

The fourth chapter reviews the larger political-economic environment in which the Nova Scotia and Canadian compensation systems have operated. The chapter explores the role of the system within the evolution of the Canadian welfare state, as well as the impact of changes in labour/management and federal/ provincial relations. Alternates to the current system will also be explored from a public policy perspective. What are the contemporary issues or problems that are to be resolved? Does a system that resolves

one of the outstanding issues: legal rights, social welfare or injury prevention compromise the ability to address the others? Is it possible to find a new solution that embraces the complexity of the compensation issue as whole?

The legislative framework of the contemporary system resulted from political decisions influenced over centuries by the interactions the state and the interests of labour and capital. This thesis argues that to find solutions to contemporary issues it is necessary to understand the past.

The compensation system evolved through a number of distinct phases. These can be defined by shifting objectives; dominant participants; success or outcome measures; and, basic political, economic and social characteristics. By reducing these phases to their essential elements it is possible to identify major strategic shifts and to offer some explanation for the shift. The compensation system in Nova Scotia is rarely assessed in its historic, social, political and economic context. It is frequently reviewed for the benefits it does or does not provide or the expense it becomes to employers.

The following description provides a summary of the themes that have dominated the evolution of the system. This is presented as an introduction to the detailed reviews contained in the next chapters. The compensation system evolved through seven major transitions: Self-help, Regulated self-help, Production cost, Entitlement, Institutionalization, Neo-conservative and Neo-entitlement.

In the Self-help phase, the principal breadwinner seeks ways to protect the family income against possible disruptions. The system is entirely voluntary, and relatively informal. The individual has a high degree of agency over key decisions, to participate, not to participate, and with whom to associate. Friendly societies were organized around communities, occupations and fraternal societies. In addition, the voluntary nature of the organization required the participants to be active in decision making. The system was predominantly male dominated, and provided an opportunity for social interaction

beyond the benefits of the insurance function. Each society established its own contribution and benefit rates, as well as the rules under which it would be administered. The societies were not subject to actuarial science and the possibility existed that funds in reserve would not be sufficient to meet the requirements of the members particularly in times of disaster. Participation in the funds created a high level of commitment and allegiance by the members, and was a source of pride. Safety standards were the result of occupational training and informal agreements negotiated between masters and servants.

The Regulated Self-help phase of the system begins in Britain in the 1840s and four decades later in Nova Scotia. The benefits of the self-help movement become recognized not just in terms of the benefits to the wage earner, and their family, but in terms of the community as a whole, and more particularly those who pay taxes and support private charities. The principal objective of this phase becomes the protection of the taxpayer against the expense of the poor law system. While the relief societies operated in basically the same manner new rules required formal records of accounts to be submitted to the government. Standards for contribution rates were recommended based on actuarial science. The financial viability of the society became the overriding preoccupation of the regulators. Employer sponsored societies began to operate with contributions imposed as a condition of employment and the fees 'stopped' by the pay window. In Nova Scotia the government and coal companies' contributions to the societies resulted in changes to the management and control of the funds severely reducing the agency of the participants. Government regulation in Britain contained provisions calling for the local magistrate to make decisions if disputes developed, further eroding the role and control of the participants.

Governments experimented with limited forms of workplace regulation for mines, and in factories for women and children. Factory inspectors were introduced in Britain. In

Germany, committees of workers and employers organized by industry sector established to develop safety regulations.

The Production Cost phase of the system's evolution represented a major turning point. This phase coincided with the introduction of employers' liability laws (1890s), and acceptance that a component of the cost of producing goods in factories or mines was the cost associated with injuries and fatalities caused through the employers' negligence. This system placed increased importance on the role of the court system in assigning responsibility for the cause of an accident to the workmen, the employer or to a fellow servant and awarding damages. Unions frequently championed benefits programs as a means of attracting membership. The influence of the individual in making decisions regarding participation and operational rules for the system was greatly diminished. A major distinction was also being drawn between accidents that occurred at the workplace and other potential causes of income disruption such as non-work related illness. Unions and social reformers viewed the system as a means to motivate employers to take action to reduce these costs through prevention.

Professional managers were encouraged to apply scientific management principles including safe and clean working conditions to the workplace. Workplace regulations were introduced for industries including railways, shipping, factories, and mining.

The Entitlement phase of the compensation system began in Canada with acceptance of the report of Sir William Meredith. The compensation system provided income security for the injured workers rather than focusing on the production cost implications for employers. Compensation systems were based on legislated guidelines that defined eligibility, benefits, decision making processes and funding. Government, businessmen of large corporations and union leaders defined the system and how it operated. The agency of individual workers had been totally removed. In exchange for

this loss of control, the worker gained ease of access to benefits and security of payment regardless of whether the employer continued in business. Access to compensation was an entitlement granted to the worker within certain industries and occupational groups. The benefits granted by the system were restricted to work-related injury. The employee gained an entitlement to benefits in exchange for giving up the common law right to sue the employer. In addition to government safety regulations for factory, mine and other industry sectors, the compensation acts included provisions for funding of accident prevention organizations to promote safety practices. The Entitlement phase lasted in Canada from about 1915 to the 1950s.

The Institutionalization phase followed the general expansionary trend of government institutions and programs in the 1960s and 1970s. This phase was characterized by the growth of large compensation bureaucracies, professionalization including the involvement of doctors, therapists, lawyers, as well as the codification of policies and claims procedures. The system outputs were measured in terms of the percentage of the labour force included within the system and the level of benefits available to the injured worker. Decision making became increasingly formal, appeal panels were established, and the system operated within the sphere of labour/management negotiated agreements. Individual workers and employers had little direct involvement or control over the system. Safety regulation changed significantly during this period with the adoption of legislation based on the internal responsibility system model. The universal application of health and safety acts to all workplaces was a common feature of this phase. In most provinces health and safety agencies based in government departments assumed the responsibilities for accident prevention that had rested with the compensation boards and enforcement of specific regulations.

By the 1980s this expansionist period came to a close. The system was influenced by neo-conservative political thought. The compensation boards were found

to have expanded beyond the point that industry was prepared to support financially. The boards were significantly underfunded. The success measures applied during this phase related to cost reduction, frequently measured by the costs per claim filed. This phase was characterized by consulting studies, legislated reductions in benefits, re-engineering, and the introduction of 'corporate board of directors' replacing the old system of full time salaried commissioners. These boards comprised of representatives of labour and management were nominated through large employer associations and major unions. Safety legislation and bureaucracies were also restructured with some functions returning to not-for-profit organizations.

The current phase of operation, Neo-entitlement, places less emphasis on the fiscal imperative replacing it with a search for a fundamental role and purpose. The Canadian compensation boards have adopted long-term strategies based on a return to the Meredith principles. The principal objective of the compensation boards is to restore confidence in the system. This is measured through 'client' performance assessment, usually conducted by professional polling agencies. Corporate, labour/management boards of directors, have been expanded to include representatives of the community-at-large. Many of the compensation boards have reclaimed some or all of the occupational health and safety administration. In some cases this move was motivated by shifting the cost to the compensation system away from general tax revenues, and in others it is an attempt to more closely align accident prevention initiatives as a means of reducing the need for compensation. Despite the now tripartite nature of the board of directors, the compensation system is still viewed by many as remote and unresponsive to the needs of injured workers and small employers.

The table below summarizes the objectives, key decision-makers, and the success measures for each phase in the evolution of the system.

Phase	Objective	Success Measures	Key Decision Makers
Self-help Up to 1880s	Replace the breadwinner's income	Replacement income, avoidance of the poor house	Individual wage earner
Regulated Self-help 1890s	Protect tax payer from excessive cost of poor law	Financially sound relief societies covering most of the labour force	Individual wage earner
Production Cost 1890s to 1915	Realize the cost of industrial accidents	Improved safety; lower production costs	Courts; Insurance companies
Entitlement 1915 to 1950s	Security of payment to the breadwinner	Benefits paid	Compensation Board of Commissioners
Institutionalization 1960s to 1970s	Professionalization; codification	Labour force coverage; benefits levels	Compensation adjudication bureaucracy
Neo-conservative 1980s	Remove disincentives to return to work; fiscal soundness	Reductions in the costs per claim	Politicians through legislative process
Neo-entitlement 1990s	Restore confidence in the fundamental principles	Fairness as defined by the Courts Client performance assessments	Courts; Tripartite Compensation Boards

The compensation system is being challenged on a number of fronts. Some employers and injured workers groups are suggesting a return to the tort system and reliance on private insurance. Alternatively, authorities such as Terence Ison have proposed integration of the system into the social welfare framework.³ The research supporting the federal provincial negotiations of a social union agreement is also assessing the integration option. Recently, the Nova Scotia government has asked labour and management whether they support integration of the compensation and occupational health and safety systems as has occurred in New Brunswick. In 2001, the most recent Nova Scotia compensation legislation will be subject to a mandatory public review.

The following chapters provide the most comprehensive review currently available of the origins of the system in Nova Scotia. The thesis can be used a reference

tool to gain an understanding of the key players and decisions that have shaped the system. It is intended as a starting point for discussion.

This thesis is titled *Institutionalizing Failure*. The title reflects the author's concern that the Nova Scotia compensation system has become so dominated by its insurance subsystem that it has become disconnected from its social policy role and its injury prevention function. The government with the exception of its legislative and oversight roles has become disengaged from the system. It defers to groups of labour and management representatives who steer and finance the individual boards, tribunals and advisory bodies that administer the subcomponents of the system. The focus has become short-term and issue-oriented preventing a comprehensive understanding of the system and its effectiveness.

End Notes

¹ International Labour Organization, *International Standards & Human Rights*, <http://ilolex.ilo>

² Nova Scotia Government, *Workers' Compensation Board of Nova Scotia Annual Report*, Halifax, 1999, p. inside cover

³ Ison, Terence, G, *Compensation Systems for Injury and Disease: The Policy Choices*, Butterworths Canada Ltd., Toronto, 1994

Chapter 1 The Casualties of Industrialization: The Search for Solutions 1800-1920

The workers' compensation system developed as a by-product of the industrial revolution, a response to the structural changes occurring within the social and economic systems of Britain and Europe in the 1800s. Harsh working conditions in the rapidly expanding network of factories and mines produced increasingly large numbers of maimed or ill wage earners including women and children. Fatalities common in the mining industry left miners' dependents destitute. Poor laws and voluntary societies proved inadequate in responding to the needs of the human remnants of the industrial age.

State intervention began to be accepted as a means of protecting working women and children. Common law solutions required that an employer's negligence be proved before damages would be awarded. Social activists began looking for more affordable and accessible alternatives to the cumbersome and biased British legal system. The need for legislative solutions began to be debated in the British Parliament. While child labour, factory and mine safety laws were introduced in the early 1800s, it was not until 1897 that the first attempt at worker's compensation legislation was made.

Other industrialized countries were also addressing the need to promote workplace safety, provide income support and medical services to the victims of industrialization. The German system provided medical aid, as well as short and long-term income replacement programs. Regulations for safe working conditions were established. The short-term disability system was operated by societies organized around industry sectors and funded from contributions made by both employer and employees. The German system shared common roots with the British system, but

evolved within a highly interventionist government model and as a strategic intervention used to undermine the spread of socialism in Germany.

Workers' compensation schemes in North America borrowed from the German and British models, while responding to local political and economic pressures. This chapter will explore the expectations of the parties to the system: capital, labour and the state in Britain, Germany and North America. The relative strength of the three parties and their success at influencing the elements of the system will be reviewed by a survey of the secondary literature. Compensation systems are created through legislative processes that reflect the victories or compromises achieved between the parties and express them as a coherent set of strategies. These strategies will be considered against the traditional explanations for the systems: the historic trade-off and the welfare state explanations.

The British Experience

British poor laws were intended to provide relief to all those in need.

In real practice, however, the method of selection of those in need was so cruel and capricious that more people were excluded than included. The benefits provided were either so inadequate or so degrading that even those who had to be assisted enjoyed nothing like full or decent economic protection. In essence the aim of public assistance was to repel rather than relieve people from distress. Poverty was tantamount to crime and legislation for combating crime was often similar to legislation dealing with poverty.¹

Economic relief for industrial accident victims other than the poor law was left to the family, the local community, and the charity of the master. Insurance might be available but most often friendly societies or sick-clubs would assist "those thrifty enough to envisage the hazards of their trade."² Friendly societies flourished particularly after the 1840s. Gosden argues that the societies filled a need "felt by working men to provide

themselves with succour against the poverty and destitution resulting from sickness and death at a time when the community offered only resort to the overseer of the poor.”³

Beyond providing for security of family income, the friendly societies were encouraged by the propertied classes for the benefits they could provide to other members of the community. A pamphlet produced in 1728 urged “the governing classes to encourage the formation of friendly societies or ‘box’ clubs...there could be no more advantageous scheme than the creation of box clubs which already keep hundreds a year from being burdens on the poor rates.”⁴

A report on the state of the British poor in 1797 describes the evolution of the relief societies,

These societies do not owe their origin to Parliamentary influence; nor to private benevolence; nor even to the recommendations of men of acknowledged abilities, or professed politicians. The scheme originated among the persons on whom chiefly it was intended to operate: they foresaw how possible, and even probable, it was that they, in their turn, should ere long be overtaken by the general calamity of the times and wisely made provision for it. A stronger proof could not well be given to show that the great mass of the people, prompted only by what they themselves saw and felt, were convinced of the inefficacy of all legislative regulations and therefore resolved in at least one instance to legislate for themselves. Rejecting, as it were, a provision gratuitously held out to them by the public, and which was to cost them nothing (the Poor Law), they chose to be indebted for relief, if they should want it, to their own industry and their own frugality.⁵

Throughout the 1800s a number of royal commissions, and legislative proposals were presented in Britain regarding the operation of the friendly societies. A major preoccupation was the financial stability of the societies. If the societies were to be effective in reducing the burden of poor relief, then measures were required to ensure the societies were financially sound.⁶

An analysis of the societies in operation in the 1850s suggested that the majority were local societies, with mixed occupational memberships. Many of these local societies operated with guidelines defining qualifications for new members as a means

of controlling the potential liabilities of the society. It was not uncommon for men in occupations that were deemed to be of a high frequency of sickness such as miners to be excluded from membership in these local societies. As a result, specialized societies especially for railway workers and miners were established.⁷

In the rural areas, however, occupational homogeneity was more common.

Gosden discusses the implications for these societies,

Where a majority of the members of a local friendly society belonged to a single industrial occupation there was an obvious possibility that the society would become involved in industrial disputes. Some reports to the Home Secretary at the time of the Lancashire weavers' turn-out in 1808 claimed that in certain cases the weavers drew their financial support from friendly societies. In situations where local societies were confined to men of one particular trade, they were known to develop into trade unions.⁸

At a time when the Combinations Act prohibited trade union activity, the friendly societies provided a legal method of holding meetings. The toleration given by law to benefit societies provided a useful shelter for trade unions. Meetings were organized under cover of the societies' exemption from the Combinations Acts. Governments were certainly aware of this danger and from time to time acted against trade unions calling themselves friendly societies.⁹

Companies also sponsored friendly societies for their employees as "a relief from the burden of maintaining servants disqualified by age or accident, or contributing to the support of families of persons killed in their service. The aim of the subsidies was to cover part of the accident risk while the employees' contributions covered the rest."¹⁰ The common law framework relative to master-servant obligations was changing and employer sponsored societies were an attempt to forestall more radical intervention.

The obligations to join pit clubs run by the employing company was a source of constant complaint among coal miners who regarded such clubs as little more than devices for withholding part of a man's pay...The pressure exerted by miners' unions and the Truck Act of 1861 helped to put an end to the pit clubs and to clear the way for the development of Miners' Permanent Relief Societies. The first of these to be established was the

Northumberland and Durham Permanent Relief Fund in 1862, but their main period of growth was in the 1870s and 1880s.¹¹

Initially employers required that the men contribute to the funding of pit clubs and other relief organizations. Threatened by possible government intervention, employers began to contribute in combination with the men. As a result of the Employer' Liability Act of 1880 many of the mine operators attempted to persuade their workmen to agree to contract-out of the Act in exchange for company contributions to the relief societies.¹²

From the employer's point of view providing these benefits could be a valuable tool in "forestalling discontent, agitation, and later, aggressive unionism... Welfare could also benefit the employer by ensuring that the labour force was as fit, and therefore, as efficient as possible."¹³

While, the societies provided income support they also played another role "the working men who joined societies expected insurance against sickness and death, they sought more than just this. They were also in quest of those convivial activities and the enrichment of their impoverished social lives which the friendly societies were expected to afford and which the very name offered their members."¹⁴

Relief available through friendly societies varied greatly. Few textile workers belonged to organizations that provided medical and financial assistance in the event of an accident. Coal miners had relatively well-organized institutions and, by 1880, a central coordinating body. Railway employees benefited from provisions for industry and death benefits financed jointly by the employers and employees as a form of the employment contract.¹⁵ Bartrip and Burman, in *The Wounded Soldiers of Industry*, conclude "compensation was a lottery, sufficient for some, no doubt, but non-existent for others."¹⁶

Bartrip and Burman describe the economic and political environment that resulted in a systematic approach to compensation for workplace injury. The explanation begins with the changing structure of employment in Britain,

Only in the second half of the century could Britain accurately be characterized as urban and industrial rather than rural and agricultural; it is well to remember that the period of greatest growth in the use of steam-power was between 1880 and the outbreak of the Great War. Moreover, while mining, textiles, and transport were large employers of labour, they were dwarfed by agriculture, in which almost 2,000,000 were employed in 1851.¹⁷

The authors state that the factory reform movement took hold in Britain when a “general belief in the existence of a substantial problem (factory safety), coupled with a clear acceptance of the horror of individual misfortunes, combined to form an eloquent argument for reform”.¹⁸ While the first factory legislation dates to 1802, it was not until 1844 that obligations to fence equipment and compensate injured operators were imposed. The main aim of the early legislation was to safeguard children from the adverse effects of factory work. The need for state intervention to prevent injury and to provide compensation was created out of the growth of the competitive capitalist system and the increasing alienation of labour and capital.

It surely was not the case that work injury was new, for common sense tells us that industrial and agricultural accidents are as old as mankind itself. Part of the answer may be provided by consideration of the paternalistic nature of pre-industrial society whereby production was quintessentially an activity of members of his household. In such circumstances it is easy to see that the prevention, treatment and compensation of accidents occurred on a personal level without recourse to the courts.¹⁹

It was the influence of the factory inspectors and their reports first filed in the 1830s that drew additional attention to the issue of factory safety. The inspectors recommended in public reports that the “pecuniary burden of accidents incurred ‘in the performance of the joint business of the labourer and the employer’ should rest with those who could best prevent ‘the mischief’, namely the employers.”²⁰ The use of economic deterrents to promote safety remains a fundamental and controversial issue. The trade-off between prevention and compensation was also raised as part of these early debates.

As industrialization and urbanization advanced, change occurred.

In the 1890s, the remaking of the British working class took place around three social processes. There was a general acceptance of industrial capitalism and the need to come to terms with the power relationships which it entailed. Increasing real income for many sections of the working class meant a growing enjoyment of commercialised leisure system of public houses, music halls, professional spectator sport, popular newspapers and for some seaside holidays. The most dynamic of these processes was the production of a vast infrastructure of socialism, fragments of organisation within which groups and individuals not only began to question the subordinations and poverty they experienced but sought to puzzle out ways of reorganising social and economic relationships which seemed so unsatisfactory.²¹

The response to the needs of industrial injury victims followed this new pattern. For those workers who did not benefit from the compensation lottery, recourse could be had through the courts. To be able to obtain compensation awards through the courts, employees or their dependents would have to be able to raise the necessary funds to pursue the case. In some instances it was possible to obtain reform minded sponsors to pay the legal expenses. Once before the courts, the employee would have to prove negligence by the employer. If the employee was found to have played any contributory role in the accident, or if a fellow employee had been responsible, the employer had no obligation to provide compensation. The question of the objectivity of the courts was an additional concern. The judges then as now often had close connections to or had been appointed to the bench as a result of ties to the propertied or capitalist class. As Meredith further describes, the potential for unions or workmen's societies to be of assistance was also subject to legal restrictions. The court system was not weighted in favour of the working class.

The Employer's Liability Act of 1881 resulted from years of debate, government inquiry, an increasing number of legal challenges, union lobbying, employer hostility and failed Parliamentary bills. The 1881 Act provided a more straightforward entitlement to compensation than could have been expected through the courts for those workmen who could prove negligence on behalf of their employer. The struggle for safe working conditions and the right to compensation, however, was in Bartrip and Burman's opinion

far from over. One aspect of the legislation provided for 'contracting-out' of the legislation with the consent of the workers. The workers' consent was rarely given without some benefit in exchange, but the nature of these agreements was controversial. It was argued by one employer representative, in favour of contracting-out, that,

[A]ny good insurance scheme contributed by the employers and workmen, is far better for the workmen than their chance of recovering damages under this Employers' Liability Act. It avoided litigation and compensated accident victims not covered by the Act, particularly those who could not prove fault or who suffered as a result of their own negligence, contributory negligence, or that of a fellow-servant.²²

Those whose expectations of the 1881 legislation were that it should promote safety argued that private insurance through the organization of mutual societies was inferior to alternative forms of coverage, since the premiums could become a fixed or flat charge on industry, and would not be affected by a good safety record or the installation of safety equipment by individual employers.²³ The Trade Union Congress (TUC) was against contracting-out, and argued strongly in favour of incentives that promoted the use of safety measures and penalized through higher insurance premiums those industries that did not protect their employees. The TUC favoured prevention over compensation.

Jose Harris, in analyzing the society and state in twentieth-century Britain, comments on the distinctions to be drawn between continental political thought and the view of the 'civil society'. In Britain the highest spheres of human existence- business, work, culture, leisure, family life, and religion, were those in which man enjoyed absolute rights, and the role of the state was of secondary importance, mainly existing to protect these rights of the individual.²⁴ Between the 1880s and 1910s the formative years of the industrial compensation system, Harris observes, "Politics grew noticeably more programmatic; market forces began to erode the independent viability of local communities, charity and self-help; social and economic dislocation forced central

government to extend its responsibilities into certain traditionally local and private spheres."²⁵

While structural change was occurring at the local community level, changes were also taking place in labour management relations. Through the 1890s in Britain, the militancy of the 'new unions' grew, and the response by the respective employers involved large police and military forces used to resolve disputes and an increasingly adverse series of judgments against the unions by the courts.²⁶ Saville states that it was the new unions and their calls for state intervention, such as an eight hour day, which caused anxiety for the propertied classes. State intervention and socialism were viewed by many as indistinguishable terms. Saville draws the distinction between the relationship between the old unions and their employers and the new unions. The old unions such as "the cotton-spinners of Lancashire, or the boilermakers of the north-east coast, or the coalminers in well-organized districts, both sides to an industrial dispute knew that when work resumed the same men would be taken on. The problem of scab labour did not, therefore arise in the virulent form that occurred in the casual and semi-skilled trades."²⁷

The issue of employer's liability and the industries to which the legislation was applied appear to fall into the category dominated by the old unions, in which skilled tradesmen were valued, and the employer could realize the benefit of the employee's return to work. In many of these industries voluntary welfare organizations or friendly societies had been established prior to the introduction of the legislation. Opposition to the 1881 Act from capitalists in these sectors was limited, particularly as the opportunity had been provided by the existence of the friendly society to utilize the contracting-out option.

Bartrip and Burman report on the growing number of trade unionists throughout Britain in the 1890s. The more militant leaders of the new unions appeared in strength

for the first time at the Trades Union Congress in 1890. In the general election of 1892, a number of the new labour leaders were elected as independents, and ten were elected as Liberals. At this time, the authors conclude “the politics of compensation entered a new phase, culminating in the Workmen’s Compensation Act, 1897.”²⁸

Finally, it is worth asking why a Workmen’s Compensation Act became law in 1897. The question is particularly intriguing in that the groups one might expect to have pressed for it, the TUC and the individual unions, were, as we have seen, no more than lukewarm towards the reform. They claimed to be uninterested in compensation as opposed to industrial safety. But if trade unionists were not behind the Act, who was? In general terms the Act reflected, as some later welfare legislation did, the growing influence of the enfranchised working classes and the competition among the political parties for their support.²⁹

The 1897 Bill required that employers provide compensation but on a general insurance basis. The idea of no-fault insurance was proposed, but rejected as too great a departure from the system of employer’s liability. The Bill exempted seamen and agricultural workers to prevent opposition from powerful shipping and agricultural interests. The Bill was viewed as a safety measure as well, with the clear expectation that insurance premiums would be lower for safer workplaces, with higher premiums for those with the greatest number of accidents and fatalities. Bartrip and Barman explain the importance of the economic deterrent, “the difficulty of framing ‘coercive measures’ and of enforcing them without an impossibly large increase in the number of inspectors rendered such economic deterrence an attractive means of advancing safety.”³⁰

The Workmen’s Compensation Act did not replace the Employer’s Liability Act, although payments could not be received under both acts. The worker would have to choose between the two, though if an action failed under the former, it could be attempted again under the latter. Any award received would be less the costs in the common law case. The Act of 1897 had many critics. Bartrip and Burman conclude,

[R]ecover of compensation under the Workmen’s Compensation Act could be a very hazardous proposition rather than a matter of certainty. Some of the obstacles were removed as the process of extending and amending the Act got underway.

But it was not until 1906 that one of the major problems-that of eligibility- was overcome by extending coverage to virtually all employments and bringing a number of scheduled industrial diseases within the ambit of the Act.³¹

The operations of the system were far from straight forward. As problems were solved new ones were created, some of which would have a lasting impact on the British system. "After 1897 workmen's compensation insurance became a big and highly competitive business, punctuated by rate cutting wars, with some businesses [the insurers] on the edge of solvency. In these circumstances it became the practice of some companies to harass claimants in various ways, particularly into accepting small lump sum settlements."³²

Bartrip and Burman conclude that the balance of public and parliamentary opinion was in favour of the Act despite its deficiencies. Members of Parliament from all parties sought to improve, not to replace, it. Placing the situation in perspective "in comparison with the position in 1830, the injured workman, relieved of the necessity to prove fault on the part of the employer, was likely to fare immeasurably better after 1897."³³

The Act of 1897 provided little role for the state. Payments were negotiated by the parties, or failing agreement, by arbitration. Disputes over matters of law were dealt with in the courts. The 1897 Act did not provide 'state insurance' nor did it give any department of the state a significant role in its administration. "State intervention can mean many things. If it is taken to imply the imposition of a public solution on private interests, then the 1897 Act constituted a breach of *laissez-faire*. If, however, State intervention is taken to mean State administration, then the Act was not a renunciation of *laissez-faire*- it was an endorsement of it."³⁴

In 1911, Britain introduced the National Insurance Act that provided contributory benefits for sickness and unemployment. Employed persons paid contributions together with employers and the state. Benefits to replace lost income were paid in the case of

illness or unemployment. The sickness insurance provision applied to all manual workers whatever their income and those non-manual workers whose annual income did not exceed a specified amount.³⁵

The combination of the workmen's compensation act and the sickness insurance provisions of the insurance act provided for a broad base of benefits which brought the British system more closely in alignment with the German model.

The German Experience

There exists a complex interplay between the laws in Germany and its predecessor states, and Britain relative to poor relief, factory and mine safety, voluntary societies, employer's liability and income replacement. Dawson, writing in 1912, states that the Prussian poor law of 1794 was based on the English Poor Law. Bavarian law included provisions to force workers to join relief funds as early as 1816. As was the case in Britain the motivation had been to reduce the burden on the community poor relief system. An 1839 Prussian royal decree restricted the employment of children in the factories and mines.³⁶ Dawson explains the origins of the German system of industrial insurance,

The germ of the three later systems of industrial insurance was contained in the ancient institution of the Knappschaftskasse (corresponding to the Bruderladen of Austria), an organisation of miners for mutual aid...The principal modern development of the Prussian miners' societies.. took place after the passing of a law of April 10, 1854 (embodied in the General Mining Law of June 24, 1865), the object of which was to strengthen the societies and to increase their efficiency and utility.³⁷

In addition to the miners' societies, Dawson reports that by 1849 the Prussian Industrial Code required factory owners and master craftsmen to ensure their employees against sickness. Funds were collected half from the factory owner and half from the employees. By 1874, over 12,000 societies were in operation in Germany following the

introduction of a law influenced, according to Dawson, by the English friendly society movement. Local authorities were granted the power to require dependent workmen to join benefit societies. The societies operated in conjunction with trade guilds and as voluntary aid or benefit societies.³⁸

Dawson states that despite the growth in voluntary and compulsory local societies their resources were insufficient to meet the demands being placed upon them.

[O]n the whole, the existing provident agencies had for various reasons failed to keep pace with the altered needs of the times, and when in 1882 a general obligatory scheme of sickness insurance was proposed the Government pleaded in its support that "Experience has abundantly shown that the universal adoption of sickness insurance, which must be characterised as one of the most important measures for the improvement of the conditions of the working classes, cannot be effected on the lines of the [voluntary] legislation of 1876."³⁹

During the debate in the British Parliament over the 1897 Bill, the details of the success of the German Industrial Accident Insurance Law of 1884 were often quoted.⁴⁰ Although the law was criticized as a "sop to socialism, aimed at containing the movement by identifying the State with many of its practical aspirations", it had important influences on the British legislation and on the debates over compensation legislation in North America.

It is important to understand the context in which the German laws were implemented. The autonomy of the state played a significant role.

More important than any direct machinations by employers or workers were their *indirect* effects on social policy. The German state was comparatively immune to social pressures during the period Bismarck was laying the ground for the welfare state, although it is an exaggeration to refer to the political system after 1878 as a "Chancellors' Dictatorship." Bismarck was still dependent on the bureaucracy, the emperor, and even the Reichstag; and the state was structurally constrained...Nonetheless, Bismarck, his immediate advisers, and the state bureaucracy are a better starting point than social classes for understanding social insurance. Without the strong tradition of the interventionist *Beamtenstaat*, it is doubtful that Germany would have been the first country to implement compulsory national social insurance. The German state was capable of both organizing businessmen and industrial associations behind its projects, as in the 1880s.⁴¹

Steinmentz explains that “The German states had moved steadily towards compulsory sickness insurance over the course of the nineteenth century.”⁴² The 1883 law making sickness insurance compulsory for non-agricultural workers was not a dramatic departure. The contributions to the sickness funds were made by the workers, who controlled the majority of the positions in the management of the fund. The funds were used to provide medical services. The operation of the funds contributed, “a solidaristic sense of mutual responsibility; and by focusing on the possibility of preventing illness, insurance may have made workers less tolerant of health-threatening work situations.”

The accident insurance law of 1884 was also oriented towards industrial workers. Steinmentz observes that the law was designed with the interests of employers in mind and did not mark a significant departure. Employer’s liability legislation had been passed in 1871, after a number of legal decisions in which employers were found responsible for significant expenses on behalf of victims. The law limited the employer’s liability as it had in Britain. One of the authors of the 1884 law described the situation under the strict employer’s liability law as having “provoked an intensification of the workers’ oppositional attitude towards the employer and towards bourgeois society as a whole.”⁴³

Steinmentz argues that the state’s objectives were clearly focused on industrial growth and social interventions were measured in this context. “The government was structurally dissuaded from alienating heavy industry too frequently or violating its interests too seriously...As a result, specific representatives of heavy industry occasionally had a direct hand in designing social policies, most significantly in the case of the accident-insurance law.”⁴⁴

The 1884 Accident Insurance Act divided the employers into a series of industry trade associations with joint liability. Funding was derived solely from the employers. The employers were also placed in charge of policing their own factories for safety

precautions. State factory inspections were conducted but were infrequent. Steinmetz describes the role of the workers in the accident insurance system, "Workers did have delegates in special paritary arbitration boards (*Schiedsgerichte*), which were supposed to be consulted on safety regulations and to decide on appeals cases for compensation benefits."⁴⁵

The third component of the German system was the Invalidity and Old Age Insurance Act of 1889. The program provided a national program for the aged and disabled who would have previously been required to rely on local poor relief. The 1883 sickness insurance law only permitted benefits for the first thirteen weeks of illness, so the 1889 law filled the gaps in income replacement. Steinmetz describes the impact of the law, "In essence, the law simply shifted part of the burden of assisting the aged and disabled away from poor relief, and thus away from the middle classes whose local taxes financed poor relief, to the workers themselves."⁴⁶

The German laws were strongly supported by business interests. Key industrialists had "promoted social legislation in order to create the more skilled, healthy, and disciplined labor force that it needed to compete internationally."⁴⁷ Steinmetz argues that the Bismarckian strategy incorporated within its social insurance programs, new ways of maintaining social discipline and combating pressures for radical reform. "Eligibility for social insurance required that workers remain stably employed and make steady payments. This was a powerful incentive against irregularities large and small, from union activism and other forms of insubordination."⁴⁸

Steinmetz states that "Following the introduction in the 1880s of national compulsory social insurance for sickness, work accidents, and old age, Germany came to be regarded as the international leader in social reform. The German Government's Imperial Insurance Office proudly promoted the national social insurance system at

world exhibitions in Chicago (1892), Brussels (1897), Paris (1900) and St. Louis (1904).⁴⁹

The processes of industrialization, urbanization and the restructuring of the social and economic fabric of Germany were made more dramatic by the short time frame in which they took place. Industrialization began much earlier in Britain and in France, but by the turn of the century German industrial output in certain industries was exceeding that of Britain.

Bartrip describes the significance of the German system,

By 1912 virtually the whole working population (some 24-25 million workers) was covered by the scheme, which encompassed all manual workers regardless of earnings. Insurance, which was compulsory, was organised and paid for by the employers on a mutual basis, trade by trade, thereby spreading the risks throughout a common industry. The effect of this arrangement was to minimise insurance costs, guarantee payments to the injured and provide a financial incentive to adopt safety precautions. The mutual associations were responsible for drawing up and enforcing, in collaboration with worker representatives safety regulations for their trade.⁵⁰

The German system created a number of new organizations, intertwined with state agencies designed to oversee and facilitate operations of the three insurance systems. These organizations however were part of a deliberate program “to undermine autonomous working-class organizations, from mutualist funds to the SPD [Social Democratic Party] and the labor unions.”⁵¹ The funds to support these systems were raised from capital and labour. The state did not guarantee payments under the accident law, nor did it administer the system directly. The state did administer the invalidity and old age pension system.

While the British government was critical of the German system, going so far as to discourage the British civil service from studying the elements too closely, the German system with its careful attention to promoting industrial activity had a significant impact. Bartrip observes that “The absence of accident prevention, medical treatment and rehabilitation from the British scheme made the British system look unrealistically cheap.

The German economy grew impressively after 1884 and it is perhaps, reasonable to suppose that the introduction of social insurance contributed to industrial efficiency. It would be difficult to argue that British workmen's compensation made any such contribution."⁵²

It would appear that the German system had achieved its objective of providing an ongoing and productive work force. The political situation changed in the 1890s in Germany, efforts to change the existing laws, or to increase regulation of working conditions were resisted by the state. Schneider summarizes the long-term impact of the German initiatives,

The modern German welfare state is the product of a series of events and forces which have unfolded over the last century. The introduction of those first three programs in the 1880s, marking the initiation of a system of "state socialism" occurred in an industrializing, but still very paternalistic and conservative, society. Those first measures were adopted to suppress the "rise" of the proletarian masses and to strengthen the power of an authoritarian government..Yet, the expansion of the German welfare system throughout this century has followed Germany's development as a highly industrialized, socially and politically mobilized modern society.⁵³

The American Experience

While the German model was adopted by a number of European countries such as Austria (1887), Norway (1894), Russia (1903) and Switzerland (1906), it was the British model that prevailed in North America. Canada and the United States (US) remain two of the three major systems of workers compensation that evolved at the state or provincial level rather than as a national system. The debate over the compensation issue in Canada and the United States took place over and over again as each individual legislature responded to their respective political economic environments.

In the United States a number of different solutions were adopted. The first attempt at legislation was in Maryland in 1902. It was deemed unconstitutional. Similar acts in other states met the same fate. It was not until 1917 that the United States Supreme Court decided these acts were constitutional. All but eight States had passed Workmen's Compensation Acts by 1920.⁵⁴

The National Civic Federation (NCF) played a major role in directing the American compensation debates. Weinstein, in *The Corporate Ideal in the Liberal State: 1900-1918*, suggests that,

The process of developing social reform through extra-political negotiation between various social groupings went on most consistently in the early years of the century in one organization, the National Civic Federation...was primarily an organization of big businessmen, although it established the principle of tripartite (business-labor-public) representation in public affairs. Founded in 1900, it was the leading organization of politically conscious corporation leaders at least until the United States entered the First World War.⁵⁵

The NCF was at the centre of a growing polarization of views between capital and labour over the role of the American legal system. Weinstein states that the growing anxiety on behalf of the business members caused them to look for some common ground on which they could work with organized labour. Workmen's compensation came to be viewed as a possible issue over which a compromise could be achieved.

Since labor's experience with employer liability legislation was unsatisfactory, workmen's compensation emerged as the ideal program for the Civic Federation. The largest corporations were instituting it in their plants; public agitation for relief had created a good political climate; compensation was paternalistic and would probably reduce somewhat the appeal of unionism to workers, yet the unions could be induced to support it. By 1909 the Civic Federation had convinced Gompers [President of the American Federation of Labor] and so was able to commit itself fully to the sponsorship of reform.⁵⁶

The NCF was the voice of large business in the United States, while the National Association of Manufacturers (NAM) represented smaller businesses. The smaller employers supported in principle the use of private welfare and compensation plans but

could not afford them. "Ninety-five percent of the 25,000 employers to whom the NAM sent questionnaires in 1910 favored compensation as a matter of right for industrial accidents; few had the resources to institute such programs privately."⁵⁷ NAM members were also concerned with the cost of the private insurance plans. Injured workers were receiving only 40 percent of the premiums, the remainder was going to the insurance company for operational costs such as the challenging claims in court and to profits.

Weinstein states that the ideal of the liberal corporate social order "formulated and developed under the aegis and supervision of those who then, as now, enjoyed ideological and political hegemony in the United States: the more sophisticated leaders of America's largest corporations and financial institutions...few reforms were enacted without tacit approval, if not guidance, of the large corporate interests."⁵⁸ These business interests were able

[T]o harness to their own ends the desire of intellectuals and middle class reformers to bring together "thoughtful men of all classes" in "a vanguard for the building of the good community". The objectives were the stabilization, rationalization, and continued expansion of the existing political economy and, subsumed under that, the circumscription of the Socialist movement with its ill-formed, but nevertheless dangerous ideas for an alternative social organization.⁵⁹

Weinstein argues that the nature of liberalism was changing in America,

The confusion over what liberalism means and who liberals are is deep-seated...in part this is because of the change in the nature of liberalism from the individualism of laissez faire in the nineteenth century to the social control of corporate liberalism in the twentieth. Because the new liberalism of the Progressive Era put its emphasis on cooperation and social responsibility, as opposed to unrestrained "ruthless" competition, so long associated with businessmen in the age of the Robber Baron, many believed then, and more believe now, that liberalism was in its essence anti big business. Corporation leaders have encouraged this belief. False consciousness of the nature of American liberalism has been one of the most powerful ideological weapons that American capitalism has had in maintaining its hegemony.⁶⁰

The corporate liberals encouraged their opponents to participate in the process of debate, appealing to leaders of different groups to work together towards a 'good society

for all citizens'.⁶¹ The debate however was restricted to reshaping the framework of the existing social order not to replacing it.

Frederick Smith, in *The Amazing Storm- Business Answers to the Labor*

Question 1900-1920, describes the industrial betterment movement in the United States.

The movement, Smith states

[O]riginated outside of business in the social gospel and social welfare work but was quickly appropriated by business for its own purposes...it came into business from Protestant social work, industrial betterment was soon handed over for implementation to statisticians, accountants, sociologists and engineers. In addition, the original rhetoric of humane treatment of employees in safe and sanitary working conditions leading to a more contented, productive and humane workforce was soon replaced with calculations of the value of lower absenteeism, lower turnover rates, fewer accidents, and so forth.⁶²

Smith observes the business press during the progressive era noted the significance of two major initiatives designed to respond to the growing challenge from organized labour. The first initiative was the industrial betterment movement. The second initiative came in the form of increased political action facilitated by the growth of business organizations at the local and national levels. Many of these organizations espoused positions based on "open-shop rhetoric" that defended of the rights of non-union workers and that "was embraced by a widening audience and was the cornerstone of U.S. Steel's defense of its labor policies as early as 1910".⁶³ The efforts of the NCF and NAM were examples of this activism.

A plethora of reports began to be published comparing the human toll of industrial activity in various countries. Smith provides a typical example published in 1907,

[T]he number of deaths by accident and violence in the United States in 1900 was 57,513. These figures are increasing annually. Thus our peaceful vocations cost more lives every two days than all that we lost in battle during our war with Spain. We kill in four years some 80,000 people more than all who fell in battle and died of wounds, on both sides, during the four years of our civil war.⁶⁴

Accidents, Smith states, were to be viewed as 'opportunities for management' where concern could be expressed for employees through accident prevention programs. The programs served a dual purpose and could be used to boost productivity. Such opportunities, the literature advised was to be encouraged as part of the responsibilities of 'modern managers'.⁶⁵ In addition to providing a new scope for managerial responsibility, Smith reports on the growing 'professionalization' of accident prevention with the increasing involvement of engineering and medical societies in the issue.

NAM developed a number of specific initiatives through their Industrial Betterment Committee. This group organized a major publicity campaign to promote accident prevention that included travelling exhibits, moving pictures and a proposed train, "The Industrial Betterment Special".⁶⁶

Smith quotes one industry trade journal as stating

Safety is the watchword of the age. The spirit of recklessness and insane speculation so rife a decade or two ago, had given way to more sane and safe methods in every line of activity..the most important factor in accident prevention is the right spirit. Without the spirit of progressiveness, with co-operation between officers and members of the organization, without harmony and co-operation between employers, superintendents, foremen and workmen, there can be no effective campaign for safety.⁶⁷

The American employer's liability system was widely compared with the British and German models of accident compensation insurance. One author concluded, "the most efficient, economic and progressive insurance system is one in which an intimate relationship is established and maintained between shop management, insurance management and the supervision of accident prevention and in which rates can and will be most closely conformed to the accident record of the individual employer."⁶⁸

In 1911, NAM published a series of resolutions relating to the operations of industrial indemnity insurance. These included:

First: All legislation must be for compensation (every kind of employer's liability has proved a failure in every civilized nation).
Second: Compensation legislation must cover every wage earner

Third: Compensation must be assured.

Fourth: Compensation must be efficient. (Not less than 75 cents and preferable 90 cents, out of every dollar paid into the insurance fund should be paid to injured workers and their dependents...)

Fifth: Employer and employee are jointly responsible for all unpreventable accidents and should therefore jointly meet the compensation expenditures..

Sixth: Every injury except those due to criminal carelessness or drunkenness on the part of the worker should be compensated.

Seventh: Humanity and efficiency demand that prevention of accidents is made of prime importance.

Eighth: Since the progressive individual usually provides voluntarily for reasonable accident compensation, it is right that the reactionary or selfish individuals be compelled to do likewise, through universal compulsory insurance.

Ninth: To prevent unfair competition between employers in different localities, it is necessary that compensation laws of the various states be reasonably uniform.

Tenth: Single liability is essential for reasons of efficiency and equity.⁶⁹

The NCF and NAM initiatives were important in establishing a basis for discussion by business organizations across the United States. The NAM resolutions followed the British model of individual liability for insurance premiums as well as incorporating a compulsory state required system to ensure that all employers shouldered the same financial burden for the system. NAM did not recommend a state run system, but a state required system.

Gompers participation in the NCF also ensured that the network of American Federation of Labor affiliated unions would be sympathetic to state compensation proposals. "Workers complained of long court delays, shabby treatment by insurance companies, and the low likelihood of winning a court suit. Both sides blamed attorneys and insurance companies for the inefficiency of the negligence system and the large gap between what employers paid in insurance premiums and what workers received."⁷⁰

Writing on the introduction of workers' compensation legislation in the United States, Fishback and Kantor explain that the legislation introduced at the state level was enacted with "relatively little controversy. By 1910 workers, employers and insurance

companies alike could anticipate gains from the adoption of workers' compensation, and members of all three groups actively supported the general concept."⁷¹

While there was general support for compensation legislation, the specific features of the proposals were hotly debated. In most states opposition from insurance companies and farmers overcame the labour unions' demands for state rather than private insurance. Monopoly state insurance was implemented where the labour organizations strength was greater than insurance or agricultural interests or where "a strong political reform movement- such as the Progressives in the early 1910s and the Non Partisans in the late 1910s- incorporated union's demands for state insurance into a broader program of socioeconomic changes."⁷²

According to Fishback and Kantor,

State insurance was considered radical by early twentieth-century standards and opponents consistently invoked images of creeping socialism. The union leaders and social reformers who sought state insurance usually did not have the political clout to determine the outcome of the state insurance debate. To succeed, they often had to form a coalition with political groups seeking far-reaching socioeconomic reforms that transcended labor issues. Thus, the adoption of state insurance often depended on the electoral successes of the major political reform movements of the time.⁷³

Fishback and Kantor analyze the debate over compensation in Washington State. Meredith cited the developments in Washington State as part of his deliberations over the Ontario legislation. The proposed bill followed the German model, with two separate legislative measures, the first to provide a state operated compensation system for loss of income, and the second to provide for first aid. In the end the state insurance system without the separate first aid provision succeeded.

The Washington State approach would prove to be in the minority.

In the majority of states the countervailing political influences of these groups [unions, insurance companies and agricultural interests] were enough to prevent the establishment of monopoly state funds. In ten states, however, a compromise position was reached in which private insurers competed with a state

insurance fund. The extreme position of establishing a monopoly state fund occurred in only seven states.⁷⁴

Fishback and Kantor conclude their study of the introduction of workers' compensation legislation with an important insight, one that holds true not just to the situation in the United States but that finds parallels throughout the research conducted for this thesis.

[I]n order to explain properly the growth of government, both narrow economic interests and broad-based political coalitions must be considered carefully. Whereas some scholars of political economy have argued that one or the other explanation is sufficient to explain why public policy is enacted, we find that both are important and both forces sometimes interact in complex ways. Examining the adoption of monopoly state insurance across the United States clearly shows the narrow economic interests and broad political coalitions played significant, but sometimes unequal, roles. The importance we attribute to either explanation will depend on the specifics of the case under consideration.⁷⁵

Workers' compensation laws were eventually introduced by all states. Some form of insurance coverage was compulsory. State agencies were involved in ensuring that these requirements were satisfied, although not necessarily involved in the administration of the insurance systems themselves.

Meredith, the Trade Unions, and the Canadian System

In Canada, the British system was adopted by British Columbia (1902), Newfoundland⁷⁶ and Alberta (1908), Manitoba and Nova Scotia (1910) and Saskatchewan (1911).⁷⁷ The Canadian system of workers compensation is a product of the legal framework in which it was created. In 1890, the Supreme Court of Canada found that workmen's compensation laws were held to be "within the competence of the provincial legislature and applicable to all employers within the province."⁷⁸ The dominant political economic influences within each jurisdiction resulted in variations in legislation and regulation as well as administrative structures. Extreme variations in

approach, evident in the United States, did not develop in Canada. This may in part be due to the relationship between the British and Canadian legal systems during the formative years for the Canadian systems.

Tucker describes this relationship and the impact on Ontario,

The legal system of nineteenth-century Ontario was shaped by its colonial status...In the absence of statute law, common law prevailed, the common law of Ontario was derived from the common law of England...Although there were a number of areas in which the local conditions of Ontario were found to justify a departure from English common law, employer's liability...was not one of them.⁷⁹

Tucker provides a further insight into the motivation to move beyond the early system of employer's liability legislation, as well as the selection of industries to which the legislation would originally apply in Ontario,

[T]he most important linkage between the railways and the development of factory legislation is that initial judge-made common law regulating occupational health and safety for *all* workers largely developed out of employer liability actions brought by railway workers and their families against the railway companies...the focus on factories and railways does not reflect a judgment about the economic importance of industrial production relative to these other sectors [staples production and extraction] of the economy...it is clear the majority of workers in Ontario were employed in non-industrial settings.⁸⁰

The issues and the political debates in Ontario at the turn of the century were not dissimilar from those that had taken place elsewhere. The growing number of women and children in the workforce fueled the debate over which industries and which aspects of their operations to regulate. Regulations were introduced for factories, mines, railways, construction even though they were neither most dominant in terms of employment nor necessarily provided the highest risk of industrial injury.

By 1871, only 19 per cent of the gainfully employed in Ontario worked in manufacturing...by 1891, only 23 per cent...Further it has been estimated that three-fifths of the population of Ontario resided on farms in 1870. Even by 1911, industrial workers made up a little over one-quarter of the workforce and agricultural workers slightly over one-third.⁸¹

Attracting the recently enfranchised working class voter became significant to both the Liberal and Conservative parties. The experience outside Ontario had taught politicians that workmen's compensation and factory legislation were two issues over which these voters could be attracted.

The Liberal and Conservative parties had put down deep roots in the working class and continued to maintain a substantial political loyalty by offering timely concessions and making patronage appointments to 'responsible' union officials. In addition, the craft base of the labour movement excluded the majority of workers. They were largely unmoved by the political aspirations of the labourites and socialists and either voted for the Liberals and Conservatives or abstained.⁸²

Logan credits the Trades and Labor Congress (TLC), in combination with the railway brotherhood for pressing the Ontario government to investigate the compensation issue.⁸³ In 1910, the Sir William Meredith, a former leader of the Tory opposition, and later a Chief Justice of Ontario, was appointed to hold an inquiry into the "laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries, and as to how far such laws are found to work satisfactorily."⁸⁴

Meredith held extensive hearings and researched the British, German, other European and the US systems that were under development. The extensive understanding of the systems outside Canada as demonstrated through the submissions is impressive, and many of the arguments presented resonate through legislative chambers across Canada today.

As was the experience elsewhere, the parties to the system: labour, capital and the state, agreed on the need to move away from the system of employer's liability. The objections to the latter are summarized in testimony before Meredith's enquiry by the Brotherhood of Railway Trainmen,

It is generally agreed that the liability system is wasteful because it is expensive to employers and uncertain to employees, not to mention its effects generally upon society. The system of recovery by mutual agreement or by court decision is slow in

operation, causing distress during a period of incapacity when the living demands of the employee are perhaps the greatest. It encourages the making of settlements by duress that are inadequate and not commensurate with the degree of injury and the loss of earning power. The liability system encourages distrust and antagonism between the employer and the employee and taken altogether is uncertain in establishing the responsibility of the employer and assuring compensation of the employee.⁸⁵

The TLC recommended to Meredith that an act be introduced “commencing with the basic principle of a State managed compensation fund, by an insurance commission, as we have pointed out, compulsory insurance of the widest possible application in Ontario, *with no contribution from workmen*, except that which they lose in wages as a result of not being paid full wages when incapacitated.”⁸⁶

Babcock describes the forces at work on the Canadian labour movement which distinguished its approach from the American craft unions of the AFL,

More often in Canada the object of political activity was to create a just social order as well as to expand labour’s slice of the national wealth. Broad political objectives advocated by many Canadian unions were not always coupled with traditional American *laissez-faire* concepts. In this respect many Canadians differed from Samuel Gompers, who bitterly opposed most forms of government intervention in the American economy. Gompers never grasped the fact that Canadian trade unionists operated within a different historical tradition. In Canada governmental initiative had become a mainstay of the economy, because economic growth and development secured continued political independence from the United States. Many Canadian unionists were more willing than their American brethren to seek political solutions to economic problems.⁸⁷

The TLC’s enthusiasm for state involvement would translate into one of the defining features of the Canadian system.

Having rejected the status quo and endorsed the principles of workers’ compensation, the major task for Meredith’s efforts was to focus on models to achieve the goal of a fair and equitable system. It was necessary to distribute the risks and costs between the parties and to determine a method of administration.

The Ontario review focused on the accident insurance function rather than attempting to create a more comprehensive program such as the three part German

system. The TLC opposed the Canadian Manufacturers' Association (CMA) recommendation that workers contribute to the cost of the system. The TLC stated,

In Great Britain the workers do not contribute to accident compensation, and as in Great Britain, workmen's compensation in Ontario should be kept entirely separate from sickness legislation, invalidity and other social insurance and not confused as many seem to confuse it. If there is a proposal of the Government to legislate to cover sickness, non-occupational accidents, etc., then the question of contribution from the workers is a different matter altogether and will have to be considered differently, but accident compensation is before us, and we must stick to the question, whether others do or not.⁸⁸

The TLC argued that under the accident insurance system workers were already expected to contribute, "The workers will contribute heavily anyway, by suffering and the loss of wages, if the compensation is 70 per cent of their wages they will contribute 30 per cent in loss of wages to the scheme, plus the suffering incurred as a result of the accident. That is the only basis upon which the workers can be asked to contribute."⁸⁹

Meredith allocated the financial responsibility for the system between three parties. He recommended the administrative costs of the system be borne by the state while the employer contributions would cover the cost of the insurance program. Meredith accepted the contribution of injured workers as outlined by the TLC.

Attorney General Armstrong of Nova Scotia summarized the principles, on which his province's bill had been drafted following Meredith's lead,

[I]t would not be urged that Workmen's Compensation Acts were a species of socialism, but were the outcome of a great economic and social problem.

The first aim of a compensation law should be the preservation of human lives, to make provisions which would lead to a minimum amount of accidents.

Second. Should be relief in every case arising out of the employment and apply to all.

Third. Relief should be, as far as possible, a substitute for wages; should be periodical, definite and certain, with as little cost as possible.

One of the defects of the English Act as well as our own was that so far as the employee was concerned, there was no certainty as to this compensation.

Fourth. It was agreed that the compensation should be provided by a fund in the nature of insurance to which all parties should contribute.

Fifth. There should be a central and economic administration.

Sixth. Another provision was that the Compensation Act should provide for inspection to prevent accident. This, however, should be regulated in such a manner as not to place too great a burden on the industry.

Seventh. It should be permanent, by this he (Hon. Mr. A.) meant that whatever compensation was awarded should be during the continuance of the disability.

The tendency of modern legislation in the direction of an ideal law dealing with this principle involved three other provisions. All these provisions were worked out in connection with our own scheme under the proposed Bill.

1. That the compensation should be compulsory.

2. That it should be exclusive. That the remedies afforded to the workmen under the Act, so far as applied to him; should be in lieu of all other remedies. This would do away with the old common law defences.

That it should apply to all industries.⁹⁰

It is the interplay between the insurance and the accident prevention programs that remains a central issue in contemporary debates. In his final report, Meredith weighs the strengths and weakness of the British and the German approaches. Meredith incorporates both models into his recommendations, "in order that with the two systems working side by side experience might demonstrate whether the collective liability or that of individual liability was preferable."⁹¹ Meredith proposed a rate setting model to ensure rewards and penalties to employers were based on safety performance while providing for the continuity of benefit payments to injured workers or survivors.

Meredith recommended extensive changes to the practices that had existed in Ontario. In doing so, he attempted to persuade his colleagues and the court of public opinion, that his recommendations were not radical but just.

In these days of social and industrial unrest it is, in my judgment, of the gravest importance to the community that every proved injustice to any section or class resulting from bad or unfair laws should be promptly removed by the enactment of remedial legislation and I do not doubt that the country whose Legislature is quick to discern and prompt to remove injustice will enjoy, and that deservedly, the blessing of industrial peace and freedom from social unrest. Half measures which mitigate but do not remove injustice are, in my judgment, to be avoided. That the existing law inflicts injustice on the workingman is admitted by all.⁹²

A compensation law should, in my opinion, render it impossible for a wealthy employer to harass an employee by compelling him to litigate his claim in a court of law after he has established it to the satisfaction of a Board.⁹³

Meredith argued that to accept his recommendations was to embrace progress, and that Ontario would not be alone as the Americans were also embarking on a similar course.

That in making these recommendations (abrogation of the assumption of risk rule and contributory negligence) I am not advancing any novel proposition is shown by the fact that what I propose should be done in this Province has already been done in some of the States of the neighbouring Republic, and that the rules which it is proposed to abrogate or modify no longer meet the requirements of modern industrial conditions and are unjust as applied to the complex relations of master and servant as now existing, and to the use of complicated machinery and the great and dangerous forces of steam and electricity of to-day is the generally accepted view, and was the unanimous opinion of the Employers' Liability and Workmen's Compensation Commission of the United States.⁹⁴

Meredith's recommendations were extensive. He rejected much of the British system, determined that the Ontario economy was too small and too new to adopt the German system and so created a Canadian approach which he believed addressed the economic, legal and political structures of Ontario.

Meredith's recommendations were adopted across Canada. Nova Scotia became the second province to accept the new Ontario model. The 'Meredith Principles' are still held to be the ideal model and the basis for the current Canadian legislation. During the 1990s, many legislative changes were recommended as a 'return to Meredith'. The annual reports of many of the compensation boards contain simplified summaries of these principles. Nova Scotia is no exception.

Meredith was commissioned to report on the liability of employers to make compensation to their employees for injuries received in the course of their employment. Meredith did not consider issues relative to medical services, rehabilitation or old age

pensions that were part of the German system. It is an important feature of Meredith's commission that his recommendations were framed in the context of Ontario in the 1910s, and that he took such pains to consider the economic and social systems in which his new system would operate. Meredith's recommendations set the Canadian system on a fundamentally different course from the approach taken in the United States.

Meredith carefully distributed the costs and the benefits of his system between the three parties to his scheme- the workers and their families; employers; and, the community as a whole. It was the allocation of risk and responsibility between these parties that defined Meredith's system.

Comparative Analysis

Workers' compensation systems developed in response to the common law, community, social, economic and political structures. While the principle has near universal support having been adopted by the International Labour Organizations at a convention in 1925, the structural elements and policies provide a wide scope for variation.⁹⁵

The differences between the most influential systems- the British and the German systems were fundamental. The German system evolved from a collective and highly interventionist state. The system was part of a complex social security network operated in contrast to the British *laissez-faire* approach. The British system emphasized individual rights and responsibilities, and employment contracts. There existed no complex state bureaucracy, nor a willingness to create one. The North American

systems combined attributes of both the German and British systems with the features tailored in response to their own political-economic structures.

The table below summarizes the roles of the parties to the system: the state, capital and labour.

	State/ Community Role	Employers Role	Workers' Role
Britain 1897-1906	Duties under the poor laws, or through charitable societies to assume responsibility for the injured worker and/or family; Costs associated with operation of the judicial system; debate regarding the need for safety regulations The need for legislation began to be debated in the 1840s	Growing level of industrialization; factory inspectors had revealed unsafe conditions; increased costs would affect international competitiveness; undermine industrial relations; increasing number of legal actions	Increased militancy of workers and formation of unions in some sectors, such as coal mines; slow increase in the number of court actions by injured workers; unions provided relief funds, and support for legal actions; in 1906 unions began to call for state administration to reduce the problems created by the insurance companies and to increase promotion of safety
German System 1854-1884	Guaranteed the collective liability system, preceded by Sickness insurance legislation which was funded by workers and employers The state had a duty to enact laws for the public welfare, medical aid and rehabilitation, as well as accident prevention were included in the system	Compulsory insurance through national trade associations based on collective liability, administered the system as well as establishing regulations for safety	Contributed financially to the insurance plan, as well as participating in the administration of the associations
Canadian Systems After 1915	Revised legislation is developed based on the 1913 Meredith Report in Ontario, which creates a Government appointed Board to administer the system. The Board levies assessments, adjudicates claims, and makes payments to workmen.	55% of the injured workman's wages while the disability lasts Protection against Court action by workers	Workman to bear: <ul style="list-style-type: none"> • Loss of all wages for 7 days if disability does not last longer than that • Pain and suffering • Medical expenses • Loss of 45% of wages while disability lasts • Burden of disfigurement through life • In cases of long-term disability the loss of potential improvements in earning power, wages increases

The defining characteristics of a compensation system have been categorized as:

- Coverage- eligibility to participate in the system by an industry sector or occupational class, and compulsory and voluntary participation
- Jurisdiction- legal status granted to the administrative functions of the systems
- Insurance system- the structure used to provide benefits, and share risk
- Funding- method of allocating financial responsibilities
- Eligibility- conditions for inclusion, work-relatedness
- Compensation- formula for calculating benefits payments
- Administration- operational structure(s)
- Medical and rehabilitation services- nature of services available
- Safety- relationship between the compensation system and accident or injury prevention initiatives

By comparing the characteristics of the system in different jurisdictions it is possible to delineate significant political-economic influences. A further dimension is revealed when adjustments to the system are made over a period of years. The chart below provides a basis for comparison of these defining characteristics. While there are attributes such as the 'no-fault insurance' approach which are common to the four systems being compared, major differences exist with respect to the role of the state in the administration of the system, the role of private insurers and the involvement of the courts.

Concept	Meredith (Ontario)	United States	Britain	Germany
Coverage	Selected industries with more than 5 employees to start, but ideal was universal coverage for all employments	Varies Several states limit the system to extra hazardous	Railways, factories, mines, buildings, Dramatically expanded after 1906 to most industries with more than 5 employees	Specified industries
Jurisdiction	Board full scope to determine compensation. No recourse to the court exempt for questions of law or jurisdiction	Employers and employees could not sue each other in most states, 3 states have an elective system, employments only	Workmen could choose to go court or be forced there by the employer or reach a private settlement	No recourse to the courts
Insurance system	Compulsory mutual insurance (collective liability) for covered employments. Selected industries provided the option to self-insure through the system. No private insurance option.	Private and public systems	Individual liability through: <ul style="list-style-type: none"> • Mutual insurance plan • Private insurance or • Direct compensation 	Compulsory for specified industries through national trade groups (collective liability) Payment was not guaranteed by the State
Funding	Assessments collected from employers, but viewed as being paid by society as a cost of production.	Assessment or premiums from employers		Compensation funded by employers Medical aid and rehabilitation jointly funded by employer and employees
Eligibility	No-fault	No-fault	No-fault	No-fault
Compensation	Wage loss. Adequate benefits so prevent the workers from becoming a charge upon the community.	Only injuries that resulted in disability were compensated. Losses for pain and suffering not eligible. Initially at 50% of wages.	Payable from 2 weeks after the accident on 50% of average earnings	Income replacement
Administration	State	Varies, most have private insurance, several have state administration, some have a combination	Private with little state involvement	State; Integrated into social welfare systems
Medical and Rehabilitation	Included several years after the initial act	Included later	Through friendly societies	Provided under separate legislation and administration
Safety	Incentive through assessment rate system; factory, mine and other industry specific safety laws	Incentive through assessment rate system; factory, mine and other industry specific safety laws	factory, mine and other industry specific safety laws	Regulated by trade associations which include employees;

Coverage:

Each of the systems assessed began by limiting the application of the compensation system to specific economic sectors, and to large employers. The industry sectors covered included: mining, manufacturing, railways, large construction projects. Those industries excluded were: agriculture, fishing, marine occupations, retail, the professions, and businesses with less than 5 employees. Ross and Trachte provide an interesting explanation for these decisions,

Within the capitalist class, large firms with concentrated market power were able, more often than not, to mold state policy to their advantage, even as they made concessions- in direct negotiations and in social policy to unions and their political representatives. The ability of large firms to tolerate these concessions rested on their market power: costs of government regulation and of wage and benefit hikes could be passed on to both consumers (through administered prices) and to their smaller scale suppliers, through market leverage.⁹⁶

Fishback and Kantor highlight the political compromises made within the American system, and note that the exclusion of farm labour was a common characteristic. In all jurisdictions, coverage choices reflected political realities. As Ross and Trachte note where there existed an “uneasy political accord between monopoly capital and monopoly labour” the compensation system was allowed to apply.⁹⁷

The early British legislation provided for the contracting-out of the system based on specific conditions being satisfied. These conditions included the existence of a ‘friendly society’ satisfactory to the government registrar and the consent of the employees to the contracting out. This provision was controversial and distinguished the liberal approach and the primacy of the contract over more social democratic influences. While the employees consent was required, the bargaining strength of labour and capital at these negotiations was frequently imbalanced favouring the employer. Contracting-out provisions were a central issue in the debates surrounding the introduction of workers’ compensation legislation in Nova Scotia, and distinguish the province’s legislation from

other Canadian jurisdictions. The ability of the state to balance the public interest in relation to individual capital interests, was critical to its autonomy. In the case of Nova Scotia, monopoly capital interests prevailed in demanding and obtaining contracting-out provisions and therefore an exemption from the workers' compensation act.

Jurisdiction:

The relationship between the compensation system and the courts is a fundamental distinguishing characteristic of the system. In Britain, and within many of the US States, the courts continue to play a significant role. This reflects the "laissez-faire" characteristic of individual rights, and individual responsibility, as well as a rejection of the concept of state intervention. The German system prohibited any challenge to the courts. Decisions were made by administrative tribunals.

Meredith believed that a non-partisan administrative tribunal was a more appropriate decision making body. The tribunal approach was to remove the bias within the court system against the employee as well reducing the cost and delays of going to court. Meredith believed the system would provide a fairer and more equitable method of settlement. Recourse to the courts in questions of law was still available. Meredith's Ontario system attempted to strike a balance between the rights of the individual, and the ability of the individual to realistically achieve in practice the rights that existed in law. Meredith did not reject in total the British approach but tempered it.

Method of Insurance:

The method of insurance incorporated into the compensation system is one of the most fundamental reflections of the political-economic influences at work. The British and German systems operated as extreme poles, while Meredith recommended a hybrid

of the two. The British system was based on the principle of “individual liability” on the part of the employer. Under this system the employer was provided three alternative methods of insurance against the liability. The German system was based on “collective liability”.

Holton draws the distinction between the two approaches,

[T]he push for the increasingly organised regulation of capitalism to meet welfare objectives involved two distinct world-views.

These may be described as minimum welfare state as against optimum welfare state options.

In the former, the welfare state provides a safety-net of short-term support against economic and social contingencies, rather than comprehensive long-term support...It could be supported by liberals on the grounds that short-run minimum assistance did not jeopardize individual self-reliance. If welfare benefits were set at a level sufficient to ward off destitution, but not so high as to act as a disincentive to work and save, then liberals could justify them. Against this the optimal welfare state strategy supported by socialist opponents of capitalism argued for the best possible public welfare services, generally disputing that these would be a disincentive to work. Welfare was seen as a community responsibility in its own right.⁹⁸

Under the collective liability model all employers were liable for the costs of all injuries, if an industry failed, or ceased to operate, benefits would continue to be paid from the collective liability pool. Under the British system, benefits payments could end with the demise of the individual employer.

Meredith, who was presented with rigorous arguments on the merits and evils of both systems, provided for both individual liability and collective liability. Individual liability was limited to industries which he believed would not provide a risk to the employee such as government enterprise, railways, and utilities. The remaining industries would have to contribute to the collective liability pool.

The role of private insurance companies also distinguishes the different models. The British system as well as many of the American systems provided for private insurance, either exclusively or in competition to a state system. The “*laissez-faire*”, anti-state intervention approach of the United States and Britain at the time of the

introduction of workers' compensation legislation, clearly distinguishes these systems from the highly developed and complex German system and the more moderately constructed Canadian system as recommended by Meredith.

Holton explains the basis for the changes that occurred in Britain following WWII.

Writers within the tradition of political economy see the Great Depression of the 1930s and the experience of social and economic centralisation during the Second World War as crucial to the rapid post-war expansion of welfare states in most parts of Europe...The idea is that the two arguments in favour of regulating capitalism, namely economic stabilisation and social support has now come together. Keynesian economic theory during the Depression years of the 1930s had added to the existing arguments against market self-regulation by demonstrating that market equilibrium could under certain conditions be accompanied by mass unemployment used to justify macro-economic government planning of public investment to regulate economic activity.⁹⁹

While the British system evolved into a complex national social welfare system, the American system, not subject to the same influences, retained the private insurance model as a central feature of the system.

Funding:

All jurisdictions accepted that it was the employer that was solely responsible for funding the compensation systems in terms of short-term wage replacement. The German system included provision for medical aid, rehabilitation services, long-term disability and old age pensions. These benefits, however, were provided separately from funds contributed to by both the employers and the employees. Many of the friendly societies in Britain, and North America provided medical and funeral services. The funding for these benefits was derived principally from the workers although some industries did contribute. For example, in Nova Scotia, the coal miners' relief societies principally funded by the miners also received support from the company and the

government. In contrast, the steelworkers' friendly societies received some company support but no government contribution.

Meredith provided a comprehensive explanation of the costs of the compensation system. Taxpayers, in funding the court system in which decisions under employers' liability legislation were determined, and in providing poor relief, would benefit from the operation of the compensation system. Employers would pass the costs on to the consumers or indirectly adjust workmen's wages to recover the costs of compensation. In his view, the costs paid by the employers were shared throughout society. Meredith also argued that the injured workmen must bear part of the cost of a no-fault system. This cost would be recognized as a portion of the pre-injury earnings (benefits were often 50% of earnings, and might not be available for the short-term injuries), as well as accepting that the injury itself represented a substantial burden.

Justice Tysoe, in a report prepared for the British Columbia government in 1966 explained the balance the Canadian system had achieved in distributing the costs and the benefits of the system,

Notwithstanding any seeming defects in administration there is no shadow of a doubt that workmen have always been immeasurably better off under the Workmen's Compensation Act than they were prior to its enactment. The fact is that roughly, 75 per cent of those who are recipients of the extensive benefits provided by the Act would have received nothing at all in earlier times, and they make no financial contribution to the costs of these benefits.

It would not be right were I to omit to say that, in my opinion, employers are also better off than they would be were the Act not in force. They are relieved of the expenditure of time and money contesting workmen's claims against them in the Courts and of the ill feeling that is generated by hard-fought legal battles.

It is my feeling that the Act has benefited workmen and employers in about equal proportion.¹⁰⁰

The division of the costs of the system in relation to the benefits being provided was often framed in comparison to what the common law would have provided. The

balance between the parties– the public, the state, employers and employees has changed over time. The costs and the benefits available have greatly expanded over the last 100 years, and are a matter of constant debate and conflict.

Another issue relative to funding has been the degree to which the rates charged to industry sectors or individual industries that are part of the collective liability pool are based on the performance in terms of safety of the individual class or company. A criticism of the early British insurance premiums was that the system did not provide for differential rates. The greater the relationship between the costs of insurance, and therefore the costs of production, the greater the incentive or penalty. In recent years, neo-conservative governments have pushed the 'collective liability' system closer and closer to the individual liability approach by increasing the proportion of the insurance rate that is influenced by experience rating which is tied to the performance at the firm level.

The German model placed greater emphasis on the industry class rather than the firm. The rate structure was used to financially pressure the industry class as a whole to work together to improve safety, rather than inducing greater competition between firms.

Interwoven with the issue of funding are the role of health and safety issues, and the regulation of working conditions. Compensation premiums in some instances are collected with the view that state expenditures relative to establishing and enforcing safety regulations are part of the cost of production, not part of the public cost of state administration.

Eligibility:

All jurisdictions shared a consistent approach accepting, what is often described as the historic trade-off of workers' compensation, that work related injuries would be

accepted on a no-fault basis in exchange for the employees giving up their common law right to sue their employer. Under the British system, the employee retained the option to sue or to accept benefits under the compensation system. In Germany and Canada this option did not exist. Legal and legislative issues, however, frequently arise over whether or not an injury was work-related. Industrial diseases i.e. illness which develop over long periods of time have been particularly problematic for compensation boards and politicians.

Compensation:

All jurisdictions provided for income replacement as a foundation for benefits payments. The percentage of income replaced, the duration of benefits, survivor benefits and compensation for pain and suffering have varied between systems and over time.

Early compensation systems provided benefits calculated as a percentage of pre-accident earnings. Over time the percentage recovered by the injured workers or dependents has increased. In the mid 1900s, short term disability continued to be compensated in this manner, but the permanent disability benefits began to be calculated on the degree of permanent physical impairment. This method became known to its detractors as the "meat chart" system. This system provided its own version of equity, a lost limb was compensated at the same level of compensation benefits, usually paid as a pension, regardless of who lost it. The difference in economic consequences could however be quite significant depending on the occupation of the injured worker. During the 1980s the Ontario government followed the lead of Saskatchewan, returning to an income replacement model of compensation.

Compensation benefits which pre-date the introduction of personal income taxes in Canada have remained tax free income. In addition to changes in tax policy, the public

health care, social welfare, unemployment insurance disability benefits, old age and Canada pension had all been introduced after the structuring of compensation benefits. These changes have fundamentally altered the obligations and demands placed on injured workers.

Compensation benefits as a percentage of earnings increased to 75 percent of gross pre-injury earnings. The level of personal income taxation also increased to in excess of 25 percent of earnings. Without including any additional impact of topped-up employer benefits frequently included in collective agreements, private insurance for loss of earnings, including loan, mortgage and credit card payments, it became possible for the injured worker to be in a more advantageous financial position after the injury than before. During the 1980s this became officially recognized as a disincentive to those individuals who could return to paid employment, and resulted in a number of changes to compensation provisions. These changes coincided with recognition of massive deficiencies in the funding positions of the Canadian compensation boards and growing neo-conservative views within the business community.

Benefits are now calculated as a lower percentage of net earnings (net of income taxes) and in some cases "collateral" benefits, from sources other than the compensation board, may be taken into consideration in the calculation of compensation payments.

Administration:

The level of state involvement in the system is another distinguishing feature. As previously discussed, the compensation system in Germany was integrated into a much larger social welfare system. The police compiled information. Payments were issued by the post office.

In Britain with the exception of Parliament's role in adopting the legislative framework, the state had no role in the administration of the system until the 1940s. The US systems are varied, incorporating only private insurance companies, state-only systems, and combinations of both. The Canadian systems, modeled after Meredith's Ontario system, are all quasi-governmental organizations with state appointed boards.

In Canada and the US the workers compensation systems responded even more specifically to the political and economic structures of regional economies. The decentralized style of government, particularly in the US, allowed for substantial variation to occur.

Workers' compensation systems in the United States and Canada share one common distinction from most worldwide compensation programs. They, along with Australia, are the only countries out of 136 that have separate legislation for each state, province or territory, and not a federal or national program. This distinction is one reason why a variety of laws, policies and practices exist.¹⁰¹

The role of private insurance companies in earning profits from the compensation system, particularly in aggressively pursuing worker's claims were seen as being in opposition to the view of accepting a collective societal liability and providing compensation as a right to the injured worker as espoused by Meredith.

Meredith's Ontario system gave birth to a large and powerful state bureaucracy. Over the years formal appeal tribunals were added to the complex administrative systems to make decisions by the boards more accountable. Legal services or advisors have also been added at public expense, to assist both employers and employees in dealing with the state-run systems. Meredith's design of a straightforward and expedient alternative to the courts appears to have been overshadowed as due process and accountability rose in importance.

Neo-conservative governments of the 1990s have re-engineered the compensation bureaucracy in Canada, and have commissioned studies into the impact of introducing the American system of private insurance.

Medical and Rehabilitation Services:

The German system provided medical aid and rehabilitation services outside of the wage compensation legislation. These services were jointly funded and administered. Medical aid and rehabilitation services were not included in the early compensation in any of the other jurisdictions. It was argued before Meredith, that the Ontario system in total should be jointly funded based on the German model, but this was rejected. The medical aid and rehabilitation services were gradually included in the systems without any changes to the method of funding that was being applied.

One of the more difficult issues associated with rehabilitation in recent years has been the objective of the service and the link to the duration of benefits. Is the objective to achieve employability or employment for the injured worker? During periods of recession it may be difficult for any worker to find employment. Compensation boards were being asked to continue benefits for injured workers who had achieved a level of proficiency but had not necessarily obtained employment.

Safety:

The relationship between the workers' compensation system and occupational health and safety had been debated prior to the introduction of any the compensation systems.

In Germany the same industry associations, which included labour and management, provided medical and rehabilitation services and were charged with establishing and maintaining safety standards. Moreover, these associations held the collective liability for an industrial sector. By allocating both the costs of failure to prevent accidents and the authority to implement safety and procedures regulations to the same organizations, the direct link between compensation and safety was achieved more thoroughly than in any of the other systems.

In Britain, the argument in favour of using compensation costs as a financial incentive to promote safety was made as early as the 1840s. The British, Canadian and US systems all attempted to use rating systems to collect higher premiums from industries with higher claims experiences. This system has been problematic and few, if any, investigations of whether this relationship has been effective have been carried out.

Safety bureaucracies, including– inspectors, educators, regulators, and prosecutors have existed within the compensation structure as well as outside of it. In the US, the systems have remained separate in most instances. In Canada, the relationship has changed over time. Whether the bureaucracy has operated within the compensation system, as it currently does in New Brunswick and British Columbia, or outside of it, as it does in Nova Scotia, the compensation system is relied upon to substantially fund the state sponsored safety systems.

Conclusion

While attempting to achieve a common objective the four compensation systems have evolved to reflect their respective political, economic and social environments. The British system with its focus on individual legal rights and obligations, and lack of state involvement fits the historic trade-off explanation of system evolution. As has been

explained the right to sue was beyond the practical reach of most employees.

Acceptance of the no-fault principle by employees ensured that many gained access to benefits at the possible expense of the few who might have gained higher awards in legal actions. From the employer perspective the extreme financial risks were mitigated by the competitive pressures between insurance providers.

The welfare state explanation for the system can be traced to the comprehensive nature of the German system. Three separately financed and administered statutes created the medical services, accident insurance and old age pension systems. The medical services and old age pension provisions were not restricted to the work-related causes of injury or illness.

Meredith's system was a hybrid combining features of both the British and German systems. This approach incorporated the historic trade-off argument while selectively applying the accident insurance features of the German system including incentive and disincentive pricing of insurance based on accident performance. Meredith, influenced by the representations of organized labour, designed his system with prevention in mind.

End Notes

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Appendix

Appendix A

Summary of Meredith's Recommendations

1. "that a compensation law framed on the main lines of the German law with the modifications I have embodied in my draft bill is better suited to the circumstances and conditions of this Province than the British compensation law, or the compensation law of any other country." P. vi
2. "the true aim of a compensation law is to provide for the injured workman and his dependants and to prevent their becoming a charge upon their relatives or friends, or upon the community at large." P. vii
3. "it is ...essential that as far as is practical there should be certainty that the injured workman and his dependants shall receive the compensation to which they are entitled P vii "...a serious objection to the British act that there is no security afforded the workman and his dependants that the deferred payments of the compensation will be met," p vii
4. "the small employer should not be ruined by having to pay compensation,...for the death or permanent disability of his workmen caused by no fault of his." P. vii "...still more serious in a comparatively (to Britain) new country such as this, where many of the industries are small and conditions are much less stable than they are in the British Isles." P vii
5. "making it (compensation) obligatory upon the employer to insure his workmen against accident...if insurance is to be compulsory I see no reason why the cheapest form of its- mutual insurance- should not be prescribed." P vii
6. "I agree...that the ultimate burden of paying the compensation under such a law as is proposed falls upon the community and that whatever the employer has to pay, whether directly by way of compensation, or if he insures against his liability by paying insurance premiums, forms part of the cost of that which he produces and is added to the selling price." P. viii
7. "the act should not lay down any hard and fast rule as to the amount to be raised to provide a reserve fund and that it is better to leave that (current cost plan vs capitalized value of the deferred payments) to be determined by the Board which is to have the collection and administration of the accident fund as experience and further investigations may dictate...."the duty of the Board at all times to maintain the accident fund so that with the reserves it shall be sufficient to meet all the payments to be made out the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made those years in respect of accidents which have previously happened." P ix
8. the Board is to be appointed by the state "...Whatever else may be doubtful as to the workings of the act there is no doubt, I think, that the members of the Board appointed by the Crown will impartially and according to the best of their ability discharge the important duties which will devolve upon them in the event of the draft bill becoming law." P ix
9. "The bill is divided into Parts. In Part I the liability of employers to contribute to the accident fund or to pay the compensation individually is dealt with." P x "The principle industries excluded are the farming, wholesale and retail establishments, and domestic service. This is, I admit, no logical reason why, if any all should not be included, but I greatly doubt whether the state of public opinion is such as to justify such a comprehensive system..."p xi
10. Part II of the act abrogates the 'objectionable doctrine [common employment]' as well as the assumption of risk rule; "contributory negligence shall not be a bar to recovery by the workman" p xii
11. Act provides the Board with the power to set a size limit by industry, and to allow employers to elect to contribute if excluded. "As I have already pointed out, it is to industries in which a small number of workmen are employed that the provisions of such an act are peculiarly applicable-as to the small employer, to prevent his being ruined as the result of an accident in his establishment, and as to his workman to insure that he will be compensated if he meets with an accident." P xiii
12. "A compensation law should , in my opinion, render it impossible for a wealthy employer to harass an employee by compelling him to litigate his claim in a court of law after he has established it to the satisfaction of the Board" p xiv
13. "compensation shall not be payable where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement". P xv
14. "following in this respect the British act, industrial diseases are put on the same footing as to the right of compensation as accidents...The diseases to which the act is to be made applicable are six in number and are enumerated in schedule 3" p xv

15. "A just compensation law based upon a division between the employer and the workman of the loss occasioned by industrial accidents ought to provide that the compensation should continue to be paid as long as the disability caused by the accident lasts, and the amount of compensation should have relation to the earning power of the injured workman." "The burden which the workman is required to bear he cannot shift upon the shoulders of any one else, but the employer may and no doubt will shift his burden upon the shoulders of the community, or if he has any difficulty in doing that will be reducing the wages of his workmen compel them to bear part of it." P xvii
16. "the draft bill...provides for a contribution by the Province to assist in defraying the expenses incurred in the administration of the act... The effect of the proposed law will be to relieve the community from the burden of maintaining injured workmen and their dependants in cases in which under the operation of the existing law they are without remedy, and by the transfer from the courts to the Board of the determination of claims for compensation, which will lessen very much the cost of the administration of justice." P xviii
17. "the Board in determining the proportions of the contributions to be made to the accident fund by employers to have regard to the hazard of each industry, and to fix the proportions of the assessments to be borne by the employer accordingly..." p xix

Meredith, The Hon. Sir William Ralph, *Final Report on Laws Relating to the Liability of Employers*, Legislative Assembly of Ontario, Toronto, 1913

Chapter 2 Labour, Capital and the State: Nova Scotia Responds to the Industrial Challenge 1800-1920

This chapter will assess the political, economic and social forces at work as the Nova Scotia system evolved. The dominant influences will be identified. The ultimate victor in the battle of influence can be determined in the nature of the legislative measures that are finally enacted. The specific issues debated reflect the position of labour and capital as well as the autonomy of the state to embark on a third way or to craft a balanced compromise.

The compensation system has been the subject of constant and continuous political debate. Therefore, the next two chapters rely heavily on primary documents including legislative debates, as well as the proceedings of a series of legislative committees and royal commissions. The annual reports of the Workmen's Compensation Board to the House of Assembly have also been reviewed.

It will be argued that the political influence of the newly enfranchised working class combined with the threat of an independent labour party caused the Liberal government to act despite opposition from the coal industry on which it was financially dependent. The coal industry lobby and its demands to contract-out of any compensation act become the dominant issue in the debate.

Relief Societies in Nova Scotia

The experiences of workmen in Nova Scotia followed the patterns occurring in Europe and throughout North America. The coal industry in Nova Scotia was being consolidated and economic power concentrated throughout the late 1800s. By the turn

of the century, the once dominant position of the skilled collier was under siege from swells of lesser skilled part-time miners who were also fishermen and farmers. The Provincial Workmen's Association's (PWA) lodges and the miners' relief societies provided the colliers a significant social network from which to influence the changing environment.

The colliers, however, were not the only occupation group to adopt the self-help philosophy and to act through the creation of mutual benefits societies. A review of the articles submitted by the Nova Scotia correspondents for the *Eastern Labor News* during 1909 and 1910 provide several references to the activities of union benefit or relief funds. These articles reveal that the Street Railway Employees' Union of Halifax had established a fund in 1910 to render "material service to those who have had the misfortune to meet with accidents."¹ In an earlier report relative to the International Union with which the Railway Carmen were associated it was stated that "Their international carries an old age pension and mortuary benefit, in addition to which the local body provides sick and relief benefits."²

In 1909, a report noted,

The Longshoremen's Associations had eight deaths among its members during the past twelve months. Four hundred dollars were paid out in this behalf. The mortuary benefit fund of this association has been the means of rendering assistance to many that badly needed it. Trade unions are indeed doing a humane and truly Christian work and such examples as this should suffice to prove to our opponents that we are not by any means selfish.³

McKay, in the *Craft Transformed*, states that as early as 1833 the Carpenters' Society in Nova Scotia had established rules with respect to the relief of members due to sickness or poverty.⁴ McKay describes the importance of these benefits to the craft unions,

The more radical trade unionists of the early twentieth century ruthlessly mocked such practices [draping black crepe to mark the death of a member] as those of "coffin clubs", but for these craftsmen [carpenters] they were important fraternal traditions,

whose roots lay far back in the nineteenth century. Indeed, for many members, the strongest tie to the union was the fraternal one.⁵

The miners' relief societies attained a prominence not achieved by other union and fraternal groups. The PWA began lobbying for legislation to formalize the relief societies in 1886. By 1889, Robert Drummond, Grand Secretary of the PWA "listed relief societies among the achievements of the PWA which had given Nova Scotia better mine legislation than any other part of the English speaking world."⁶

Speaking in the Nova Scotia House of Assembly Tanner, a Conservative opposition member, urged the Liberal government to do more for the miners by increasing its support for the relief societies from one third of a cent per ton of coal sold to one cent per ton by stating, "He wanted to impress the right and just claims of these men to fair recognition at the hands of the government."⁷

In response to the criticism Premier Murray defended the Government's record,

[T]he inauguration of the miners' relief societies was due entirely to the present government of the province. The government had gone on giving what they regarded as generous assistance to these societies, assistance which, of course his hon. friend would regard as trifling, but the representatives of the miners' societies felt that in consequence of the enlarged exchequer at the command of the government they could afford to give something more. The government said they would take the matter into consideration, and last winter they met with the representatives of the societies and asked them what their demands were, and the government embodied them in legislation which they carried through the legislature, granting the demands in full.⁸

It had been suggested in the Assembly that a broad plan of benefits be created for the miners following closely the German example. Tanner reminded the House of the debate which had occurred in 1902 in which the proposal was first put forward,

The desirability was pressed upon the government of extending the benefits of these societies to certain classes of men. If he remembers correctly, there was to be the ordinary relief; then there was to be the old age pension fund; then there was to be payments on account of death claims, and finally something was to be done for the class referred to this afternoon in assisting in cases of disability.⁹

In response to pressure from the PWA and members of the House, the Government proposed a bill to establish a commission of three "to examine and report upon the feasibility of a scheme to provide old age pensions for workmen, especially in connection with the miners' relief societies."¹⁰

The Commission was created in 1907. It began hearings in mining communities in the fall of that year traveling to ten locations before concluding its work in Halifax. Written submissions were also encouraged particularly from the relief societies and PWA lodges. The Commission's report does not inventory the written submissions but a summary of the oral evidence taken is presented as an appendix to the main report. The secretaries and/or treasurers of eighteen relief societies appeared to give testimony, as did thirteen PWA lodge spokesmen, five mining company officials, two colliery doctors, and about 20 individual miners who were not identified as having any specific status as spokesmen for a specific group.

The final report of the Commission was primarily concerned with the matter of old age pensions. With respect to the operations of the relief societies the report stated, "The Commission are unanimously of opinion that were it not for the present Relief Societies and the local conditions which have grown up around them, the ideal system would be to organize one Society of all the Colliery workers of Nova Scotia, providing the benefits of the present Societies and adding thereto the total disability and old age pensions features."¹¹

The Commissioners continued in their report to address the role the Government should play in relation to the miners,

The coal mines are perhaps the greatest provincial asset. The coal royalty therefrom is the only item of provincial revenue which seems to be capable of any great expansion: We have ascertained beyond all question that coal miners do not continue to follow the occupation. In former times the growing demand for labor in the coal mines was met by sons of miners, but these apparently are no longer available, and of late years there has resulted in a large importation of foreigners. Whether this is

desirable or not, is not for us to discuss, but it emphasizes the conclusion that any legislation which would make the occupation more attractive to our people would be desirable.¹²

It will be noted that the Government share in proportion to the amount paid by the members varies from 16 per cent in the lowest case to 49% in the highest. This is an anomaly so serious as to demand an immediate remedy. The difficulty arises in connection with the basis of payment which in our judgment is no longer applicable to the changed conditions in our coal mines. We suggest that the contribution of the Government shall be 50 per cent., and of the employers be fixed at twenty-five per cent, of the per capita amount paid in by each member of the Society.¹³

The Commission was so concerned with the variation in practices by the societies it proposed a standard constitution for the societies that they recommended should not be allowed to be amended.¹⁴ The Commission also proposed changes to recognize that miners often contribute to more than one society as they move between collieries. As well the Commission recommended the creation of a disaster fund, standard accounting and reporting practices, and the supervision of the societies by a Government appointed inspector of societies. It was clear from the report's conclusion that significant improvements could be made. Surprisingly, the Commission did not plead the case of the relief societies who appeared before them and received no government funding, nor did the Commission venture too far in recommending an expansion of the relief society system beyond certain occupations it believed were considered essential to the operations of coal mining.

Beck summarizes the Murray government's response to the Commission's recommendations,

[I]t had recommended a plan for aged and disabled miners. Accordingly Murray took action to appoint an Old Age Pension Board to formulate a plan providing old age and disability pensions of members of the Colliery Workers' Provident Society branches, the funds to come from the miners, the coal companies, and the government. Fearful that the proposal would be regarded as socialistic, the *Chronicle* explained that, although the bill might be a pioneering one in America, it was "founded not on the theories of visionaries, but on the sober...recommendations of a most responsible and competent Commission."¹⁵

The bill to create the Nova Scotia Colliery Workers' Provident Society and to create an Old Age Pension Board passed the legislature in 1908, but was never proclaimed into law. The relief societies existed within the industrial and political economic hierarchy of decision making in Nova Scotia. The Dominion Coal Company, the largest and most mechanized of the collieries obtained the greatest benefit from the PWA sponsored relief system. The legislation providing for the establishment of miners' relief societies remains in force but was modified in 1917 to make allowance for operation of the Workmen's Compensation Board.

Frank comments on the frequent references by J. B McLachlan on the division of responsibilities between the miners and their families,

McLachlan had made the point that the miner's wife was the hero of the household, struggling to make ends meet with limited resources...Like most of his contemporaries among labour leaders, McLachlan shared in the patriarchal view that it was the responsibility of the male wage earner to secure a wage adequate to support a family. That responsibility was part of the sacred obligation of a husband to his wife and children...This particular breadwinner version of the cult of masculinity, one that recurred again and again in McLachlan's speeches, had the additional advantage that it conformed to prevailing public attitudes about male responsibility. Masculine virtue was not just a form of middle-class privilege, this discourse implied, it was also a reasonable expectation within working-class culture...the coal miners' wage agitations had the eminently responsible social objective of protecting the stability of family life.¹⁶

The miners' relief societies followed this pattern of protecting against the loss of the principal family income, or source of credit at the company store. No mention is made of any women belonging or participating in the relief societies

The link between community based lodges and social action is discussed by Clawson. "Groups that share a common interest and location in the social structure may act in quite different ways; some may never engage in visible collective action while others are militant. In the effort to specify the particular circumstances influencing the emergence of collective action, the resource mobilization perspective identifies the

presence of already-existing social ties as a key variable. When such ties link people into units, they are then available to facilitate communication and action and to serve as the organizational basis for more explicitly political acts of mobilization, resistance and struggle.”¹⁷ “The more extensive its [the group] common identity and internal network, the more organized the group and the more capable of articulating a common interest and mobilizing in pursuit of it.”¹⁸

The miners’ relief societies operated as part of a complex set of social networks. Individual societies focused on the hierarchical structure of the particular colliery, the relationship between the colliers and other workers at the mine, the PWA lodge members and those outside the lodge, the workers and the mine management and the PWA Grand Council and the network of relief societies.

Extremes of communication in terms of access to information, agency of the miners and their families and their influence were expressed throughout the testimony before the Commission. These inequities were masked during the legislative debates surrounding the benefits of the relief society system by the generic statements of Premier Murray, and the Government’s statistics on the funding of the relief societies.

It is clear that not all societies were operated or created equally. If the original societies were a response to the desire to provide mutual aid and self-help, the Dominion Coal Company’s societies were co-opted to serve a corporate function. The thrust to contract-out of the compensation legislation was an example of this behavior that served the interest of the company over the interests of the men, their families and the community.

The strength of the miners was drawn from two sources, the vital nature of the industry in which they laboured, and the strength of their unions. McKay explains the economic significance of the coal industry,

In an economy dependent on coal, railways, and steamships, workers derived tremendous power from the interlocked

character of production. A 19th century coal strike was a nuisance; a large coal strike in the 20th century was a calamity. A new dynamism would be found in this economy, and here lies the key to the militancy of these years [1901-1914]. Workers enjoyed the unusual position- in the Maritimes, at any rate- of being able to take advantage of their scarcity value in the labour markets.¹⁹

The PWA had been extremely influential before 1909. McKay argues that a direct connection can be made between strikes and radical ideological shifts following the 1904 steel strike and the 1909-11 unrest in the coal fields. "Part of the ambiguity was the ability of the mainstream politicians to absorb radical rhetoric and even concede working-class demands. There could be no better example of this responsiveness than the progressive policies followed by the Nova Scotia Liberals, who constructed an alliance with the PWA to help consolidate their long hold on provincial political power."²⁰ The PWA with its craft union orientation, however, was not able or willing to marshal the breadth of this discontent, the very factor which had become the calling card of its challenger, the United Mine Workers of America (UMW).

As has been shown by 1910, class-consciousness, paternalism and craft unionism were causing strain in the most important industry, and the most significant source of revenue to the Government of Nova Scotia. Beck summarizes the situation the Government found itself in,

In 1910 the assembly concerned itself particularly with the coal and associated industries, and with accompanying regulatory bills. The previous year's surplus had been only \$15,422 because of the strikes in Cape Breton and Springhill that had cut coal production and hence royalties. The strikes had resulted from a collision between the Provincial Workingmen's Association (PWA), long operative in the province, and the newly arrived United Mine Workers of America (UMW), which sought to supplant it. The Conservatives demanded that the government use its authority, "if it has any authority," to effect a reconciliation, but Murray insisted that no government was "big enough or strong enough to ...tell [the miners] that they must go to work...The company said no [to recognition of UMW], and the men said unless you recognize us we will not work."²¹

The debates surrounding the introduction of workmen's compensation in Nova Scotia provided a new focus for the discussion of the miners' relief societies. Politicians on both sides of the Legislative Assembly sought to ensure that the good works of the societies were not undermined by any state intervention in compensation for industrial accidents or diseases. The right of employers and workmen to contract-out of the compensation act as a means of ensuring the future of the societies was proposed. Speaking in 1913, Tanner argued against a contracting-out clause,

The Hon. Member for Cape Breton did not want anything done which would imperil the relief societies, but it must be remembered that the reason why the relief societies were created was that there was no Workmens Compensation Act. They were built up in the first instance by the men; and the Government and the companies were induced to come in and assist, but that was because at the time we were without the ideal system.²²

The societies were defended from many quarters, the Hon. Mr. MacGregor stated as part of the same debate, "There was not only an advantage in the Relief Society that it dealt with cases of sickness but it always seemed to him a splendid thing to have these Societies where employer and employee worked together, which tended to good feelings and harmony."²³

The question of the position of the miners on the contracting-out issue was hotly contested territory in the House of Assembly with a number of speakers presenting conflicting opinions based on their own experiences and sources of information. The Government, however, would be persuaded by the views expressed by Mr. F. W. Armstrong, secretary to the Dominion Coal Company's relief societies.

[I]t was stated by Mr. Armstrong, representing the relief societies, that he regarded the relief funds as a better scheme than the Compensation Act. He said they were better for the workmen...Mr. Armstrong said that in Great Britain a great number of societies did not come under the Act and he used that as an argument to show that the larger companies in Cape Breton should be excluded.²⁴

Mr. MacGregor reminded the members that, “[W]e had on the floors of the legislature delegations representing the workmen of the Province, who came here and in the most intelligent manner, showing a full grasp of the situation, presented the view that they would prefer to have a continuation of the mutual relief societies rather than the Workmen’s Compensation Act.”²⁵

The question arose in the Assembly as to who these delegates were that represented the relief societies and what opportunity the workmen had to express their opinions. The structure of the societies as provided for in their bylaws and the participation of the members appears to vary significantly. In the testimony before the Committee on Old Age Pensions some miners referred to meetings of the men, at other collieries including the Dominion Coal mines it was commented that such meetings were never conducted. The following example was provided as to the officers of the largest relief society operated by the Dominion Coal Company,

By the statement of the Miners Relief Fund for 1911 the following appeared to be the officers,-

M. J. Butler, President.
 Michael McNeil, Vice President
 F. W. Gray, Secretary
 Alfred Bower,
 F. W. Armstrong, Treasurer.

It was noted that there were five men. He was dealing now with the Coal Company. Mr. Butler was the general manager of the Dominion Coal and Steel Company. F. W. Gray was Secretary to Butler. Alfred Bower and McNeil were the two representatives of the miners. The fifth man was Mr. Armstrong who represented himself as he was paid by the Society \$125.00 a month as secretary. Why should he not be in favor of relief societies? Could it be contended that he came to the Legislature to represent the miners?²⁶

In reply to a question regarding his personal involvement in the operation of the Dominion Coal Company societies in 1907, the General Manager of the Company who was also President of the relief society responded that he left this responsibility to Mr. Armstrong to carry out unless there was trouble in which case the manager or colliery

clerk might become involved.²⁷ It is hard to imagine F. W. Armstrong strayed far from the coal company position in his representations to the Assembly.

The steel workers' relief societies operated in a different class from the miners' relief societies. No government funding was provided. In testimony before a committee of the House considering the 1910 compensation legislation a representative of the Dominion Steel Co. described the process leading to the creation of its relief society,

Amongst the men themselves a sort of feeling began to grow that something better could be done. The result was that they approached the company and said instead of paying so much money to those insurance companies, wont you pay it to us if we will organize amongst ourselves a mutual benefit society that will take care of all the injured people at the works- will you not make a generous contribution to its funds. I was the person to whom this request was brought and I considered the matter, and thought that it was a good thing...After three months of very careful study of the organization of mutual benefit societies and other organizations of a similar nature in Canada and Great Britain, we elaborated a constitution and by-law which was adopted five or six years ago. This society went into operation, since which time the company has not had a policy of insurance on its workmen; it has not been called upon to pay one single claim for indemnity- but the men have received a very much larger sum of money than they would have received under the old system [insurance],- a very much larger sum of money, I fancy, than they would have received under any workman's compensation Act. The result is we have at the works at Sydney an organization today which takes care of the persons who are injured, for which the Company could be held liable for under this Act, from the smallest accident up to the fatal accident.²⁸

In response to questions from Dr. Kendall, a colliery doctor and Liberal member of the House of Assembly for Cape Breton, regarding the management structure of the society, the company official described,

With respect to the government of this society, the Company has practically no voice in the administration of this fund. The constitution of the society provides that the company shall have representation on the committee. The committee of management consists of 15 persons- these were elected at the commencement of the society...No employee is required to pay. It is absolutely voluntary. At the present time there are not more than 40 men in the employ of the company who are not members of the association. And I can speak with confidence for the men who compose the society, and say that they would give up many things before they would consent to go back to the state of affairs which prevailed before the foundation of this system.²⁹

Concern continued to be expressed on several occasions as to who actually represented the views of the men in the question of the societies. In 1913, a member of the Assembly stated, "Representation had been made by Mr. G. H. Duggan of the Coal Company and Mr. John Moffat, representing the workmen of the County of Cape Breton. These two telegrams must have been dictated by the same person because they were identical in terms [opposing the compensation act]...If a plebiscite were taken he believed nine-tenths of the miners of Nova Scotia would be in favour, of the Act [Workmen's Compensation Act].³⁰

During the final debates over the 1915 Workmen's Compensation Act, the government stated with confidence its opinions regarding the relief societies. Attorney General Armstrong who had tabled the Bill, reported,

It was satisfactory to know that some of our relief societies had a good record. It could be said without hesitancy that the management of the societies had been a pronounced success and that no mere compensation Act which provided only for cases of accident would afford the same benefits. In the case of some of these societies as much as 70 per cent. of the payments was for sickness not connected with industrial disease, and only 30 per cent. for what would be called strictly accidents and industrial disease. If this were so it could only be brought about by a condition that no compensation Act could hope to reach. In the case of these societies the company and the employees contributed on a mutual basis and as long as the employees were willing to contribute to such a fund the matter presented a claim for consideration that has no equal in any other country.³¹

No comment is made regarding the scale of benefits that would have been made available under the societies as opposed to the compensation act. Neither structure provided for medical costs, but the compensation bill would provide for 55 percent of earnings up to \$22 per week, the majority of the societies paid benefits of only \$3.50 per week.

Another important issue was the principle that by forcing employers to accept the cost of accidents including compensation costs that they would for competitive reasons be more inclined to invest in safer methods and equipment. This matter had seemed to

elude the Government in its consideration of the compensation scheme. A member of the Assembly observed,

There was one other feature more important than all. He wished to call attention of the House to a curious condition of affairs now existing in Cape Breton. There were there some five hospitals. In the Town of Glace Bay were two, they would do credit to a town of three times its population. Large, well-equipped, with excellent staff, both of nurses and medical men, in every way modern and these two hospitals are taxed to their limit. He would ask the House to consider whether or not the compensation Act would have a tendency greater even than the relief association to do away with carelessness in the mining portions of Cape Breton, whether it would have a tendency to send less men to these hospitals.³²

Company check-offs from the men's pay included many items among them the relief societies and additional contributions for the colliery doctor and hospital. The relief societies played no role in promoting safety. Safety was the responsibility of the union and company directly, and of the mine inspector. In Germany, a close relationship existed between the insurance programs and accident prevention. In Britain, the insurance company's premiums had failed to differentiate between safe and unsafe employers which was recognized as a weakness in the system.

In 1917, the Compensation Board reported its first accident statistics. A total of 1,823 claims were filed by employees in the coal mining industries including 1,408 temporary disability claims.³³ It is hard not to wonder what the human toll actually was, it must have been far greater than the 200 accidents reported to the Legislature by the inspector of mines.

The Government's final position on the matter of the relief societies and the 1915 Compensation Act was articulated by the Attorney General. The 1915 Act would continue the practice of allowing for contracting-out by a select group of companies, named in the statute, providing that the new compensation board was satisfied that the workmen had received "equally advantageous terms".³⁴

The first annual report of the Workmen's Compensation Board provided the answer to the question of the standard of benefits. The Board denied the applications by the Dominion Coal Company and The Dominion Iron and Steel Company to contract-out of the Act based on the existence of the relief societies and associated benefits to the workmen.³⁵ The applications were denied despite the presence of F. W. Armstrong as the Vice Chairman of the new Board. The Nova Scotia Steel & Coal Company was entitled under the Act to make application but chose not to.

Mr. Douglas, a Liberal critic of the Government, while debating a bill providing for the creation of the Lunenburg Fishermen's Relief Association reminded the Government of concessions previously made with respect to the miners' relief societies and the standard of care typically expected from the trustees of the such funds,

[H]e desired to call the attention of the Government to the fact that this important principle [funds invested should be done in the manner authorized by the law on the investment of trust funds] has been omitted from the Act in relation to Miners' Relief funds. The Societies in connection with the mines of the Dominion Coal Company had a reserve fund amounting to \$150,000 and instead of being invested as was proposed by this Bill it was handed back to the company.³⁶

Premier Murray's response to Mr. Douglas' claim was to state that he believed that interest was being paid to the societies.³⁷ The miners contributed more than 50 percent of the funds collected by the societies. The benefits when provided were far from generous yet some of the societies had accumulated substantial surpluses of which the men received little or no benefit.

It had been hoped that the Government would "deem it advisable to contribute a certain amount to this society [Fishermen's Relief]...the coal miners, who like our hardy fishermen, were pursuing a hazardous occupation."³⁸ This never happened.

The Nova Scotia Debates: 1900-1912

While the need to improve working conditions was compelling for trade unionists and labour party candidates winning over the recently enfranchised working class voter was becoming of increasing significance to both the Liberal and Conservative parties. Workmen's compensation and factory legislation were two issues over which these voters could be attracted. The chart below traces the introduction of factory and mine safety legislation, and compensation insurance initiatives in relation to elections held in Nova Scotia.

Election	Event	Date	Activity
1897	Mine safety regulations	1895	Coal mines act includes safety rules, and sets out conditions for work by "boys", includes mines inspector
	Miners' relief societies	1889	Provided for general registration of miners relief societies and government funding based on three tenths of one cent per ton of coal sold
1901	Employers' Liability for Injury Act	1900	Preserved the common law fault based system but removed some barriers to workers
	Protection of Persons Employed in Factories Act	1901	Regulates conditions for women and girls and requires that the employer not endanger the health and safety of the employees and the appointment of a factories inspector
	Factory inspector	1908	First factory inspector retained by government
1911	Workmen's Compensation Act	1910	Workers has to choose to take common law actions or accept the remedies provided by the Act, covered employment of more than 10 workmen, excluded agriculture, fishing, lumbering, and saw mills, provided contracting-out for coal and steel industries with relief societies
	Workmen's Compensation Act	1912	Amended to apply to covered employments with less than 5 employees
	Lunenburg Fishermen's Relief Association	1913	Established by legislation
1916	Workmen's Compensation Act	1915	Based on the Meredith principles- industry rather than the worker was to bear the hazard of protection and the Act also afforded the largest amount of compensation possible with as little litigation as possible
	Workmen's Compensation Board	1917	Opens offices

1920	General Accident Association; Amendment	1919	Funded from the accident fund to promote accident prevention Medical aid benefits added
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There appears to be a close relationship between factory legislation, factory inspector's reports and the introduction of workmen's compensation legislation. Social and union pressure to regulate factory working conditions particularly for women and children often included a provision calling for the appointment of the factory inspector. As the inspector began to file reports of the working conditions that were encountered pressure would grow for greater government intervention.

The pattern repeated itself in Nova Scotia. The Factories Act was given royal assent in 1901.³⁹ While the Act contained provisions for the appointment of a factory inspector, Premier Murray responding to a question in the Assembly four years later replied "the Government had the question of the appointment of such an inspector under consideration."⁴⁰ The inspector was not appointed until 1908. By 1909 the inspector was hard at work, his report to the Assembly contained the following commentary with respect to public interest in his activities,

The number of people interested in, and who give much time and intelligent thought to social and moral questions in their relation to factory life, is much larger than many would suppose. In every section of the province I am frequently asked, "What are the conditions in this town?" "Are they observing the law in our factories?" "How do you find things?" and numerous other questions relating to my work. This report should give a correct answer to these questions. The information given will, I trust, be of some service, not only to the members of the legislature, but also to the public generally.⁴¹

In addition to the information provided by the factory inspector, the Commission on Hours of Labor, appointed in 1909 provided an extensive survey of workplaces in Nova Scotia. These new sources of information combined with the activities of the trade unions, labour party candidates and those concerned with progressive approaches to

government and society to pressure the Government to move forward on the issue of workmen's compensation.

The pressure from social reformers and unions were changing the public attitudes that influenced political decisions in Nova Scotia. These attitudes were reflecting a shift from the British model to respond to North American influences.

The United States Steel Company is frequently referred to in the American literature reviewed by Smith. Business managers in Nova Scotia looked to US Steel for leadership and as a bases of comparison for their operations. The Hours of Labor Commission described the approach of the Dominion Iron and Steel Company with respect to unions as, "following this policy [of not recognizing unions] of the United States Steel Corporation. On the other hand it does not penalize men who join a union, and some of its employees are members of the unions of their trades. Where there is such a large percentage of foreign labor, and such a mixture of it, organization is difficult."⁴²

Speaking in 1909 to the National Civic Federation (NCF) in the United States, George W. Perkins of the International Harvester and United States Steel corporations explained big business support of compensation and other welfare plans,

Cooperation in business," he said, "is taking and should take the place of ruthless competition." If "this new order of things is better for capital and better for the consumer, then in order to succeed permanently it must demonstrate that it is better for the laborer." Profit sharing, pensions, sick and accident insurance, Perkins emphasized, "must mean cooperation between capital and labor"...The Harvester Company, Perkins explained, "did not do this out of pure philanthropy," but was motivated by "purely business spirit." The idea was "that the plans would so knit [the company's] vast organization together, so stimulate individual initiative," so "strengthen and develop the esprit de corps" that it would enable the company to increase its earnings.⁴³

Smith states that "accident prevention was supported by statistics and additional professional personnel...business periodicals came to argue that welfare work paid. This assertion was something of a tautology, however, because the welfare work accepted by

business was only that part of the new social work that eventually proved profitable.⁴⁴

Smith concludes that

Implicit in these calculations of profitability was the degree of control exercised by management over the workplace. Increased mechanization and the expanding scale of the new factories diluted the power of workers from foremen on down but also make work more monotonous and dangerous. By presenting welfare work as an outgrowth of management's concern for the safety and well-being of the worker, management could speak to the concerns of both workers and reformers, placate both and retain if not increase its degree of control over the new workplace. In a sense, this was the real profitability of welfare work.⁴⁵

The Hours of Labor Commission offered the following observation regarding the different attitudes of managers in Nova Scotia and their relations with their workmen,

The labor conditions at this plant [Nova Scotia Steel Company] differ to some extent from those of the Dominion Iron & Steel Company. Most, if not all the men employed at Trenton, are Nova Scotians, and the absence of foreign labor makes a difference. Further there is less change in the labor force from year to year than in Sydney. One of the representatives of the men stated that he had been with the Company sixteen years, and that a great many had been there longer. In Sydney, organized labor men feel strongly and speak hardily of the Dominion Iron & Steel Company, in New Glasgow no such spirit appeared to the Commission. On the contrary the feeling among the men in regard to the Company is exceptionally good.⁴⁶

In contrast to the Commission's observations, a spokesman for the Dominion Iron and Steel Company testifying in Nova Scotia in 1910 described the company's involvement in its relief plan,

I am not going to take credit for the Steel Co for any altruistic motives on their part; doubtless anything the Steel Co does for its employees, is done because they expect to derive some benefit from it- and I suppose the chief benefit they expect to derive in paying sums to employees who are injured at their works (and they could not at law be compelled to make such compensation) is to get some return in the way of satisfied employees, in the way of loyalty and esprit de corps.⁴⁷

The management philosophy of DISCO appears to fit Smith's analysis. The lived reality of its workforce, in contrast, was far from an esprit de corps.

The early compensation legislation applied to selected occupations or industry sectors such as manufacturing, mining, railways and large construction projects. These

sectors represented industries where the interests of monopoly capital were often subject to union activism in some cases such as the UMW on a continent wide basis.

Tucker provides a further insight into the motivation to move beyond the early system of employers' liability legislation, as well as the selection of industries to which the legislation would originally apply,

[T]he most important linkage between the railways and the development of factory legislation is that initial judge-made common law regulating occupational health and safety for *all* workers largely developed out of employer liability actions brought by railway workers and their families against the railway companies...the focus on factories and railways does not reflect a judgment about the economic importance of industrial production relative to these other sectors [staples production and extraction] of the economy...it is clear the majority of workers in Ontario were employed in non-industrial settings.³⁸

Both the industrial betterment movement and debate around compensation legislation were dominated by large business interests most frequently operating in the manufacturing and mining sectors. Agriculture, forestry, fishing and even retail activities did not play a prominent role in the debates, and remained outside the scope of much of the compensation legislation. It is not surprising that these sectors were also subject to low levels of unionization.

The path to a comprehensive workmen's compensation system was prepared by a tearing away at the structures that had preceded it. These structures included the attitude of managers, and business owners to workplace safety and the effectiveness of the liability insurance system under the employers' liability laws.

The Hours of Labor Commission reviewed the various components of the Dominion Iron and Steel Co. operations at which a total of 2,661 persons were employed within its many departments. The Commissioners described the total number of men as having been "enormously reduced" by the time of its report. It also suggested that changes in equipment might result in further reductions particularly in the unskilled classes of work.⁴⁹ The company maintained detailed statistics of the departments output,

a table of the number of ingots rolled per hours was included in the Commissioner's report as were statistics regarding hours lost in the various operations.⁵⁰ It is clear that the steel company was applying many of the modern management techniques espoused by the Industrial Betterment Movement.

The expansion of this new role for managers and engineers combined with increasing attacks on the inadequacy of the current liability insurance system. The National Civic Federation reported in 1909 that, "Based on the preceding five years, 53 percent of the funds paid to liability insurance companies went for company solicitors and administration. Of the amount paid in compensation, 40 percent was for litigation. Only between 25 and 30 percent of the amount paid by the employer in insurance premiums reached the employee or his family."⁵¹

Similar concerns were voiced in Nova Scotia by the General Manager of the Nova Scotia Steel and Coal Company, "We thought of working on a system of accident insurance; our Company always turned it down because they felt that the insurance people would only pay on the merits of the case, that is, if they were legally responsible, otherwise the widows and orphans would be left in their distress. In other words these accident insurance people would fight the case."⁵²

In addition to the "economic waste" associated with the system, business leaders began to level other complaints, "bring the existing system before the bar of public opinion and charge it first, with disturbing relations between employer and employee; second, with breeding perjury; third, with failure to prevent or decrease accidents; fourth, with uncertainty; fifth, with inhumanity and sixth, with abuse."⁵³

The Industrial Betterment Movement, while centred in the United States, influenced business interests in Nova Scotia. The economic dominance and political influence of the Dominion Iron and Steel Company, and the related Dominion Coal

Company were major factors in deciding the direction of public policy in relation to workplace safety and compulsory workmen's compensation.

Progressive Impulse

While the British legal traditions had a significant impact on the development of workmen's compensation legislation in Canada and Nova Scotia, other forces were also at work. Nova Scotia has a long history of trade, commerce and social interaction with the United States, particularly New England. American industrialists had a major stake in the coal and steel industries of the province. American unions such as the Knights of Labor, and the American Federation of Labor (AFL) affiliates, including the United Mine Workers, were making their presence felt by 1909.

John Joy, representing the Halifax Trade and Labor Council, spoke in 1910 before a legislative committee reviewing the compensation issue. Joy's remarks demonstrate an extensive knowledge of activities in the United States,

[T]he minority committee in Massachusetts reported and recommended a Compensation Act. I want to point out that the State of New York in 1909 appointed a Commission for exactly similar purposes to enquire into the merits of a Compensation Act and to recommend legislation. That Commission was composed of every interest that would be in any way interested in such a question. The Commission sent out letters to 117 employers of labor, and to 70 trades unions, requesting answers giving their opinions on the Compensation Act- and also what they thought of the present law. The answers received from a majority of the employers of labor declared in favor of compensation. The minority stated that they were not entirely in favor of a Compensation Act but that they would welcome some changes in the law. Even the State of New York is now considering this question. The National Civic Federation of that country at its last conference practically resolved to make a demonstration for compensation. On the 20th January, Commissions of the States of Minnesota, New York and Wisconsin met for the purpose of exchanging views and data and that three declared in favor of compensation. One State had gone so far as to provide legislation in that direction.⁵⁴

The National Civic Federation, which included among its membership the President of the American Federation of Labor, had a significant influence over the development of the American compensation system, which like Canada operated not as a nation wide system but at the state government level.

In Nova Scotia the reform impulse was also strong. Howell describes the forces at work at the turn of the century,

Accompanying this starry-eyed crusade for God, Empire, and the progress of mankind, was a more hard-headed faith in the efficient and 'scientific' administration of the social system- the application of scientific management principles to society in the name of greater efficiency...The Protestant application of Christian principles to social reform did not necessarily imply fundamental alterations to the existing system. The large phalanx of 'Social Gospellers', professionals, volunteer agencies, and reform-minded politicians stopped far short of advocating a radical remodeling of modern society. Instead, the reformers steered a middle course between the advocates of traditional individualism- those who defended *laissez-faire* economics, maintained partisan political loyalties, and adhered to traditional notions of individual salvation- and those on the left, the socialist, labourites, and more radical critics of modern industrial capitalism whose prescriptions for economic democracy struck directly at the distribution of power and ownership within society.⁵⁵

The report of the Factory Inspector for 1909 summarizes the labour force characteristics encountered during his inspections. The Inspector provides the following explanation related to interpretation of the statistic contained in the table below

"Statistics of the number of persons employed- men, women, boys and girls- are herein presented. It must not be considered that these statistics are a complete census of the industrial establishments of the Province. They are a record of visits made and of help employed at the time of my inspection. Many workshops are not inspected because, under the law they are not "factories" within the meaning of the word defined in the Factories Act. "⁵⁶ The dominant manufacturing centres were located in Halifax, Cumberland, Pictou and Cape Breton Counties. In Cape Breton, the dominance of the steel industry provided few employment opportunities for women.

County	# of Factories Visited	Men Employed	Boys over 14 but under 18 years	Women Employed	Girls Employed	Total Employment
Halifax	109	2974	419	749	215	4354
Lunenburg	22	353	23	4		380
Queens	26	420	22			442
Shelburne	9	99				99
Yarmouth	6	307	52	141	44	541
Digby	6	187	23			210
Annapolis	9	389	25			414
Kings	19	257	4			261
Hants	52	901	64	63	52	1080
Cumberland	38	2123	162	213	31	2529
Colchester	21	457	40	188	25	710
Pictou	42	1433	109	96	12	1650
Cape Breton	19	3296	113	29		3438
Totals	378	13196	1056	1480	379	16111

Source: Report of the Factories Inspector, 1909, p. 43

The Hours of Labor Commission reported in 1909 on working conditions in industries throughout the Province. The Commission noted that,

The hours of women and young persons employed in cotton and woolen mills are regarded almost everywhere as proper subjects of statutory regulation. This is due partly to the disclosures of the conditions existing in many textile mills in Great Britain in the 19th century, partly to the fact that women and young persons are not able by organization to protect themselves, and partly to the recognition that the health of mothers, and of the rising generation of workers is of first importance. Hence, even those who object to the statutory regulation of the hours of labor of adult males as an unwarranted extension of the functions of the State, recognize the right of the State to regulate the hours of women and young persons, and the beneficent results of such regulation.⁵⁷

The Factory Inspector's Report also discussed the hazards associated with factory work, one of the main focuses of factory legislation was the guarding of machinery and dangerous places. The Inspector describes the importance of these provisions,

Danger to life and limb lurks in so many unexpected places that it is somewhat difficult to determine just where or how fencing or guarding should be erected; experience will eventually assist the inspector in locating places of this kind. On the other hand there are some well-known contributory causes of accidents, and while

every careful worker may escape by being always on the alert, the danger is there to trap the careless or forgetful employee. There can be no excuse for employers where accidents happen from causes. "Carelessness on the part of the worker" is sometimes placed as a foot-note to accident reports, but enquiry in most of these cases show that the primary cause was neglect of the employers; some gear was left uncovered, some set-screw allowed to project, or some other dangerous condition allowed to exist. Not the workman's carelessness, but the employer's negligence was the cause of many of the accidents enumerated [591 accidents were reported of which 12 were fatal] in this report.⁵⁸

A second important feature of the Factory Act related to the employment of child labour, the Factory Inspector reported on the success achieved in this regard. It is important to note how important the inspections conducted appear to have been.

It will therefore be pleasing to you and to the people of the Province to know that employers generally are respecting the child-labor law, and the progress has been such during the past year as to lead one to expect that child labor will soon cease to be an evil with which to reckon. This evil has been checked with promptness and vigor. Troubles that are deep seated are hard to cure, and it will require constant care and watchfulness for some time to abolish child labor entirely.

The number of children under the statutory age found employed was 18, distributed as follows:- New Glasgow 8, Halifax, 5, Amherst 3, Stewiacke, 2...With the exception of Amherst, the children here spoken of, were working under the most objectionable conditions. The employers were ordered to send all of them home immediately, at the same time receiving a warning, that a repetition of offence would mean prosecution.⁵⁹

The Hours of Labor Commission noted that the great majority of wage earners outside the coal mines did not belong to any union. Female wage earners formed a large percentage of the workers in the textile mills, boot and shoe factories, the confectionery establishments, the milk factories, the shop assistants, the telephone offices etc and in trades where they predominate organization was almost non-existent. The Hours of Labor Commission concluded, "It was an open question how far the State should do for any class what that class had not tried to do for itself. In cases where organization is impossible, or even difficult, as in the case of female workers generally, the advisability of State action is less open to doubt."⁶⁰

From the comments of both the Factory Inspector, and the Hours of Labor Commission it becomes clear that regulation of the working conditions of women and children was an essential feature of a “progressive” approach by the state. It was also clear that regulation of the same conditions for male wage earners was crossing the line into unwarranted interference. In the 1910 debates over the compensation bill, it was suggested that the bill apply only to men earning less than \$1,200, male wage earners whose income exceeded this limit “whether by manufacturing labor or otherwise could be left to insure himself against accident.”⁶¹ The line between unwarranted intervention and progressiveness had just shifted again, this time added to the list of those entitled to government protection were male wage earners in the lower income brackets.

As the debate over workmen’s compensation legislation progressed the Murray government’s particular preoccupation with the coal industry appears much more based on its significance in relation to provincial revenues than its absolute dominance in terms of the labour force. The contracting-out provisions for the coal and steel industry relief societies represent a bias towards the interest of capital over the interests of labour.

The 1910 Debates of the House of Assembly contain the report of the Select Committee appointed to consider a draft workmen’s compensation bill. The Committee Chairman Mr. MacGregor in his report to the House provided a brief overview of the evolution of the industrial liability issue and compensation systems in Britain, Germany and United States. He stated, however, that while the Committee was urged to consider the German model rather than the British, “the Committee were not dealing with that phase of the question but only with the Bill as it was placed in their hands.”⁶² MacGregor continued on to provide a safe, but progressive path for Nova Scotia,

Nova Scotia is by no means the first Province in Canada to undertake the enactment of a Workman’s Compensation Act. British Columbia led in 1902 by an Act modeled very largely on the English Compensation Act of 1897. During the last two or three years Quebec, Alberta, and New Brunswick, and this very

year Manitoba fell into line and have adopted Acts more or less based on the English Act.⁶³

MacGregor credited Dr. Kendall, the senior member for Cape Breton for persuading the Assembly members, "In this Province I think great credit is due and should be given to the honourable senior member for Cape Breton (Mr. Kendall), who during the last few years, one might almost say in season and out of season, had led the agitation for a Compensation Act in this Province, and on two occasions had introduced such Acts as a private member."⁶⁴

Dr. Kendall, who began his early career as a colliery doctor, had begun promoting compensation legislation decades before it was introduced. In 1898, Kendall returned from London with "1000 copies of guide to the new British Workman's Compensation Act. Only passed in May 1898. These copies were distributed throughout Coal mines of Nova Scotia and British Columbia also to the Railway employees of I. C. R., Grand Trunk and C. P. R. Railways."⁶⁵

Beck describes Kendall as "the social conscience of the Liberal party".⁶⁶ Kendall was an outspoken critic of the industrialists in Montreal, Hamilton and Toronto who he believed were determined to prevent further development of the steel industry in Nova Scotia. Kendall believed "the duty of government, and especially of liberalism, was to "regulate the forces of society so that the greatest good may be enjoyed by the greatest numbers" . Kendall advocated the abolition of the legislative council, and a redistribution of the assembly to increase the number of members from industrial counties "more attuned to the substance of liberalism."⁶⁷ Kendall also advocated a bill to provide for compulsory recognition of unions, which Murray opposed. Kendall warned the Government against the consequences if Dominion Coal did not recognize the United Mine Workers union.⁶⁸

In 1905, Kendall presented a motion amending the 1900 Employer's Liability Act that was designed to prevent companies from contracting-out of its obligations under the

Act. Kendall was concerned that the Dominion Coal Company was forcing employees to sign agreements without satisfying the provision requiring the employer to provide benefits greater than what was provided under the law. Even Murray supported the amendment in the end.⁶⁹ This was the beginning of a long series of debates regarding the ability of Dominion Coal and several of the other large coal companies to 'contract-out' of legislation. Kendall would routinely ask that the records for accidents in the mines, and the contributions of the company, men and the government to the relief societies be presented to the Assembly.⁷⁰

Kendall appears to have adopted a long-term strategy, recognizing the importance of significant structural change in the legislative process. Kendall maintained a stern resolve to return, 'in season and out' to the issues he believed important. So it was with the compensation issue, as Beck states, "In 1907, however he [Dr. Kendall] sought no more than to make them [workmen's compensation laws] better known."⁷¹

Continuing on in his report on the 1909 Compensation Bill, MacGregor explains,

The reasons for asking for such legislation are not far to see. I suppose largely they may be described as humanitarian reasons. It was urged before the committee on behalf of some employers that this Act was not based on any principle but that it imposed an unjust burden on the employer and that there was no reason in the world why an employer should pay for accidents which occurred through no fault of his own. But another gentlemen who spoke before the committee laid down the great principle which underlies all Compensation Acts, that every trade must carry its own risks, and that society at large must pay the cost, because there was no use evading the fact that the cost will fall on some person, that the employer who will probably insure to protect himself will have to charge it up as one of his overhead expenditures, just as he charges his fire and other insurance today....

Another strong reason for the enactment of this legislation is that even under our present liability laws litigation is very expensive, and as a corollary to this there is bad feeling created between employer and the employee who seeks to recover, and one of the features of the present Act and all the other Compensation Acts along similar lines is that they afford an easy and cheap way for the employee to recover his damages.⁷²

MacGregor then proceeded to summarize the objections that were presented to the Committee: the employers were not ready for such an Act; there was no demand for it; the act would create more not less friction between employer and employee; and that the premiums would “simply be a premium on negligence”. The Committee response to these objections was “that when one turns up the debates in the Imperial House of Commons, when the Compensation Act was first brought in there, one finds the very same arguments used there, and the history of the past thirteen years, since the first Compensation Act was passed in Great Britain negates the whole of this argument.”⁷³

The Committee did find merit, and insufficient solutions to the suggestion that employers might “weed out from time to time the older workmen and those physically unfit who may be more liable to accident.”⁷⁴ The Committee was sympathetic to potential hardships to small employers those who “might work today as journeymen and tomorrow have an opportunity to take a small contract and thus find themselves in the position of employers.”⁷⁵ The exemption provided for the agricultural, fishing and lumbering industries was seen as justified in that “in these particular industries the work is not continuous and it is largely carried on by employees who act to a large extent on their own initiative and are to be considerable extent their own masters.”⁷⁶

A comparison of the provisions of the 1910 Act, and the 1915 Act is included in the appendix to this chapter that highlight the differences between the two approaches. The no-fault features and the state administration included in the 1915 Act were major departures from the approach taken with the 1910 Act.

Special interest groups, some in the background and some very much in the foreground can be identified in the nuances of the debates. Unions, apparently with the exception of the PWA lodges, lobbied to be included under the Act’s provisions while industry lobbied to be excluded. Great effort was made by the Members of the Assembly

to ensure the 1910 Act included the stevedores, owing to the prominence of longshoreman, John Joy, in the debates.⁷⁷

The PWA and the coal companies supported the exemption for the coal miners. A compromise exempting sawmills was reached to save the Act from defeat in the Upper House.⁷⁸ The efforts to obtain special relief were so great one member stated, "The time of the Committee was so taken up in hearing representatives of mines in various part of the Province and the Dominion Iron and Steel Company that representatives of Western industries had no opportunity of being heard."⁷⁹

Murray's government attempted to craft responses, and concessions to the workingmen which were acceptable to capital interests. The years between the two workmen's compensation acts were full of debate regarding the merits of the system, its impact on the various parties, and annual adjustments to the 1910 Act. In 1911, A.K. Maclean was serving his last term as Attorney General before returning to federal politics. Beck describes Maclean as providing the Murray government with "a genuinely progressive stance".⁸⁰ Maclean spoke to members of House on the merits of the English system in relation to the German system,

It may be quite possible that at the last session, when we undertook to enact the English Workmen's Compensation act, we made a mistake, in not giving fuller consideration to the subject. There is a difference of opinion as to whether the English Compensation act is the best system of providing for those engaging in industrial life. I have my views and I think the German system of industrial insurance is the last word spoken on the subject and is infinitely preferable to the Workmen's Compensation act. So far as I was personally concerned I was not enthusiastic in enacting the Workmen's Compensation act last year, largely for the reason that I felt sufficient study and consideration had not been given the measure. However, the act was passed and after all it is largely as compromise measure.⁸¹

In 1912, the Factory Inspector's Report reaffirmed the Government's progressive approach by concluding, "Factory inspection is no longer an experiment; it is recognized by all nations to be a necessity and it has advanced at the same rate as their industries; the greatest manufacturing countries have the most advanced legislation for the

protection of their workers, and year by year they are extending its scope so as to furnish them further protection."⁸²

The Report also contained the results of a special enquiry into 100 accidents at the Dominion and Iron and Steel Company's works. Accidents occurring in the coal mines would not have been included in the inspector's report as these fell under the jurisdiction of the Mine's inspector. A total of 902 accidents in all factories of which 12 were fatal were reported for the year.⁸³

Murray continued to defend the progressive nature of his government and its commitment to the working people of the Province, speaking in 1913, in response to the suggestion that a Department of Labour should be established, Murray replied, "We were here so far in advance of the other Provinces in connection with Labor Legislation that he had been anxious to find out whether there was anything new that could be suggested."⁸⁴

The Labour Unions and Political Action

The craft unions such as the PWA were adverse to state intervention based "on the fear that state action would weaken labor's prerogatives" and "carry with it disintegration of the vital forces of labor".⁸⁵ Further objections to workmen's compensation existed in that "state provision of guildlike pensions and other welfare benefits would reduce the crafts man's loyalty to the union."⁸⁶ Tucker notes that "the craft base of the labour movement excluded the majority of workers".⁸⁷ It was to this larger constituency of the working class that the Labor party and the industrial unions were attempting to appeal. Industrial unions such as the United Mine Workers and Labor party supporters looked more favourably on the extension of insurance benefits to large numbers of workers through state operated or mandated systems. Weakening craft

union affiliations was necessary to the success of industrial unions and a strategic benefit of comprehensive state compensation legislation.

The Dominion Steel Company submitted confidential papers to the Hours of Labour Commission which satisfied the members that the wages it paid compared favorably with those being paid in the United States.⁸⁸ The close competition between the American and Canadian manufacturers also translated into action on behalf of organized labour. The connection between the American unions and the Canadian workers is complex. Craig and Solomon state that

American international unions came to Canada both because Canadian workers wanted them to and because American workers believed that Canadian workers posed a potential 'threat' as cheap labour. By organizing Canadian workers and securing them wages similar to those earned by Americans, the U. S. -based unions achieved two goals: first, Canadians would not be tempted to emigrate to the U.S. and compete with Americans for jobs; and second, American employers would not relocate to Canada for the sole purpose of achieving cheaper wage rates.⁸⁹

Howell discusses the role of the American Federation of Labor in Nova Scotia. "Beginning in 1901 the AF of L's Canadian organizer, John A. Flett, conducted an organizing drive in the Maritimes that spawned more than two dozen new unions in the three provinces...The organizing efforts of the AF of L in the Maritimes may have led to a growing involvement of the region's working class in the union movement, but they also nourished a rivalry between international trade unions and regional unions such as the PWA."⁹⁰

In concluding its report the Hours of Labor Commission reviewed the labour organizations that were active in the Province at the time of its inquiry and provided its opinion regarding the strength of the various unions. It stated "The members of the locals may be few, but their strength lies in the power supporting them...The Longshoremen's Union in Halifax is strong, because of its membership and because of

its concentration upon local problems. The division among the coal miners is obviously a source of weakness."⁹¹

The Commission observed,

In industrial communities the unions of the men in the building trades are amongst the strongest labor organizations in the world. In Nova Scotia there are several unions in these trades. The Bricklayers' International Union has a local in Sydney and in Halifax, there is the Bricklayers' & Masons' Union of Nova Scotia. In Halifax and Sydney are locals of the United Brotherhood of Carpenters and Joiners of America, and there are also a Plumbers' Union and a local of the International Brotherhood of Electrical Workers. The strength of these unions is relative, not so much to the number of members in each as to the strength of the organization of which they are locals. There is no doubt that the number of local members represents only a small portion of the total number of men engaged in these trades in Nova Scotia.⁹²

The majority of the unions identified by the Commission followed the craft union tradition. Affiliations with international unions, to the American Federation of Labor and to the trades and labor council would have a significant influence on the availability of information and on support for issues such as workmen's compensation and labor party activism.

As was the case in Britain and Ontario, the turn of the century was a time of growing working class militancy in Nova Scotia. Howell characterizes the broad base of this discontent "The bitter strikes of these years [1901-1914], fought by coal miners, steelworkers, civic labourers, textile workers, longshoremen, and even such unlikely individuals as paid members of church choirs and professional hockey players, bear witness to the deep class conflict that accompanied the development of modern industrial capitalism."⁹³ The political significance of the working class voter to the main stream political parties was on the increase.

The *Eastern Labor News* (ELN) carried an article dramatizing this point,

The existence of the relief societies gave the appearance of an excuse for the exemption of coal companies, but we can find no reasonable excuse for the exemption of lumbermen and saw mills. This class of labor is surrounded by many things that make

it easy to receive injury. Dangerous machinery is in use and constant vigilance is required to keep out danger. The men engaged in this occupation are not organized, therefore their voice can not be heard in the matter. Verily, the politician knows his game.⁹⁴

The mining industry would play a dominant role in directing the course of workmen's compensation in Nova Scotia. The unions representing the mine workers, however, took opposite views of the legislation— the PWA lobbying for an exemption for the coal and steel workers, while the UMW supported inclusion within the proposed legislation. The division was highlighted in a defense of support for the compensation act in the *Eastern Labor News*, "The Sydney Trades Council were not backward in supporting the Compensation Act and in response to a telegram from their local M.P. have sent a delegation of three good men who at the people's expense will use their best endeavor to see that workingmen and their families are protected against the grasping corporations who sacrifice their employees in the mad rush for big profits."⁹⁵

The ELN reported on the appearances of various groups before the House of Assembly Committee reviewing the compensation bill, "John Moffat and S. B. McNeil of the P.W.A. going on record against the act in favor of the Relief Society which is in vogue in all the collieries of the Dominion Coal Company. But just think of labor leaders as they pride themselves on fighting a legislative measure that is distinctly for the benefit of the working class."⁹⁶

The article continued on to the identify the members of various delegations from the PWA, "one is a chief engineer of a colliery, three are Coal company policemen, three are pay clerks at the colliery, the rest P.W.A. men at present working for the Coal Company. Now who do they represent?"⁹⁷

The miners' unions, however, were preoccupied with more significant issues over union recognition while the compensation debates played out in Halifax. McKay describes another factor which undermined the urgency of the issue for the miners,

“Since miners had a written code of safety regulations and a secure trade union, they could more often wage struggles for safety that lay beyond the reach of other workers—who were left struggling, with some effect, for workmen’s compensation and factory inspection.”⁹⁸

It is not surprising then that John Joy, Halifax longshoreman, Labor Party Candidate, and representative of the Halifax Trade and Labor Council would become the key figure in promoting the labour case for workmen’s compensation. *The Nova Scotian and Weekly Chronicle* provided the following report on a meeting of the Trades and Labor Council,

Mr. Joy had during the passage of the Bill through the House has been on watch night and day to see that no clause detrimental to the interests of labor be inserted to destroy the value of the Bill...the workingmen of Nova Scotia owed Mr. Joy a debt of gratitude which they could never repay. Not only had he been interested in this legislation just passed, but he had always been ready to rise to every call on behalf of labor, and there was not a union in Halifax which was not indebted to him for advice and assistance.⁹⁹

Frank in *J. B. McLachlan- A Biography*, quotes McLachlan as referring to John Joy as “the father of workmen’s compensation in Nova Scotia” and as “the best labor man in the province”.¹⁰⁰

The ELN contained a column that features notes from Halifax. A series of updates were published reporting on the process of the 1910 act through the House of Assembly. The ELN also monitored the Labor party activities and published reports on the Trades and Labor Congress of Canada. One such report published in 1909 focused on the Congress convention of 1908 at which the Executive Council of the Congress was given the mandate to prepare legislation including: a mechanics lien bill; workmen’s compensation act and laws respecting the employment of women and children.¹⁰¹

In May of 1909, the Cumberland Labor Party Platform principles were reproduced. These included “1. A minimum living wage, based on local conditions 2. A

Workmen's Compensation Act."¹⁰² The following year, an article appeared encouraging local unions to affiliate with the Trades and Labor Congress of Canada, among the reasons cited was the importance of collective action, "The only appeal that has any force with governments is one that is backed by votes. We have the votes and therefore the power".¹⁰³ Listed in the same article were the objectives of the Congress that included the need to gain free compulsory education, a mechanics lien law and workmen's compensation legislation.

In December 1909, the ELN published an article credited to the *United Mine Workers' Journal*. The article was critical of the system of employers' liability laws.

To an employers' liability law no one can raise serious objection. It is the expensive machinery necessary for its successful operation that causes objections and taking into consideration that the lack of financial ability on the part of those who need it, places it outside the pale of practical remedies for the evil that confronts us.

So many and intricate are the ways of the lawyers and the courts that it becomes almost a farce for any working man to seek the so called benefits that he expects to receive...

Something should be done, and an agitation in favor of whatever may be agreed upon kept up until we have some guarantee of adequate recompense for all who are killed and injured in industrial pursuits.¹⁰⁴

In March of 1910, the Halifax correspondent provided an update on the Workmen's Compensation Bill, "The writer has seen the Act as it will be presented and it is exactly the same as that introduced by Dr. Kendall at the 1908 session and which was revised by a committee of the Trades and Labor Council at the time. We must give the government credit for not attempting to change the clauses of the original Act."¹⁰⁵

In 1913 Douglas, a Conservative, tabled an amendment to the 1910 Workmen's Compensation Act that would have extended coverage to all industries. He went on to support his proposal by quoting at length the preliminary report of the seminal Meredith enquiry in Ontario which credits labour organizations as having largely fashioned the framework on which the report would be written.

The relationship between union pressure, acquiescence by monopoly capital and a public acceptance of the need for government intervention were critical factors in the willingness of governments to move forward with compensation legislation, and in determining to which sectors the legislation would apply.

The ELN commented on John Joy's candidacy in the 1911 election,

Never in the history of Halifax has there been such interest displayed by the trade unions in the labor political movement. This is a gratifying and encouraging thing to those who have worked so hard for the past two years under adverse circumstances to bring about what has now been decided [to place a candidate in the next election] upon by the Halifax workingmen.¹⁰⁶

McKay discussed the significance of John Joy's appointment in 1916 as one of the first commissioners to be appointed to oversee the operation of the system, "it was also typical that John Joy, the labour candidate and leader of the city's longshoremen, was later co-opted by the Liberal Government as commissioner of its new Workmen's Compensation Board. There were complicated progressive undercurrents at work beneath the frozen surface of Nova Scotia liberalism."¹⁰⁷ John Joy would remain a Commissioner of the Compensation Board for several decades and the Labor Party for which he had been a candidate would fade into the political wilderness in Halifax.

The *Eastern Labor News* reported on a secondary impact of the 1910 Bill,

The Workers' Compensation Act has spurred the employers on in their endeavor to hoodwink the poor wage workers by giving a few cents here or there so as to pose as very sympathetic employers of labor, well able to play on the sentiment of the poor wage workers and to keep them from finding out what a power they possess when they go up to mark their ballot so as to force legislation to better their position.¹⁰⁸

While not all labour voices were satisfied with the passage of the compensation acts, it was a major step forward particularly for those excluded from the system of voluntary relief. Beck discusses the Murray government success in balancing the expectations of labour, capital and the public,

Despite Murray's contention towards the end of his political career that he had always stood by the workmen and given them "as advanced [labour] legislation as ... anywhere else," the evidence is that he provided less than was politically possible, although never lagging so far behind public opinion as to endanger himself. Thus his Employer's Liability for Injuries Act of 1900, instead of using the British act of 1897, followed the much less liberal act of 1880. Not until 1910 did the Workmen's Compensation Act adopt the basic principles of the 1897 act, and even then one Liberal backbencher complained that it excluded workmen were taken into account "you have partially nothing left."

Murray's attempt to maintain a balance between the interests of labour and capital was so successful in the case of the latter that many leading businessmen who supported the Conservatives and the National Policy federally looked upon him with favour.¹⁰⁹

Fiscal Realities

By the beginning of the twentieth century, the work force of the province had become more diverse. A number of industries, and occupations were concentrated in specific areas such as the coal and steel industries in Cape Breton, Pictou and Cumberland counties. Immigrants, many recruited by the government, were distributed around the province and between industries but were most evident within the labour force of the Dominion Iron & Steel Co. and the Dominion Coal Company. The employment of women was also highly concentrated in certain manufacturing industries, and in the growing service sector. The primary resource industries, however, remained a dominant feature of the economy. Unions were most active within the male dominated industries and within the category of skilled labour.

Although, the primary sectors of the economy were still significant in 1910, they had begun to decrease in importance as other sectors grew. The coal mining industry and the steel industry to which it was linked were the dominant economic forces. Howell describes the significant growth that was occurring in the mining and steel making centres,

The opening of the Dominion Iron and Steel Company (DISCO) plant at the beginning of the century contributed significantly to this expansion. A blooming mill was added in 1902, allowing for the production of unfinished forms of steel...With the opening of DISCO, Nova Scotia vaulted into prominence as a steel-producing province. By 1910 the combined output of DISCO at Sydney and the Nova Scotia Steel and Coal Company (Scotia), with operations in Trenton and Sydney Mines, amounted to one-half of the iron and steel production of the entire Dominion.

The expansion of the coal and steel industry changed the face of Cape Breton County...The rapid growth continued into the next decade and placed inordinate demands upon towns for proper housing, sewage systems, electrification, and pure water supply.¹¹⁰

The health of the mining population, the Hours of Work Commission stated, was “affected by other things than the conditions of work. Water, sewerage, housing, overcrowding, housekeeping and moral habits are all of prime importance. And it is not easy to distinguish the effects of these conditions upon the health of the miners from the effects of the conditions of their work.”¹¹¹

The Commission also reported on the coal consumption of the iron and steel industries, which is instructive in establishing both the relative size of the operations and the potential disruptive effects of strikes in the coalfields. The Dominion Iron & Steel Co. consumed about 850,000 tons per annum dramatically overshadowing the Nova Scotia Steel Co. at 55,000 tons and firms like Robb Engineering Co. and the Starr Manufacturing Co., from 3,000 to 4,000 tons.¹¹²

The impact of the contracting-out provisions of Nova Scotia's 1910 Act continued to be a contentious subject. In Cape Breton County, it was argued 12,000 to 15,000 persons were excluded by this provision. The impact of the contracting-out provisions hinged on the question of whether the miners and their families were better off under the relief society system or under the provisions of the compensation act.

Following passage of the 1910 Bill, the *Eastern Labor News* carried a report stating that, “It is estimated that the Dominion Coal Company will save \$80,000 a year because of the exemption. They now pay about \$13,000 or \$20,000 into the miners’

relief fund...The P.W.A. favored the relief Society, but it can be clearly demonstrated that the act would have given greater recompense in case of accident or death."¹¹³

The company would have had the option to pay directly the cost of each claim rather than to purchase insurance, but given the reported accidents included in the factory and mines inspector's reports, the risks might have been very high. The potential financial implications for the company would explain company officials repeated representations to the House on their own behalf and that of the relief societies.

In a heated debate regarding the Government's motives with respect to the contracting-out issue a Liberal member suggested, "Mr. Murray should try in this ingenious way to drag a red herring [the relief societies] over the trail and conceal his real concern for the employers rather than the laborers."¹¹⁴

There was little doubt the pressure on the government would have been sizable. Abbott traces the growth of the coal royalties as a source of revenue "economic, political and legal interdependence grew as the provincial government increasingly became more dependent on royalties".¹¹⁵ In 1872 the coal royalties comprised seven percent of revenues. By 1900 they had increased to 41 percent. Presenting the public accounts for the fiscal year ended 30th September 1913 Premier Murray advised the members of the Assembly that, "Our largest sources of revenue have been first, from the Dominion Government amounting to \$636,666.86. This equals the amount as estimated. The royalty from mines is another large producing source of revenue, \$852,954.04"¹¹⁶

Further detail on the mines royalties is provided in the 1914 Mines Report, "The Cape Breton collieries produced eighty-two per cent of the entire production of the Province, and out of that the Dominion Coal Company's production was about seventy per cent of the entire production of the Province."¹¹⁷

The first annual report of the Workmen's Compensation Board reported a total of \$390,573 in assessment income for the year from the coal-mining sector the majority of which would have been collected from Dominion Coal as the largest single employer.¹¹⁸

The 1910 Workmen's Compensation Act had been modeled on the British legislation and had been promoted by Dr. Kendall and John Joy. Members of the legislature had discussed the developments in the United States and the German system, but these approaches had not prevailed. After 1912, the direction was significantly altered with the release of the Meredith's preliminary report in Ontario. The legislation that flowed from Meredith's recommendations created a distinct Canadian response to the issue of compensation for victims of industrial injury and disease and a model Nova Scotia would embrace as the basis for the 1915 Workmen's Compensation Act.

The Breadwinner's Law, Nova Scotia 1915

In Ontario, Sir William Meredith had crafted the definitive Canadian response to workmen's compensation legislation. In 1915 Meredith's recommendations were incorporated into legislation in Ontario. Meredith had proved adept at recognizing and balancing the same forces, which were challenging the Murray government. Meredith, the Conservative, provided Murray, the Liberal, not only with a blueprint for reform, but a well-reasoned argument to address the court of public opinion. Howell reflects on the forces at work within Nova Scotia's Liberal party.

Murray's caution stemmed largely from the existence of three divergent groups within the Nova Scotia Liberal Party. One was largely rural. Committed to a *laissez-faire* market-place of freely competing individuals, this generally distrusted big capital and organized labour and remained hostile to most social-reform initiatives, except for prohibition. A second group...spoke for the business interests of the province and supported reform only when they saw it contributing to a more businesslike

administration of provincial affairs. A final group...urged broader commitment to social justice, worker's rights, and public-health reform in response to the unfortunate side-effects of too-rapid industrialization.¹¹⁹

The Nova Scotia House of Assembly opened in 1915 with the Lieutenant-Governor reading the Throne Speech that announced the Government's intentions to introduce a new compensation act. The legislative session was over shadowed by the war, and it is hard to imagine this did not change the nature of the debate regarding the workmen's compensation. For several years the more progressive members of the House, both Liberal and Conservative, had promoted the German model of compensation as superior to the British approach. In 1915, the Government looked more carefully at the new Ontario legislation rather than pursuing this earlier line of debate.

Members of the Legislature had debated appointing a commission of enquiry to look into the compensation issue. Murray was concerned that the businessmen were occupied with the demands of the war effort and that an investigation would be "an embarrassment to them".¹²⁰ Instead Murray looked for advice from the secretary to the Dominion Coal Company relief societies Mr. F. W. Armstrong.

Attorney General Armstrong moved the second reading of the 1915 Workmen's Compensation Act with the following remarks,

[T]his Bill involved a departure with respect to the principles of Workmen's Compensation Acts from those that had hitherto prevailed. The Province of Nova Scotia took no second place to any other country so far as legislation of this character was concerned. While we were not mere copyists we were under some obligation to the legislation of other provinces for some of the outstanding features of the Bill, which was one that materially affected a great portion of our population. We had at the present time in force in the Province as Employers' Liability Act; a Factories' Act; an Act with respect to Mutual Relief Societies; an Act with respect to schools for miners and other pieces of legislation in the interest of the working classes of the Province which dealt on advanced lines with the subjects to which they related and were up to date. The necessity for some form of legislation in reference to compensation to workmen was universally admitted. It had received very general attention and at the present time no one would question the necessity for such legislation. The advance attention given to the subject was due to the recognition of the necessity for placing the laws relating to

compensation to workmen on a sound, logical and economic basis. Everyone would recognize that protection for industrial occupations constituted one of the most important subjects that this or any Legislature had to deal with. The movement in the direction of providing adequate laws for the protection of workmen was world wide in its application.¹²¹

Armstrong then explained the rationale behind the move from the British based system incorporated in Nova Scotia's 1910 Act which relied on individual liability and the new collective liability system which had been adopted in Ontario and Washington State.

It was estimated in the State of Washington that of those engaged in industrial occupations 85 per cent. had made absolutely no provision for accidents or sickness outside of what they received under the Workmen's Compensation Act. If it were not for the provisions of Compensation Acts a large number of employees would be turned upon the public and would have to become objects of charitable aid or private support. In the end, therefore, it would be found that whether it was through Poor Relief Acts or compensation systems the public must take the responsibility and must bear the burden and the question was how to do it in the most economical way.¹²²

The Nova Scotia Government accepted this argument. It convinced itself that industry would not unduly be put at risk, as the majority of provinces and states were adopting similar laws. The insurance costs were being incorporated in the cost of the goods produced, and as long as competitive products included similar costs Nova Scotia goods would not be disadvantaged.

A lengthy debate was held over the merits of the individual clauses of the bill, the issue of waiting periods before benefits would be paid, the method of classification of industries, and the administrative systems that would be required. One of the frequently cited reasons for the introduction of compensation was the potential problems arising out of common law actions against employers. This seemed to be of little concern to the members of the Assembly in Nova Scotia. "Up to the present time, under our Employers' Liability law, claimant could go into court and take his option and he (Mr. B.[Butts]) thought there were one or two decisions in the Supreme Court of Nova Scotia."¹²³

The Canada Law Book Company published a summary of all Canadian judicial decisions. Between 1901 and 1910, five Nova Scotia cases involving employers' liability were listed. Two cases were filed against the Dominion Iron and Steel Company, one against the Nova Scotia Steel & Coal Company, another against the Inverness Coal & Railway Co., and the last against another small mining operation. In almost all cases, the companies were found not to be negligent, but this was not the case in other parts of Canada. During the same time frame awards for injuries where employers had been found negligent ranged from \$1,500 to \$6,000.¹²⁴

This is a small number of cases compared to the number of reported accidents and fatalities. In 1908, the Nova Scotia factories and mines inspectors reported 804 accidents of which 47 were fatalities for the year.¹²⁵ Given these accident statistics, other factors must have deterred the number of legal cases. Matters were either settled out of court, or a lack of financial resources or an unwillingness to take legal action against employers resulted many cases not being pursued.

In articulating the principle of accident prevention, Attorney General Armstrong was the first speaker in Nova Scotia to suggest that financial penalties should result from accidents and high-risk industries. This was a common feature in the positions articulated in the industrial betterment movement and by the trade unions in their arguments in favour of compensation. The British experience had been that the private insurance premiums varied little from company to company and had not provided the hoped for incentive. In addition to the factory inspector's work, the schedule of premiums owed to the compensation board was to act as a motivating factor in favour of safety.

Armstrong also explained that, "In Ontario there had been organized some twenty odd of these societies, for the purpose of reducing the number of accidents. The matter should receive careful attention in the hands of the various industries. The result of these associations would be to reduce the cost of premiums to a minimum. The direct

effect being to curtail the assessment of the industries that had to maintain the accident fund."¹²⁶ While the 1915 Act contained a provision to finance an accident prevention society, none was established until after 1919.

The matter of the relief societies and the contracting-out clause was also debated in the context of the "likelihood or non-likelihood of a reduction in the number of accidents" as a result of the operations of the societies.¹²⁷ While the miners themselves had lobbied for safety regulations for the mines in their negotiations with the companies, there appears to be no relationship between these activities and the operations of the relief societies. The contributions of the companies and the government were based on coal sales not on men employed or accidents at the collieries.

John Joy described the balance that was struck from the workingmen's perspective,

In reference to the contracting out clause of which some of the workingmen of Cape Breton, who already have benefits features in connection with their organizations, and some of whom wished to be exempted from the provisions of the Act, it was explained by Mr. Joy that the workingmen in that district would be granted a plebiscite, taken by secret ballot, whereby they would be given an opportunity to vote whether they will retain their benefits system or decide to partake of the benefits of the Compensation Act.¹²⁸

In the end, the Murray government would rush the 1915 Act through the committee system of the Assembly and conduct the final vote the next day in effort to end the session of the Assembly. The opposition protested but Murray replied, "He [Murray] was under the impression that probably there would never be another piece of legislation, taking it all in all, to which a greater amount of public discussion had been given."¹²⁹

Despite political claims to the contrary,

The government explained in the legislature that the principle underlying the 1915 legislation was that "industry rather than the individual workman should bear the hazard of protection and also that there should be afforded the largest amount of compensation possible with as little litigation as possible...Its

position [the Government] was that the Meredith model of workers' compensation was the most equitable, efficient and cost-effective model available.¹³⁰

The Meredith model provided room for considerable tailoring to local political needs and economic conditions. The inclusion of certain industries within the system, and the size of establishment to be included, as well as the level of benefits to be paid could be adjusted without compromising the principles.

A promotional pamphlet produced in 1915 extolled the virtues of the new workmen's compensation act and encouraged workmen to support the Murray government and vote for the Liberal candidates in the upcoming election. The richly coloured cover of the pamphlet contained images that establish the cornerstones of the compensation legislation: the breadwinner mythology; progressive values; and, a belief in industrial growth as the way to achieve a better society. The use of colour in the brochure's cover, featuring— red, yellow and green combines to create a vibrant feeling, one of optimism, in which liberal red plays a dominant role. Standing in the foreground is a strong young tradesman at work with tools and anvil, healthy and very clean despite his work, symbolic of 'all workmen'. He stands tall and proud. Behind him, the industry, large factory complexes obviously at work with smoke billowing from the numerous stacks, trains in motion at the ready to serve, wrought iron pillar, the wheel of industry all as the title suggests evidence 'Nova Scotia's most material industrial progress'. In the top corner, as if in a vision in the back of the workman's mind, an idyllic image of a large home, set with mature trees and a large green surrounding the house. The text reinforces the relationship between the workman and the house 'The Workman's Life, His Family, His Home'.

These images exist in stark contrast to the lived reality of the majority of wage earners in Nova Scotia. The Hours of Labor Commission concluded,

The miner's life is not a pleasant one. Working in the depths of the earth, amid dust and damp and gas, liable at any moment to

grave danger, it is little wonder that he likes a day off, and that especially in summer he likes to spend a whole day in the sunshine and pure air. And his life, outside working hours, is often not a pleasant one. The mining towns as a rule, can only be described in one way- they are ugly. Many of the men have gone to the pits from the farm, and the wonder perhaps is that they work as regularly as they do. They are criticised for their absenteeism, and other things. A just appreciation of all the conditions would spare the criticism, especially the criticism that has nothing better to offer.¹³¹

Certainly from the descriptions of the living conditions in the steel and coal towns it is hard to imagine a tradesman having such a home as the one in the illustration. It is also important to remember that workmen's compensation was needed because of the numbers of men who did not return home from work, and were mutilated.



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What is interesting is the appeal of the pamphlet to the breadwinner, to the socially responsible husband and father. There is no reminder of destitute women or children, the sick or the old. There is no suggestion of the government stepping in to protect the families. This may be explained because the pamphlet was an election tool, designed to appeal to the male voter and his sense of duty and responsibility. The pamphlet describes the significance of the legislation,

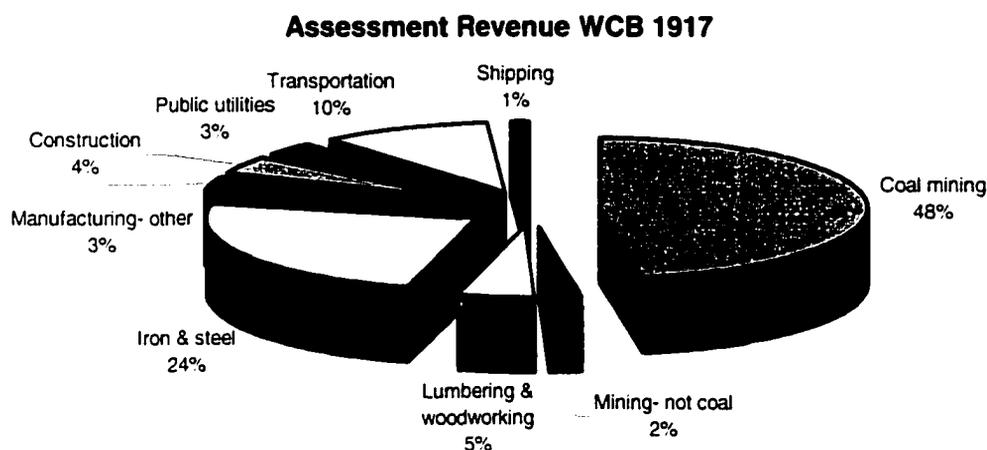
For many years the question of enacting a sound and humane compensation law has engaged the attention of our Legislators, and the first practical step was taken in 1910 when the Murray Government passed an advanced law respecting Compensation for Workmen. This was considered a great step forward and brought commendation from all sides. At the sessions of 1912, 1913, and 1914 the Act was further improved.

But it was the session of 1915 that produced the ideal measure of Compensation, when the Murray Government, realizing the necessity of a sounder and more humane measure of Compensation for our Workmen, passes a law that stands out as the greatest labour legislation in the history of the world. It is the law which the English workingman has been seeking for years, and be it ever to our credit Nova Scotia was the first to enact it into law.

The members of the first Workmen's Compensation Board were appointed in October 1916. They were: V. J. Paton, Chairman; F. W. Armstrong, Vice-Chairman; and J. T. Joy, Commissioner.¹³² For reasons not explained other than possibly the timing of the election of June of 1916, the Murray Government took more than a year to appoint the Board. The Board members were an interesting group. Paton appears to have played no direct role in the more than 10 years of debates. Beck reports that Paton was rewarded in the mid 1920's for his support for the Liberal party with an appointment to the Supreme Court.¹³³ Joy and Armstrong were very much involved in the lengthy debates leading to the creation of the new Board.

The Board reported that it began work immediately to prepare to issue payments as of January 1, 1917. An industrial census of 4,000 industries was completed, however, when the qualifications of size and industry class were applied only 1,704

industries remained to be rated for insurance premiums.¹³⁴ The coal and steel industry represented the largest payrolls from which assessment revenues were collected.



Source: *NSWCB Annual Report, 1917*

The Board noted in its first report that,

Before the Board established its assessment rates, there was some nervousness upon the part of employers as to what the rates would be. Many employers anticipated much higher rates. We believe that much of the opposition on the part of employers to the passing of the Workmen's Compensation Act in Nova Scotia was due to the fear on their part as to what the rates would be. The rates established by the Board were received by the employers generally as a relief from the uncertainty and fear which previously existed.¹³⁵

As previously noted the Board denied the application for contracting-out submitted by the Dominion Coal Company and the Dominion Iron & Steel Company. The Nova Scotia Steel & Coal Co. though eligible under the Act for the contracting-out provisions made no application for exemption.¹³⁶ While the Dominion Companies lost their case for contracting-out they would successfully secure other concessions in the future. McKinnon writing in 1958 described the situation,

Prior to this enactment [WC Act of 1915] it had become customary for employees of many coal mines in the Province to pay Doctors, hospitals and Relief Associations through a check-off from their wages.

The Workmen's Compensation Act as originally enacted provided but limited hospitalization and medical coverage, and the employees of the mines in some areas were endeavoring to organize Relief Associations to assist injured miners who did not qualify under the provisions of the Act, and to care for them during periods of sickness and non-occupational injury...the employees' agreement to check-off for Doctor and hospital is, in practice a condition of employment...the employing Companies contribute: sums to the Relief Association, the various hospitals and office space and mailing facilities for the Relief Association..the consideration accruing to the employer in return for these payments... is relief from assessment for Medical Aid under the Workmen's Compensation Act."¹³⁷

The concessions referred to by McKinnon with respect to medical aid payments to cover the cost of medical treatment were a later feature of the Compensation act introduced by amendment in 1919. Prior to that date the workmen were responsible for these costs and therefore the companies rate reduction would not have been in effect.

The Board established procedures for processing claims. It stated that its aim was to "enable a workman to obtain compensation with the least possible trouble and delay, and without being obligated to go to any legal expense."¹³⁸ The Board also reported on its activities to prevent "malingering and fraud."¹³⁹

The Board reported on two significant coal mining disasters. In 1917, 65 workmen were killed in New Waterford. In 1918, 88 men were killed in Stellarton. The Board concluded its comments by saying, "It is remarkable that these two disasters should occur practically during the first year's operation of the Compensation Act, but it is most fortunate for widows and orphans of the men who lost their lives that the Act was in force."¹⁴⁰ It is more than somewhat ironic that Armstrong was a member of the Board having fought for so long in defense of the relief societies.

While the focus of the breadwinners' law discourse had been on male wage earners, the legislation was drafted to include women within its protective provisions.

The 1918 report of the Board indicates that benefits were paid on behalf of 4,888 males and 43 females. As well as an 11 year old child, and eleven individuals over the age of 75 were found eligible for benefits. While the majority of men were married, more than 80 percent of the women were single. Over all 70 percent of the claims paid were from individuals working in the coal and steel counties of Nova Scotia- Cumberland, Pictou and Cape Breton County.¹⁴¹

The debate over workmen's compensation is rich with the tensions of the early twentieth century. In Nova Scotia, not only does the debate reflect the progressive moment, the changing role of the state, and the increasing involvement of new government agencies but also it reflects the growing tensions between the skilled and the unskilled, and the awakening of both class consciousness and the expanding trade union movement. The debate also dramatized the extreme vulnerability of the Government of Nova Scotia to those who controlled the coal industry. This of course was only the beginning of the debate that would embroil successive administrations. Murray's statement in 1915 that "He was under the impression that probably there would never be another piece of legislation, taking it all in all, to which a greater amount of public discussion had been given" would ring true for almost every Premier to follow him.¹⁴²

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Appendix

Key Concept	Nova Scotia Employers Liability Act 1900 based on the British Act of 1880	Nova Scotia Workmen's Comp. Act 1910 based on the British Act of 1897	Nova Scotia Workmen's Comp. Act 1975 based on Meredith Principles
Liability Principle	Individual Liability on behalf of the Employer	Individual Liability on behalf of the Employer	Collective Liability; and individual liability for certain specified industries
Fault clause	Personal injury arising out of and in the course of employment, the employer shall be liable to pay compensation if fault can be proved he was at fault or if the accident was wholly or in part due to the negligence of a fellow workman.	Personal injury arising out of and in the course of employment, the employer shall be liable to pay compensation regardless of his fault in causing the accident, and unless proof of serious and wilful misconduct or drunkenness on behalf of the worker could be proven Workmen earning more than \$1200 per year were exempt	No fault system in which the worker gained the right to benefits without regard to his own negligence and gave up the right to sue the employer Compensation is not provided where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement A schedule of industrial diseases to be compensated
Industry classes	Railways; factories; mines; quarries; engineering work; buildings Firms excluded that had less than 10 employees. A contracting out clause was provided for selected coalmines with relief societies.	Railways; factories; mines; quarries; engineering work; buildings Firms excluded that had less than 10 employees, farming, fishing, lumbering and sawmills were all exempt. A contracting out clause was provided for selected coal mines with relief societies.	Industries are classed in two schedules- the first those that are part of the collective liability system and the second being those under the individual liability system. Schedule 2 includes the railways, municipal enterprises, telephone and navigation companies. Schedule 1 includes all industries with the exception of farming, fishing, lumbering, wholesale and retail establishments, domestic service. Firms excluded based on the number of employees (less than 5 employees) Contracting-out was provided for selected coal mines with relief societies.
Compensation		Weekly payment of \$7.00 would be payable up to a maximum payment of \$1,500 and a lump payment in the case of death was to be three years earnings up to \$1,000.	Compensation was available on a wage loss basis for the duration of the injury, 55 % of earnings, 7 day waiting period, and annual max of \$2,000.

Recourse to the Courts	Determined by the Courts upon conviction	An arbitrator was appointed failing that the matter was referred to the Court.	Board was granted 'exclusive jurisdiction' to make decisions Only matters of the law, not of fact, could be referred to the Courts
Method of Insurance	Three options to the employer- <ul style="list-style-type: none"> • mutual insurance, • private insurance, • direct compensation 	Three options to the employer- <ul style="list-style-type: none"> • mutual insurance, • private insurance, • direct compensation 	Compulsory payment to the Board, with the Board provided with exclusive jurisdiction to adjudicate and pay claims
Role of Government	None	Limited	To administer the system through the creation of a Board of Directors, and to fund the administrative costs of operating the system
Relationship to Safety	None	Addressed outside the Act	Assessments to paid based on the hazards within an industry
Funding	Insurance or risk was a cost of doing business The loss to the workmen was a risk associated with the occupation	Compensation was a cost of operating a business	Cost of operating a business, but also support systems to injured workers not compensated through insurance were a cost to society as a whole Debate occurred over whether the 'accident fund' such be based on a current cost plan or on the capitalized value of future benefits
Objective	Remove the impact of the 'doctrine of common employment', and the unpredictability of Court decisions regarding benefits to the injured workmen	Remove the requirement to prove negligence on the part of the employer	One of the main purposes- the prevention of the injured workman becoming a burden on his relatives or friends or on the community

Chapter 3 Nova Scotia's Politics of Crisis Management: 1920-1999

With the opening of the doors of the Workmen's Compensation Board offices the debate shifted from philosophical discussions to operational concerns. The compensation system has touched the lives of close to 2 million Nova Scotians. The history of the system is rich with stories of political concessions and tragedies. Was the compensation system somehow expected to contribute to preventing these tragedies or was its role merely to address the widowed, orphaned or injured? It is virtually impossible to assess the success or the failure of the system-- the objectives were never clearly stated-- unless success is weighed in terms of political compromise.

There have been more than a dozen formal inquiries into the operations of the workers' compensation system since the Meredith based legislation was introduced in 1915. The resulting reports provide a valuable insight into the ebbs and flows of political influence. The story of the compensation system is inseparable from the province's political economy punctuated by personal, industrial and community tragedies. But it is equally inseparable from the interplay between dominant capital interests and pressure from organized labour, both of which will be assessed in this chapter. It will be argued that throughout the period from 1920 to 1999 the government of Nova Scotia has consistently responded to the interests of monopoly capital. Successive governments were reluctant to make change or introduce measures that would undermine its need to attract new investment.

The compensation system evolved as described in the introduction through a number of phases. Between 1915 and 1950, the compensation system focused on its insurance function and only modest efforts were made with respect to health and safety. The Board of Commissioners, full-time appointees, of the government made

decisions regarding claims and set assessment rates for employers. The economy was still dominated by traditional industries, fishing, forestry, coal and steel. Three royal commissions were appointed. The Dennis Commission in the 1920s restructured coverage in the fishing industry and recommended the addition of rehabilitation benefits. The Hanway Commission in the 1930s voiced its concerns regarding a growing lack of confidence in the system while recommending a reduction in benefit levels for the lumbering industry. In the 1950s, the McKinnon Commission completed one of the most comprehensive reviews of the Nova Scotia system. Benefit levels had become inadequate causing complaints from municipal welfare agencies. In addition, the Springhill mine disasters focused attention on the inadequacy on safety regulations and the need for compassion.

Throughout the 1960s and 1970s, government institutions grew significantly. The adjudication and safety functions of the compensation boards were affected as guidelines and regulations were developed and more duties were assigned to staff rather than the commissioners themselves. Nova Scotia was not at the forefront of the institutionalization phase of compensation system development. The Clarke Commission in the mid 1960s emphasized the need for greater effort in accident prevention, increased benefits and recommended that the fishing industry be re-integrated into the mainstream of the compensation system. In the mid 1970s two select committees of the legislature recommended the indexing of pensions and benefits and created the external appeal system. Nova Scotia was one of the last provinces to adopt the new model of comprehensive health and safety legislation based on the internal responsibility system.

The 1981 select committee produced the most comprehensive assessment of the system since McKinnon's report. The committee emphasized the importance of accident prevention, proposed a change to wage replacement benefits, recommended the extension of the system to all workplaces and occupations, and suggested a merit

rating system to reward or penalize employers based on their accident performance. The majority of these recommendations were ignored. The wage replacement system would be forced on the board by the courts in the early 1990s, while merit rating was implemented in 1995.

By the late 1980s many of the compensation systems across Canada had been significantly changed by the combined impact of the benefits expansion of the 1970s, the lack of adequate financial planning and the growing impact of neo-conservative political philosophies. Nova Scotia's compensation system was nearly bankrupt before legislative changes were made. A regular series of white papers, select and special committees were appointed throughout the 1980s and 1990s.

While Nova Scotia escaped the more radical measures of some of the neo-conservative governments, the system was fundamentally altered by several significant court rulings. A corporate board of governors was appointed from labour and management representatives. New policies and programs were implemented. The OH&S system was fundamentally affected by the aftermath of the Westray mine disaster. The most comprehensive review of the regulatory system was completed resulting in legislative and ongoing regulatory changes. The OH&S administrative structure was also greatly expanded in recent years.

The public reaction to the mine disasters proved short-term windows of opportunity where improvements were made to safety regulations and to the insurance program. In more recent years, successful legal challenges to the system by injured workers and widows have created instability. The combination of escalating costs and pressure from injured worker groups has created a new political crisis. This situation was not unique to Nova Scotia but years of neglect and mismanagement have allowed Nova Scotia's position to become extreme.

The Atlantic Provinces Economic Council provides an important context to the provincial government's need to define its place in relation to the federal government and thus capture the hearts if not the minds of the electorate, "The century following Confederation was one of rapid economic and social evolution in which those minor responsibilities left to the provinces at Confederation became focal points of major provincial and national importance. Health, welfare, education and roads to name a few."¹

The following chart captures the key events affecting the compensation system in Nova Scotia. The proximity of these changes occurring either immediately before or after an election demonstrates the continuing prominence of the issue in the minds of the politicians and the electorate alike.

Election Year	Legislative Activity	Date Effective	Major Changes
1920	General Accident Association; Amendment	1919	Funded from the accident fund to promote accident prevention Medical aid benefits added
1928	Royal Commission [Dennis]	1927	Rehabilitation benefits added Recommendation to establish Part III allowing the fishing industry to gain private insurance with max benefits set
	Amendment	1931	Benefit of the doubt clause added
1937	Royal Commission [Hanway]	1938	Reports on the lack of confidence of workmen and employers in the administration of the Act Benefits for lumbering industry exempt from general increases. Results in a major revision of the Act in 1938
1956	Royal Commission [McKinnon]	1958	Resulted in legislative changes in 1959, many increasing the level of benefits
1967	Royal Commission [Clarke]	1968	Benefits revised; Fishery reintegrated under Part I; safety emphasized, Board takes over responsibility for safety, Accident Prevention association is closed
	Select Committee	1973	Provided for indexing of benefits to CPI
1974	Select Committee	1974	Appeal Board created
1981	Select Committee	1981	Emphasized safety and rehabilitation; shift to earnings loss benefits, universal coverage and merit rating
	McKeough Report	1983	Recommends that all safety services be consolidated in Department of Labour and new Safety Act is introduced
1984	Ministerial Action Group Auditor General's Report	1987	Identifies serious problems
1988	White Paper	1988	Dual award system, New bill
	Select Committee	1990	Revises bill, and requires actuarial analysis
1991	Amendment	1992	Creates new corporate board
	Discussion paper; Peat Marwick Stevenson &	1993	Board found to have only 18 months worth of reserves from which to pay all future benefits

	Kellog report		
1994	White Paper	1994	Proposes return to wage loss. Reduction in benefits. Government financial guarantee to stabilizing financial situation
	Workers' Compensation Act	1996	Implements 1994 recommendations
1998	Select Committee Auditor General's report	1998	Recommendations to address appeal backlog some of which is 7 years old
1999	Amendments	1999	Addressed chronic pain, appeal processes.

The first section of this chapter traces the significant decisions and events affecting the key features of the system. The second section provides a Canadian context to the events and problems that came to dominate the system in the last two decades. The issues facing the system in Nova Scotia were not unique but the unwillingness or inability of the government to intervene strategically allowed the problems to compound and become the most significant in the country.

The Compensation System in Operation

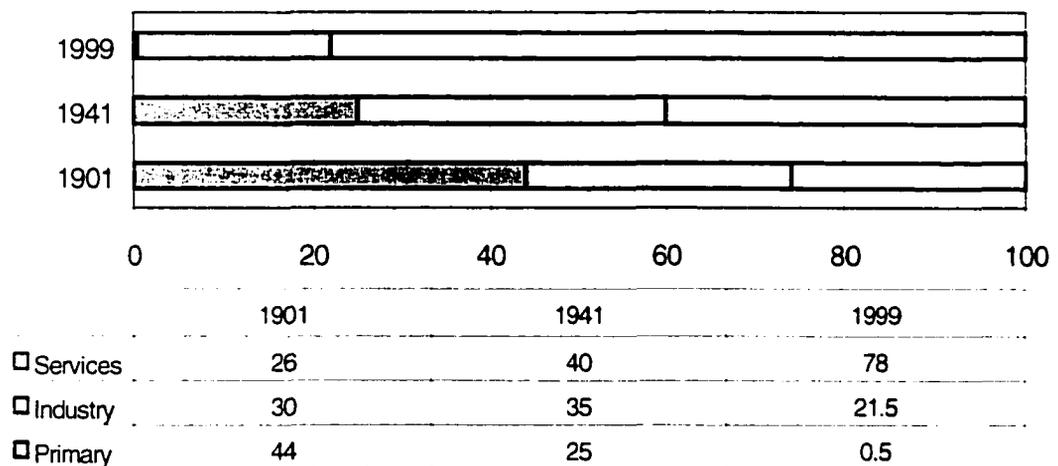
The features of the compensation system are interdependent. These features have been grouped for analytical purposes into the following categories: coverage; jurisdiction; insurance program, funding, eligibility, compensation, administration, medical and rehabilitation and safety. Significant issues and developments within the system are reviewed in the context of each of these features. Many of the changes were made in response to a specific crisis, few reflect a comprehensive investigation and rethinking of the system and its objectives.

Coverage

The 1915 Workmen's Compensation Act established an insurance program that provided coverage for individuals employed in industrial undertakings. The employers

included within the compulsory provisions of the Act were divided into two schedules following Meredith's procedure. Railways, municipal enterprises, telephone and navigation companies operated under the individual liability model, while all other industries employing more than 5 employees become part of the collective liability system. The Act excluded farming, fishing, lumbering, wholesale, retail and domestic service. With close to forty percent of the province's employment in the primary sectors of farming, fishing and lumbering a large proportion of the labour force remained unaffected by workmen's compensation.

**NS Employment
Percentage Distribution Between Sectors**



Sources: Statistics Canada, Labour Force Historical Review, CD-Rom 71 F0004XCB, and Alexander, David, "Economic Growth in the Atlantic Region, 1880 to 1940". *Acadiensis Reader: Volume Two Atlantic Canada After Confederation, Second Edition*. Editors: P. A. Buckner, David Frank, Acadiensis Press, Fredericton, 1988, p. 142

The case of the fishing industry offers an interesting example of the governments changing views with respect to the issue of coverage. Initially excluded from the act, the industry would be integrated into the collective liability pool, only to be carved out again with its own special legislative treatment. The pressure from capital interests was intense while the fishermen remained largely unorganized.

For wage earners in those industries outside of the scope of the Act private relief or public services were the only alternatives. Relief associations continued to operate in some of the fishing communities such as "the Lunenburg Fishermen's Benefit Association, a private compensation plan open to fishermen resident in Lunenburg County and similar to other relief associations in other industries...Of the 2700 fishermen in Lunenburg County eligible to join the association in 1915 only 1400 had signed up..² These systems however were far from adequate.

Winsor discusses the conditions that eventually lead to the industry being included,

It should be remembered that at the time [1919] that this amendment [providing for coverage for offshore fishermen and sailors who worked on coastal trading schooners] was brought in, both Canada and Nova Scotia were in turmoil. May 1919 marked the beginning of the Winnipeg General Strike, an event that was to have profound effects on the labour movement and the political system in Canada. In Nova Scotia a major strike was taking place in Halifax, while Amherst was in the throes of a general strike. South of the border, in Gloucester, Massachusetts, schooner fishermen had gone on strike and had ventured as far north as Yarmouth, Nova Scotia seeking support. For the Nova Scotia fish merchants, granting fishermen protection under worker's compensation may have appeared a mild antidote compared to the labour turmoil in the rest of the world.³

The pattern had been set years ago and in another country, workers compensation legislation was a compromise. As an issue developed, the relative importance of the affected parties, their respective influence on the state, and the willingness of the state to act was weighed. In 1915, the climate was favourable to bring

selected commercial, construction, mining and factories within the scope of the Act. In 1919 it was the fishing sector.

Major disasters in the fishing industry caused rates to increase dramatically. The fishing vessel owners and captains argued that they could not afford the compensation system, "The vessel owners and captains in Lunenburg, plagued by uncertain prices the loss of six vessels and one hundred thirty-eight men in one year, responded by announcing that if they were not removed from the Workmen's Compensation Act, they would close down the industry in Lunenburg and go out of business, as they could not afford to pay the new rates set by the Board."⁴

Over the years 1920-1927 inclusive the [fishing] industry had contributed a total of \$242,000 or about \$30,000 a year. The total claims over that eight-year period amounted to \$600,000 which not only wiped out the industry's small credit in the Disaster Fund, but left the Board with the staggering deficit of about \$360,000. The whole scheme was in its infancy and the Government was very perturbed with the problems raised by the fishing industry.⁵

The government responded in 1927 by establishing a royal commission under C. D. Dennis. Winsor describes the Commissioner's report.

Dennis [appointed to head a Royal Commission into the Rating of the Lunenburg Fishing Fleet and the Lumber Industry in 1927] in his report to the provincial government agreed with the vessel owners and captains. In making his recommendations Dennis realistically recognized that fishing, as practiced aboard the schooners of Lunenburg, was a dangerous occupation, but he went on to indicate his basic ignorance of the concepts of Workmen's Compensation by pointing out that other maritime countries had not included fishermen under workmen's compensation...The question of safety and accident prevention, two of the pillars in the philosophy behind the thinking of the Workmen's Compensation Act, were completely ignored by Dennis in his report.⁶

The Dennis Commission recommended that a separate system of compensation be created for the fishing sector. The new section severely limited the benefits available to the fishermen and their families thereby reducing the cost of the system.

Chap. 42 set up Part III which applied only to the industry of fishing. Briefly it provided that employers in the fishing industry were not liable for Part I assessments but every contract of

employment between owner and fisherman was deemed to include a covenant by the employer that if the fisherman was killed or injured in the course of his employment, then he or his dependents would be entitled to compensation under the Part I scale. The employer was required to insure his possible liabilities with a reliable Underwriter. The limit of liability for claims arising out of any one accident was set at \$50,000 [per vessel]....As a result of the introduction in 1928 of Part III the Lunenburg owners set up their own fund. The other owners joined P&I Clubs and insured against awards made under Part III.⁷

The Meredith principles on which the 1915 Act was based incorporated the “collective liability” approach to funding claims. It was not surprising that the Canadian Manufacturers’ Association supported the vessel owners, as the manufacturers would have had to make up for the shortfall created by the fishing sector,

Their ability [the vessel owners] to get out of the responsibility of paying the debt [a deficiency in the fishing sub sector in excess of \$360,000; the CMA had lobbied in 1928 that the debt be assumed as a public responsibility], removing themselves from the coverage of the Workmen’s Compensation Board, and lobbying the Provincial Government to guarantee subsidies for compensation rates for the Lunenburg fleet above five percent, were indications of the kind of political influence the Lunenburg vessel owners had both in the fishing industry and in the province.⁸

The need for compensation for the fisherman and their families should have been compelling. Winsor argues that the fishermen themselves shared the responsibility for the loss of benefits,

This attitude toward the health and safety of fishermen during the early 1920’s set precedents that were to haunt fishermen for the next fifty years. The lack of unionization, the neglect of health and safety regulations, the lowering of the amounts of compensation to which fishermen were entitled, and the failure of the fishing industry to come to grips with its own structural deficiencies, set the pattern for years to come.⁹

The fishermen were not the only group to have been affected by the introduction of ‘special provisions’ to the Act. In 1937, another commission of inquiry recommended reducing the benefits paid to lumbermen. Commissioner Hanway explained the change,

With the increasing losses and suggested increases in compensation it is obvious that the industry [lumbering] can not very well bear the added burden. If these losses are to be paid out of assessments levied on that industry, the rate would be raised to the point that the industry could not carry. For these

reasons, Your Commission suggests that the increases recommended for employees be not made applicable to persons employed in the lumbering industry.¹⁰

The question of the needs of the communities is never very clearly addressed during these inquiries. In 1939, Saunders writing on public health issues in Nova Scotia expresses concern about the rural areas noting that “especially the fishing communities: there are inadequate medical, dental and nursing services.”¹¹ It would seem from Saunders’ observations that the medical services supported by the friendly societies and the compensation system were important to the community as a whole.

During the early years of the breadwinners’ law it was clear that the unions, the longshoremen, the building trades, the miners and steelworkers had influence on the government’s actions. As this direct influence diminished within the traditional political parties, attention turned to the creation of an electoral alternative. During the 1930s and 1940s, the Co-operative Commonwealth Federation (CCF) struggled to establish roots in the province, and to organize electoral support. McKay describes the internal struggle that existed within the party, “The Cape Breton members envisioned a Labour Party based on those who toiled in the mines and in the steel mill, while Halifax spokesmen wanted a genteel party of moderate social reform.”¹²

Even within this political alternative, the significant role of the miners and steelworkers overwhelmed other voices. Objections to the Dennis’ and Hanway’s recommendations affecting lumbering and the fishery were not voiced too strongly.

During the late 1960s and early 1970s Canada experienced a long period of high inflation, voluntary restraint programs were followed in 1975, by compulsory wage and price controls that lasted for three years.¹³ This was also the period for massive restructuring of the ailing coal and steel industries. Work began in 1968 on the legislation to create the new federal crown corporation, Cape Breton Development Corporation, to operate the coal mines. Hawker Siddeley announced it was closing the Sydney steel

mill. The inflationary pressures added political pressure to the debate over workmen's compensation benefits.

The 1981 Select Committee of the Legislature conducted another review of the system. It made extensive recommendations. Among its many recommendations was a proposal to expand of the base of coverage to other types of employment.

This Committee believes that the principle of universal coverage is preferable because the tragedy of an accident obviously respects no such artificial listings. Industries and occupations which were formerly considered to be safe such as teaching, clerical, etc are now subject to risks not previously considered. This Committee believes the proper approach is to provide coverage for industries except where a very persuasive case can be advanced against the inclusion on the grounds of administrative impossibility or other factors....The number of employees required before compulsory coverage commences should be reduced from three to one employee.¹⁴

Meredith had argued in favour of the principle of universal coverage but stopped short of making the recommendation after weighing the political and practical objections that such a feature might attract. The issue of coverage affects perceptions of fairness in the system in terms of distributing benefits to workers and costs to employers. Coverage can be both compulsory and voluntary depending on legislation and on the perceived benefits to both employers and workers. In 1996, coverage in Newfoundland was extended to over 95 percent of the workers in the province. In New Brunswick 80 percent of the workforce is covered under the act.¹⁵

Currently in Nova Scotia, more than 30 percent of the labour force falls outside the compulsory jurisdiction of the Compensation Board. Some of the excluded employees have negotiated or are the beneficiaries of private insurance coverage. The Insurance Bureau of Canada opposed proposals to expand the base of workers covered by the Act. The Bureau argued that "If the introduction of Workers' Compensation coverage to the financial services sector would provide benefits to our employees which they were not presently receiving, it would make our arguments [against compulsory coverage] substantially weaker. The reality is however that this move to universal

coverage will not benefit our employees, and in fact may disadvantage them.”¹⁶ The Insurance Bureau argues that their private coverage is superior as it covers employees 24 hours a day, employees can receive up to 100 percent of gross salary on short-term disability, and the industry enjoys an excellent track record of rehabilitating injured workers and returning them to work.¹⁷

The number of employers who are funding the system in Nova Scotia is declining in relative terms. Much of the personal and business services sector as well as the financial services industries are exempt from the compensation system in Nova Scotia. This is not the case elsewhere. Attempts at expanding the base have created howls of protest. Private insurance coverage, while not protecting employers from litigation, has the benefit of providing benefits for both employment and non-employment related injuries or conditions.

The agricultural sector remains firmly opposed to compulsory inclusion under the Act. Even the Nova Scotia Federation of Labour in its submission to the Law Amendments Committee of the Legislature in 1999 supported the right of the Teachers’ Union and others to opt-out of compensation coverage if private insurance coverage was available and provided better benefits to the employees. This is the same argument presented by the Dominion Coal Company in relation to the relief societies in 1910.

The coverage debate demonstrates the timelessness of compensation issues. Meredith lamented the political limitations he felt that prevented him from recommending universal coverage. The 1999 Select Committee’s suggestion that it was time to move to universal coverage meet a similar fate. The government chose not to extend coverage beyond the sectors already included under the Act.

Nova Scotia has moved more slowly than other jurisdictions in Canada to broaden the base of the labour force included within the system. This reluctance could be explained from the perspective of traditional Nova Scotia conservatism, it is however

more directly linked to the lack of autonomy of the government. Major capital interests, among them the insurance carriers, have prevailed maintaining the exemption for their sector and its customers. The situation has also allowed for a greater range of private alternatives to develop and become accepted.

The percentage of labour force participants who have no insurance coverage has not been established. With the majority of individuals working in small businesses with less than 5 employees it is not hard to imagine that a significant proportion of the 30 percent excluded from the compensation system are without any insurance coverage. This has significant consequences to the compensation system, to the public health and social welfare systems as well as the health and safety system.

Jurisdiction

The Workmen's Compensation Board created in the 1915 Act was granted exclusive jurisdiction to make decisions on the award of compensation benefits. Only matters of law, not fact, could be referred to the courts. The compensation board continues to operate under the principles of exclusive jurisdiction, however, over the last two decades the board's decisions have become subject to internal and external appeal systems.

Paul Weiler describes the rationale for Meredith's recommendation that the board be given exclusive jurisdiction,

From its origins in this century, the Canadian model of claims adjudication has been administrative rather than judicial in tone. We wanted not only to remove employment injuries from the ordinary courts, but also to avoid the traditional ways of the courts in designing our new administrative tribunal. Now that employers were to be assessed collectively by the Board, and injured workers were to be supported from a new public fund, we believed that we could dispense with the basic adversarial format of trial adjudication, in which a judge settles a dispute which the parties choose to bring before him in light of a record developed through the efforts and skill of counsel. Instead, the Workers' Compensation Board requires that all accidents in the workplace

be reported to it. Its investigators search out the facts relevant to the claim. Payments are made as speedily as possible and are adjusted to changing circumstances. Board files are never closed against the later reappearance of a disability. And the judgments reached through this investigative model are, to all intents and purposes, immune from scrutiny by the courts.¹⁸

Referral to the courts was not the only method of challenging the jurisdiction of the board. Sample cites several examples of the Nova Scotia legislature intervening by passing special legislation that award benefits when the board had refused to do so.¹⁹ By 1931, a 'benefit of the doubt' clause was added to the Act. Sample suggests the clause represented an attempt by the government to limit this role for the Legislature. The clause was for the benefit of "persons in respect of whom payment for compensation under the provisions of special Acts was sought."²⁰ The interpretation of this clause has been the subject of considerable debate in recent years causing the government to provide a more explicit interpretation in the 1996 Act.

The 1974 Select Committee recommended the creation of an external appeal board, "It is the view of the Committee that a workman who is not satisfied with the determination made by the Workman's Compensation Board should have an appeal as of right to an independent board."²¹ The recommendation for an external appeal system was consistent with experience elsewhere in Canada. Sample notes that the level of litigation expanded rapidly following the introduction of the appeal system. "In the sixty years from 1915 to 1975, there were seven reported judicial decisions...from 1975 to 1995, there were ninety-four."²²

Sample provides several explanations for the rapid increase. A provision creating workers' counselors was added to the act in 1957, this service expanded rapidly after 1975. By 1996, 150 lawyers were active in the program at a cost to the taxpayer of approximately \$8 million a year.²³ In an effort to contain the program and the costs, private practice lawyers were replaced with full time workers advisors under the 1996 Act.

In addition to the number of lawyers filing cases with the appeal board, the board was ill conceived. Sample notes the structure appeared to encourage litigation through "its repeated unwillingness or inability to give a reasoned decision. It is almost incredible, but true, that an increasingly exasperated Court of Appeal had to tell the Appeal Board not once, not twice, but seventeen times to give better reasons for its decisions."²⁴ In addition to the lack of available documentation on its decisions, almost 100 percent of the appeals before the board were successful.

The 1981 Select Committee recommended the need for an internal appeal system.²⁵ It also recommended improved access to information for the injured worker, and legislative changes to broaden the scope of public information produced by the Board.²⁶

Throughout the 1990s, changes were made to both the internal and external appeal systems. By 1997 a complex system involving six levels of decision making was in operation. In 1998, another Select Committee of the Legislature was created to review changes to the Act and to consider the recommendations from the Auditor General with respect to the Board, Workers' Advisor Program and the Appeal Tribunal. The Committee was a response to a public outcry from injured workers who had occupied the Premier's office for several days, on behalf of over 2,500 claimants with appeals waiting to be heard, some of the appeals more than seven years old.

The new compensation system was less than 3 years old and it was failing. The politicians were forced to step once again. This time on behalf of injured workers.

The 1998 Select Committee concluded,

Fairness must be the underlying principle to the workers' compensation system if the system is to work properly. Injured workers' need to have a system which compensates them fairly when they have been injured on the job and treats them with respect. Employers need a system which charges them affordable rates while removing the burden of guilt when a worker is injured in their workplace. This system is a "no-fault" insurance system. Nothing more, nothing less.

Workers' compensation is a concern for all Nova Scotians. This system is not perfect but it is the sincere hope of this committee that the changes it recommends will improve workers' compensation into the next millennium.²⁷

Injured workers' groups have begun to question the value of the historic trade off. Several of these groups have recommended a return to the tort system.²⁸

Insurance Program

The 1915 Act followed Meredith's recommendation with respect to establishing two schedules of industries, one based on collective liability, the general assessment group, and the other based on individual liability referred to as the self-insured accounts. Little adjustment, with the exception of the fishing industry, has been made to this distribution of employers between these schedules over the years.

The distribution of costs within the system between the two groups has been challenged recently. The self-insured accounts purchase insurance coverage based on their direct costs plus an administration fee. The compensation board negotiated directly with each employer on the administration fees which range between 0-8 percent for the government of Nova Scotia to 18 percent for federal employers. The employer is responsible for future obligations to injured workers or dependents rather than the compensation board.

The expansion of benefits over the years, combined with longer life spans and improved medical care have increased the costs of the compensation system. In 1998, the Cape Breton Development Corporation (DEVCO), self-insured under the Nova Scotia compensation system, declared a major loss. The most substantial portion of the loss related to the declaration of over \$140 million in unfunded liabilities owed to its injured workers or their dependents. The federal government guarantees these funds.

Another \$20 million has been set aside on the province's books owed to provincial government employees and their families. The deficiency in the collective liability pool at the compensation board is over \$300 million. The issue of assessments used to fund the collective liability insurance group will follow under the heading of funding.

Injured workers have not experienced a direct difference in treatment related to the status of their employer. Several of the self-insured accounts, however, have aggressive policies in filing appeals or objections to compensation claims.

Funding

Funding for the compensation system has been an ongoing and importance source of debate. Meredith's system allocated the costs of the system among the parties based on the burden they carried prior to his legislation. The employer provided the funds to pay for the insurance coverage that was based wage replacement. The injured worker bore a significant burden in pain, suffering and other effects of the injury in addition to part of the direct financial burden including the cost of medical care if it was not provided for through another mechanism outside the compensation system. The community was to contribute the administrative costs in recognition of the savings in court costs and welfare payments that it might have been called upon to provide.

The community represented by the government very quickly removed itself from the burden of contributing financially to the system. The employer organizations and unions have lobbied for changes with respect to the burdens of their respective interest groups. Employer organizations will argue they bear the total responsibility for funding

the system. Unions argue employers adjust total wage and benefit compensation packages to reflect compensation costs and therefore employees bear the burden. Meredith and others argued that the consumer in the end pays for the system through price increases in goods and services.

The system has expanded its range of activities since the 1915 Act. The funding for the self-insured accounts as previously described is based on a direct cost plus administrative fee. The following discussion focuses on the funding of the collective liability pool that affects the majority of employers and employees.

Discussion of the funding of the system is difficult to isolate from the coverage and benefits portions of the system as they are inter-related. Arguments against universal coverage or inclusion of a particular sector are frequently presented as objections to the costs of the system. Each of the royal commissions or select committees was forced to weigh the costs to the employers with the benefits to the employees.

The McKinnon Commission of 1956 offered the following analysis of the funding problems,

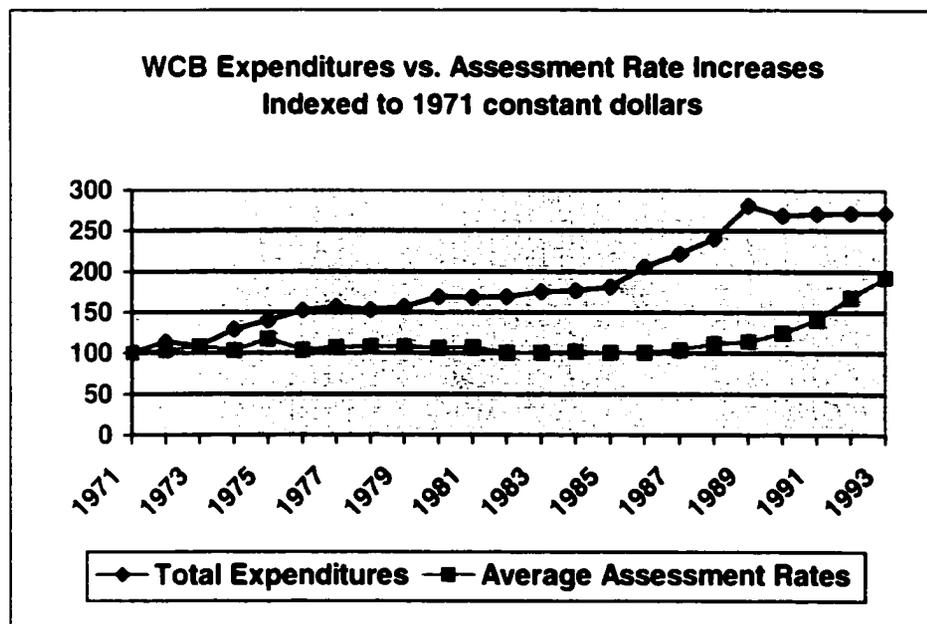
One of the basic principles of Workmen's Compensation is that the workman is not completely compensated for his injury or disability. The workman does not contribute to the Accident fund, but the margin between what he receives in compensation payments and full indemnity for injury is considered to be his contribution to the scheme. The factor of industry's ability to pay must also be kept in mind, for if the assessment rate becomes too burdensome, industries will find themselves unable to pay their assessed share to the Accident Fund, and benefits to the injured workman will then have to be curtailed.²⁹

McKinnon was concerned that the benefits available to injured workers and widows were not adequate. He suggested, however, that employers who had fulfilled their obligations to the system should not be burdened with the obligations of "industries now bankrupt, terminated or out of existence."³⁰ Therefore he recommended that,

Increases in former awards are very much in the nature of community-obligations. If the people of Nova Scotia are prepared

to make upward revisions then they must be prepared collectively to pay the price, and in so doing bring Government into an area where it has not yet operated. If the Legislature is willing to make the adjustments from the Provincial Treasury it is in effect attaching these scales (benefits) to changing economic conditions. And further, future Legislatures must be prepared to accept the pressures that will be brought upon them to continue financial contributions to equate previous awards with changing scales.³¹

Throughout the 1970s compensation costs grew partially in response to expanding benefits and changing eligibility criteria, raising health care costs and inflationary pressures. In Nova Scotia the compensation board largely ignored the long-term implications to the system and the obligations being created for future employers or governments. In 1993, the board reported on the impact of the legacy it had inherited. The chart below is reproduced from the annual report. It represents the relative increase in expenditures in relation to increases or lack thereof in the assessment rates needs to fund the system. It is clear the board was living well beyond its means.



Source: Workers' Compensation Board of Nova Scotia, "Annual Report 1993", WCB, Halifax, 1993

Low compensation rates were used to attract new investment, and were as critical to successful industrial development as low electrical costs. In 1993, the WCB released a report that highlighted how expensive this policy had been. The WCB estimated that deficits in the funding of future liabilities for pensions began to be accumulated, between 1975 and 1985. The annual reports filed by the Workmen's Compensation Board indicated that it was operating with either small surpluses or with balanced books. In 1993 the report, however, restated these results, estimating that a deficiency of \$35 million had existed in 1975, and had grown to \$146 million by 1985.³²

In 1993, consultants Peat Marwick Stevenson & Kellogg were commissioned by the Compensation Board to "provide a detailed and comprehensive understanding of the various factors driving the cost of workers' compensation in Nova Scotia, as a basis for developing effective policy options."³³ The study was one of many similar reports that had been commissioned by compensation boards across the country. Nova Scotia was one of the last provinces to acknowledge its growing financial problems.

Across Canada, and indeed throughout most jurisdictions in North America, Workers' Compensation Boards are labouring under tremendous financial pressures. With the largest relative unfunded liability of any Canadian province, Nova Scotia's Board has particular cause for concern. The data reveal a long-standing and growing fiscal difficulty... The result- a progressive erosion of the Nova Scotia Board's fiscal position- and a declining position relative to Canadian counterparts.

The Nova Scotia Board's benefits structure, as dictated by the Act, is no longer contemporary and directly impacts on payments and costs. Because the Act does not recognize multiple support programs and today's progressive tax system, legislated benefits may now yield compensation levels equal to or in excess of pre-accident wages. Other unique sections in the Act, such as the definitive benefit of the doubt provision, serve as pervasive cost drivers. While most other provinces have moved in recent years to update legislation, Nova Scotia has not.

The influence of parties outside the control of the Board, including external physicians, the Appeal Board, and those responsible for occupational health and safety, also have an overwhelming impact on payments and costs. Historic administration practices have disadvantaged the Board's ability to manage costs and have, overall, had a negative financial impact.³⁴

Organized labour, employer associations and the public accepted the grim details. In 1994, the Minister of Labour released another White Paper as the basis for preparation of a new draft bill, the tone of the paper emphasizes the growing concern over the condition of the compensation system,

This government inherited a workers' compensation system on the brink of collapse. It is a system based on legislation that was first introduced over 79 years ago, and which fails to take into account the realities of today's work and social environment.

It is a system with a method of calculating benefits that treats many injured workers unfairly; a system that has seen the assessment rates charged employers more than double in the past seven years; and a system that is threatened with bankruptcy by a spirally unfunded liability.

The proposed Workers' Compensation Act brings stability to a system badly in need of repair. It is an essential building block in this government's strategy for economic growth and prosperity, and I encourage you to lend it your support.³⁵

Speaking in 1995, the Chairman of the NSWCB, stated that,

The great "clamour in the halls" these days is about the financial status of some Boards. Those that have significant unfunded liabilities—and there are a few, to be frank—that is, they do not have sufficient funds invested to cover the future costs of present obligations and have usually gotten into this position because of a failure to recognize the impact of indexing in a timely way. The province where I come from, for example, Nova Scotia, is probably the least well funded of any of the Boards, and you may be aware that a very concerted effort through legislative initiatives, along with government contributions, has been put in place in order to assist the Board to get this issue under control.³⁶

The legislation that was eventually adopted in 1995, restructured the benefits system, replacing the much criticized 'meat chart' system with wage replacement benefits, reduced the compensation based on collateral benefits, provided for the right to return to work and restructured the appeal system. The legislative changes were

supported by a forty-five year plan to reduce the unfunded liability and a government financial guarantee. While labour and management did not whole-heartedly endorse the bill, neither attacked it vigorously.

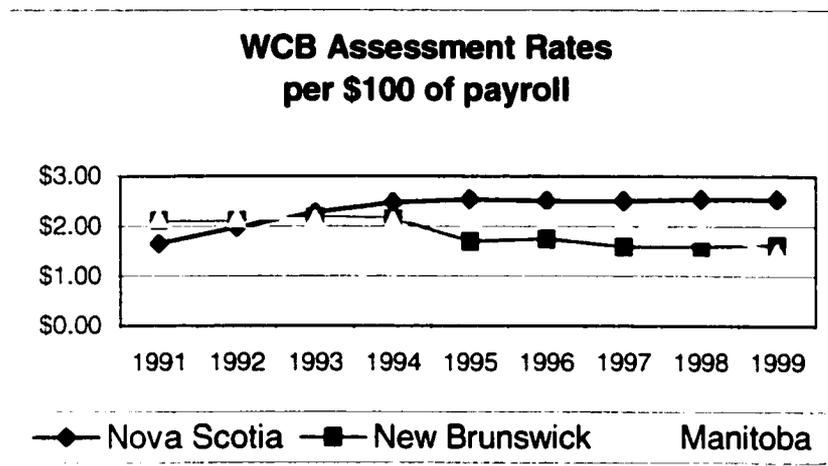
With the new legislation in hand, armed with the government's financial guarantees and directed by the forty-five year plan, the newly appointed tripartite compensation board embarked on the difficult task of turning the ship around. The board's administrative operations grew significantly. New policies in binders were published. The compensation board became known as one of the largest law firms in Nova Scotia.

Two major changes were implemented. The first involved restructuring the benefits system to operate on the wage replacement basis, as Meredith had recommended. The second was a restructuring of the assessment system that determined the proportion of the collective liability, which was to be charged to each employer group. While the rates paid were to have reflected the claim experience of the industry group, they had over the years become a reflection of politics in Nova Scotia. As a result of the actuarial study that formed the basis for the new system, a number of formerly influential employers saw their rates more than double. Many small businesses and the construction sector saw rates decline.

By the mid 1990s, the role of the small business sector in employment creation was being recognized and its political influence had increased in relation to both monopoly and global capital within the province. The new assessment system signaled change.

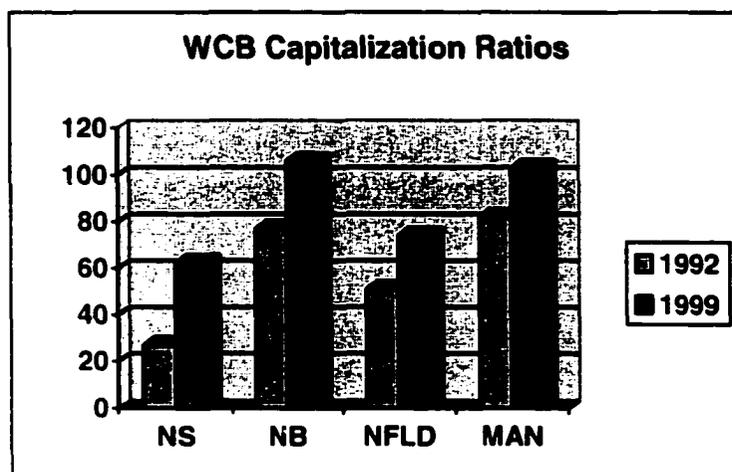
The two most frequently cited financial performance indicators are the capitalization ratio (assets in relation to benefits liabilities where 100 percent ensures security of future payments) and the average assessment rate expressed as dollars per

hundred dollars of payroll. Nova Scotia, as presented in the WCB's 1999 Annual Report, has the lowest capitalization ratio in Canada and the second highest assessment rates.³⁷



Source: NS WCB Annual Reports

Where is the NS board five years after its cost driver study was released? The financial capacity of the board is affected by the larger elements of the workers' compensation system—legislation, economy, health and safety performance. In Nova Scotia, the board reports that its financial performance is in line with its funding strategy to eliminate the unfunded liability by 2040. The board reported that it was 50.2% funded at December 31, 1997, even though it posted a loss for the year.³⁸ Assessment revenue growth in 1998 and 1999, combined with higher than anticipated rate of return on investments has improved the situation in Nova Scotia.



Source: NS WCB Annual Report, 1999

The notes to the board's 1997 financial statements contain supplementary information regarding contingencies: earnings-loss experience is short and may be subject to change once more experience has been gained; a court decision regarding chronic pain coverage has the potential to materially increase liabilities; and retroactive and prospective reinstatement of benefits to survivors has the potential to materially increase liabilities.³⁹ These issues were addressed in the amendments introduced in 1998, the exact impact on the board's finances, combined with the appeals outstanding before the Appeal Tribunal provide for continued uncertainty. It would also appear that the Board remains vulnerable financially to the same external influences that contributed to the financial crisis of the early 1990s.

Eligibility

The eligibility for workers' compensation benefits is based on the requirement that the injury or death arises out of or in the course of employment. This principle has

not significantly changed. Terence G. Ison, a noted authority on compensation systems, argues that the evolution of cause-based systems such as workers' compensation is easier to explain than to justify. The origin of the compensation system arising out of the need to redress the impact of industrialization provides the explanation. Ison states that "The use of etiological classification requires an accuracy of diagnosis that is often impossible; and even when diagnosis is clear, etiology may still be uncertain."⁴⁰ The difficulty is even greater in Ison's opinion in cases of disease, bad backs, sprains, strains, heart attacks, strokes, and many other common conditions submitted to the compensation system. This difficulty has resulted in a range of different solutions. The response has been to modified legislated definitions as well as to develop new policies, procedures and protocols.

The recognition of silicosis and coal miner's pneumoconiosis, chest conditions exclusively suffered by coal miners demonstrates the difficulties of the etiological approach. In 1940, the list of industrial diseases was amended to include silicosis. Sample states that "The complex disease process, including its very slow progression, the difficulty of early diagnosis and the variations in individual susceptibility, led to many difficulties in handling such claims."⁴¹ By the early 1970s, Sample writes that the number of claims and a shortage of medical specialists to review them caused a serious backlog. By 1981, the miners' union had successfully convinced the government that the only way to resolve the problem was to amend the act to create a unique "automatic assumption". This unique provision stated that individuals who had worked 20 years or more in the coal mines and suffered from a lung condition were deemed to have a causal link without having to present specific proof and therefore were entitled to compensation.⁴²

In addition to the medical issues associated with determining a direct link to the workplace, Commissioner Hanway reported on another common theme,

Very early in our investigation it became evident that the Board did not enjoy that confidence of the workmen and the employers

which, in our opinion, it should enjoy if it was to administer the Act in the manner satisfactory to the persons who received benefits under the Act, and those who are responsible for the money which the Board was to dispense.

It is our conviction that this lack of confidence was due to various causes, some of which are enumerated.

Due to a misunderstanding, or an ignorance of what workmen's compensation is, and was meant to be, there has grown up in the province a misconception that the Act, instead of being compensation for injured workmen, is a system of unemployment insurance.⁴³

The link between the compensation system and the social safety net is matter of ongoing debate. In Ontario provisions existed that extended compensation coverage for up to two years if no work was available. This feature blurred the line between the unemployment insurance, welfare and the compensation systems.

Eligibility criteria combined with coverage within the labour force can have a significant impact on perceptions with respect to occupational health and safety that will be discussed later in this chapter.

Compensation

The range of benefits and services available from the compensation board is too extensive to be reviewed in detail. Several key features of the program will be discussed by way of example. Benefits and services that have been or are provided by the board include medical aid, rehabilitation, short-term and long-term disability income support, support payments for widows and dependents, pensions and lump-sum payments. Most benefits payments are subject to a schedule or formula established by legislation or policy of the board.

The 1915 Act provided for income replacement benefits payable after a 7 day waiting period at a rate of 55 percent of gross earnings up to annual maximum of

\$1,200. Income replacement benefits are currently paid at a rate of 75 percent of net earnings up to \$39,700 with a 2 day waiting period.

The level of benefits whether it was the maximum cap on earnings, percentage of earnings and dependent allowances were adjusted periodically. Sample's summary of the significant changes is included in the appendix to this chapter.

In 1956 the Stanfield government appointed a new royal commission headed by Judge A. H. MacKinnon. The Commission dealt with all parts of the Workmen's Compensation Act, including Part III and was the first inquiry to do so since 1915. The inquiry focused on the benefits paid to widows and those on long term disability.⁴⁴

McKinnon's report provides one of the most comprehensive assessments of the system in Nova Scotia. McKinnon appealed to the government to intervene in the system to bridge the gap between what the injured workmen needed to receive in benefits and what revenues industry in the province could in his opinion reasonably be expected to contribute.

I do not for a moment want to deprecate the hardship workmen with past awards are undergoing. The Commission saw and heard many of them. I believe them when they tell the Commission the near-desperate circumstances under which they are trying to meet the basic costs of food, shelter and clothing. However, to come to any other conclusion would be to change the character of workmen's compensation into the kind of social legislation that I do not think it was intended to become.⁴⁵

The submission to McKinnon's Commission prepared by the Dominion Steel and Coal Corporation (DOSCO) provides dramatic evidence of the magnitude of the corporation in relation to other enterprise in the province, "The present assessment for Workmen's Compensation in this Province is a very heavy burden on our limited number of industries. In 1956 the total assessment was \$3,397,092...the largest employer of labor in this Province is DOSCO and the Corporation pays almost one-half of the total assessment levied."⁴⁶ It is little wonder McKinnon's solution was to appeal to the public

purse. DOSCO had been very clear it was not in a position to fund major changes to the system.

Change in the compensation system occurs as part of the political system. Public support, concern or direct political influence is required before an issue will be addressed. In many cases, the issues take years to resolve.

In 1970, Voluntary Economic Planning hosted an experiment in urban and economic planning. Twelve international experts were brought to Halifax metro to "explore the workings of its [metro region] ways, sort its strong and weak points, diagnose its ills, and recommend the general directions it might follow toward social and economic strength".⁴⁷ At the closing of Encounter week, Martin Rein, a British social scholar provided his observations,

[Y]ou have here a political culture which tends to inspire indifference, caution and to some extent, fear as well...one is struck by the way in which economy and culture each reinforce each other to produce this political culture...you have an economy of scarcity... which is based on a set of occupations which essentially tend to be non-collegial and hierarchical and the occupations which are strongest in this community- medicine, your bureaucracy government and the military- all reinforce this sense of hierarchy...and certainly your cultural, religious and historical legacy reinforce authority and support this sense of hierarchy... the outcome of this set of economic and cultural forces is a climate in which there is a reduction of personal freedom.⁴⁸

Dennis McDermott, then head of the Canadian United Auto Workers, also was a member of the Encounter team, he commented upon the role that organized labour played in the community, "Labour..pretty well conforms with the total picture in the community- mentally and otherwise. Its attitudes pretty well reflect the attitudes of the community at-large. Labour, here, like everywhere, is fairly staid, fairly safe."⁴⁹

There appeared to be no major force for change on the labour side. In the 1960s, the CCF have given way to the New Democratic Party which was attempting to provide a more broadly placed platform, "The party concluded that it faced an inherently conservative electorate. The more it moderated its image, therefore, the greater

progress it would make. The strategy was to drop most of the party's socialist program."⁵⁰

While governments struggled with the state of the economy, the focus during the 1960s and 1970s was on diversification away from coal and steel by attracting new investment. Nova Scotia was entering the new era of global capital. Ross and Trachte describe the significance of this change,

Under global capitalism, the expectations that capital has of state policy are altered, its attitude towards public policies favorable to labor hardens and its leverage over state expenditures is heightened. This leads to the relative decline of the relative autonomy of the state... global capital can now threaten to withdraw investment from localities or nation-states whose governments adopt policies relatively favorable to labor. They are also in a position to demand the repeal or rollback of programs adopted during the monopoly era but that global capital no longer regards as necessary...Our conclusion is that the emergence of global capitalism shifts the balance of class forces towards capital, and one of the results is the decline in the relative autonomy of the state from transient capitalist class will and ideology.⁵¹

In 1973 and 1974, Select Committees of the Legislature, interrupted by the 1974 election began, once again to review the system. The Committee's recommended increases to benefits levels and the indexing of pensions to the consumer price index. A member of the committee commented on the difficulties encountered, "People tend to think of it as a welfare organization."⁵²

The balance of labour, capital and state relations in the late 1970s were illustrated by the concessions granted Michelin Tire,

Then in 1979, following a more general sign-up campaign by the United Rubber Workers, the Progressive Conservative government of the day prepared legislation- to require that the prospective bargaining unit include all Michelin plants in the province, thus invalidating the union's efforts at Granton. [The bill withdrawn by the Conservatives was latter introduced by the Liberals] Despite bitter opposition from the Nova Scotia Federation of Labour and serious misgivings expressed by some business leaders, the bill found quick passage... would provide the necessary background for increased stability, production, and development in Nova Scotia. Well it might, but in the meantime Nova Scotians were left to reflect on the raw political

power apparently being wielded by a non-accountable corporation."⁵³

Shortly following the passing of the bill, a third Michelin plant was to be announced and Michelin became the second largest employer in the province. While the per capita earnings in the province have improved since the 1960s in relation to the Canadian average, 50 percent of the government's revenues were still coming from the federal government. Despite efforts at industrial development, Nova Scotia was highly dependent on transfer payments– to the government, to industry and to individuals.

The 1970s would come to be dominated by another crisis that of rising oil prices, and therefore domestic energy prices. While by the end of the decade this would result in a renewed commitment to Cape Breton coal, the legacy of government debt resulting from attempts at stabilizing energy prices were significant. This period saw massive inflation and wage increases which were offset in collective agreements by the COLA clause, indexing benefits to cost of living increases. Energy costs alone had increased 140% between 1974 and 1978. The Select Committees of the 1970s tinkered with compensation reform but never ventured far from the interests of capital.

In 1981, the Conservative Government, comfortable in its majority, created a new Select Committee to conduct yet another review. The Committee's work was the most comprehensive since the McKinnon Commission and included an actuarial study of the impact of its recommendations.

From the initial meetings of the committee, it was apparent that members were close to a general consensus on the philosophy and purpose of compensation legislation and its intended effect on Nova Scotians requiring protection from loss of income from work-related injury. There was agreement that legislation should provide the most comprehensive protection possible to the work force, consistent with economic realities, i.e. that costs would be a direct charge upon industry.⁵⁴

The Committee made extensive reference to the work of other commissions into workers compensation that had taken place within and outside Nova Scotia. The

Committee quotes the report of Justice Sloan of British Columbia written in 1952, “the adoption of a workmen’s compensation scheme was done with the deliberate purpose of abandoning common-law duties, rights, obligations and remedies. Other rights different in concept and exclusive in operation were substituted. Both workman and employer had to forego common-law rights in a compromise for the common good.”⁵⁵

The Committee adopted the priorities as articulated by Justice Tysoe,

The prime mission of those who administer workmen’s compensation and the prime purpose of the Act is not to furnish financial benefits, but to promote and encourage measures for the prevention of injury to workmen in the course of their work and, should any be so unfortunate as to become disabled as a result of such injury, means for their rehabilitation and return to useful employment as soon as possible. To keep work-connected injuries to a minimum is the first object. Restoration of injured workmen physically and economically is the second, and to achieve it adequate medical care is to be provided. Payment of compensation while disabled is very necessary certainly, but it is only incidental to the main purpose of restoring workmen to the point where they can again play their proper part as citizens of our Province.⁵⁶

The 1981 Committee then set its sights on the issue of benefits,

The Compensation Board in this Province like most of the Boards in Canada pays a pension to such individuals based upon an objective disability evaluation schedule. Every person with the same injury receives the same percentage pension which in itself may superficially appear to render some type of justice although it may only be rough justice....The concept of replacement of earnings lost because of an injury rather than attempting to replace the loss of physical function is in the opinion of the committee a sound principle. Saskatchewan has advocated and introduced a loss of earnings plan and studies in New Brunswick and Ontario have recommended the same....Workers’ Compensation is not welfare, it is a right which arises out of a workers’ employment and the plan should strive to place the worker in the same position earnings wise after the accident as prior to the accident.⁵⁷

Many of the extensive recommendations of the 1981 Committee were not implemented until decades later. The deferred recommendations included the return to the earnings loss method of calculated benefits. Sample states that “At some point between 1917 and 1990, not recorded anywhere in the Minutes of the Board or in the Annual Reports, the Board had changed its method of calculation. Compensation for

permanent disabilities was calculated by multiplying the worker's pre-accident earnings by the worker's percentage of physical impairment."⁵⁸

In 1989, the Minister of Labour, Ron Russell released a white paper on workers' compensation titled, *Changing to Meet Today's Challenges*, the paper described the state of the compensation system,

The stress of a modern work environment demands more proactive initiatives to meet the challenges created by rapid changes in work method, technological advancements and scientific developments.

Program delivery has become complex as costs related to providing insurance against loss of income due to work related injuries escalate.

The pace at which costs are increasing has been fuelled by the spiraling costs associated with the provision of health care and medical treatment, the expansion of vocational rehabilitation services and the indexing of permanent disability pensions. Primary stakeholder lobbies have been vigorous in their representations to government for amendment to the legislation and the manner in which they perceive its is being administered by the Workers' Compensation Board.⁵⁹

The White Paper outlined the Government's intention to introduce legislation in 1990. Many of the proposals were drawn from the Select Committee of 1981 and from the Ministerial Action Group, which investigated the workers' compensation system beginning in 1986. The legislation was introduced and met with howls of protest from both management and labour organizations, resulting in the creation of yet another select committee to study the 1990 bill.

While reporting that few of the stakeholders supported fundamental change to the system, the 1991 Select Committee made 75 recommendations for changes to Bill 99, which was itself already over 100 pages long. Bill 99 died on the order paper, but the need to make changes to the system did not fade. As the Select Committee noted, there were "numerous and diverse submissions", and a consensus among the stakeholders was needed before major reform could begin.⁶⁰

Because of the intensive interest in Worker's Compensation throughout the years, there have been many amendments made to the original Workers' Compensation Act to address problems of pressing concern. However, prior to Bill 99, there has not been a major coordinated approach to rewriting...That resulted in the Nova Scotia Supreme Court, Appeal Division, commenting that: "The Act has been revised from time to time resulting in what is sometimes described as a 'scissors-and-paste job'. Hence, the language in the Act is not consistent, resulting in some confusion."⁶¹

The need for reform escalated with a landmark decision by the Nova Scotia Court of Appeal known as the Hayden case. The court ruled that the board's method of calculating compensation for permanent disabilities was contrary to the provisions of the Act.⁶² The ruling required the board to pay compensation based on the effect of the permanent injury on the worker's ability to earn wages. The board began to develop policies to respond to the Hayden decision. It was not until 1995 that the government confirmed the new system in legislation. The confusion created by the Hayden decision and the time delay in establishing a new system of benefits caused considerable hardship and confusion, which resulted in the large backlog of cases on appeal.

In the early 1990s organized labour argued for extensive expansion of both coverage and benefits levels. The CMA, the Canadian Federation of Independent Business, and other employer groups argued that the Board was in dire financial shape. Assessment rates had been held artificially low, and would have to increase dramatically to cover the growth in benefits liabilities. There existed no consensus as to how to proceed, and even fewer facts on which to build a consensus.

The 1995 legislation which re-engineered benefit levels, and created the need to consider the value of 'collateral benefits', income from other sources such as Canada Pension Disability Benefits as part of post injury income. The act also provided for "deeming", a method of calculating the potential earning capacity of an injured worker once it has been determined that they are capable of returning to some form of employment. Deeming does not require that there actually be earnings, or even

employment. It is designed to re-enforce the need for the injured worker to return to the labour force if they are able.

These concepts, while being new to Nova Scotia, are found in most North American systems. Organized labour and injured workers see them as regressive and objectionable, a retrenchment of the social democratic expansion of the last three decades. The application of these concepts coincides with the rise of neo-conservative thinking. Not surprisingly, the Alberta government has led the way in many of these reforms. The Alberta system has employer premiums that are less than half of Nova Scotia's while benefits and coverage are actually broader including the range of compensable conditions.

Workers' compensation boards balance expenses with revenues. Therefore, Governments across the country struggle with trade-offs. The following table contains information compiled by the workers' compensation boards and reflects the 1998 benefits levels. Benefit levels, particularly the calculation of permanent impairment benefits, are very complex and are not easily summarized. In 1997, Nova Scotia's temporary earnings loss benefits were not significantly different from New Brunswick and Newfoundland. Both of these jurisdictions however increased benefits levels as of January 1998.

	Nova Scotia	New Brunswick	Newfoundland	Manitoba
Earning loss %	75% net (85 % after 26 wks)	85% of loss of earnings Changed as of Jan/98 previously was 80% net (85% after 39 wks)	80 % net changed as of Jan/98 previously was 75% net (85% after 39 weeks)	90% net after collateral benefits deducted (80% after 24 months)
Max Insurable	\$39,300	\$44,100	\$45,500	\$50,380
Max Weekly Payments	\$419.99 (85% net-\$475.99)	Single \$489.33 Married \$513.85	\$488.28	\$568.63
Avg Weekly Industrial Wage 1997	\$501.39	\$522.88	\$527.80	\$524.54

Waiting Period	2 days	3 days	Employer pays for day of injury	None
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Source: Association of Workers Compensation Boards of Canada, 1998

Administration

In addition to legislative changes, the composition of the board of commissioners also changed with major shifts in the governing party. Between 1917 and 1991, the position of commission member was a full time salaried position viewed as a political plum. In the early 1990s a corporate board model was adopted. Board members were essentially volunteers representing the interests of employees, employers or after 1996 the public-at-large. Although the size of the plum has substantially diminished the appointments are still hotly contested, and subject to considerable criticism by opposition politicians.

From 1917 to the mid 1970s the basic operations of the compensation board and its staff changed only in minor ways. The board was the ultimate arbitrator of claims while staff kept the administrative wheels turning. The process was described for the 1974 Select Committee by Compensation Board Chairman Stephen Pyke.

Pyke, who was former Minister of Labour, reported that on average one hundred and fifty claims were received each day, the claims officers would review and accept as routine one hundred claims, the remaining fifty were submitted to the Boards doctors for review, who would typically authorize thirty five of the fifty. If there was a difference of opinion between the workman's doctor and the Board's doctor, a specialist will be consulted, in some cases two specialists. Pyke emphasized "we make full use of the Section of the Act that says benefit of the doubt will be given to the workman."⁶³ The outstanding claims were then reviewed by the Board, if the Board was divided the final

decision rested with the Chairman. A further appeal was provided for to the Minister of Labour who could convene a medical review board.

Among the 1974 Select Committee's recommendations were the removal of two provisions which had finally become inconsistent with the norms of society. The Committee recommended that the Board's authority to withhold payments to persons who in the Boards' opinion were "leading an immoral or improper life" or those who were "likely to use the money in gambling" be removed. The Committee expressed its reasoning as,⁶⁴

[T]his authority in reference to gambling is not in accord with present day practices particularly, when governments are sponsoring gambling and lotteries and urging the citizens of the country to participate in such gambling and lotteries to raise money for public purposes...Section 26 leaves the board sufficient broad authority to deal with any matters where it should intervene on behalf of the wife or the workman's children or persons dependent upon him.⁶⁵

Issues relating to the rights of the individual appeared to carry far less weight with the Select Committee rather than the new need of government to convince citizens to invest in lottery tickets.

In the early 1990s concern was expressed over the ability of the board to make good decisions and to effectively administer the system. Nova Scotia was characterized as having a "penny-wise and pound-foolish administrative system"⁶⁶ The 1993 Peat Marwick report stated that "During this time period (1975-1992), administrative costs remained below 10% of all other outlays. This is significantly below the 16% administration costs expended, on average, in other Canadian jurisdictions."⁶⁷ The legacy of this approach was the financial crisis facing the system by 1993. The challenge of the new corporate board was to ensure it made good decisions that were critical to the financial survival of the system and those individuals who depended on it.

Medical and Rehabilitation Services

Medical and rehabilitation services were not part of the original program outlined in the 1915 Act. Medical aid benefits were first introduced in 1919, with rehabilitation services being added in 1927. The nature of these services has changed over the years, as has the emphasis placed on them.

Sample comments on the objections of employers at the time the medical aid provisions were included. The employers were concerned that they would be "victimized by the doctors."⁶⁸ The introduction of the medical services was challenged by the employers and unions in the coal industry who were still using a system of check-offs or deductions from payroll to support such services. Sample states the board believed these programs were inadequate but "as a result of the requests of organized labour the Board opted not to interfere with the existing arrangements until new schemes could be worked out."⁶⁹ Most of the plans were replaced by 1922, with the exception of the Dominion Steel and Coal Company which was still receiving concessions on medical aid costs at the time of McKinnon's inquiry in 1956.

The importance of the medical aid services is reflected in Stephen Pyke's comments that, "we handle perhaps thirty-six thousand claims per year, perhaps fifty per cent of them would be medical aid only with no layoffs."⁷⁰ Throughout the 1990s close to two-thirds of the claims accepted by the board were for medical aid only.

The 1981 Select Committee recommended greater effort be placed on rehabilitation, "the second item which needs a new emphasis is when a worker is injured, there must be major stress on rehabilitation in order to promote his return to the workplace and to productive activity in society as a whole."⁷¹ Other recommendations by the Committee included programs to encourage employers to hire workers who had

been injured, to protect the worker's job while on compensation, to provide injured workers with priority in filling new jobs, to establish vocational rehabilitation and retraining services at the Board to provide for the earliest possible intervention, and to create a second injury fund.

In the mid 1990s the board announced a strategy to focus on its long-term disability claimants greatly expanding its vocational rehabilitation department. The 1996 Act included the first compulsory return-to-work provisions despite the recommendations made in 1981. The board also introduced a program for injured workers suffering from chronic pain. The program remains the subject of considerable complaint from injured workers' groups.

Safety

The debates leading up to the passage of the 1915 Act make it clear that the system was intended to promote safety, or at least penalize employers who provide unsafe workplaces. Nova Scotia followed Meredith's recommendation to establish a provision for funding of accident prevention associations drawn from the German experience.

In 1919, the WCB provided the funding for the new Nova Scotia Accident Prevention Association. The association was closely aligned with the CMA. While it retained responsibility to promote safety practices it was also responsible for representing the employers interests in the administration of the compensation system. "Since the association represented business interests, its focus centred on education programs as opposed to more government regulations."⁷²

Winsor compares the response of the provincial government to disasters in the coal mines and in the fishing fleet. The significance of the coordinated class or union

pressure on the government's response can be seen both in terms of the introduction of safety measures and in terms of inclusion in the compensation system. Dramatically different approaches were taken in response to the disasters that occurred in the mining sector as compared to those in the fishing industry.

Although the Workmen's Compensation Board set the rates for the fishing industry and paid out claims, it had no say in determining any of the rules and regulations governing work on the offshore trawlers. The authority for that rested with the Federal Government [Supreme Court of Canada decision taken after 1976]...In Nova Scotia, the provincial government demonstrated a total lack of initiative. To this day [1987] there has never been a study of health and safety conditions on the offshore fleet completed by the Nova Scotia government. In fact there has never been any state-sponsored study done on health and safety in any sector of the fishing industry, even though it is the oldest industry in the Province.⁷³

Two major mine disasters in Springhill, in 1956 and 1958, killed more than 100 men. In Beck's words the disasters "tragically documented the inadequacy of safety measures in the increasingly obsolete mines."⁷⁴ Nova Scotia did review its mine and factory safety laws, new legislation establishing safety standards were adopted, and included the first regulations governing the construction industry. While the Accident Prevention Association continued to be funded by the Board, little or no mention of its activities is provided in the board's annual reports.

In 1967, the WCB annual report addressed the issue of workplace safety, a topic rarely discussed other than reporting on the funding provided to the accident prevention association. The Commissioners stated that,

It is of concern that industrial accident figures and claims continue to increase. A small reduction in the frequency of accident trend line is being evidenced and it will be most interesting to see whether this continues over the next year. However, it is of concern that the severity measurements; ie. The cost of accidents is rising.

Certain industries are slowly showing improvement in respect to the general accident pattern but other industries are of concern in this regard. It seems to us that the corporate Board should be more directly involved in accident prevention activities and a review of the accident prevention organization, measures and methods is necessary in our view. Particularly is this desirable in

view of the changing nature of industry and commercial undertakings, automated and technology effects and the fact that increasing technical and mechanical industrial methods are not being matched in some cases by an improvement in industrial accident experience.⁷⁵

In 1967, Lorne Clarke, Q. C., (who had served as the secretary to the McKinnon Commission and would serve as Chief Justice of Nova Scotia) conducted another royal commission into the compensation system. While the primary focus of the Commission was Part III of the Act, the Commission made recommendations with respect to improving accident prevention. The Commission recommended the WCB takeover the NS Accident Prevention Association. Following the transfer, the Board began reporting on its activities which included: seminars, meetings, newspaper advertisements, and employer visits and inspections.

The 1981 Select Committee made a number of recommendations regarding workplace safety, The Committee recommended that safety training be introduced into the curriculum of the academic and vocational schools a feature that was finally incorporated in legislation in 1996. It also proposed "the formation a tri-parite council composed of representatives of employees, employers and staff of the Department of Labour and Manpower to suggest and develop future reforms and programs for safety in the workplace."⁷⁶

The Select Committee recommended that legislation be prepared requiring safety committees in workplaces, greater emphasis on education programs for employers who have smaller numbers of employees and to those who have a higher risk and frequency of accidents, and that some form of merit-demerit assessment rating be introduced. As well a proposal was presented that enforcement of safety regulations be applied in relation to the accident frequency of the employers, and that the officials have the discretion to make assessment of penalties or incentives based upon the hazards in the workplace ascertained by the inspectors employed with the Department of Labour.

The Committee recommended consolidation of all safety enforcement within the Department of Labour and recommended that the right to refuse unsafe work be written into legislation.

While the government would eventually act on the Committee's safety recommendations, the changes to the compensation system to reinforce investment in safety measures were rejected including suggestion to adopt a merit and demerit rating system which would charge higher premiums to employers within the same industry sector based on the level of safety performance. This system common in other Canadian jurisdictions would not be implemented in Nova Scotia until the mid 1990s.

In 1983, the Committee on Occupational Health and Safety, chaired by Dr. Thomas McKeough recommended implementation of the 1981 Select Committee's proposals including the consolidation of health and safety administration within the Department of Labour, and the introduction of an Occupational Health and Safety Act.⁷⁷

The McKeough Committee recommended that the accident prevention section of the Workers' Compensation Board be transferred to the Department of Labour removing the final link between compensation and safety. With the implementation of McKeough's report Nova Scotia had entered the modern era of health and safety legislation, it was one of the last jurisdictions in Canada to do so.

In 1992, the Westray coal mine exploded killing 26 miners. The provincial and federal governments came under severe criticism for their roles in both promoting the mine, and for potential interference with government officials particularly related to mine inspection and safety. One of the government's responses was to embark on a major review of McKeough's occupational health and safety legislation. The review would take more than four years to complete.

When the Westray Mine Public Inquiry finally reported in 1997, the report made clear the view that the tragedy was preventable. Justice Richard summarized his

findings, “The tale that unfolds in the ensuing narrative is the *Westray Story*. It is a story of incompetence, of mismanagement, of bureaucratic bungling, of deceit, of ruthlessness, of cover-up, of apathy, of expediency, and of cynical indifference.”⁷⁸ The report found the government failed in its responsibilities.

Testifying before the Inquiry, former premier John Buchanan described the role of the politicians in Nova Scotia in the 1980s,

In general, he observed, civil servants do not bend to pressure from elected politicians in the conduct of their jobs, “unless it was a matter about a highway ditch or a paving of a road or that kind of basic political thing in Nova Scotia”. Pressed further on the limits of such interventions, he offered a somewhat novel interpretation of the boundary. “[T]he limits, I would suspect, are what I call basic grass-roots politics and non-basic grass-roots politics.”, with ditching and gravelling in the former and more centralized and technical issues in the latter. The implication of this distinction prompted the question whether “it wouldn’t be basic grass-roots politics not to close down an employer in a certain town.” Buchanan declined to respond.⁷⁹

New Occupational Health and Safety legislation was also introduced in 1995, a major rewrite of the act designed to purge the provisions that had created the environment for the Westray disaster. The WCB’s role in funding the Department of Labour also expanded significantly until 100% of the operations were supported by a declining employer base left contributing to the compensation system.

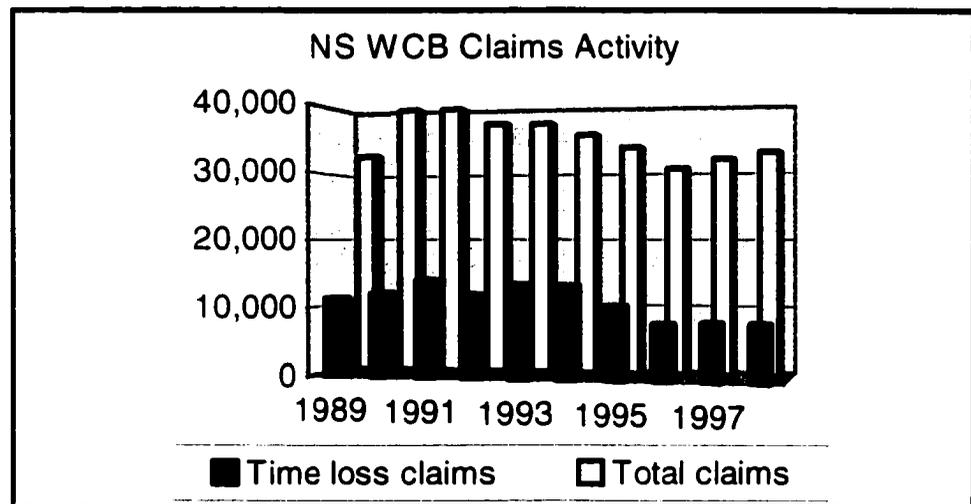
A 1998 survey of employers conducted by the WCB, dramatically demonstrates the lack of any relationship between safety, prevention and WCB.

Just under half of the employers believe their main responsibilities are to report accidents accurately (43%), and to a much lesser extent, to ensure a safe workplace (17%)...Only a third of employers believed that experience rated assessments actually reduced accidents in the workplace, this was only slightly higher than the number who believed experience rating increased usage of company sickness plans as an alternative to filing a WCB claim.⁸⁰

It is often suggested that Nova Scotia’s high assessment rates reflect a lower level of occupational health and safety and are justified. Nova Scotia’s assessment rates, like those of Ontario, have as much to do with the financial capacity of the

compensation system as they do with occupational health and safety risks. A brochure released by the Royal Commission on Workers' Compensation in British Columbia shows Nova Scotia to have the fourth lowest injury rate (2.9 time-loss injuries per 100 workers) in the country, below the national average (3.4 time-loss injuries per 100 workers).⁸¹

In 1998, the Nova Scotia Workers' Compensation Board paid out in excess of \$96 million in benefits, medical aid and rehabilitation costs on behalf of 30,000 Nova Scotians.⁸² While the number of time loss claims has declined, the re-introduction of a waiting period in 1996 may be the principal cause. The fact that the total number of claims has not reduced along the same trend line would suggest that the same number of injuries is occurring with workers qualifying for medical aid benefits only.



Source: Workers Compensation Broad Annual Reports

Opting-out of the compensation system has serious implications for interpreting health and safety performance. Close to one hundred percent of the funding for OH&S in Nova Scotia is provided from the compensation system. Increasing the number of

employers who are able to avoid the compensation system weakens the OH&S system unless the government is prepared to reinstate its previous support.

Across Canada, all OH&S agencies rely on workers' compensation claim statistics to calculate injury rates and incidences of industrial disease. When large sectors of the workforce do not participate in the compensation system, as is the case in Nova Scotia, these measures become increasingly ineffective.

Nova Scotia in Context

As labour, management and the politicians of Nova Scotia gained experience with the operations of the compensation system, they began to make adjustments. The frequency of these adjustments and the number of royal commissions, select committees and other inquiries demonstrate the prominence and durability of the compensation system as a public policy issue.

Nova Scotia's politicians directed the system by applying a crisis management approach. Only the McKinnon Commission and the Select Committee of 1981 conducted thorough reviews. It was not until after the 1993 consultant's report and the Hayden decision that comprehensive legislation was finally implemented.

The 'Meredith Principles' are statements that define the key operational elements of a compensation system based on Meredith's recommendations. Meredith's principles— real justice that was achievable and communal responsibility— particularly the latter, have been lost. The benefits to the community as a whole reflected by the contribution to the financial operations of the system by the state have been completely eroded. A negotiated system that balances costs and benefits to employers and employees has replaced the tripartite concept, employee, employer and community created by Meredith.

In the 1990s, politicians and compensation boards defend their operations in light of their relevance to a well-worn interpretation of Meredith's principles. The economic and social systems as is discussed in the next chapter have changed.

Reasons, Ross and Paterson, writing in the early 1980s described the nature of the workers' compensation reform process as,

The hiatus created in progressive, continuous legislative and policy rejuvenation marks the system as one of inertia and passivity combined with externally-inspired "crisis" management via periodic political explosions. At various points, Royal Commissions, Task Forces and so on have to be called in to deflate political pressures and smooth the process of reform, offering a few improvements to workers to forestall the next crisis.⁸³

The issues facing the Nova Scotia system were not unique. The problems however were exacerbated by a failure to recognize and act on them. It was the changes made in the 1970s particularly the indexing of pensions and increases in medical costs without offsetting increases in revenues that created the financial problems of the 1990s.

Meredith's Ontario system was experiencing similar difficulties. In 1980, Robert Elgie (who would later serve as Chairman of both the Ontario Workmen's Compensation Board and the Nova Scotia Workers' Compensation Board), the Minister of Labour, commissioned Paul Weiler, a Canadian professor of labour law at the Harvard Law School, to carry out an inquiry into the system. Weiler's landmark report concluded that,

In the final analysis, I believe that compensation benefits are paid for not by capital but primarily by labour: both as consumers of higher-priced goods and as wage earners in an industry faced with increasing labour costs in a competitive world. I emphasize this point in my Report to temper the ideological tone in the debate about the level and structure of compensation benefits. Richer benefits should not be advocated as a device through which workers as a class extract a larger slice of the national income pie from the capitalists as a class. Rather, workers' compensation is a vehicle through which able-bodied workers share their income with their disabled fellows.

I do not want the significance of this point to be misunderstood. When the Workers' Compensation Board assesses business for the cost of industrial injuries, rather than sending the bill to be

paid out of the government's treasury, this step is not neutral in its impact. Indeed, suitably designed, this system for financing workers' compensation can be a useful lever in achieving better accident prevention by employers, who usually are in the best position to institute safety measures in their workplaces. On the other hand, for those injuries which do occur in spite of the most heroic prevention efforts, assessing employers for the costs may actually be a more regressive mechanism for footing the bill than would be relying on the taxes which flow into the Consolidated Revenue Fund of the province.⁸⁴

Weiler's point is a critical one. At the time of Meredith's inquiry the focus for safety was to prevent industrial accidents and fatalities. The hazards were recognized as primarily of a physical nature. Requiring cages on machinery was a typical example of a safety prevention measure. Industrial diseases other than lung conditions for miners or textile workers were rarely recognized or compensated. In recent years, medical research has revealed many new connections between the workplace and diseases or medical conditions. Stress, chronic pain, hearing loss, and environmental illnesses have been difficult issues for the compensation system.

Increasingly, the conditions being considered for inclusion can be found to have resulted from a combination of lifestyle and workplace factors. Employers object to accepting financial responsibility for lifestyle choices or for pre-existing medical conditions. Defining 'work-relatedness' and therefore eligibility for benefits has become a fundamental and distracting issue for both politicians and compensation board administrators.

The Canadian model of workers' compensation had always included a centralized public agency as the vehicle for administering the program...This variety of tasks demands a large organization and a sizable budget. In a field as conflict-prone as this one, it is understandable that the leaders and employees of this large bureaucracy should serve as the lightning rod which attracts the deeply-felt grievances of workers- and their employers- about the character of workers' compensation in this province...The main battle terrain is claims adjudication.⁸⁵

Still, it is no secret that Ontario's Workers' Compensation Board has been enmeshed in conflict and protest in recent years....The difficulties encountered are not unique- neither to this province nor to this government program...But, I dare say, nowhere in the

Ontario government are the storm clouds more threatening than in workers' compensation. The clients of the Workers' Compensation Board in this province are simply no longer prepared to accept what they perceive as the edicts of a giant [3,000 employees], paternalistic, closed bureaucracy located in downtown Toronto.⁸⁶

While dissatisfaction with the model has been and continues to be a significant problem, few alternative solutions have been found. Many of the compensation boards, or appeal systems are finding themselves increasingly subject to challenges on points of law. Charter challenges have been successful.⁸⁷ These actions have created even greater instability in the system. Nova Scotia's 1996 Act and the 1999 amendments were very much in response to court decisions affecting the Board policies and entitlements to benefits.

Weiler addressed the central elements of the Ontario system, searching for alternative solutions. He noted,

Royal Commissions in New Zealand and Australia proposed abolishing the tort action in personal injury cases and replacing it with a general scheme of social insurance. New Zealand, though not Australia, has acted on that proposal...A traditional argument against such a system of social insurance for accident costs rests on the objective of prevention. A favourite defense of either tort litigation or workers' compensation is the assertion that this is an important instrument in reducing the overall accident toll, an end which is undeniably more desirable than providing compensation after the fact.⁸⁸

Weiler drew attention to an alternative to the Ontario approach of a stand alone compensation system. The New Zealand system provided for a combined system of compensation where work related and non-work related injuries were administered through a single system. Funding for the system was divided between individuals and employers. This model resembled some of the concepts included in Beveridge's British report which recommended integration of the elements of the social welfare system including workers' compensation. In 1999, a neo-conservative New Zealand government has begun to restructure this model separating the workers' compensation system from

the personal injury insurance system, and privatizing the delivery of the insurance benefits.

Weiler also pointed out the growing regulatory system that was being created to address occupational health and safety (OH&S) directly rather than through the indirect financial structures provided by the compensation system.

As far as industrial injuries are concerned, a challenger to workers' compensation has recently arrived on the scene. In 1978 Ontario enacted Bill 70, the Occupational Health and Safety Act, as a systematic attack on the problems of unsafe work-places in the province...The question naturally arises, can we now rely on direct regulation of specific industrial hazards to optimize accident prevention in the workplace, and thus feel free to fold workers' compensation into a general scheme of accident insurance?⁸⁹

Weiler's question is critical. The methodology on which the compensation system was based was to promote investment or to penalize a lack of investment in safety measures. Reasons, Ross and Paterson suggest, however, while the system provided the tools to promote safety they were not always used. "The general picture has been that WCBs have rarely adopted a determined approach to imposing penalty assessments. Only political pressure, overt or implied, can explain that situation. For instance, the British Columbia WCB, under a reformist NDP government, radically stepped up its use of penalty assessments, both in number and in amount."⁹⁰

Weiler's reports represent a significant body of work. Changes were made in Ontario and elsewhere in Canada as a result of a number of his recommendations. Many of his questions however, have not been adequately answered.

Speaking in 1995 to the annual workers' compensation college Dr. Elgie, then Chairman of the Nova Scotia Workers' Compensation Board, addressed the history of the Canadian system summarizing the many challenges it must face,

So these are different times we are facing, and different issues that we face than those that confronted our predecessors in 1914.

This combination of changing industries and changing workplaces is creating a difficulty in determining just what illnesses and diseases are work-related, and which are related to the economy; which diseases and injuries are multi-causal in origin; and in which condition did the workplace make a sufficient contribution to justify making the accident fund the sole payer.⁹¹

But, the most striking thing we will have to confront is the fact there have been, over the past 80 years in this country, a number of significant changes in the types of support systems since those pioneering days of workers compensation. And we are faced with the fact that there has been no attempt to get involved in any significant rationalization of these programs

What a “potpourri” of programs with no apparent plan in mind to rationalize all of this into some meaningful comprehensive program that protects people in this changing economic climate we live in, and which will prepare us more adequately for the competition we will face in the new global economy that challenges all of us.⁹²

Thus, in many parts of the country, we are seeing a process of what some have called “retrenchment” taking place—but, in reality, many of those changes to benefits were necessary in order to take both the tax system and collateral benefits into account.⁹³

The priorities of trade unions have changed as has their membership moving away from the coal miners and heavy industry, to the civil servants. Office workers had other priorities more important than workers’ compensation. Recently compensation issues are gaining momentum as diseases and injuries related to medical occupations, the use of computers, chemical sensitivity, and air indoor quality problems are being identified.

Despite countless royal commissions and inquiries, rarely has there been an attempt to assess the system as to its successes or failures. More often than not political intervention was a short-term reaction to a specific problem or pressure group. The result is a patchwork quilt of solutions, with the potential for gaping holes to develop. As Leonard Marsh described it, “the *ad hoc* character of workmen’s compensation procedure, however, is one of its disadvantages.”⁹⁴

“One of the truisms in management theory is that “if you can count it, you can manage it”.⁹⁵ If you can not determine the size, nature or location of the problem it is

unlikely you will be successful at addressing it. This is very much the case with workers' compensation.

The Atlantic Provinces Economic Council argues that

Public policies represent a form of social technology, as such follow to some degree the general principles of technology change, diffusion and obsolescence. Technology appears to be subject to life cycles of various lengths, rewards gained from a technique are derived from the early and middle parts of the life cycle.⁹⁶

Little effort has been made to assess the life cycle of the workers' compensation system or to establish the system within a wide public social policy context.

Comparison of programs between jurisdictions is a common practice in Canada. The structure, benefits, and operational characteristics of the systems are compared on an ongoing basis by the boards themselves. This is not unique to Canada. Rather than stimulating innovation, however these efforts appear to mitigate against wide variations in programming by defining a neutral zone of behaviour for government policy makers.

Canada needs to take the time to reflect on the compensation system and its role and relationship within the larger context of the social welfare system. The compensation systems in Canada are collectively a huge business. In 1996, eight provincial boards (exclusive of Quebec and PEI) spent \$4.8 billion on programs including, income replacement, medical benefits and rehabilitation. In addition, \$765 million was spent to administer the system.⁹⁷ The compensation boards play a significant role in relieving need for income support from other government programs. Their impact on the financing of hospital and medical services, the relationship with private insurance plans, as well as the system's impact on the competitiveness of industry internationally and interprovincially, on collective agreements and on industrial communities does not receive adequate consideration.

Conclusion

Workers' compensation legislation was introduced in Nova Scotia at a time when workmen, and the unions particularly the coal and steel industry unions, were a major political force. Over the years the interests of monopoly capital gave way to the needs of the government to attract and hold global capital investment. By the 1990s, the focus had shifted again to respond to the needs of competitive capital, and to the pressure of the injured worker organizations that had captured public support. The interests of global and monopoly capital and organized labour while not removed from the decision making process have diminished in influence.

Disasters and short-term political solutions have been the most significant influence on Nova Scotia's compensation system. Governments of a neo-conservative persuasion in other provinces intervened early to head off problems developing within the compensation system. This approach served dual political purposes: that of rolling back state intervention while, at the same time resolving the financial problems of the system. No government in Canada that expanded coverage and benefits during the 1970s has been able to escape the need to retrench in the 1980s and 1990s.

The Canadian political economic environment has created a number of government programs and initiatives that profoundly affected both individuals and the community since Meredith held his hearings. In 1995, Nova Scotia took the first steps to recognizing these and adjusting the workers' compensation system to reflect the context in which it had evolved. There were only small steps.

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Appendices

Appendix A

Commissioner's Appointed to the Workmen's Compensation Board	Term	Election Years Highlighting Changes in Government
V.J Paton, Chairman F. W. Armstrong, Vice Chairman John T. Joy, Commissioner	1917 to 1928 1917 to 1938 1917 to 1937	1916 and 1920 Liberal Government Continues
F. L. Milner, Chairman F. W. Armstrong, Vice Chairman John T. Joy, Commissioner	1928 to 1938 1917 to 1938 1917 to 1937	1925 Conservative Government Established, Continues through 1928 election
Frank Rowe, Chairman F. W. Armstrong, Vice Chairman Arthur Petrie, Commissioner	1938 to 1957 1917 to 1938 1938 to 1957	1933 Liberal Government Elected, Continues through 1937, 1941, 1945, 1949, 1953 Elections
Frank Rowe, Q. C., Chairman Harold Brownhill, Vice Chairman Arthur Petrie, Commissioner	1938 to 1957 1940 to 1957 1938 to 1957	
W. T. Hayden, Q.C., Chairman Harold J. Bartlow, Commissioner Robert K. Murrant, Commissioner	1958 to 1967 1958 to 1963 1958 to 1980	1956 Conservative Government Elected, Continues through 1960, 1963, 1967 Elections
W. T. Hayden, Q.C., Chairman William W. Downie, Commissioner Robert K. Murrant, Commissioner	1958 to 1967 1964 to 1976 1958 to 1980	
Stephen T. Pyke, Chairman William W. Downie, Commissioner Robert K. Murrant, Commissioner	1968 to 1976 1964 to 1976 1958 to 1980	1970 Liberals form a minority government, 1974 Liberals gain a majority
Willard MacKenzie, Vice Chairman Robert K. Murrant, Commissioner J. Denis Aucoin, Commissioner	1976 to 1978 1958 to 1980 1976 to 1979	1978 Conservative majority government, continues 1981, 1984, 1988, 1991
John R. Lynk, Chairman Willard MacKenzie, Vice Chairman Robert K. Murrant, Commissioner J. Denis Aucoin, Commissioner	1977 to 1985 1976 to 1978 1958 to 1980 1976 to 1979	
John R. Lynk, Chairman C. Burton Coutts, Vice Chairman Robert K. Murrant, Commissioner J. Denis Aucoin, Commissioner James H. Vaughan, Commissioner	1977 to 1985 1979 to 1987 1958 to 1980 1976 to 1979 1979 to 1991	
John R. Lynk, Chairman C. Burton Coutts, Vice Chairman Robert K. Murrant, Commissioner J. Denis Aucoin, Commissioner James H. Vaughan, Commissioner	1977 to 1985 1979 to 1987 1958 to 1980 1976 to 1979 1979 to 1991	
John R. Lynk, Chairman C. Burton Coutts, Vice Chairman James H. Vaughan, Commissioner	1977 to 1985 1979 to 1987 1979 to 1991	
John R. Lynk, Chairman C. Burton Coutts, Vice Chairman James H. Vaughan, Commissioner	1977 to 1985 1979 to 1987 1979 to 1991	

C. Gregory Hicks, Commissioner	1982 to 1987	
Reginald J. Allen, Chairman and General Manager	1985 to 1991	
C. Burton Coutts, Vice Chairman	1979 to 1987	
James H. Vaughan, Commissioner	1979 to 1991	
C. Gregory Hicks, Commissioner	1982 to 1987	
Reginald J. Allen, Chairman and General Manager	1985 to 1991	
James H. Vaughan, Commissioner	1979 to 1993	
Robert Elgie, Chairman	1992 to 1996	
Jim Vaughan, Vice Chair	1979 to 1993	
David Stuewe, CEO	1992 to present	
Wally Power, Employee Rep.	1992 to 1998	
Norman Robar, Employee Rep.	1992 to 1993	
Charles Weir, Employee Rep.	1992 to 1995	
Bill Reid, Employer Rep.	1992 to 1995	
James Sapp, Employer Rep.	1992 to 1999	
Barry Wark, Employer Rep.	1992 to 1999	
Robert Elgie, Chairman	1992 to 1996	1994 Liberal government elected, continues following 1998 election
Innis Christie, Chair Designate	1995 to present	
John Bishop, Vice Chair	1994 to 1999	
David Stuewe, CEO	1992 to present	
Wally Power, Employee Rep.	1992 to 1998	
Jim Gill, Employee Rep	1993 to 1995	
Charles Weir, Employee Rep.	1992 to 1995	
Bill Reid, Employer Rep.	1992 to 1995	
James Sapp, Employer Rep.	1992 to 1999	
Barry Wark, Employer Rep.	1992 to 1998	
Innis Christie, Chairman	1995 to present	
John Bishop, Vice Chair	1994 to 1999	
David Stuewe, CEO	1992 to present	
Roberta Morrison, Employee Rep	1995 to present	
Ben Chisholm, Employee Rep	1995 to 1997	
Gary Dean, Employer Rep	1995 to present	
Jim Sapp, Employer Rep	1992 to 1999	
Barry Wark, Employer Rep	1992 to 1998	
Basil Kilgar, Public-at-Large	1997 to 1999	
Oscar Wong, Public-at-Large	1997 to present	
Innis Christie, Chairman	1995 to present	1999 Conservative Government elected
Oscar Wong, Vice Chair	1997 to present	
David Stuewe, CEO	1992 to present	
Roberta Morrison, Employee Rep	1995 to present	
Gary Penny, Employee Rep	1998 to present	
Jim Nevill, Employee Rep	1998 to present	
Gary Dean, Employer Rep	1995 to present	
Melville, Employer Rep	1999 to present	
Elwood Dillman, Employer Rep	1998 to present	
Jim Whyte, Public-at-Large	1999 to present	

Source: Workers' Compensation Board Annual Reports

Appendix B

Year	Benefits Calculations
1915	55 % of gross earnings loss
1930	60% of gross earnings loss
1937	66 2/3% of gross earnings loss except in the lumbering industry
1944	All claimants increased to 66 2/3 %
1956	70% of gross earnings loss
1959	75% of gross earnings loss
1996	75% of net earnings loss during the first 26 weeks; 85% thereafter

Year	Waiting Period for Wage Replacement Benefits
1915	7 days
1953	5 days
1959	4 days
1968	3 days
1992	Remainder of the day of the injury
1996	2 days

Source: Sample, Kelly, *Workers' Compensation in Nova Scotia: A Legal History*, working paper prepared for the Workers' Compensation Board of Nova Scotia, 1996, p. 20

Appendix C

Coverage	Industries are classed in two schedules- the first those that are part of the collective liability system and the second being those under the individual liability system. Schedule 2 includes the railways, municipal enterprises, telephone and navigation companies. Schedule 1 includes all industries with the exception of farming, wholesale and retail establishments, domestic service. Firms of varying sizes determined by industry class excluded based on the number of employees which ranged from 1-5 employees	Classifications not significantly changes, but all firms under the compulsory participation were to have more than 3 employees, firms outside the schedule or with less than 3 could apply to be included voluntarily Self insured employers remained benefits were paid by the Board, the Board being reimbursed for the direct costs plus a contribution to overhead	All firms with more than 3 employees except those excluded, did not really alter the list of firms that were covered by compulsory participation Self insured employers remained benefits were paid by the Board, the Board being reimbursed for the direct costs plus a contribution to overhead Return to work rights to the employee included for most industry sectors
Jurisdiction	Board was granted 'exclusive jurisdiction' to make decisions Only matters of the law, not of fact, could be referred to the Courts	Appeal Board introduced in mid 1970s combined with the use of Workers Counselors funded by the Government The backlog of appeals, and nature of the decisions being made were fundamental issues in calls for reform	New appeal structure introduced, created Appeal Tribunal which was restricted to policy set by the Board
Insurance system	Collective Liability; and individual liability for certain specified industries	Collective Liability; and individual liability for certain specified industries	Collective Liability; and individual liability for certain specified industries
Funding	Assessments by industry class for those part of the collective pool, and costs plus a contribution to overheads for the self-insured accounts	Assessments by industry class for those part of the collective pool, and costs plus a contribution to overheads for the self-insured accounts	Assessments by industry class for those part of the collective pool, and costs plus a contribution to overheads for the self-insured accounts
Eligibility	No fault system in which the worker gained the right to benefits without regard to his own negligence and gave up the right to sue the employer Compensation is not provided where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement A schedule of industrial diseases to be compensated	No fault system in which the worker gained the right to benefits without regard to his own negligence and gave up the right to sue the employer Compensation is not provided where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement A schedule of industrial diseases to be compensated which required to be changed by the legislature, over time the list of conditions expanded, automatic assumption for coal miners with a loss of lung function introduced in 1981	No fault system in which the worker gained the right to benefits without regard to his own negligence and gave up the right to sue the employer Compensation is not provided where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement A schedule of industrial diseases to be compensated could be changed by the Board amending its own regulations

Compensation	Compensation be available on a wage loss basis for the duration of the injury, 55 % of earnings, 7 day waiting period, and annual max of \$1,200.	<p>Benefits expanded to include medical aid and rehabilitation costs</p> <p>Temporary wage loss benefits based on 75% of gross earnings payable from the day of the injury (established at this level in 1959)</p> <p>Benefits in the fishing industry and lumbering varied from the normal benefits, fishing under Part III of the Act</p> <p>Permanent impairment benefits shifted from wage loss to a schedule based on the degree of impairment</p>	<p>Medical aid and rehabilitation costs</p> <p>Temporary wage loss benefits based on 75% of net earnings payable after the third day of the injury</p> <p>Permanent impairment benefits shifted back to earnings loss, increased to 85% of net earnings after 26 weeks</p> <p>Collateral benefits to be considered in calculation other than from private coverage</p>
Administration	State appointed Board of Directors; to administer and to fund the administrative costs of operating the system	<p>State appointed Board of Directors comprised of labour and management, and Appeal Board</p> <p>Provided free legal services to injured workers to file appeals</p>	<p>State appointed tripartite Board of Directors comprised of labour, management and the general public, and Appeal Tribunal</p> <p>Provided free legal services to injured workers to file appeals</p>
Medical and rehabilitation services	Not included	<p>Included and expanded overtime.</p> <p>Medical aid exemptions had existed in earlier years for friendly societies</p>	Substantially included in the system

Chapter 4 A System Divided

This chapter surveys the issues and changes that have taken place at the national level in relation to the three historic roles of the compensation system: no-fault insurance, the welfare state and injury prevention. Many of the problems the compensation system was designed to address can be solved by systems that did not exist in the late 1880s. Many of these systems operate at a national level. It is important to remember that the Canadian approach of provincially mandated workers' compensation systems is not the international norm. This structural feature adds to the complexity of the system.

Once set in motion the compensation system in Nova Scotia changed in response to the political economic environment of the province. The system operates within a large complex of issues that are debated and negotiated at the national and/ or federal/provincial level. The first section of this chapter surveys the developments in the Canadian welfare state, the nature of federal/provincial negotiations and labour/management relation to provide a context for the compensation system.

It has been argued that the social and political economic basis for Meredith's work has shifted dramatically. Meredith's research was conducted from 1912 to 1913. Personal income taxes, socialized medicine, unemployment insurance and old age pensions did not exist. Had these systems been in place would they have materially altered the design of his system? Are these changes so fundamental that Meredith's system is no longer valid?

The second section of the chapter surveys the current compensation literature highlighting the most contentious issues. What are the policy choices? How is success to be measured?

At the Periphery of Social Policy

The workers' compensation system whether in Britain, Germany, Canada or the United States developed and operated not as an isolated system but within a larger context of state, capital and labour relations. The compensation system has been influenced by occupational health and safety conditions; industrial relations; the social welfare policy and in Canada by the evolution of health care policy. This chapter will review the major developments in the Canadian and Nova Scotia context, and attempt to draw conclusions regarding the interaction between these systems.

The Social Insurance System

Struthers describes the origins of the social welfare system in Canada,

In 1940 Canada became one of the last western industrial nations to create a national system of unemployment insurance, ending a twenty-eight-year period during which local poor relief and private charity provided the only means of coping with three of the worst industrial depressions of the twentieth century. This change has quite rightly been viewed as a landmark in the development of the Canadian welfare state. Together with old-age pensions, workmen's compensation, and medicare, unemployment insurance now constitutes part of a crucial network of state social –insurance schemes designed to protect the individual from the most pervasive risks to income in a market economy.¹

The 1943 Marsh Report provided recommendations to the federal government regarding a comprehensive social security system for Canada. Marsh described three arguments in support of a social insurance system,

(a) In modern economic life there are certain hazards and contingencies, which have to be met, some of them completely unpredictable, some of them uncertain as to time but in other ways reasonably to be anticipated. They may be met in hit-and-miss fashion by individual families or they may be met by forms of collective provision...we know from experience that, *collectively speaking*, these problems or needs are always present at some place in the community or among the population.

(b) For a large proportion of the population, incomes are not sufficient to take care of these contingencies through their own resources...The inadequacy of even moderate incomes to provide for such things as major illnesses has now been measured by more than one authoritative investigation.

(c) The third principle, which really links together the first two, is that of the collective pooling of risks. Social insurance is the application on a much larger scale of the principle of pooling which has long been the basis of insurance in the more restricted sense (commercial insurance against fire, etc.)...

Social insurance brings in the resources of the state, i.e., the resources of the community as a whole, or in a particular case that part of the resources which may be garnered together through taxes or contributions...The basic soundness of social insurance is that it is underwritten by the community as a whole.²

Workmen's compensation fell within Marsh's study and definition of social insurance. The Marsh Report was presented to Parliament at the same time as the Heagerty Report on Health Insurance. Marsh's report recommended health and unemployment insurance as "the two basics of 'universal' and 'employment' risks, respectively...Both the Heagerty Report and the Marsh Report recognized that provincially administered schemes would be essential, but both were striving for modes of national co-ordination that would be politically acceptable."³

Marsh concluded his review of the compensation systems by stating, "There is so much other ground that remains to be covered in Canada, however, that reform or absorption of industrial-accident insurance is not the most pressing item on the agenda."⁴ Marsh did recommend expansion of the workmen's compensation system and the need for greater standardization between provinces.⁵

Included in the appendix to the Marsh report is a comparison of the benefits available from eight provincial compensation systems in 1943. The maximum payment per week for either temporary or permanent disability was \$8.00 in Nova Scotia and New Brunswick, compared to \$10.00 in British Columbia and Alberta, \$12.50 in Saskatchewan and Quebec, \$15.00 in Manitoba, and in Ontario benefits were based on two thirds of average earners with no ceiling imposed.⁶ Marsh estimated that in 1940, the compensation boards provided coverage for 1,500,000 wage earners while

2,500,000 workers were covered by the unemployment insurance program. If compensation benefits were to be standardized across the country the cost of the system in the Maritimes would increase dramatically.

The Canadian government when confronted with a compelling issue found the authority directly or indirectly to establish programs and/or national standards. In the case of the old age pension and unemployment insurance the British North America Act was amended to create the authority for the programs. Workmen's compensation despite its weaknesses and regional variation has never become such an issue.

Another method employed to achieve a national standard was the development of cost shared programs such as the Canadian Assistance Program to fund welfare programs, and Established Programs Funding strategy to provide for health care. In these cases, the provinces were required to perform to a specified level to earn federal funding.

The 1964 Royal Commission on Health Services reported that prior to "World War II, a large part of the population of Canada received little hospital and health care, and government expenditure on health was minimal. After the war, there began a rapid process of expansion of hospital services through insurance schemes and government action."⁷ The Commission recommended a system of standards and a complex system of federal provincial transfers. The need for the compensation system to provide basic medical and rehabilitation services was declining.

The Commission in analyzing expenditures on health identified the compensation systems as contributing, "Between the calendar years 1947 and 1960 the outlays of Workmen's Compensation Boards in Canada on medical aid and hospitalization increased from \$9.2 million to \$35.9 million. Currently the annual rate is nearly \$40 million, over 6 per cent of total provincial net general expenditure on health services, and over \$2 per capita."⁸

In 1999, the NSWCB provided \$17.5 million in medical and rehabilitation services that represented less than 1 percent of total provincial health care expenditures.⁹ Medical and rehabilitation services represent approximately 20 percent of the claims expenses of the board. Disability and survivor income payments take up the remaining 80 percent.

In Unison, A Canadian Approach to Disability Issues, a 1998 report published by the federal and provincial governments states,

In Unison recognizes the need for an income safety net that rewards individual work efforts to the greatest extent possible but which provides financial assistance if self-support is impossible or insufficient to meet basic needs. The objectives are to:

- encourage economic independence by removing disincentives to work;
- detach eligibility for disability supports from income programs;
- improve access and reduce administrative duplication through greater coordination of income programs;
- ensure availability of income support for periods during which individuals are not able to support themselves.¹⁰

The report states that 8 percent of disabled persons of working age rely on workers' compensation benefits as a source of income.

Workers' compensation has never achieved the necessary national prominence to warrant federal government intervention. Jennissen, Prince and Schwartz observe that for the last twenty-five years workers' compensation has been absent from social policy-making and reform in Canada.¹¹ The authors suggest that this exclusion may be due to jurisdictional disputes between departments or across governments. Another rationale maybe that workers' compensation as an insurance plan, though state operated, it is essentially privately financed. It is hard to understand why the differences in benefits provided however would not have been of concern, the impact would have been no less significant than variations between welfare programs, access to medical services or other programs that were essentially local in determination.

Certainly the fact that workers' compensation applied only to those in the labour force appears not to have been a significant deterrent to government action as initiatives were taken to implement unemployment insurance and pension programs. It may have been the lack of a significant crisis of national proportions deterred the federal government. Workers' compensation existed on the margins of government social policy at least at the national level.

In the United States, repeated attempts have been made to legislate national workers' compensation standards for state administered systems, although none of these attempts succeeded.

Federal Provincial Relations

Another explanation for the lack of federal or national interest may be in the relationship between the compensation system, industrial relations, and workplace regulation. The provinces regulate labour/management relations except in certain industries such as the transportation, telecommunications and banking sectors. This may have further disinclined the federal government to become involved in the compensation issue.

Public pressure on government to provide universal education, improved health care and poor relief not to mention roads, bridges, sewer, water, and electrification grew as traditional sources of provincial revenues were in decline. Personal income and corporate taxes were introduced beginning in 1917 to broaden and increase revenues.

The war years changed the public's attitude with respect to the federal government's involvement in non-traditional areas such as veterans' pension and medical services, and widows' allowances. The public came to accept and expect government intervention.

In Nova Scotia, the provincial economy and provincial finances were in severe distress by the late 1950s, with a high rate of dependency on federal transfers to both the province and the individual. Regulation affecting industrial activity was not a priority. Labour legislation such as workers' compensation and safety regulations was subject to periodic review but no bold moves were taken.

With changes in public attitudes and the support of new economic theories critical of the unregulated market, governments embarked over a series of decades to construct a social security system combined with national standards for health care, and education. This system was expanded and refined until the 1980s when economic and political philosophy came under the increasing influence of neo-conservative thinking.

Smarsdon notes the significance of the federal welfare state not simply for the benefits it provided to citizens and in terms of economic stability, but "as a key source of national political legitimacy."¹² The system became "entrenched because of the inter-party consensus around the welfare state, the growth of federal transfer payments as a key source of provincial government revenues, and the further development of federal social benefits as an important form of compensation for regional inequalities of employment and income."¹³

The 1990s have marked a period of major restructuring for the social welfare system where universality and rights based approaches to program design have given way to means tests and greater demands on individuals to assume responsibility and the consequences for their actions. Even with the retrenchment of the 1990s, the role of the state in the lives of Canadians has changed dramatically since 1900. Universal health care, old age pension, the Canada Pension Plan, employment insurance, and publicly mandated private pensions have all been introduced as have new personal and consumption tax structures to support these programs.

Smarsdon states that the

“significant neo-conservative assault on the federal welfare state thus means more than an attack on various social programs which ‘distort’ market incentives. It also involves an attack on a set of redistributive policies and programs that are deeply implicated in the process by which political order and legitimacy are constructed in Canada...The complications surrounding systematic cutbacks point to a wider tension that has always existed in the federal welfare state between the “liberal-residualist” concern to minimize the impact of social programs on market operations, and the use of federal social programs as a key means of establishing national policy legitimacy through various forms of inter-regional distribution.”¹⁴

These changes principally initiated at the federal government level had been hard on provinces such as Nova Scotia where both personal household income as well as provincial government revenues have been dependent on federal transfer payments. In the April 1996 Budget Speech, the Nova Scotia Minister of Finance assessed the impact of these changes on the province,

Other areas of federal funding have also been capped or reduced. Mr. Speaker, the writing is on the wall. This province cannot look to Ottawa to solve its fiscal or its economic problems. The combined effect of federal restraint measures, announced in recent budgets, will result in cumulative losses to the province estimated to reach \$2.5 billion by the year 2000.¹⁵

According to the Atlantic Provinces Economic Council,

The decline in the dependency ratio [a Statistics Canada measure that compares the level of government transfers with earned employment income] in 1997 is following a steady trend which began in 1993. Over the period, total transfers to persons in Atlantic Canada fell from \$31.66 per \$100 of employment income in 1993 to \$28.53 in 1997 [the Canadian average for 1997 was \$18.16]...In Atlantic Canada, weak labour markets in the mid-1990s muted growth in employment income, and the region’s decline dependence reflects as much the cuts which have occurred in some government transfer programs as the growth in employment income.¹⁶

As Prince states,

[F]ederal-provincial conflict has intensified since the late 1980s, driven by several unilateral restraints applied to the EPF [Established Program Funding] transfers, cuts to Unemployment Insurance benefits and increases in premiums, the cap on CAP [Canada Assistance Plan], and the introduction of the CHST [Canada Health and Social Transfer] which “gored the ox” of all the provinces and territories. Individually and cumulatively, these measures have encouraged a new take-off of provincialism in federalism and of inter-provincialism in social policy making.

Feelings of discontent about intergovernmental relations are high.¹⁷

Prince notes the use of provincial/ territorial committees to develop policy and to coordinate responses and negotiations with the federal government. This process with federal participation has resulted in the release of the *In Unison* discussion paper referred to earlier in this chapter. The question remains however whether workers' compensation will be integrated or disassociated from this framework.

Despite the neo-conservative influences on the social welfare system throughout the 1990s, the system is far more comprehensive than at the time of Meredith's research. During the 1990s, the workers' compensation system has pledged its return to "Meredith". The following excerpt from the Saskatchewan Workers' Compensation Board Strategic Plan highlights this approach,

The Meredith Principles form the basis for the Workers' Compensation System we are mandated to manage. They are our foundation established in tradition and practice, and supported by legislation and policy. Without them, the compensation system ceases to exist in a way that significantly serves our society. The Principles entrench and support the integrity and value of what we do.

The Meredith Principles are regularly under pressure from different and sometimes self-interested decision making on the part of stakeholders and ourselves. Weaknesses in decision making create the potential for competitors to promote alternatives that are real, but that cannot yield the benefits of a system based on the Meredith Principles.¹⁸

The Board identifies the Meredith principles, which were adopted in Saskatchewan fourteen years after the Nova Scotia and Ontario legislation, as including the following: no fault compensation, security of benefits, collective employer liability, independence of the board and exclusive jurisdiction.¹⁹ This interpretation of Meredith fails to acknowledge the important contribution the system makes to the benefit of the community-at-large by removing income replacement and medical expenses from taxpayers.

The Meredith recommendations also imposed a burden on the injured worker, not simply the removal of the right to sue, but a shared financial burden associated with the risk in law of successfully finding an employer liable. The modern interpretation of Meredith's system fails to recognize that income replacement in 1915 was required to cover medical costs, pension income and other expenditures that have long since been provided separately. Life expectancies have also increased significantly since 1915 requiring the compensation system to provide or replace income over a more extended period.

What is it about the compensation system that sets it apart from the mainstream of social policy development in Canada yet has sustained the system as a state enterprise?

The answer can be found in the relationship between workers' compensation and the industrial relations system. The transition from miners' relief society to modern compensation system is clearly the result of a process of negotiation between organizations of labour and capital, arbitrated by the state. While small groups such as the miners made the early gains, benefits were slowly expanded and extended to the majority of the workforce.

The Canadian Labour Congress (CLC) reports on the current trend by governments towards handing over policy-making to consultative bodies involving labour and business, mandating these groups to develop a consensus which government may or may not implement. This process the CLC describes as "social bargaining".²⁰ The CLC's objective is to achieve "co-determination", the joint control of the workplace by workers and employers through the adoption of a workers bill of rights, significantly enhancing the existing rights to include the "right to act".²¹ The CLC emphasizes the importance of the collective bargaining process, and local workplace efforts to affect health and safety. As the CLC states "Many legislated health and safety rights and

standards were first achieved through contract language on the part of strong unions in particular workplaces. Joint committees were common in the mining industry and were then legislated first for mines, then for workplaces generally. The legal right to refuse arose through unions first succeeding in getting the procedure enshrined in collective bargaining.”²²

Changes in the structure and composition of the labour force, as well as within the trade union movement have occurred. In Nova Scotia less than one third of the labour force is unionized.²³ Trade union membership growth since the 1960s has been from public sector employees. Sixty-six percent of unionized employees in Nova Scotia work in the public sector.²⁴ The number of women in the labour force and within the trade union movement also increased. The preoccupation of craft unions with regulations for safety in industry, construction and mining has been supplanted by an interest in occupational health, working conditions in offices, schools, hospitals and within the service and retail sectors. Many of these occupations, such as teachers in Nova Scotia, are not included within the compensation system.

Symbolic of the complex relationship between workers' compensation and occupational health and safety is the date chosen by the Canadian Union of Public Employees to commemorate workers killed while on the job. The now internationally recognized Day of Mourning is held on April 28, the day that Meredith's Ontario compensation act was proclaimed into law.²⁵

The CLC reports on two trends discernible in recent OH&S legislation. The first is a move from physical safety issues to health issues, and the second is the growth in the remedial side of health and safety. The health and safety legislation of the 1970s provided for a series of workers' rights and powers (the right to participate; the right to know and the right to refuse unsafe work) as well as establishing regulatory standards for health and safety in workplaces.²⁶

A briefing paper prepared by the British Columbia Workers' Compensation Board described Nova Scotia's 1995 OH&S legislation as "explicitly declares self-regulation as a statutory objective."²⁷ The briefing paper states that,

Financial and political factors may be contributory drivers for this trend in jurisdictions, such as Ontario and Nova Scotia, which have large unfunded liabilities in their compensation systems- the financing source for OH&S activities. However, other provinces are also promoting internal responsibility, not necessarily for financial or political reasons. Many provinces are encouraging workplace parties to take on greater responsibility for self-monitoring and compliance. This allows the enforcement agencies to target scarce resources on high-risk industries and poor safety performers.²⁸

Self-regulation became a fundamental characteristic of OH&S legislation across Canada. Self regulation while empowering workers in some interpretations, also can be used to justify a reduced role for government, either an absolute reduction in government inspection or a relative reduction to address the new sectors which were included under the OH&S umbrella during the 1970s.

The lack of a federal interest in the area of standards with respect to workers' compensation, and OH&S regulations combined with Nova Scotia's extreme dependency on federal transfers to sustain its basic system of health, education and infrastructure immobilized the provincial government.

The benefits gained by organized labour in the 1915 compensation act with several exceptions were never taken away. Organized labour, however, has only with great difficulty and persistence been able to gain any expansion of the system. The interests of capital were addressed through the absence of significant change. The government did not roll back benefits, it just allowed them to atrophy. The compensation system operated within a narrow and declining proportion of the economy. As small businesses and the service sector expanded, they did so outside the compensation system.

Union proposals for change regularly included proposals to expand to 'universal coverage' but these were most often given lesser weight than securing what gains could be achieved for those already within the scope of the act.

A federal government advisory committee reported in 1997 on the changing workplace and the implications for government policy. The committee concluded,

It is clear that employment relationships are undergoing major changes, as self-employment, short term contracts, telework and other forms of non-standard employment increase in importance...Structural change has been a Canadian reality for many years, and it is accelerating conditioned by the business cycle and macroeconomic policies and, - driven by globalization, computerization, changing labour market institutions and the changing labour supply decisions of individuals.

As a result of the transformations of the organization and institutions of work, the risks of the workplace are tending to fall more and more on the employees (e.g., obtaining or keeping a job; a lack of benefits such as retirement, leave and insurance benefits for those in atypical employment...

Historically, through insurance programs, pension and similar benefits, the workplace has been used as a vehicle for employees to secure protection for themselves and their families. This system of workplace-based social benefits is at risk in the new world of work. Our current system's lack of portability of benefits and pensions does not encourage or support mobility, and it operates to the detriment of both employers and workers. The decline in secure lifetime employment means that we must focus on new, more flexible and more portable forms of third-party benefits schemes.²⁹

It is clear the system must be reconsidered or restructured to respond to changes in the nature of work, as well as to the limitations of provincial boundaries and employer-employee relationships. The compensation system in Nova Scotia limps along outside the mainstream of public policy, on the periphery of social planning, workplace regulation and labour/management relations.

Workers' compensation systems have been far from the mainstream of social policy considerations at the national level. With only 8 percent of disabled Canadians dependent on the system and medical aid representing less than 1 percent of total

health care expenditures, it is even less likely the system will attract policy attention in the future.

Throughout its history the system has changed episodically by way of formal government inquires and in response to special interest groups. In the 1990s, Ison notes that "Participation in this process of change has produced new organizations representing employers, workers or disabled people...and new organizations of professionals and para-professionals."³⁰ Ison also observes that the legal profession plays a far more substantial role in promoting structural change even within its traditional advocacy function. Arguments presented to appeal tribunals have resulted in decisions causing structural change. As well the Charter of Rights has in Ison's opinion made "arguments about system design relevant in the legal processes in which they would not have been relevant before."³¹

Jennissen, Prince and Schwartz conclude that,

Accountability is a hallmark of democratic government and one of the traditional public-service values in Canada. It is also a persistent concern and a present issue in public management and governance. Workers' compensation has stood apart – both historically and administratively- from other social insurance programs in Canada. Historically, it insured a limited pool of Canadians –those working in covered jobs – against a limited set of injuries, those that occurred on-the-job and because of the job. Administratively, most provincial programs have been run by boards dominated by representatives of employers and workers, boards that were little influenced by representatives of elected governments. The challenge today is not simply placing greater emphasis on the traditional accountability of workers' compensation boards to business and labour but elaborating on the duty of boards to account systematically to elected officials for policy results as well as administrative processes.³²

The authors recommend a number of initiatives involving public reporting and legislative scrutiny as a means of holding compensation boards across Canada accountable to elected governments. Accountability is defined by Jennissen, Prince and Schwartz, as "the duty to answer, explain and justify the exercise of public powers, the disbursement of public resources, and the achievement of public policy objectives to

provincial governments and legislatures".³³ Increased public accountability it is argued would improve "the potential for developing a compensation system that is more in tune with the current profile of workplace health and safety in Canada...and may help generate pressure from the public and from within government to address the gaps and overlaps in the social security system."³⁴

The history of the Nova Scotia system demonstrates that it is the lack of public policy goals, not the accountability system that is the most serious deficiency. The policy decisions affecting coverage, benefits, and funding have traditionally been debated outside the compensation board, before select committees and royal commissions. Most recently as Ison observes court rulings have been responsible for significant policy changes.

Jennissen, Prince and Schwarz conclude their article by stating that,

Greater public accountability will allow the future course of workers' compensation insurance to be determined not by a private compromise between employers and workers but by a more public compromise among representatives of employers, workers and the broader Canadian public.³⁵

Nova Scotia's recent experience supports this conclusion with government action resulting from civil disobedience by injured workers' groups and court decisions on widow's pensions. Traditional attempts at labour and management negotiation as a method of resolving these issues will neither be sufficiently expedient nor public enough to resolve the current problems facing the system.

Defining Success

Throughout this thesis, the term 'system' has been used to distinguish the broad legal and administrative framework from either the act or the board. In 1998, the Auditor General for Nova Scotia was asked to conduct a review of the administrative

structures of the system which included the board, appeal tribunal and workers' advisors program. The report was critical of the linkages and accountabilities of the system as a whole. While it is clear these components of the system are interdependent– what of occupational health and safety? Should it be considered part of the compensation system?

Justice Tysoe of British Columbia while conducting a major inquiry into the BC system in 1966 wrote that,

Some individuals misconceive the purpose and intention of the Act and of the scheme or plan it embodies. It was not designed to be a social welfare measure. Nor, in my view, should it be. The time may come when it will be integrated with a broad system of social security, but it is my feeling that its purpose is so different to that of a social welfare scheme that it ought not to be completely swallowed up in such a scheme. I feel that it would be undesirable from the standpoint of accident prevention alone.³⁶

Is this conclusion still valid?

Surprisingly little empirical research is available particularly with respect to the Canadian compensation systems. In 1983, John D. Worrall, edited a series of American research reports on the incentives and disincentives to safety in workers' compensation. The report by James R. Chelius finds "The positive relationship between income replacement and both the total number of lost workdays rate and the frequency rate indicates that workers' compensation influences more than just the income security of injured workers."³⁷ Chelius concludes that higher benefits are associated with higher injuries rates but cautions against suggestions that rates should be lowered to counteract this trend. "It is, more simply, an empirical finding that there is a conflict between income security and prevention. The balanced achievement of both goals can therefore be enhanced if attention is paid to this trade-off between security and prevention."³⁸

With respect to incentives and disincentives to employer behaviour, the American studies achieved contradictory results on the impact of experience rated assessment premiums. While some researchers concluded “that employers should have incentive to reduce accidents: wages rise with injury risk, and employers pay compensating differentials that can be substantial. But the experience-rating plan produces no measurable effect on employers safety.”³⁹

Nova Scotia unlike most Canadian jurisdictions has less than 5 years experience operating an experienced rating assessment system. The impact of this program on employers has not been determined, nor has research been published on the relationship between injury rates and benefits levels. Without evidence to guide policy development and decision making, the compensation system including OH&S is extremely vulnerable to political expediency.

In 1991, the Workers Compensation Research Institute in the US, hosted a panel discussion on twenty-four hour insurance coverage. The panelist assessing the political dynamics of the issue observed “workers’ compensation is the classic graveyard of politics and it’s where politicians’ bones are buried.”⁴⁰ The historical perspective confirms this conclusion, workers’ compensation systems operate on frequently contested terrain. The number and sophistication of the contestants is increasing.

A series of new Canadian research papers has just been released under the title *Workers’ Compensation: Foundations for Reform*. The editors, Gunderson and Hyatt conclude that the “workers’ compensation system is in drastic need of reform”.⁴¹ The papers presented in the volume provide a valuable collection of research based on the Canadian system. A number of the key issues facing the system are explored including: the relationship between health and safety regulation; experience rating and corporate performance; the impact of a return to a tort-based system; private insurance delivery versus public insurance institutions; the impact of unfunded liabilities and changes in the

nature of work. Gunderson and Hyatt identify a number of common themes from research papers that they argue must be addressed as part of a reform agenda. These themes are: incentives matter; litigation is filling policy voids; unfunded liabilities are a form of cost shifting to future generations; payroll taxes such as workers' compensation can discourage job creation and privatization is not an obvious solution for system reform.⁴²

The nature of work and work relationships is changing. Our understanding of etiology is limited. Successful legal challenges are dictating policy agendas. Compensation system changes offer little in the way of political capital. In Nova Scotia, the system offers too little at too high a price not only to injured workers and employers but to interested politicians as well.

What are the alternatives to our current approach to workers' compensation?

To be able to answer this question, one must decide what is it that the system is attempting to accomplish and to develop a clear statement of the goals that are to be achieved:

- Is the system designed primarily to promote safe working conditions?
- Is the system designed to provide income replacement, medical and rehabilitation services?
- Is the system intended to accomplish both of these tasks?

Once a clear statement as to the goals to be achieved is made it becomes possible to define the population at risk and the needs to be protected or provided for within the system. Each of the three alternative goals leads to a different set of structures, issues and parties whose interests must be considered.

If the primary mission relates to the provision of safe workplaces, it would be hard to argue that the application should not be universal. As members of a community we have come to expect that protection under the law in terms of minimum safe working

conditions and protection from known occupational hazards should be available to everyone.

If the system is solely designed to provide income support against disruptions in earnings, the first question that comes to mind is whether it should matter as to the cause of the income disruption. Is it not simply enough that the disruption has occurred, and the need to replace that income has arisen. How and from where the replacement income is derived— whether it is from family, private insurance or public support mechanisms is not the primary consideration. The compensation system applies on a selective basis across workplaces, and only in the cases of “work-related” injury or disease. It is only one aspect of what can be a very complex system combining, public services such as health care, and pensions, private insurance against disability, medical costs and income disruption as well as guaranteed mortgage and credit card and other payments, to mention family and community services of both a monetary and non-monetary nature.

The second question related to the operation of an income replacement system is one of entitlement. Is a self-employed individual less in need of an income replacement program, than an employee of a large company? Does someone working on a farm have different needs than someone working in a factory? In many cases, the acceptance of the shortcomings of the current approach to the state workers' compensation system have resulted in disenfranchised individuals, those who plan ahead or have unions that bargain on their behalf have created through private coverage benefits that replace or in some cases supplement the public system from which they are excluded.

In Nova Scotia, more than 30 percent of those employed do not have protection under the public compensation system. The reality of the workers compensation system is that government policy condones a three tiered system:

- The state mandated public system for selected industries
- Private insurance for those who have taken the initiative
- No protection

It was the individuals in this third category that Meredith correctly recognized as a potential responsibility of the community at large. Beneficiaries of private insurance can also become a community obligation if eligibility becomes an issue to be resolved through the state financed court system. In the case of both the public and private insurance systems, the community as consumers of products and services shoulders part of the cost of income replacement measures.

Regardless of the method of insurance or lack thereof- the community will in one way or another play a role in assuming the cost of any income replacement measure. While workers' compensation is selectively applied, in reality, universal income replacement programs already exist. Ironically, it has been the private programs that have dropped the "work-related" cause of the income disruption, and focused on the real issue as Justice Tysoe of British Columbia described it, "restoring the individual economically and physically".⁴³ The public system has grown in complexity in response to the need to defend its decisions to appeal tribunals and to the courts.

It is not difficult to accept the concept of universality as it applies to public policy and safe work environments. The question of the universal need for protection against income disruption is also hard to argue. The divisive aspect of the issue of universal application of workers' compensation has been the allocation of the costs associated with such a program, not the principle itself.

In 1997, the Nova Scotia Workers' Compensation Board paid out \$98 million in benefits to injured workers.⁴⁴ Accident cost accounting theory would suggest these direct costs would have generated another \$500 million in property damage, safety investigations, administrations, down-time and other disruptions and expenses.⁴⁵ On \$4

billion in insured wages more than 10 percent of the value is being lost. This does not begin to place a value on the quality of life of the injured workers, the loss to their families or to their communities.

At the same time, direct public occupational safety expenditures were \$6 million over the same period.⁴⁶ I would be the first to argue that you can not legislate and inspect every workplace every minute of the day. That is why Nova Scotia's new occupational health and safety legislation is based on the internal responsibility system model, where the workplace parties, not the government are responsible for safety. The dramatic contrast between public expenditure on safety which applies universally to all workplaces in the province and the direct expenditure by the workers' compensation system which covers less than 70 percent of the labour force causes one to ask "Are the priorities right? " Clearly the existing priority whether it is publicly acknowledged or not, is to provide compensation not to prevent injury.

Nova Scotia, in contrast to other provinces in the current public policy cycle relating to safety and compensation, has retained a disassociated system. Safety regulation, education, promotion and enforcement is carried out by a government department that "cooperates" with the crown corporation that operates the compensation system.

It is critical to the design of a program delivery system to have first established the goal it is to achieve. Is a workplace safety system to be an outcome of the compensation system or not?

Occupational safety focuses on workplaces. Outcomes are influenced by decisions made by the parties at the workplace. The need for income replacement on behalf of an individual may or may not arise out of something related to the workplace. The need may be created by a non-work related medical condition; an automobile

accident; or as a result of a recreational activity. Decisions made at the workplace may or may not affect the availability of income replacement benefits to the individual.

A public policy initiative directed at workplace safety will not satisfy all the income replacement needs of an individual. A public policy initiative that provides comprehensive income replacement may not have any impact on improving working conditions.

In Nova Scotia, the employers who are part of the compensation system understand there is little direct relationship between the expense of compensation and the level of safety in their workplace. In actual fact, the level of safety regulation and inspection had increased significantly with no apparent impact in terms of an overall decline in projected compensation costs. An individual firm's experience rating may provide minor cost savings in assessments paid but the burden of the collective liability pool is so great that financial incentives for safety are lost. The external occupational health and safety system is relied upon to influence the collective behavior, not the compensation system.

If the compensation system is disassociated conceptually, from workplace health and safety, policy makers are freed to look at its complexities and to reallocate the costs of the system. Several options immediately become apparent:

- Integrate compensation with other income- support mechanisms- such as the Canada pension plan disability benefits, employment insurance sick leave provision and allow the existing public health system to address medical needs,
- Publicly mandate an income support insurance program but integrate it into the private insurance system providing twenty-four-hour coverage and removing the burden of proving work-relatedness.

Potential integration of income support programs may arise out of the work of the Social Union negotiations. It is quite possible however that the compensation systems will be confined to the periphery of the debate, as has been the case in the past.

The twenty-four-hour coverage option has been studied in both Canada and the United States. Terence Ison sets out a well-reasoned proposal in his 1994 book. Ison concludes,

There can be little doubt about the benefits that would be achieved by a universal and comprehensive plan. The human need for compensation in the event of disablement or premature death does not depend upon how it happened. The systems that classify disabilities by reference to their cause create delay, controversy, injustice, therapeutic damage and enormous waste. Moreover, the people who are excluded from compensation under the present conglomeration of systems include not only those who are ineligible, but also those who cannot prove their eligibility because of the difficulties of establishing the cause of a disability in each case.⁴⁷

Ison suggests a comprehensive royal commission is the only politically viable method of testing his proposals and providing for public debate.

If the compensation system is assigned as its primary goal improving workplace safety, then the compensation system must be applied universally and it must be integrated in an effective manner with occupational health and safety. For the integration to be effective, the "collective liability" pool must be distributed in such a way that the shareholders of the pool have a very direct stake in managing occupational health and safety prevention. Peer pressure to achieve ever increasingly high standards must be created.

Several aspects of this integrated model require further comment. There must be a clear division between occupational health and safety enforcement and activities such as education, consultative services and activities of a primarily preventative nature. Delegating enforcement or creating an entirely self-regulatory system would not be consistent with everything that has been learned regarding our capitalist system over the last 150 years.

The second issue to be considered relates to the basic theory of accidents in the workplace. The accident pyramid states that for every 600 incidents (near misses that cause no visible injury or property damage) there are 30 incidents involving property damage, 10 minor injuries and 1 fatality.⁴⁸ Occupational health and safety professionals argue that to be truly effective the patterns at the near miss stage can be used to prevent the events at the injury and fatality stage.

The existing compensation system operates on information generated at the top of the pyramid. To substantially effect change, the integrated occupational health and safety/compensation system must be able to take advantage of the industry knowledge and experience at the near-miss/property damage stage. This information must be combined with and promoted through "group" pressure to create performance standards that continuously evolve beyond the level of minimum legislative performance and that directly translate into reductions in the collective liability pool and thus the overall cost of compensation.

Meredith expressed his concern regarding the size of the Ontario economy in 1910 and the ability to create a sufficiently large collective liability pool using the German industry group model. He was forced to reject the concept as the number of businesses was not sufficiently large enough to provide for a reasonable allocation of risk without the costs of the collective system overwhelming individual employers. The design of an integrated compensation/ occupational health and safety system on a sectoral arrangement such as the German model will require a larger collective liability pool than can be generated within Nova Scotia. A national or at least regional– Atlantic or Maritime system must be considered.

Enlarging the base to be included in the collective liability pool will also provide for greater differentiation based on the type of business. Global capitalist firms, competitive capital and self-employed individuals all require access to the system. They

must be provided without compromising the benefits to workers the ability to participate in and draw on very different levels of service and support. The opting-out delivery option will need to be considered. Legislative standards to protect employee rights must at the same time provide for alternative delivery options.

While the Canadian compensation boards cling to their Meredith principles, what have we really learned over the last ninety years? Meredith studied the best of what the world had to offer. He studied Ontario and what he believed were the needs of the province's people and its economy. He blended what he learned, explaining the choices he made as he proceeded to chart a new course. Other commissioners have made similar attempts. In the end, the system has incorporated the basic divisions of power within Canada, as well as the social, economic and political experiences of its regions.

The Canadian Tax Foundation conducted a review of the financing of the compensation system. The Foundation's report concludes,

The main findings of this study are that although in the 1980-1990 period the number of workplace accidents did not increase, the cost of workers' compensation to the economy has been increasing and an important share of that cost is being passed on (at least in some provinces) to future employers... A substantial part of this increase in cost is the result of retroactive changes in benefits.⁴⁹

The Foundation draws the same conclusion that Commissioner McKinnon did in 1958, that provincial governments should finance part of this cost directly. The situation as assessed by the Foundation has grown more severe throughout the 1990s.

J. D. McNiven, former Deputy Minister of Economic Development in Nova Scotia, and a past President of the Atlantic Provinces Economic Council, is an astute observer of the social, economic and political trends affecting the region. McNiven states that,

The weakening of the Canadian version of communitarianism has also been abetted by enhanced communication channels from the US, influencing political discourse and notions of social propriety. The Charter of Rights has helped to move the focus of decision-making away from a political/community focus to an individual/judicial one. Finally the FTA, and NAFTA have blurred

the boundaries between the two countries in more than just trade.

Clearly, the notion of Canadian communitarianism is under seige at the present. As long as governments are being forced to retrench, they have to accept that rethinking of this basic Canadian trait will go on. Not only are social programs being recast or discarded, so are regionally specific programs... Federal downloading of responsibilities onto provincial and municipal governments has also been a feature of these changes. These developments have important implications.⁵⁰

In Nova Scotia, we must find the courage to look at the compensation system in its new context as part of an intricate web of social infrastructure and public expectations- not as the stand-alone system we have considered it as in the past. We must clearly differentiate its dual roles- promoting safe working conditions, and restoring the injured worker, medically and economically. We need to ask ourselves, as Meredith did, what are the best ways to accomplish these tasks and with whom do we need to align ourselves to be successful? The answer for the next century should be very different.

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Appendices

Appendix A

Milestones in the Development of the Social Welfare System	
1917	Federal Government introduced personal income taxes, followed by corporate income taxes
1927	Old Age Pension system introduced in Canada, as a fed/prov measure, a means test was applied
1940	Unemployment Insurance Act considered Canada's (national) first social insurance program
1943	Report on Social Security in Canada (Marsh report)
1945	Family Allowances introduced
1951	Old Age Security Act passed providing universal benefits,
1957	Hospital Insurance and Diagnostic Act provides federal funding to provinces to provide universal hospital and diagnostic services
1965	Canada Pension Plan introduced
1966	Medical Care Act provides federal funding for doctors services
1966	Canada Assistance Plan introduced to provide cost sharing for social assistance programs
1977	Established Programs Financing arrangement provides federal funding for hospital care, medical insurance, and post secondary education
1984	Canada Health Act
1991	GST consumption tax introduced
1992	Child Tax Benefit
1996	Canada Health and Social Transfer combines the Established Programs Funding and Canada Assistance Programs
1996	Old Age Security to be replaced by Seniors Benefit in 2001, benefits will be means tested
1996	Employment Insurance program replaces UI

Appendix B

	1750s	1840s	1880s	1890s	1910s	1920s	1940s	1950s	1960s	1980s
Poor Law (Social Assistance)	→									
Self-help Societies	→					Continue to provide non- work related support				
Mine Safety Regulations				→						
Employers' Liability Law				→		Labour relations system provides for benefits outside of workers' comp.				
Factories Act				→						
Workmen's Compensation Act				→						
Personal and Corporate income taxes (Cda)				→						
Old Age Pensions (Cda)				→						
Unemployment Insurance (Cda)				→						
Hospital Insurance (Cda)						→				
Doctor's Insurance (Cda)						→				
Canada Pension Plan (including disability)						→				
Industrial Safety Regulations						→				
Construction Safety Regulations						→				
Occupational Health and Safety Act						→				

Conclusion

The evolution of the workers' compensation system in Nova Scotia offers a number of valuable insights into the province's social, economic and political history. In the late nineteenth century, the pronounced British influences on both individuals and government policy are easily identified within the miners' relief societies movement, as well as mine safety and employers' liability laws. The impact of socialism and the enfranchisement of the working class combined with the growing influence of central Canada and the United States to shape the debates of the early twentieth century. The expansion of government institutions and the social welfare system following the world wars overwhelmed the compensation system relegating it to the periphery of national social policy.

Nova Scotia governments have regularly reviewed the compensation system. Twelve royal commissions and select committees were appointed between 1917 and 2000. Several of these made sweeping recommendations for change. Nova Scotia's fiscal position, its economic dependence on the federal government and on monopoly capital interests resulted in these recommendations being deferred in some cases for decades as a more cautious approach to safety regulation and to expansion of the compensation system was pursued.

Despite this approach, the range of services provided by the compensation system evolved. In 1915, the system offered only wage replacement benefits that were expected to provide for needs medical services as well as income needs of the injured worker. By 2000, the system provides medical services, rehabilitation programs, return-to-work rights, legal advice, pensions as well as income replacement. The expansion of benefits and services in many cases preceded but was not replaced by the Canadian social welfare and public health care systems.

Meredith's recommendations addressed the need to ensure security of benefits for the injured worker, to structure a system of incentives to encourage employers to promote safety, while providing for an effective, fair and efficient administrative process. Viable alternatives to a stand-alone compensation system, either publicly and privately operated, did not exist in 1915, they are very real in 2000.

The transitions that have taken place since the inception of industrial accident insurance as a voluntary system have served to alienate those who created the system. As the Insurance Bureau of Canada describes it, "the process is its own purpose."¹ In Nova Scotia, the government appointed a new employer/employee board of directors in an attempt to provide for greater accountability to the system's stakeholders. The growing complexity of the etiological issues, structural change in the labour force combined with the increasing number of successful legal challenges are creating new and fundamental instabilities which appear beyond the capacity of a stand-alone compensation system and its stakeholder board of directors.

Reviews of the history of compensation systems including this thesis address the historic trade-off, the employees' right to sue versus employer funding for the compensation system. How significant is the risk to employers or the potential reward to employees that would result from a return to the tort system? The prevalence of private insurance in Nova Scotia and the forceful opposition to universal coverage might suggest that the risks are manageable for employers. The potential rewards for injured workers, although likely to be significant in a small number of cases, would not affect the majority of compensation claimants who file medical aid claims for minor injuries.

Any serious attempt at defining a new role for the compensation system must take into consideration both the impact of the various elements of the social welfare system, and the lack of stakeholder confidence that is driving the current redefinition

process. The real issue is not what the compensation board should be doing, it is whether it should continue to exist.

The options available have been discussed in the preceding chapter. The fundamental risk associated with abandoning the compensation system is not in finding a viable alternative to the insurance subsystem or replacing the medical aid and rehabilitation features. It is whether or not the occupational health and safety subsystem can stand on its own without the financial incentives/penalties provided by the compensation system. Despite 85 years of operational experience there is little or no research to answer this question.

Marsh's conclusion, in 1943, that other matters were of a more pressing nature underscores the evolution of the compensation system. The system has never been significantly problematic enough to warrant intervention or even national debate. Perhaps as part of the social union negotiations the issue of workers' compensation will surface again. Until the significant cost to people, to communities and to economy of the failure to improve health and safety is recognized little in the debate will change.

We are long overdue for a national investigation of a system much criticized. We, collectively, need to define the objectives that we are attempting to achieve. The need for integration of labour force issues into lifestyle issues and of workplace compensation into an integrated social welfare system must be assessed. Labour force mobility, and the changing nature of work relationships must also be considered.

The compensation system is a substantial bureaucratic institution, it owes its continued existence to our lack of resolve, provincially and nationally, to make it obsolete. It is time to ask fundamental questions and to make decisions.

In 2001, Nova Scotians will be invited to provide their thoughts on the 1996 Workers' Compensation Act. The political graveyard of compensation will weigh heavily

on the minds of those structuring the review. History suggests the debate will be as narrowly focused as the letter of the law will allow.

It is hoped that this thesis has demonstrated the need to broaden not narrow the scope of the debate. The legislative review provides an opportunity not just to hear stakeholder concerns but to expand our understanding of the system and its performance. The review needs to build a Nova Scotia interpretation of the findings presented by Gunderson and Hyatt. The Nova Scotia system has several unique characteristics not considered by these authors, that must be taken into consideration in weighing policy options. These include:

- The lowest level of compulsory labour force and employer participation of any major system in Canada,
- A relatively new experience rating system,
- A new occupational health and safety act and new regulations,
- One of the highest per capita unfunded liabilities, shifting the financial burden for the system from past to future employers, and
- An economy that depends of small business for job creation, a service sector that is becoming increasingly regionalized and a manufacturing sector dominated by large firms that must be internationally competitive.

The 2001 legislative review should provide stakeholders with answers to the broad policy questions:

- Defining the distinct subsystems and the inter-relationships that combine to form the compensation system including the acts, the Department of Labour, the compensation board, the appeal systems, the workers' advisors, the stakeholders, the public and the politicians.

- Determining the existing public policy goals and performance of each of these subsystems and how these affect the performance of the other subsystems.
- Assessing the system outcomes by defining performance measures. How does the compensation system perform in comparison to private insurance or the public medical and income support systems? Does employer participation in the compensation system impact on safety performance? Do employees covered by private insurance have more or less difficulty accessing medical, rehabilitation or income support programs?
- Assessing the risks and benefits to employers, employees and the community of alternative models of insurance or program delivery.
 - What are the financial implications to the parties of a return to the tort system?
 - Can delivery of services to injured workers be streamlined and integrated with other public or private agencies to provide a single window available at a local level?
 - If twenty-four hour-a-day coverage was adopted what changes would be required to ensure oh& s performance was not affected? How would oh&s be supported? Is co-pay for this coverage viable? How would coverage standards be enforced?
 - What are the implications of a regional compensation system servicing the Maritimes or Atlantic region?
- Assessing the fundamental characteristics of the current Nova Scotia system to determine major deviations from systems that are within the traditional market service areas in which Nova Scotia businesses compete.

- Establishing within its recommendations clear lines of accountability for the system itself as well as clear measures of performance for the subsystems.

Clearly defined goals and regular reporting on key performance measures for the system as a whole as well as the subsystems will empower stakeholders once again. Workers' compensation is not just a labour/management issue. It is about community responsibility and standards. This is the one Meredith principle most frequently forgotten.

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