



LEGISLATIVE REVIEW CONSULTATION

*Workplace Health, Safety and Compensation Commission
& WCAT Act*



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Dear valued employees

I'm reaching out to invite your valuable input on our review of the [Workplace Health, Safety and Compensation Commission & WCAT 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.

To facilitate a thorough review and to make the process more convenient, we are unveiling a new engagement platform for this consultation. We invite you to share your insights, suggestions, or concerns on any of

these sections by May 10. Your feedback will be instrumental in guiding discussions with the board as we prioritize areas for legislative review.

Your participation in this consultation process is invaluable, and 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.

Warm regards,



Carolyn MacDonald
Executive Director, Strategic Planning, Policy, and Risk

Did you know?

WorkSafeNB is undertaking this review as required under section 26.1 of the Act. This section was added in 2019 and requires a review every five years. The first review resulted in amendments in 2021 which included the following:

- Clarity given to which decisions can be appealed to the Internal review process (Decision Review Office).
- Clarity given to timeframes to appeal to the WCAT.
- Board meetings changed from at least six times a year to quarterly.

Before the first mandatory review, there were significant changes to improve the system, including:

- Making the appeal tribunal a body external to WorkSafeNB (2015)
- Giving clarity to WorkSafeNB's standing at appeal hearing (2015)
- Strengthening the board's policy making authority (2018)
- Creating an internal appeal (2019); and
- Strengthening the board appointment process (2019).

Structure of Board

SECTIONS 8, 9, 13

Purpose

To have an effective, efficient, and responsive corporate board. As the stakeholders are the employees and employers, it is essential that they be represented on the board. As well, terms should ensure continuity, so that there will always be members with tenure on the board.

Current legislation

Membership is currently equal worker and employer representation, with a Chairperson and Vice-Chairperson that are not representative of either workers or employers. The President and Chief Executive Officer of the Commission is, by virtue of their office, a non-voting member of the board of directors.

The board makes nomination for membership based on a merit and objective approach, which includes an evaluation of skills and qualifications.

The Lieutenant-Governor in Council makes the appointments. Membership is for five years. Members may be re-appointed for two additional terms of up to three years each.

The board is to meet at least once each quarter (at least four times a year). For a meeting to take place, one-half of members must be in attendance, with at least one worker representative, one employer representative, and either the Chairperson or the Vice-Chairperson.

When a member has a conflict of interest, they do not vote or participate in discussion on the matter.

Number of Meetings

WorkSafeNB's board must meet at least once each quarter (at least four times a year):

13(1) *The board of directors shall meet at least quarterly in each calendar year.*

Five jurisdictions have no minimum, while seven legislate a minimum from at least four times a year to as many as 12 times a year.

No minimum:

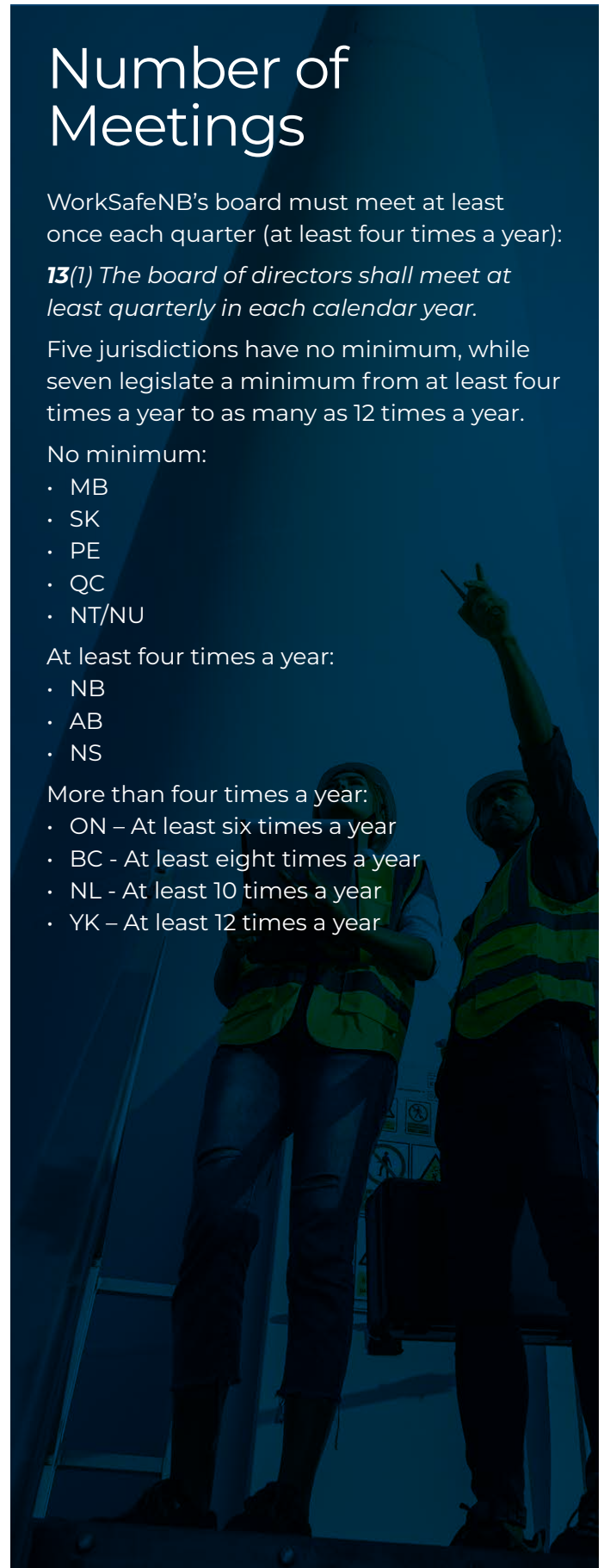
- MB
- SK
- PE
- QC
- NT/NU

At least four times a year:

- NB
- AB
- NS

More than four times a year:

- ON – At least six times a year
- BC – At least eight times a year
- NL – At least 10 times a year
- YK – At least 12 times a year



SECTIONS

5(1), 7, 8(1), 16,
19(3), 23.1

Purpose

To set out responsibilities/abilities to maintain and improve the system, and aid in their responsibility to administer the *Occupational Health and Safety Act*, the *Workers' Compensation Act*, and the *Firefighters' Compensation Act*, facilitating efficient and effective management and improvement of systems.

Current legislation

In section 7 of the Act, the board is to:

- Advance the principle that every worker is entitled to a safe and healthy work environment;
- Promote an understanding of, acceptance of and compliance with this Act, the [Workers' Compensation Act](#), the [Firefighters' Compensation Act](#) and the [Occupational Health and Safety Act](#);
- Develop, approve or conduct educational programs designed to promote an awareness of occupational health and safety;
- Undertake research on matters related to workers' health, safety and compensation;
- Advise the minister on developments in the field of workers' health, safety and compensation principles in other jurisdictions;
- Propose legislation and practices to promote workers' health, safety and compensation;
- Establish policies not inconsistent with this Act, the [Workers' Compensation Act](#), the [Firefighters' Compensation Act](#) and the [Occupational Health and Safety Act](#) to promote workers' health, safety and compensation;

Board Duties

The duties outlined in section 7 are similar to those duties of other jurisdictions across the country. Some duties outlined in legislation across the country that are not captured in section 7 are as follows:

- Work with organizations engaged in workplace injury and illness prevention to promote workplace health and safety (MB)
- Treat workers and their dependants in a fair and reasonable manner (SK)
- Establish a program to designate return to work and labour market re-entry service providers, to monitor the service providers' performance and to charge them a fee for the cost of the program (ON)
- Establish grant and award programs in relation to the board's responsibilities under this Act (YK)
- Ensure proper administration (NT/NU)

- Recommend changes in this Act, the [Workers' Compensation Act](#), the [Firefighters' Compensation Act](#) and the [Occupational Health and Safety Act](#), and the regulations, in order to promote better service by the commission;
- Publish from time to time such reports, studies and recommendations as the commission considers advisable;
- Prepare and approve its operating and capital budgets;
- Plan for the future of the workers' compensation system; and
- Develop a prevention strategy with respect to workplace injury and illness.

Where the Act does not specify powers or responsibility of the Commission, the Minister of Post-Secondary Education, Training and Labour would be responsible.

The Commission, the President and CEO may delegate their powers, duties, authority or discretion as they determine is appropriate.

Reporting and audits

SECTIONS 18.1, 19

Purpose

To provide oversight of the administration of WorkSafeNB.

Current legislation

The Auditor General is to conduct a performance audit every five years.

WorkSafeNB is to submit an annual report to the Minister, which should include an audit of accounts by a chartered professional accountant that is appointed by the Lieutenant-Governor in Council.



Legislated Contents of Annual Report

WorkSafeNB's Annual Report must contain an audited report:

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.

23.1 The Chairperson of the Appeals Tribunal shall annually make a report to the Minister respecting its activities under this Act that is satisfactory to the Minister and includes any information required by the Minister.

Across the country, this is common, with additional legislated requirements as follows:

- Actuarial statement of opinion on the compensation fund (YK)
- Strategic plan (YK)
 - Three year service plan (BC)
 - Five-year operating plan (MB, NL)
- A report on its prevention activities (MB, BC)
- Operation and transactions (NS, PE, YK)
- Transactions (SK)
- Information as required by the *Transparency and Accountability Act* (NL)
- Outline of new programs and policies introduced in the preceding year, a statistical breakdown of claims, reports from the chairperson of the Board and the Chief Executive Officer (PE)

The internal appeal process

SECTION 19.11

Purpose

To provide an internal appeal process for decisions made under the *Workers' Compensation Act* or the *Firefighters' Compensation Act* is to ensure WorkSafeNB decisions are compliant with legislation and policies, and considers the merits of each case.

Current legislation

A request for a decision review must be made within 90 days of the date of the decision, order, or ruling, unless it is a review of an administrative penalty imposed under subsection 82.1 of the *Workers' Compensation Act*, which must be made within 14 days of the date that the notice of administrative penalty is served.

The time period may be extended if the delay in requesting a review is considered justified.

The internal review may confirm, vary, revoke, or suspend the decision, order or ruling. The reasons for the decision must be provided in writing to the person who requested the review.

Further, the decision review is a required step before an appeal may be made to the WCAT.

Timeframe for Internal Review

There is a 90-day limitation period to appeal an initial decision to WorkSafeNB's Decision Review Office (DRO):

19.11(2) A request for review shall be made within 90 days after the decision, order or ruling referred to in subsection (1) is made.

Across the country the time limitation varies from 30 days to no time limit:

14 days:

- NB (admin penalty under 82.1)

30 days:

- NS
- NL
- QC
- ON (RTW decisions)

45 days:

- BC (decisions other than compensation and assessment)

90 days:

- NB
- PE
- BC (Compensation and assessment decisions)

Six months:

- ON (non-RTW)

One year:

- AB
- YK

Three years:

- NT/NU

No time limitation:

- MB
- SK

The external appeal tribunal (WCAT)

SECTIONS

20 – 23.1, 25.2

Purpose

To give stakeholders access to the appeals mechanism and to ensure that the appeals process deals with appeals efficiently and fairly.

Current legislation

Areas of interest to WorkSafeNB in this review are sections pertaining to:

- The timeframe to appeal to the WCAT is within one year of a decision from WorkSafeNB's internal review body, the DRO [section 21(1.1)];
- The timeframe to appeal is seven days for an administrative penalty or an order under the *Occupational Health and Safety Act* [section 21(1.4, 1.5, 2, 2.01, 2.1)];
- Ability to waive time limitation period [section 21(1.1)];
- WorkSafeNB's standing at appeals [sections 21(2.1, 8.1)];
- The application of WorkSafeNB's policy in an appeal [section 21(9, 9.1 – 9.6)];
- Consideration of new evidence [section 21(9.8, 9.9)];
- Implementation of a decision of the WCAT within 30 days of issuing the decision [section 21(12.1)];
- The ability of WorkSafeNB to reconsider a decision upon new evidence as long as the WCAT has not issued a decision (section 22); and
- Mandating two annual meetings between the WCAT and WorkSafeNB to discuss activities and issues of mutual concern (section 25.2).

Length of Time Between First Decision Review Level and the Appeals Tribunal

The timeframe to appeal a DRO decision to the WCAT is one year. Once an internal review decision on a compensation issue has been rendered, the limitation period to the next level of appeal varies from 30 days to no time limit.

30 days:

- NL
- NS
- PE
- BC
- MB (Admin penalties)

60 days:

- QC

90 Days:

- YK (assessment)

Six months:

- ON
- BC (medical change in condition)

One year:

- NB
- AB
- YT (non-assessment)

Three years:

- NT/NU

No time limitation:

- MB
- SK

SECTIONS

24, 24.01, 24.1, 25,
25.1, 25.2, 26

Purpose

To support functioning of the board.

Current legislation

WorkSafeNB has the power to invest as authorized by the [Trustees Act](#), but not in mortgages on real estate.

WorkSafeNB provides an annual grant to the Department of Post-Secondary Education, Training and Labour to fund the operations of the WCAT.

Investment Parameters in the Jurisdictions

No other jurisdiction has a legislative bar to investing in mortgages.

Currently the following jurisdictions hold mortgages as standalone investments:

- BC
- AB
- MB
- SK
- NL
- NT/NU

The following jurisdictions may hold mortgages within other products:

- NS
- ON
- QC
- YK



Other comments, suggestions, or issues

We welcome any comments, suggestions, or identification of issues that have not been addressed above.

Some provisions found in other jurisdictions include:

- Distinction on ending benefits at a defined age applies despite age being a prohibited ground of discrimination under the *Human Rights Act*; and
- A stay of proceedings for internal review decisions, pending the outcome of a WCAT decision.



Clarity Around Retirement Age

The *Workers' Compensation Act* provides wage loss insurance due to workplace injuries. The Act contains provisions for this wage loss benefit until age 65, as representing a fair retirement age.

Ontario's legislation contains the following provisions:

- A provision of this Act or the regulations under it, or a decision or policy made under this Act or the regulations under it, that requires or authorizes a distinction because of age applies despite [sections 1 and 5](#) of the [Human Rights Code](#).

Stay of Proceedings

Yukon's legislation allows for the stay of an internal review decision pending the outcome of a decision by the appeal tribunal.

76 Stays of decisions or orders under this Part

(2) The board may, on written application, stay all or any part of the decision or order on any conditions that the board determines, until the reconsideration or appeal is concluded. (3) The decision of the board under subsection (2) is final and not subject to appeal.

178 Stays of administrative penalties

(2) The board may, on written application by the person on whom an administrative penalty is imposed, stay the penalty on any conditions that the board determines, until the reconsideration or appeal is concluded.

(3) The board's decision under subsection (2) is final and not subject to appeal.

