

SUBMISSION
TO THE
PRINCE EDWARD ISLAND
WORKERS' COMPENSATION REVIEW COMMITTEE

BY

*CANADIAN RESTAURANT &
FOODSERVICES ASSOCIATION*



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The Foodservice Industry

Prince Edward Island's foodservice industry is a huge sector of the provincial economy representing:

- \$201 million in sales or 5% of GDP;
- 5,200 employees or nearly 8% of workforce
- 2,600 employees under the age of 25; and,
- 271 commercial establishments

The foodservice industry is a diverse activity, feeding consumers in a variety of circumstances ranging from fine dining, to the small fish & chip shop, to the local pub or quick service restaurant. The size of establishments varies from small owner-operator units to large national chains. In spite of its size, the industry continues to be dominated by small independent, Prince Edward Island owned operations, which represent 67% of industry sales.

In 2006, the foodservice industry directly employed more than 5,200 residents of the province, making it one of Prince Edward Island's largest private sector employers.

The foodservice industry employs a diverse work force with many in management and skilled occupations. The industry also includes a large number of unskilled and semi-skilled occupations. The foodservice industry plays an important role in providing employment opportunities for those who experience the greatest difficulties in finding work, the young and the inexperienced. At a time when politicians of all stripes are talking about the youth unemployment crisis, nearly half of the industry's employees are under the age of 25. In fact 21% of all youth in Prince Edward Island are employed by the foodservice industry.

Foodservice Industry and Workers' Compensation

As one of the province's largest private sector employers, the foodservice industry has a major stake in Prince Edward Island's workers' compensation system. The Canadian Restaurant and Foodservices Association (CRFA) concern for the system is evidenced by our participation in many compensation initiatives including:

- Active member of the Prince Edward Island Employers Council Inc.
- Participant at many WCB discussions and consultations
- Former member of the PEI Occupational Health and Safety Advisory Council
- Presented during Consultations on New Act, 1994
- Presented during the 1998 Workers' Compensation Review
- Presented during the 2001 Worker' Compensation Review
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As a labour-dependent employer with razor-thin profit margins, the foodservice industry is particularly vulnerable to problems with the workers compensation system. CRFA believes a stable and viable workers' compensation system is important to a healthy workforce and a thriving employment environment. It is with an eye to returning the system to full health that this submission has been developed.

The PEI Workers' Compensation Board walks the fine line of providing benefits to injured workers while maintaining an affordable and sustainable insurance system for employers. For our industry, the vision for the WCB is very clear:

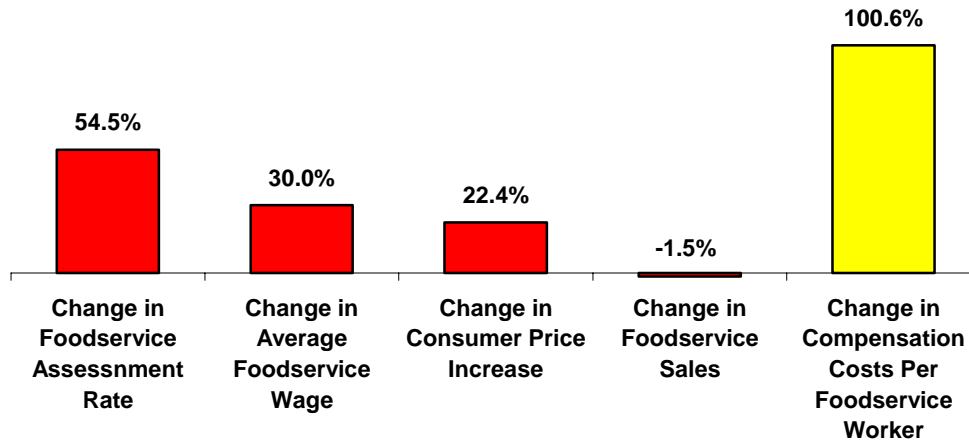
- Workers' compensation is an insurance program not a social program. As such it must be run using insurance principles.
- At the same time, injured workers deserve to be treated in a timely, respectable fashion and receive adequate compensation for a loss of earnings.

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- Employers need an affordable insurance program that is accountable and competitive with other jurisdictions.
- Accident prevention is a priority; the best way to reduce workers' compensation costs is to prevent accidents from happening.
- Assessment rates must reflect the actual experience of the rate group and the individual firm.

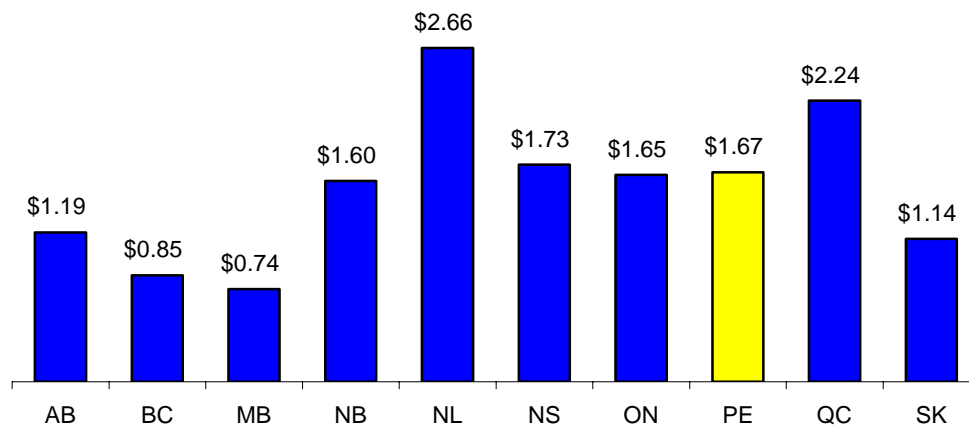
The Foodservice Industry and Assessment Rates

Government and members of this Committee must not lose sight of the fact that workers' compensation rates in Prince Edward Island are still in the mid to upper end of the spectrum when compared with other jurisdictions in Canada. The same can be said for accident rates and claim duration. While the Workers' Compensation Board is quick to say how well things are going and how far they've come, these high rates coupled with the growth in wages means that the compensation bill for an average foodservice establishment has increased by over 100% since 1999. These large cost increases impact the viability of businesses and make it difficult to attract new business to the province. When operators are faced with these high cost increases, they have few options but to reduce hours and jobs in order to keep costs down.

Compensation Cost Are Increasing Exponentially

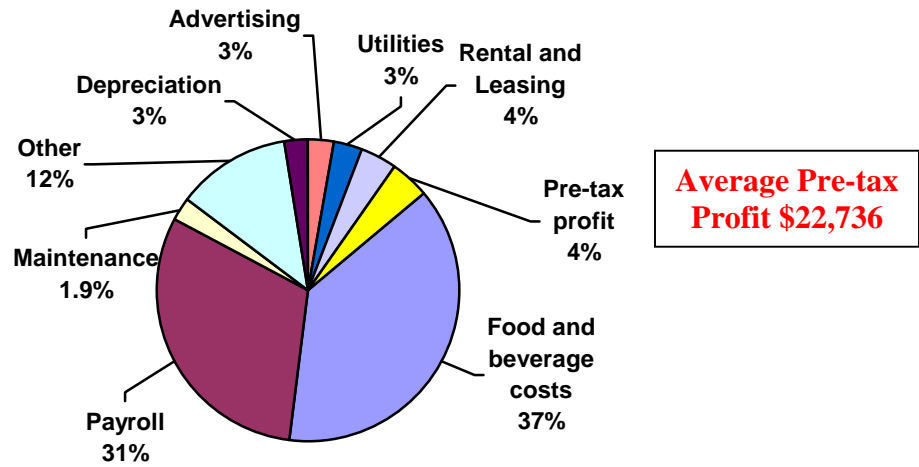


2006 Foodservice Assessment Rates- Atlantic Canada



Given the high labour costs - including workers' compensation premiums, low profitability ratios of foodservice establishments and weak sales over the last few years, it is extremely important that foodservice operators see rate relief in order to protect the viability of many businesses and jobs for residents of the province.

Operating Expense Ratios PEI



Source: CRFA 2006 Operations Report, Statistic Canada

System is at a Crossroads

Prince Edward Island's workers compensation system is at a crossroads and decisions made with this review could continue to stabilize and return the system to financial health or force the system back to the edge of a financial abyss.

The Committee need not be reminded of the state of the system only a few short years ago. The system had a huge unfunded liability, climbing accident and duration rates, and spiraling assessments rates. While CRFA is not pleased with everything that is happening with the system today, it must be clear that we support the true intentions of the "new Act" and the direction taken since the last review in 2001. While not perfect, steps taken then saved the system. Let's ensure we continue on this path.

The best thing we could do for the system today is to give it time. Time to stabilize and develop sound procedural and policy initiatives based on a proper experience period. Most of the indicators seem to point out that the system is moving in the right direction. **Drastic change is not needed; only some fine-tuning is necessary.** I strongly urge the Review Committee to stay away from any quick fix intended to placate vocal special interest groups. Any change taken should not undo the significant progress made to date.

Foodservice Industry Recommendations

CRFA supports the general thrust of the Workers' Compensation Act. This Act attempts to introduce a culture of safety to the province and return the compensation system to an insurance program based on compensation for a loss of earnings. The aim is to encourage individuals to return to work through early and timely intervention and income differential incentives. While much has been accomplished, CRFA has several recommendations that the foodservice industry believes will further enhance the progress made to date. CRFA has categorized its recommendation into two groups, those to be introduced to the legislation and those that must be maintained.

NEW PROVISIONS

PURPOSE CLAUSE

The Workers' Compensation Act should have a clear "purpose clause" which sets out fundamental insurance principles. The purpose clause should also impose upon the Commission a duty to operate in a financially responsible manner and to operate in fiscal competitiveness with other Canadian jurisdictions.

- **CRFA recommends the inclusion of a purpose clause in the Act, which imposes a duty on the Commission to operate in fiscal competitiveness with other Canadian jurisdictions.**

COMMISSION STRUCTURE

A strong commission, endowed with the ability to manage claims, can have the greatest impact on the success of the workers compensation system.

CRFA believes in the bipartite nature of Board. Strong representatives from employee and employer constituencies must be present. There is no need for a public representative to serve on the Board.

Employers also take issue with the fact that even though employers pay for all of the costs associated with workers compensation, they have little input into the operations of the Board. Politicians control the legislation that governs the Board as well as the appointments to the Board. Our industry is of the view that this process has not adequately represented the business community in many cases. The foodservice industry believes that both the employer and labour communities would be better served if Board members were chosen from nominees forwarded by recognized provincial or national groups or associations.

- **CRFA recommends that Labour and Employer appointments to the Board be selected by nominations from provincial and nationally recognized groups or associations.**

FINANCIAL ACCOUNTABILITY

To achieve financial accountability, the Board must be charged with the responsibility of meeting disciplined financial targets. Positive steps were taken with the setting of measurable objectives and the introduction a five year strategic plan.

To strengthen financial accountability it is recommended that new provisions be added to the Act that support the goal of maintaining a sustainable, competitive

and financially responsible workers compensation system. Requirements would include the 5-year strategic plan, an annual statement of investment policies and a coordinated plan for the use of WCB funds for occupational health and safety.

Other checks and balances might include the authorization of the Auditor General to conduct an accountability audit. This audit would monitor the system's vital statistics including administration costs and investment return.

By statute, all new policies should be costed and be consistent with the objective of financial accountability.

- **CRFA recommends including statutory provisions in the Act requiring the Board to operate in a financially responsible manner and to meet disciplined financial targets over a 5-year planning period.**
- **The Auditor General should also be authorized to audit the WCB.**

DEFINING WORK RELATED INJURIES AND DISEASES

The workers compensation program was established to insure workers against injuries caused by work. Over time entitlements have been expanded so that compensation is payable for injuries not clearly caused by employment.

CRFA is concerned that soft tissue injuries like sprains and strains will comprise an ever-increasing percentage of lost-time injury claims, even though there are typically non-work causes contributing to these injuries.

An insurance approach calls for entitlement to be defined so that payers know exactly what they are getting in the "policy" and beneficiaries know what they are entitled to on a consistent basis. The legislation must more clearly define eligibility, requirements for continuation of benefits, and criteria for terminating benefits.

The phrase "arising out of and in the course of employment" has been interpreted to mean an injury that manifests itself in the workplace as opposed to an injury arising out of the workplace.

Replacing the "benefit of the doubt" principle with "balance of possibilities" principle and rewriting the definition of "injury" to bring greater certainty and predictability to the WCB system is advocated. For example "In determining whether benefits are to be paid to a worker or a worker's dependents under this

Act, the Board shall be required to find that the work-related accident was the dominant cause of the personal injury for which benefits are claimed”.

- **CRFA recommends amending the Act so that entitlement is contingent on the establishment of a work activity as the predominant cause of injury or disease.**

Diseases associated with the natural aging process or are multi-causal are also falling under the domain of workers compensation in many jurisdictions. CRFA believes that injuries and diseases that are not clearly identified as work-related should not be covered under an accident insurance plan funded solely by employers.

- **CRFA does not support the introduction for the automatic assumption of any natural diseases of an occupational disease unless it can be conclusively validated as work related. .**

The current legislation was intended to exclude stress as a compensable injury unless it was the direct result of a traumatic event. However, there can sometimes be misrepresentations of the intent of the Act. Therefore, any reference to stress as the direct result of a traumatic event should be included in the definition of any injury section of the legislation.

- **CRFA recommends that specific conditions such as chronic stress be excluded by legislation.**

PROVISIONS THAT MUST BE MAINTAINED

WAITING PERIOD

The introduction of a waiting period has probably had the most significant positive impact on costs and lost time claims of any of the changes made during the last review. Accidents in the foodservice industry are generally low severity in nature. Due to a high frequency of these minor injuries, claims and administrative costs for the industry can be fairly high.

The introduction of a waiting period has reduced costs and provided an added incentive for employers and employees to reduce workplace hazards. The waiting period acts as a deductible, which is standard in any insurance program.

In fact, a seven day waiting period was part of the original Meridith program of workers compensation.

The waiting period has reduced the time spent on administrative paperwork and prevented minor incidents from affecting an overall experience rating.

Foodservice operators also report that the waiting period encourages workers with minor injuries to stay on the job or seek alternative employment within the same establishment. Thereby maintaining the important attachment between employers and their employees.

- **CRFA recommends no change to the 3/5ths waiting period before compensation is payable.**

PERMANENT IMPAIRMENT

This legislative change also had a significant impact on claims cost at the WCB. Prior to this change, there was no requirement for a worker to have a measurable permanent impairment in order to qualify for an extended earnings loss award.

The intent of a wage loss system is to compensate individuals for a loss of wages due to an physical impairment that does not allow them to reach their previous earnings capacity. This is a well established principle in most compensation systems.

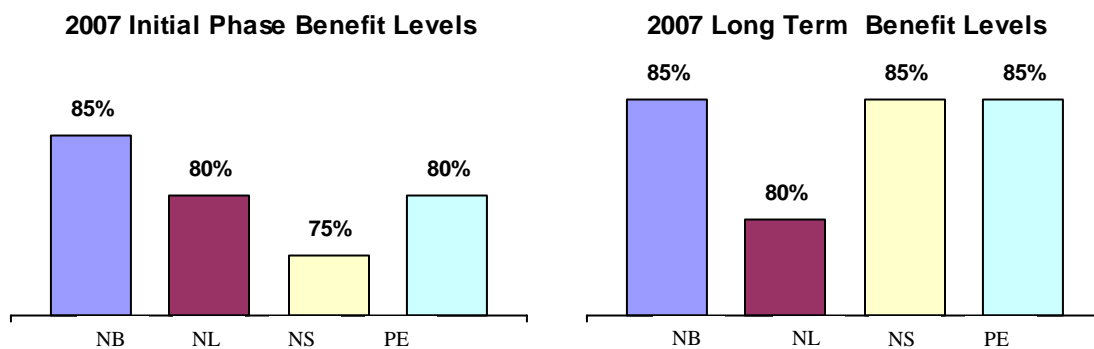
When a worker is first injured, they receive temporary earnings replacement while they recover from their injury. Once they have reached the point of maximum medical recovery, the intention is then for the worker to return to the workforce. If there is a physical impairment that stops the individual from reaching their previous earnings capacity, they then receive an extended earnings loss benefit to make up for the difference between their previous income and that which they are physically capable of earning.

However, the previous legislation did not require there to be a physical impairment in order to receive extended earnings loss awards. This allowed a large number of individuals to receive compensation for a temporary injury and then for reasons other than a physical injury, move on to a extended earnings loss award and receive full compensation. This was a major cost driver in the system.

Adding the provision for a physical permanent impairment ensured that only those that actually have an physical injury will receive long term compensation.

BENEFIT LEVELS

It is important to ensure that injured workers are compensated at a rate that is fair and reflective of their earning capacity. That being said, there must continue to be a differential between pre-injury earnings and compensation to ensure a motivation to return to work. There are many Canadian and U.S. economic studies that suggest that as the level of workers' compensation benefits increases, so does the tendency of workers to claim and stay on benefits. The current benefit level of 80% of net earnings for the first 38 weeks and 85% of net earnings after that achieves this balance of compensating injured workers while establishing an insurance differential. Benefits in Prince Edward Island are in line with other Atlantic Canadian jurisdictions.



- **CRFA recommends retaining benefit levels of 80 % of net earnings for the first 38 weeks and 85% of net earnings thereafter.**

The inclusion of only 50 percent of CPP income in the calculation of post accident earnings can bring post accident earnings above the 80/85 percent threshold. This diminishes the gap between pre and post accident earnings. This acts as a disincentive for injured workers to return to the workforce.

- **CRFA recommends a full offset for Canada Pension Plan benefits.**

CRFA takes issue with provisions that allow workers to be topped up above the 80/85% threshold up to the maximum insurable earnings. This is counterintuitive to the principle of an earnings differential between pre and post accident income and can encourage injured workers to remain on claim. It is also unfair because it creates two classes of workers, those with top ups and those with none. Workers should be treated similarly.

➤ **CRFA recommends the prohibition of wage top-ups.**

Injured workers and employee advocates have argued that given the recent improvements to the funding level that it is time to increase benefits. It must be recognized that much of the recent gains can be attributed to changes to the accounting principles which can lead to large fluctuations in to the investment rate of return. Given these fluctuations, the WCB funding strategy should be amended so that benefit levels are not reconsidered until the Board has reached a funding level of 120%. This 20% buffer could also act as reserve in case of a large workplace disaster.

The Canadian Restaurant and Foodservices Association support the continued inclusion of these sections of the current legislation.

- **Collateral Benefits** - CRFA supports the continuation of all collateral benefits such as top-ups and CPP benefits in the calculation of income and wages. It is the intention for there to be a income differential between pre and post accident earnings to act as an incentive for employees to return to the workforce.
- **Deeming** - There has always been much criticism by organized labour and injured workers about deeming. Deeming is not unique to PEI. It is a practice carried out in all Canadian provinces except one and is an essential part of an earnings loss compensation system.
- **Appeals Bound by WCB Policy** - This is necessary to ensure consistent interpretation of the law. CRFA also supports the process by which any cases in which there is new evidence must go back through the Board for adjudication.

FUNDING STRATEGY

As part of the funding strategy to return the system to fiscal health, employers on the Island were forced to pay a 5 cent surcharge on the average assessment rate. Given the high cost of compensation and that fact that much improvement has been made to the funding level, employers believe it is time to eliminate the unfunded liability surcharge.

- **CRFA recommends that a funding level of 120% be achieved before benefit level changes are considered.**
- **CRFA recommends the elimination of the 5 cent employer surcharge.**

EMPLOYER ADVISOR

CRFA strongly supports the continuation of the Employer Advisor program. The establishment of this position has instilled a level of balance between employers and employees.

The Employer Advisor has assisted many operators through the maze of workers' compensation, which can be extremely daunting particularly to small business operators. The Employer Advisor has also acted as a conduit between the Board and the employer community at large to communicate the importance of prevention and the compensation program.

OCCUPATIONAL HEALTH AND SAFETY

Occupational Health and Safety is an area where PEI WCB must continue to focus attention. Preventing an accident is the best way to reduce workers' compensation costs.

CRFA believes the merger between WCB and OH&S has had a positive impact on health and safety in the province. In smaller jurisdictions like Atlantic Canada, there are many benefits to a merged system including formal and informal communication and consistent information gathering and analysis. Safety officials have also said that employers were much more receptive to the advice and educational material of the safety officers knowing that these individuals had the power of enforcement behind them.

While CRFA is a strong advocate for safe workplaces, we do not believe the answer lies in creating countless regulations, formal procedures and paper trails. Efforts should be focused on determining high risk areas and then focusing efforts on educating the employers and employees. The Safety Matters @ work and Experience Counts programs have been very successful at focusing efforts at high risk employers or those with below average safety records. This approach builds a good cooperative partnership between safety officers and employers who view safety officials as a resource by which employers can create safer work places. This being said, safety officials should not hesitate to use their powers to crack down on employers or employees who flagrantly choose to ignore safe working procedures. CRFA believes these programs and approach should continue to be supported and endorsed.

Summary

Workers compensation rates in Prince Edward Island have a significant impact on labour intensive industries such as the foodservice industry. The high rates in Prince Edward Island can place businesses in the province at a disadvantage and impede businesses' ability to expand and provide new opportunities for Prince Edward Islanders. Progress has been made to stabilize assessment rates but more must be done to bring them down. The focus on health and safety, return to work and a responsive experience-rating program has been major factors in the turnaround at the WCB. A steady course must be stayed.

Employers have been saddled with some of the highest assessment rates in the country. On the other hand, when all factors are considered, employees' benefits are in line with those in other Atlantic Canadian jurisdictions. Therefore, it is essential that no changes in benefit levels be contemplated until such time as the assessment rates in the province are on in line with the Canadian average.

In order to make the system more responsive to employers, Board representative should be chosen from a list of nominations brought forward by the business community.

The Association

Canadian Restaurant and Foodservice Association (CRFA) is the largest hospitality association in Canada representing over 35 000 members including restaurants, quick service establishments, hotels, caterers, institutions, educators and foodservice suppliers.

CRFA's mission is to create a favourable business environment and deliver tangible value to our members. We accomplish this through a variety of services to members, including:

- government lobbying on behalf of the foodservice industry;
- information and research on consumer trends and industry performance;
- group buying programs; and
- national and regional trade shows.

CRFA is governed by a volunteer Board of Directors. CRFA was founded in 1944 and is incorporated as a nonprofit organization without share capital. The association is funded by membership fees and non-dues income from member services and trade shows.