



Stakeholder Consultation Results: Eliminating the Three-Day Wait for Police and Firefighters

August 2009

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The Canadian workplace health, safety and compensation system is guided by principles formulated by former Chief Justice of Ontario, Sir William Meredith, in 1910.



A. Background

In a request by the Minister of Post-Secondary Education, Training and Labour, the Board was asked to consult with WorkSafeNB stakeholders to gauge their opinions on the possibility of eliminating the three-day waiting period for benefits for New Brunswick police officers and firefighters as it is not practicable for these individuals to refuse dangerous work.

Minister Arseneault's call for consideration to the issue followed a written request in November 2008 from the New Brunswick Police Association (NBPA), and a subsequent meeting between the NBPA, Minister Arseneault, and the Honourable John Foran, Minister of Public Safety. It is the position of the NBPA that due to the nature of their work, their members cannot exercise their legal right to refuse dangerous work, and that police officers and firefighters should not be subject to the three-day waiting period if they are injured in a workplace accident.

Summaries of the consultation methodology (Section B) and results (Section C) are provided. Stakeholder engagement provides the Board with opportunities to better understand stakeholders' priorities, their divergent opinions, and learn from their experience and expertise. Typically, WorkSafeNB has found that stakeholder opinions and feedback vary, depending on the particular topic. Sometimes there may be overwhelming agreement either affirming or rejecting a particular direction, while at other times the shared stakeholders' opinions differ tremendously. **In the current consultation, there was no consensus among opinions shared by stakeholders to support making changes to the three-day waiting period.**

B. Current Consultation Methodology

On April 18, 2009 WorkSafeNB mailed a consultation package to its stakeholder groups, providing them with background information on the three-day waiting period and requesting responses to three primary questions pertaining to eliminating the three-day waiting period for police officers and firefighters. A fourth question was added to the consultation packages sent to managers of each of the municipalities who contract the services of municipal police officers in the province.

The consultation package was sent by mail to 142 stakeholder groups. They were sent to 126 stakeholders from the regular WorkSafeNB stakeholder list, and an additional 16 packages were sent to solicit the feedback of New Brunswick municipalities, municipal associations, community administrators, New Brunswick Association of Fire Chiefs, and the New Brunswick Police Association (NBPA).

The survey tool used in the stakeholder consultation is a qualitative data instrument, and as such, the purpose is not to quantify the results, but rather to provide a general overview of the opinions of those stakeholders who participated. In reviewing the results, some common themes emerged from the stakeholder consultation, and are discussed in Section C – Results Summary.

Questions asked in the current consultation

- 1) Does your organization agree that the three-day wait should be eliminated for police officers & firefighters?
- 2) Should the system allow for different levels of benefits or types of benefits based on occupation or nature of work?
- 3) Are there other occupations that should be exempt from the three-day waiting period on the grounds that they work in “dangerous situations”?
- 4)* Do you know of any police officers or firefighters who lost three days’ pay because they required benefits for less than 20 days and were not hospitalized?

If the stakeholder response was “yes” or affirmative to Question 4, they were asked to continue to answer the following additional questions:

- a) How many were receiving benefits due to an injury that occurred because of a dangerous work situation?
- b) How many were receiving benefits for repetitive strain injuries?
- c) How many were receiving benefits for other types of injury?

**Question 4 was included in questionnaires sent to municipalities who contract the services of municipal police officers in the province.*

A summary of the responses to questions appears in Section C – Results Summary.

C. Results Summary

Stakeholder Participation and Responses

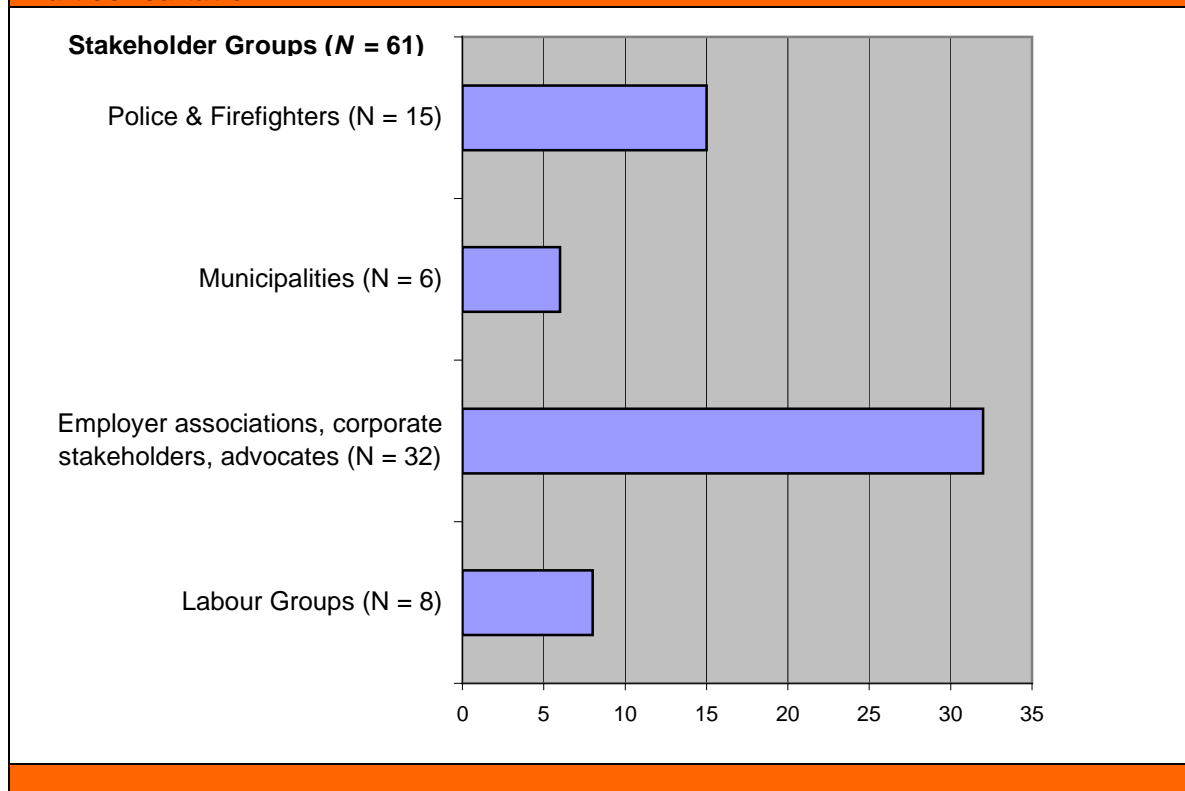
WorkSafeNB received sixty-one ($n = 61$) responses in the consultation. In addition to stakeholder groups, there were a number of individual responses from workers and employers with membership in associations that responded to the survey.

For comparison and discussion, feedback from the stakeholders who participated is sorted into four stakeholder groups, including:

- Police & Firefighters;
- Municipalities;
- Employer Associations, corporate stakeholders, and advocates; and
- Labour Groups

A distribution (categorized by group) of the 61 stakeholders who participated in the consultation is provided in Figure 1.

Figure 1. Distribution of stakeholders who provided submissions in the three-day wait consultation.



An overall summary of the survey responses for each group is presented in Table 1.

Table 1. Summary of Stakeholder responses to each item in 3-day wait consultation						
Stakeholder Subgroups	Question 1		Question 2		Question 3	Question 4
	Should the 3-day wait for police & firefighters be eliminated?		Should the system allow for different benefit levels based on occupation?		Are there other occupations that should be exempt because they are “dangerous”?	Know of officers who lost 3 days’ pay (requiring benefits for less than 20 days, and not hospitalized)?
	Q1 Responses		Q2 Responses		Q3 Suggestions	Q4 Responses
	YES (n=)	NO (n=)	YES (n=)	NO (n=)		
Police & Firefighters (N = 15)	15	0	15	0		N/A
Municipalities (N = 6)	3	3	3	3		1 of 6 said yes, but noted that the injury was not due to dangerous work
Employer Associations, corporate stakeholders, and advocates (N = 32)	5	27	2	30	Farmers	N/A
Labour Groups (N = 8)	7	1	5	3	Nursing Home Workers	N/A
TOTAL	30	31	25	36	2 occupations suggested	None
	61		61			

Through their consultation responses, stakeholders shared mixed opinions on eliminating the three-day waiting period:

- Police officers and firefighters, and their chiefs, favoured eliminating the three-day waiting period for their professions, the implication of which would be a system of different benefit levels, based on workers’ occupations or nature of work. The police and firefighters made the point that while many occupations can be considered dangerous, the difference for firefighters is the unpredictability and unstable conditions that cannot be controlled. Also, although workers, under the *Occupational Health & Safety Act*¹, may have the right to refuse dangerous work, firefighters did not feel this right applied to them, due to the inherent danger of their work. Police expressed the same concern about the right to refuse and indicated that they could not exercise their right to refuse because of their legislative obligation under the *Police Act* to fulfill the duties of a police officer.

¹ OHS Act, Sections 19-23

- For the most part, groups affiliated with labour unions agreed with eliminating the three-day wait for police and firefighters, and, in effect, establishing different levels of benefits based on occupation. Many of the stakeholders in this group shared the opinion that the three-day wait should be eliminated for all workers. The only other suggestions made were with respect to waiving the three-day waiting period for nursing homes (suggested by CUPE Local 3013) and for farmers (Agricultural Alliance of NB), on the grounds that they work in dangerous conditions.
- Most employer groups indicated opposition to eliminating the waiting period, and they shared opposition to providing different levels/types of benefits based on different types of work. Their feedback focused on sustaining the system by maintaining costs.
- While there was no consistent position among the opinions put forth by municipalities regarding eliminating the three-day wait for police officers (some were in support, some objected), none of the responding municipalities provided cases where an injured police officer or firefighter lost three days of pay. Firefighters and police officers that are hospitalized as a result of their injury, or are entitled to benefits for a period greater than 20 days, do not lose three days' pay.

D. Emerging Themes

In addition to the responses summarized in Table 1, several themes were shared in the comments and written submissions from stakeholders during the consultation. Samples of comments from stakeholders, which illustrate the broad themes, have been included below.

Some workers cannot refuse dangerous work in practice

Under the *Occupational Health & Safety Act*², workers have the right to refuse any act “where he has reasonable grounds for believing that the act is likely to endanger his health or safety or the health or safety of any other employee”.

The main argument shared by police and firefighters in the consultation, and in their request to the Minister, is that their right to refuse dangerous work is impracticable because of the inherent danger of their work and that they are not always able to make the working environment safe under constantly changing circumstances.

“Our issue isn’t that others don’t work in a dangerous environment, our issue is that our workplace is both dangerous and uncontrolled. In many cases we are working in darkness, at heights, in confined spaces, or toxic environments, all without the opportunity to mitigate any of these problems. Other workers can request, for example, better lighting [...] we do not have the ability to take the time to make corrections before we begin a rescue or search in a burning building.” – Local 771

“We can only control the environment so much through preplanning and training yet every situation is different and sometimes we do not have the opportunity to make things safe before someone loses their life. If

² OHS Act, Sections 19-23

someone gets injured or trapped on an industrial site, firefighters are expected to help or rescue that worker yet they know nothing about the safety features or risks of that machinery involved, but they still act.” – (Individual Response) City of Saint John Fire Department

“We are not always able to make our working environment safe under constantly changing circumstances, therefore, we should not be punished by having our benefits held back for three days.” – (Individual Response) City of Saint John Fire Department

“With the many unforeseen events associated with their duties, it is unreasonable to expect that injuries may not from time to time occur despite the best efforts of the officers. It is noted for police officers especially, that many of the issues with which they deal, involve situations designed specifically to inflict harm upon them.” – NB Power Holding Corp.

Also, police maintain that because they have a legislated obligation under the *Police Act* to fulfill duties as peace officers, they are unable to exercise their right to refuse dangerous work and therefore should not be subject to the waiting period.

“Police officers who suffer injuries in the conduct of their duties should not be subject to loss of pay in accordance with the 3-day waiting period. There are duties that police officers must perform regardless of the risk, and they are unable to exercise a right to refuse those duties.” – NB Association of Chiefs of Police

Although some other stakeholder groups support the elimination of the three-day waiting period for police and firefighters, some believe it should apply only for injuries unique to an occupation rather than all injuries, and others thought it should apply to more than just police and firefighters.

“I would recommend looking at the function of the work not the job itself. For example, a police officer or firefighter could sustain an injury in the same manner as any other employee (e.g., trip and fall). Look at the work – is the injury unique to that occupation.” – City of Bathurst

“I do not support blanket elimination. It should be specific to the injury not the occupation. We strongly oppose the elimination unless it is based on the injury.” – Cities of New Brunswick Association

“Many - nurses, linesmen, correctional officers, welders who work in confined spaces and many more, most occupations have an element of risk and can report “dangerous” situations. Definitely, those workers who do not have the “right to refuse” such as police officers and firefighters should be exempt [...] occupations that expose workers to higher risk would be a good place to start eliminating 3-day waiting.” – NB Nurses Union

In support of the elimination of the waiting period, one stakeholder group suggested that New Brunswick should be comparing itself to more than just Atlantic Canada. Currently, New Brunswick, Nova Scotia, and Prince Edward Island are the only jurisdictions in Canada that have a legislated waiting period.

“WorkSafeNB likes to compare itself to other provinces. In your background paper you only compare yourself to the Atlantic Provinces, this is only 3 out of the 13 (less than 30%). What about the rest? It is time to compare yourself to the rest of Canada.” – **New Brunswick Federation of Labour**

Challenging that police and firefighters uniquely work in dangerous situations and should receive a different level of benefits because of their occupation, some stakeholder groups cited examples of dangerous situations that regularly arise for other New Brunswick workers for whose jobs merit no exemption in the case of injury:

“Does a long haul truck driver know that a moose is about to cross in front of him/her or do they know about the black ice up ahead? Does the cab driver know that his/her next passenger is armed? Does the tree harvester know that the wind is about to catch a tree and fall it onto or through the cab of his/her equipment? There are many professions that also would fit into this category, such as snow plow operators, heavy equipment operators, saw mill workers, brick layers, electricians, mine workers, chemical workers, bank tellers”. –**Mactaquac County Chamber of Commerce**

“These occupations are not the only occupations with potentially dangerous situations. Look at cashiers in late night convenience stores, roofers, jail guards, and nursing homes. There is no correlation between the right to refuse work or not and the 3-day waiting period. Therefore there should be no exceptions.” –**Office of Employers’ Advocates**

Other stakeholders also pointed out that because of their unique training, police and firefighters are among the best suited for the dangerous situations that arise in their jobs, and that they routinely demonstrate safety as part of their jobs.

The need to maintain system costs

Most employer groups strongly opposed the elimination of the three-day waiting period for any group. They provided ongoing support for the 1993 legislative amendments and understood that the waiting period was established to ensure that the compensation system would be sustainable for both workers and employers.

“New Brunswick has worked hard in achieving a compensation system without an unfunded liability and it is our belief that the three-day waiting period helped accomplish this. If it were to be withdrawn the possibility of returning to an unfunded position once again emerges and this is a position we cannot support.” – **Construction Association of New Brunswick**

“If anything, arguments against eliminating the 3-day waiting period are even stronger, given [WorkSafeNB’s] (and government’s) tenuous fiscal situation... At the very least, stakeholders should be provided some data as to the cases where this resulted in the injured worker not being reimbursed for the waiting period.” – **Canadian Manufacturers & Exporters**

“The three-day waiting period should be maintained for all industry sectors and classifications, including police officers and firefighters.”

Claims in 1992 represented 10,018 as compared to 1993 when 5,647 claims were processed following the implementation of the three-day waiting period. Minor and questionable claims have gone, resulting in a positive impact on a system that was under severe financial pressures at the time.” – Atlantic Building Supply Dealers Association

Other stakeholder groups cited their opposition to eliminating the waiting period because of the need to exercise financial (and administrative) restraint for the benefit of their own stakeholders as a reason to maintain the status quo regarding costs.

“In the context of Bill 45 tabled in the Legislature during the last budget (capping the increase in land assessments, effectively limiting the sources of revenue for municipalities), municipalities will now face significant financial challenges.” –Francophone Municipalities Association of New Brunswick

“The Introduction of this measure in 1992 to manage system costs had an enormous positive impact on a system that was unsustainable at the time. While there will no doubt be pressure to eliminate this provision, CFIB believes it is a fair and reasonable way to manage costs – particularly given that the system is 100 percent employer paid.” – Canadian Federation of Independent Business

“A similar proposal was considered in the past. Arguments opposing the elimination of the 3-day waiting period are even stronger today, given WorkSafeNB and provincial government’s current fiscal situation... the cost of waiving the three-day waiting period for police and firefighters would be borne by the municipalities (and ultimately the taxpayer), downloading additional costs to municipalities.” – City of Moncton

“Allowing for different levels of benefits based on occupation would be a pathway to utter confusion and disorder in the system, and a high level of dissatisfaction among workers who are not on the high end of the benefits scheme.” – (Individual Business) L&A Metalworks Inc.

“In the mining industry we have numerous job positions, some with higher risk than others. If legislated to classify which jobs are more dangerous than others we could be perceived as discriminatory in our classification. Assigning resources to determine what is a “dangerous situation” places an onerous responsibility on the employer and could discourage business growth and attracting new business to New Brunswick.” – Xstrata Zinc Brunswick Smelter

While the present consultation was conducted in the context of presenting the possibility of a change for police officers and firefighters, CFIB noted in its consultation letter to WorkSafeNB that it had polled its members (i.e., small and medium sized employers) in October-November 2007 on the issue of the three-day wait for all workers and received 222 responses³. They noted the results as follows.

³ Kelly, D., Dunn, R. (Nov. 7, 2007). CFIB Submission to the Independent Review Panel of New Brunswick’s Workplace Health, Safety and Compensation System

“To the question “should the waiting period for workers’ compensation benefits be changed?”, about one-in-two business owners indicated that they didn’t want any change. Moreover, about one-fourth, 26 percent indicated they wanted the waiting period increased. Only 5 percent would recommend removing the wait, and another 2 percent would like to see it reduced.” –**Canadian Federation of Independent Business**

Workplace Health and Safety is a shared responsibility

Some of the feedback from stakeholders, on eliminating the three-day wait, for a specific set of stakeholders, focused on the inequity to other stakeholders, and on the tension it may create between these stakeholders.

“Why would you define different levels or types of benefits based on your occupation, each occupation has a certain level of risk associated with the job? It is the employer’s responsibility to insure proper safety training & PPE is provided to the employee and the employee’s responsibility to follow the Safety Policies & Procedures to mitigate the risk.” – **(Individual Business) Flakeboard Company Limited**

“I thought working in a Nuclear Power Plant was dangerous, but they have adopted safe work practices and employee training in their occupations and they seem to have a wonderful safety record [...] The system should be the same for all occupations” – **(Individual Business) Connors Bros. Ltd.**

“It should be equal for all workers in New Brunswick, not just a few. All occupations have some degree of danger. These workers understood that there is an increased risk to the job when they choose the profession.” – **Injured Workers’ Advisory Committee**

“Workers, in any occupational setting, are continually faced with situations that could pose a threat to their personal safety, as well as the safety of their co-workers. This requires them to make assessments as to the risk and manage it accordingly, regardless of where they are in an organization and the type of work that they do. Indeed, this is a central tenet of the Internal Responsibility System. It has been industry’s experience that enhanced training significantly improves safety performance. It is suggested that this approach should be undertaken prior to considering raising injury benefits for police and firefighters.” – **Canadian Manufacturers & Exporters**

“Wage rates compensate for nature of work, risk, and education. This is an insurance program and these factors are already incorporated into the assessment rate. A worker is a worker and should be treated the same. The waiting period is an important factor in the insurance program. It acts as a deductible, stops frivolous claims and keeps attachment to the workforce. It must be retained for all workers.” – **Canadian Restaurant & Foodservices Association**

E. Conclusion

Supported by a high participation rate, in excess of 40%, the present consultation with WorkSafeNB stakeholders demonstrates significant interest among stakeholders in whether the three-day waiting period for benefits is waived for police officers and firefighters, and the consequences of such a decision. It is clear that there is no consensus on this issue:

- Some stakeholders do not support any change to legislation and the benefits offered by the current system, and they disagreed with making exceptions for police and firefighters;
- Some stakeholders support amending the legislation to make exceptions only for police and firefighters due to the dangerous nature of their occupations; and
- Some stakeholder groups indicated that the three-day wait should be eliminated for all workers, including the police and firefighters under consideration in this consultation.