



STAKEHOLDER* CONSULTATION

LEGISLATIVE REVIEW OF THE **WORKPLACE HEALTH,
SAFETY AND COMPENSATION COMMISSION
AND WORKERS' COMPENSATION APPEALS
TRIBUNAL ACT**



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A Message from our Chairperson



I'm reaching out to invite your valuable input on our review of the **Workplace Health, Safety and Compensation Commission & Workers' Compensation Appeals Tribunal Act** (the Act).

This legislation, established in 1994 through the merger of the Workers' Compensation Board and the Occupational Health and Safety Commission, serves as the backbone of our organization's governance framework.

The Act encompasses various critical provisions, including the structure and authority of the board, reporting requirements, the internal appeal process (the Decision Review Office), the external appeal tribunal (WCAT), and general provisions aimed at facilitating the smooth functioning of WorkSafeNB.

We invite you to share your insights, suggestions, or concerns on any of these sections by March 7. Your feedback will be instrumental in guiding discussions with the board as we prioritize areas for legislative review.

I encourage you to seize this opportunity to help shape the future of our organization while safeguarding the integrity of our system. Together, let's ensure the development of sound legislative frameworks that underpin our collective vision. Thank you for your dedication and commitment to WorkSafeNB's mission.

Mel Norton
WorkSafeNB Chairperson



Executive Summary

OVERVIEW

WorkSafeNB and its board of directors are pleased to share these proposals as part of our statutory obligation to review our governing legislation every five years.

WorkSafeNB supports a collaborative process for legislative reviews. This consultation provides the foundation for stakeholder input. Once consultations are complete, WorkSafeNB's board of directors will provide the Government of New Brunswick with a "What We Heard" report to facilitate next steps.

This summary identifies four recommendations for stakeholder consultation and government deliberation, as follows:

- 1. The implementation timeframe for WCAT decisions.**
- 2. The restriction on investing in mortgages or products that may hold mortgages.**
- 3. The requirement of a Lieutenant-Governor in Council appointment for the external auditor.**
- 4. The need for modernization of the Act.**



Implementation timeframe of Workers' Compensation Appeals Tribunal decisions

CURRENT LEGISLATION

21(12.1) *Unless the Appeals Tribunal otherwise determines or the Commission applies to the Appeals Tribunal for a statement of facts under subsection 23(1) and, within 30 days after receiving the statement of facts, commences an appeal under subsection 23(4), a decision of the Appeals Tribunal shall be implemented by the Commission within 30 days of issuing the decision.*

DISCUSSION

WorkSafeNB is legally required to implement appeal decisions within 30 days and works hard to meet this timeline. However, delays can happen when we need information from third parties, such as test results or medical exams. In these cases, implementation may take longer than 30 days.

WHAT WE WISH TO ACHIEVE

WorkSafeNB wants more flexibility with the 30-day timeline for implementing appeal decisions in cases where third-party information is required. This would allow extra time in cases where third-party information is needed. Making this change will ensure we can gather all necessary information to properly carry out appeal decisions while staying within the law.

Jurisdictional Information

Only one other jurisdiction, Alberta, has a timeframe in legislation. Other jurisdictions have the timeframe outlined in policy or in practice guidelines.

- 30 days to implement (NB, AB, NL, ON)
 - 60 days to implement (PE*, MB, BC)
 - As soon as reasonably possible (NT/NU, NS, QC, SK)
- * PE must let 30 days expire from the date of the decision to allow time for an appeal, and then the board has 30 days to endeavour to implement.



PROPOSAL:

We propose updating the *WHSCC & WCAT Act* to include an exception to the 30-day implementation timeframe where third-party information is required. The decision would then be implemented as soon as possible once the information is received.

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Restriction on investing in mortgages on real estate

CURRENT LEGISLATION

24(1) Subject to the regulations, the Commission has the power, and shall be deemed always to have had power,

(a) to invest any part of the Accident Fund or the Disability Fund and any other money under its control in the manner authorized by the Trustees Act, but not in mortgages on real estate, and

(b) to borrow such sums as may be deemed expedient for the proper carrying out of the provisions of this Act, the Workers' Compensation Act, the Firefighters' Compensation Act and the Occupational Health and Safety Act.

DISCUSSION

The Board of Directors is responsible for ensuring the Accident Fund's assets are sufficient to sustain our system. This involves earning the highest possible return at an acceptable level of risk.

Currently, the legislation prevents WorkSafeNB from investing in real estate mortgages, including publicly traded mortgage-backed securities. As a result, investment managers must avoid products containing these securities, even indirectly, which adds extra time and effort to ensure compliance.

This restriction may limit WorkSafeNB's ability to access investment opportunities that could either maximize returns at an acceptable risk or achieve reasonable returns at lower risk.

WHAT WE WISH TO ACHIEVE

To ensure the long-term success of the Accident Fund, WorkSafeNB would like the removal of this restriction to provide greater investment flexibility which could help keep the Accident Fund within the funding level target of 115%-125%.

Jurisdictional Information

No other jurisdiction has legislation prohibiting investments in mortgages. Currently:

- Six jurisdictions - BC, AB, MB, SK, NL and NT & NU - hold mortgages as a standalone investment
- Four jurisdictions - NS, ON, QC and YK - do not hold mortgages as a standalone investment but may hold mortgages within other products



PROPOSAL:

We propose removing the restriction on mortgage investments from the *WHSCC & WCAT Act*.



Lieutenant-Governor in Council appointment of the external auditor

CURRENT LEGISLATION

19(3) *The accounts of the Commission shall be audited by a chartered professional accountant to be appointed by the Lieutenant-Governor in Council for that purpose and the auditor's report shall be included in the annual report of the Commission.*

DISCUSSION

WorkSafeNB is required to hire an external auditor each year.

While WorkSafeNB is accountable to the government, we are meant to operate independently and manage our own decisions. The current requirement for the Lieutenant-Governor in Council to appoint our external auditor could interfere with this independence.

This process can also create challenges, such as delays during the order-in-council process or disruptions caused by elections, which could affect the timely appointment of an external auditor.

WHAT WE WISH TO ACHIEVE

To improve efficiency and maintain autonomy, WorkSafeNB wants the authority to choose its external auditor without requiring an order-in-council.

Jurisdictional Information

In six jurisdictions, the auditor is one of the following:

- A Lieutenant-Governor in Council appointment (ON, SK, YK)
- The jurisdiction's auditor general (ON, SK, YK, NT/NU)
- A public accountant (NS, AB, NT/NU)

Five jurisdictions engage the auditor of their choice:

- By appointment of the board of directors (NL, PE, MB)
- By appointment of the board of directors, except when the Auditor General has been appointed to conduct an audit (BC)
- QC's legislation does not prescribe an appointment process



PROPOSAL:

We propose that the *WHSCC & WCAT Act* be updated to give WorkSafeNB's board of directors authority to independently appoint the external auditor, eliminating the requirement for the Lieutenant-Governor in Council's involvement.

04 Modernization & plain language

The *WHSCC & WCAT Act* was first established in 1994 and since that time there have been changes and the *Act* should be modernized. Various sections of the *Act* could be amended, accordingly:

- To promote values of inclusivity and equality, Canada's Department of Justice advises on the use of gender-neutral language in legislation. Currently, The *WHSCC & WCAT Act* contains non-gender-neutral language, with pronouns "he" or "she" and "his or her" used throughout.
- The *WHSCC & WCAT Act* has been amended a few times over the years, and while the *Act* is short and straightforward, it could be easier to read with the removal of some of the repealed sections.
- Removing obsolete sections within the *WHSCC & WCAT Act* would also contribute to a more straightforward governing legislation. There were transitional pieces of legislation from when the *Act* was first introduced which are no longer relevant, such as section 10(3) that discussing the terms of the first appointment of the President and CEO: 10(3) The appointment of the first President and Chief Executive Officer shall be made by the Lieutenant-Governor in Council for a term of up to three years.

WHAT WE WISH TO ACHIEVE

WorkSafeNB would like to have inclusive and clear guidance in its governance legislation.



PROPOSAL:

We propose updating the *WHSCC & WCAT Act* to use gender-neutral language, fix translation discrepancies, remove outdated provisions, and delete repealed section numbers that do not affect the numbering of other parts of the *Act*.

For consideration

At the heart of workplace health and safety and workers' compensation in New Brunswick is a shared commitment among workers, employers, and other stakeholders to maintain a fair and equitable system.

The system's sustainability depends on sound governance, transparency, and accountability to ensure it continues to meet the needs of workers and employers alike. These principles build on the historic compromise that forms the foundation of workers' compensation and occupational health and safety frameworks in Canada.

Your feedback is essential to ensure the continued success and effectiveness of WorkSafeNB's legislative framework. This consultation provides an opportunity to shape the policies and processes that govern both the prevention of workplace injuries and illnesses and the fair treatment of those affected by workplace incidents.

After the consultation concludes, WorkSafeNB will carefully consider all input and develop recommendations for government that reflect the voices of stakeholders, strengthen our legislative framework, and ensure we continue to achieve our shared vision of healthy and safe workplaces for all New Brunswickers.

If there are any additional issues or topics you would like to raise, we encourage you to share them as part of this consultation. Together, we can enhance the integrity and sustainability of our system for generations to come.





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