

A HISTORY OF EMPLOYER LIABILITY AND WORKERS'
COMPENSATION LAWS IN NEWFOUNDLAND FROM
1887 TO 1993 AND AN OVERVIEW OF FACTORS
WHICH INFLUENCED POLICY CHOICES

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**A History of Employer Liability and Workers' Compensation Laws
in Newfoundland From 1887 to 1993 and An Overview of Factors
Which Influenced Policy Choices**

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ABSTRACT

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This paper examines factors which have influenced the development of employer liability and workers' compensation policy in Newfoundland since 1887. Various influences are considered such as the role of government policy, individuals, interest groups, institutions and processes, ideology, political parties, international and interprovincial emulation factors, and fiscal/economic matters. In addition to public policy development analysis, the paper's scope of review serves as an historic overview of the system and its development is reviewed against many of the major developments in the province over these years.

By copying the Canadian workers' compensation system, as it did after 1949, Newfoundland adopted the terms of a bargain struck by Canadian employers and labour as early as 1914. The bargain is that labour (individual workers) surrendered the right to sue their employers for damages caused by workplace injuries in exchange for guaranteed compensation payments from an employer-funded program whether or not the employer or worker was at fault. The result is a no-fault workers' compensation system, the development of which is the subject under review.

The paper may be of interest to academics, analysts, and decision makers interested in the Newfoundland workers' compensation experience, or serve as a comparative source for related public policy research.

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Chapter One

The Historical Context (British, German and Canadian Influences)

This paper reviews the major policy determinants which have affected the development of workers' compensation laws in Newfoundland from colonial to modern times. Broad, often complex, economic, social, institutional and political factors have influenced the direction of the law and while occasional major policy shifts do occur, it is determined that workers' compensation in Newfoundland is a policy field normally subject to incremental change. By simple definition, incrementalism "as a political pattern"¹ is change by small steps. In particular, the paper considers the incremental nature of policy development in the context of Newfoundland as British colony to 1949 and as Canadian Province after Confederation. That context involves obvious influential roles played by Britain and Canada regarding their workers' compensation policy choices and influences, yet on an island territory with its own distinctive legal history reflecting social, economic and political history. The paper reveals that the path of policy development is not readily categorized or neatly explained solely in terms of one influencing variable or another, although at certain points in time it may be possible to isolate distinctive influences. Instead, the incremental nature of policy development is influenced by a mix of factors including: historical; ideological; legal and institutional; and economic, social, and political responses to industrialization and modernization.

This work unfolds in a number of distinct steps. It seeks to create and preserve a complete historic record of the development of compensation law in Newfoundland. The evolution of Newfoundland's laws governing compensation for injury at work is carefully

traced from the narrowly defined *Employers' Liability Act* of 1887 to the more broadly principled, post-1949 Workers' Compensation Acts and system. Second, it discusses the most important factors influencing policy choices in workers' compensation over more than a century and how those factors changed over time. Factors such as ideology, rate of economic and social development, interest group participation, political leadership, and institutional processes are considered. Thirdly, where necessary, it connects the legal history to the political and industrial history of the island, its changing political regimes and leaders, and various industrial champions. This close analysis of political history not only provides a clearer picture of the factors influencing the system at given points in time, it allows one to assess and appreciate the persistence of policy choices over time. Furthermore, the detailed running analysis of evolving, recurring, and new influencing factors - and the policy actors associated with them at given points in time - permits clearer assessment of the suite of factors affecting change at given points in time.

The history of workers' compensation laws in Newfoundland is sharply divided into two distinct periods: pre-1949 and post-1949.² Prior to 1949 the laws of Newfoundland are based entirely on England's employer liability laws and after 1949 they are based entirely on Canadian workers' compensation law. It is important to note, however, that the Canadian system was heavily influenced by the German model. Therefore, as a means to illustrate the social, legal, and philosophical genesis of the laws adopted by Newfoundland, the first part of this chapter provides an overview of the history of development of workers' compensation laws in England and Germany, followed by an

analysis of the early Canadian history.

Tracing the evolution of English common law is instructive because it explains the origin and development of key legal concepts and doctrines which continue to underlie compensation law philosophy. The English history also effectively demonstrates the importance of changing ideologies upon the law, e.g., the influence of 18th century philosophies such as the rights of man, self-determination, liberty, utilitarianism, and the perfectibility of man. Similarly, the German history effectively illustrates the evolving interplay between the interests of labour, capital, and governments in workers' compensation policy development. These are basic forces which recur throughout this work; many of the group and class dynamics experienced in Germany parallel those of Newfoundland, particularly illustrated in Chapters Six and Seven. For example, Bismarck's resort to a corporatist approach in the 1880s echoes over a century later when changes are made in the governance structures of the Newfoundland workers' compensation system to ensure greater involvement of employers and labour.

Finally, the English and German historical juxtaposition provides the thought-provoking and illustrative concept of how, by the 1980s, various concerns and complaints with the Newfoundland system (Chapter Seven) can be philosophically attributed to inherent tensions associated with administering a German-rooted, mass adjudication and collective liability system in an English-rooted, common law, Canadian Charter of Rights and Freedoms environment. Ultimately, it is important to give full treatment to the English

and German experiences because they provide the basis on which western workers' compensation systems developed:

There are two main types of compensation laws. By one of them the employer is individually liable for the payment of it, and that is the British system. By the other, which may be called the German system, the liability is not individual but collective, the industries being divided into groups, and the employers in the industries in each group being collectively liable for the payment of the compensation to the workmen employed in those industries practically a system of compulsory mutual insurance under the management of the state. The laws of other countries are of one or other of these types, or modified forms of them and in most, if not all of them, in which the principle of individual liability obtains, employers are required to insure against it.³

The British Influence

The experience and laws of England, in particular from the 1830s onward, directly affected the form and substance of workers' compensation law in Newfoundland prior to 1949. Clear and unequivocal evidence of this occurs in 1908 when Newfoundland's first Workmen's Compensation Act was introduced in the Newfoundland House of Assembly. Not only was it explicitly stated that the Newfoundland law was based entirely on the law of England, a detailed history of the development of the English laws was presented to the House. It was indicated that unfair English common law related to injured workers was not improved upon in England until 1880.⁴

To understand the nature of the 1880 improvements in England it is useful to briefly consider English legal history regarding compensation for injury. While the roots of English workers' compensation laws are traceable to the 1880s,⁵ the concept of

compensating for injury with money predates can be traced as early as 597 a.d., when, under King Ethelbert, visiting missionaries garnered the protection of the king who declared that if anyone injured the missionaries he would have to pay "a two-fold compensation and 50 shillings to the king."⁶ Early laws were exact and stark, and the societies and economies they governed were peasant, rural and unsophisticated, but providing specific amounts of compensation for personal injury was an ancient concept.⁷

By 1215, with the signing of the Magna Carta, the basic concepts of fairness, natural justice or due process were put in place setting the stage for a century of rapid change and development of legal precedent affecting government and law. This was the beginning of the English Common Law system.⁸ The 400 year period following the Magna Carta is characterized as one during which changing economic relationships resulted in a broader role for the courts related to private law (affecting individuals). Harding states, "a whole new legal system was being constructed in the way that legal systems usually are, by continual experiment in the arbitration of disputes arising from new social arrangements."⁹

By the eighteenth century social arrangements developed at an even quicker pace with the advent of the industrial revolution. Technologies improved and factory systems were created causing working populations to shift from farms to factories, from rural to urban settings.¹⁰ Medieval feudal relationships faded and workers increasingly sought protection and benefits through other means such as Parliament, common law courts, friendly societies, guilds and, eventually, trade unions. Fair outcomes for commoners,

however, did not come easily. Social class inequalities and prevailing ideological beliefs and philosophies increasingly limited their options. For example, in the year 1800 the English Parliament actually banned trade unions because they fought employers for higher wages. That was interpreted as being against the common good. On the other hand, friendly societies were encouraged as less threatening impediments to commerce offering worker's representation and mutual benefits.¹¹

As for ideological influences, prevailing belief systems were highly influenced right across Europe following the ideals of the great revolutions of France (1789) and America (1776). This was the age of Enlightenment when the maturing philosophies of Rousseau, Voltaire, Paine and others focused attention on such ideals as the rights of man, self-determination, liberty, and the perfectibility of man. Among the stream of progressive thinkers was, for example, Englishman Jeremy Bentham, famous for promoting the utilitarian concept of *the greatest good for the greatest number*. Bentham had strongly lobbied for a wide variety of social and political reforms for many years prior to his death in 1832.¹² A significant number of progressive social issues occurred in England between 1800 and 1832.¹³ This ideological trend also resulted in the passage of the Poor Law Amendment Act of 1834 which stressed self-help, self-reliance, individualism, and liberation.

This belief system did not assist injured and struggling working class individuals because there is solid evidence that the courts of law were not immune from the prevalent *laissez-*

faire economic and social thoughts. For example, prior to the 1830s an injured worker may have been awarded compensation by a court based on an employer's responsibility for the injury.¹⁴ The generally accepted *master's vicarious liability* doctrine said that an employer was vicariously liable for wrongs committed by one of his employees.¹⁵ Unfortunately for the interests of workers, that legal view of the world changed in the 1830s when an exception to the general rule of *master's vicarious liability* was created. In a case known as *Priestly v. Fowler* the judge concluded that a butcher (the employer) was not liable for the negligence of his employee who had overloaded a wagon causing another employee to be injured. Generally known as the *fellow-servant role* the reasoning held that an employer would not be liable if a coworker caused the injury.¹⁶

That negative trend in common law did not stop with the *fellow-servant role*. There were two other significant lines of defense available for employers who wished to escape liability for injuries suffered by their workmen. Closely associated with reasoning employed in *Priestly v. Fowler*, that an employer would not be liable if a coworker caused the injury, was the *voluntary assumption of risk* doctrine. Under that concept employers would successfully argue that employees were completely free to decide against carrying out dangerous activities and would, as much or more than the employer, be in a position to determine what activities were dangerous. So, in the event of injury to the employee, the employer would escape liability.¹⁷ The third line of defense for employers was the concept of *contributory negligence*. Under this form of legal defense employers avoided all liability if some degree of negligence on the part of the employee could be shown, even if direct negligence on the part of an employer was also evident.

These laws were not beneficial for the interests of injured workers. As Larson suggests, it is a paradox that at a time when the number of injuries and risks to workmen were increasing, there were fewer and fewer common law remedies.¹⁸ As the industrial revolution matured there were increasing numbers of maimed urban workers and the emergence of a new social phenomena for English society: a class of chronically disabled injured workers and the families they had previously been able to support through their labour. In effect, the *fellow-servant*, *voluntary assumption of risk*, and *contributory negligence* rules were fundamentally unfair to individual injured workers who would be left with little or no compensation. The emergence of this social fact and eventual recognition of the need to respond more equitably were fundamental determinants of the original workers' compensation laws. However, improvements in the laws governing individual rights arising out of accidents at work did not occur quickly after 1830.

It was not until well into the nineteenth century that English Parliaments created laws to protect the interests of the worker population. In what Harding describes as a more "socialistic atmosphere"¹⁹, in 1880 the English Parliament introduced the first major improvement in the laws regarding work-related injury by way of the *Employers' Liability Act*. This Act restricted the availability of the *fellow-servant* defense for employers.²⁰ It was a good first step, but not entirely satisfactory from the workers' point of view. In addition to the "exceptions, qualifications, and pitfalls in the Act itself"²¹, the law was rapidly weakened by a series of court rulings which held as valid an employer and worker contract waiving the worker's rights under the Act.²² The general deficiencies

prompted an increasingly powerful trade union movement to voice its concern that workers were being left destitute as a result of their work injuries.²³

The eventual response to mounting concerns in England was the implementation of its first *Workers' Compensation Act* in 1897. This was a significant piece of legislation which provided a right to compensation for injured workers or their dependants for injuries 'arising out of and in the course of their employment'. In principle, this represented a major departure from the English common law tradition in which an employer's fault or negligence had to be proven before it would be held liable for injuries sustained by one of its' workers. The Act treated workers as being automatically entitled to compensation from their employer when they suffered a work injury. In practical terms though, the Act was not as generous to injured workers. The amount of compensation payable to an injured worker was limited to half of their wages because it was the accepted belief that the worker must share half the risk for industrial activities. Employers were not required to purchase insurance against the risk of injury to their workers (although many did), which in effect meant that many workers did not have security of benefits in the event of injury.²⁴

Additionally, although employers were responsible for work injuries, entitlement under the *Workers' Compensation Act* was not the only remedy for injured workers. There remained an option for workers to execute their natural/legal right to sue an employer in court for full compensation (instead of half wages under the Act). Furthermore, the 1897

Act did not create any change with respect to the general administration these matters. While the general intent was to create a system which provided swift and secure compensation, it remained a conflict-oriented, adversarial system featuring workers, employers, insurers and courts. In the final analysis the 1897 Act did not enjoy widespread support and was the target of many amendments. From 1897 to the 1940s this workers' compensation policy was maintained in England through an unhappy alliance between the unions and employers.²⁵

Chapter Two outlines how the British experience significantly influenced the first workplace injury law in Newfoundland. In fact, it is accurate to say Newfoundland directly copied the British experience in 1887.

The German Influence

Because of its direct influence on Canadian, and ultimately Newfoundland, workers' compensation laws it is important to examine the German experience of the 1870 -1889 period. During those years the first comprehensive German workers' compensation system was developed in the Reichstag (legislature) with much guidance from Chancellor Otto von Bismarck. The motivation of the German leadership to deal with those matters was, in essence, no different from those which led to the laws of England, Canada, or Newfoundland. Like England, Germany was subject to ideological influences permeating Europe society as well as other fundamental shaping forces such as industrial development and growing numbers of disabled urban workers. Nothing in the

experiences of these other countries, however, compares with Bismarck's ultimate political objectives related to the development of the workers' compensation program.

By the 1870s social unrest in Germany had grown to such an extent that various working and middle class groups were threatening the status quo.²⁶ The working class, whose interests were represented by the socialist movement, was repressed for little else than seeking better working conditions and measures to reduce mass poverty. Anti-socialist laws were passed in 1878 and again in 1881.²⁷ These laws were not entirely successful. By 1884 there remained a key group of social democratic leaders within the Reichstag. Among Bismarck's goals for social legislation after 1878 was to diminish labour's reliance on the social democratic movement. More importantly perhaps, one of Bismarck's overriding political objectives was the strengthening and further development of Germany as a nation state, as opposed to independent German states; demonstrating that the state was capable of looking after labour's needs was an indicator of nation state development. Consequently, by 1889 Germany would pass a medical insurance act (1883), an accident insurance act (1884), and an old age and disability act (1889).²⁸

Progressive laws for the injured worker were not new in Germany. For example, as early as 1838 in Prussia a law was passed which made railroads liable, under certain circumstances, for injuries sustained by their employees. Larson cites the German philosopher Johann Fichte as being responsible for expounding the idea that "the misfortunes, disabilities, and accidents of individuals are ultimately social and not individual in origin, and that the state ... therefore ... (should be responsible)."²⁹ As well,

Germany enacted an accident liability statute in 1871 which required an injured worker to prove that the employer was at fault. In 1878 a stricter employer liability bill was introduced by social democrats which would have reversed the onus of proof and made it mandatory for employers to report all accidents. While employers would be required to arrange private insurance coverages, premiums were to be shared between the employer, workers and regional poor relief associations. That bill was defeated, however, largely due to the influence of Bismarck, who wanted a system which featured greater involvement of the Reich (or state). Given general political unrest and the threat of instability, Bismarck felt it was important for Germans to see benefits of state involvement in their lives.³⁰

In his quest for information, Bismarck relied on the views of successful industrialists more than those of his bureaucrats.³¹ While many of these employers were genuinely interested in improving conditions, there is no doubt that they did not want to be overly generous; in return for better social programs, employers also expected increased productivity, loyalty, no unions and no strikes. In 1879 mining industrialist Louis Barre wrote to his commerce colleagues, "If industry now demonstrates a willingness to sacrifice it will receive the sympathy of the imperial government in the struggle against an extension of the law on employers' liability for job-related accidents."³² While employers were treated as a key interest group, it is certain that their motivations varied. There does not appear to have been much of a role for labour in planning the system, but their position and interests were directly considered. As Gall describes it, the political

objective of the social insurance acts was to reconcile the working class with the state.³³ Satisfying the demands of labour (and reconciling them with the state) was certainly not a minor objective, and on July 6, 1884, Bismarck appeared to get what he wanted with the passage of the Accident Insurance Act. Under the new workers' compensation scheme all premiums were to be paid by the employer.³⁴ Furthermore, the system would be administered by employer associations based on industry with supervisory oversight provided by an Imperial Insurance Office which would be financed by the Reich.

Two important and distinctive characteristics of this German system were its *no-fault* and *exclusive remedy* features. Under the *no-fault* insurance model injured workers were automatically entitled to benefits when injured without having to prove that the injury was their fault, the fault of the employer or anyone else. *Exclusive remedy* meant that injured workers had no other recourse, i.e., no recourse to the courts, for damages against the employer. The system involved a trade-off for employers who in return for full premium payment would be free of the uncertainties of court-based liabilities and for workers who in return for surrendering the legal right to sue their employer would be assured prompt and predictable compensation in the event of disability. These critical *quid pro quo* pioneering initiatives have had a significant effect on the development of workers' compensation systems throughout much of the Western world ever since.³⁵

While the German accident insurance system was seminal, Bismarck generally viewed it and the other social insurance plans as a failure.³⁶ He would have preferred the passage of an Act which called upon the Reich, i.e., the nation state, to make premiums payments

along with the employers. That would have been, in Bismarck's view, a significant demonstration of state affiliation and concern for labour's interests (although a significant degree of state involvement was achieved through the role of the Imperial Insurance Office). But his major and longer term disappointment may not be immediately obvious; there were, from Bismarck's perspective, much deeper motivations behind the creation of the employer associations which would administer the accident insurance system. Bismarck's political motives were far more complex than simply wishing to deflate the socialist leadership by championing one of their causes. He was keenly aware that the gathering social forces were threatening the state and social order which had been his to preserve. His ultimate plan was to integrate the alienated groups into the political order by means of corporative structures through which their concerns may be aired, thus avoiding social tension and disintegration.³⁷ In 1883, he commented that:

Accident insurance in itself is for me a secondary consideration. My chief consideration is to use this opportunity to attain corporative associations that must be extended gradually to include all productive classes of the population. ... we will establish the basis for a future representative body that will become an important participant in the legislative process either as a substitute for, or as a parallel to, the Reichstag, even if it must be raised to this status by means of a coup d'etat.³⁸

In that regard, Bismarck's grand wish never materialized but it is a fascinating perspective on the origins of these critical workers' compensation laws. The impetus for the creation of Germany's broadly-based social insurance system, including its unique form of workers' compensation, was largely political. Bismarck was not primarily motivated by benevolence or the virtues of socialism when he promoted the remedial

legislation; arguably he was more interested in maintaining the existing order in a troubled society. Bismark's political maneuvering to pre-empt the rise of the radical socialist parties has of course been noticed by the left. The Marxist analysis of the creation of workers' compensation programming sees them as anti-socialist in origin.³⁹

Understanding German workers' compensation history is necessary for any analysis of the history and development of these laws in Canada, and subsequently Newfoundland. Ultimately, the German scheme, with its *quid pro quo* arrangements may be referred to as *modern* workers' compensation law, as opposed to the British Workmen's Compensation Act which was actually a renamed employer liability act. Ironically, there are extremely limited numbers of references to the German system in the Newfoundland history. Prior to 1949 no direct references to the German model are found suggesting, for example, that it is a program to be copied (except indirectly to the extent that adoption of Canadian laws is advocated). Where references occur, mainly after 1949, they are indirect historical notes usually as background to the roots of the Canadian system.⁴⁰ More precisely, it is correct to say that there is no German influence on the development of laws in Newfoundland prior to 1949, but that after 1949 the German influence on Newfoundland laws is significant, though indirect and to the extent that Canadian law was heavily influenced by Germany.

As discussed earlier, the German history effectively illustrates the critical interplay between the interests of labour, capital, and governments in workers' compensation

policy development; as will be seen in later chapters (Chapters Six and Seven), many of the group and class dynamics experienced in Germany parallel those of Newfoundland. Bismarck's resort to a corporatist approach echoes over a century later when changes are made in the governance structures of the Newfoundland workers' compensation system to ensure greater involvement of employers and labour. Finally, it is interesting how, by the 1980s, various concerns and complaints with the Newfoundland system (Chapter Seven) can be philosophically attributed to inherent tensions associated with administering a German-rooted, mass adjudication and collective liability system in an English-rooted, common law, Canadian Charter of Rights and Freedoms environment.

The Canadian Influence

Like England and Germany, the development of workers' compensation laws in Canada was a necessary byproduct of a developing industrial economy. Unlike England and Germany, however, Canada was not a unitary state, so it is important to remember that its response to the issues would be characterized by its federal nature. There was never any serious debate in Canada about the administration of the Workers' Compensation Acts falling anywhere but under provincial jurisdiction. These matters have always been interpreted as an "issue of Property and Civil Rights in the Province" or as "Matters of a merely local or private Nature in the province" which are, of course, contained in Section 92 of the original *British North America Act* (now renamed the *Constitution Act, 1982*). These are generally referred to as the province's enumerated powers under that Act and may be contrasted with the federal government's "general" powers under Section 91 of

the *British North America Act*.⁴¹ After 1867, industrialization was heavily promoted in Canada through tariff protection and other measures, especially so following the re-election of the Sir John A. MacDonald government in 1878. As factory systems evolved and dependence on staple, resource-based industries lessened in the decades following 1878, marked migration from the country to the cities occurred.⁴² In 1908, J. W. Woodsworth observed:

Canada is leaving the country for the city.... The population of Ontario more than doubled from 1851 to 1901, but the population of Toronto increased over six times during the same period. The population of Quebec was almost twice as large in 1901 as in 1851, but that of Montreal was over four and one-half times as large. Manitoba is an agricultural Province, and yet one-quarter of the entire population is resident in the city of Winnipeg alone.⁴³

The changing economy and shifting population patterns established a new socioeconomic environment - industrialization and urbanization - with new sets of problems including increasing numbers of workplace injuries. By 1910 it was clear that Canada's English-style employer liability acts were inadequate mechanisms for compensating injured workers. That year the Ontario government appointed a commissioner, Chief Justice W.R. Meredith, to conduct an enquiry into the matter of workers' compensation laws.⁴⁴ Meredith undertook an international comparative approach and found that most countries used either the "British system" or the "German system". He concluded 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."⁴⁵ The main feature of the German system that Meredith strongly favoured and incorporated in his recommendations was its collective liability system of premium collection. Regarding the importance of assured, cost-shared premium collection, i.e., collective liability, he believed adherence to this principle would provide security of payment for workers; suggesting possible uncertainty of payment, he interestingly described Ontario as a "comparatively new country" with many small, not entirely stable industries. Meredith's expressed personal belief was that "... 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."⁴⁶ Finally, another German-like feature adapted by Meredith was inclusion of a specialized, autonomous and non-political Board, i.e., state appointed and run. He felt comfortable doing so because similar railway and hydro-electric boards were already functioning very well, i.e., free from political partisanship, in Ontario and Canada.

As a direct result of Meredith's recommendation, a Canadian collective liability (as opposed to individual employer liability) workers' compensation law was implemented in the province of Ontario on January 1, 1915.⁴⁷ The Ontario Act embodied key aspects of the Germany program which have endured as defining principles of the Canadian approach. Meredith emulated the *no-fault*, *collective liability*, and *exclusive remedy* features of the "German model," where injured workers are automatically entitled to compensation - through an employer funded system - without having to prove that anyone was at fault. In return for funding the system employers gained immunity from

legal action. This *quid pro quo* arrangement was not a simple variation of employer liability laws, nor did it flow from common law tradition; it was a unique solution to social and economic change. Like the German system, Meredith also placed the administration of the Canadian workers' compensation system squarely in the hands of a quasi-judicial administrative agency known as the Workers' Compensation Board. Meredith's report was seminal resulting in a unique "Canadian model" of workers' compensation which has survived ever since. By 1919, six Canadian provinces had adopted the model with the others following relatively quickly, an exception being P.E.I. which did not adopt the system until 1949.⁴⁸ (That PEI was one of the last provinces to adopt may be attributed to its small, rural, non-industrial economy, whereas the system was largely an industrial model.)

Introductory Summary

Generally, this work undertakes close review of the period from 1887 to 1993. The start date was somewhat obvious as it marks the passage of the first relevant legislation (see Chapter Two). The choice to conclude the analysis in 1993 was based upon several factors. In particular, very significant policy and institutional changes occurred during the 10-year period leading up to 1993, thereby making it a natural temporal milestone and point of departure (see Chapters Six and Seven). It was also a time of great dissatisfaction when virtually all major stakeholders experienced significantly decreased levels of satisfaction with system performance, and when the high expectations of the 1980s were shattered. Furthermore, by choosing 1993, it also provided more than 100 years of history

for assessment - an adequate length of time to identify possible policy development paths, patterns, and trends, and to draw credible conclusions about them. Finally, the role of Newfoundland's history - particularly legal, institutional, economic, social, and political - cannot be avoided as a cumulative contributor in the shaping of workers' compensation policy.

Whatever level of success may be achieved by the analysis contained in subsequent chapters, it is hoped the work may benefit those with an interest or stake in understanding the current status, or in predicting possible future development trends, of compensation law in Newfoundland. Some aspects of the compendium of historic facts and political observations contained in this work may be unique or new, though most are not. To the extent that new analysis is provided, the paper may serve as supplemental documentation for future researchers.

Substantively, from a public policy perspective and as the conclusion regarding *incrementalism* in the opening paragraph suggests, the paper attempts to interpret the nature of policy development within the workers' compensation sphere in Newfoundland. How and why policy tends to evolve slowly is examined, as are the circumstances which provoke rare major changes. It is important, for example, to track the accumulation of small changes over time, e.g., insurance coverage, benefit increases, institutional change, etc., because many small changes can create major effects, even though they appear as discrete, minor policy choices at given points in time. It is interesting, for example, to

note how Bismarck's choice of a dedicated, state agency to administer the system in the 1880s - perhaps for reasons related to strengthening of the nation state, as much or more as for good administration - figures prominently in Meredith's recommendations for the Canadian system in 1915 and, as we shall see, as the path forward in the Newfoundland history post-1949. Thus, linkage of policy and political/industrial history of the island is offered throughout this work as a means of identifying and assessing the influence of various interrelated factors over time. As the British policy theorist Richard Rose writes:

Whereas politicians can live from election to election, government is continuing. The inheritance of public policy is the cumulative sum of many actions taken by many governments, each carried forward by the force of political inertia. The greater the momentum behind a programme, the harder it is to slow down, redirect or stop it.⁴⁹

NOTES:

¹ Charles Lindblom, "Still Muddling, Not Yet Through," *Public Administration Review* 6 (November/December 1979): 517-526.

² The terms *workmen's* or *workers'* compensation may be used interchangeably, although the latter is favoured because it is gender neutral. Because legislation prior to the late 1970's used the term *workmen's* this paper uses that term deliberately from time to time.

³ *Final Report On 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*, by Sir William Ralph Meredith, Commissioner (Osgoode Hall, Toronto, Oct. 31, 1913), 3.

⁴ "Report of Second Reading speech by The Honorable Minister of Justice, Mr. J.M. Kent," *Evening Telegram*, St. John's, February 7, 1908.

⁵ P.S. Atiyah, *Accidents, Compensation and the Law* (London: Weidenfeld and Nicolson, 1970), 341-343. In fact, the first Workmens' Compensation Act was not introduced in England until 1897, but in 1880 parliament introduced an Employers' Liability Act which improved upon the rights of injured workers.

⁶ Alan Harding, *A Social History of English Law* (Glouster: Peter Smith, 1973), 13-15. If a freeman was killed under Ethelbert, not only did the King collect a fine, the victim's family, or kin, were also owed compensation.

⁷ F.L. Attenborough, ed., *The Laws of the Earliest English Kings* (New York: Russell & Russell, Inc. 1963). Compensation for personal injury was scheduled so that aggressors would pay 10 shillings for breaking open a skull; 25 shillings if they caused loss of hearing (either ear); 50 shillings for loss of an eye; and if they lopped off someone's foot the penalty was also 50 shillings.

⁸ Harding, *A Social History*, chapters 1 and 2 passim.

⁹ *Ibid.*, 115.

¹⁰ *Ibid.*, 330. Between 1780 and 1851 the population of England and Wales increased from 8 to 18 million, making them predominantly urban.

¹¹ *Ibid.*, 323-329.

¹² *Ibid.*, 330-339.

¹³ *Ibid.*, 336-339. Between 1800 and 1831 there were over 60 reform-related Commissions of Inquiry formed in England.

¹⁴ Ronald Manzer, *Public Policies and Political Development in Canada* (Toronto: University of Toronto Press, 1985), 9. Political ideology is an important determinant in the evolution of workers' compensation policy which cannot be overlooked. Manzer defines political ideology as "a doctrine or set of ideas which purports to provide a comprehensive explanation of political arrangements."

¹⁵ Harding, *A Social History*, 307. Harding mentions the 1691 case of *Boson v. Sandford* (a case from Maritime law) from which has been derived the principle of the employer's liability for wrongs committed by his employees for which he is responsible.

¹⁶ Arthur Larson, *Workmen's Compensation for Occupational Injuries and Death, Desk Edition, Volume I* (New York: Matthew Bender & Co., 1997), Section 4.30.

¹⁷ *Ibid.*

¹⁸ Ibid. Contributory negligence acknowledged since 1908. See *Butterfield v. Forrester*, [K.B. 1809] 11 East 60.

¹⁹ Ibid., 379.

²⁰ Atiyah, *Accidents*, 342.

²¹ Larson, *Workmen's*, Section 4.30.

²² Atiyah, *Accidents*, 342-343. Atiyah points to various deficiencies arising out of other several cases which reduced available remedies for injured workers.

²³ Ibid., Chapter 14.

²⁴ Ibid.

²⁵ C. Arthur Williams, Jr., *An International Comparison Of Workers' Compensation* (Boston: Kluwer Academic Publishers, 1991), 126-137. By 1940 several state benefit programs had been established in England, such as old age pensions, certain medical benefits and unemployment insurance. The Beveridge Report [1942] - an all-encompassing review of the social welfare system - was the starting point for the eventual demise of workers' compensation as a distinct entity within the social security system in England.

²⁶ Lothar Gall, *Bismarck. The White Revolutionary, Volume 2 [1871 -1898]* (London: Allen & Unwin, (Publishers) Ltd., 1986), 82. Translated from the German by J.A. Underhill.

²⁷ Ibid., 100.

²⁸ Otto Pflanze, *Bismarck and the Development of Germany. Volume III [1880-1898]* (Princeton, N.J.: Princeton University Press, 1990), 146-158.

²⁹ Larson, *Workmen's*, Chapter 2, 2-12.

³⁰ Pflanze, *Bismarck*, 153. See footnote for discussion of the 1871 accident liability act.

³¹ Ibid., 151. In retrospect, it is perhaps not surprising that there was little or no statistical information concerning labour conditions prior to 1870. There were no programs to copy and little or no international experience to draw upon. Perhaps as a delaying tactic, or perhaps for as part of a genuine desire for accurate knowledge, Bismarck initiated a number of inquiries into the matter of labour conditions throughout the 1870's.

³² Ibid., 152. [Quoting from Vogel, *Bismarcks Arbeiterversicherung*, 38-44.]

³³ Gall, *Bismarck*, 166.

³⁴ The overall social security system was highly integrated. Medical Insurance Fund - (Premiums: 2/3 by worker and 1/3 by employer) paid 13 weeks of either sickness or disability. Accident Insurance Fund -(Premiums: Employer 100%) paid for disability after 13 weeks. Old Age and Disability Insurance Fund -(Premiums: Employer 50%, Worker 50%) provided disability due to old age or other causes not covered elsewhere. Participation: Compulsory, but by mutual association. Administration in hands of employers and employees, but under government supervision. See full discussion in Larson. *Workmen's*. Chapter 2.

³⁵ Pflanze, *Bismarck*, 155. Also, Williams, *An International Comparison*, 1-3.

³⁶ Williams, *An International Comparison*, 429.

³⁷ Pflanze, *Bismarck*, 156-157. In laying the foundation of his plans Bismarck revised the floundering medieval guild system in 1880, even though he regarded them as not in

keeping with the industrial age. His purpose in doing so was to establish other corporative structures.

³⁸ Ibid., 156. Also, Gall, *Bismarck*, 166-167. Bismarck's comments recorded in private letter by Theodor Lohmann, under secretary of state in Ministry of Commerce.

³⁹ James O'Connor, *The Fiscal Crisis of the State* (New York: St. Martin's Press, 1973), 138. O'Connor expands on the Marxist analysis suggesting that the main function of programs such as workers' compensation is to placate and maintain an effective work force for the betterment of business interests. "... the fundamental intent and effect of social security is to expand productivity, production and profits. Seen in this way, social insurance is not primarily insurance for workers, but a kind of insurance for capitalists and corporations." See also, Larson, *Workmen's*, Chapter 2, 2-12.

⁴⁰ Irving Fogwill, "How Modern Workmen's Compensation Law Came To Newfoundland" (an unpublished paper, circa 1967, Workplace Health, Safety and Compensation Resource Centre, St. John's). This paper illustrates the generic reference to German-rooted laws as 'modern'.

⁴¹ R. Simeon and I. Robinson, *State, Society, and the Development of Canadian Federalism* (Toronto: University of Toronto Press, 1990), 21-27, 42-57.

⁴² Ibid., 32-33. Here the authors point out that the marked population movements were concentrated in Ontario and Quebec while the Maritimes were stagnant and the population of the West was small. Nevertheless, it is useful to speak of the "industrialization" of Canada.

⁴³ D. Guest, *The Emergence of Social Security in Canada* (Vancouver: University of British Columbia Press, 1980), 18.

⁴⁴ *Final Report On Laws Relating to the Liability of Employers*, Meredith, 7. Speaking about the general unfairness of employers' liability acts, Meredith explains that the so-called Workmen's Compensation for Injuries Act is erroneously labeled because it is really an employers' liability act. The same misconception applies to the first "Workmen's Compensation Acts" of Newfoundland.

⁴⁵ Ibid., 3. "... I made enquiry as to the laws in force in the principal European countries, in the United States of America and in the Provinces of Canada. I also visited Belgium, England, France, and Germany, and consulted those concerned in administering the laws of those four countries, ... perhaps all of them except the German, have not been in force long enough to enable a conclusive opinion to be formed as to their merits or demerits." [K. Banting, *The Welfare State and Canadian Federalism* (Montreal: McGill-Queen's University Press, 1982), 181. Banting suggests that for social policy evaluation an international comparative approach may provide effective perspective. In the realm of workers' compensation program development, generally, the experience of other jurisdictions has always been an important policy determinant. This illustrates the importance of considering Newfoundland history in light of English, German and Canadian experiences.]

⁴⁶ *Final Report On Laws Relating to the Liability of Employers*, Meredith, 6-7.

⁴⁷ G. Dee and N. McCombie, *Workers' Compensation in Ontario* (Toronto: Butterworths, 1987), 7.

⁴⁸ Terence Ison, *Workers' Compensation In Canada, Second Edition* (Toronto: Butterworths, 1989), 1. Meredith's Canadian model was adopted in: Ontario and Nova Scotia (1915); Manitoba and B.C. (1916); Alberta and New Brunswick (1918); Saskatchewan (1928); Quebec (1932); and, P.E.I. (1949).

⁴⁹ Richard Rose, "Inheritance Before Choice in Public Policy," *Journal of Theoretical Politics* 2, 3, (1990): 289.

Chapter Two

The Influence and Persistence of British Legal Tradition (1887-1920)

This chapter explores how work injury compensation law first appeared in Newfoundland in 1887 and, in particular, how it emulated British experience. It goes on to assess how developments in Newfoundland's political, industrial and workplace environments, especially the emergence of unionism, contributed to amendments in the first decades of the twentieth century. Even though Newfoundland struggled for colonial independence it remained underdeveloped with a narrow, predominantly non-wage-based economy throughout most of the nineteenth century. The paucity of workplace laws may be explained by the absence of an industrial base outside of the fishery. The chapter analyzes events up to approximately 1920 - just after the end of the First World War.

Prior to joining Canada the general and political history of Newfoundland is inextricably linked to and in many ways defined by England. Trade, settlement, general economic and governance matters were squarely under English control or direct influence throughout this era. To determine why English law persisted in a colony which, otherwise, sought a unique identity and economic independence, the chapter concludes by offering a theoretical lens which suggests that current laws and policies are often heavily influenced by historical example and experience. Specifically, path dependency theory suggests that the weight of tradition and past practices may promote incremental change processes, and that dramatic systemic changes do not usually occur easily.¹ Or, put another way, "path dependence (means) ... that once a country or region has started down a track, the costs

of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice.”² Thought of in this light, the chapter’s theoretical conclusions provide a foundation for understanding how key historical policy decisions often have enduring influence upon workers’ compensation policy choice. With respect to the overall finding of the paper regarding the nature of incremental change, it is also revealing to note that path dependent change - economic or social - is typically gradual.³ This is a model of thought which may be carried through subsequent chapters.

From its inception as British colony very few laws were adopted in Newfoundland to deal with employer-employee relationship or workplace conditions. In fact, there was a veritable absence of workplace laws which, as suggested, is explained by the fact that there was little or no industrial base outside of the fishery. Newfoundland’s fish-based economy remained underdeveloped supporting a small year-round population throughout the 1700s, but it remained firmly under the control of England. In fact, to ensure it remained the supreme authority in Newfoundland the British Parliament passed the *Palliser’s Act*⁴ in 1775 to promote British dominance through a series of measures designed to establish benefits for fishermen associated with British operations. This was Newfoundland’s first legislation dealing with workplace relationships covering such matters as the necessity of establishing written contracts between fishermen and the masters of vessels. *Palliser’s Act* stated that there must be a written agreement between masters and fishermen concerning wages and the conditions of employment. Regarding

the concept of wages, however, it indicated that payment of "wages" could be in the form of fish and oil.⁵

Regarding the Newfoundland fishing industry, it is well-known that the old English system of "truck" - payment of goods instead of cash wages - flourished through the nineteenth century (and, in indeed, persisted into the twentieth century).⁶ That state of social and economic imbalance - a primary work force without a wage-based economy - was unlikely to spawn beneficent workplace protection laws; there was no incentive to create a wage replacement compensation system. Besides, any effort to advance social benefits through improvement in the laws of Newfoundland would have met resistance through the influence of *laissez-faire* doctrine through the nineteenth century. "Repeatedly (from 1832 to 1870) debates in the Newfoundland Legislature and newspaper editorials and comments reflected views of those who were, at best, only reluctantly sympathetic to the needs of the poor."⁷

Early reformers such as William Carson and Patrick Morris successfully advocated parliamentary and legal reforms in the 1820s.⁸ Britain granted Newfoundland limited democratic Representative Government in 1832 and there was an elected House of Assembly, but the executive government was controlled by England. Deeper British culture and traditions were reflected by an English-style Supreme Court in 1826 and the application of English Law and Practice in Newfoundland by statute in 1837.⁹ Because this made English criminal law applicable in Newfoundland in all cases not covered by local law, it in effect outlawed trade unionism by relying on British crimes of conspiracy which prevented workers

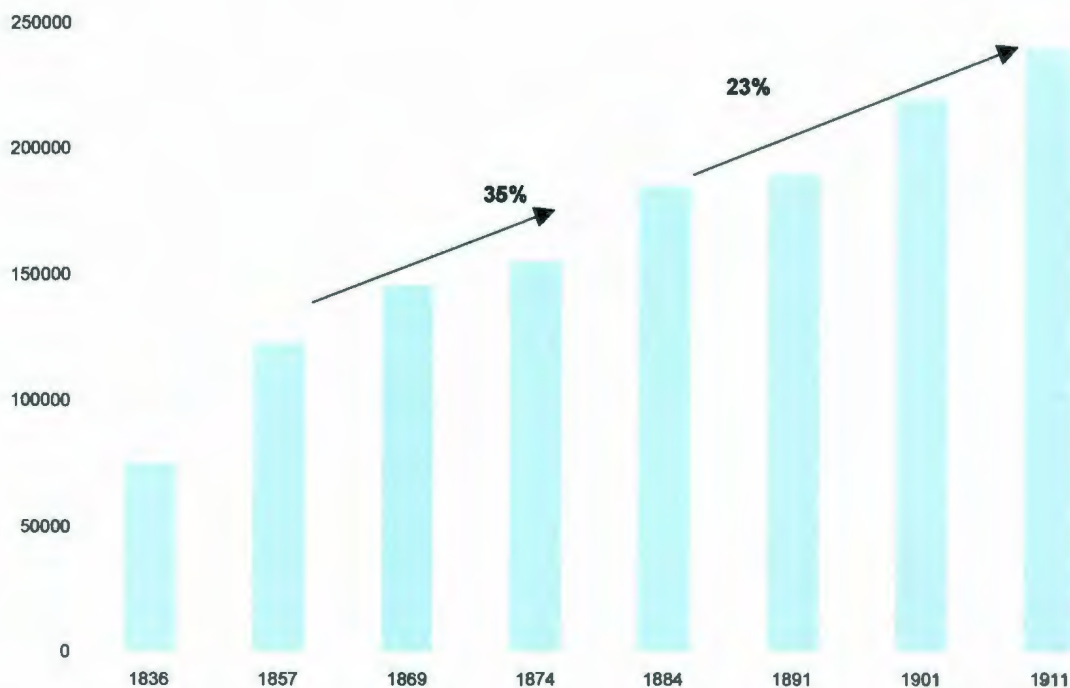
from organizing for the purpose of advocating better working conditions or wages.¹⁰ The fate of workers did not improve after Newfoundland was granted Responsible Government in 1855. In 1858 the British parliament passed the *Master and Servants Act*¹¹ which provided more favourable terms and conditions to employers than to workers. In terms of influence, the reach of British law continued to extend itself into Newfoundland either directly through legislation such as the *Master and Servants Act*, or indirectly through Newfoundland legislation mirroring British statutes.¹²

Generally, the nature of work in Newfoundland prior to and after 1855 was mainly associated with the staple fishing industry. Dependence on the fishery resulted in a risky environment in which unpredictable supply and demand patterns created economic volatility. The economy was subjected to further stress as Newfoundland's population rapidly increased - the population was approximately 75,000 in 1836 but by 1874 it more than doubled to approximately 161,300. (See Figure 1, next page.) With an increasing population, the narrow, fish-based economy could not generate an inadequate supply of jobs and income to support it.¹³

Once Newfoundlanders rejected Confederation with Canada in the election of November 1869 the objective of successive governments was industrial diversification. That thrust was particularly pronounced after 1878 when the English-born but St. John's-trained lawyer, William Whiteway became Prime Minister; he is best remembered for his "policy of progress." This theme suited the prevailing nationalistic attitude among the population which clearly saw its future as an independent nation. Moreover, the dream of an east-west island

economy funneled into the St. John's metropol was politically popular under Whiteway.¹⁴ A peculiar, but defining fact of Newfoundland history since 1832 at least, was St. John's dominance as the political and economic centre where the population was most diverse and heavily concentrated.

Figure 1
Population Growth in Newfoundland from 1836 to 1911



Whiteway's interest in railway building reflected a concern for economic diversification which would "free Newfoundland from its retarding dependence on one unpredictable staple"¹⁵ - the fishery. An unstable fishery and economy was not in the interest of the commercial elite of St. John's, so the concept of a cross-island railway artery was highly attractive and spurred by the potential for mineral and other natural resource development in the interior of the island. Of course, the development of a railway link would have presented

advantages for Newfoundlanders in outlying regions as well. While Whiteway's ambition resulted in the passage of a significant number of laws supporting economic development, such as shipbuilding, agriculture and manufacturing, by 1885 the progress he offered had not materialized and, in particular, the promised railway was only half complete and in receivership.¹⁶

That general failure was among the reasons Whiteway lost the 1885 election to the new Reform Party led by Robert Thorburn. Thorburn's Reform Party was not interested in railway development but favoured other local public works projects such as road building as a means of addressing immediate economic concerns. By 1887, for example, the state of the Newfoundland economy was such that immediate governmental action was required. The February 1887, Speech from the Throne illustrates the desperate state of the economy. Successive fisheries - cod, seal, herring and salmon - had failed and "a large proportion of the population of the Eastern and Northern Coasts of the island had failed to secure the means of subsistence for the coming winter." Although guided by "a desire to avoid, wherever possible, the evils of gratuitous relief,"¹⁷ that year government had to established relief (make-work) projects. Attempts to diversify the economy by promoting agricultural operations reported only fair success. This was a low point for the Newfoundland economy which, despite the best efforts of recent government initiatives, remained vulnerable. It had failed to grow much beyond its primary resource dependence and non-wage-based character.

In light of this limited industrial diversification, the predominance of a non-wage-based economy, and the economic downturn of 1887, it is somewhat surprising that measures for providing compensation for workplace injury were undertaken that year. In fact, 1887 saw one of Newfoundland's most beneficial workplace laws in over two hundred years proposed. In the reply to the February 1887 Speech from the Throne, the Thorburn government stated its intentions:

We are glad ... that mining operations have substantially increased, and give indications of development in future. The enthusiastic labour of Murray, Howley, and others, have shown Newfoundland to be possessed of great deposits of copper, coal, and other minerals; and we feel assured that when means of speedy communication and easy transportation have been provided, the development of these resources will materially benefit the whole people of this Colony. And in view of the numbers who are likely to be engaged in the prosecution of this industry, we shall be glad to give prompt attention to the placing of measures on the Statute-Book which will afford to operative miners protection from injury to life and limb whilst engaged in their avocations.¹⁸

1887 Introduction of *Employers' Liability Act*

On March 2, 1887, a Bill "to extend and regulate the liability of employers to make compensation for personal injuries suffered by workmen in their service" was introduced in the Newfoundland House of Assembly. The bill was called the *Employers' Liability Act* and it was passed into law on April 26, 1887. It made employers liable under certain circumstances for injuries caused to their workmen in the course of employment. However, compensation could only be obtained by a law suit against the employer and the worker's action could be easily defeated. While compensation was not guaranteed, it was generous when compared to the total absence of worker protection in Newfoundland up to that point. It is worthwhile to examine why the *Employers' Liability Act* was introduced in 1887.

Unlike England and Germany, the introduction of this kind of law in Newfoundland cannot be explained on the basis of political pragmatism as a result of dramatically increased industrial injuries secondary to a robust economy. There was, in fact, little or no industry and railway development was in disarray. Inevitably, many workers would have been injured in railway construction prior to 1887 and general awareness of the circumstances of individual cases may have contributed to an acknowledgment of the desirability of an *Employers' Liability Act*. No anecdotal or statistical evidence is found to indicate whether key individuals, groups, or politicians promoted or supported the implementation of the *Employers' Liability Act* in 1887 on the basis of railway construction injury cases. [Newfoundland railway workers would eventually play a significant role in the development of workers' compensation legislation (1936 -1949), but there was no union in 1887. Interestingly, it was railway development that led to the first liability acts in Germany in 1832.]

Furthermore, no evidence is found to suggest that other individuals or groups were directly pressuring government to implement an *Employers' Liability Act*. There was, for example, no organized labour movement in Newfoundland at the time and the majority of the Newfoundland workforce, approximately 82 percent, were fishermen.¹⁹ While there were a few small, non-political unions in St. John's by this time, labour simply was not organized or relevant in Newfoundland politics in 1887. Somewhat tangentially, it is interesting to note that the matter of labour relations was being seriously discussed and evaluated in Canada at this time. A Royal Commission on the Relations of Capital and

Labour in Canada was appointed in December 1886, for the purpose of "inquiring into and reporting upon the subject of Labour, its relations to Capital, the hours of labour, the earnings of labouring men and women, and the means of promotion of their material, social, intellectual and moral prosperity, etc." The final report was not issued until 1889.²⁰ While there may have been indirect influences related to the Canadian activities, no records are found to substantiate a direct influence upon the Newfoundland decision in 1887.

To the extent that the Newfoundland workforce was slowly changing, however, it was happening almost exclusively within the more populous and diverse St. John's.²¹ Interestingly, the 1887 *Employers' Liability Act* bill was introduced by Edward P. Morris, a 28 year-old lawyer, elected to the House as the representative of the predominantly working-class district of St. John's West. Morris was a rare local talent who had progressed from common roots to law and politics. It is likely that individual government members from St. John's were influenced by or attracted to the interests of labour surfacing in St. John's. Morris, an ambitious political renegade, would have been especially eager to align himself with a potentially popular bill to advance his own political interests.²² As for the interests of labour, it would be at least another 10 years before organized labour became a reality and any kind of reasonable political factor in Newfoundland.²³ On the whole, however, government was not reacting to organized or widespread political pressure when it introduced this legislation in 1887.

In retrospect, there are likely two interrelated factors which best explain why the 1887 bill was introduced. First, and in line with government's general desire to promote economic development, was the plainly stated reason to "afford protection to operative miners" who become injured in the course of their work. The legislation was presented in speculative terms as government anticipated the further development of a mining industry and the need to attract and support skilled labour. It was not based on a demonstrated history of mining injuries or experience because by 1887 Newfoundland had neither, although there was the major push toward railway development. Although potential industrial development and labour demand was further dependent upon the implementation of better communication and transportation linkages, it is noteworthy that government chose to proceed as it did. In addition to attracting labour the government may have been also interested in retaining its already growing supply; between 1869 and 1884 the population had increased by 35 percent. Given the trend toward economic development, therefore, Newfoundland's *Employers' Liability Act* of 1887 appears to have been more about anticipating and fostering future economic development than it was a political response to an immediate and obvious social demand.

The second related and significant factor which helps explain the appearance of the 1887 law is emulation. A largely identical *Employers' Liability Act* had been introduced in England in 1880. Clearly, Newfoundland copied the example set by England. As discussed, one significant reason for wishing to do so may have been the desire to support economic development by remaining competitive with other countries such as England

(where labour would be drawn from) and Canada (where labour would be drawn to).²⁴ It would have been disadvantageous for economic development, for example, if potential labourers felt they did not have the same level of coverage in Newfoundland as in England or Canada.²⁵ To some degree this was a case of the standard being set by England and Newfoundland feeling compelled to follow. Another important factor was Newfoundland's deference to British laws and customs based on historical and cultural attachment. To a very large extent Newfoundland was defined and therefore limited to a set of definitive experiences directly related England. From the beginning, English laws were applied directly to the colony, and Newfoundland's constitutional and legal systems were an exact copy from England; arguably, Newfoundland was a figurative psychological, if not structural, hostage to its history. No evidence is found to suggest that any other alternatives, such as the German laws, were ever considered, but it is unlikely that laws other than English laws would have been considered.

The *Employers' Liability Act* was not amended during the remaining years of the nineteenth century, but a changing economy would come to play a direct role in shaping future legislative change. There was a significant change in the profile of Newfoundland's economy. The number of fishermen as a percentage of the entire work force dropped significantly between 1884 and 1891, from 82 percent to 64 percent, respectively. Although industrial diversification came slowly, the changing composition of the work force had ramifications for labour, particularly increasing levels of unionization. Between 1886 and 1899, at least 18 new, small (non-fishery) trade unions were formed and there were over 50 labour strikes arising out of a variety of issues. Strikes for higher wages and improved working conditions

were common and employee vigilance was not restricted to unionized workers. For example, non-unionized Bell Island miners vigorously fought for improved working conditions and pay after the new iron ore mine opened 1895.²⁶ Because only rudimentary laws only had been adopted in Newfoundland safeguarding workers' interests in employer-employee relationships, it is not surprising that trade unionism would be recognized as a viable option for the average worker, or that non-unionized protests would occur. Further to that point, Newfoundland labour relations in that era has been described as "survival of the fittest."²⁷ As a show of growing confidence, numbers, and potential, Newfoundland's first Labour Day parade was held on July 15, 1897.²⁸

As such, the 1890s were tumultuous for Newfoundland with a lack of labour and economic stability. Its quest for economic development went unfulfilled as the island economy remained underdeveloped and, largely, depressed. The dream of a cross-island railway was not fully realized. By 1893 its banks had failed. With British and Canadian support ruled out, Newfoundland became reliant on other external sources of capital. In 1898 the recently elected Conservative government led by James S. Winter made its attempt to bring economic and labour stability to Newfoundland by entering a detailed contract with Canadian financier, Robert Reid. Among other things, the 1898 railway deal gave Reid major land holdings for operating the railway for the government until 1945 when the railway would become the property of Reid's successors for \$1 million. The complex agreement allowed Reid to operate a coastal steamship and the Gulf of St. Lawrence ferry (in return for government subsidies); to take over government telegraph services; to purchase the St. John's dry dock; to build a St. John's street railway and to supply electricity to St. John's.²⁹ The 1898 agreement enabled the

completion of the railway, but was so controversial that it led to the defeat of the Tory government in 1900 and the rise of Robert Bond and his Liberals.

Born in St. John's in 1857 and trained as a lawyer, Bond entered politics at age 25 beginning a lifelong commitment to Newfoundland politics. A strong nationalist, Bond viewed the Reid contract as a sell-out for which a variety of colony-wide monopoly rights had been virtually given away.³⁰ He successfully engineered the passage of a motion of no confidence in the Winter administration in the House of Assembly in March 1900, after engaging the support of key politicians who had originally supported the 1898 deal, notably Edward Morris and his followers. Morris, interested in preserving job creation opportunities for the province, changed his mind when Bond modified his call for a total repeal of the law in favour of modifications. With Morris' support and widespread public resentment of the Reid deal, Bond's Liberal Party went on to win 32 of the 36 seats in the House of Assembly in the November 1900 election. Recalling that Reid had provided significant financial backing for the Conservative party in the election,³¹ Bond later wrote:

Now in the year 1900 a corporate body having large and varied business interests, the Reid Newfoundland Company, endeavoured at the polls to obtain control of the Government of this Colony. I led a party in opposition to defeat them, defeated their design, and kept them in their proper place, during my term in office of nine years.³²

Industrial Relations Turning Point: The First Amendments

Bond and Reid quickly agreed on modifications to the 1898 contract, but Reid continued as Newfoundland's pre-eminent capitalist operating the railway, steamship services, the St. John's dry-dock and St. John's tramway. In fact, it was Reid's corporate strength and

practices that would lead to the first amendments to the *Employers' Liability Act* in 1902.³³ There were two substantive amendments in 1902, each one highlighting the nature of change in the Newfoundland economy going into the 1900s. The first amendment was designed specifically to defeat regressive employer practices; indeed, it may be a demonstration of the Bond government acting to keep Reid in his "proper place." The amendment in question outlawed employers', particularly Reid's,³⁴ practice of demanding that their workers sign a preliminary contract of employment which diminished or forfeited their rights under the *Employers' Liability Act* in the event of injury. The 1902 amendment made it illegal for workers to waive their rights under the *Employers' Liability Act* or for an employer to use the terms of any contract of employment as a defense to an action taken under the Act. These were general practices known as "contracting out," meaning that by way of a written agreement a worker and employer could indicate their willingness to contract or opt out of *Employer Liability Act* rights and liabilities in favour of private terms or agreements. The requirement for the amendment appears to demonstrate Reid's company dislike for potential liabilities created for it under the Act, and it also provides a glimpse of Reid's attitude toward labour. As a matter of fact, Reid successfully fought to keep unions out of the railway operation until the railway worker's union, Newfoundland Industrial Workers Association, was formed in 1917.³⁵ Although there was no union in place in 1902, it is clear that the Bond administration was willing to implement laws supportive of labour; it suggests growing influence for labour in the political arena.

Prior to the Bond administration there were very few government initiatives which

overtly supported the interests of labour. A clue as to why government's attitude may have changed in that regard can be, in part, detected by considering the basis of the other major amendment in 1902. In short, the second major amendment in 1902 ensured that subcontractors would be liable for injuries to workmen. In legal terms, it may not have been a startling conclusion that a subcontractor should be so liable, but what is significant is that the need for such a stipulation in Newfoundland was now identified. In other words, by 1902 the economy had progressed to the stage where larger industrial projects, in which subcontracting would be used, now exist.

The emergence of Reid and Bond at the beginning of the 1900s neatly demarcates a definitive turning point in Newfoundland industrial politics. Although the contentious Reid contract was amended, his various industrial endeavours helped fulfill the industrial diversification that Newfoundland politicians had been seeking for at least 30 years. In fact, the Reid projects were in addition to the Bell Island mining operations which had been operating since 1895 and other major developments like the large newsprint mill in Grand Falls which came on stream in 1905. In short, these various industrial developments and the secondary support industries they spawned created a more complex, evolving economy and the *Employers' Liability Act* was amended as a result. As the economy grew, however, there were new implications and tensions associated with the relationships between labour, capital and government.³⁶ For example, in the 25 years between 1890 and 1915, the number of labour strikes in Newfoundland, predominantly St. John's, increased significantly (a total of 215).³⁷ Unionization was not

always successful, however, but after 1900 major strikes occurred involving non-unionized Bell Island miners (1900), non-unionized sealers in St. John's (1902) which featured concerns for safety, and, soon after its formation, a strike by the Longshoremen Protective Union dock workers in St. John's (1903).³⁸ Failure to unite Bell Island miners and the Reid railway workers is attributed to Canadian-based employers adamantly opposed to unionization.³⁹ To summarize, after experiencing a period of growth after 1900 the economic, industrial, and political environment in Newfoundland is more complex with evidence from 1902 demonstrating the strong influence of labour interests on government policy decisions regarding the liability law for workplace injury. These facts would mix and grow to eventually place the concerns of labour squarely into the political sphere and, ultimately, influence further change in the *Employers' Liability Act*.

By 1907, the activities of 49-year old Edward Morris demonstrate that Newfoundland politics was clearly being influenced by issues of concern to labour. Since introducing the original *Employers' Liability Act* in 1887 Morris was often visibly on the side of labour which is neither surprising nor lacking in credibility given his working class roots. Furthermore, he was a key minister in the Bond government, with a province-wide power base, ever since his 1900 decision to support Bond on the railway question.⁴⁰ Ironically, this political power base assisted him in 1907 when he sought to destabilize the Bond government. In calculated fashion Morris defected from the Bond government in August 1907 alleging disagreement concerning the rate of pay for certain labourers. Morris' departure did not threaten Bond's numerical majority position in the House, but it gave

Morris the independence he needed to attack Bond in the anticipated 1908 elections. As well, the reason cited for his departure would have bought Morris more favour with the working class.⁴¹

Five months later the influence of Morris was evident when the Bond government introduced comprehensive and progressive changes to the *Employers' Liability Act*. On January 28, 1908, Bond's Minister of Justice, J.M. Kent, move the second reading of a Bill entitled *An Act with Respect to Compensation for Workmen for Injuries Suffered in the course of their Employment*⁴² indicating that everyone would readily agree that this was a matter of great importance. The importance stemmed from previously limited remedies for injured workers in the event of workplace injury. Kent outlined the deficiencies of the 1880 English *Employers' Liability Act*. He noted that while the *Priestly v. Fowler* doctrine had been modified, and employers were liable for injuries sustained by their workmen in more instances, the situation remained problematic. Kent says (in second reading), "It soon became manifest ... that this modification did not go far enough and worked very little better than the old common Law."⁴³ In the February 7, 1908 edition of the *Evening Telegram*, Kent made it very clear that the new Act was modeled directly on the *Workmen's Compensation Act*, 1897 of England which improved the 1880 *Employers' Liability Act*. While speaking of labour relations generally, and the *Employer's Liability Act* specifically, Kent said there was no subject in the law of the colony which caused such frequent controversy as the governance of labour relations and, particularly, employer liability for personal injuries suffered by workmen in the course of

their employment.⁴⁴

The Act offered improvements. There was to be clearer direction related to the calculation of lost earnings; swift appeal directly to the Supreme Court in the event of dispute between a worker and employer; reduction of litigation through elimination of employers' defense on the grounds of contributory negligence; government monitoring of the benefits offered by employers with private insurance schemes⁴⁵; and, finally, a requirement for employers to report annual injury statistics and compensation payment to the Colonial Secretary. Although this Act was named the *Workmen's Compensation Act* and replaced the *Employers' Liability Act* (in name), it remained in substance a narrow employers' liability act. Injured workers would continue to deal with individually liable employers and, as applicable, their insurers and the courts. Another shortcoming was that the Act only covered dangerous industries such as railways, factories, quarries or major construction projects⁴⁶ which left many trades and occupations such as fishermen, loggers, tradesmen, retail clerks, and general labourers, totally unprotected.

While labour achieved modest gains in 1908, there was clearly no appetite for major legislative change toward their interests. In addition to limiting coverage to dangerous industries, there is other evidence that suggests the interests of employers were carefully considered as well. Perhaps tellingly, Kent introduced the Act by saying that it had been greatly improved in England and now it was time for the colony to follow "as far as our circumstances would permit."⁴⁷ From a practical standpoint this meant that the scope of

coverage and the amount of compensation payable under the Act would be limited. In fact, the most contentious and controversial issue debated was whether the lump sum amount payable to dependants in the case of death should be increased. Ultimately, government maintained the low benefit ceiling they had proposed. The basis for their reasoning was that it had been established under the English Act and, even if wages were often higher in Newfoundland, the English standard must have been well considered and should apply. Interestingly, the English experience was relied upon as an excuse for not increasing benefits payable under the Act.⁴⁸ In the same breath, the interests of capitalists were cited as a reason for limiting benefits payable. To the extent that benefit improvements may be granted in good economic times it is worth noting that the Newfoundland economy was doing fairly well at the time. As a broad measure of success, for example, in the same session as the new Act was introduced the government announced a budget surplus of \$125,000 for the 1907-08 fiscal year.⁴⁹ This suggests that drawing upon the British experience as an excuse not to increase benefits may have been an important influence at a time when strong arguments for benefit improvements may have existed.

Overall, however, the legislation did mark an advance for the interests of labour. Even Morris agreed with the intent of the legislation, although qualifying his enthusiasm by stating that he "would like to see fishermen and others covered as well."⁵⁰ Morris rationalized the need for the new law on the basis that "during the last two or three years in this Colony conditions had been such as to justify the legislature in the introduction of

the most advanced legislation that can be found."⁵¹ While Morris does not elaborate on what he means by "conditions" over the last two to three years, he most certainly is referring to the improving economy and appearance of more diverse labour groups. Interestingly, Morris, the political maverick, worried aloud in January 1908 that he might be accused of "sinister motives"⁵² by supporting the government legislation. Evidently, he wanted to openly support the interests of labour while, at the same time, not be viewed as opportunistic.

On the other hand, the government itself may have expected political advantage through the introduction of such progressive labour legislation going into an election. Bond's reasons for introducing the 1908 Act appear to have been self serving. In addition to a directly appeal to the labour vote, Bond may have viewed the introduction of this specific legislation as a means of outmaneuvering Morris immediately prior to the election.⁵³

Bond had good cause to be worried about Morris, just as Morris had reason for a certain coyness about being suspected of *sinister motives*. In January 1908 Morris was covertly organizing a new political party - the *People's Party* - to launch a direct attack on Bond. Morris resigned from the Bond government citing disagreement with a relatively minor decision which had gone against the interest of labour. He then launched his *People's Party* in St. John's at the same time as the arrival of thousands of sealers in March 1908. A clear underlying theme of Morris' politics was a demonstrated concern for the common people and his party platform aimed to provide something for everyone.⁵⁴ After two

elections and a constitutional crisis, Morris went on to defeat Bond and become Prime Minister in 1909.⁵⁵ Despite his common roots and progressive history, Morris' ability as Prime Minister to actually serve the interests of labour was seriously limited by the coalition of diverse interests that helped him win government.⁵⁶ Not the least of those interests which assisted him oust Bond was Reid, proving once again the famous quip that the enemy of my enemy is my friend.

Coaker: Emergence of Organized Labour

The next amendment to the Workmen's Compensation Act occurred in 1914. The roots of this amendment go back to the year 1908 and the founding of the Fishermen's Protective Union (FPU). Its founder, William Coaker, displayed an uncommon interest in politics and significant leadership abilities from an early age. As well as attending House of Assembly debates while in school he also instigated and organized strikes. The son of a St. John's labourer, at age fourteen he left school for a clerical position in a branch store of a St. John's firm on the north coast. There he quickly to the position of manager and, by age 19, owner. He was forced into farming after losing ownership of the store following the 1894 bank crash. His interest in the plight of local fishermen and unionism grew.⁵⁷

The rise of Coaker and his union are eminent examples of the emergence and growing strength of organized labour in Newfoundland in the first decades of the century. McDonald explains how Coaker captured the essence of the class struggle for fishermen:

Fishermen were exploited by a manifestly unjust economic system, that deprived them of their fair rewards by placing so much arbitrary power in

the hands of the merchants. The commercial class along with the government was attacked for its failure to come to grips with the problems of fish quality and international marketing and for failing to improve the working conditions of loggers and sealers.⁵⁸

Coaker's success was remarkable; at its peak in 1914 his union had a membership of over 21,000.⁵⁹ A central role of the FPU was active participation in politics, but it was to operate on a well-defined political philosophy established by Coaker. The FPU representatives would try to be elected to the House of Assembly but only in sufficient numbers "to secure the balance of power between the Government and the Opposition Parties."⁶⁰ The essence of this strategy was that the union, with all of the advantages of the balance of power and none of the trouble of actually governing, would support those willing to do the most for their causes. In essence, it was a form of political blackmail which proved more theoretical than real.⁶¹

In that regard, after initially courting him at about the time of the 1909 election, Coaker had a falling out with Prime Minister Morris by 1911. By the time of the 1913 elections (which Morris won again) Coaker had aligned himself with Sir Robert Bond in what was a strained Liberal-Union relationship.⁶² Although Morris and his People's Party retained government, Coaker and the elected Unionist members emerged as an effective opposition force. The Unionists elicited favourable editorial comment in the Evening Telegram:

One of the features of the present session is the way the FPU members have held up their end of the plank ... bold and fearless in debate, and though they have been handicapped from a lack of knowledge of the

practices of the House they have not been deterred from giving expression to the political and social faith that is within them In time, with a fuller knowledge of public questions, the Union men will do good service to the community and we shall watch their careers with interest.⁶³

Coaker and the FPU opposition members can be credited for the 1914 amendment to the Workmen's Compensation Act. That year, Coaker successfully argued to have the scope of coverage enlarged under the Act to cover loggers. That would have been welcomed and relevant for thousands of FPU members many of whom traditionally alternated between being seasonal fishermen and loggers.⁶⁴ However, this was essentially an incremental and somewhat opportunistic expansion of coverage. It paid no attention to all other Newfoundland workers.⁶⁵

On the other hand, the 1914 amendment would not have been possible without the consent of the Morris government. It is quite likely that Morris would have readily supported the 1914 amendment legislation as a measure for which his government would claim credit. In terms of cost or offending other interest to which Morris may have been beholden, this was a relatively minor amendment catering to special interests. Furthermore, Morris may have agreed to share legislative success with Coaker and the FPU members' on the basis of that their rise to prominence served as a legitimate political threat. It is useful to recall tactics employed by Morris in 1913, which may be viewed as his reaction to the growing FPU threat. As Bond attempted to undermine him in 1908 with the passage of workers' compensation legislation, Morris attempted to trump his emerging rivals (Coaker and the FPU) with *The Marine Disaster Act* in 1913. That Act

provided a \$100.00 lump sum to provide short-term assistance for the families of fishermen and seaman lost at sea.⁶⁶ This Act was a clear appeal to the FPU base. At the time, for example, Morris cited the many marine tragedies off Newfoundland and wondered why better programs did not exist to help the victims of accidents and why was it that the plight of surviving dependants, for example, are only recognized when there are disasters, i.e., multiple deaths.⁶⁷

Despite the FPU's extraordinary history and significant membership, workmen's compensation legislation was not a major preoccupation for Coaker and the FPU membership. There was only limited, narrow success with respect to the 1914 amendments⁶⁸ even though there were in excess of 30,000 trade union members in Newfoundland.⁶⁹ For all its successes, the FPU remained a regionalized party which did not infiltrate St. John's or represent the interests of all Newfoundland workers.⁷⁰ Independent fishing activities provided no basis for an employer-employee relationship on which to base a liability claim. Therefore, there is no evidence between 1900 and 1949 that policy-makers considered including fishermen under the liability laws. Indeed, it is difficult to imagine how it possibly could have been administered in that era.⁷¹ The only form of insurance available at that time for fishermen was the contributory disaster fund maintained by the FPU. It provided benefits to the dependants of members lost at sea.⁷² While the FPU may have been a social and political force in Newfoundland for some years after 1908, there certainly are reasons why improvement of the Workmen's Compensation Act may not have been a priority issue (beyond gaining coverage for

loggers in 1914).

Building on the trend toward unionism manifested by Coaker's early example, labour became a presence during the First World War years as Newfoundland's economy prospered.⁷³ In 1917, after years of discouragement from their employer, Reid Company workers successfully unionized. They formed the Newfoundland Industrial Workers Association (NIWA) which was a unique trade organization for the times.⁷⁴ Unlike the narrowly defined FPU, NIWA membership cut across various trades and was more national in scope setting up branches in various towns and regions of the colony. Like the FPU, it also intended to play an active political role. Not only did it act as a legislative lobby - it called for a Department of Labour in 1917 - but the NIWA went on to unsuccessfully contest elections in 1919.⁷⁵ NIWA was not efficiently organized, however, and eventually faded from existence through the 1920s.⁷⁶

The significance of the rise and prominence of labour in Newfoundland was heightened by world events after November 11, 1918 when the First World War ended with the signing of the Armistice (initiated in part because German leaders feared a communist take-over). It was the rare edition of the St. John's Evening Telegram or Daily News in 1918 or 1919 that didn't contain articles or editorials debating the rise and threat of bolshevism.⁷⁷ While Newfoundland labour was committed to reform within the capitalist system – peaceful democratic participation, supporting labour-friendly political parties, building working class consciousness, organized protests, legal strikes, etc.⁷⁸ there was

much evidence of sensational and radical unionism, especially in nearby Canada. While violent protests or revolt did not occur in Newfoundland it is evident from the discussions in the local papers that general threat was taken seriously. For example, the debate at the January 3, 1919 Newfoundland Board of Trade meeting reflects the tentative mood among business leaders in post-war Newfoundland. One member indicated that labour was the most important, unavoidable problem facing employers and recommended a joint labour-business organization to improve the general failure to communicate between labour and capital.⁷⁹ Another proposal at the same meeting was that government should take over management of the Permanent Marine Disaster Fund⁸⁰ and levy a tax on the shipping community to fund it rather than being dependent on charity. While this suggestion that government administer a narrow, employer-paid insurance system very closely mirrors the German collective workers' compensation model (aspects of which were adopted in Canada in 1915, see Chapter 3), no evidence is found to suggest that this model was seriously considered in Newfoundland at that time. It is worth noting that the general concept of a collective liability insurance system was in the air, so to speak, in Newfoundland at that time. Most likely, post-war uncertainty and possible fears of labour revolt provoked these employer comments. Another factor affecting compensation policy in 1919 was the concern for treating returning soldiers fairly. As indicated in the January 1919 Board of Trade meeting:

We must live up to our obligations and discharge our duties ... What are our duties? They are: Our Spiritual Duties; Our National duties; and our duties to those who delivered us from the perils that threatened us. ... (soldiers) have borne burden of war and they must be looked after ... they must be reinstated in their old positions.⁸¹

These various factors were among the influences in the next legislative amendments to the Workmen's Compensation Act which occurred in June 1919.⁸² In fact, there were two amendments in 1919: the first raised the weekly maximum compensable rate from \$5 to \$10 and the second established a statutory minimum compensation rate for injured workers under the age of 21. The second ensured 100 percent earnings for totally disabled young workers who earned less than \$5.00 per week.

Practically, the amendments guaranteed better insurance protection for workers, especially young workers (many of whom were ex-soldiers) in the event of work injury. Although incremental in nature, these amendments served symbolic as well as practical purposes. Generally, in 1919 there was more sympathy than normal extended to the average worker and, in particular, extended to the many decommissioned soldiers looking to re-enter the workforce. In symbolic terms, therefore, the government may have wished to be seen responding to a post-war *duty*. The symbolic value of this legislation may have been particularly important because it was introduced just five months before a general election. (It will be recalled that in 1908 the Act was amended months before the general election.) In fact, politicians and party leaders sought the support and favour of war veterans and their newly formed Returning Soldiers Association in 1919.⁸³

Yet another reason politicians appear to have been especially sensitive in the spring of 1919 was that the direction of party politics was quite uncertain. By that time it was realized that the World War I coalition party structures had outlived their usefulness, a

realization which set off an intricate process of lobbying and politicking at all levels throughout the province. The process was particularly intense and complicated by the Spring of 1919.⁸⁴ The People's Party, which led the coalition National Party through the War, slowly disintegrated after Edward Morris retired in 1918 and finally fell after a non-confidence vote in May 1919.⁸⁵ A newly constituted government led by Sir Michael Cashin, a wealthy Catholic, was cobbled together following the confusion of May 1919. With an election expected in November 1919, Cashin renamed his party Liberal-Conservative hoping to develop the broadest possible profile for the party. Although Cashin's group did represent a broad coalition on interests across the province, it was clearly biased toward the interests of business.⁸⁶

Meanwhile, as a result of the political maneuvering, Coaker - like Morris in 1908 - was in opposition in June 1919 and a threat to Cashin's hope for election in November. Of course, it was the Cashin government - not the left-leaning Coaker opposition - that introduced the favourable workmen's compensation act amendments that June. In addition to the practical and symbolic reasons mentioned above for the passage of the June 1919 amendments, it was also in governments' interest for a number of other reasons. It would have been advantageous being able to cite the passage of pro-worker legislation going into an election featuring strong labour representation from Coaker and his allies, plus the three St. John's NIWA candidates.⁸⁷ Given Cashin's relatively broad base of support, it would have been possible to pass such legislation without the risk of being accused of overtly pandering to labour, especially considering that Cashin's group

may not have been closely associated with the concerns of labour. Also, the amendment reflected the notion of higher wage protection and *minimum* standards for workers in a manner that would not have been too costly, in comparison to other conceivable options under the workmen's compensation or other legislation of general application such as minimum wage or labour standards.⁸⁸ As reflected in the Board of Trade comments, these minor amendments were likely acceptable to an employer community who, shaken by aggressive trends in post-war labour communities, would benefit if Newfoundland labour felt fairly treated and did not resort to radicalism. Furthermore, by 1919 the Newfoundland wartime economy was booming with four years of increasing governmental revenue and balanced budgets.⁸⁹ Newfoundland's financial status in 1919, along with the post-war spirit certainly provided an appropriate climate for government to improve benefits for injured workers. Coincidentally, the 1908 legislative improvements also came at a time when the Newfoundland government's fiscal status was positive. Possibly these amendments would not have been as acceptable, to government or employers, if it were possible to predict the economic turmoil which awaited Newfoundland through the next decade.⁹⁰

By September 1919, Coaker had strengthened his hand remarkably by joining forces with the ambitious and skillful Richard Squires. Born in Harbour Grace, Squires was a 38-year old lawyer who, after joining the law firm of Edward Morris in 1902, successfully run for election as a People's Party candidate in 1909. Although defeated in the 1913 election, Squires went on to serve in the National Government as well as gaining controlling

interest in a St. John's newspaper in 1916. His opportunity to seek the office of Prime Minister came with the departure of Edward Morris from active politics in 1918 and the subsequent fall of the National Government in May 1919. In November 1919, just two months after forming the alliance with Coaker, Squires defeated the Cashin forces and became Prime Minister as leader of the newly named Liberal-Reform Party.⁹¹

Like the Bond government of 1908, Cashin lost the election just months after introducing favourable workmen's compensation legislation. While this may appear as the beginning of a pattern of electoral defeat following political opportunism, there were to be no similar occurrences associated with workers' compensation legislation in future years. There certainly were few opportunities for the Squires-Coaker coalition to advance progressive social legislation at the beginning of the 1920s. Less than two years after being elected there was evidence that Newfoundland's post-war economy was fragile as government recorded a significant annual deficit marked by increasing public debt and lower governmental revenues.⁹² And, while the Liberal-Reformers finished a relatively successful first term by easily winning the May 1923 election, Squires was forced from office within months of the victory in the wake of political scandal.⁹³ This suddenly pre-empted Squires' political career and marked the beginning-of-the-end of Coaker's political career and his zest for unionism. By 1925 Coaker's FPU had lost its significance,⁹⁴ and there were few obvious individuals or groups with a natural interest or bias toward promoting improvements in the employer liability law.

Chapter Summary

By way of review, up to 1920 there is no doubt that the development of work injury liability laws in Newfoundland is defined by English tradition and experience. The *Employer Liability Act* of 1887 was copied from England and introduced in Newfoundland as a means to support economic growth even though, at the time, it was underdeveloped with a narrow, predominantly non-wage-based economy. In fact, Newfoundland continued to rely on the English law as its economy changed after 1900. The 1908 Act, for example, was unequivocally copied from England. On a practical level it is not surprising that Newfoundland would have emulated the English laws given their close history and the availability of English experience. Yet the persistence of the borrowed law in a colony which struggled for a unique identity and independence, economically at least, is more of a theoretical matter.

It was only natural, as the original policy determinant, that the British experience would provide the policy context and direction for Newfoundland. Once the law was copied and enacted, however, it would have been easier merely to amend the existing law and allow the framework, structures, processes and learned experience which grew up around it to continue without major interruption. This is a simple yet compelling proposition which suggests, for example, that the English law inevitably continued to influence the direction of future laws once it was introduced to Newfoundland in 1887. In this regard, we can generally cite the weight of tradition and culture as a policy determinant. It becomes difficult to break away from an inherited psychological mould; in other words,

Newfoundlanders felt that the best way to handle any problem was as it was handled in the old country. These somewhat simplified analyses are best elaborated under the concept known as path dependence. Generally, this means that events which have happened in the past, e.g., policy choices in law or institutions, will affect and possibly determine future choice.⁹⁵ In that regard, history may be viewed as a constraint on change options. It is as if Newfoundland legislators may be lulled as hostages to their own experience making it, in modern terms, difficult for them to think or act outside of a predefined policy box.

Drawing on economic theory of returns, Pierson's more precise definition of path dependency includes grounding in the dynamics of "increasing returns."⁹⁶ Under the increasing returns theory the likelihood that a law, institution or process will be changed steadily decreases the longer it remains in place. In this regard, as Pierson notes, social processes characteristically involve "increasing returns" which may be described as "self-reinforcing or positive feedback processes."⁹⁷ This approach is significant because it suggests that the social costs of switching from one policy alternative to another generally increase over time. This may, in some cases, account for incremental change. The increasing returns concept may also be helpful in helping us analyze the factors which lead to systemic change or path divergence - not only what happens, but when it happens. Authors such as Mahoney, in search of a clearer definition of the concept, dissect the principle of increasing returns as a core aspect of path dependency in more precise terms. He discusses models of 'reactive sequences' and 'event chains', for

example, in the effort to demonstrate that “each event in (a) sequence is both a reaction to antecedent events and a cause of subsequent events.”⁹⁸ In the social sciences, these refined ideas may allow one to identify and explain social factors associated with ‘breakpoints’ in history when change or path divergence occurs. Path dependency issues will be revisited in subsequent chapters.

Viewed from a basic path dependency perspective, the post-1887 result for the *Employer Liability Act* in Newfoundland was strict adherence to the British model. There was no path divergence or breakpoints during the period reviewed in this chapter, i.e., 25 years before the first amendments. Perhaps this degree of legislative durability is explained in part by the increasing returns premise; as a positive tool to support industrial development the law would have likely involved benefited workers, employers, and government - to the extent that the system replaced an inferior one and the historic record does not reveal any advocacy for a new system through these years. Meanwhile, the first amendments to the Act (1902) were driven by an ideological rift between employers - e.g., Reid, favouring the possibility of limiting workers’ rights - and those who insisted that workers’ rights be protected. It may be deduced that advancement of a mere amendment to resolve this disagreement was a beneficial outcome versus large-scale systemic overhaul; as such, increasing returns accrued. Meanwhile, that episode demonstrated some degree of growing influence of labour at about that time. Nevertheless, the interest of capitalists prevailed in the 1908 amendments which limited worker benefits. Yet modest coverage gains were realized for some workers in 1908 and

1914 amendments, and largely symbolic changes to the Act in 1919 supported returning soldiers. This brief initial history suggests that after the introduction of the Act in 1887, it was essentially locked in on a path dependent trajectory which involved minor amendments only influenced by ideological biases and preferences, labour relation issues, increasing trade unionism, union politicization, economic growth, diversifying workforce, and social class issues.

NOTES:

¹ Paul Pierson, "Increasing Returns, Path Dependence, and the Study of Politics," *The American Political Science Review* 94, 2, (June 2000): 251-267. This is a somewhat recent, but thorough, article which effectively lays out the definition and history of path dependency theory.

² Margaret Levi. "A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis," in *Comparative Politics: Rationality, Culture, and Structure*, ed. Mark I. Lichbach and Alan S. Zuckerman (Cambridge: Cambridge University Press, 1997), 28.

³ Pierson, "Increasing Returns," 257.

⁴ *Palliser's Act*, 15 Geo. III. C.31. 1776. Up to 1825 the supreme English authority in Newfoundland was the Naval Governor. The 1776 Act was named after the recently retired Naval Governor, Sir Hugh Palliser, who played an important role in the promotion of the legislation.

⁵ *Report of The Royal Commission on Labour Legislation in Newfoundland and Labrador 1972*, by Maxwell Cohen, Q.C., Commissioner,

⁶ Stewart R Godfrey, *Human Rights and Social Policies in Newfoundland, 1832-1982: Search for a Just Society* (St. John's: Harry Cuff Publications, Limited, 1985), 27-28.

⁷ *Ibid.*, 26.

⁸ S.J.R. Noel, *Politics in Newfoundland* (Toronto: University of Toronto Press, 1970), 6-8.

⁹ *An Act for the Application of English Law and Practice*. 1. Vic. 4. 1837.

¹⁰ *Report of The Royal Commission on Labour Legislation*, Cohen, 47.

¹¹ *Master and Servants Act*. 21 Vic. C. 9. 1858. See also, *Report of The Royal Commission on Labour Legislation*, Cohen, 46-47.

¹² *Report of The Royal Commission on Labour Legislation*, Cohen, 47.

¹³ J.K. Hiller, "The Railway and Local Politics in Newfoundland, 1870-1901," in *Newfoundland in the Nineteenth and Twentieth Centuries*, ed. J.K. Hiller and P. Neary (Toronto: University of Toronto Press, 1980), 123-147.

¹⁴ *Ibid.* In 1878 the Premier Whiteway fought and won an election on a "Policy of Progress" slogan which highlighted the critical need to build a cross-island railway. p. 132

¹⁵ *Ibid.*, 123.

¹⁶ *Ibid.*, 132-135.

¹⁷ "Journal and Proceeding of the Second Session of the Fifteenth General Assembly of Newfoundland," February 17 and March 4, 1887.

¹⁸ *Ibid.*, March 4, 1887.

¹⁹ Bill Gillespie, *A Class Act: An Illustrated History of the Labour Movement in Newfoundland and Labrador* (St. John's: Creative Publishers and Printers Limited, 1986), 21.

²⁰ Greg Kealey, ed., *Canada Investigates Industrialism: The Royal Commission on the Relations Between Capital and Labour, 1889 (Abridged)* (Toronto, University of Toronto Press, 1973), ix.

²¹ Gillespie, *A Class Act*, 21.

²² Ian McDonald, "To Each His Own" *William Coaker and the Fishermen's Protective Union in Newfoundland Politics, 1908 -1925* (St. John's: Institute of Social and Economic Research. Memorial University of Newfoundland. 1987), 34-35. Also, Noel, *Politics*, 31-32.

²³ Gillespie, *A Class Act*, 27. Gillespie cites the first attempt by small unions to organize a council to represent the interests of labour as occurring in 1891. By 1893, however, the Workingmen's Union of Newfoundland had disappeared.

²⁴ Dee and McCombie, *Workers' Compensation in Ontario*, 4-5. Ontario passed a similar *Employers' Liability Act* in 1886.

²⁵ Peter Neary, ed., *The Political Economy of Newfoundland, 1929-1972* (Toronto: Copp Clarke Publishing, 1973), 14.

²⁶ Jessie Chisholm, "Organizing on the Waterfront: The St. John's Longshoremen's Protective Union (LSPU), 1890-1914," *Journal of Canadian Labour Studies* (Fall 1990): 37-59.

²⁷ Gillespie, *A Class Act*, 27.

²⁸ *Ibid.*, 20-22.

²⁹ J.K. Hiller, "The Political Career of Robert Bond," in *Newfoundland in the Nineteenth and Twentieth Centuries*, ed. J.K. Hiller and P. Neary (Toronto: University of Toronto Press, 1980), 13-17.

³⁰ *Ibid.* Edward Morris formed an important electoral alliance with Bond in 1900 after Bond had agreed to amend the railway contract rather reject it totally. Morris favoured maintaining as many job opportunities as possible, especially in St. John's.

³¹ Noel, *Politics*, 30.

³² *Evening Telegram*, January 12, 1914.

³³ *An Act to amend the law relating to the Liability of Employers for Injuries to Workmen in their Service*, Newfoundland Statutes, 1902, 2 Ed. VII., Cap 22.

³⁴ Gillespie, *A Class Act*, 27-39.

³⁵ Robert H. Cuff, "The Quill and the Hammer: The NIWA in St. John's, 1917 -1921," in *Workingmen's St. John's*, ed. M. Baker, R. Cuff, and B. Gillespie (St. John's: Harry Cuff Publications, 1982), 45-47.

³⁶ David Alexander, "Newfoundland's Traditional Economy and Development to 1934," in *Newfoundland in the Nineteenth and Twentieth Centuries*, ed. J.K. Hiller and P. Neary (Toronto: University of Toronto Press, 1980), 17-39. As well as any, Alexander's article highlights the nature of economic change in Newfoundland during these years.

³⁷ Jessie Chisholm, "Strikes in Newfoundland, 1890-1914," in *Newfoundland History 1986, Proceedings*, Newfoundland Historical Society (October 1986.), 16-17.

³⁸ Chisholm, *Organizing on the Waterfront*, 37-59.

³⁹ Gillespie, *A Class Act*, 27-39. Outdoing the Reid Company, British Empire Steel Company (BESCO) managed to keep unions out until 1924.

⁴⁰ Noel, *Politics*, 29-35.

⁴¹ *Ibid.*, 31-33.

⁴² *An Act with respect to Compensation to Workmen for Injuries suffered in the course of*

their Employment, Newfoundland Statutes, 1908, 8 Ed. VII, Cap 4.

⁴³ *Evening Telegram*, St. John's. February 7, 1908.

⁴⁴ *Ibid.*, January 28, 1908. (see Report on Legislative Proceedings)

⁴⁵ *An Act with respect to Compensation to Workmen for Injuries suffered in the course of their Employment*, Newfoundland Statutes, 1908, 8 Ed. VII, Cap 4. Section 3. This amendment offers an interesting follow-up to the 1902 amendment which prevented workers from signing one-sided agreements with their employers, especially large employers, in which the employer escapes liability and responsibility in the event of injury, i.e., contracting out. While the 1908 Act confirmed that an employer could not contract out of the Act, Section 3 specifically provided employers with flexibility to offer equivalent "compensation, benefit or insurance" schemes the merits of which would be monitored by Government.

⁴⁶ *An Act with respect to Compensation to Workmen for Injuries suffered in the course of their Employment*, Newfoundland Statutes, 1908, 8 Ed. VII, Cap 4. Section 9. The limited application of the Act to dangerous industries was based on the 1897 English Act; Kent states the type of industries covered in England had been expanded in 1906 but it was not in operation long enough to allow Newfoundland to copy (*Evening Telegram*. February 7, 1908).

⁴⁷ *Evening Telegram*, February 7, 1908. (see Report on Legislative Proceedings)

⁴⁸ *Ibid.*, February 12, 1908. (see Report on Legislative Proceedings)

⁴⁹ Noel, *Politics*, 56.

⁵⁰ *Ibid.*, 51-52. See also the report of Morris' comment in the January 16, 1908 edition of the *Evening Telegram*.

⁵¹ *Evening Telegram*, January 16, 1908. (see Report on Legislative Proceedings)

⁵² *Ibid.*, January 29, 1908. (see Report on Legislative Proceedings)

⁵³ Noel, *Politics*, 52. Noel downplays the significance of this (and other) 1908 legislation as an 'unambitious' pre-election program on the part of Bond. It is possible, however, that the introduction of this pro-worker legislation would have had more political currency in 1908 than Noel credits (particularly considering its potential to rob Morris, associated with the 1887 *Employers' Liability Act*, of an election issue).

⁵⁴ *Ibid.*, 57-59.

⁵⁵ *Ibid.* For a detailed history see Chapters 3, 4, 5 and 6. It took two elections and a constitutional crisis (in which powerful forces favouring Morris are displayed) for Morris to finally defeat Bond in 1909.

⁵⁶ Ian McDonald, "*To Each His Own*," 33-35, 49. Going into the 1913 election union leader William Coaker sought political alliance with Morris who had demonstrated concern for the working class..

⁵⁷ Noel, *Politics*, chapters 1 and 2.

⁵⁸ Ian McDonald, "Coaker and the Balance of Power Strategy: The FPU in Newfoundland Politics," in *Newfoundland in the Nineteenth and Twentieth Centuries*, ed. J.K. Hiller and P. Neary (Toronto: University of Toronto Press, 1980), 155-156.

⁵⁹ McDonald, "*To Each His Own*," 27.

⁶⁰ McDonald, "Coaker and the Balance of Power Strategy," excerpt from section 63 of

FPU constitution.

⁶¹ McDonald, *"To Each His Own,"* 139-140.

⁶² Noel, *Politics*, 111-115. This was Bond's last active involvement in Newfoundland politics. In his January 2, 1914 letter of resignation Bond attacked the political rise of the FPU. He wrote: "Now in the year 1900 a corporate body having large and varied business interests, the Reid Newfoundland Company, endeavored at the polls to obtain control of the Government of this Colony. I led a party in opposition to defeat them, defeated their design, and kept them in their proper place, during my term in office of nine years. In my opinion it would be no less objectionable for the corporate business concern known as the F.P.U. to "secure the reins of power", ... as printed in *Evening Telegram*, January 12, 1914.

⁶³ "Editorial comment," *Evening Telegram*, February 7, 1914.

⁶⁴ McDonald, *"To Each His Own,"* 45.

⁶⁵ *An Act to amend Chapter 5, of 8 Edward VII, entitled 'An Act with respect to Compensation to Workmen for Injuries suffered in the course of their Employment,'* Newfoundland Statutes, 1914, 4 Geo. V, Cap 15.

⁶⁶ The \$100 allowance under the Act was clearly intended as a short-term measure. It may not have been intended to undermine the long-term assistance under the FPU Disaster Fund, as suggested in Noel (*Politics*. p. 100), but it was undoubtedly politically motivated to "steal thunder."

⁶⁷ "Proceedings of the House of Assembly during the Fifth Session of the 23rd. General Assembly of Newfoundland, 1913," 68.

⁶⁸ T.K. Liddell, *Industrial Survey of Newfoundland* (St. John's: Robinson & Co. Ltd., 1940), 35. Liddell also notes that while the FPU was instrumental in improving the lot of fisherman and loggers, it is never had broad industrial influence.

⁶⁹ Gillespie, *A Class Act*, Chapters 2 and 3; also, McDonald, *"To Each His Own,"* 27. In 1914 there were over 21,000 members of the FPU alone, so considering the size of the other unions (outlined in Gillespie) the 1914 figure was likely in excess of 30,000.

⁷⁰ McDonald, *"To Each His Own,"* 136-139.

⁷¹ Indeed, universal coverage for independent inshore fishermen was extended to inshore fishermen in May 1980, but only after protracted negotiations between the union, politicians, bureaucrats, and fish processors (who refused to be labeled as the "employer" of the independent fishermen, if only for administrative reasons). No published material available. See files in Corporate Policy and Research Department of the Workers' Compensation Commission.

⁷² Noel, *Politics*, 100 (see footnote).

⁷³ *Ibid.*, 135.

⁷⁴ Cuff, "The Quill and the Hammer," 45-52.

⁷⁵ Noel, *Politics*, 136 (see footnote).

⁷⁶ P. McInnis, "All Solid Along the Line: The Reid Newfoundland Strike of 1918," *Journal of Canadian Labour Studies* (Fall 1990): 84.

⁷⁷ There are innumerable examples, such as: "England As Bulwark Against Bolshevism," *Daily News*, St. John's, April 24, 1919, 5. Bolshevism, of course, is the radical brand of

Russian socialism which sees workers (or proletariat) and peasants uniting to overthrow the state apparatus in favour of socialism. The plea for working men of the world to unite was indeed heard and debated in Newfoundland at that time.

⁷⁸ Gillespie, *A History of the Newfoundland Federation of Labour*, 12.

⁷⁹ Mr. R.F. Horwood proposed that the organization - *Newfoundland Industrial Council* - would be comprised of employer representatives (from the Board of Trade, the Manufacturers Association, the Employers' Association, the Master Builders' Association) and labour representatives (one member from every hundred members of every labour union).

⁸⁰ *Evening Telegram*, April 8, 1914. The *Permanent Marine Disaster Fund* was established in March 1914 after 78 sealers died in blizzard conditions on the northern ice flows. As a result of the disaster and general distress caused by so many families forced to seek charity at once (there were no forms of insurance), a series of public meetings resulted in the establishment of the fund to provide long-term assistance for the families. A poignant letter (signed by "X") appeared in the April 9, 1914 *Evening Telegram* commenting on the current feverish, reactionary, and inefficient approach to raising money for the disaster. "X" went on to say: *Another point which is lost sight of entirely in this community is when the loss of one seaman occurs ... In such cases no public meetings are called, and beyond a passing expression of regret that so-and-so has been cut off in his prime, etc. etc., no provision is made for his survivors, and the only reason, if it can be called a reason, is that he faced the grim reaper alone and was not accompanied in the sad journey by forty or fifty of his companions.* Here we see public comment capture the general sentiment for programs such as workmen's compensation. Interestingly, very similar words were spoken by Prime Minister Edward Morris in the House of Assembly when he introduced the *Marine Disasters Act* in 1913.

⁸¹ *Evening Telegram*, January 4, 1919.

⁸² *An Act to amend the Act 8 Edward VII. (1908) Chapter 5, entitled 'An Act with respect to Compensation to Workmen for Injuries suffered in the course of their Employment,'* Newfoundland Statutes, 1919, 9-10 Geo. V, Cap 23.

⁸³ Noel, *Politics*, 139 - 141.

⁸⁴ *Ibid.*, 134 - 144.

⁸⁵ McDonald, "To Each His Own," 74-85. Complicated factors, involving religious factionalism and hardcore political strategies, resulted in the Prime Minister W.F. Lloyd (Sir Edward Morris' replacement) actually seconding a motion of no confidence in his own government just moments after indicating that he had resigned an hour earlier. It was bizarre and unprecedented.

⁸⁶ *Ibid.*, 78. Also, Noel, *Politics*, 134. Cashin's had actually been leader of the People's Party since May 1919 only; it was comprised of diverse interests but had pro-business bias. Cashin and his group went on to lose the November 1919 election to the Liberal-Union forces led by Sir Richard Squires and backed by Coaker.

⁸⁷ Noel, *Politics*, 136 (see footnote).

⁸⁸ *Daily News*, St. John's, April 26 and May 1, 1919. In the spring of 1919 the NIWA launched a public campaign advocating a minimum wage for Newfoundland. NIWA

President, T.M. White, provides a lengthy supportive letter of argument in the May 1 edition.

⁸⁹ Noel, *Politics*, 151.

⁹⁰ Alexander, "Newfoundland's Traditional Economy," 32-37.

⁹¹ Noel, *Politics*, 137-142.

⁹² *Ibid.*, 151. For fiscal year 1920-21 a \$4.3 million deficit accrued against total annual revenue of \$8.4 million.

⁹³ The Squires government was proven corrupt via the Hollis Walker Commission Report in March 1924. For an account see R.K. Elliot, "Newfoundland Politics in the 1920s: The Genesis and Significance of the Hollis Walker Enquiry," in *Newfoundland in the Nineteenth and Twentieth Centuries*, ed. J.K. Hiller and P. Neary (Toronto: University of Toronto Press, 1980), 181-204.

⁹⁴ McDonald, "*To Each His Own*," 136.

⁹⁵ James Mahoney, "Path Dependence in Historical Sociology," in *Theory and Society* 29, 4 (August 2000): 507-548.

⁹⁶ Pierson, "Increasing Returns," 251.

⁹⁷ *Ibid.*

⁹⁸ Mahoney, "Path Dependence in Historical Sociology," 526-535.

Chapter Three

Early Signs of Favour for Canadian Model (1920-1934)

The period following the end of the First World War up to 1934 was largely inactive in terms of amendments to the Workmen's Compensation Act of Newfoundland. But this chapter begins by exploring developments in Canada where, just prior to the commencement of the First World War, a unique workers' compensation law was adopted. Canada rejected fault-based British employer liability laws in favour of a no-fault, collective liability system along the lines of the German solution. Although the unfolding Canadian model significantly influenced activities in Newfoundland over the long term, there were few short-term effects. There is, for example, no direct evidence found to show that the Canadian experience affected events in Newfoundland before the 1920s. A brief narrative is provided, however, to show how two young Newfoundlanders, Joseph R. (Joey) Smallwood and William (Billy) Browne, advocated the adoption of the Canadian system in Newfoundland in the mid-1920s. Their endeavors and relative success, including certain incremental policy changes with which they were associated in 1926, is reviewed. While they did not succeed in having the Canadian system adopted in 1926, the ability of Smallwood and Browne to raise the profile of the issue on government's agenda demonstrates the importance that personalities can have in policy development processes. Overall, however, the prospects for dramatic program change were low in Newfoundland throughout the post-war to 1934 era due to an unsettled combination of political, fiscal and economic concerns. The chapter considers how these forces tended to be mitigated against the interests and influence of organized labour through

the 1920s, thus diminishing the strength of labour's voice before government. It ends by considering why it is not surprising that few, incremental policy changes only materialized during this period.

As discussed in Chapter One, following an Ontario Royal Commission, a collective liability workers' compensation law was implemented in the province of Ontario on January 1, 1915.¹ The Ontario Act resulted in elimination of Employer Liability laws, such as in Newfoundland, in favour of a no-fault system where injured workers are automatically entitled to compensation via an employer funded program. There is, however, no evidence to show that individuals, organizations or governments advocated the adoption of the Ontario, or Canadian, model in Newfoundland before the mid-1920s. The first documented attempt to introduce the Canadian system in Newfoundland occurs in the mid-1920s. Although the Canadian system was not adopted, the Newfoundland Workmen's Compensation Act was amended in 1926 to provide increased benefits for death and permanent injury. And, for the first time, it made employers totally liable for all medical aid expenses of injured workers.² These were the most significant legislative changes since 1908. But it is the process leading up to the 1926 amendments, not the amendments themselves, that provides insight into the nature of policy development at that time. The story involves two main characters: Joey Smallwood, the eventual long-time Premier, and William (Billy) Browne, who would enjoy a long, diverse political and judicial career. Their common interest in the development of progressive workmen's compensation laws was remarkable and both may be credited with laying the groundwork

for the eventual adoption of the Canadian model in Newfoundland.³

Born in 1900, Smallwood grew up in a poor, working class St. John's family and had no formal education beyond high school (which he left early). It has been generally said that he was not especially successful in his multiple careers prior to 1949. His first political activity occurred when he actively supported the three NIWA candidates in the 1919 election. Between 1920 and 1925 Smallwood lived mainly in New York City, writing and campaigning for pro-labour causes. In 1925 he returned to Newfoundland permanently and acted as a union organizer and journalist. In fact, in 1925 he led the formation of the first Newfoundland Federation of Labour. Although that organization did not survive past 1926, its appearance confirmed the continuing desire for a united labour front; it also gave Smallwood (as the first elected president) a major profile in Newfoundland with respect to labour representation.⁴ Years later, Smallwood recalled his early interest in workmen's compensation:

Many years ago, I became interested in the whole subject of Workmen's Compensation. I don't remember what made me particularly interested in it, but interested I did become to the extent that I wrote to virtually every Government in the world asking them to send me a copy of their Workmen's Compensation Act, each of them. I received them. I was living at the time in the City of New York, and there, over a period of about twelve months, I gathered together what I say now was a very remarkable collection of the Labour Laws of all lands of the earth, in all kinds of languages. In conversation with Professors John R. Commons⁵ and John B. Andrews ... Co-Directors of the American Association for Labour Legislation, that very famous Organization which wrote two-thirds (if not more) of the Labour Laws of the United States of America for the American Federation of Labour and other Trade Union Movements, told me in their offices that my collection of Workmen's Compensation Acts of the Countries and States and provinces of the world was more complete

than their own. When I returned to Newfoundland I made a strenuous effort to get a civilized Workmen's Compensation Act brought before the House of Assembly of Newfoundland.⁶

Billy Browne was born in 1897 in St. John's and was raised in a very stable, industrious environment. After completing his first degree at the University of Toronto he finished law school at the University of Oxford where he was Newfoundland's Rhodes Scholar for 1919. He was called to the London and Newfoundland Bars in 1922.⁷ Browne wasted no time in becoming involved in Newfoundland politics. In June 1924, he was elected as the junior member of a team running in the three-candidate district of St. John's West on behalf of the Liberal-Conservative Party.⁸ The Liberal-Conservative Party was able to win the election by defeating the Liberal Reform party which suffered greatly due to uncertainty surrounding the resignation of its leader, Richard Squires.⁹

As a young government backbencher, Browne demonstrated strong interest in workmen's compensation when he visited the Nova Scotia Workers' Compensation Board for general discussions in 1924.¹⁰ By 1926 he had drafted a workmen's compensation act for presentation when the House of Assembly sat again in March 1926. Browne relied heavily on the Nova Scotia Workmen's Compensation Act of 1915 because he felt conditions there, such as economic make-up, were similar to Newfoundland.¹¹

Unfortunately, considering Browne's enthusiasm, it is unlikely that the leadership of the Liberal-Conservative Party shared his strong interest in progressive workmen's compensation legislation. The party itself had been assembled somewhat haphazardly,

largely as a negative reaction to the Squires scandals, and, according to Browne, when it came into power in 1924 it was not prepared to govern. In fact, the Liberal-Conservative Party is described an alliance comprised mainly of St. John's businessmen, whose subsequent policies reflected the interests of its mercantile membership. The party leader, Walter Monroe, remained as Prime Minister until August 1928 when he resigned.¹² Browne states he was "unable to find in Monroe's attitude towards public life and toward government generally, any philosophy, any purpose, any aim; he seemed to depend on chance all the time."¹³

Although the party was not established along any clear philosophical lines, it did not take long for a pattern to emerge. Eventually, Monroe would be described as "a perfect representative of St. John's social and commercial elite"¹⁴, and his government as:

... a true merchant party of the nineteenth century type, an *ad hoc* group created, dominated, and financed by the Water Street interests, whose preoccupations it unmistakably reflected in its policies.¹⁵

Perhaps the clearest indication of its bias toward the social and commercial elite occurred in 1925 when it repealed the Income Tax Act which had been introduced in 1919. The tax only amounted to about 4 percent of the provincial budget, but the symbolic value was great because it was paid by the wealthier people. Browne himself states, "revocation (of the Income Tax Act) confirmed the opinions of those who declared that the Government was the instrument of the wealthy merchants."¹⁶ Reflection on the government record from 1924 to 1926 certainly suggests that the Monroe government may not be

characterized as pro-labour.¹⁷ Ironically, in 1926 it was the Monroe government that significantly raised Workmen's Compensation benefit levels for all injured workers for the first time since 1908. To try and understand why that may have occurred it is necessary to further consider the forces which united Smallwood and Browne in 1926.

Between 1921 and 1927, the Newfoundland government and the operator of the Bell Island iron ore mines, British Empire Steel Corporation (BESCO), were embroiled in ongoing contractual disagreements associated mainly with the level of export excise taxes levied by government. At the centre of the dispute was a 1921 contract negotiated between the Squires government and the company. As bargaining leverage to support its continuing demand to renegotiate the contract, particularly its demand to pay lower taxes, the company advised government that it would not be able to operate or employ as many workers if it had to pay taxes too.¹⁸ Also linked to and revolving around the matter of mine operating costs and the fundamental excise tax issue were thorny labour relations issues, such as the combined threat from workers' of forming a union and higher wage demands in 1924. That year, BESCO threatened to close the mine and the union organizers backed down – there would not be a union at the mine until the 1940s.¹⁹

BESCO and the government focused on another round of negotiations to amend the 1921 contract early in 1926, marked in particular by a letter from the President of BESCO to Monroe in which the company promised to increase miner's wages.²⁰ At about that time, shortly before or after, Smallwood was called upon by the Bell Island miners to represent

them before government. Smallwood recalls meeting with Monroe and being told that although government was not proud of the new contract proposed by BESCO, they felt it was the best one available. Monroe sought union approval before bringing the matter back to the Houses of Assembly. In return for union support, however, Smallwood made a series of demands, one of which was a new Workmen's Compensation Act.²¹ Smallwood recalls being assured that a new Workmen's Compensation Act would be tabled in the upcoming March 1926 sitting of the House.²² Smallwood says that a few weeks after this meeting he was asked to work with Browne (the young government backbencher) on the draft legislation. In addition, during this period Smallwood publicly agitated for legislative change through his work as an editorialist with the *Daily Globe*.

Meanwhile, Browne was working on his 'Newfoundland' version of the 1915 Nova Scotia Act. Browne's Act mirrored the Canadian principles of no-fault insurance and collective liability exactly, and provided for the establishment of a Workmen's Compensation Board to administer the program. It even broadened the scope of coverage significantly to include the recognition of industrial diseases and to extend coverage to employed fishermen and seaman.²³ The statute was referred to government and referenced in the March 3, 1926 Throne Speech. That day Browne rose to second the motion:

This matter is a question of social legislation. The Act that we have on the Statute Book today was passed in 1908, and we are not so far behind other countries in this respect. However, the amounts given in compensation are utterly inadequate. This Country has made a great deal of progress during that time, and what surprises me is that we have had governments that claimed to represent the mass of the people more than any other government has done, and no change has been made to any extent in this

matter of compensation. I feel sure that the Government can count on the support of all the Members of the House to produce an Act which will be original and serviceable and which will be a lasting benefit to all those engaged in the industries of this Country.²⁴

Factors Weighing Against Change

So the stage was set in 1926 for Newfoundland to adopt the Canadian model of workmen's compensation. Monroe's government appeared very serious when an impressive Joint Select Committee of the House - including Browne, three other MHA's, the Minister of Justice, the Deputy Leader of the Opposition, plus five members from Legislative Council - was appointed to study the proposed legislation. Browne's Act was destined to be a legislative landmark and a dramatic leap forward. The Joint Select Committee, however, never met and Browne's original Act was not passed. Instead, a scaled down version, albeit one with slightly improved benefit levels, was passed in early June. Exactly why the government stalled on this issue and, ultimately, reduced the number and significance of legislative amendments is open to debate.

For example, while the House was in session - March to May 1926 - Browne reports being ignored whenever he inquired about when the Joint Select Committee was expected to meet. He appears to have been treated as an annoyance by the Minister of Justice who said "... he was very busy, had so many things to do, day and night, etc."²⁵ The nature of Monroe's role in this is unclear, but two divergent possibilities arise: one, Monroe ruthlessly decided to renege on his legislative promise to Smallwood and decided to put off Browne through his Minister of Justice; or, two, Monroe made a promise he couldn't

keep and, in fact, was not really in control of the government agenda. Some version of the second scenario is most plausible considering the various descriptions of Monroe's attitude and approach to government. Furthermore, it is likely that a larger Workmen's Compensation Bill was not heartily supported (if at all) by many government members considering their legislative record and bias toward the interests of capital. In any event, by the end of May 1926, the Monroe government fell into serious political trouble when it was left with a majority of one seat after a senior Minister resigned from Cabinet taking four other government members with him. Browne writes: "(the original Act) was not passed in the 1926 session because the (Minister of Justice) asked me to defer it as we only had a majority of one in the House of Assembly and Government was anxious to get the House closed."²⁶ Instead of the larger Bill, he was advised to draft essential improvements which could be put through the House quickly.

Browne speculates in his memoirs that his larger Bill would have passed easily if government had brought it forward and that the opposition members all appeared to support the Bill. He does not, however, directly discuss the true level of support for the Bill within his own party.²⁷ In fact, that is a crucial consideration given the Monroe government slim majority of one and the strong bias of its members toward the interests of capital, not labour.

Another major factor not considered by Browne is the significance of the early 1926 promise made to Smallwood and the Bell Island miners by government: a progressive

workmen's compensation act in return for union support in closing the BESCO contract negotiations. In fact, by May 10, 1926 (at least), contract negotiation with BESCO was not a priority with government because BESCO was no longer interested in a long-term contract.²⁸ It is, perhaps, not coincidental that the Monroe government's level of interest in the Workmen's Compensation Act fell off dramatically once the BESCO matter was resolved. In fact, the series of events could be interpreted to suggest that the government never intended to pass the larger Bill, but introduced it to keep Smallwood and the unions happy. In retrospect, Browne may have been very lucky to get through the minor amendments that he did, most notably: an increase in the maximum benefit for permanent disability or death from \$1,500 to \$3,000 (interestingly, just as Morris had argued for in 1908); modest increases in the weekly maximum allowable compensation rate; and, for the first time, a provision making employers liable for medical and surgical aid costs.²⁹ The end result, in fact, was incremental change only to the existing British model Act.

The efforts of Browne and Smallwood did not result in the adoption of the Canadian model in 1926, but their pioneering interest is a remarkable feature of the history. Their personal interest and determination were important factors leading to the introduction of the Canadian model into Newfoundland politics. But given their locations outside the hub of government power they were not, through strength of personality alone, able to decisively influence the course of events. After 1926 Browne never formally raised the Workers' Compensation matter again in the House in 1927 or 1928, nor did he play a direct role in the future development of the legislation. Given Smallwood's eventual role

in Newfoundland's history it is especially interesting to consider his contribution. Smallwood indicates that the next time he seriously promoted a progressive Act was between 1930 and 1932 when he gained the interest of Richard Squires (back for a second time as Prime Minister) and persuaded him that Newfoundland ought to have a new Workmen's Compensation Act. Although it appears some preliminary work may have been done at that time nothing substantive materialized.³⁰

In retrospect, it is not surprising that there were no changes in workmen's compensation legislation in the early 1930s, or for that matter that there were only minor changes through the 1920s. Generally, Newfoundland of the 1920s and 1930s was characterized by poor economic fundamentals, depressions, political scandals, increasing debt and looming prospects (and eventual realization of) bankruptcy.³¹ While government overspending did not characterize Newfoundland through the 1920s, the narrowly based island economy slipped into an irreversible downward economic spiral through the 1920s and into the 1930s, marked by ballooning public debt.³² Additionally, throughout the 1920s there was a general ideological tendency to curb social costs.³³ While hopes for industrial development were revitalized in the late 1920s with major developments such as the new pulp and paper mill in Comer Brook and a new mining operation in Buchans, domestic and international economic forces and fiscal realities conspired to bring Newfoundland to its knees economically and politically by 1933. That unfortunate era culminated in 1934 when the *Amulree Royal Commission* prescribed the suspension of responsible government as the cure for Newfoundland's failing economic and political

systems.³⁴ Newfoundland relinquished its democratic independence in February 1934 and would be governed by a Commission of Government (British appointees) until choosing to join Canada in 1949.³⁵ Basically, consecutive governments were consumed with significant macroeconomic and other dominant domestic issues, so it is reasonable to assume that the concerns of local labour leaders (like Smallwood) or groups were not really treated as priorities.

Another factor which explains why there were so few legislative changes after the First World War is the fact that the strength of organized labour was diminished. By the mid-1920s organized labour, to the extent that it could still be called organized, had diminished into insignificance. The Newfoundland Industrial Workers Association's (NIWA) bold initiative to establish a national umbrella union faded after 1920³⁶ and by 1925 the Fishermen's Protective Union (FPU) lost its significance.³⁷ Smallwood's effort to form the Newfoundland Federation of Labour did not last. Practical forces which mitigated against the interests and influence of organized labour through the 1920s, therefore, were diminished union membership and leadership. In fact, the union movement fizzled so that by the mid-1930s there remained possibly as few as 7,000 Newfoundland members of trade unions (with the majority of those in large, secure unions such as mine and paper mill workers), compared to in excess of 30,000 members in 1913.³⁸ Overall labour appears to have suffered from an uncontrollable cycle of declining influence: dominance of fiscal, economic, and other political concerns, plus declining union membership, equaled loss of political influence. The influence of the

labour movement appears to have actually peaked in the 1908 to 1919 period when fiscal concerns were minimal and union membership numbers high, but diminished into the 1920s and 1930s as fiscal concerns increased and union membership numbers declined.

Chapter Summary

In summary, the years between the end of the First World War and the arrival of Commission of Government in 1934 were not active ones in terms of amendments to the Workmen's Compensation Act. Although Canada unveiled a progressive new model in 1915 it was not embraced when promoted in 1926 by Smallwood and Browne. Smallwood and Browne were promised big change, but Monroe was not able or willing to deliver on that promise. On the other hand, the Monroe government was willing to accept a number of less dramatic legislative improvements. It appears that the clash of political promise and competing dominant interests resulted in incremental policy change only in 1926. The following commentary is suggestive of the dynamics which resulted in the incremental amendments of 1926:

incremental politics ... reduces the stakes in each political controversy, thus encouraging losers to bear their losses without disrupting the political system. ... poor as it is, incremental politics ordinarily offers the best chance of introducing into the political system those changes and those change-producing intermediate changes that a discontented citizen might desire.³⁹

NOTES:

¹ Dee and McCombie, *Workers' Compensation in Ontario*, 7.

² *An Act Further to amend Chapter 212 of the Consolidated Statutes (3rd Series) Entitled 'of Compensation to Workmen,'* Newfoundland Statutes, 1926, 17 Geo. V, Cap 18.

³ W.J. Browne, *Eighty-four Years a Newfoundlander: Memoirs of William J. Browne. Volume II. 1949-1965* (St. John's: Dicks and Company Limited, 1981), 166. Browne claims to be the major proponent of the 1926 legislative package and diminishes Smallwood's later claim of great involvement in that process.

⁴ Richard Gwyn, *Smallwood: The Unlikely Revolutionary* (Toronto: McClelland and Stewart, 1968). This is the definitive biography of Smallwood to date.

⁵ In fact, John R. Commons was a central figure at about that time and has been acknowledged as the "father of American social insurance." See Arthur Larson, "Social Insurance, American Style and John R. Commons." In *Workers' Compensation Desk Book*, edited by John F. Burton. (Horsham, Pennsylvania: LRP Publications, 1992.) V-I - V-7. Based on speech from John R. Commons Lectures, University of Wisconsin.

⁶ "House of Assembly Proceedings," April 11, 1950, 608.

⁷ Browne, *Eighty-four Years*, Chapters 1 -4.

⁸ Ibid., 111-126. Teams of two and three members ran for election in the larger districts. Browne was elected in St. John's West on a three-way ticket with Sir John Crosbie -"the moving spirit behind the Party" according to Browne (p. 123) -and William Linegar (master cooper and President of the Coopers Union). During the election Crosbie, a well-known merchant, dubbed the trio "C.L.B.... Capital, Labour and Brains". Although a light play on words, referring to the high profile local Anglican organization (the Church Lads Brigade) known by those initials, it is interesting that this was a mixed slate of labour-business interests likely designed to appeal across classes.

⁹ The Squires government was proven corrupt via the Hollis Walker Commission Report in March 1924. For an account see R.K. Elliot, "Newfoundland Politics in the 1920's: The Genesis and Significance of the Hollis Walker Enquiry," in Hiller, and Neary, *Newfoundland in the Nineteenth and Twentieth Centuries*, 181-204.

¹⁰ Browne, *Eighty-four Years*, 145.

¹¹ W.J. Browne, "Personal letter to Workers' Compensation Commission," March 18, 1988. Workplace Health, Safety and Compensation Resource Centre, St. John's. Browne enclosed with this letter the original working copy of the 1926 Act which he had drawn up, as well as a copy of the 1915 Nova Scotia Workmen's Compensation Act which he states he "followed largely." The purpose of this communication appears to have been to leave, for posterity, Browne's personal record of involvement in these early years of development.

¹² Noel, *Politics*. Noel provides an authoritative chronological of political history up to 1949.

¹³ Browne, *Eighty-four Years*, 142.

¹⁴ Neary, *The Political Economy of Newfoundland*, 20.

¹⁵ Noel, *Politics*, 176.

¹⁶ Browne, *Eighty-four Years*, 144.

¹⁷ *Fisherman's Advocate*, February 14, 1926. This Valentine's Day edition (of Coaker's newspaper) demonstrates there was no love affair between labour and the Monroe government. It lists what it considered a series of negative actions by the government since 1924: Redistribution Act (accused government of gerrymandering); abolished Income tax; abolished Business Profits Tax (allowing the rich to escape certain taxes); Bank Tax (reduced taxes paid by banks by 50 percent); Tory tariff (tariff protect added costs of shoes, rubbers (boots), tobacco, groceries, etc.); Roads (crazy policy of building roads for tourists, putting roads where "the producers of the country" will never see them); and Besco Contract (said government entered bad deal with operators of the Bell Island mine).

¹⁸ V. Summers, *Regime Change in A Resource Economy: The Politics of Underdevelopment in Newfoundland Since 1825* (St. John's: Breakwater, 1994), 69-89. BESCO actually represented the corporate amalgamation of two Canadian companies. Raw product was shipped from Newfoundland and processed in Nova Scotia. Between 1921 and 1927 the mine was shut down five times and only reopened when the government granted tax concessions to BESCO.

¹⁹ Gillespie, *A Class Act*, 36-37. In 1924, BESCO hired spies to report on union organizers and, when a union was formed and made their first wage demands, threatened to close the mine.

²⁰ Summers, *Regime Change*, 85.

²¹ Other demands recalled by Smallwood were: that BESCO would be required to bargain with the Union as the Legal Representative of the employees; that BESCO would sign an agreement covering wages and working conditions; assurances of a special price at which BESCO sold coal to its employees; and, a new Mines Regulations Act.

²² "House of Assembly Proceedings," April 1950, 604-611. This is perhaps the best recorded legislative speech in Newfoundland history regarding Workmen's Compensation. Smallwood leaves no doubt about the extent of his knowledge regarding the history and subject matter of workmen's compensation.

²³ Although it was a progressive step forward, coverage for fishermen would apply only if there was an identifiable employer/employee relationship. Coverage would not have been available for the significant majority of Newfoundland fishermen who were independently self-employed.

²⁴ Browne, *Eighty-four Years*, 146. It is interesting that Browne wonders in 1926 why previous labour-oriented governments did not bring forward such progressive legislation. This comment may apply to the various People's Party governments led by Morris, as well as the various governments of which Coaker was apart. To the extent that the comment may apply to Coaker and the FPU, it supports the notion that Workmen's Compensation legislation was not a major priority for the FPU between 1908 and 1923.

²⁵ *Ibid.*, 146.

²⁶ Browne, "Personal letter to the Workers' Compensation Commission."

²⁷ Browne, *Eighty-four Years*, 146.

²⁸ Summers, *Regime Change*, 85.

²⁹ *Newfoundland Statutes*, 1926, 17 Geo. V, Cap 18.

³⁰ "House of Assembly Proceedings," April 1950, 604-611.

³¹ The complexities of economics and politics in Newfoundland in the 1920's and 1930's are dealt with extensively elsewhere, especially in the various works cited in this paper. For example, see Noel, *Politics*, and Hiller and Neary, *Newfoundland in the Nineteenth and Twentieth Centuries*.

³² Alexander, "Newfoundland's Traditional Economy," in *Newfoundland in the Nineteenth and Twentieth Centuries*, ed. J.K. Hiller and P. Neary (Toronto: University of Toronto Press, 1980), 35. Alexander points out that expenditures over the 1920s were consistent, but argues that the Newfoundland economy lacked the scale and level of diversification to enable prosperity.

³³ J. Overton, "Economic Crisis and the End of Democracy: Politics in Newfoundland During the Great Depression," *Journal of Canadian Labour Studies* (Fall 1990): 95. What developed in the first quarter of the twentieth century in Newfoundland was a fairly wide-ranging, if limited, reform movement which focused its attention on medical and social problems. But broader and more political aim of the movement was to challenge and roll back state involvement in the social sphere. It responded to social problems by the cheapest method available.

³⁴ *Report. Presented by the Secretary of State for Dominion Affairs to Parliament by command of His Majesty, November, 1933. Great Britain. Newfoundland Royal Commission, 1933*, by W.W.M. Amulree (London, H.M.S.O., 1933), 197. Generally referred to as the Amulree Report, it recommended a "rest from party politics for a limited period" to enable the "Island to make a speedy and effective recovery from its present difficulties".

³⁵ P. Neary, *Newfoundland in the North Atlantic World: 1929-1949* (Kingston and Montreal: McGill-Queen's University Press, 1988), Chapter 1.

³⁶ McInnis, "All Solid Along the Line," 84.

³⁷ McDonald, "To Each His Own," 136.

³⁸ Gillespie, *A History*, Appendix, Table A.

³⁹ *Ibid.*, 520 -521.

Chapter Four

Growing Influence of Organized Labour and the Move to Canada (1934-1948)

This chapter reviews events in the 1934 to 1949 Commission of Government era. During this era Newfoundland advanced from desperation and loss of political independence in 1934, to an economic boom during the Second World War, followed by a lengthy process through which political independence was regained. Reversing economic, social and political fortune is important policy determinant during these years and it is intriguing to note how policy changes occur in step with an improving economy. For example, it will be shown that progressive activities do not commence after 1934 until the fiscal situation improved - illustrating fiscal health as an important policy determinant. The chapter will review other factors which influenced policy development, in particular how the Commission of Government was unprepared to deal with new and significant labour relations concerns in the late 1930s. A critical development during these years is the rebirth of the organized labour movement in Newfoundland. The chapter demonstrates the degree of influence of a reinvigorated labour movement upon the actions the Commission of Government. Decisions of the Commission of Government resulted in the retention of the narrow British employer liability laws, in spite of labours' advocacy for significant change. Instead the Commission of Government created a bureaucratic position, known as the Labour Relations Officer, which would be responsible for workers' compensation (among a range of other labour relation issues). Additional policy determinants considered in the chapter include minor effects from bureaucratization associated with the new Labour Relations Officer position, and the

considerably more influential matter of the process leading up to Newfoundland's decision to join Canada. While these years are not noteworthy for substantive change in the workers' compensation system, a review of relevant events demonstrates the persistence of incremental policy change.

Without a doubt the priority issue for the Commission of Government in 1934 related to restoring economic and political stability in Newfoundland. Improving the workers' compensation was likely near the bottom of the Commission's list of priorities. The Commission of Government did make one minor amendment to the Workmen's Compensation Act in 1935.¹ It stated that failure of a worker to file a claim within six months from the date of injury did not automatically bar their right to compensation if it was otherwise a just claim. While not insignificant, especially in terms of the individual case, this amendment would have cost the colony virtually nothing (except that liabilities may be extended in rare cases where just delays occurred). No evidence is found to show why this amendment was initiated or approved, but it may have been a case where the Commission wished to be seen doing something quickly in response to concerns raised by labour representatives. It would have been a classic case of "incremental politics"²: reducing the stakes in political controversy - where the losers (labour) would have been encouraged to bear their losses - without disrupting the priority work before the Commission of Government. This would have been an easy transaction because the Commission would not have been confronted by a strong labour lobby in 1934 or 1935. In fact, as shown in the last chapter, by 1934 there was no organized labour movement in

the province. Any lobbying for government action on issues of concern to labour would likely have come from one of the larger industrial unions. While there was no broad based national labour movement in Newfoundland at the time there clearly were labour advocates. Furthermore, by the mid-1930s an environment conducive to the resurgence of unionism developed rapidly when the significantly depressed economy created desperate working conditions. (Ironically, it had been a failing economy through the 1920s which contributed to the demise of organized labour.) By 1936, bad working conditions and low wages in Newfoundland, as well as the influence of trade union activism in the United States and Canada, prompted a return to union activism in Newfoundland. In particular, no group of workers were as negatively affected by the pressures of the depression years as were Newfoundland loggers. As a result, by 1936 a new union - the Newfoundland Lumbermen's Association - was formed representing 12,000 loggers. In one year the number of organized workers in Newfoundland more than doubled.³

The reawakening of union activism in 1936 is a significant development with respect to the evolution of workmen's compensation because it marked the entry of organizations and individuals which would eventually change the face of the compensation system in Newfoundland. In this regard, a landmark event occurred during 1936 when Newfoundland trade union leaders met to discuss the possibility of a federation of labour which would act on behalf of the entire working class. The 1936 meeting led to the formation of the Newfoundland Federation of Labour with stated goals which included legislative lobbying and influencing public opinion in favour of organized labour.

Delegates at the founding meeting in 1936 adopted ten policy resolutions, one of which called for improvements in the Workmen's Compensation Act.⁴ The Federation not only lasted, but would come to play a critical role in influencing the development of the workers' compensation system in Newfoundland, particularly during the decisive years following Confederation. It is noteworthy, however, that the Federation decided against direct political participation by way of creating their own party or fielding candidates in general elections. That was a marked departure from the former approaches of Coaker, the FPU and NIWA. Instead their preferred route for political activism was to lobby government for favoured legislation in return for support at the polls.

Among the small number of leaders who attended the inaugural meeting of the Federation in 1936 were Charlie Ballam and Irving Fogwill. These names would figure prominently in the development of workmen's compensation policy. Ballam, a union organizer out of the Corner Brook mill eventually served as President of the Newfoundland Federation of Labour. In 1949 he entered active politics, as a Smallwood Liberal, and was named as Newfoundland's first post-Confederation Labour Minister, a position he held until 1966. Fogwill was a railway unionist out of the NIWA tradition. Particularly literate and a socialist, he was assigned by Smallwood to study the matter of Workmen's Compensation in 1950 and, eventually, was named Chairman of Newfoundland's post-confederation Workmen's' Compensation Board where he remained until March 1967.⁵

Within a year Federation membership tripled and in 1938 the first Labour Day parade since 1908 took place in the City of St. John's.⁶ This new organization, with credible leadership, took the Commission of Government by surprise. It was not equipped to deal with a growing Newfoundland labour movement and the complaints of new groups like the NLA and the Federation of Labour. By 1938 the Commission of Government recognized the need to pay greater attention to industrial relations questions but realized that it was not structured to adequately manage the issues. As a result, in 1938 the Commission of Government arranged for London to appoint a qualified individual to conduct an evaluation of labour relations in Newfoundland. Thomas K. Liddell, a conciliation officer from the British Ministry of Labour, was selected and he completed his *Industrial Survey of Newfoundland* in 1940.⁷

Liddell found that employers were not very well organized when it came to dealing with labour relations issues. Up to 1939 only one employer organization - The Employers' Association - was in place to represent employers' interests (but not very successfully) when it came to negotiating wage agreements between its members and labour. In fact, the narrow focus of employers at that time was establishing predictable processes for wage negotiations and resolving associated disputes.⁸

On the other hand, Liddell described the Newfoundland Federation of Labour as a more focused entity:

The aims of (the Federation) are undoubtedly in the direction of legislation

... The Federation has ... already set its hand to the production of resolutions for submission to the Government. Some of these have little or no bearing on industrial affairs, but among these which have such a bearing are resolutions dealing with pension, minimum wages, Workmen's Compensation, Trade Unions and other kindred subjects.⁹

Specifically regarding Workmen's Compensation, Liddell noted the general desire for unions to have the scope of workmen's compensation coverage and benefits increased. In response to the concerns raised by labour, Liddell's report includes excerpts from the English, Nova Scotia, Quebec, and Newfoundland Acts, but with little or no commentary. The lack of comparative analysis is readily apparent and, in essence, Liddell simply dismisses labours' requests for improved benefits such as those found under the Canadian Acts. Given that in less than 10 years Newfoundland would become part of Canada, and considering the 1926 efforts to bring in an Act based on Nova Scotia, Liddell's biased comments in favour of retaining English law in Newfoundland is interesting from an historic perspective. Here was a plainly stated preference for the maintenance of British law in Newfoundland, by a British civil servant, revealing overt Imperial influence on the direction of the law. Liddell writes:

Each of these Canadian Acts is entirely different in its construction and procedure from the English Acts and the adoption of a system based upon Canadian practice would be awkward and somewhat out of place because, up to the present, the law of Newfoundland has followed the law of England and a revision of policy would mean the turning over to Canadian Law and precedent. ... A further point which has to be kept in mind on this subject is the extreme difficulty of comparing wages and working conditions in Canada.¹⁰

Essentially nothing happened regarding the Workmen's Compensation Act immediately following the release of the Liddell report in 1940. Similarly there was inaction regarding

the Newfoundland Federation of Labour's 1939 resolution recommending the creation of a Labour Department.¹¹ Liddell did not agree that it was necessary to create a department, but he did recommend the creation of a section in one of the departments to deal exclusively with labour matters. While the Liddell report may have provided current grassroots feedback and some recommendations, its main virtue in the eyes of the Commissioners may have been that it bought them time. That is because, ultimately, the Commission's basic problems remained; they lacked the resources and direction to be able to resolve Newfoundland's difficulties. Fortunately for the Commission of Government, the advent of the Second World War improved economic conditions in Newfoundland immensely. In fact, the revenues and focus provided by the war effort is credited with *saving* the Commission of Government.¹²

By 1942, Newfoundland was three years into its Second World War effort. And, just as it had during the First World War, the North Atlantic island prospered. An economic boom, mainly due to the new American military presence, resulted in government revenue reaching an all-time high in 1942. This change of fortune allowed the Commission of Government to reinvest in certain public services and begin to assert some direction with respect to domestic policy. (Although some government surplus funds were spent in Newfoundland, most of the surplus was transferred to Britain).¹³ In particular, the Commission of Government follow-up on Liddell's recommendation and created the post of Labour Relations Officer, under the Commissioner for Public Utilities, in June 1942.¹⁴ Although the primary responsibility of the Labour Relations Officer was to develop and

maintain good relations between employers and workmen in the various industries of Newfoundland, the role of the office grew quickly to cover all aspects of labour relations.¹⁵ Most of the correspondence recorded by the Labour Relations Officer after 1942 came from trade unions. A telling comment concerning the availability of information regarding the Workmen's Compensation Act went as follows:

For the information and guidance of workmen this office has consolidated the Workmen's Compensation Act and amendments thereto and issued the complete Act, as amended, in stenciled form through the various Unions. Formerly the Acts were not available otherwise than in the Consolidated Statutes of 1916 and the yearly Acts since 1918.¹⁶

This comment suggests that prior to the 1940s the average workman would have been in a very ignorant and deprived situation when it came to having information concerning workmen's compensation. Likely, workmen would have been vulnerable, subject to rumour and possibly unscrupulous employers, when it came to their rights under the workmen's compensation act. Workers might have been easily dissuaded from pursuing workmen's compensation claims by being told that coverage didn't exist or that they had opted out of coverage. Although these were the kinds of fears which the 1902 and 1908 legislation were meant to eliminate, it is clear that by 1944 there was a very low level of awareness regarding the Act; copies of the Act simply were not available. In fact, it was well known that it depended largely on the employer what, if anything, a worker would get following a work injury prior to 1949.¹⁷

The creation of focused bureaucratic capacity, in the form of the Labour Relations

Officer, meant that someone within government was devoted to the matter of industrial issues, as had been the wish of labour groups in the Liddell process. Quite likely, the Commission of Government welcomed the additional support, particularly as a buffer between local labour interests and the Commission. This may be deduced based on the previously poor record of managing domestic matters demonstrated by the professional English bureaucrats assigned as lead Commissioners.¹⁸ The Commission remained challenged because labour relations issues did not diminish or suddenly get any easier to manage in the mid-1940s. Although the Newfoundland economy had improved, the immediate post-war period is also characterized by rapid growth in organized labour and labour relations volatility. That culminated, in June 1948, with a railway workers' strike that virtually crippled the island economy and caused the Commission grave difficulties.¹⁹ By 1947, membership in unions had increased to over 42,000.²⁰

The creation of additional bureaucratic capacity also meant that as early as 1944 the Labour Relations Officer reports spending a considerable amount of time comparing the existing labour laws of Newfoundland and other countries, particularly England and Canada. In particular, the Labour Relations Officer reports in 1944 that he was preparing a draft Workmen's Compensation Act which would be circulated to employers and workmen for their comment prior to enactment.²¹ Interestingly, for the first time in Newfoundland the policy development process was driven by the Labour Relations Officer (a civil servant), not Commissioners or politicians.²² Also, this is the first evidence of a conscious and serious policy consultation process regarding the Workmen's

Compensation Act involving the two key interest groups: employers and workers.

In fact, in 1947 the Commission of Government asked for public feedback when it published its proposed Workmen's Compensation Act amendments in the local newspapers. Prior to the consultation process, however, the Labour Relations Officer provides an odd, though intriguing comment which portrays organized labour in Newfoundland as being underdeveloped and unsophisticated:

Much of the existing legislation in other countries which tends to assure to workmen freedom from want, was either prepared by labour organizations or thoroughly examined by them before enactment. In this country labour has not reached the stage of organization which one finds in such countries as England and it is not in the position to put forward for consideration carefully considered schemes applicable to industry in general.²³

There are a couple of points to be made here. First, there is the direct matter of the Labour Relations Officer's comments which do not give much credit to the fact that unions had been involved in serious workers' compensation law proposals since at least the 1920s. Perhaps the Officer's comments were based on activities within his limited framework or experience, or maybe he was unduly influenced by his British superiors who may not have had a high regard for the local unions compared to those in England.

A more important point, though, is that there may not have been an opportunity for consultation were it not for the existence of the Labour Relations Officer. Joey Smallwood, who certainly could not have been considered unsophisticated or unable to effectively propose a "carefully considered" proposal when it came to Workmen's

Compensation, was among those who responded to the Commission's consultation. Smallwood recalls indicating to the Commission that their proposed Workmen's Compensation Act was merely an improved employer liability act and, as such, misnamed.²⁴ The proposed Act, Smallwood argued, was merely a continuation of the British-styled employer liability acts in force since 1887 and, as such, left workers open to the unpredictability of employer attitudes and the vagaries and expense of court processes. Even if the Act did contain certain improvements such as a schedule recognizing certain industrial diseases as being work related (a schedule similar to that originally recommended by Browne and Smallwood in 1926), it did not contain any significant changes in quantum of benefit levels paid to injured workers or their dependants, a consistently unfulfilled desire of labour since 1908. The Commission of Government proposal, Smallwood reminds, amounted to merely incremental changes in what labour perceived to be a fundamentally second-rate law. A clear opinion to be sure, but one which was enabled through a new form of consultative interaction involving the Commission of Government, the Labour Relations Office, and interested individuals and groups.

Meanwhile, as directed by the British government, Newfoundlanders were preoccupied with the much larger issue of national self-determination since December 1945. Delegates were elected to attend an ongoing National Convention through which possible forms of government for the future of Newfoundland would be debated and recommended. Among the delegates elected in June 1946 - the first vote in

Newfoundland since 1932 - was Joey Smallwood who decidedly promoted the idea that Newfoundland should join Canada. Smallwood led a small group of delegates committed to the Confederation concept, but was outnumbered by a larger merchant and professional group of delegates who preferred a return to responsible government. Although those delegates blocked Smallwood's attempt to have Confederation with Canada appear as a choice before the Newfoundland electorate, the British government intervened following dissolution of the National Convention in January 1947 to ensure it was considered. Following two referenda in June and July, 1948, Newfoundlanders opted to join Canada by a small margin of victory; Terms of Union negotiations were underway with Canada by the fall of 1948.²⁵

Just over a month after what was undoubtedly the most significant vote in Newfoundland history the Commission of Government implemented its own Workmen's Compensation Act on September 2, 1948.²⁶ Not only was this anticlimactic in historic terms, the amendments were incremental and the law itself remained a mere employers' liability act. As for the Commission's anticlimactic timing, there appears to have been little to be gained by the introduction of the minor amendments. It could not, for example, have served as an inducement to affect the referenda in any way because the decision to join Canada was already made. It is noteworthy though that the Act was implemented in the middle of the highly disruptive 1948 railway strike which, having begun in June, would not end until November. While the strike itself was about wages, the introduction of beneficial, even if limited, labour legislation would have provided the Commission of

Government with an opportunity to appear to be responding to labour issues and concerns.²⁷ But the amendments did not reflect the wishes of labour or the general advice of Smallwood for fundamental systemic change. Ironically, considering his many years of advocating for improvements in Workmen's Compensation laws, Newfoundland's decision to join Canada destined Smallwood (as the eventual Premier of Newfoundland) to be ideally positioned to directly affect the course of the law. Perhaps the Commission of Government was satisfied to postpone a major overhaul of the Workmen's Compensation Act knowing that new leaders of the Canadian-province-to-be would emerge to do so, thereby demonstrating the benefits of confederation and strengthening the transition from colony to province. In any case, the Commission of Government's 1948 Act was the last to reflect English influence in the style and substance of workers' compensation laws in Newfoundland.

Chapter Summary

As will be reinforced in the next chapter, the emergence of the Newfoundland Federation of Labour in the Commission of Government era is an important factor in the evolution of workers' compensation laws. And, as Liddell found, no effective countervailing group representing the interests of employers emerged during these years. After 1936, the influence of the revitalized labour movement contributed to the requirement for the Liddell study and the creation of the Labour Relations Office. While substantive amendments to the compensation law were not realized through these years, for the first time a formalized consultation process was introduced inviting participation from labour

and employers. From a policy development perspective the environment was starting to become somewhat more complex involving bureaucracy and key interest groups, as well central decision makers.

As discussed at the end of Chapter Two, path dependency is an effective theoretical model for assessing the development of compensation laws in Newfoundland. It suggests the English law inevitably continued to influence the direction of future laws once it was introduced to Newfoundland in 1887. And, so it did up for 61 years up to 1948. Another simple but clear factor influencing path dependency is illustrated by Rose's 1990 comment that "politicians are heirs before they are choosers."²⁸ This chapter shows that not only was the Commission of Government a program inheritor, but also given its caretaker status it is not surprising there were no major changes in the workers' compensation system between 1934 and 1948. This experience also supports Rose's observations that a durable (one not easily replaced) program is less likely to be significantly changed.²⁹ Whether it was failure or inability of the English Commissioners to identify acceptable program alternatives, or whether they were simply dealing with larger questions of economic and political stability in Newfoundland, the unique Commission of Government years obviously influenced path dependency regarding this legislation.

Pushing the susceptibility to path dependency argument further Pierson focuses on the potency of increasing returns in political processes. He points to political processes factors such as collective activity in politics, the central role of change-resistant

institutions, political power imbalances, and ambiguous political processes as being promoting increasing returns.³⁰ In this regard, the 1934 to 1948 period hits all four factors. Generally speaking, any systemic workers compensation decision of significance is collective in nature since it will likely affect the interests of workers and employers. As for change-resistance, the basic law had been in place since 1887 and without any obvious reasonable replacement the likelihood of change was very low. As for power imbalances, it was clear through this period that labour was unable to gain the ear of the Commission of Government. The rebirth of the organized labour movement in Newfoundland in the 1930s caused disruption because the Commission of Government (perhaps dealing with broader priorities) was unable or unprepared to deal with local labour relation concerns. That breakdown eventually resulted in the need for the Liddell process and, eventually, the creation of the Labour Relations Office. In turn, with the involvement of the buffering Labour Relations Officer, the process of resolving labour relations matters such as workers' compensation policy development was further refined to include public consultation in 1947. While employers were totally silent during this time period this does not mean they were powerless - as Pierson notes power may sometimes be hidden from view. Employers may very well have been silent because the existing system had provided enough positive feedback over the decades, or increased returns, that continued slow evolution of the system was in their interests. These examples demonstrate how the Commission of Government eventually managed to process local concerns at the institutional and political level in a manageable fashion, thereby creating acceptable alternatives for incremental decision making. Finally, to cap

off the political processes factors that contribute to increasing returns, these examples also point to the prevailing and associated levels of political ambiguity associated with the growing policy environment.

It is also important to note the broadening of an institutional dimension. The environment was becoming more complex involving not only the law, courts, employers, and individual workers, but it now featured bureaucracy (albeit small), key interest groups, and emerging public consultation processes. A useful theoretical approach for assessing political change over time – with implications for increasing returns - is known as “historical institutionalism”³¹ and it argues that state and societal institutions can have an important and independent role in shaping political conflicts and policy choices. It advocates the study of political processes over time with, as the name implies, special reference to fundamental institutions, e.g., formal rules (laws), policy structures (courts, public agencies, bureaucracy), and norms (learned and accepted practices).³² In particular, it advocates understanding of how political processes unfold over time and “often emphasizes critical moments in politics, distinctive developmental sequences, and the rigidities that make it difficult for social actors to escape from established paths.”³³ The opportunity arises, therefore, to employ the historical institutionalism lens to assess when and why path dependencies continue - as they clearly did with the 1887 law until 1948 - or when and perhaps why path dependencies get altered at critical moments in politics, such as ‘breakpoints’ in history when change or path divergence occurs. As we shall see in upcoming Chapters, distinctive breakpoints do occur but not often.

NOTES:

¹ *An Act to Amend Chapter 212 of the Consolidated Statutes (Third Series) Entitled 'of Compensation to Workmen,'* Newfoundland Statutes, 1935, No. 48.

² Lindblom, "Still Muddling, Not Yet Through," 520-521.

³ Gillespie, *A Class Act*, 55-68. John J. Thompson, skilled but formally uneducated, single-handedly led the development of the NLA and went on to be a highly influential union leader into the 1950's. He represented the interests of labour and many individual injured workers before the Workmen's Compensation Board after 1950 (Max Bursey, interviewed by author, June 1998.)

⁴ Gillespie, *A Class Act*, 53-68. NIWA, of course, had tried to establish a Newfoundland-wide organization before its influence had diminished in the early 1920's. Plus, in 1925 Joey Smallwood made the first attempt to establish a Newfoundland Federation of Labour but was not effective and did not last long.

⁵ Cuff, "The Quill and the Hammer," 48. Cuff notes that core of activists from NIWA played an important part in revival of labour in 1930's, there is no doubt that Irving Fogwill came from the NIWA tradition.

⁶ Gillespie, *A Class Act*, 74-75.

⁷ Liddell, *Industrial Survey*, 108-119.

⁸ *Ibid.*, 33.

⁹ *Ibid.*, 98.

¹⁰ *Ibid.*, 119.

¹¹ In fact, a separate Department of Labour was created shortly before the switch to responsible government in 1933, but it was not established until 1949. See Report of The Royal Commission on Labour Legislation in Newfoundland and Labrador 1972, p 52.

¹² Noel, *Politics*, 243.

¹³ *Ibid.*, 242-243.

¹⁴ J.K Hiller and M.F. Harrington, *The Newfoundland Convention. 1946 - 1948. Reports and Papers. Volume 2* (Montreal: McGill-Queen's University Press, 1985), 288 -329.

¹⁵ "Report of the Labour Relations Officer," (1944), 1-2. The report states: "From the beginning, ..., it became apparent that the work of the office could not be limited to industrial relations which is but one of the functions of Labour Departments in other countries. Even in dealing with the matter of relationship between employers and workmen, the office is brought into contact with questions of wages, hours of employment, methods of payment of wages, workmen's compensation, procedure for settlement of disputes under defense Regulations and peacetime machinery, organization and function of trade unions, industrial safety and, in fact, all labour legislation enacted or proposed in this country. ... It can therefore be said that all matters which particularly affect labour are now being dealt with through this office." The establishment of the Labour Relations Office marks the beginning of a continuing trend toward labour relations specialization.

¹⁶ *Ibid.*, 14.

¹⁷ Generally, this can be confirmed through various means. See the introductory speech

by Labour Minister Charlie Ballam, "House of Assembly Proceedings," April 11, 1950, 600-601. Also confirmed through author's interview with Ted Blanchard, October 1998. Blanchard rose from an entry position in the provincial department of labour in 1950 to become CEO of the Labour Relations Board by the mid-1960s. He served as Deputy Minister of Labour through the 1970s and 1980s, and as Minister of Labour in the Peckford government beginning 1985.

¹⁸ Noel, *Politics*, 233-243.

¹⁹ Gillespie, *A Class Act*, 84-90.

²⁰ *Ibid.*, 85.

²¹ "Report of the Labour Relations Officer," 1944, 11.

²² J.G Channing, "The Effects of Transition to Confederation on Public Administration in Newfoundland," *Canadian Institute for Public Administration* (1982): 77. Channing points out that the role of civil servants in the Responsible Government era was minimal, but increased dramatically under the Commission of Government because they were more familiar with local problems than the English commissioners. That had beneficial affects for the confidence and expertise of the Newfoundland civil service. In fact, the Labour Relations Officer in the 1940s, Mr. Selby Parsons, went on to become Deputy Minister when the Department of Labour was formed after 1949.

²³ "Report of the Labour Relations Officer," (1944), 9-10.

²⁴ "House of Assembly Proceedings." April 11, 1950, 610.

²⁵ Noel, *Politics*, 246-261. The June 3, 1948 referendum ballot results were: 44.5% for return to responsible government; 41.1% for Confederation; 14.3% for retaining Commission Government (dropped from second ballot). The July 22, 1948 ballot: 47.4% responsible government; 52.3 % Confederation.

²⁶ *An Act relating to Compensation to Workmen for Injuries Suffered in the course of their Employment*, Newfoundland Statutes, 1948, No. 30.

²⁷ Gillespie, *A Class Act*, 86. In fact, one of two key planners of the massive strike was Irving Fogwill who would be in the forefront of workers' compensation in Newfoundland less than three years later.

²⁸ Rose, "Inheritance Before Choice in Public Policy," 263.

²⁹ *Ibid.*, 270-273.

³⁰ Pierson, "Increasing Returns," 257.

³¹ Peter A. Hall and Rosemary C. R. Taylor, "Political Science and the Three New Institutionalisms," *Political Studies* (1996): XLIV, 936-957. This is an interesting paper because it distinguishes the three schools of thought - historical institutionalism, rational choice institutionalism, and sociological institutionalism - which have evolved to help explain the role that institutions play in social and political outcomes.

³² *Ibid.*, 938.

³³ Pierson, "Increasing Returns," 265.

Chapter Five

Adoption of Canadian Model: Birth of the "WCB" (1949 – 1972)

The entry of Newfoundland into Canada in 1949 marked the beginning of a major shift in workers' compensation policy in Newfoundland. This chapter analyzes events from 1949 to 1972. It will consider how and why Canada's newest province altered course significantly in 1949 by deciding to adopt the Canadian workers' compensation system. That decision represented a personal victory for Joey Smallwood and a huge success for organized labour. Both had advocated adoption of the Canadian system as early as the 1920s. Of course, 1949 marked the beginning of a 23-year period of Newfoundland history which would be dominated by the political dynasty of Joey Smallwood, the province's first Premier, and his Liberal party. The chapter considers how implementation of the new system was an important early success for Smallwood which - to the extent that it mollified the political activism of labour - contributed to a strengthening of Smallwood's grip on power through the 1950s. The new policy direction was also a major victory for organized labour in Newfoundland. The chapter analyzes the instrumental role played by the labour movement in the evolution of the new system and briefly considers why the introduction of the new system was largely a non-event for employers. It also reviews general developments in the policy environment from 1949 to 1972 and assesses changes in the degree of influence of the major partners, i.e., government, labour, and employers, upon the system. Changing dynamics between the groups, particularly labour and government, is considered against an important new institutional element in the policy environment, namely the Workers' Compensation

Board (WCB). The emergence and effects of the WCB as the central bureaucratic agency which administered the new system is examined. The chapter concludes with an assessment of Smallwood's loss of power in 1972 and the implications of that defeat on the future direction of workers' compensation policy in the province.

True to the original mission carved out for itself in 1936, the Newfoundland Federation of Labour actively lobbied for its preferred pieces of labour legislation before, leading up to and after March 31, 1949. And, prior to Newfoundland's first general election as a Canadian province on May 27, 1949, the Federation's legislative committee sought the endorsement of its policies from the potential political leaders. The Conservative party leader refused to meet with the Federation, but the new Liberal party leader, Smallwood, openly accepted the Federation's proposals. Smallwood promised that, if elected, his Liberal government would enact, among other things, a new Workmen's Compensation Act.¹ Of course, improvements in workmen's compensation legislation had been a goal of Smallwood's for many years (see Chapter Three), so the promise to implement a new Act would have suited him ideologically. Plus, it may have been an easy promise for Smallwood to make considering that all Canadian provinces (including P.E.I. in 1949) had adopted the "Canadian model" and it was reasonable to think that Newfoundland would follow suit. With the assistance of labour, Smallwood swept the 1949 election by taking 22 of the available 28 seats in the legislature (with the conservative leader, who refused to meet with the Federation, among the losers).²

Among Smallwood's first actions as Premier was the appointment of a Labour Advisory Board with a mandate to review all labour relations laws across Canada and to adapt Newfoundland's laws where advisable. With respect to the Workmen's Compensation Act there is no indication that adapting to Canadian standards would be inadvisable, as suggested a decade earlier by Liddell. Also, it is well-known that Smallwood pursued an aggressive industrial diversification and modernization strategy for Newfoundland in the years after Confederation,³ so it is likely that adoption of the Canadian industrial model for workers' compensation was an attractive option. In any case, by the end of 1949 the Labour Advisory Board presented government with a draft Workmen's Compensation Act based squarely on the Canadian model.⁴ The Smallwood government acted quickly and the necessary legislation was passed into law in House of Assembly in the spring of 1950.⁵ That session offered instructive second reading speeches from Smallwood and his new Minister of Labour, Charlie Ballam (the former labour leader). Ballam provided a succinct list of drawbacks associated with the pre-1949, British-styled employer liability laws and, in doing so, a predisposition towards the interests of labour:

In the first place, there probably are many cases in which a workman does not realize that he has a right to Compensation and, therefore, does not claim or get any Compensation.

In the second place, the workman, even if he knows his rights, is put through a great deal of trouble, legal and otherwise, in order to get Compensation, and sometimes, I have no doubt, the thought of facing Court Action is enough to put him off from seeking his rights.

In the third place, the amount of Compensation under our present legislation is not very high, and when legal costs are involved, the net amount that arises from his claim may be entirely inadequate.

In the fourth place, a workman with an injury causing temporary or partial disability may be very reluctant to make any claim because it might prejudice his chances of getting further employment with the same employer.

In the fifth place, the employer may not have enough funds to pay the compensation Claim in which case the injured workman is in a worry plight indeed.⁶

The Smallwood government was unable to put the new law into effect immediately. The legislation was a significant departure from the laws in effect prior to 1949. Not only did it propose covering more workers and providing higher benefits, there were major transitional challenges, not the least of which was the requirement to create a new administrative agency, i.e., the Board, to administer the proposed workmen's compensation program. In fact, a special Workmen's Compensation Committee⁷ was appointed to oversee the creation of the new agency and the overall development of the system following the passage of the Act. The Committee began its work on August 1, 1950, and submitted its final report to government in January 1951, indicating a readiness to start the new system. Included with that final report was a set of 15 statutory amendments which were, in their view, necessary or advisable before the implementation of the new system. Although the amendments were mainly of a housekeeping variety, the Committee added a schedule of Regulations and extensive changes to section 39 which governed the critical areas of quantum and entitlement criteria for compensation benefits covering temporary and permanent disability, as well as dependency benefits.⁸ The Smallwood Liberals had no difficulty accepting the changes and, ultimately, Newfoundland's new workmen's compensation system came into effect on April 1, 1951.⁹

It is not surprising that Newfoundland adopted the Canadian system after 1949. It might have been a predictable outcome simply on the basis of meeting Canadian standards because by 1951 the Workmen's Compensation Board system had been adopted across Canada. In that regard, the Labour Advisory Committee had specific instructions to review the laws of Canada. Furthermore, it cannot be overlooked that Smallwood, the new Premier, was a long-time advocate of the Canadian system. In retrospect, however, it is critical not to underestimate the influence of organized labour on the new workmen's compensation policy choice - it was, in fact, an election promise to them. Not only did the legislative achievements of the Liberal government in 1950 and 1951 reflect the long-standing desires of the Newfoundland labour movement, key members from the Newfoundland Federation of Labour played integral roles in the development of the new labour laws, particularly the workmen's compensation act. To begin with, the Labour Advisory Board which recommended the Canadian model was dominated by unionists, in particular Federation of Labour unionists who had made improvements to the workmen's compensation act a major issue since their resurgence in the 1930s.¹⁰ Magnifying that influence is the fact that the Labour Advisory Board reported to the Minister of Labour (Ballam) who was a founding member and past-president of the Federation of Labour. Furthermore, another founding member of the Federation - Irving Fogwill - was named Chairman of the Workmen's Compensation Committee and, as such, was largely responsible for the establishment of the new Workmen's Compensation Board system. Additionally, Fogwill was appointed Chairman of the Workmen's Compensation Board in 1951, and as an indication of the stability the system would enjoy in its initial years, he

held that position until 1967. Just as impressive is the fact he reported to the same Minister, Charlie Ballam, until 1966.

Stability certainly was the order of the day throughout the 1950s for the workmen's compensation system, due in part to the success of the new bureaucratic agency at its centre - the Workers' Compensation Board (WCB).¹¹ The WCB was run by a government-appointed Chairman and two Commissioners¹² whose sole occupation was the effective administration of the Act. The presence of full-time curators to constantly oversee and review the operation of the Act was a major difference compared to the pre-1949 laws. From 1951, the WCB had the authority to hire its own staff and by 1958 it was an organization of approximately 35 employees.¹³

A clear consequence of the WCB's bureaucratic specialization was increased capacity for policy analysis. While no major systemic policy changes occurred through the 1950s, there was a quickening in the pace of legislative amendments compared to pre-1949 which may be directly attributable to the presence of the full-time WCB analysts. Between 1952 and 1959, for example, there were six more legislative amendments (seven if one counts the consolidation act of 1952).¹⁴ The 1952 amendment increased the "waiting period" to four days. Waiting period is the length of time an injured worker was expected to go without income before being entitled to benefits. On its face that amendment appears contrary to the interests of labour. But it was actually somewhat of an improvement because when the Act was passed in 1951 there was a combination three

and six day waiting period formula. Workers had to go three days without income before they could receive compensation, but they would receive retroactive compensation to the date of disability if they were off longer than six days. While the new amendment increased the initial wait by one day, it reduced the length of time necessary to receive full retroactive compensation by two. There may or may not have been a relationship, but it is interesting to note for comparative purposes that the neighbouring province of Prince Edward Island reduced its waiting period from seven days down to four days in April 1952. The Nova Scotia Act was amended in 1953 lowering its waiting period to five days.¹⁵ Also of note, but an anomaly in the Canadian context, the province of Alberta eliminated its waiting period in 1952.¹⁶ In the interest of Newfoundland workers, the 1956 amendment increased the compensation benefit rate from 66 2/3 percent to 75 percent of gross income.¹⁷ This followed a clear Canadian trend of increasing benefit levels in this range.¹⁸ And, one of the sections amended in 1958 introduced modest vocational rehabilitation service provisions for injured workers.¹⁹ These various amendments serve as evidence of the continuing influence of labour upon policy choices, since all of these were quite favourable amendments for their side.

Labour's Surprising Loss of Influence

Surprisingly, however, organized labour grew weaker in Newfoundland following Confederation. It did not grow stronger as one might have expected based on its resurgence, growth and political influence in the years prior to and immediately after 1949. The reasons for labour's decline in influence vary, but appear to have been rooted

in loss of initiative. Contributing factors included the loss of prestige as the once *national* Federation of Labour settled into its role as a provincial body; the attention of large unions shifted to their national or international affiliates; grassroots organizing drives were no longer necessary because most groups in the province that could be organized already were; and, paradoxically, the fact that the business of unionism became more complicated after 1949 as a result of various labour legislation for which it had advocated.²⁰ From a workmen's compensation perspective, for example, the unionists had clearly reached a pinnacle in 1951 with the passage of legislation it had craved for decades. Then there were basic improvements in the legislation during the 1950s. To the successful unionists it may have appeared unnecessary to maintain a struggle for major improvement or, alternatively, unnecessary to rely on the union given the beneficence of governments since Confederation.

Another factor which may have contributed to this overall loss of initiative is that key unionists, such as Ballam and Fogwill, went into politics or government service following Confederation. Such involvement likely had the double effect of exacerbating the loss of leadership and elevating a sense of complacency. Unions might have perceived the emergence of Ballam and Fogwill as having their own representatives in government as they entered these comfortable years. In the ten years between 1946 and 1956, the number of people in unions fell by ten percent, but the largest difference during these years was the decline in interest and enthusiasm.²¹

Unfortunately for the unions it was no time for weakness. A loggers strike occurred in March 1959 and became a major crisis. Organized labour, particularly the Federation, battled against Smallwood and the owners of the Grand Falls paper mill in the infamous International Woodworkers Association [IWA] strike of 1959.²² While room does not permit a detailed account, it was a defining moment in the relationship between unions and the Smallwood government. In short, Smallwood's legislative actions - which outlawed the IWA attempt to establish a new loggers union - branded him anti-union, and his government's relationship with labour following the IWA strike became highly strained. The union forces would not easily recover from their defeat in 1959, but the event shook the unions from their post-Confederation complacency and served as a turning point from which the Federation, in particular, was forced to reassess its long-held policy of non-direct political involvement. The major rift between government and labour was so pronounced that the unions boycotted many government processes and there was to be no real attempt at fence mending until the Smallwood government was finally defeated in 1972.²³ In the aftermath of the IWA strike Federation of Labour union membership fell precipitously from 22,328 in 1958 to nearly half that number in 1965, its lowest point in 30 years.²⁴

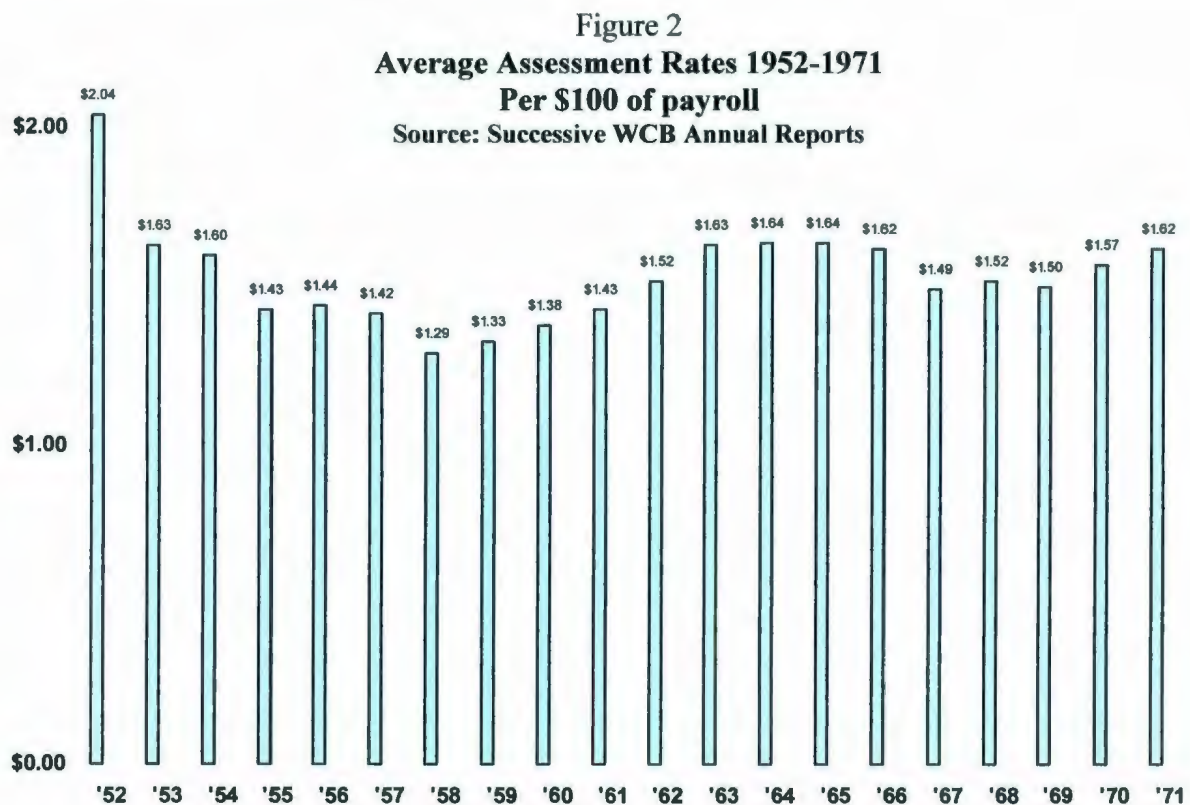
While the influence of the WCB and labour is notable after 1949, the same cannot be said for the degree of influence of employers in relation to the system. Employers were traditionally unorganized, as discovered by Liddell in 1940, and it was no different after Confederation. On the other hand, employers were given little or no reason to be

interested or concerned with the new system when it was introduced in 1950. In fact, employers were totally discouraged from developing an interest in the functions of workmen's compensation and were told to pay premiums and do nothing else. If employers were not organized enough to represent their general interest before Liddell in 1940, they certainly were not encouraged to do so based on Smallwood's advice in 1950:

All the employer has to do with the Workmen's Compensation is pay the costs, and nothing else. He doesn't pay the individual costs to an individual worker; he doesn't pay the individual costs to the dependants of a worker who has been killed. What he does do is contribute regularly into a fund which the Act sets up. He doesn't determine the size of the fund. He doesn't have anything whatever to do with the fund. He has no jurisdiction over the fund; no responsibility for it; no control over it. His only connection with the fund as an employer is to pay in to it at certain stated intervals so much for each individual employee in his employ. The employer's connection with this legislation begins and ends with the payment by him into the fund on behalf of each individual employee of the amount assessed upon him by the Workmen's Compensation Board.²⁵

And the amount assessed upon employers was known as the assessment rate. Employers paid an annual assessment rate based on the size of their payroll and level of risk - derived from demonstrated claims cost experience - in their industry. The average assessment rate paid by Newfoundland employers in 1952 was \$2.04 per \$100 of payroll. This was a deliberately high rate for the first year of operation because expected costs could not be predicted with absolute certainty.²⁶ But assessment rates were quickly lowered to \$1.63 in 1953; employers enjoyed these low rates for the following decades. In retrospect, the relative financial stability, along with general admonitions from the politicians to stay out, merely reinforced an already established pattern of employer non-involvement in the work injury insurance system in Newfoundland; a pattern that would

persist until the early 1980s.²⁷



By 1958, there was a slowly changing attitude in government toward the system. Attention focused on the administrative practices of the WCB when the number of Board employees came into question. Smallwood didn't argue against the Board's competence, but he felt government had certain rights related to the administration of the Board which was nothing less than "a creature of the Government."²⁸ That year another amendment gave the Smallwood government a right to hire three key managers (in addition to the Chairman and two Commissioners). No doubt this move provided government greater influence at the Board. In retrospect, the deeper infiltration of government into the affairs of the Board may have represented government's reaction to the fact that the Board had

operated so independently since 1951. It is intriguing to note that it had been Smallwood himself who preached the virtues of a strong, independent Board when it was established in 1950.²⁹ But, the comments of the Attorney General in the House of Assembly very succinctly capture the new questioning attitude of the Smallwood government regarding the WCB in June 1959:

Up to now, they have been a little municipality, a little kingdom of their own. Nobody knows what they are doing. Everybody has confidence in the Board. There is no question of a lack of confidence. Everybody has confidence in them, but any Board after a while is apt to get slack.³⁰

Creation of the Statutory Review Process

In 1959 the most significant amendment of the past decade occurred.³¹ That amendment provided for the appointment, at least once every five years, of an independent review committee of at least three members to review, consider, report and make recommendations to Cabinet regarding all matters respecting the Workmen's Compensation Act, Regulations and overall system administration. In fact, this amendment copied the unique Saskatchewan approach; Ballam stated that government was aware that a statutory review process was followed elsewhere in Canada and there is no doubt that the amendment mirrored Saskatchewan's 1945 amendment.³² A critical feature of the review committee is that its membership would equally represent the interests of employers (contributors) and workers (beneficiaries). Since 1959, the terms "Statutory Review Committee" and "statutory review process" have been applied to describe these regularly scheduled evaluative processes. The review committee reports contain non-binding recommendations only and government makes all final judgments

and decisions concerning what, if any, changes it will accept.

The idea of periodically reviewing WCB operations was not unique to Saskatchewan and Newfoundland. By 1959, in fact, there was somewhat of a Canadian trend of governments reviewing their WCB. But the other provinces had employed periodic Royal Commissions to review their systems, including Ontario (1913, 1932, 1950), and British Columbia (1942, 1952). Furthermore, Royal Commission reports were delivered in Manitoba and Nova Scotia in 1958.³³ The most common perspective regarding the benefits of formalized reviews of WCB operations is expressed in the (extremely well-written and researched) report of British Columbia's third Royal Commission:

The WCB is no different from other administrative bodies which are possessed of more or less absolute power. Unless someone is "constantly looking over its shoulder," it will tend to lapse into a laissez-faire attitude and to be content with things as they are. If those who feel they have been the victims of injustices are powerless to do anything about it, there is an ever-present danger that complaints with administration will be shrugged off and that there will be no exercise of imagination to the end that improvements will be made.³⁴

However, the Smallwood administration may have had mixed reasons for introducing the statutory review process in 1959. A questioning attitude concerning WCB operations had in fact developed. Clearly the 1958 effort to gain greater influence in hiring senior managers of the WCB demonstrated Smallwood's desire for more control over the agency. Furthermore, as Minister Ballam indicated that by 1959 the WCB was handling approximately two million dollars in employer contributions annually, providing an additional reason to introduce a process of checks and balances over the WCB.³⁵ As well,

various concerns with the WCB reflect the general experience of the other Canadian provinces at about that time. In this regard, there was the readily available example of a statutory review process in Saskatchewan. It is not known why the government opted for the Statutory Review model and not the Royal Commission approach as followed in all other provinces. One can speculate, however, that the Royal Commission approach may have been considered too expensive or intensive for local needs at that time. Finally, it is noteworthy that the legislative tightening of WCB controls occurred immediately after the IWA strike; while no evidence is found to support such a conclusion, it is interesting to speculate that government may have been motivated by threats of loss of political power.

Neary has described Smallwood's premiership in terms of three distinct periods: 1949 to 1957; 1957 to 1968; and 1968 to 1972.³⁶ The first period is characterized by provincial integration within the Canadian system and the solidification of Smallwood's hold on power. The stability of the workmen's compensation system during the same period substantiates Neary's categorization. The stable, self-controlling WCB left to establish itself in the Canadian style meant few, if any, political problems at government's doorstep. The second distinct period from 1957 to 1966 period is characterized by the threat of lost political power. Generally, Smallwood's move to secure greater control over the WCB in 1958 is behavior consistent with Neary's observation that Smallwood acted as if threatened. Furthermore, it cannot be overlooked that the statutory review amendment of 1959 was passed in the House less than four months after the IWA strike.

To the extent that Smallwood may have viewed the labour oriented leaders overseeing the WCB as potential enemies, the implementation of the statutory review mechanism would have ensured government influence at regular intervals. The remainder of this chapter involves an examination of events leading up to and including the third distinct period [1968 to 1972] when Smallwood's hold on political power weakened and was eventually lost.

Against the background of apathetic employer involvement, loss of labour influence, more closely checked WCB and generic government suspicion, workers' compensation policy evolved somewhat unremarkably beyond 1959 with occasional incremental changes only. Following the 1959 statutory review committee amendment, there were six more amendments before the departure of Ballam as Minister in 1966.³⁷ These were mainly minor housekeeping changes, involving minor adjustments to the scale of compensation, entitlement criteria, and internal administrative affairs of the Board. The first amendment in 1964 is noteworthy though because it reduced the waiting period for compensation following disability from four days to one day. Notwithstanding labour's general falling out with the Smallwood regime following the IWA strike here is an example of a significant new benefit for injured workers. Significantly, it was the third time the waiting period had been reduced since 1951. Overall, as a minor benefit improvement, it serves as an excellent example of the type of incremental policy change which characterized policy development since 1902. It also marked one of the final legislative improvements during the terms of Ballam and Fogwill, both of whom retired

in 1966 after turning age 65.

In fact, notwithstanding the legislative encroachments by government in 1958 and 1959, the WCB remained very autonomous throughout the Ballam/Fogwill years (prior to 1959 and up to 1966). In fact, Minister Ballam specifically refused to interfere in the operational matters of the WCB even though he was often prodded to do so by unions. Ballam often said, for example, that the WCB doing a better job with their investments than government. The fact that the WCB was consistently financially secure was another reason not to interfere (at least, failure in that regard would have provided government with an excuse for aggressive intervention if it had so desired).³⁸ In other words, even though the Smallwood government was interested in establishing more control and review mechanisms over the WCB, there were no burning political issues associated with the system in or immediately after 1959. This is clearly demonstrated by the fact that even after the legislation was introduced in 1959 government did not use its power to appoint a review committee until five years later. The reality was, however, that government had captured significant control over major policy decisions and an opportunity to assess WCB operations every five years through a committee of its own choosing.

As the Ballam/Fogwill era ended, the first Statutory Review Committee report was delivered in May 1966.³⁹ The 1966 Statutory Review Committee process established the general pattern for future statutory review processes regarding the participation of labour

and employers. The Committee itself was balanced with equal numbers of employer and labour representatives. Although sensitive to the possibility of being seen to operate behind closed doors, it opted to avoid holding public hearings even though some written submissions expressed an interest in being heard. However, this was the first and last Statutory Review Committee process not to include public hearings. In fact, the public hearing process has been a major feature of statutory review processes ever since, particularly since the 1980s when the level of interest and participation rates rose remarkably.⁴⁰ Substantively, the 1966 report did not recommend any major systemic change. After 1966 there were a few incremental changes to the Act,⁴¹ but no major program or benefit changes.

Although the 1966 Statutory Review Committee report recommended maintaining the status quo with respect to "waiting periods" (discussed above), the nature of the discussion on this topic characterizes the flavour of typical workers' compensation policy debate before the Review Committee. As an isolated example, the waiting period debate - referred to as this "this vexed question" in the 1966 Tysoe Report in British Columbia, likely because of the long history of tinkering with the formula⁴² - illustrates the common manner and context in which specific policy matters are often discussed on a recurring basis in both Newfoundland and Canada. In fact, the comparison with other Canadian provinces is a constant feature and major influence on the development of workers' compensation policy in Newfoundland. In any case, the process before the Committee involved: arguments and briefs from the key interest groups; some consideration of

history; some ideological discussion; cost-benefit considerations; and national and international experience. Each of these considerations is referenced in this excerpt from the 1966 Statutory Review Committee report dealing with waiting periods:

... the briefs we have received reflect the differences of opinion to be found not merely between management and labour but between the jurisdictions. In the beginning the English standard of a seven day (waiting) period seems to have been followed nearly everywhere, but there has been a gradual and steady shortening over the years. Whatever length of "waiting" is chosen, there will always be cases in which it works some hardship, encourages malingering or exhibits some disadvantage ... The present situation across Canada is this. In Nova Scotia and New Brunswick the period is four days; in British Columbia, Ontario and Quebec, three days; in Alberta, Manitoba, Prince Edward Island, Saskatchewan and Newfoundland, one day.⁴³

A notable interest group - the Law Society of Newfoundland - made a special presentation before the 1966 Committee. It disagreed that the WCB should have exclusive jurisdiction to decide matters coming before it. The Newfoundland Act, based on the Canadian model, contained a provision known as a privative clause which prevents court review, except in special circumstances (typically, where there is an error on a question of jurisdiction or law). The provision advocated by the Law Society was interesting because it chipped away at this original principle of the Canadian system. In addition to a right of appeal to the courts on questions of jurisdiction or law, the Society advocated a right to appeal to court on questions of mixed law and fact. The phrase "mixed law and fact" potentially opened up new avenues of attack against WCB decisions. As a result of the submission by the Law Society to the Statutory Review Committee, government went on to confer this broadened avenue of appeal against WCB

decisions to the Supreme Court of Newfoundland. The theoretical effect of the Law Society provision was to expand the set of special circumstances for which WCB decisions could be reviewed by the court.⁴⁴ That result may have interested lawyers and others who may have viewed the privative clause as a philosophical irritant, contrary to the rule of law. There also may have been those who resisted the rise of quasi-judicial bodies generally, or the WCB specifically. By 1966, for example, active members of the Law Society may have recalled the pre-1949 laws which clearly called for court action without interference from such government agencies.

It is worth noting that the Smallwood government may have been predisposed to initiatives which acted to curtail WCB authority. The amendments of 1958 and 1959 demonstrated government's bias against a powerful WCB. It is also interesting to speculate that if Smallwood was at all uncertain about who might replace the retiring Fogwill and Ballam, he may have been further biased toward measures which clamped down on WCB authority. By 1966 recall, Smallwood was, as Neary describes, deep into the phase where there were threats of loss of political power.

Uncharacteristically, in fact, the amendment was out of step with the Canadian norm. This is best illustrated through reference to that section of the 1966 British Columbia (Tysoe) Royal Commission in which the possibility of expanding the right of appeal against WCB decisions to the court on questions of law, or mixed law and fact, was roundly denounced. Tysoe concludes that all industrial parties, especially the unions, in

British Columbia strongly believed that would be a step in the wrong direction (the Law Society of the British Columbia, or its equivalent, did not appear before the Tysoe Commission).⁴⁵ Tysoe writes:

... while complaining of alleged injustices perpetrated by the Board, (the unions) feel that a remedy for them that involves the introduction of rights of appeal on questions of fact to the Courts or to some other outside body or person would be worse than the disease ... Some of them advocated a right of appeal to the Courts on questions of law, including questions of interpretation of the Act. I cannot help feeling that this was based on a lack of appreciation of what is a "question of law" as distinct from a "question of fact" and of how few claims involve the former alone. The truth is that practically every claim depends for its validity on matters of fact or mixed law and fact, and, so long as there be any evidence to support the factual finding of the Board, a right of appeal on a question of law would be of value (rarely). ... such a right could become the cause of even more dissatisfaction ... It is very difficult to explain to a layman the difference between a question of law, a question of fact, and a question of mixed fact and law as it applies in his particular circumstances.⁴⁶

It is important to also note that in British Columbia (and Ontario, as noted by Tysoe) there was no interest in diminishing the exclusive jurisdiction of the Boards. The Ontario view was reinforced the following year when the McGillvary Royal Commission noted that the "matter of appeal of WCB decisions (was) long debated (in Ontario), but (there is) strong resistance against formality or the emergence of an adversarial system."⁴⁷ That said, it is also clear that by 1966, in British Columbia and Ontario, elaborate internal review processes were developing as safeguards against the absolute decision making authority of the WCBs.⁴⁸ There were no such elaborate internal review systems at the Newfoundland WCB in 1966, and the final authority on all major decisions rested with the small group of Commissioners through very informal mechanisms.⁴⁹ Other than the

Law Society push for the expanded appeal provision, there were no demands for alternate internal review systems in Newfoundland in 1966. [Different approaches to the same problem in these provinces at this time may be attributed to the fact that the Canadian model had been established in British Columbia and Ontario for about 50 years, but only 15 years in Newfoundland.] By way of a concluding note on this topic, it is noteworthy to recall how the statutory review process was used to further special interest legislation.

St. Lawrence Tragedy

But, without doubt, the most significant contribution of the 1966 Statutory Review Committee report was the fact that it squarely addressed the tragedy experienced by the miners and families from St. Lawrence. St. Lawrence ranks, without equal, as the single largest (though slowest moving) industrial disaster in Newfoundland history. From the mid-1940s onward hundreds of miners died prematurely as a direct result of harmful exposures in the local flourspar mines. The 1966 statutory review report devoted ten often poignant pages to St. Lawrence and is an important milestone regarding the development of unique workers' compensation policy regarding the affected workers and their families. Ultimately, the review committee recommended the formation of a Royal Commission to study and make recommendations for legislative and other improvements for those suffering industrial disease because of harmful exposures to silica dust and radioactive gases at the mine.⁵⁰

The first mine commenced flourspar extraction in March 1933 and operations continued

and expanded over the subsequent decades.⁵¹ In 1933 the concept of workplace safety or safe working conditions was basically unknown. Instead of laws, regulations and policies governing workplace safety, miners (and all other workers for that matter) were governed by the laws of self-preservation. The first regulatory initiative governing mine safety - a regulation known as Safety of Workmen in the Mines of Newfoundland - did not come into effect until June 22, 1951.⁵²

Unfortunately, by the mid-1940s the community noticed a high, premature death rate among the miners. By the late 1940s an unusually large number of miners were afflicted with poorly diagnosed respiratory conditions. The first diagnoses of silicosis - a lung disease caused by prolonged inhalation of silica dust - were made in 1950, but the St. Lawrence workers did not respond to traditional treatments. They all died. In 1950 the provincial and federal government conducted a preliminary dust study noting that detailed environmental and medical would be necessary. However, the recommended detailed studies were not commenced until 1956 when reports of a high incidence of lung cancer - with the same deadly outcome for the workers - raised the necessity to include radiation measurements in the environmental studies.⁵³

During these years there were persistent complaints from the miners that something was very wrong. As a young officer of the Department of Labour, Ted Blanchard recalls visiting the community many times beginning in 1952. It was during the 1950s that he first met what he described as seriously concerned and committed union officials. In

particular, and as an example of the kind of leadership which brought the miners' concerns into governmental circles in that era, Blanchard remembers a Mr. Aloysius Turpin. Turpin is described as a strong and determined president of the local miner's union who made it his full-time business to try and understand what was happening at the mine. Blanchard recalls that the first time he personally ever heard the word "radiation" was from Turpin. Through the 1950s and 1960s Turpin and the union adamantly argued that radiation in the mines was responsible for killing the unusually high number of local men. Blanchard credits the union and leaders like Turpin with consistently pushing the matter to the forefront through sheer determination.⁵⁴

Frustrations mounted during the 1950s as serious shortcomings associated with entitlement to benefits under the Workmens' Compensation Act were realized. The Newfoundland Act simply did not recognize lung cancer and many other respiratory ailments experienced by the St. Lawrence miners, such as tuberculosis and chronic obstructive lung disease, as being occupationally related.⁵⁵ As a result the WCB rejected many claims. In effect, the WCB was obliged to carry out a legislated benefit system ill-designed to compensate for permanent chronic disability of the nature suffered in St. Lawrence. Adding to the troubles, there was no entitlement whatsoever for the families of those who died before the new Act came into effect in 1951. The miners and their families felt slighted and were decidedly uncomfortable with the bureaucratic and quasi-judicial WCB environment in which many were increasingly involved as they appealed for compensation. When compensation was payable the amount of disability pensions

payable under the Act did not adequately compensate for their financial and other losses. Not surprisingly, the reputation of the WCB among these families was seriously damaged.⁵⁶

Workers' compensation policy development regarding the recognition of certain diseases as being occupationally related is an inherently incremental process. In the realm of occupational epidemiology scientific knowledge emerges slowly - dependent upon a range of factors - and often presents ambiguous results.⁵⁷ Commenting on why the WCB had not compensated the lung cancer claims of St. Lawrence workers through the 1950s, Fogwill said: "Why wasn't (lung cancer) included (under the Act)? Because medical science had not caught up with the developing situation!"⁵⁸ The Royal Commission produced evidence to show that Newfoundland was not unique (or "behind the times", so to speak) in the range of industrial diseases it covered through the 1950s.⁵⁹ These succinct observations highlight the fact that government/WCB policy making regarding the coverage of certain occupational diseases was highly incremental in nature, being heavily reliant upon scientific proof of association.

Following the investigations in the late 1950s which confirmed the presence and significance of deadly radon gas in the mines (secondary to a large, low-grade uranium deposit abutting the mines), the first major policy decision regarding entitlement for St. Lawrence workers occurred in 1960. At that time government amended the regulated schedule of industrial diseases, retroactive to April 1, 1951, to include "carcinoma or

malignant disease arising from radiation as a disease associated with any process, employment or occupation wherein radiation, x-rays or radioactive materials or substances are involved."⁶⁰ While that was a big step forward, there were many outstanding issues and concerns left for argument and review through the 1960s.

Primarily, not all aberrant lung diseases, such as tuberculosis and chronic obstructive pulmonary disease, would be readily acceptable by the WCB under the schedule of industrial diseases. Another major concern related to the legislative requirement that the dependants of a deceased worker had to prove that the worker died within a period of twelve months from the time he last worked in the mines. That statutory requirement caused great difficulties for the families - and the WCB - associated with proof of claim. As an effective example of the incremental nature of policy development regarding St. Lawrence, it remained in the legislation until amended on July 1, 1967.⁶¹ The timing of this legislative improvement (just after the Royal Commission commenced) suggests that it was a direct outcome of the May 1966 Statutory Review report. This indicates the concerns of the workers and their representatives were heard and understood, and that they gained new benefits via the statutory review process.

Given the incremental approach to a difficult, but major problem, it is relevant to ask whether the St. Lawrence workers were adequately represented.⁶² Perhaps, it is speculated, the St. Lawrence membership might have been represented more effectively and forcefully if there had been better local linkages (with the Federation of Labour, for

example) rather than depending upon support from a national mainland body.⁶³ This line of speculation presupposes that more concentrated political pressure upon government might have moved important issues up government's policy agenda more quickly. Effective representation from the provincial Federation of Labour in the early 1950s might have promoted resolution of the federal/provincial bureaucratic log jam and sped up the requested studies, especially considering the evidence from the early to mid-1950s which indicates that the Smallwood government had a highly favourable relationship with labour. Whether the slack federal/provincial response was the product of basic, bureaucratic irresponsibility or a result of poor understanding of federal/provincial relations (possible perhaps, considering the Newfoundland bureaucrats were new to the federation) is moot. The failure to initiate investigative processes and formal studies sooner likely slowed the overall government/WCB policy response (which in the case of industrial disease is shown to be sensitive to the accumulation of scientific evidence).

As for more effective representation before government, it is unlikely, given the nature of the falling out between Smallwood and labour generally following IWA strike, that the St. Lawrence workers were disadvantaged in any way because they lacked association with the Federation of Labour after 1959. As demonstrated, their issues were meaningfully communicated through the 1966 Statutory Review process without local union affiliation or support. Furthermore, through the 1960s organized labour in Newfoundland had not received satisfactory support or action from the Smallwood government or the WCB in the general area of occupational health and safety. Although

the WCB had carried a mandate for safety and prevention since its inception in 1950, safety initiatives did not receive a high profile. The concept of safety and prevention grew very slowly from the hiring of one "safety" man for three months in 1953, to the eventual formation of a modest division with a couple of safety officers or inspectors involved in education and enforcement throughout the 1960s.⁶⁴ During those years the unions were pressuring government to provide improved health and safety standards. They were driven by growing awareness of issues related to industrial disease learned mainly from their mainland affiliates, but also based on the acute local experience at St. Lawrence.⁶⁵ The industrial unions were behind this push and, the Steelworkers union in particular, was among the leaders advocating improved health and safety laws and administration in Newfoundland.⁶⁶ Their general concerns were complicated by the fact that the administration of health and safety laws was highly fragmented involving not only the WCB, but also numerous other departments such as mines and health. Through the late 1960s, however, the unions' request for improved services fell on deaf ears with Smallwood and WCB executives.⁶⁷

A factor which may be raised as contributing to delayed reactions regarding the St. Lawrence dilemma is the fact that the losses occurred slowly and privately over of many years in a small community, geographically isolated from St. John's decision makers. The drawn-out burden of an unfamiliar and silent industrial killer - with rates of death spaced as latency periods varied from individual to individual - may not have been powerful enough to evoke the kind of political and social reactions that would have flooded them if

all miners somehow died suddenly in a single catastrophic accident.⁶⁸ Nothing has been found to support this, but it is interesting to consider how sudden disasters often receive dramatic and quick fixes (though this may simply be explained because cause and effect relationships are more evident in sudden events).

In retrospect, 1966 Smallwood's political dominance was unquestionable - he won 39 of 42 seats in the general election that year. But by 1968 there were mounting pressures on him to resign. Smallwood was, as in Neary's analysis, into the third phase of his premiership and his grip on power was slipping. For example, by the late 1960s organized labour across the island had regrouped and become more vocal against Smallwood in what was an "age of activism" and militancy.⁶⁹ Labour's concerns varied, but in part their dispute with Smallwood was an overdue reaction to his treatment of the labour movement during the 1959 IWA strike. Gillespie explains that the story of unionism in Newfoundland at this time, particularly as a factor leading to the downfall of Smallwood, is the story of the rise of public sector unions, the Fishermen's Union and women.⁷⁰ With respect to showing concern with or attempting to exert influence upon the workers' compensation system at that time, however, these unions were not a factor. In 1970, for example, workers' compensation coverage was not in place for independent fishermen and would not be a major concern for the fishermen's union for another 10 years. There was no specific entity or lobby group representing the interests of women in the workers' compensation system (interestingly, the system was still referred to as 'Workmen's' in 1970). Additionally, the public sector unions were less interested in

workmen's compensation issues because their employments were generally less risky and they generally suffered fewer reportable injuries. Furthermore, negotiated "top up" provisions in the collective agreements of public sector unions ensured no loss of income in the event of having to file a workmen's compensation claim (the employer agreed to "top up" the 75 percent of gross compensation benefit with a 25 percent supplement).⁷¹ Even though certain labour groups expressed their general concern and discontent,⁷¹ workers' compensation (and health and safety) policy continued to evolve slowly throughout the 1960s with only occasional legislative changes, including some beneficial St. Lawrence sections.⁷² But the changes were decidedly incremental with no fundamental systemic change.

By 1969 there is evidence that the Smallwood government was either avoiding important workers' compensation policy decisions, or reluctant or unable to carry them out. Smallwood's reaction to the St. Lawrence Royal Commission report is a clear example. The Royal Commission report was presented to government in July 1969 and it recommended sweeping changes to extend very broad coverage, including disability pension and death benefits, to the occupational disease victims and families of St. Lawrence.⁷³ There was, however, no immediate response from government. Coincidentally, by the summer of 1969 political pressure building against Smallwood was intensifying and the events of that summer and fall drove Smallwood into a fight for political survival. Not least among the threats was direct pressure from discontented young government members from within the Liberal party including John Crosbie and

Clyde Wells. In fact, in October 1969 Crosbie unsuccessfully challenged Smallwood in a hotly contested leadership convention. In retrospect Smallwood's decision to delay decision on the Royal Commission may have been highly political, perhaps because he would have preferred to avoid the difficult subject matter, or merely because it was not a priority, when he was otherwise fighting for political survival. Generally, it may be concluded this was not a period conducive to radical policy development.⁷⁴

In any event, government delayed the release of the St. Lawrence Royal Commission until March 1970. Arguably, the July 1969 to March 1970 delay was necessary to allow government to carefully formulate a response. But that argument is not convincing. Not only did the Smallwood government not implement the recommended legislative changes when the report was finally released in March 1970, Smallwood's only reaction was to appoint another (the provinces second) Statutory Review Committee. The St. Lawrence workers would have to endure another review process before any significant governmental policy decisions were made affecting their workers' compensation entitlement. Ultimately, it appears delayed response to the St. Lawrence Royal Commission recommendations was mainly for political reasons (if only indirectly due to Smallwood's preoccupation with defending the party leadership).

As for the 1970 Statutory Review Committee appointed by Smallwood, it was a three-man committee which promptly held four, low keyed public meetings in June and July 1970 in Grand Falls, Corner Brook, St. John's and St. Lawrence.⁷⁵ The Grand Falls and

Corner Brook hearings featured presentations from three unions from the paper mills while the St. John's sitting heard from the Newfoundland Branch of the Canadian Manufacturers Association only. Notably, a separate meeting was held in St. Lawrence where the Committee heard from a large and representative group and entered into a general discussion with respect to the predicament of the St. Lawrence miners. The St. Lawrence group was led by T. Alex Hickman, the local MHA. He presented a submission on behalf of the St. Lawrence Town Council and the St. Lawrence Worker's Protective Union. Ironically, Hickman had entered provincial politics in July 1966, just months after the 1966 Statutory Review Committee report was released, at Smallwood's request. Before entering politics Hickman served as a Bencher of the Law Society of Newfoundland from 1957 to 1966, and as Honorary Secretary of the society from 1958 to 1966. Previously Hickman was called to the Bar of Nova Scotia in 1947 and to the Bar of Newfoundland in 1948.⁷⁶ Under Smallwood he entered cabinet as Minister of Justice and Attorney General before being elected as the Liberal member for Burin district (encompassing St. Lawrence) in the September 1966 election. His responsibilities increased in 1968 when he took on the additional portfolio of Health. To the surprise of many Hickman emerged as a last minute leadership "compromise candidate" less than a month prior to the October 1969 Liberal leadership race which featured Smallwood and Crosbie as the front runners. By 1970 major political upheaval was at hand and factors destined to significantly influence the history of workers' compensation policy, particularly related to the St. Lawrence workers, were set in motion. In fact, prior to representing the St. Lawrence workers at the 1970 Statutory Review Committee hearings,

Hickman - like other dissatisfied Liberals, including Crosbie - had left Smallwood's Liberal Party to join the energized Conservative Party and its newly elected and dynamic leader, Frank D. Moores.⁷⁷

Smallwood's final political defeat began with the October 1971 election in which no clear winner emerged; Moores' Conservatives held 21 seats, the Smallwood Liberals' 20, and there was one independent member from Labrador. Stalemate resulted when neither the Conservatives nor Liberals could win over the independent member, but (as was his right) Smallwood refused to resign since no party was able to demonstrate it could hold a majority in the House of Assembly. Smallwood did resign, however, in January 1972 after the indecisive general election result was resolved when the Supreme Court confirmed political newcomer Ed Maynard as Conservative member in the disputed district of St. Barbe (Maynard would go on to play critical roles in workers' compensation policy development). A second general election was called in March 1972 and the Moores' Conservatives swept 33 of the 42 seats, conclusively ending Smallwood's 23 year regime. The Progressive Conservative's march to power was marked by significant disenchantment with the long-lived Smallwood administration, popularly captured in the Conservative party slogan *The Time Has Come*. Among the victorious Progressive Conservative candidates was none other than T. Alex Hickman as the member for Burin district. As when he entered the Smallwood cabinet in 1966, Hickman went on to become Minister of Justice and Attorney General following the 1972 election.

It was only after this political upheaval that the time arrived for very deliberate action

regarding the outstanding 1969 Royal Commission Report and 1970 Statutory Review Committee process. Early in July 1972, just months into the Moores' mandate, long overdue and highly favourable amendments regarding St. Lawrence workers were made to the Workmen's Compensation Act, as recommended by the Royal Commission.⁷⁸ The new clauses provided automatic presumptions of entitlement for former St. Lawrence mine workers covering a broad range of any and all respiratory ailments, including tuberculosis and disabilities arising from chronic obstructive pulmonary disease. This unilateral legislation eliminated the requirement for WCB adjudication processes, thereby providing swift relief from frustrations experienced by many. It is both historically interesting and revealing to note that the 1972 amendments were championed by Hickman. Generally, the July 1972 changes have been referred to as the "Hickman" amendments because he was the driving force behind the government effort to rectify matters as soon as they took power in March 1972.⁷⁹

Here is a unique example where individual interests and timing combine to contribute to significant policy change. Hickman was unable to bring about such dramatic change for his constituents when he held three powerful portfolios under the Smallwood government between 1966 and 1969, yet the change of government rendered quick action. While swiftly addressed in 1972, the amendments represented the culmination of incremental policy changes based on the weight of slowly accumulating deaths, studies, legislative changes, two Statutory Review, a Royal Commission, change of political regime, and, ultimately, irrefutable evidence that radiation was killing the miners. This policy

breakthrough may be best understood in terms of Kingdon's 'policy window' and 'policy entrepreneurs' concepts.⁸⁰ A policy window arises or opens up when new circumstances, such as accidents, disasters or change of Government, create the environment and platform for a change in policy direction. As with Hickman's opportunity, a policy window opened up "because of change in the political stream or ... because a new problem captures the attention of governmental officials and those close to them."⁸¹ While the policy window suggests timing plays an important role as a policy determinant when various influencing factors synergize to support desired policy outcomes, it is also pointed out that key political players - acting as policy entrepreneurs - take advantage of the environment to achieve their desired goals.⁸²

As for the Statutory Review report it was released at the end of July 1972 (after the amendments). In fact, the report actually commented on the new legislation passed earlier that month!⁸³ Of course, that report had very little to do with the decision to expand coverage for St. Lawrence workers. The Report merely repeated the well-known history. This was two years after the 1970 hearings making it the first and only Statutory Review Committee report to date to be ordered by one party in government but delivered by another. That distinction may have contributed to the fact that it was the least consequential in terms of follow-up action by a government of all the Statutory Review Committee reports from 1966 to date. The report contained very few specific recommendations and where substantive recommendations were made they were rejected or ignored.⁸⁴ For example, government rejected the recommendation that Canada Pension

Plan disability benefits (then a relatively new federal benefit)⁸⁵ should be offset from compensation entitlement. In fact, government and public opinion in that era of social activism was one of optimism with expectations for growth in social programming, not restrictions such as offsetting Canada Pension benefits. As it turned out, the growth and optimism regarding social programs in the 1960s and early 1970s was not a beginning, rather it was a climax in the history of Canada's social policy development (even though it was not recognized by most until the late 1970s and early 1980s).⁸⁶ The Committee report itself testifies to the general mindset or state of expectations: "... it would seem that social legislation, during the years which lie immediately ahead, may change so as to provide a more all-embracing coverage of social requirements. If so, it is doubtful that compensation law could remain unaffected by these changes."⁸⁷

The positive and overdue changes regarding St. Lawrence allowed the new Tory government to side step the actual Statutory Review Committee report of 1970 and to avoid negative criticisms for doing so (although considering the passage of time and political climate, it is unlikely that was a major concern). On the other hand, one can imagine that the fresh, new Moores' government would not have been eager to deal with such negative and potentially controversial issues such as offsetting Canada Pension Plan benefits from compensation benefits.⁸⁸ Indeed, timing the release of the Statutory Review report with the St. Lawrence amendments put a feather in government's hat, so to speak, and created momentum for the new government by being seen to act quickly on a well-known and troubling issue that the Smallwood Liberals had failed to adequately address.

Chapter Summary

In review, Confederation with Canada was a remarkable path divergent event for the Province as a whole. Having shifted national allegiances in 1949, it is not surprising that Newfoundland officially adopted the Canadian workers' compensation system in 1951, thus ending 64 years of British style employer liability laws. Viewed in simple terms, just as British law was emulated in 1887, the Canadian law was emulated in 1951. In fact, as the chapter demonstrates and this is a consistent future trait, Newfoundland would look to and often copy the practices of other Canadian Provinces. In other terms, it is critical to remember roles played by key players leading up to 1949. For example, given his position of power and long-held interest in the subject matter it is noteworthy that Smallwood's was an important contributory influence on the decision to adopt the Canadian system. It is also remarkable to recall the high degree of influence organized labour enjoyed on governments' workers' compensation policy at that time. One might even conclude that labour and the Smallwood government acted as 'policy entrepreneurs' to ensure their desired system outcome was put in place following the 1949 Confederation 'policy window'. This was an opportune time, especially when compared against the history from 1951 to 1972, during which time the fortunes of Smallwood (expressed broadly as political strength) and labour (expressed broadly as degree of influence upon government policy) would, respectively, rise and fall, and rise and fall and rise. And their relationship would turn from one of respect and tolerance (at least, if not a higher degree of mutual admiration) to hate from 1951-1959 and post-1959, respectively. Clearly labour lost a large degree of influence upon workers' compensation policy after

the 1950s.

Also, as discussed at the end of the last Chapter, new, powerful institutions emerged after 1951, particularly the new legislation itself and the new WCB. As seen, and as will be discussed in subsequent Chapters, these two new institutions play a highly influential role in shaping policy question and answers. Even though Smallwood characterized the system a purely rational and functional policy choice, i.e., “All the employer has to do with the Workmen's Compensation is pay the costs, and nothing else”, this will eventually be seen as wishful thinking.⁸⁹

Interestingly, the fortunes of the new WCB (expressed as degree of policy control and external respect) seemed to rise (1951-1959) and fall again after 1959 as well, as government introduced the Statutory Review audit process and as it faced criticism from labour secondary to St. Lawrence policies and a perceived lack of concern for occupational health and safety. This combination of interrelated factors and counterbalancing rising and falling of fortunes contributed to the fact that the 1951 - 1972 period is characterized by incremental policy development. Not to be overlooked as a basic reason why this period was marked by slow development is that, based on the public record (including two Statutory Review processes), there was little in the way of strong reaction against what was a still a relatively new, welcomed system. That seems to have been especially the case prior to the mid-1960s after which labour did become more vocal. It is difficult to measure the true degree of labour's dissatisfaction with workers'

compensation policies through the 1960s because of their disjointed relationship with government. By the end of the 1960s, a degree of path dependent increasing returns had become associated with the new system, including political power imbalances, ambiguities, and change-resistant institutions and processes.

Finally, it may be said that government policy inaction concerning workers' compensation, St. Lawrence, and occupational health and safety stirred certain segments of organized labour and political leadership. And, to some degree, the desire for influence upon workers' compensation and occupational health and safety policy played a contributory role in the rising up and general militancy of the labour movement against the Smallwood government. Ultimately, Smallwood's final defeat and the advent of the Conservative government in 1972 marked created a policy window for progressive policy change. More importantly, as an historic trigger, it led to a series of developments and events which would interconnect to create dramatic changes in the workers' compensation system over the course of the 1970s and 1980s. The next chapter covers these turns of fortune.

NOTES:

¹ Gillespie, *A Class Act*, 93.

² Noel, *Politics*, 280.

³ Smallwood's dedication to industrial diversification is well documented by Newfoundland economists and historians. For immediate authoritative source materials see "Economy Bibliography" at Newfoundland Heritage, available from www.heritage.nf.ca, a project by Memorial University of Newfoundland and the C.R.B. Foundation. Internet access.

⁴ Fogwill, "How Modern Workmen's Compensation Law Came To Newfoundland."

⁵ *The Workmen's Compensation Act*, Newfoundland Statutes, 1950.

⁶ "House of Assembly Proceedings," April 1950, 600. As a young officer in the Department of Labour through the 1950's, Blanchard recalls that following the introduction of the new workmen's compensation act the salient point emphasized by the man in the street was "We can't sue the employer anymore which is a good thing because we couldn't afford to sue them before ..." (Blanchard, interviewed by author).

⁷ Fogwill. "How Modern Workmen's Compensation Law Came To Newfoundland." Fogwill was Chairman of the special Workmen's Compensation Committee.

⁸ Ibid.

⁹ Due to poor legislative drafting, the actual coming into force of the 1950 Act was not as smooth as the government would have liked. One of the amendments (section 90) contained in the *Workmen's Compensation (Amendment) Act*, 1951 indicated that "This Act shall come into force on the first day of April 1951." The "This Act" referred to here, however, was narrowly interpreted as relating to the Amendment Act only, even though government had intended for *The Workmen's Compensation Act, 1950* (which previously had not been in effect) to come into effect at the same time as the 1951 Amendment. There were immediate concerns as government acted quickly to enact the second amendment to the Act less than two months later. The confusion was rectified when *An Act to Remove Doubts as to the Date of Coming into Force of the Workmen's Compensation Act, 1950 and (Amendment) Act*, 1951 was passed on May 11, 1951.

¹⁰ Gillespie, *A Class Act*, 93 - 95.

¹¹ Comments from government and opposition members in the 1958 and 1959 legislative sessions clearly indicate that the Board and its leadership were highly regarded. See "House of Assembly Proceedings," 1958, 35-55, and 1959, 548-551. Also, Blanchard interview by author confirm this was the case.

¹² In addition to Fogwill (Chairman), the original two Commissioners were John J. Maddigan and C.V. Hancock.

¹³ "House of Assembly Proceedings," 1958, 52. An incidental point concerning the hiring of Board staff is that into the 1960s, Chairman Fogwill consciously maintained a balanced number of Catholics and Protestants on staff. (As related by Max Bursey interview with author.) This has no bearing on compensation policy, but it is an interesting social comment reflecting the well-known significance of religion in Newfoundland society. Furthermore, it is also interesting to note that there is no evidence to show that workers' compensation policy in Newfoundland has ever been influenced by

religious issues or cleavages.

¹⁴ The successive amendments by year were:

1952. Workmen's Compensation (Amendment) Act. No. 64. 'An Act to Further Amend the Workmen's Compensation Act 1950'

1952. The Revised Statutes of Newfoundland, Chapter 253. 'An Act Relating to Compensation to Workmen for Injuries Suffered in the Course of Their Employment'

1953. Workmen's Compensation (Amendment) Act. No. 23. 'An Act to Further Amend the Workmen's Compensation Act 1950'

1954. Workmen's Compensation (Amendment) Act. No. 20. 'An Act Further to Amend the Workmen's Compensation Act'

1956. Workmen's Compensation (Amendment) Act. No. 14. 'An Act to Further Amend the Workmen's Compensation Act'

1958. Workmen's Compensation (Amendment) Act. No.3. 'An Act Further to Amend the Workmen's Compensation Act'

1959. Workmen's Compensation (Amendment) Act. No. 67. 'An Act Further to Amend the Workmen's Compensation Act'

¹⁵ Association of Workmen's Compensation Boards of Canada, "Minutes," Convention of the Association of Workmen's Compensation Boards of Canada, Saint John, New Brunswick (September 1952), 13.

¹⁶ Ibid., 13-14.

¹⁷ *WCB Annual Report 1952.*

¹⁸ Association of Workmen's Compensation Boards of Canada. "Minutes," 10-14. As early as 1952 the provinces of Alberta, Quebec and Prince Edward Island increased compensation levels similarly.

¹⁹ The 1958 vocational rehabilitation amendment limited total expenditures (for all injured workers) to \$25,000.00. This is interesting from an historic perspective given the eventual growth of these services, especially through the 1980's and 1990's. By 1990, the system would expend \$5.8 million in direct vocational rehabilitation services. See *Annual Report, Workers' Compensation Commission*, 1990, 1.

²⁰ Gillespie, *A Class Act*, 101-103. To corroborate Gillespie's findings, Blanchard also recalls discussions with unionists in the 1950s regarding the fact that they benefited from the actions of Canadian labour and didn't have to fight for the various labour reforms which were served up to them. (Ted Blanchard interview by author.)

²¹ Ibid.

²² Ibid., 105-118.

²³ Blanchard (former Deputy Minister of Labour and Minister of Labour) and Bill Parsons (former labour leader) both note that the relationship between labour and government did not began to thaw until the Conservatives, under the leadership of Premier F. D. Moores, took power in 1972. Interviews by author.

²⁴ Gillespie, *A Class Act*, 118.

²⁵ "House of Assembly Proceedings," 1950, 605 -606.

²⁶ *WCB Annual Report*, 1956, 7,

²⁷ It is clear that prior to the 1980s, the level of employer interest in the workmen's compensation system approached "zero". Their interest level finally increased in line with rising premiums. There is very consistent agreement on this point among those interviewed for this paper by author, including Vince Withers (Employers' Council), Bill Parsons (former labour leader), and John Peddle (former union leader).

²⁸ "House of Assembly Proceedings," 1958, 52.

²⁹ Ibid., 1950, 604-607.

³⁰ Ibid., 1959, 550. The reply from one of the honourable members of the opposition was "Boards, like governments."

³¹ *Workmen's Compensation (Amendment) Act. No. 67*, Assent July 6, 1959.

³² Judge A.J. Muir, "The Review Process Under the Saskatchewan Act. 1989," In *Meredith Memorial Lectures 1987-1991*, Association of Workers' Compensation Board's of Canada, 1996. This remains a particularly noteworthy amendment because to date Saskatchewan and Newfoundland are the only Canadian jurisdictions with this legislated evaluation mechanism. The mechanism remains in place in both provinces.

³³ *Commission of Inquiry Workmen's Compensation Act. Report of the Commissioner*, by Justice Charles W. Tysoe, Commissioner (Province of British Columbia, 1966), 15.

³⁴ Ibid., 16.

³⁵ "House of Assembly Proceedings," 1959, 548.

³⁶ Peter Neary, "Changing Government: the 1971-72 Newfoundland Example," in *Twentieth Century Newfoundland: Explorations*, ed. James Hiller and Peter Neary (St. John's: N.F. Breakwater 1994), 297-298.

³⁷ The successive amendments by year were:

1960. *Workmen's Compensation (Amendment) Act. No. 52. 'An Act Further to Amend the Workmen's Compensation Act'*

1961. *Workmen's Compensation (Amendment) Act. No. 47. 'An Act Further to Amend the Workmen's Compensation Act'*

1962. *Workmen's Compensation Act. No. 32. 'An Act to Consolidate the Law Relating to Compensation ...'*

1964. *Workmen's Compensation (Amendment) Act. No. 57. 'An Act to Amend the Workmen's Compensation Act 1962'*

1964. *Workmen's Compensation (Amendment) Act. No. 67. 'An Act to Amend the Workmen's Compensation Act 1962'*

1966. *Workmen's Compensation (Amendment) Act. No. 19. 'An Act Further to Amend the Workmen's Compensation Act 1962'*

³⁸ Blanchard interviewed by author. Served as Deputy Minister of Labour through the 1970s and 1980s, and as Minister of Labour in the Peckford government beginning in 1985.

³⁹ "The Workmen's Compensation Act Report of the Review Committee," 1966, 8. The 1966 Statutory Review Committee report was based on 15 written briefs from the following groups: six employers' groups or associations, including the Newfoundland Branch of the Canadian Manufacturers Association; six worker/union associations, including the Newfoundland Federation of Labour; the Law Society of Newfoundland; a

resident of St. Lawrence; and an individual doctor from St. Lawrence.

⁴⁰ A high water mark was achieved when the 1988 Statutory Review Committee held 26 public hearings involving 114 oral presentations. It also received 24 written submissions.

⁴¹ The successive amendments by year were:

1968. Workmen's Compensation (Amendment) Act. No. 24. 'An Act to Further Amend the Workmen's Compensation Act, 1962'

1969. Workmen's Compensation (Amendment) Act. No. 59. 'An Act Further to Amend the Workmen's Compensation Act 1962'

1970. The Revised Statutes of Newfoundland, Chapter 403, Workmen's Compensation Act.

⁴² *Commission of Inquiry*, Tysoe, 195-199. For example, Tysoe provides a detailed analysis of the long history, debate and amendments associated with waiting periods in British Columbia.

⁴³ *The Workmen's Compensation Act Report of the Review Committee* 1966, 19.

⁴⁴ *Workmen's Compensation (Amendment) Act. No. 58. 'An Act to Further Amend the Workmen's Compensation Act 1962.'*

⁴⁵ *Commission of Inquiry*, Tysoe, 6.

⁴⁶ *Ibid.*, 356.

⁴⁷ *Report of the Royal Commission in the Matter of the Workmen's Compensation Act*, by G.A. McGillvary, Commissioner (Toronto, Government of Ontario, 1967), 58-63. Generally known as the McGillvary Royal Commission.

⁴⁸ *Commission of Inquiry*, Tysoe, 363-367.

⁴⁹ Bursey (long-time WCC Executive interviewed by author) explains that the approach of the Commissioners toward workers was very paternalistic and, while workers were generally treated well, there were some subtle methods of claim closure and unique approaches to claim "settlements" which would not meet currently accepted standards of administrative justice and fairness.

⁵⁰ *Report of Royal Commission Respecting Radiation, Compensation & Safety at the Fluorspar Mines, St. Lawrence, Newfoundland*, by Fintan J. Aylward, Commissioner (Government of Newfoundland, July 1969.) The Commission was established April 5, 1967.

⁵¹ *Ibid.*, 17-20.

⁵² *Ibid.* 33.

⁵³ *Ibid.* 33-42. The reasons for the long delay are identified as slowness on the part of the provincial Department of Health to recognize the seriousness of the conditions and unwarranted bureaucratic responses from the federal Department of National Health and Welfare. In fact, the detailed study was finally requested by the provincial Department of Mines because it was determined to have confirmed the findings from its own recent studies which showed dust levels within safe limits.

⁵⁴ Blanchard interviewed by author. Served as Deputy Minister of Labour through the 1970s and 1980s, and as Minister of Labour in the Peckford government beginning in 1985.

⁵⁵ *Report of Royal Commission Respecting Radiation*, Aylward, 264-266 (see Conclusions

and Recommendations.)

⁵⁶ Elliot Leyton, *Dying Hard: The Ravages of Industrial Carnage* (Toronto: McClelland and Stewart, 1975). Leyton provides a vigorous social commentary regarding the St. Lawrence disaster. It speaks of strained relationships between these various groups, particularly the "fight" of workers and their families for adequate compensation.

⁵⁷ Harvey Checkoway, Neil Pearce, Douglas Crawford-Brown, *Research Methods in Occupational Epidemiology* (New York: Oxford University Press, 1989), 3-14.

⁵⁸ *Report of Royal Commission Respecting Radiation*, Aylward, 243-244.

⁵⁹ *Ibid.*, 256-257. The Commissioner found that Newfoundland's list of industrial diseases was essentially the same as all other Canadian provinces.

⁶⁰ *Workmen's Compensation (Amendment) Act. No. 52. 'An Act Further to Amend the Workmen's Compensation Act 1960.'* The amendment also created a committee of expert medical referees who would be independent from the WCB and able to provide an opinion regarding the etiology of individual industrial disease cases.

⁶¹ *Workmen's Compensation (Amendment) Act. No. 58. 'An Act to Further Amend the Workmen's Compensation Act 1962.'* Assent April 25, 1967.

⁶² *Report of Royal Commission Respecting Radiation*, Aylward, 22. The St. Lawrence Miners and Labourers' Protective Union first organized in 1939, but did not originally affiliate with the Newfoundland Federation of Labour. Instead it was represented by the Quebec-based Confederation of National Trade Unions through the 1950s and 1960s.

⁶³ Martin Saunders, former Steelworkers union leader, interviewed by author.

⁶⁴ *WCB Annual Reports, 1953-1974.* By 1972 there was a Director and two officers, and by 1974 a Director and five officers.

⁶⁵ Saunders, Dwyer and Parsons (former labour leaders) interviewed by author.

⁶⁶ Gillespie, *A Class Act*, 132-133. (Virtually all individuals interviewed for this paper confirmed as fact the Steelworkers role.)

⁶⁷ Parsons interviewed by author.

⁶⁸ The slow recognition brings to mind the April 9, 1914 letter in the *Evening Telegram* which commented on the burst of activity following a sudden sealing tragedy. The author wrote: "Another point which is lost sight of entirely in this community is when the loss of one seaman occurs ... In such cases no public meetings are called, and beyond a passing expression of regret that so-and-so has been cut off in his prime, etc. etc., no provision is made for his survivors, and the only reason, if it can be called a reason, is that he faced the grim reaper alone and was not accompanied in the sad journey by forty or fifty of his companions." Years later another sudden Newfoundland disaster, the sinking of the *Ocean Ranger*, would prove that legislative action occurs swiftly when major loss of life occurs quickly and dramatically, as opposed to slowly and less obviously.

⁶⁹ Gillespie, *A Class Act*, 121 and 133.

⁷⁰ *Ibid.*, 133. It was the beginning of a new and remarkable era of growth which would see provincial union membership rise to 77,026 by 1981.

⁷¹ The record shows, for example, that although the Federation of Labour did not participate in the 1970 Statutory Review process (boycott of Smallwood government process) the industrial paper worker unions did attend to voice concerns.

⁷² The successive amendments by year were:

1968. *Workmen's Compensation (Amendment) Act. No. 24. 'An Act to Further Amend the Workmen's Compensation Act 1962'*

1969. *Workmen's Compensation (Amendment) Act. No. 59. 'An Act Further to Amend the Workmen's Compensation Act, 1962'*

1970. *The Revised Statutes of Newfoundland, Chapter 403. Workmen's Compensation Act.*

⁷³ *Report of Royal Commission Respecting Radiation*, Aylward.

⁷⁴ Neary, "Changing Government: the 1971-72 Newfoundland Example," 297-320.

⁷⁵ "Report of The Review Committee Workmen's Compensation Newfoundland and Labrador," July, 1972, 1-3.

⁷⁶ Hickman would have been likely very aware of the Law Society presentation to the 1966 Review Committee and the subsequent amendment regarding rights of appeal. It is interesting to speculate whether or to what degree his involvement in the various St. Lawrence claims before the WCB, coupled with his legal training in Newfoundland prior to the introduction of the Canadian model, shaped his views of the WCB system.

⁷⁷ Hickman went on to play a critical role regarding St. Lawrence policy as Minister of Justice and Attorney General in the Moores' Conservative government. He was later named Chief Justice of Newfoundland Supreme Court (Trial Division) and in 1982 he Chaired the Canada-Newfoundland Royal Commission on the Ocean Ranger Marine Disaster.

⁷⁸ *Workmen's Compensation (Amendment) Act. No. 54. 'An Act to Further Amend the Workmen's Compensation Act, 1962'* 1971.

⁷⁹ Maynard, former MHA and WCB CEO, interviewed by author.

⁸⁰ J. W. Kingdon, *Agendas, Alternatives and Public Policies*, 2nd edition (New York: Longman. 1995.)

⁸¹ *Ibid.*, 203.

⁸² As seen in this and earlier chapters workers' compensation policy developments are often enabled by interested, well-placed politicians - such as Morris, Browne, Smallwood and Hickman - who take advantage of timing and circumstances to promote special policy issues.

⁸³ "Report of The Review Committee Workmen's Compensation Newfoundland and Labrador," July, 1972, 101-104.

⁸⁴ For example, nearly one fourth of the report (24 of 111 pages) are devoted to detailed analysis of the 1966-67 amendment which conferred the broad right of appeal to the Supreme Court, but government rejected the Committee's detailed argument that the provision be repealed. Interestingly the Law Society which had won the 1966-67 amendment by participating in the first statutory review process did not participate in the 1970 review process.

⁸⁵ Human Resources Development Canada, *Overview: Income Security Programs*, (Ottawa: 1994), 16. The Canada and Quebec Pension Plans were launched in 1965. The plan is "... a contributory, earnings-related social insurance program. It ensures a measure of protection to a contributor and his or her family against the loss of income due to

retirement, disability and death."

⁸⁶ Michael Mendelson, "Social Policy in Real Time," paper from Proceedings of Sixth Biennial Social Welfare Policy Conference, St. John's, June 1993, 9.

⁸⁷ "Report of The Review Committee Workmen's Compensation Newfoundland and Labrador," July, 1972, 7.

⁸⁸ The recommendations regarding Canada Pensions offsets and right of appeal were eventually adopted in the 1980s, so in that regard the 1970 Committee was actually ahead of its time.

⁸⁹ "House of Assembly Proceedings," 1950, 605-606.

Chapter 6

From Smallwood to Moores to Maynard (1972-1984)

This chapter outlines changes in the workers' compensation system in Newfoundland from 1972 to 1984 and considers the political, institutional, social, economic, and other factors which contributed to those changes. Of course, Smallwood's final defeat was a dramatic turning point in Newfoundland's political history, but with respect to workers' compensation policy it marked the unfolding of an environment which almost guaranteed change. At a governmental level, the new environment was mainly characterized by the commitment of the new Moores' government to improve organizational efficiency and productivity within the public service. The chapter will assess how associated institutional initiatives, such as a new cabinet committee system and departmental reorganizations, would eventually influence the workers' compensation system. These political developments must also be considered against a background of social change in Newfoundland marked by reinvigorated private sector and ideologically charged public sector unions determined to have their concerns known and acted on by government.

Through these years organized labour consistently pursued greater levels of influence, fairness and equity in the administration of the WCB, its programs and benefits. Based on the experience of St. Lawrence and lessons learned from other jurisdictions, Newfoundland unions were highly vocal about the need for an improved occupational health and safety regime (of which the WCB was a part) by the early 1970s. The unions

also strongly believed that workers' compensation benefit levels were too low; those concerns were amplified when combined with the hyperinflation of the 1970s - an external determinant beyond the scope of provincial control. Workers' compensation benefits were improved in the late 1970s and early 1980s, but that contributed to new considerations and dynamics, particularly those related to the question of system affordability. The cost of the system increased quickly and beginning in the early 1980s concerns were raised about the WCB's ability to fund all of its benefit commitments. In fact, the concern for financial stability becomes a dominant concern and policy determinant throughout the 1980s and 1990s.

In addition to these influencing factors, the chapter also considers the effects of various Statutory Review Committee processes and reports of this period. These are institutional milestones by which major policy choices can be marked. The degree to which these processes are merely vehicles which facilitate inevitable change or whether they themselves determine policy direction is assessed. Ultimately, for the first time since 1951 when the new Canadian model was put in place, the workers' compensation policy field in Newfoundland appeared primed for non-incremental systemic changes by the early 1980s. In fact, that change process was influenced to a remarkable degree by the tragic sinking of the Ocean Ranger oil rig and loss of 84 lives in February 1982. There is an assessment of how and why that catastrophic event created a policy window - see discussion at end of Chapter 5 - and was a turning point for the Newfoundland WCB. By 1984, dynamic change occurs including the passage of significant new workers'

compensation legislation and the appearance of new administrative processes. The magnitude of these fundamental institutional developments is such that they themselves would be, increasingly, change-producing mechanisms affecting future policy and policy making processes. The chapter concludes with an overall assessment of developments from 1972 to 1984 and sets the stage for the final chapters which will examine post-1984 developments.

Moore's Government: Institutional Change & Influence of Organized Labour

One of the more subtle factors influencing workers' compensation policy development in Newfoundland after 1972 was the drive for administrative modernization within government. It is critical to realize that before it won power the Moore's government promised to introduce better planning and a more open, businesslike approach to the administration of government.¹ Almost immediately after taking office in 1972, Moore's called for complete government reorganization in order to improve "administration and productivity."² With respect to administrative restructuring there was a complete overhaul of governmental decision making. As Channing points out, policy development took on a complete new look under the Moore's government.³ Specifically, cabinet decision-making processes were altered by the introduction of a powerful committee system through which the priorities and direction of the government would be more clearly focused and controlled. For example, all matters of a fiscal nature would be monitored through the Treasury Board committee (usually headed by the Minister of Finance) while the new Planning and Priorities committee (usually headed by the Premier) sorted and managed

the overall governmental agenda. The introduction of the centralized committee system, including the addition of seasoned bureaucratic officials to support it, meant that individual departments (the ministers and their officials) had more time to devote to the operation of their respective areas. It also resulted in a diffusion of power and authority so that the emergence of a dominant premier, such as Smallwood had been, would be less likely in the future.⁴

Blanchard cites the additional internal focus and capacity for analysis under the committee system as important factors which enabled the labour department to more closely examine matters associated with the WCB as they arose.⁵ With respect to the WCB, Blanchard (who by 1973 had been promoted to Deputy Minister of Labour) says there were many "glitches" through the 1950s and 1960s which the Ministers did not vigorously pursue. But that pattern gradually changed so that by the mid-1970s, and definitely by the 1980s, Ministers were more persistent in their requests for information about WCB decisions and operations. Also, when Ministers asked him to look into a workers' compensation matter as Deputy Minister he was generally reluctant to interfere and often recommended to Ministers that they not interfere on the grounds that historically the WCB operated independently with respect to decision making on individual cases. Furthermore, as a Deputy Minister he says he regarded the WCB Chairman as an equivalent colleague which would have lessened any inclination he might have had to dig into the system. As the Committee system evolved, however, bright, young mandarins (whose primary allegiance was to the role of their key central

committee, i.e., Treasury Board) appeared on the scene and they generally ensured much more follow up and examination of concerns as they arose. Overall this broad governmental initiative set in motion processes which would eventually facilitate change more readily as problems within the workers' compensation system came to the attention of government in a focused way, either through the Minister or directly to cabinet through one of its central committees. As it happened, the additional capacity for governmental analysis of WCB matters came at a time when complaints about the system were increasing.

For example, there is no doubt that early in its mandate the Moores' government was challenged by an invigorated labour movement that consistently articulated demands for improvements.⁶ Fortunately for labour, the Moores' administration was willing to listen. And, for a generation of new labour leaders who had come of age under the Smallwood regime after 1959, progress was realized for the first time under Moores.⁷ Without question, labour drove workers' compensation and occupational health and safety matters onto the government agenda in the early 1970s.⁸ Labour had regrouped effectively by 1972 and entered a remarkable period of growth which would eventually peak with provincial union membership of 77,026 by 1981.⁹

As for employer participation and influence in 1972, it was low to non-existent. Groups such as the St. John's Board of Trade and the Canadian Manufacturers Association occasionally represented employer interests but nothing of consequence was

accomplished. As if confirming the limited role of employers, the 1972 Review Committee report casually commented that since employers funded the system government might 'think about' consulting them prior to legislative amendments.¹⁰ By 1972 employers were no more interested, nor any better organized with respect to, their participation in the system than when Liddell visited in 1939. As Smallwood commented in 1950, employers were expected to pay the bills, nothing more. In this regard, the bill was low and predictable within a range of 1.29 percent and 1.64 percent of assessable payroll since 1953 (see Figure 4, p. 115, Chapter 5). As discussed in the conclusions of Chapter 4, the low cost of the system may help explain why employers remained silent for so many years; that positive experience promoted increasing returns for employers for whom systemic status quo remained in their interests.

As noted in Chapter Five, one of the first moves of the Moores' government when it took power in 1972 was to implement sweeping legislation to improve workers' compensation entitlement for St. Lawrence miners. That quick and decisive action served as notice that the new Progressive Conservative government was predisposed to serious treatment of workers' compensation and occupational health and safety policy. Another early sign that WCB issues would be taken seriously by Moores occurred when the basic concept of safety was identified as a WCB priority. Although the WCB had carried a mandate for safety and prevention since its inception in 1950, safety was not given a high profile by the WCB. When the original Act was approved in 1950, Minister Ballam highlighted the important powers given to the WCB regarding prevention and hoped "that the (WCB)

will devote a great deal of its attention to this vital subject."¹¹ Yet the safety concept grew very slowly. The Board hired a 'safety man' for three months in 1953 and developed only a modest division with a couple of safety officers involved in education and enforcement by the 1960s. In 1972, however, the Board gave safety a higher profile by creating a new Safety Director position in addition to the existing two officers.¹²

That a sea change had occurred in 1972 was also signaled by the immediate appointment of Ed Maynard as Minister of Labour in 1972. Born at Green Island Brook on the Great Northern Peninsula, Maynard was 33 years old with a diversified employment history - as a teacher, policeman, electronics technician, and union organizer - who offered a unique background for the labour position at that time. It is noteworthy to recall that Maynard was secretary of the Northern Regional Development Association in 1969 and secretary-treasurer of the Northern Fishermens' Union in 1970. The Northern Fishermen's Union was formed as a grassroots protest movement against unfair fish pricing and other negative practices of dominant fish buying companies. The action of this group contributed to the development of the large and powerful Newfoundland Fisherman, Food and Allied Workers Union (FFAW).¹³ Although Maynard only spent six months as Minister of Labour in 1972, the fact that Moores chose him for that post served as another sign that labour issues would be taken seriously.¹⁴ The appointment of Maynard, someone who had risen to a Cabinet position from the union ranks, was likely viewed as a victory of sorts for concerned labour representatives who, increasingly ignored by Smallwood and invigorated by the "age of activism", were convinced in 1972 that the

time for change had indeed come. It is noteworthy to mark Maynard's first entry into the governmental sphere of influence regarding workers' compensation policy because he would eventually be awarded leading governmental and WCB positions from which he would play significant roles in shaping policy development.

In fact, Maynard was moved back to into the labour portfolio in 1974. Due to governmental reorganization the name of the department had changed to Manpower and Industrial Relations; as a sign of further mandate assessment, the name of the department was changed again to Labour and Manpower in 1977. Meanwhile, in 1974 Maynard was told by Moores that labour relations and review of the occupational health and safety (OHS) system were his top priorities.¹⁵ That government sought more harmonious labour relations as a priority is not surprising given the nature of union activism and growth, and the immediate past relationship with government. In line with that, any action by government in the area of occupational safety would have served as a demonstration of goodwill. As part of a continuing commitment to improve in this area the resources of the WCB safety division were modestly increased after 1972 so that by 1974 three new safety officer positions were added bringing the complement to six officers (including the Director).¹⁶

There are several reasons why OHS would have been treated as a priority under Moores. There was the clear history of labour demands to improve health and safety laws, and their administration.¹⁷ In addition to local concerns and continuing fall-out from the St.

Lawrence experience, Maynard recalls being heavily influenced by a general trend throughout North America for more stringent rules regarding the observance of workplace safety. In 1970, for example, a powerful piece of federal legislation known as Occupational Safety and Health Act (OSHA) was introduced in the United States.¹⁸ Major regulatory changes were also occurring in other Canadian provinces such as Saskatchewan where, in 1972, all OHS services (enforcement and education) were consolidated in one division within the Department of Labour. Furthermore, OHS within the province was genuinely viewed as an administrative and policy area in need of improvement. In fact, Moores initiated a review of OH&S programs in 1973.¹⁹ By 1974, it was the general consensus that the administration of health and safety laws in the province was highly fragmented involving not only the WCB, but numerous other departments, such as mines and health, who carried distinct mandates for health and safety. The disjointed nature of these responsibilities alone made the matter of OHS a natural candidate for review under the Moores "administration and productivity" initiative.

While organized labour across the country and in this province were major influences, not all employers were in favour of increased government regulation and they lobbied against increasing regulations. Employers were not against safety per se, but they resented bureaucratic intervention by way of regulation. While many large employers were already evolving toward safety promotion and practices, many small to medium sized employers did not welcome government intervention. These various concerns were

made evident between 1974 and 1976 as government sponsored various public conferences and open-house discussions regarding these issues.²⁰ After a long process of study and consultation government finally consolidated the administration of OHS matters in 1978. As in Saskatchewan, government placed responsibility for all OHS matters within a division of the Department Labour and Manpower. This process culminated when the WCB safety division was transferred to the department on October 1, 1978, thus ending an era of WCB responsibilities for safety.²¹

The growing influence of the labour lobby and government's willingness to respond during the mid-1970s is aptly demonstrated by two workers' compensation legislative amendments in 1975.²² The first amendment was necessary because labour and employers, but mainly labour, were dissatisfied with the degree of responsiveness traditionally received from WCB executive; that level of responsiveness has been described as non-existent, secretive or (when given) poorly communicated.²³ Labour, for example, often met and raised concerns with the "political appointees" who comprised the WCB executive, but they were not satisfied with results and found it necessary to lobby government directly on substantive issues. In response, government amended the Act to create two new positions called Board Advisors, one representing the interests of workers and the other representing the interests of employers.²⁴ These part-time advisors would sit from time to time with the full-time WCB Commissioners (three "Board" members) to alert the WCB officials of the wants and concerns of their respective constituencies. The positions were expected to act as intermediaries between the two key

interest groups and the WCB with the general goal being to develop better lines of communication between the WCB and its main constituents. The amendment did not change the role or authority of the WCB or its executive in any way. The evidence strongly suggests that this amendment was intended to placate labour, in particular, who had the pronounced feeling that they were shut out from and were unable to provide meaningful input into the workmen's compensation system, especially through highly insulated WCB Board members.

In retrospect, the Board Advisor amendment did not satisfy labours' demand for effective representation. Even though the Board Advisor system was put in place in 1975, the record shows that there were continuing concerns with representation before the Board. In 1976, the lack of an "industrial voice" at the WCB, including labour (and employers), was noted again in an independent review of the WCB requested by Premier Moores.²⁵ Furthermore, there were recurrent external complaints about representation in 1977 when one of the labour unions called for the creation of a permanent, full-time labour Board member.²⁶ On review it is not surprising that the Board Advisor system was viewed as ineffective and not achieving the previously expected goal of better communications. In 1975, for example, the plan was for the full Board, including the two Advisors, to meet once every two months. In 1976 they met only four times and in 1977 they met only once.²⁷ The swift decrease in frequency of these meetings helps demonstrate the general proposition that the Board Advisor positions were ineffectual. In conclusion, while the unsuccessful 1975 Board Advisor amendment indicated government willingness to try

new consultative approaches, it was not prepared, or perhaps had no clear alternative, to fundamentally alter the governance model at that time.

The second amendment in 1975 was also beneficial for the interests of labour. It broadened the critical definition of "injury" to include *disablement* arising out of and in the course of employment.²⁸ The definition of injury under the Act is vitally important. It is the fundamental coverage determinant. An ailment or disease is covered under the Act if it meets the injury definition; if not, there is no coverage. The effect of the disablement amendment was to expand coverage to include injuries that occurred gradually over time, such as subtle musculoskeletal sprains and strains secondary to repetitive motions at work, as opposed to narrowly defined "accidents" caused by obvious, sudden and traumatic events. Prior to this amendment the WCB was limited to accepting obvious physical injuries arising out of narrowly defined "accidents" only, e.g., trips, falls, cuts, broken bones, etc.

This amendment was brought forward in Newfoundland at this particular time for several reasons. First, by the 1970s labour had successfully promoted a greater awareness of the causative relationship between various workplace activities and numerous injuries such as strains and sprains secondary repetitive or routine motions.²⁹ In light of this, the amendment must be viewed as a victory for labour. Second, there was government's willingness under Moores to embrace progressive policies which responded to the concerns of labour. Third, there was the emulation effect. Newfoundland was not alone in

this area because the very same type of amendment was introduced in other provinces years earlier, including Ontario as early as 1963.³⁰ Provincial policy was being influenced by developments elsewhere in Canada. The long-term significance of the expansion of coverage which grew out of this amendment cannot be understated. But its effect was insidious, not immediate, as new types of injuries were gradually accepted by the system (secondary to slowly changing adjudication practices) and as workers became more aware of the possibility that their aches and pains could be claimed as work related. This is important from a Newfoundland historical perspective because by 1991 the definition of injury and the general process of accepting a broad range and increased number of claims was questioned on the grounds of possibly being too liberal and a major systemic cost driver.³¹ (Chapter Seven) While the disablement provision broadened the scope of coverage, it did not provide benefits to workers already on the system or to those experiencing traditional injuries. The latent potential for creeping, wider coverage in the future was quite likely not appreciated by many, if any, at the time.

Labour Demands Fundamental Systemic Change

Despite the efforts of the Moores' government to provide legislative improvements there was growing general dissatisfaction with the system in Newfoundland. Superficial policy changes, like ineffective Board Advisors or perceived incremental coverage improvements like the disablement provision, were not enough to stop the unrest. While beneficial, those kinds of changes did not address the real concerns which were driving labours requests for better representation. The fundamental problems were more basic. In

short, by the mid-1970s the central problem was the adequacy of benefits being paid to injured workers. There were two important flaws with the benefit system: low benefit structure in an inflationary economy and a systemic inability to fairly compensate for long-term disability.

As regards the low benefit structures, in 1975 the compensation benefit for short term disability was 75 percent of pre-injury gross earnings. In addition, like the other Canadian jurisdictions which had traditionally done so, the Newfoundland Act placed a ceiling on the amount of earnings which could be compensated. In 1975, for example, the ceiling was \$9,000.00. In other words, the most an injured worker could receive (on an annual basis) was 75 percent of \$9,000.00, even if he or she regularly earned more than \$9,000.00. That was problematic for high-wage earners in industrial unions in Newfoundland, and it became especially pronounced as their real wages rose significantly through the 1970s.³² Private industry groups, like the Labrador Steelworkers for example, were significantly disadvantaged as their workers incurred large loss of income in the event of disability. Furthermore, that fundamental problem was severely aggravated when workers' compensation benefits did not keep pace with the rapid onset of hyperinflation in the 1970s.³³

The other basic problem with the benefit system was inability to fairly compensate for long-term disability. The disability benefit system in place since 1951 did not adequately compensate for permanent disability in many cases. Long term benefits were rigidly

structured based on a physical rating system which ignored the true financial effects of an injury, resulting in cases of over and under compensation.³⁴ For example, if an office worker and a carpenter making \$25,000 per year lost an arm they would both receive the same monthly benefit for life, even though the office worker could return to work with no loss of income but the carpenter could not with complete loss of income. There was general agreement that these kinds of inequitable results in individual cases was not acceptable.

By the late 1970s, organized labour in Newfoundland was leading the fight for improvements on behalf of all workers. Organized labour was very dissatisfied with the workers' compensation system generally, and, in particular, the system's inability to provide adequate compensation to permanently disabled workers for economic losses associated with their injuries. Consider the following retrospective analysis by the Federation of Labour:

From the late 1950s to the mid 1970s many jurisdictions tried to ameliorate the problem (of under compensating in the case of long-term disability) by paying supplements. These supplements would increase the amount of benefit to unemployed permanently disabled workers to the equivalent of 100 percent benefit while the worker is looking for work or on rehabilitation. It soon became apparent that these attempts did not remedy the situation. The supplements when paid were only temporary. By the mid 1970s pressure for change was growing very strong... Labour and injured workers were pressuring for improvements. We wanted more income coverage, i.e., 100 percent wages, better rehabilitation, and obligation on employers to hire disabled workers, and full compensation for those disabled workers who could not return to work. We wanted the right to appeal our claims to an independent tribunal.³⁵

These various issues were all cited as major concerns when another Statutory Review Committee was appointed in September 1976. After receiving 15 written briefs and hearing 16 oral presentations, the Committee responded with a list of 48 recommendations in its June 1977 Report.³⁶ Even though there were many complaints the Committee did not recommend any major systemic changes. The recommendations were all incremental in nature, but generally favoured the interests of labour. For example, it recommended increasing the compensation rate from 75 percent to 80 percent of gross for short-term disability and to 85 percent for long-term disability (although, ultimately, that recommendation was not followed by government).³⁷ And by way of terse statements the Review Committee registered strong objection to the notion of integrating Canada Pension benefits, as had been recommended by the 1972 Review Committee, on the grounds that integration with other social programs would "destroy the whole concept of Workmen's Compensation."³⁸ Of course, such integration would have led to decreased benefit levels from the WCB. On the other hand, the Committee rejected the plea from unions, particularly the higher than average wage earning Labrador Steelworkers, to eliminate the ceiling on compensable earnings. Perhaps recognizing the fact that major concerns being expressed about the system related to insufficient benefit levels rather than representation, the Committee found little merit in the suggestion that a permanent, full-time labour Board member should be appointed. Instead the Committee concluded that the status quo - full-time Board members and the two advisory members - was sufficient.³⁹ Maintenance of the Board system, to strengthen their independence as quasi-judicial decision makers, also meant that workers unhappy with WCB decisions would

not see a new system of appeals to an independent body, except to a Court on a question of law, or mixed law or fact.⁴⁰

The main outcome of the 1977 Review Committee recommendations, however, was government's decision to enact a series of changes in 1978, mostly minor, which increased and adjusted the scale of compensation.⁴¹ Notable among the 1978 improvements was the removal of the limitation on discretionary expenditures by the WCB for vocational rehabilitation which included efforts to return injured workers to the worker force or to retrain them. This amendment provided significant new benefits for injured workers. There was an immediate uptake in vocational rehabilitation services as total expenditures in this category grew steadily: \$74,779.00 in 1978; \$108,839.00 in 1979; \$178,099 in 1980; and, \$294,880 in 1981.⁴² In this regard the 1977 Statutory Review report is a milestone which marks entry into a period of liberalization in which there would be increasing demands on the system to provide higher, richer benefits and broader coverages. As if foreshadowing a move into new territory, government also changed the name of the program from Workmen's to Workers' Compensation in 1978.⁴³

Frank Moores resigned in 1979. He was replaced as Premier by Brian Peckford who won the Progressive Conservative party leadership in March 1979 and a general election in June 1979. Peckford is best remembered for personal devotion to resource policy throughout his tenure as premier. There is nothing to indicate that Peckford ever had a strong personal interest or background in workers' compensation policy. But, like Moores

in 1972, when Peckford's electoral mandate commenced in 1979, workers' compensation was a troubled policy whose administrative agency, i.e., the WCB, was increasingly under general attack. In retrospect, it seems logical to assume that Peckford would have wanted solutions or, at least, to find someone with an interest and experience to help guide government's management of workers' compensation policy.

Beginning of the Maynard Years

As it turned out Ed Maynard, who Peckford had appointed Industrial Development Minister in his first cabinet following the March 1979 Progressive Party leadership contest, lost his bid for re-election in June 1979. Actually Maynard had run unsuccessfully against Peckford for the leadership in March 1979, but (wisely, in retrospect) backed Peckford on the second ballot at the convention.⁴⁴

At the time of the June 1979 election, the 61 year old Chairman of the WCB, W.J. (Bill) May, was preparing for semi-retirement. Like Irving Fogwill, May was a former Newfoundland Railway worker and Federation of Labour activist who played an important role in the development of the WCB system beginning in 1949. Not only did he sit on Smallwood's Labour Advisory Board, he also acted as secretary to Fogwill's 1950 Workmen's Compensation Committee. May returned to the WCB system in 1975 after a distinguished career as a builder of the provincial vocational education system since 1953. Given that May's career was at a flexible stage, Peckford decided to appoint Maynard to the position of WCB Chairman in August 1979. A subtle, but significant

initiative was arranged as May was eased into retirement and Maynard was moved from his previous political role to Chairman of the WCB. In light of growing dissatisfaction with the system in Newfoundland, May was retained by government as a contractual consultant to study the various compensation systems across Canada. May was instructed to assess possible improvements for the system in order to meet the needs of the 1980s and beyond.⁴⁵ Therefore, while Peckford did not play a personal role in leading workers' compensation policy, by August 1979 he had put the leadership resources in place to do so.

Soon after the executive appointments the Peckford government adopted a pragmatic approach for responding to demands for benefit increases. In December 1979, the Act was amended giving the Lieutenant-Governor in Council the power to periodically increase benefits payable under the Act.⁴⁶ This meant that cabinet had direct control over various workers' compensation benefit increases without having to amend the Act in the House. This type of mechanism promoted, one might even say institutionalized, incremental policy development. In January 1980, the government used this mechanism to provide minor increases in the scale of compensation payable on a range of compensation benefits.⁴⁷

Meanwhile when Maynard arrived at the WCB in 1979 the system in Newfoundland was under pressure to expand its responsibilities from another angle. Led by the FFAW, independent inshore fishermen had been actively lobbying government and the WCB for

coverage under the Act since 1978. This certainly reflected Maynard's earlier career as an organizer for Northern Fishermen's Union. Up to 1979 the only fishermen covered under the Act were those employed on boats with crews of three or more. Numerous meetings took place involving government, WCB, fishermen's union, and fishing industry representatives regarding the possibility and mechanics of extending the requested coverage.⁴⁸ The negotiation process was limited to private meetings involving the interested parties only. From the WCB perspective, the effect of coverage sought was dramatic because it would insure the wages of 10,000 or more geographically dispersed seasonal workers with no readily identifiable employer. To ensure that coverage was provided equitably across the province it was decided that fish processors (fish buyers) would be given the responsibility for collecting premiums on fish sales by the independent fishermen. That was the same method used in British Columbia, the only other province to provide coverage to individual fishermen. While that workable solution was eventually hammered out in terms acceptable for government, union and the WCB, the fish processors were never satisfied with the arrangement which saw them fulfilling the extremely odd role of "employer" for completely independent workers. In fact, the proxy arrangement was established over the objections of the industry buyers which shows the dominant influence and determination of the union, as well the willingness of government and WCB to oblige union interests.

Ultimately, the negotiation process led to the extension of coverage for all inshore fishermen via the first amendment of the decade in May 1980.⁴⁹ The record very clearly

shows that Maynard was instrumental in bringing about this development. Not only did he initiate a strongly worded letter advocating a "final policy by Government" ... in this "most urgent matter" to his Minister (with a copy to the Premier) during his first month as WCB Chairman, he followed up with a November 1979 letter to the Minister/Premier explaining he had visited British Columbia to gain first hand knowledge of their system (which Newfoundland emulated with its 1980 decision).⁵⁰ This would not be Maynard's last significant contribution concerning the direction of workers' compensation policy development in Newfoundland.

Even though minor improvements had been granted, by 1980 there was deep discontent with the workers' compensation system in Newfoundland. The varied concerns which had been brewing through the 1970s continued to gather and fuelled a process of change that, for the first time since 1950, would lead to fundamental changes in the system. It is neither too strong nor inaccurate to say that the process of change launched in this era would be tumultuous and long-lasting; in fact, it is a process not yet complete. Not surprisingly, given that this was the Canadian system, the discontent registered in Newfoundland was common throughout the country at that time as well.⁵¹

In September 1980, government appointed another Statutory Review Committee. Given that the last Statutory Report had been released just three years prior (June 1977), the government was apparently eager to embark upon another large scale review of the system. Bill May, who spent the prior year examining alternative compensation

programs, was appointed Committee Chairman.⁵² In particular, May had closely studied the major developments in Saskatchewan arising out of the 1978 Statutory Review Report in that province. In 1979, Saskatchewan was the first province to introduce a significantly revised system for compensating worker in the event of permanent disability. Saskatchewan's so-called wage-loss system was not based on physical disability, instead it sought to gauge the effect of an injury on a worker's earning capacity and replace wages accordingly. In fact, the wage-loss system was not new, it was the original Meredith concept (Chapter Three) which had been abandoned fairly quickly because of administrative difficulties.⁵³ Maynard had also relied on a Saskatchewan model when establishing the Occupational Health and Safety changes in 1978. He says Saskatchewan was considered a leader in social policy because although its policies were always a little left of centre they managed to strike a balance; usually other provinces went too far one way or the other.⁵⁴

The May Committee received 24 presentations (21 oral and 3 written briefs) and conducted a series of interviews with WCB officials before rendering its final report. The Committee Report was released in December 1981 and recommended massive change to the compensation system based directly on the Saskatchewan wage-loss model.⁵⁵ Altogether the 1981 Committee Report offered up 67 recommendations with a bias toward program expansion and benefit enrichment. But without question the key recommendation - to adopt the wage-loss system - was significant and comprehensive in scope. Closely tied to the recommendation to move to a wage-loss system was

Committee advice to increase funding and staffing to allow for "more vigilant and intense" vocational rehabilitation programming. This was recommended because the opportunity for injured workers to maximize their earning potential following an injury is described as integral component of the wage-loss system. Notably, the Committee also recommended that the WCB must have the authority to deem workers capable of working in a particular occupation, particularly if they choose not to avail of the new and improved vocational rehabilitation services.⁵⁶ [The implications of this recommendation were dramatic. Annual vocational rehabilitation expenditures in 1981 were \$294,880.00; as will be shown in the next Chapter, by 1989 annual costs in this category skyrocketed to \$19.9 million.]

Like other Review Committees since 1966, the 1981 Committee also addressed the matter of integrating compensation with other social program benefits, primarily Canada Pension Plan disability benefits. It was noted that employers argued that the stacking of workers' compensation and other social insurance benefits caused workers to be in a better financial position while disabled than while working, resulting in disincentive for early return to work.⁵⁷ In other words, an individual could take home more money while disabled (from various social insurance program sources) than he or she could earn by working. The 1981 Review Committee framed an interesting argument in historical terms:

One commencing to judge the performance of Workers' Compensation in light of its co-existence with many social programs such as Unemployment Insurance, Canada Pension Plan, the Guaranteed Income

Supplement, Family Allowance, etc., cannot help but be struck by the fact that at its inception none of these other plans were in existence. The Canada Pension Plan for example has been with us since only 1966. One is compelled to ask have there been any corresponding changes in Workers' Compensation, if not there should have been, and if so have they been adequate and proper.⁵⁸

The Committee went on to point out that other provinces had not changed their workers' compensation legislation to prevent overcompensation which often resulted when various social insurance program benefits were payable to the same individual:

The fact that change did not take place in Workers' Compensation legislation over the years and the undoubted awareness of the possible need for it on the part of the various legislatures forces one to conclude that it cannot be abundantly clear that change is necessary and desirable... The Committee reiterates that these (other social) programs arose after Workers' Compensation ... Perhaps they can be forced to accommodate Compensation rather than the reverse.⁵⁹

It was probably naive to suggest that the various federal social programs might accommodate the nuances of twelve provincial and territorial workers' compensation programs. But the main point to be drawn from this is that the political will did not exist in 1981 to significantly reduce workers' compensation entitlements. The 1981 Committee did, however, recommend changing the basic compensation rate from 75 percent of gross earnings to 90 percent of net earnings to prevent some workers from receiving more income while disabled than while working (secondary to the nature of the progressive income tax system and the fact that workers' compensation benefits are non-taxable under Canadian law). In this matter the Review Committee merely copied the direction adopted or recommended elsewhere in Canada.⁶⁰ The Committee noted "this is a vexing issue

which most jurisdictions in Canada have faced and dealt with, are facing now or will be forced to face in the very near future."⁶¹ On yet another familiar matter (under review since before 1952) the Committee recommended total elimination of the waiting period which by 1981 was down to one day.⁶²

The Committee also recommended expansion of the Act by eliminating the numerical exclusion which stated that employers with three or less employees in covered industries were not automatically subject to the Act.⁶³ The effect would be that all employers and workers in covered industries would be covered automatically. On the other hand, the Committee did not recommend what is known as universal coverage, i.e., granting automatic coverage to all workers in all industries. The Committee felt the Act should only cover those industries with inherent risk of injury, thus excluding industries such as banks, law firms, insurance agencies, etc.⁶⁴ But, as it had done for independent fishermen a year previously, the Newfoundland government expanded the program during 1981 with amendments to extend coverage to two additional groups, namely workers involved in work training programs and volunteer firemen.⁶⁵

Seminal Institutional Recommendations (1981 Statutory Review Committee)

The 1981 Statutory Review Committee made two other far-reaching, seminal recommendations. First, the Committee called for an independent external appeal system, other than the Courts,⁶⁶ to review WCB decisions. The recommendation was modeled directly on the expert medical and independent external appeal mechanisms in place in

British Columbia.⁶⁷ The British Columbia model appeared to address two common complaints heard about insular WCB decision making: that the WCB decision makers lacked medical expertise in matters they decided and, in any event, the WCB was answerable to nobody. This was the first time in Newfoundland such a recommendation had been seriously entertained; its appearance in 1981 signaled the arrival of a new era in which the WCB would be subject to greater scrutiny and in which injured workers and employers would eventually have more opportunities to test the merits of WCB decisions. While the pleas for such an independent system of review had been in the air for many years this was the first official articulation for such a policy. None of the WCB annual reports from 1951 to 1983, for example, even mention the word "appeal" let alone external appeal.⁶⁸ While the Newfoundland government did not act on this recommendation immediately, it was an idea that would persist and eventually become a reality.

The second recommendation relates to system governance. The 1981 Committee Report advocated greater autonomy and control of policy development for the WCB. In other words, that government should rely to a much greater degree on the advice and direction supplied by WCB administrators. Among the reasons cited for this recommendation were the distinct nature and mandate of WCB operations compared to government departments and agencies, and the growing level of sophistication and complexity within the system.⁶⁹ The Committee recommended maintaining the three government-appointed Commissioners as overseers of the system and giving them greater control over policy

development. This was an endorsement of the governance status quo with one major difference. The difference was that it also endorsed the concept of greater autonomy for the WCB, a concept that would be operationalized by 1982 giving the WCB more influence over policy direction than ever before. Precisely how and why this matter was operationalized is explored in greater detail later in this Chapter.

In addition to the Statutory Review Committee recommendations, another critical development occurred in 1980-1981 that cannot be overlooked. For the first time since 1951 when Joey Smallwood told employers that their only involvement in the system would be to simply pay their premiums, the matter of system financing was put under a microscope and the findings were troubling. The record shows that the WCB was becoming concerned that the amounts being shown for future liabilities did not reflect the actual liabilities incurred to that point. Even though the annual reports between 1975 and 1980 indicated there were enough funds to cover all future liabilities - the reports actually showed a surplus - actuarial review indicated that the WCB liabilities were seriously underestimated.⁷⁰ It was shown that this underestimation would not have occurred if the WCB had used a proper actuarial formula since 1975.⁷¹

Moreover, because of the illusory surplus in its annual reports the WCB actually decreased the average assessment rates paid by employers by 17 percent between 1975 and 1980. As a consequence of these findings the WCB increased the average assessment rates charged to employers by 20 percent for the year 1981. This signaled the arrival of a

new and powerful factor which would eventually become the major policy determinant; namely, system affordability.

There was one immediate effect caused by the realization that rates had been erroneously reduced and now, unexpectedly, increased by 20 percent - employers woke up. For the first time since 1951 employers were shaken by unexpected cost increases in their workers' compensation premiums. Employers were accustomed to stable rates since 1952 and even experienced declining rates in 1979 and 1980. That, more than anything, explains why employers were simply not tuned into workers' compensation prior to 1981.⁷²

Figure 3
Average Assessment Rates 1972-1981
Per \$100 of payroll
Source: Successive WCB Annual Reports



In addition to increasing premiums, employers also sensed significant legislative changes were occurring, largely if not exclusively favouring workers, but that no person or group was effectively representing the interests of employers. As a result, the Employers' Labour Relations Council, an offshoot of the St. John's Board of Trade, was formed in 1981. The name of this organization was later shortened to Employers' Council to reflect a broader role of representing employers before government on a variety of matters. The Employers' Council, a small organization but one with full-time, professional staff, was promoted by the larger employers because they knew that although they could effectively manage their workers' compensation and labour relations issues, many small to medium sized employers did not have the resources or interest to do so and would require education and assistance if system wide, i.e., province wide, cost management and control was to be achieved. Generally, coming out of the 1970s in Newfoundland there was a significant across-the-board requirement for education and training among employers (and unions) on all issues governing workplace relationships.⁷³ That recognition led to training and awareness which would breed greater policy learning and, eventually, countervailing demands on the workers' compensation system.

In 1981 employers realized that, to their credit, the labour movement had achieved various legislative victories through organized and persistent lobby over a period of years. And, that employers were highly unorganized and underrepresented when it came to labour relations matters generally and workers' compensation in particular. Although employer organizations such as the St. John's Board of Trade rallied to represent

employers interests before government from time to time they were generally more preoccupied with larger scale matters such as trade and economic development and did not have the time or expertise to adequately deal with matters such as labour relations, labour standards, occupational health and safety, and workers' compensation.⁷⁴ Given rising workers' compensation costs beginning in 1981, the Employers' Council quickly assumed a leading role in representing employer interests on workers' compensation matters before government and the WCB.⁷⁵

One of the Employers' Council pivotal roles was to make government aware of the fact that employers were not pleased with the increasing premiums and to point out what it considered other red flags such as expanding programs and growing future liabilities.⁷⁶ Critically, the collective liability system from which an employer's workers' compensation premium was based could prevent employers with good claims experience, i.e., low injuries/low costs, from getting a lower rate if other employers in their category had bad records. In terms of active employer involvement and advocacy in the workers' compensation system, the creation of the Employers' Council is the first real sign of progress since the 1939 Liddell study.

There is no doubt that significant legislative and institutional changes associated with the Statutory Review Committee report, and the emergence of new interest group dynamics driven by key factors such as system affordability, marks 1981 as a turning point for the Newfoundland system. After years of incremental policy development the 1981 Statutory

Review Committee Report set the stage for a dramatic shift in program policy. For labour and injured workers this represented a major victory after many years of advocacy for substantial improvements. For Peckford's Progressive Conservative government and individuals such as Maynard and May, the environment leading up to 1981 may have represented a window of opportunity for the continuation and further implementation of policy direction begun in 1972. At very least, they would have viewed developments as an opportune time for the culmination of their efforts since 1979. On the other hand, increased premiums in 1981 were a cold, unwelcomed shower for employers. For the first time ever employers organized a professional lobby group - the Employers' Council - once they realized that a threatening policy environment was evolving. Finally, the WCB entered the decade on a cautious tone with a growing sensitivity toward the issue of system costs and sustainability.

Ocean Ranger Disaster and its Implications for Change

But, before the 1981 Statutory Review Committee recommendations could be acted upon the *Ocean Ranger* oil rig sank off the coast of Newfoundland on February 14, 1982 claiming 84 lives.⁷⁷ The fallout from the disaster had significant implications for the workers' compensation system and the WCB; this is a remarkable example of catastrophic events acting as policy determinant. Immediate reactions to the sinking of the *Ocean Ranger* were varied and intense.⁷⁸ Notably, within two days separate federal and provincial Royal Commissions were announced⁷⁹ and a provincial Day of Mourning was proclaimed for February 19, 1982.⁸⁰ In addition, questions of corporate culpability

arose very quickly as numerous stories emerged concerning safety practices aboard the rig. Among the article titles in the February 16, 1982 edition of the St. John's Evening Telegram are "Safety procedures on rig criticized", "Rig was nicknamed the *Ocean Danger*", "Rig inspection was two months overdue", and "Mobil claims safety procedures aboard drill rig were adequate."⁸¹ Eventually it would be learned that the disaster could have been easily prevented if the senior ballast control room operator and his staff had been properly trained.⁸²

It was in the midst of this atmosphere that the Hon. Gerald R. Ottenheimer, Minister of Justice and Attorney General for the province, issued a public statement to the surviving family members on February 17, 1982. Ottenheimer suggested that the families ought to retain Newfoundland lawyers to ensure best possible legal outcomes against parties who may approach them to waive or settle claims. The families were advised that their right to financial protection lay against the employer(s) for the loss of their loved ones. In essence, they were being advised to sue the employers. The Justice Minister's advisory caught the WCB off guard; it had not been consulted prior to the announcement. In fact, the Justice Minister's statement lacked critical information concerning the legal rights of the survivors (to the point of being wrong and misleading) and it was clear that this was something the Justice Department officials did not realize.⁸³ To clarify matters the WCB issued a press release which was carried in the February 19, 1982 edition of the Evening Telegram under the following banner: Compensation Board says Employers Can't be Sued in *Ocean Ranger* Disaster. The article went on to say, correctly, that the *Workers'*

Compensation Act prevents a worker or his or her dependants from taking legal action against an employer covered by the Act, i.e., the Act prevents them from suing an employer, but may allow an action against third parties not covered by the Act such as an out-of-Province rig manufacturer. It also suggested that it was ironic to consider these implications in light of the previous advisory supplied by the Minister of Justice.

The immensity of loss forced the entire weight of the Newfoundland government and legal community through an exhaustive and focused review of the implications of the workers' compensation act. Two particular items were at issue. First, there was the fact that at the time of the sinking, in the event there may be a right of action against a third party not covered by the Act, the workers' compensation act required injured workers or (as in this case) their dependants to either claim compensation from the WCB or opt to sue the third party not covered by the Act – but they were not allowed to do both. Second, there were questions regarding the adequacy and structure of dependency benefits. To summarize events as they unfolded, less than six months after the calamity two major legislative initiatives were ushered through the House of Assembly in the form of statutory and regulatory change.⁸⁴ At once government changed the Act to allow dependants the right to claim compensation and bring a court action against third parties not covered by the Act, and it improved the scale and structure of dependency benefits. Furthermore, these changes were given retroactive effect from January 1, 1982 to give the families of the Ocean Ranger victims more and improved choices and stability in their bid for maximum compensation.

Several observations arise out of the Ocean Ranger tragedy. From a public policy perspective it shows the effects of catastrophic events as a policy determinant. There is no doubting that the motivation of government with respect to the Ocean Ranger amendments was to improve benefits for the families, but the gripping nature of the accident made it even more pressing. In terms of impetus, it must be noted that the local legal community played a large role in advocating the sweeping changes on behalf of the dependants.⁸⁵ Politically, the provincial government had nothing (or little) to lose by changing the right to sue provisions because the negative effects of any successful legal actions would be felt by employers or manufacturers from outside of Newfoundland who would not have been immune from legal action. Although the scale and structure of workers' compensation benefits had been problematic through the 1970s and into the 1980s, politicians quickly intervened in the face of a crisis. Like the Marine Disaster funds established in the early 1900s (Chapter 2), however, government response followed catastrophe or disaster. It must be recalled, however, that the December 1981 Statutory Review Committee Report had actually recommended improvements in the scale and structure of dependency benefits; major portions of those recommendations were included in the July 1982 amendment.⁸⁶ The fortuitous timing of the December 1981 recommendations aside, the fact remains that a benefit of the Statutory Review Committee process is that it may act as a vehicle for keeping the Act current. One imagines that the WCB administrators were thankful during the aftermath of the tragedy that a recent study and solid recommendations were available.

Finally, the Minister's *faux pas* regarding the intricacies of workers' compensation legislation, and his failure to consult with the WCB before issuing his public statement on February 17, 1982, were not mere oversights at a time of crisis. It was simple ignorance regarding the significant ramifications of the workers' compensation act. Maynard, WCB Chairman at the time, recalls immediately contacting the Minister of Justice who quickly acknowledged the miscommunication.⁸⁷ Maynard also suggests that the failure of a government department to consult with the WCB at that time was not surprising because during the 1970s and early 1980s, it was an agency that simply did "not get noticed much" by government officials. Maynard suggests (and there is no reason to discount his views in this regard) that when he arrived at the WCB in 1979 it was a stagnant organization that had not changed very much since 1951. The WCB opinion would not have been highly regarded or its involvement seen as a necessary prelude to action by government officials.⁸⁸ In the aftermath of the sinking, however, a close working relationship was quickly established between the Department of Justice and the WCB as the various amendments went through the Cabinet system.

During this process the very significant legal implications which flowed from the Workers' Compensation Act were recognized by many politicians and government officials for the first time causing the profile of WCB and its issues to be raised in government circles. This episode likely reinforced the call of the 1981 Review Committee to increase the level of WCB autonomy. Of course, another explanation for the improved communication and greater awareness was the fact that Maynard, as a

former Minister and colleague of the current government members, had a natural affiliation with, and understanding of, the current government. As a result of the greater levels of awareness and respect toward the WCB and its issues it became easier to have key government officials, departments and committees consider WCB-generated submissions and papers. From the perspective of gaining intergovernmental credibility, Maynard says the Ocean Ranger was a "turning point" for the WCB.⁸⁹

In fact, the WCB had been improving its internal operations and management capabilities beginning with an organizational overhaul in 1981.⁹⁰ It quickly followed up on the December 1981 Review Committee report with a very comprehensive response to government concerning the various recommendations dated February 16, 1982.⁹¹ Fortunately for the WCB it had undertaken its analysis before the sinking of the Ocean Ranger; presumably, it might have been difficult to provide such a focused review in the wake of the tragedy. The WCB response was decisive, offering its agreement on the majority of recommendations put forward by the Committee, but forcefully and persuasively disagreeing on several key points. For example, the WCB strongly disagreed with the 1981 Review Committee call for an independent external appeal system. Instead, the WCB proposed a less elaborate internal review system culminating in a review by the appointed Board members.⁹²

The WCB bolstered its argument for a scaled-down appeal system through reference to one of the cornerstones of the Canadian workers' compensation system which is that the

administration of the system is placed in the hands of a quasi-judicial administrative agency known as the WCB. The WCB reminded Government that an underlying objective of the system was to achieve speedy, informal decision making and to reduce complicated court-like processes. The WCB scrutinized the local environment and concluded that there had not been a high demand for formalized review procedures in the province, as there had been over many years in British Columbia and some other provinces. It was strongly agreed, however, that the existing informal approach to internal reviews had to be formalized. WCB agreement on the general point that change was necessary was most likely based on the apparent dissatisfaction of the major interest groups, mainly labour, with the lack of appeal mechanisms and a general appreciation of changing public expectations. As a matter of fact, the WCB recommendation regarding a modified appeal system was mirrored in the Federation of Labour's response to the Statutory Review Committee which report was filed in May 1982.⁹³ While the Federation agreed that an appeal system was necessary it did not support adoption of the elaborate British Columbia model because there was no accountability to the Board.⁹⁴ That is an intriguing opinion which suggests they felt the WCB played an important governance role which should not be jeopardized by a rogue external tribunal. In fact, the Federation of Labour confirmed its general support for the continuation of the WCB system involving government-appointed Commissioners. Noting that "for many years these appointments have been political in nature rather than any other" and that such practice would likely continue, the only concession sought by the Federation was that one of the Commissioners should be a "worker" representative.⁹⁵

Related to the proposed internal appeal system, the WCB also recommended changing the name of the organization to Workers' Compensation Commission (WCC) in its February 1982 response to government. The purpose was to eliminate confusion between the corporate Board and general operations. The corporate Board, i.e., the three government-appointed Commissioners, would act as final decision and policy makers under the proposed new internal appeal process. That recommendation was accepted by government with the WCC name taking effect in 1983.

Throughout 1982 it was demonstrated that WCC credibility with government was on the increase. The best example of this is the WCB recommendation to government that the *Workers' Compensation Act* should be rewritten (it had not been rewritten since 1951). The WCB proposed this major action in its February 1982 response to the 1981 Review Committee report, even though that matter was not mentioned as a concern or recommendation by the Review Committee.⁹⁶ Government not only agreed that the Act would be rewritten, it further agreed that the WCB would have prime responsibility for the rewrite. This was a highly unusual approach because the primary responsibility for drafting new legislation was normally assumed by the Office of the Legislative Counsel with assistance from the WCB (or other sponsoring departments). Noting the aberrance, the Clerk of the Executive Council provided the assistance of a legal draftsman to the WCB in August 1982 as it undertook to rewrite the Act.⁹⁷

Based on its newfound credibility, the WCB influenced other key decisions beginning in

1982. For example, the WCB disagreed with the 1981 Review Committee recommendation that there should be a ceiling on the amount of earnings which could be compensated and that the ceiling should be set at 150 percent of the Industrial Composite Wage for the province. In their response to government the WCB countered that there should be no earnings ceiling whatsoever, so that all injured workers would receive an equitable compensation rate based on their actual gross income.⁹⁸ In 1982 the ceiling was \$21,000.00. Primarily as a result of the WCB intervention, government agreed on a compromise solution: the ceiling was established at 250 percent of the Industrial Composite Wage. The 250 percent ceiling satisfied the WCB argument which suggested that if there had to be a ceiling it should be high enough to cover workers in the higher paid industrial jobs within the province. When the new ceiling took effect, as of January 1, 1983, it was \$45,500.00.⁹⁹ At the time, and for many years thereafter, \$45,500.00 was the highest ceiling in Canada. Aside from the fact that some injured workers would benefit by receiving higher compensation rates, more reflective of their pre-injury income, an immediate effect was to expand the payroll base on which the employers' assessment rate, or premium, would be based. Instead of paying assessments on all salaries and wages up to \$21,000.00, employers now had to pay assessments on wages paid up to \$45,500.00. Furthermore, announced as it was in December 1982, that decision coincided with yet another WCB increase in the average assessment rate charged to employers.

These were very unpopular developments as far as employers were concerned. In a

belated September 1983 brief to the Minister of Labour and Manpower regarding the 1981 Statutory Review Committee recommendations, the Employers' Council stated: "In late December 1982, the WCB announced several increases in premium rates as well as an increase in the maximum (insurable earnings to \$45,500.00) ... Reaction from employers was predictable. The (Employers' Council) has received more communications from employers on the WCB matter than all others combined in 1983."¹⁰⁰ The predictable reaction spoken of here, of course, was strong and firm disapproval. The employer group asked government to reconsider the decision to increase the ceiling to \$45,500.00 in order to keep it more in line with other provinces. The brief went on to state the WCB should be made more accountable to employers from whom the Board's funds were derived. And in response to the recommendation that the WCB should become more autonomous, the employers strongly disagreed suggesting that responsibility for "major items required by the Act should remain with government or to a certain extent be shifted to employers."¹⁰¹ In this regard, the employer group felt that the system of appointing Board members should be re-examined to give employers more formal representation. The Employers' Council did not support the existing Board Advisor system and urged government to consider the concept of a Board of Directors for the WCB made up of employers who would not be "employees" of the WCB. This report also advocated such matters as integration of workers' compensation and Canada Pension Plan disability benefits and retaining the one-day waiting period because it would add to WCC costs.¹⁰² On the main proposal - the shift to a wage-loss system - the employer group strongly urged its acceptance and implementation.¹⁰³ The theory was that more equitable long-term benefits

could be supplied to seriously injured workers and that the system would be affordable because effective vocational rehabilitation programming would allow most injured workers to return to the workforce in some capacity. In effect this was perceived as a possible win-win scenario for workers and employers.

While employers rallied against the expansion of the program and benefits in September 1983, the Federation of Labour had already quietly accepted the generally favourable recommendations from the 1981 Review Committee in its May 1982 response to government. The Federation generally believed that application of the Act should apply to as many workers as possible and it basically supported the move to the wage-loss system. The Federation did, however, question the Committee statement that the WCB must have the authority to deem workers capable of working in a particular occupation. It worried that the WCB would become "lord and master" making decisions regarding injured workers' ability to return to work which they thought may be better made by the worker's treating physician.¹⁰⁴ From a philosophical perspective the Federation also disagreed that the recommendation to change the compensation rate from 75 percent of gross to 90 percent of net was an important development. It felt that even if an injured worker was receiving more income while disabled than while working there is nothing to prove that this represents a disincentive to return to work.¹⁰⁵

Finally, the next major legislative event following the Ocean Ranger amendments of July 1982, occurred in late 1983 with the passage of the new wage-loss Act as proposed by the

1981 Statutory Review Committee. The new Act came into effect on January 1, 1984.¹⁰⁶ As noted in its 1983 annual report, this was the culmination of three years of work and study for the WCC: "Practically all the work in compiling the new Act was done by officials of the Board with the expert guidance and assistance of a senior draftsman from the provincial legislative drafting office." The WCC also proudly noted that the Act gave the province "... a system of Workers' Compensation that undoubtedly compares favourably with that which can be found in any other jurisdiction in the world."¹⁰⁷ Adoption of the Saskatchewan style wage-loss system was a major shift in compensation policy for Newfoundland. The primary change related to the way compensation entitlement would be calculated. Under the old system the amount of compensation an injured worker received for long term disability was based on the estimated degree of physical disability as measured against a pre-established medical disability schedule (unaffectionately referred to as the "meat chart" by some). Outcomes were often highly inequitable; generally, more than adequate compensation for workers able to return to gainful employment, and less than adequate compensation for workers unable to return to gainful employment. Striking inequities occurred when dramatically different return-to-work outcomes resulted for workers with identical injuries, thus identical disability ratings and long term compensation. For example, a labourer with a 20 percent disability rating for a back injury is unable to return to productive employment, whereas an office worker with the same injury and 20 percent rating returns to full employment with no loss of earning capacity. Of course, it was inequitable when the 20 percent pension did not come close to replacing the loss of earnings for the labourer over a lifetime, whereas

the office worker received the same 20 percent pension and continued earning at work. In short, the new system was designed to estimate and replace the actual wage-loss of injured workers to age 65. Furthermore, it provided an annuity benefit after age 65 to cover pension income which may have been lost because of the injury.¹⁰⁸

Not only were the various other program and benefit improvements recommended by the 1981 Review Committee adopted, the WCC had even convinced government to accept the principle of universal coverage. This universal coverage idea had been rejected by the Review Committee, strongly objected to by the Employers' Council, and given only lukewarm support from the Federation of Labour who would have been happy if the idea were seriously considered five years later in the next statutory review process.¹⁰⁹ As a result of the WCC lobby for universal endorsement, effective January 1, 1984, the new Act not only extended coverage for employers with one or more employees, it did so for all industries outside of a few minor industries specifically excluded by regulation. As a result, in 1984 "approximately 4,000 new employer registrations were processed" by the WCC.¹¹⁰ In 1984, as will be shown in the next chapter, the system grew richer and larger.

Chapter Summary

In summary, the train of events from 1972 indicates a certain inevitable march toward program and benefit growth within the context and framework of the Canadian-style Act and administrative framework established, and largely unchanged, since 1951. The Smallwood-Moores transition created a policy window of opportunity through which

labour concerns were given remarkable attention beginning with major overhaul of the occupational health and safety regime followed by a series of planned and unexpected processes and events which led to implementation of the 1984 Act. These changes were certainly driven by the direct complaints of labour covering such factors as the need for higher benefits in the face of inflation and for more responsiveness from the WCB itself. But it is also important to note that workers' compensation system was influenced by institutional factors beginning in 1972 which was marked by Moores' broad policy objectives related to governmental organization and effectiveness. Perhaps Ed Maynard's evolution from Minister in the Moore's government to trail-blazing Chairman of the WCB under Peckford is the best example of how those policy objectives eventually influenced the WCB system. Under his tenure as Chairman from 1979 to 1984 the central bureaucratic organization went from the obscure WCB to the empowered WCC, providing governmental-like leadership and proximate decision making regarding the development of 1984 changes. The approach during these years was well-orchestrated and it is worth noting that for the first time since the process was used in 1966, the Statutory Review Committee headed by Bill May was deliberately used to solve large-scale systemic problems. That may be contrasted to the first three Review Committees (1966, 1972, and 1977) which merely set out as routine sounding boards to assess the state of current opinion. Rather than acting as a remote conduit through which a variety of issues were channeled for eventual governmental rumination and possible decision, May's Committee acted more directly as a deliberate vehicle of policy determination related to the core aspects of the system.

The significance of the 1981 Statutory Review Committee recommendations - which were largely implemented by 1984 - are revealing. The recommendations for dramatic change resulted from years of complaint about system performance and specific dissatisfaction with the equity of benefits being paid for long-term disability. The successful advocacy of organized labour through the 1970s, by effectively impressing their concerns upon government, must be considered a major policy determinant with important downstream outcomes: a series of legislative amendments and modest benefit improvements in the 1970s; the 1981 Committee process and report; and, the very dramatic 1984 legislative and systemic changes.

Large-scale systemic change does not happen easily in workers' compensation policy development and there appears to be a recurring phenomenon in the Newfoundland case where governments initially tinker for as long as possible before major policy shifts are accommodated. In the first instance, governments appear loathe to strike bold new directions (unless forced to) and incrementalism appears to be an appealing, low risk political strategy. A simple view with respect to breaking the pattern of insufficient incremental changes in 1979 gives the Peckford government much credit for setting the agenda and leading the way to the 1984 changes. It may be argued that government recognized workers' compensation as a problematic policy issue for which they deliberately created and strategically controlled an agenda for change. While the availability and appointment of Maynard was a matter of political fate, government

certainly did work the Maynard/May transitions for maximum effect. On the other hand, rather than concluding that the Peckford administration set the agenda in 1979, another view which may be useful to consider is that labour set the agenda years before and that government finally bought in because of their determined efforts and persistent complaints. If there is a lesson here, it may be (in terms of a simplified reduction) that major change will neither occur easily nor without strong and continuing advocacy, plus structured and continuous advocacy may eventually pay off if events and circumstances align to create a policy opening for your cause. There is, for example, the striking example of how a catastrophe - the Ocean Ranger sinking - acted to create a powerful set of dynamics which set the stage and propelled policy action which supported labour's views.

Of course, policy development is usually more complicated than can be portrayed in simple terms. The provincial environment is altered and influenced by a host of internal and external forces. Emulation is a consistent factor that cannot be forgotten in terms of the eventual policy choices which were made. Because workers' compensation policy was also undergoing change across Canada the policy entrepreneurs and policy makers had the example of other provinces, particularly Saskatchewan, to emulate. As will be seen more clearly in the next chapter, however, the various benefit improvements won by labour and accepted by government came at a cost. And there were questions regarding the WCC's ability to pay for these new benefits without significantly increasing the levy on employers as early as 1980. When the premiums charged to employers were increased

beginning in 1981 employers were motivated - for the first time - to seriously monitor the workers' compensation system. A new group, known as the Employers' Council, emerged to defend and promote employer interests before the WCC and government. Like labour in the 1970s, by 1983 this group called for greater levels of influence over workers' compensation policy decisions. In fact, in 1983 the Employers' Council recommended abolishing the existing governance model and replacing it with a Board of Directors comprised of employers. As events unfold after the introduction of the new Act in 1984 there are few, if any reasons, for employers to change their opinion on these issues. Meanwhile, there is no doubt that the legislative, administrative and institutional changes made in 1984 irrevocably established new ground for workers' compensation policy development and debate. In fact, those changes are the primary determinant of virtually all major policy decisions and outcomes for the remainder of the 1980s and 1990s.¹¹¹ The next chapter assesses post-1984 developments.

NOTES:

¹ Maynard, former MHA and WCB CEO, interviewed by author.

² Channing, "The Effects of Transition to Confederation on Public Administration in Newfoundland," 78. The *Committee on Government Administration* was appointed on April 5, 1972 and delivered its first report on October 6, 1972.

³ Ibid., 78-79. The new committees included Social Policy Committee, Resource Policy Committee, Planning and Priorities Committee, and Treasury Board. Social and Resource Policy were comprised of Ministers from relevant departments. For example, the Minister of Labour would sit on the Social Policy Committee. Relevant policy matters were referred through the committees before getting to Cabinet. The third critical Committee determined government priorities and membership included the Premier, the Minister of Finance, the President of Treasury Board and other ministers the Premier may choose. Treasury Board was also critical because all matters of a staff or financial nature arising out of government departments were referred through it before reaching Cabinet. (Also, Maynard interview by author.)

⁴ For a detailed analysis of the modern Canadian provincial cabinet system, including actions taken by Moores, see: Christopher Dunn, "Premiers and Cabinets", in *Provinces: Canadian provincial politics*, ed. Christopher Dunn (Peterborough, Ontario: Broadview Press, 1996), 165-204.

⁵ Blanchard interviewed by author. Served as Deputy Minister of Labour through the 1970s and 1980s, and as Minister of Labour in the Peckford government beginning in 1985.

⁶ Saunders, Dwyer and Parsons. These former labour leaders with direct workers' compensation experience were interviewed by author.

⁷ Parsons (Past President of the Newfoundland Federation of Labour) interviewed by author.

⁸ Standard forms of lobbying involved formal meetings, letters and submissions, public sessions, or more informal interactions in Cabinet as Ministers may voice the concerns expressed to them by a friend, colleague, or group with whom they may share similar interests or with whom they may have interacted. (Maynard, former MHA and WCB CEO, interviewed by author.)

⁹ Gillespie, *A Class Act*, 121 and 133. Also, Parsons (Past President of the Newfoundland Federation of Labour) interviewed by author.

¹⁰ "Report of The Review Committee Workmen's Compensation Newfoundland and Labrador," July, 1972, 46.

¹¹ "House of Assembly Proceedings," April 1950, 603.

¹² *WCB Annual Reports* 1953 - 1972.

¹³ Gillespie, *A Class Act*, 128 and 130. Today known as Fish, Food and Allied Workers (FFAW).

¹⁴ After the first six months in office he was reassigned as Minister of Forestry and Agriculture. (Maynard, former MHA and WCB CEO, interviewed by author.)

¹⁵ In early 1976 an Order-in-Council was passed to arrange for the eventual consolidation of OH&S responsibilities under one agency. A three-member Ministerial Committee, chaired by Maynard, was struck with specific Terms of Reference in this regard. Review

of Labour Standards was also a named priority but it was a less demanding process. (Maynard, former MHA and WCB CEO, interviewed by author.)

¹⁶ *WCB Annual Reports* 1973 - 1974.

¹⁷ Gillespie, *A Class Act*, 132-133. (Additionally, all individuals interviewed for this paper confirmed the Steelworkers' union leading role in advocating these changes.)

¹⁸ James Kohn, Mark Friend, Celeste Winterberger, *Fundamentals of Occupational Health and Safety* (Rockville, Maryland: Government Institutes, Inc. 1996), 21-38.

¹⁹ Dr. Ernest Mastromatteo, "Report on O.H. & S." Special report to Premier F. Moores (St. John's, April, 1973.)

²⁰ In October 1976, a major conference initiated by the Department of Manpower and Industrial Relations was held to assess feedback on the concept of consolidating OH&S services. The reality may have been that the direction toward housing the services under a single roof had been decided and the conference was designed to pave the way. A keynote speaker at the conference was Robert Sass, Deputy Minister, Saskatchewan Department of Labour, who spoke of the advantages gained by their 1972 decision to centralize OH&S services. See unpublished conference proceedings, Library, Department of Environment and Labour, St. John's.

²¹ *WCB Annual Report*, 1978, 9.

²² There were also two amendments to the Act in 1973 and 1974:

1973. Workmen's Compensation (Amendment) Act. No. 115. 'An Act Further to Amend the Workmen's Compensation Act'

1974. Workmen's Compensation (Amendment) Act. No. 72. 'An Act Further to Amend the Workmen's Compensation Act.'

²³ Withers (Employers' Council - Past President), Peddle and Parsons (former labour leaders) interviewed by author.

²⁴ *Workmen's Compensation (Amendment) Act. No. 43. 'An Act Further to Amend the Workmen's Compensation Act,'* RSN. 1975.

²⁵ "Report to the Premier on the Workmen's Compensation Board," by Elliot Leyton (St. John's, July, 1976.) While the focus of the independent review of the WCB was internal, involving labour relations difficulties, it is worthwhile to note that it dealt directly with various accusations of poor judgment made by WCB staff against certain full-time Board members. The internal expression of dissension registered by WCB staff against the Board members must have contributed to an overall impression of dissatisfaction with operations.

²⁶ "Report of The Review Committee Workmen's Act June 1977," 2.

²⁷ *WCB Annual Reports*, 1975, 10; 1976, 10; 1977, 9.

²⁸ *Workmen's Compensation (Amendment) Act. No. 42. 'An Act Further to Amend the Workmen's Compensation Act,'* RSN. 1975-76.

²⁹ Francois Vaillancourt, *The financing of workers' compensation boards in Canada, 1960-1990* (Canadian tax papers, ISSN 0008-512X; no. 98), 4.

³⁰ Dee and McCombie, *Workers' Compensation in Ontario*, 53-56.

³¹ As a result of the 1991 Workers' Compensation Statutory Review report the Minister ordered the WCC to conduct a cross-Canada Entitlement Study to assess whether it was

adjudicating claims too liberally. See "Statement By Honourable Roger Grimes, Minister of Employment and Labour Relations on Changes To Workers' Compensation," delivered at news conference in St. John's, July 2, 1992.

³² Martin Saunders, Gerald Dwyer and Bill Parsons (former labour leaders) interviewed by author.

³³ See note in previous chapter about "top up." Although Gillespie explains that the story of unionism in Newfoundland in that era is the story of the rise of public sector unions, the Fishermen's Union and women, other unions such as the Steelworkers may have had more influence on the course of development of workmen's compensation. The public sector unions may have been less interested in workmen's compensation issues because negotiated "top up" provisions in their collective agreements ensured no loss of income in the event of an injury and workmen's compensation claim, while private industry groups like the Steelworkers would have received 75 percent of gross benefits or less.

³⁴ Terence Ison, "The Calculation of Periodic Payments for Permanent Disability," *Osgoode Hall Law Journal*, 22, 4 (1984).

³⁵ Newfoundland Federation of Labour, "Evaluations and Recommendations: A Review of Workers' Compensation," 1991, 12-13. A Presentation to the Workers' Compensation Review Committee. A highly problematic aspect of the quasi-judicial role fulfilled by the WCB executive was that in addition to devising and administering all policies and programs, the executive members also sat as final arbiters in WCB cases.

³⁶ "Report of The Review Committee Workmen's Act June 1977."

³⁷ *Ibid.*, 34-37.

³⁸ *Ibid.*, 90.

³⁹ *Ibid.*, 2.

⁴⁰ *Ibid.*, 71-72. The right of appeal which permits an appeal to the Supreme Court of Newfoundland from any order, ruling or decision of the WCB involving questions of jurisdiction, law, or mixed law and fact had been introduced following the 1966 Statutory Review Report. The 1977 Committee was informed that not a single case had been brought before the Supreme Court of Newfoundland under this section in 1966 and it therefore recommended keeping the provision.

⁴¹ *An Act to Amend the Workmen's Compensation Act*, RSN. 1978, Chapter 68. This amendment act contains a list of incremental legislative improvements:

- i. Amend, Long title (Workers' for Workmen's)
- ii. Para. 3(2)(c) repealed (minor wording)
- iii. Amend, Sec. 4: Application of Act (minor coverage issue)
- iv. Amend, Sec. 18: Medical aid (minor coverage expansion)
- v. Amend, Sec. 19: Aid in training injured worker (increase expenditures for rehabilitation)
- vi. Subsec.35(4) repealed (power of appointment of key staff by Cabinet turned over to Board)
- vii. Amend, Sec. 46: Scale of compensation (minor increase)
- viii. Amend, Sec. 49: Permanent total disability (minor increase)
- ix. Amend, Sec. 50: Permanent partial disability (minor increase)

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- x. Add. Sec. to 50.1: compensation for retired workers (minor increase)
 - xi. Amend, Sec. 53: Minimum payments (minor increase based on dependency)
 - xii. Amend, Sec. 55: Manner of computing average earnings (minor increase)
 - xiii. Add. Sec. 61.1: Compensation for apprentices (improved coverage)
 - xiv. Amend, Sec 76: Adjustment of payroll (minor increase in amount of assessable payroll)
 - xv. Amend, Sec.88: Lien for assessment (assessments due become first lien, subject to municipal taxes/wages under *Mechanics' Lien Act*.)
 - xvi. Clearance of doubt (minor clarification)
 - xvii. Amend, Sec.98: Admission of industry (coverage extended *to/arm labourers*)
 - xviii. Amend, Schedule (several additions/clarifications under Industrial Disease Schedule)

⁴² *WCB Annual Reports*, 1978, 16; 1979, 11; 1980, 6.; 1981, 6.

⁴³ This had been recommended by the 1977 Review Committee in order to totally eliminate discrimination by making it clear that the Act applies to all workers, male and female, see RSN. 1978. Chapter 68. *An Act to Amend the Workmen's Compensation Act*.

⁴⁴ Maynard, former MHA and WCB CEO, interviewed by author.

⁴⁵ Background information contained in informal notes for development of 1983 legislation. See "Development of Legislation, 1983 -1984," Resource Centre, Workplace Health, Safety and Compensation Commission, St. John's.

⁴⁶ *An Act to Amend the Workers' Compensation Act*. RSN. 1979. Chapter 43.

⁴⁷ *WCB Annual Report*, 1980, 3.

⁴⁸ Details located in the files of the Executive division of the Workplace Health, Safety and Compensation Commission, St. John's.

⁴⁹ RSN. 1980. Chapter 6. *An Act to Amend the Workers' Compensation Act*.

⁵⁰ Maynard, WCB CEO, to Hon. Jerry Dinn, Minister of Labour and Manpower, letters, August 24, 1979 and November 30, 1979.

⁵¹ Paul C. Weiler, Chairman, "Reshaping Workers' Compensation for Ontario," Report to the Minister of Labour, Ontario (November 1980). An influential report, not only in Ontario, but all of Canada. Especially influential in design of Newfoundland governance and appeal structures adopted in 1986. The author explores common workers' compensation policy difficulties of the 1970s and describes the tone of the era at page 4:

I was appointed ... to review the system of workers' compensation in (Ontario). The WCB is an embattled agency ... a perennial target of newspaper editorials, or speeches in the Legislature, even street demonstrations. Many of the briefs written to my Inquiry were derogatory in tone, especially the ones from trade unions and injured workers... While a little more polite than the union movement, the attitude of Ontario employers is captured in the comment that the WCB is bending over backwards to "extend the benefit of the unreasonable doubt to workers.

Caught in this crossfire of criticism, the WCB itself is looking for major reforms in the system... Workers' compensation is now a field of public policy which is ripe for government action. The ferment is being felt in jurisdictions across Canada.

⁵² "Report of The Review Committee Workers' Compensation Act. December 1981," Preface. Maynard indicates that he had promoted Dr. May as Chair for the 1981 Committee to his Minister, but that May was also an obvious choice to head up the inquiry at that time. (Maynard interviewed by author.)

⁵³ Ison, "The Calculation of Periodic Payments for Permanent Disability," 737.

⁵⁴ Maynard, former MHA and WCB CEO, interviewed by author.

⁵⁵ "Report of The Review Committee Workers' Compensation Act. December 1981."

⁵⁶ Ibid., 46-47.

⁵⁷ Ibid., 39.

⁵⁸ Ibid., 37.

⁵⁹ Ibid., 38 and 40.

⁶⁰ Weiler, "Reshaping Workers' Compensation for Ontario," 40.

⁶¹ "Report of The Review Committee Workers' Compensation Act. December 1981," 28.

⁶² Ibid., 144.

⁶³ Ibid., 126.

⁶⁴ Ibid., 126.

⁶⁵ *An Act to Amend the Workers' Compensation Act*, RSN. 1981, Chapter 8. and, *An Act to Amend the Workers' Compensation Act*. (No.2), RSN. 1981, Chapter 84, respectively.

⁶⁶ In fact, the 1981 Review Committee also recommended that the 1966 amendment that provided a right to appeal to court on a question of mixed law and fact be repealed. Government subsequently amended the Act to eliminate the mixed law and fact ground for appeal.

⁶⁷ "Report of The Review Committee Workers' Compensation Act. December 1981," 75.

⁶⁸ *WCB Annual Reports*, 1951-1981.

⁶⁹ "Report of The Review Committee Workers' Compensation Act. December 1981," 18-19.

⁷⁰ Workers' Compensation Commission, Board of Directors, "Financial Strategy," Policy Paper, Number 1, St. John's, April, 1991.

⁷¹ Vaillancourt, *The financing of workers' compensation boards in Canada, 1960-1990*, 64. Newfoundland was not alone regarding the use of inappropriate actuarial accounting. Vaillancourt explores liability measures generally and, in particular, highlights similar problems in Nova Scotia from 1975.

⁷² The benefits of greater employer involvement in WCB processes would be realized years later, but the lack of employer knowledge and involvement prior to the 1980s is acknowledged unanimously. A view supported by everyone interviewed by author.

⁷³ Withers (Employers' Council - Past President), Peddle and Parsons (labour leaders) interviewed by author. The emergence of large scale development projects, such as Churchill Falls and the Come-by-Chance refinery, was cited as an important factor driving the level of sophistication in Newfoundland, in addition to a general trend toward

education.

⁷⁴ Withers (Employers' Council - Past President and one of the founders of the Newfoundland Employers' Council) interviewed by author.

⁷⁵ Withers (Employers' Council - Past President) and Peddle (former labour leader) interviewed by author.

⁷⁶ Blanchard interviewed by author. Blanchard served as Deputy Minister of Labour through the 1970s and 1980s, and as Minister of Labour in the Peckford government beginning in 1985.

⁷⁷ National Transportation Safety Board, "Marine Accident Report: Capsizing of the U.S. Mobile Drilling Unit Ocean Ranger Off the East Coast of Canada 166 Nautical Miles East of St. John's, Newfoundland, February 15, 1982," March 1983.

⁷⁸ *Evening Telegram*, February 16 and 17, 1982. Numerous stories in these editions convey the full range of actions and concerns.

⁷⁹ Both levels of Government eventually agreed on a joint Royal Commission.

⁸⁰ 52 of the 84 lives lost on the *Ocean Ranger* were Newfoundland residents.

⁸¹ Mobil Oil Canada Ltd. was the rig operator and employer of the largest number employees working on the rig when it sank.

⁸² National Transportation Safety Board, "Marine Accident Report," 74-77. See also, the more comprehensive Canada-Newfoundland Royal Commission on the Ocean Ranger Marine Disaster.

⁸³ Maynard, former MHA and WCB CEO, interviewed by author.

⁸⁴ *An Act to Amend the Workers' Compensation Act*, RSN 1982, Chapter 11.

⁸⁵ Bursey (long-time WCC Executive) and Maynard, former MHA and WCB CEO, interviewed by author.

⁸⁶ "Report of The Review Committee Workers' Compensation Act. December 1981," 126.

⁸⁷ Maynard, former MHA and WCB CEO, interviewed by author.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ *WCB Annual Report*, 1981, 3.

⁹¹ Ed Maynard, WCB Chairman, to Hon. Jerome Dinn, Minister of Labour and Manpower, letter and attachment, February 16, 1982. See copy in "Development of Legislation, 1983-1984," Volume 1, Tab A. [Resource Centre, Workplace Health, Safety and Compensation Commission, St. John's.]

⁹² Ibid.

⁹³ Newfoundland Federation of Labour, "Summary of Committee Recommendations and Our Comments," May 1982, 25.

⁹⁴ Ibid., 27.

⁹⁵ Ibid., 6.

⁹⁶ Maynard, WCB CEO, to Hon. Jerry Dinn, Minister of Labour and Manpower, letter and attachment, February 16, 1982, 24 (attachment).

⁹⁷ David Vardy, Clerk of the Executive Council, to Maynard, Chairman, WCB, letter, August 10, 1982. See copy in "Development of Legislation, 1983-1984," Volume 1, Tab

B. [Resource Centre, Workplace Health, Safety and Compensation Commission, St. John's.]

⁹⁸ Maynard, WCB CEO, to Hon. Jerry Dinn, Minister of Labour and Manpower, letter and attachment, February 16, 1982, 8-10 (attachment).

⁹⁹ Cabinet approved the new ceiling in December 1982 using the authority it gained in 1979 to periodically increase benefits payable under the Act.

¹⁰⁰ Employers' Labour Relations Council, "Brief to Hon. Jerry Dinn. Minister of Labour and Manpower. Report of the Review Committee Workers' Compensation Act, December, 1981," September 23, 1983, 1.

¹⁰¹ Ibid., 3.

¹⁰² Ibid., 4-8.

¹⁰³ Ibid., 6.

¹⁰⁴ Newfoundland Federation of Labour, "Summary of Committee Recommendations and Our Comments," 18.

¹⁰⁵ Ibid., 13-14.

¹⁰⁶ *An Act to Consolidate the Law Relating to Compensation for Injuries Suffered in the Course of Their Employment*, RSN. 1983, Chapter 48.

¹⁰⁷ *WCC Annual Report*, 1983, 3.

¹⁰⁸ *An Act to Consolidate the Law Relating to Compensation for Injuries Suffered in the Course of Their Employment*, RSN. 1983, Chapter 48, Sections 61-63.

¹⁰⁹ Newfoundland Federation of Labour, "Summary of Committee Recommendations and Our Comments," 2.

¹¹⁰ *WCC Annual Report*, 1984, 8.

¹¹¹ Government enacted the wage-loss system in 1984, but certain entitlement provisions, notably the practice of deeming workers capable of earning (even though they may return to work), have been the subject of controversy ever since.

Chapter 7

The Changing Face of Workers' Compensation (1984-1993)

This chapter reviews developments in the Newfoundland workers' compensation system after January 1, 1984, the date on which the new wage-loss legislation was introduced. It outlines how the promise held forth by the introduction of that new Act quickly gave way to regressive amendments culminating in a significant rollback in benefit entitlement by 1993. These are dynamic years during which the system experiences new pressures arising out of rapidly changing social, legislative, administrative and fiscal circumstances. By the mid-1980s the system is forced to adjust to a new environment in which individuals are more willing than ever to defend their individual rights. In that regard, the chapter begins with the story of an important legal battle which challenged the constitutionality of critical components of the Newfoundland and, by association, Canadian workers' compensation model. While the internal appeal system proposed by the WCC in 1982 takes shape slowly in 1984, by 1987 an entirely new appeal system, including an independent external review tribunal known as the Workers' Compensation Appeals Tribunal, is created; there is an assessment of how and why usage of the appeal systems increases significantly during these years. On another front, the system of governance is significantly revamped by 1987 involving the creation of a Board of Directors system to replace the government-appointed WCB Commissioner system. Because a corporate-style Board of Directors - comprised of representatives of workers, employers and the public - would be responsible for balanced administration of the Act it was felt that this new governing structure would be more accountable. The

chapter will also examine how the system faces financial collapse by the end of the 1980s and reviews the steps taken to secure the financial position of the WCC between 1990 and 1993. Overall this is a unique period during which difficult policy choices are encountered with new and compelling sets of policy determinants, particularly dire warnings regarding the fiscal stability of the system. It is a period when the range of actors in the system is broadened to include new groups such as the Board of Directors, the appeal tribunal, and - a new phenomenon for Newfoundland - an interest group known as the Injured Workers' Association. Against the diversity of interests and policy challenges, by 1993 difficult and unpopular policy choices were unavoidable. The chapter concludes with an assessment of those decisions, and of why and how they were implemented.

The WCC experienced a broad and generally changing environment in 1984. In what may be considered effective foreshadowing the 1984 Annual Report of the WCC stated: "In past years there did not appear to be any great demand from sectors of the public for information regarding workers' compensation legislation and programs. That appears to be changing."¹ Evidently there was growing awareness and desire for transparency regarding workers' compensation operations and programs. Considering the expansion of the program - 4,000 new employers and significantly improved benefits - as of and prior to January 1, 1984, it is not surprising that the number of interested individuals and groups increased. It must also be considered that the population of the province was becoming more knowledgeable and aware of their rights, particularly in the wake of the

new Canadian Charter of Rights and Freedoms enacted in April 1982.² As well, people were more willing to assert their rights. There is no better illustration of this new dynamic than the story of Mrs. Samuel Piercey's assertion of her perceived rights. Mr. Samuel Piercey was employed in St. John's by General Bakeries Limited on July 20, 1984 when he was electrocuted after coming into contact with ungrounded electrical equipment. His wife tried to sue the employer, but she was barred from doing so because the employer was covered under the *Workers' Compensation Act* of Newfoundland. Mrs. Piercey was not satisfied with that answer and proceeded to Supreme Court of Newfoundland (Trial Division) where she won a stunning legal victory. The Trial Judge concluded that the statutory bar under the *Workers' Compensation Act* which prevented Mrs. Piercey from suing the employer was "an intolerable blot on the legal landscape of a free and democratic country." The Judge believed that Mrs. Piercey was being discriminated against - contrary to the intent of Section 15 of the Canadian Charter of Rights and Freedoms³ - and he went on to say:

The undeniable fact is that any Canadian whose rights have been adversely affected by the negligence of another may seek redress in the Courts against such tortfeasor and in the event of liability being established may recover his proven damages in accordance with well-established principles of common law in that regard.⁴

The nature of this decision struck at the very heart and questioned the continuing existence of the Workers' Compensation system in Newfoundland and, in fact, Canada.⁵ For the various Workers' Compensation Boards and Commission's across Canada, such a challenge was inevitable in the new Charter of Rights and Freedoms era. The Piercey

case was a welcomed opportunity to test the constitutionality of the fundamental provisions of the Workers' Compensation Acts once and for all. Given the significance of the decision for all provincial statutes it was decided to proceed to the superior Courts by way of reference case from the Attorney-General of Newfoundland, instead of an ordinary appeal.⁶ (A further irony may be found in the fact that the Trial Judge who declared the Act to be "an intolerable blot on the legal landscape of a free and democratic country" was T. Alex Hickman whose direct experience with the Act dated back to at least the 1960s when he represented St. Lawrence miners, and to 1972 when he authored significant amendments to it - see Chapter 5.)

As evidence of the significance of this case, leave was granted for 17 interveners, including major labour and employer associations,⁷ to appear before the Newfoundland Court of Appeal in June 1987. All but Piercey were arguing strongly for the retention of the Acts. The author of this paper was a spectator in Court throughout these proceedings and it seemed clear where the judges were headed when one commented (somewhat lightly) to the effect that it was one of the few times in his experience that labour and employers were on the same side of a workers' compensation argument. The Newfoundland Court of Appeal held that the statutory bar was not discriminatory and that the legislation was not inconsistent with the Charter. Chief Justice Goodridge wrote:

The Charter was not designed to interfere with beneficial social programs of the legislature. It was not designed to patrol or regulate these programs. Only where there is contained in the program something that is unfair or

unreasonable will courts interfere.

The workers' compensation scheme provides a stable system of compensation free of the uncertainties that would prevail otherwise ... Judicial deference to the legislative will is required here.⁸

The matter was put to rest on April 24, 1989 with a brief ruling from the Supreme Court of Canada unanimously upholding the Court of Appeal decision.⁹ Structured as it was, including no right for workers or dependants to sue employers whose negligence may have caused or contributed to injury, the Workers' Compensation Act of Newfoundland was declared constitutional at the highest level. Like the Ocean Ranger families, the remedy for Piercey and all other injured workers or dependants is workers' compensation - not the courts.¹⁰ The Piercey case is a legislative milestone in Newfoundland and Canadian workers' compensation history. Not only does the Supreme Court decision reinforce the balance and wisdom exercised by Meredith when he recommended the Canadian model in 1913, it also ensures that the story of the Canadian model will continue for the foreseeable future.

Yet the Piercey case - a challenge as to whether the system itself was an unconstitutional affront on individual rights - would serve as an unmistakable early warning sign of the development of a culture of litigiousness. Perhaps partly as by-products of post-Charter confidence and curiosity, by 1984 increasing numbers of individuals felt empowered to challenge administrative authority and decisions. Growing reference to the administrative law principles of natural justice at a time when the concept of individual rights were prominent following adoption of the Charter of Rights and Freedoms, eventually brought

tremendous new pressures into the workers' compensation system. The *rules of natural justice* may be described more simply as rules of "fairness" covering concepts like the right to be heard, the right to know the evidence being used against you, the right to be represented, and associated notions. In fact, enactment of the Canadian Charter of Rights and Freedoms in 1982 merely served to reinforce earlier trends in Canadian administrative law which would have significant implications for quasi-judicial agencies.¹¹ For example, the 1979 Supreme Court of Canada case of *Nicholson v. Haldimand-Norfolk Regional Police Commissioners* demonstrates the emergence of natural justice principles in Canada as a defense against decisions of administrative tribunals.¹² Nicholson was an Ontario municipal police officer who successfully demanded a right to a full hearing with respect to certain charges laid against him. The Court concluded that Nicholson was entitled to present his case before the police Board of Commissioners; essentially, that he should be treated fairly, not arbitrarily.¹³ The Nicholson decision indicated that tribunals, such as WCBs, may have to provide more effective opportunities for individuals to "be heard" when a decision against their interests is rendered. A direct example of how reliance on the rules of natural justice influenced workers' compensation operations is the 1981 British Columbia case of *Napoli and Workers' Compensation Board*.¹⁴ Here the Court concluded that the WCB practice of refusing to release medical reports on its file to an injured worker interested in appealing his WCB decision was contrary to the tenets of natural justice. In effect, the Court stated that Napoli had the right to know the case against him. This decision had implications for Newfoundland which up to the early 1980s also did not release such information. The

only information an injured worker received from his or her file was a summary of medical reports and findings prepared by a WCC official. While the *Napoli* decision did not cause the Newfoundland WCB to alter its approach immediately, it did contribute to the tide of change. In fact, it was only after the passage of the provincial *Freedom of Information Act* in 1983 that the Newfoundland WCC began a process of loosening its administrative policies regarding release of information.¹⁵

The ingredients for more litigiousness were in place by 1984, but there was no local tradition of challenging WCC decisions. The word "appeal" had never been mentioned in a WCC Annual Report prior to 1984. More importantly, prior to 1984 there was no mechanism in place to either accommodate or promote appeals. Even though an internal appeal system had been proposed by the WCB as early as 1982, it was mobilized very slowly. That all changed in 1984 when a detailed, two-level internal appeal process, culminating in a review by the full Board of Commissioners, was introduced.¹⁶ The number of full Board hearings was relatively low during the first few years: 52 in 1984; 85 in 1985; 29 in 1986; and 68 in 1987. For various administrative reasons the number of hearings that took place, particularly in 1986 and 1987, were artificially low. That is best illustrated by the fact that once the administrative concerns were resolved the numbers of internal hearing requests per year exceeded 500 by 1991.¹⁷

By 1984, therefore, there was the beginning of a trend in Newfoundland of injured workers increasingly appealing WCC decisions in hope of individually tailored decisions

and outcomes, as opposed to decisions reflecting "average" justice which had flowed from the WCB mass adjudication system for decades.¹⁸ This, in fact, is a central weakness of the Canadian model in our modern environment; a German-based collective liability system offering average benefits or average justice in a country of British heritage in which common laws notions of individual justice is not only inherently desirable but fervently promoted since the early 1980s given the advent of the Charter and associated developments in administrative law.

Of course, the tacit premise underlying the introduction of the 1984 Act was that the new system would significantly reduce the complaints from workers and organized labour regarding the failure of the old system to provide adequate benefits. Labour originally went along with the wage-loss system proposal guardedly. Although the Federation of Labour response to government was vague concerning whether in fact it actually supported the move to the wage-loss system, it clearly registered direct concerns that the WCC could begin to act like "lord and master" when it came to use of its deeming authority.¹⁹ Martin Saunders, a long-time union activist with the Steelworkers' union, was a member of the 1981 Review Committee and suggests that although Dr. May and others were sold on the 1979 Saskatchewan model, he (Saunders) was concerned that there had been so little experience on which to base a decision. Saunders says he had serious reservations with the wage-loss proposal, but felt it offered more equitable solutions over the old disability system.²⁰ In fact, labour became highly disenchanted with the WCC practices and decision making under the wage-loss system very soon after

1984. Concerns arose regarding the Act's requirement for the WCC to deem a worker capable of earning income whether they were employed or not. These concerns did not abate; in fact they grew.²¹

Cost Increases Cause Employer Concern

As for employers, by 1984 they were fully alert to the systemic changes which had developed around them. It was quickly realized that the benefit improvements under the wage-loss system came with cost increases. The WCC Annual Report of 1984 shows a substantial negative change in the financial position of the Commission as compared to 1983 and prior years. The operating deficit had grown to \$21,433,420 at the end of 1984, from \$10,986,406 at the end of 1983. These different amounts do not represent an actual decrease in the funds of the Commission, but do show an increase in the estimate of future liabilities. In other words, the WCC did not have sufficient assets, financial and otherwise, to pay for the cost of future benefits promised under the new Act. In simple terms, that is what was meant by the actuarial concept of *unfunded liability* which, by 1984, was being popularized as an expression or proxy for measuring the relative health of the various Canadian WCBs. Essentially, an unfunded liability is the amount by which the assets of an insurance or pension plan are less than its liabilities. The estimated level of funding for the WCC at the end of 1984 was 75 percent. In other words, at that point in time the WCB only had assets to cover 75 percent of the cost of future benefits promised under the Act, i.e. it had a 25 percent unfunded liability.

Because benefits and coverage under the Act had been enriched and expanded, the only alternative open to the WCC to cover increasing system costs was to increase the amount of money or, in insurance terms, 'premiums' it collected from employers. The premium paid by employers to fund the workers' compensation system is known as their assessment rate (calculated with reference to total employee payroll). Given that assessment rates increased steadily after 1980, it is not surprising that the employer interest level in the system quickly rose to all-time highs. Overall the amount of assessments collected from Newfoundland employers increased as follows: 1980, \$14.5 million; 1981, \$20.9 million; 1982, \$22 million; 1983, \$27.4 million; 1984, \$33.4 million; 1985, \$36 million. By 1988 it would be \$61.3 million.²² The end result, quite simply, was that the same employers were being asked to pay more each year.



Considering how these numbers accrued so quickly it is reasonable to ask the most basic question. Could the province afford the new, growing system? While the new wage-loss system was thoroughly researched theoretically, very little cost analysis was available and virtually none undertaken prior to implementation in 1984. By 1984, two provinces - Saskatchewan and New Brunswick - had adopted the wage-loss system, but due to the nature of slowly accumulating cost experience it would be years before credible data was available. Nevertheless, the system was implemented because there was a strong perception that change had to occur and the wage-loss advocates contented themselves with the belief (and, perhaps, hope) that long-term liability costs would be greatly lessened through increased and intensive vocational rehabilitation efforts. Even though the cost implications of the wage-loss may have represented a future risk, it is argued that the decision to adopt it was rational to the extent that it appeared to be the best political alternative given all competing interests.²³ Meanwhile, these events may also reflect an aspect of path dependency theory which heightens increasing returns and makes it very difficult to reverse or significantly alter course once a program is put in place. Pierson points to the short time horizons of political actors and how political decision makers, i.e., politicians, are often more concerned about short-term rather than long-term consequences of their decisions.²⁴ This analysis may aptly apply to the decision to implement the wage loss system in 1984, e.g., implement now and let unknown costs be an issue for others at some future point.

But costs were a new and important policy determinant by the end of 1984. To the extent

that the legislative pendulum had been weighted toward the interests of labour for successive years, an amendment in 1985 signaled a reversal of that trend.²⁵ After many years of debate on the issue, the 1985 amendment reduced the amount of money an injured worker could receive in compensation benefits if he or she was receiving Canada Pension Plan disability benefits at the same time. Basically the amount of Canada Pension Plan disability benefit entitlement was offset from compensation entitlement, a general concept sometimes referred to as the "integration" of Canada Pension Plan and workers' compensation benefits. First proposed by the 1972 Statutory Review Committee, but rejected by government in 1972 (see Chapter 5), the concept was raised and rejected again by the 1977 and 1981 Statutory Review Committees. Basically what changed in 1985 to generate the political will to move on this matter was the fact that employers began complaining about the increased costs and were advocating tighter controls on benefits. The Employers' Council was actively "throwing up flares" for government through those years with complaints against high rates and arguments regarding the negative effect they were having on the competitiveness of the provincial economy.²⁶ In 1983 the Council advocated the need to integrate CPP disability and workers' compensation benefits as a means to reduce the disincentive to return to work which may exist if a worker receives more pay while disabled than when working.²⁷ As for labour, the specter of benefit roll backs was a startling new development against a long history of incremental benefit improvements capped off with the dramatic improvements of 1983/1984. Additionally, that legislative development added to the frustrations of labour representatives who were already dissatisfied with deeming

decisions and an ineffective internal appeal system.

In retrospect, this amendment marked the beginning of a process of streamlining benefits which would eventually culminate in full scale decremental policy initiated by government and the WCC in the early 1990s. It is compelling (if only from an historical perspective) to note that the provincial government continued to expand this social insurance program through the 1970s, and dramatically in the early 1980s, even though the federal government had applied the brakes to social spending as early as 1974 when the Family Allowance increase (to \$20.00 per child) was "the last major (federal) social program expansion financed with significant "new" money...".²⁸ The fact that the WCC's financial house was typically in order (or at least had appeared to be) may have been one reason why governments did not aggressively intervene prior to 1985,²⁹ but by the mid-1980s it was clear that that factor had changed dramatically so government was compelled to curtail benefits payable. At the most basic level it must also be considered that the government was likely not immediately measuring the financial ramifications of the system since they were not paying the costs. It seems that government did not really pay attention until employer complaints surfaced.

In April 1985, Ted Blanchard made the somewhat unusual transition from recently retired Deputy Minister of Labour to Minister of Labour in the Peckford government as the newly elected member for the Bay of Islands district. Foremost among the various issues he faced as new Minister were varied complaints from all directions concerning the

workers' compensation system.³⁰ Primarily there had developed an unfavourable perception that the WCC was acting unilaterally as judge and jury. There was an overriding general impression that justice was not being seen to be done because WCB decisions were not open to review. The government-appointed WCB Commissioner system in place since 1951 had gained a solid reputation of being inflexible and deaf to constituent concerns, especially labour. By 1985 the Board of Commissioners system was anachronistic and, as a group of political appointees, they basically represented nobody.³¹ Growing demands from external groups to participate in policy making processes, and for an appeal system that provided individual rather than average justice, put additional strains upon the system. The Meredith principle (endorsed by Smallwood in 1950) that the WCC's correct role was that of exclusive, independent arbiter had been seriously eroded, possibly due to the WCC executives being political appointees or simply as a by-product of the social environment, or more likely both. The main interest groups felt they were not being listened to by the WCC and that new mechanisms must be found to ensure that their concerns were addressed.³²

When these various forces and complaints manifested themselves in discussion around the Cabinet table it was not long before talk of systemic reform emerged. Blanchard suggests there was an accountability issue and general feeling that the WCC had too much control, much of it wrapped up in Maynard.³³ For example, employers felt the 1984 benefit improvements were too dramatic, that the system administrators were out of control and that something had to be done about what employers viewed as a lack of

accountability by the WCC. While respectful of Maynard's abilities and intentions, the Employers' Council felt Maynard had advocated the development of a system which was overly ambitious and too rich for the province.³⁴ Blanchard specifically recalls two other Cabinet members strongly urging WCC reform, as well as Premier Peckford's initial reluctance but final personal approval for significant changes within the system. Meanwhile, aware of its poor public relations profile, the WCC had been exploring alternative approaches and ultimately backed a proposal for major program overhaul which had been originally recommended in the 1980 Weiler Report in Ontario. Maynard recalls meeting with Professor Weiler on at least two occasions for detailed discussions regarding his recommendations. Blanchard, on the other hand, recalled that the driving force for some of the new changes was Vince Withers from the Employers' Council. Withers does not deny that the Employers' Council heavily promoted change; in fact, as discussed in the previous chapter, it did so directly in its September 1983 brief to government.³⁵

Significant Institutional Change: Corporate Governance

Government acted decisively in 1986 when it passed a major legislative amendment with the principal objective being to separate the corporate and quasi-judicial functions of the workers' compensation system. The amendment abolished the roles of the WCC Commissioners, i.e., the political appointees, and created a corporate Board of Directors and a separate independent, i.e., external, appeals tribunal.³⁶ The corporate-style Board of Directors would be responsible for the administration of the Act, the approval of budgets,

policies and programs, and, eventually, the hiring of a Chief Executive Officer (CEO). Under the amendment the Board of Directors was comprised of no less than seven but up to eleven representatives of workers, employers and the public with an assurance that the number workers' and employers' representatives was equal.³⁷ Although not explicitly stated, the notion of public, or at large, representation on the corporate Board had its roots in the 1980 Weiler Report where it is argued that system costs and outcomes are shared by the public and that the widest possible cross section of involvement might be beneficial.³⁸ It was absolutely clear, however, that the Board of Directors would not hear or rule on individual cases - a task it performed since 1951. Instead, government created a new tribunal known as the Workers' Compensation Appeals Tribunal (WCAT) whose role it was to provide independent review of WCC decisions. The government-appointed WCAT was tripartite in nature with its decision-making panels comprised of a labour and employer representative, chaired by an independent Chair. Outside of ex-officio membership by the WCAT Chair, the WCAT members were distinct from the Board of Directors. The WCAT had authority to review WCC decisions and to judge cases according to their individual merits, but it did not have policy making authority.

This amendment ended the 35 year-old practice of relatively isolated leadership and concentrated power within the WCC. It represented government's response to the long-held desires of the two main interest groups for more say in the running and management of the system. As well, it created the possibility of greater decision-making independence in the form of the WCAT. The Board Advisor system was finally scrapped which really

did not matter since it hadn't functioned since the 1970s and when it did function it was a rather lame process. Although the old structures were abolished, old political ties and allegiances remained strong, as Maynard was retained as the WCC's first CEO when a provision was added to the Act allowing him to continue during "good behaviour."³⁹ In other words, he was not hired by the Board of Directors, he was put in place by government and his tenure dependent upon the will of the government. Maynard kept his position until the Progressive Conservative party was defeated by Clyde Wells and the Liberal party in April 1989 following the March 1989 resignation of Brian Peckford.

The first corporate Board was barely in place when government appointed Newfoundland's fifth Review Committee in November 1986. It had been five years since the December 1981 report and government was compelled to do so. Whether it made sense at that time or not is a moot point. Since dramatic governance changes had just occurred and the wage-loss system had only been in place for three years, it may not have been an ideal time for a review. Those facts probably indicate that this Review Committee would not be expected to make overly significant recommendations. In fact, it did not. But it did make no fewer than 116 recommendations when the report was finally released in February 1988. It is difficult to capture the breadth of issues covered but, generally, it may be stated that the majority of recommendations were biased toward the interests of workers. Generally, there were many minor, incremental recommendations with no one alone having a significant influence on overall system design or administration, but the recommendations did call for additional spending through

improved entitlements and processes for workers, ranging from higher meal allowances to enhanced vocational rehabilitation programming to more assistance providing assistance for workers experiencing chronic pain.⁴⁰ Somewhat ironically, given the Committee's bias to liberalize benefits and processes, contained along side these varied recommendations was the suggestion that the WCC should arrange for a comprehensive actuarial study to determine the financial impact of previous decisions to include pre-1984 Act claimants under the post-1984 Act.⁴¹ Arguably, it may have been more prudent to answer that question first before proceeding with their series of recommendations which called for additional spending.

But this Review Committee process is most noteworthy for the relative explosion of participation compared to all previous review committees. Twenty six hearings were held around the province involving 114 presentations and 24 written submissions were sent to the committee. These are very large numbers compared to the previous statutory review processes and, perhaps, as well as any other indicator serve to show the level of growing interest in and dissatisfaction with the workers' compensation system at that time. Over 85 percent of the presentations came from disgruntled injured workers or their representatives. The final report lists the names of the individuals, groups and corporations which participated in the review; clearly this was the most diversified cross section of Newfoundland society ever to participate in a workers' compensation review.⁴²

Though it may be only partly coincidental, in the wake of this activity a new interest

group known as the Injured Workers' Association was formed in 1988. As implied by the name, the Association was created to promote the interests and concerns of injured workers before government and the WCC. It developed because many injured workers shared similar same concerns with WCC decision making and believed that their views would be more readily heard and appreciated if they presented them in a more organized and forceful manner. This group was of particular interest to non-unionized injured workers who did not have the advantage of any other representation.⁴³ Even though the compensation system was perceived as being fundamentally unfair many times prior to 1987/88, there is no history of injured workers themselves joining together to fight for improvements in Newfoundland. It is worth pointing out that in 1974 a group of injured workers in Ontario formed the Union of Injured Workers which acted to apply pressure upon government to improve the benefit programs, mainly long-term disability pensions, in that province.⁴⁴ The development and existence of those groups in Ontario and other provinces before 1988 influenced the formation of the Newfoundland group.⁴⁵

In retrospect, the public consultation process leading up to the 1988 Review Committee report was likely a necessary outlet for widespread complaints regarding the workers' compensation system. That argument might support the requirement for the Review Process at that time, even though there had been major changes in 1984. It appears that Review Committee aired as many concerns as possible and tried to offer improvements for the many injured workers who appeared before it. But the Committee Report did not fix the fundamental issue which was that many injured workers felt they were not being

adequately compensated for their real or perceived long-term losses. In particular they were not happy with the WCC deeming decisions. In retrospect, the 1984 wage-loss system merely replaced an old set of problems and complaints with new ones.⁴⁶ It is speculative, but the depth of dislike for the wage-loss system was probably as intense in 1988 as it was for the disability system in 1977 or 1981. One major difference is that there were numerically more parties involved in the 1988 Review Committee process than there were previously. And unlike previously, by 1988 new, diverse groups vied for equal attention and influence, including employers who opposed they general wishes of labour for a more liberal, e.g., more expensive, wage loss system. The new participation dynamics caused inevitable tensions as various interests sought to influence policy direction. As for system governance up to 1988, the WCB/WCC organization was a specialized, somewhat isolated group more accustomed to functioning as an independent, quasi-judicial agency rather than as an effective assessor and arbiter of diverse, often competing views from interests as diverse as Boards of Directors and strong-willed interest groups with divergent interests.

The End of the Maynard Years

Penelope Rowe's first encounter with the workers' compensation system occurred in 1988. She is a well-known social policy advocate and perhaps best known as the Executive Director of the Community Services Council of Newfoundland and Labrador. In 1988 she had been asked by Minister Ted Blanchard to attend a press conference regarding a review of provincial Building Accessibility legislation on which he had asked

for her assistance. Rowe was surprised when Blanchard was overwhelmed at the press conference with a barrage of questions focused strictly on workers' compensation concerns. Essentially there were no questions concerning Building Accessibility and the only thing the press appeared interested in was grilling the Minister on workers' compensation. This introduction to the intensity and strength of convictions often associated with workers' compensation policy issues was perhaps fitting for Rowe who was appointed Chair of the WCC Board of Directors in August 1989.⁴⁷

It is useful to place the timing of Rowe's appointment as Chair in political context. By the end of 1988, as discussed earlier in this chapter, Maynard had been in office as Chairman and CEO of the WCB/WCC for nearly 10 years, having been appointed by Progressive Conservative Premier Brian Peckford in 1979. He had overseen all significant changes through the 1980s and, as a result, was increasingly the object of concern in some quarters, especially employers, for what might be best described for the purposes of this paper as his very successful policy entrepreneurship in the expansion of the workers' compensation system. However, Maynard's influence came to a sudden halt when he was relieved of his duties by Clyde Wells very shortly after the Liberal election victory in April 1989.⁴⁸ As for Peckford, who had resigned in March 1989, the record throughout his tenure as Premier does not show very much personal involvement in workers' compensation matters. Peckford is best remembered for his determined political and legal fights against Ottawa regarding ownership of offshore oil and gas. Clyde Wells, on the other hand, is best remembered as a strong federalist who insisted on the equality

of provinces in the Meech Lake constitutional debate. Wells is also well-remembered within the Province for taking on the role of Premier at a time of serious economic difficulties, not the least of which was collapse of the cod fishery. Although Well's government implemented austere fiscal measures in its initial years, especially targeting public sector wages, he and his Liberal Party were returned to power with an increased majority in the May 1993 election.

Therefore, it was at the beginning of the Wells era in 1989, and on the heels of the complaint-filled 1988 Statutory Review Committee process and report, that Penny Rowe and her new Board of Directors inherited a number of major problems and challenges.⁴⁹ Not the least of these was how to respond to the many and varied complaints about the system which had not dissipated since the 1988 Review Committee process. Responding to those problems was complicated by the fact that the WCC suffered a major image problem by 1989. For example, Rowe commonly heard the WCC referred to as "the bunker on the hill" because of its reluctance to answer questions put to it by the media and others. Indicative of this was the fact that when she asked about the possibility of having a press conference in early 1990 she was told "we don't do that." Unlike the situation faced by the old WCB, and even the first Board of Directors, the operating environment in 1989 was more complex and tense given the array of interests, competing viewpoints, and new institutional processes. Initially, in 1989, Rowe and her Board of Directors were not well-equipped to cope as effectively as possible with the emerging demands. The Board of Directors system had not evolved significantly during its first

couple of years of existence and, in particular, there was not an effective relationship between senior WCC personnel and the Board itself. The relationship lacked levels of comfort and sophistication which might have allowed for more open exchanges between them, although this improved quickly after 1989.⁵⁰

Looming over and above these environmental and organizational challenges, however, was a significant issue which the Board and WCC senior officials were forced to address immediately. That issue was upwardly spiraling costs. In fact, costs - and related questions of system affordability - became the most important policy determinant of the 1990s. In 1989, for the first time since 1984, sufficient injury, disability and cost experience was available for the WCC to request a detailed actuarial study to confidently assess and project the financial costs of the wage-loss system.⁵¹ The findings not only confirmed that the system was very costly, it also showed that costs were escalating so dramatically that "if serious measures are not taken immediately the system will simply fall apart."⁵²

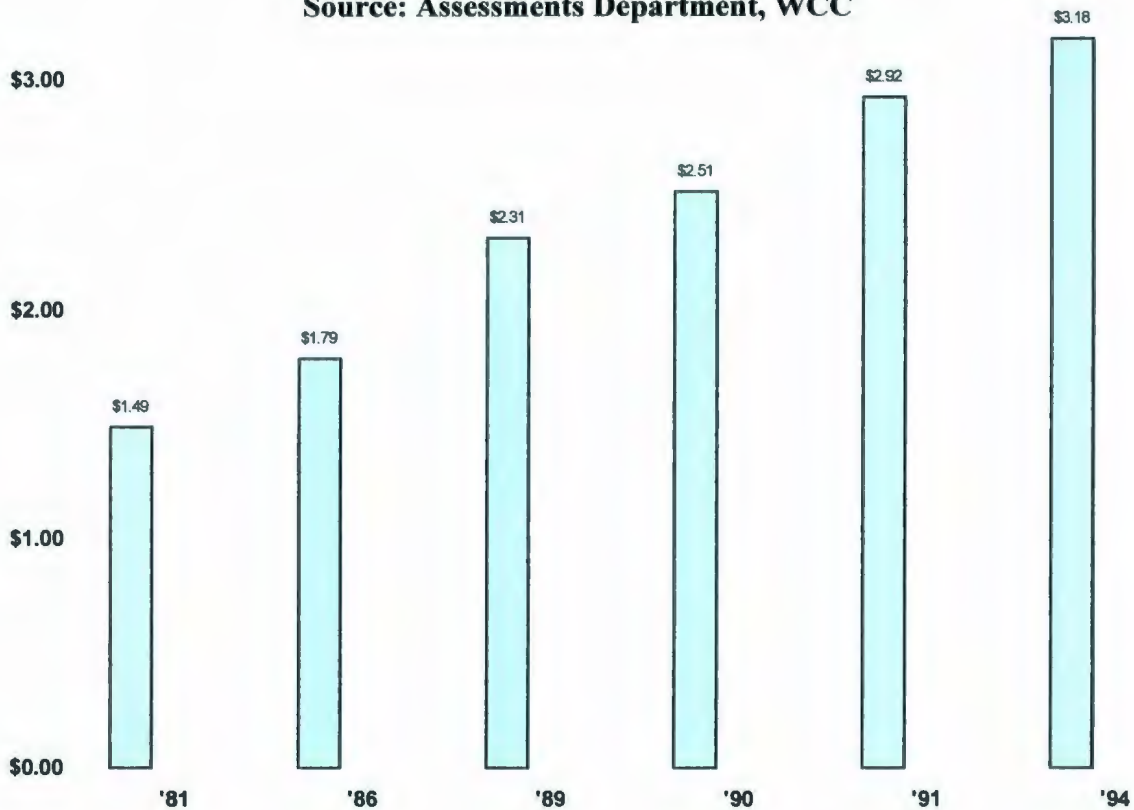
By the end of 1989 the system was very much under financial pressure.⁵³ Evidence was mounting that an important belief/hope of the pre-1984 wage-loss advocates was not materializing: long-term liability costs were not being lessened through increased and intensive vocational rehabilitation efforts. Long-term liabilities were sky rocketing and there was no end in sight to the amount of money spent on current claim costs. For example, total WCC expenditures on vocational rehabilitation in 1985 were \$2.2 million.

These costs covered items such as tuition for various levels of academic or vocational training, retraining or upgrading, books and other materials, provided to assist injured workers re-enter the workforce. By 1989, the total costs associated with vocational rehabilitation had ballooned to \$19.9 million. Unfortunately, even though these large amounts were being spent on retraining injured workers, there was no offsetting decrease in long-term liabilities. The WCC ordered a second actuarial assessment in 1990 which confirmed a gloomy financial picture. Board Chairperson, Ms. Rowe, wrote:

The unfunded portion of the liability at the end of 1990 ... is \$112, 759, 398. This figure is not a statement of a current account deficit but represents the additional funds required to pay the future costs of injuries which have occurred to date assuming annual indexation in line with increases in the average industrial wage. Nonetheless, the figure is startling and is a matter which requires immediate remedial action.⁵⁴

In very simple policy choice terms, to address a rising cost problem in the workers compensation system one either increases assessment rates paid by employers or lowers benefits paid to injured workers. Or both. The history shows that employers were gradually asked to pay more since the early 1980s. Between 1986 and 1989 the average assessment rate paid by employers increased to \$2.31 from \$1.79. In 1990, the average rate was increased to \$2.51, and in 1991 it increased again to \$2.92. By 1994 the average rate charged to Newfoundland employers would be \$3.18. (See Figure 5 on next page.)

Figure 5
Average Assessment Rates 1981-1994
Per \$100 of payroll
Source: Assessments Department, WCC



These increases were required because the WCC's annual revenue requirements steadily increased based on growing claims cost experience and on independent actuarial advice with respect to anticipated future liabilities. By 1990 employers were becoming much more vocal regarding increasing workers' compensation costs. James Pitcher, president of the Employers' Council, was quoted in the February 5, 1990 edition of the *Evening Telegram*:

... increased Workers' Compensation assessments will result in lost jobs.... employers in this province are supportive of ... no-fault insurance ... but the existing economic conditions make payment of heavy assessments

difficult. The increasing cost to fund this program is presenting serious problems for employers. Employers do not have a bottomless pit of money, and they feel it is about time government took a leadership role to review its present legislation while the objective of developing a more realistic program.

At the same time labour was sensitive to the prospect of government being forced to make critical policy choices with respect to the program. Labour risked erosion in the improved benefits and processes it had gained since the 1970s and 1980s. The views of labour and employers were highly polarized, as vividly demonstrated in the response to Mr. Pitcher in the very next issue of the *Evening Telegram* (February 6, 1990) by the president of the Newfoundland and Labrador Federation of Labour, Bill Parsons:

... employers should stop bellyaching about the workers' compensation and be more supportive of the no-fault insurance system. (Reacting to comments that questioned why WCAT appeal decisions were so highly favourable to workers, Parsons said) We now have a quasi-judicial system whereby the workers can get a fair hearing rather than a kangaroo court as was here in the past.

These exchanges, as much as any, illustrate the essential ideological nature of the struggle between the labour and employers when difficult workers' compensation policy choices must be made. When the system becomes unbalanced, however, it is difficult to redirect it without one side or the other - or both - paying a price. It was in light of dire financial predictions and growing friction between labour and employers that the Wells Government appointed a Statutory Review Committee in December, 1990. A long-time provincial government official, with little or no background in workers' compensation, was named Chairperson of the three-person Committee (with the other two being named

as representatives of labour and employers). Twenty (20) public hearings were conducted with a total of 38 oral presentations and 51 written submissions.

To put it mildly, the 1990 Statutory Review Committee members differed in their conclusions. The majority report was that of the Chair and employer representative who concluded that dramatic cuts in benefits payable to injured workers were imperative. Among their recommendations were legislative amendments to cut the amount of compensation payable to injured workers, including reduction of the basic benefit payable to 75 percent from 90 percent of net earnings, and reduction of annuity benefits payable after age 65. It is perhaps not surprising that benefits payable to workers were targeted because these they were identified as key cost drivers. Likely the most influential document considered by the majority members was the WCC Board of Director's April 1991, *Financial Strategy* policy paper which outlined the factors it thought responsible for significantly increased costs.⁵⁵ The Board indicated in this report that legislative intervention from Government was required to stop rising costs because tightening WCC administrative procedures (already in place) would not bring about sufficient cost savings.

At the polar opposite, the labour representative on the Statutory Review Committee produced a minority report entitled *Betrayal*. He strongly disagreed that benefits payable to injured workers should be rolled back. Furthermore, comments contained in that report reveal a belief that the Review Committee process was seriously flawed because of a

tight time frame for the production of the report, part-time Committee members, and no independent staff or financial advice. The ultimate speculation was "one also wonders if the recommendations of my colleagues, i.e., the majority report, is nothing more than an extension of the draconian fiscal policies of the provincial government. Slash, slash, slash, with little concern for the human element."⁵⁶

The reaction of labour groups was predictable when the Review Committee report was tabled in the House of Assembly on November 6, 1991. They felt deprived of an adequate hearing on the various matters. This prompted the responsible Minister to commence a long series of special meetings with all major groups such as The Newfoundland and Labrador Federation of Labour, the Newfoundland and Labrador Employers' Council, the St. John's Board of Trade and the Newfoundland and Labrador Nurses' Union during the early months of 1992.

Government was not convinced by the eleventh-hour meetings with the concerned labour groups, but it waited until July 1992 to announce its final intentions.⁵⁷ Not only did government announce that it accepted the recommendations from the majority Report regarding reduction of benefits payable to injured workers, it also pointed toward a decremental approach regarding the parameters of coverage. The Minister questioned the acceptance of claims having a remote connection to employment and the application of various legislative provisions which were considered responsible for liberalized entitlement to workers' compensation benefits. The Board of Directors was instructed to

conduct a comparative study of adjudicative practices of other Canadian jurisdictions to determine if further operational or legislative changes were required. Government's intentions to reduce benefits payable to injured workers, as recommended in the majority report, were realized through a set of legislative amendments which went into effect January 1, 1993.⁵⁸

There is no doubt that concern for the financial stability of the system was the overriding policy determinant in the early 1990s. Costs and affordability trumped all other concerns and drove the entire policy agenda. In retrospect, it is clear that government knew going into the 1991 statutory review process that there would have to be major cutbacks (decremental policy movement). In that regard, Rowe's Board of Directors delineated the issues and laid groundwork for government through effective analysis and study. The Wells government tightly managed the 1991 statutory review process accordingly; for example, by the selection of the senior provincial government bureaucrat as Chairperson, post-report consultations, and announced legislative cut-backs, including specific directions to the Board of Directors regarding adjudication practices. It is interesting to compare Wells careful approach to managing the 1991 statutory review process with that of Peckford's in 1981. In 1981, when complaints were rampant and the requirement for major program improvements seemed inevitable, the Peckford administration carefully managed the statutory review process to achieve certain desired outcomes (Chapter 6). Like Wells, Peckford also benefited from the issue delineation, analysis and study provided through Maynard. In 1981 and 1991, therefore, governments carefully

controlled the agenda to ensure that the predominant recommendations from the statutory review committees were reasonable, workable, and acceptable alternatives. By exerting influence and control over policy development consultation processes, and generating acceptable alternatives, government minimizes the difficulties it will eventually face when it imposes final policy choices.

Chapter Summary

To recap, the 1984 to 1993 era is one characterized by a series of legislative, organizational, and attitudinal changes: new WCC; new wage-loss system; new Board of Directors; new appeal systems; Charter of Rights and Freedoms; invigorated employers groups; injured workers' association; and serious financial difficulties followed by legislative cutbacks. Each of these change factors contributed - if only subtly, but some more than others - to an increasingly complex policy environment. Of special note is the addition of new institutional bodies, such as Board of Directors and external appeal structures, to the policy environment.

Although this paper has examined the implications of path dependency in a general manner only (see Chapter 4 Summary), it is worth recapping the associated theory which suggests the addition of new institutions usually produces increasing returns.⁵⁹ In other words, the likelihood that a law, institution, or process will be changed decreases as new institutions are introduced. It is suggested that "massive increasing returns" are produced because established institutions tend to reinforce their own stability and, at a macro level,

the stability of institutions with which they interact.⁶⁰ Given the layering of organizational changes witnessed between 1984 and 1993, therefore, it may be predicted that systemic change in the fundamental nature of the law and surrounding organizational institutions will not occur very easily. It may be anticipated that path dependence will apply with substantive divergences at critical and defining moments only.

Ultimately, however, 1984 to 1993 was an era of dashed expectations. Expectations were very high in 1984 and, encouraged by various social, political and economic factors, injured workers fought for their rights more often and more vigorously. That general spirit was captured most effectively by the *Piercey* case in which one person challenged the legitimacy of the entire system. Of course, the *Piercey* case also allows an exploration of the basic tenets of the Canadian workers' compensation system and will remain an interesting legal footnote to the extent that it was the Newfoundland Act which proved the constitutionality of the Canadian system under the Charter of Rights and Freedoms. This era is also significant because employers' expectations for a balanced and affordable system were destroyed and, as a result, they became much more engaged as committed and important policy actors.

While the range of political actors, institutions and interest groups broadened during the 1984 to 1993 period, and spirits were optimistic, there is one inescapable conclusion: very shortly following introduction of the 1984 Act the system faced financial collapse. The generous benefits and programs of 1984 proved more costly than could be easily

afforded. Consequently, system costs became the predominant policy determinant. Faced with the prospect of financial collapse of its workers' compensation system, Government was forced to take control of the policy agenda and execute firm measures to restore fiscal stability in 1993.

In 2001, the workers' compensation system in Newfoundland underwent another government-appointed statutory review process, except this time the appointees to the review committee (now called a Task Force) are all members of the WCC's Board of Directors. Of course, it is no longer the WCC - the name of the organization was changed to Workplace Health, Safety and Compensation Commission (WHSCC) in 1998. This is the second statutory review committee since 1991; recommendations from a 1997 statutory report resulted in benefit improvements for injured workers (mainly as a reaction to 1993 cutbacks), but since then financial concerns have re-emerged to become a major policy determinant once again. Commission bureaucrats had little or no involvement in 1997, but appeared to be playing a greater role in 2001. Perhaps non-political Board members and advisory bureaucrats can offer long-term policy balance to avoid abrupt systemic failures as happened from 1984 to 1993? It will be for future writers to assess the relative effectiveness of these institutional developments, though history predicts an incremental, path dependent result within the context and framework of the Canadian-style system in place since 1951.

Meanwhile, a thought-provoking and perhaps instructive analysis is supplied by March

and Olsen regarding the very important role that institutions, particularly the newly-named Workplace, Health, Safety and Compensation Commission in this case, play in responding to and shaping their environment:

... every democratic system faces a difficult problem of balancing the undoubted advantages, even necessity, of institutional autonomy with the risks that such autonomy will make popular control difficult or impossible. Ultimately, the system works only because of institutional limits and trust. Institutional actors refuse to exploit opportunities for autonomous action that might compromise the system. Interest groups grant a reasonable range of independence to political institutions. Sustaining the limits and encouraging the trust, therefore, become an essential part of institution building.⁶¹

NOTES:

¹ *WCC Annual Report*, 1984, 3.

² *Constitution Act*, 1982 (79). Enacted as Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, which came into force on April 17, 1982.

³ Although Section 15 of the Canadian Charter of Rights and Freedoms did not come into effect April 17, 1985, Piercey's lawyer asked the Court if it could have retrospective effect. All Courts agreed that Section 15 operated prospectively only, i.e. for matters occurring on or after that date. Therefore, even if the Trial Judge's decision regarding the constitutionality of the statutory bar had been upheld, it would have been a hollow victory for Mrs. Piercey because her rights stemmed from the July 20, 1984 death of her husband. Section 15 of the Charter reads:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

15. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

⁴ *Piercey v. General Bakeries Limited* (1987), 185 A.P.R. 147, 22.

⁵ The Workers' Compensation Acts in all Canadian provinces and territories are patterned identically with respect to major principles.

⁶ Ed Maynard, "Workers' Compensation Law and The Charter of Rights: The Piercey Case" (paper presented at Corpus Conference on Workers' Compensation Appeals, Toronto, 1988 10 12).

⁷ Three provincial Attorney-Generals, eight provincial Workers' Compensation Boards, Canadian Labour Congress, Newfoundland Federation of Labour, Canadian Manufacturers Association, Canadian National Railway, Marine Atlantic Inc., General Bakeries Limited, and Shirley Piercey.

⁸ *Reference of the Lieutenant-Governor in Council to the Court of Appeal for its hearing, consideration and opinion on the constitutional validity of Sections 32 and 34 of The Workers' Compensation Act*, 1983. Nfld. Court of Appeal. 1986. No. 209.

⁹ *RE: Reference on the Constitutional Validity of sections 32 and 34 of the Workers' Compensation Act* (1987). 67 Nfld. and P.E.I.R. 16, (Nfld. Ct. of App.). Affirmed [1989] 1 S.C.R. 922.

¹⁰ There are rights of court action against third parties not covered by the Act (although this does not include any employer covered under the Act). "Employer" under *The Workers' Compensation Act*, 1983 - Section 2(j) - is defined in extremely broad, liberal terms so that only a few individuals or bodies engaged in business are not covered by the Act.

¹¹ J.M. Evans et al., *Administrative Law: Cases, Text, and Materials. Second Edition*.

(Toronto: Edmund Montgomery Publications Limited, 1984), 14-16.

¹² *Nicholson v. Haldimand-Norfolk Regional Police Commissioners*, [1979] 1 S.C.R. 311. Supreme Court of Canada

¹³ Evans et al, *Administrative Law: Cases, Text, and Materials*, 57 -59.

¹⁴ *Napoli and Workers' Compensation Board*. 1981. 126 DLR (3d) 179 (BC CA).

¹⁵ "WCB Policy 83-08," approved July 15, 1983, gave an injured worker access to a photocopy of his or her claim file, and an employer access to relevant information on a worker's claim file in the event of a dispute. The development of this policy was clearly driven by the introduction of the Freedom of Information Act at the beginning of 1983, see "Operations Manual Background Development," Volume 2, Policy 83-08. Department of Policy and Research, WHSCC. St. John's.

¹⁶ *WCC Annual Report*, 1984, 3.

¹⁷ *WCC Annual Reports* and Internal WCC data. Due to this increase the Internal Review system changed to focus on paper-based reviews instead of hearings in 1993.

¹⁸ "Reshaping Workers' Compensation for Ontario," Weiler, 53.

¹⁹ Newfoundland Federation of Labour, "Summary of Committee Recommendations and Our Comments," 16-18.

²⁰ Martin Saunders, former Steelworkers union leader, interviewed by author.

²¹ The first post-1984 Statutory Review Committee of 1986/87 was the first of successive Committees since that time to deal with the contentious matter of deeming. The issue remained so contentious that in 1998 the Minister of Environment and Labour directed the WCC to conduct a formal study of the matter, see "Report of The Review Committee Workers' Compensation Act. February 1988," 20-21.

²² *WCC Annual Report*, 1986, 32.

²³ Maynard, former MHA and WCB CEO, interviewed by author.

²⁴ Pierson, "Increasing Returns," 261.

²⁵ *An Act to Amend the Workers' Compensation Act, 1983*, RSN. 1985, Chapter 31.

²⁶ Blanchard interviewed by author. Served as Deputy Minister of Labour through the 1970s and 1980s, and as Minister of Labour in the Peckford government beginning in 1985.

²⁷ Employers' Labour Relations Council, "Brief to Hon. Jerry Dinn," Sept. 23, 1983, 5.

²⁸ Michael Mendelson, "Social Policy in Real Time," (paper presented at Sixth Biennial Social Welfare Policy Conference St. John's, Newfoundland. June 27-30, 1993. 'Proceedings,' 13.

²⁹ Blanchard interviewed by author. Former Deputy Minister of Labour and Minister of Labour in the Peckford government beginning in 1985.

³⁰ Ibid.

³¹ Maynard, former MHA and WCB CEO, interviewed by author.

³² Withers (Employers' Council - Past President), Peddle, Parsons, Dwyer, and Saunders (labour leaders) interviewed by author.

³³ Blanchard interviewed by author. Former Deputy Minister of Labour and Minister of Labour in the Peckford government beginning in 1985.

³⁴ Withers (Employers' Council - Past President) interviewed by author.

³⁵ Maynard (former MHA and WCB CEO), Blanchard (former Deputy Minister of Labour and Minister of Labour), and Withers (Employers' Council - Past President) interviewed by author.

³⁶ *An Act to Amend the Workers' Compensation Act, 1983*, RSN. 1986, Chapter 38.

³⁷ *Ibid.*, Section 2.

³⁸ Weiler, "Reshaping Workers' Compensation for Ontario," 16-18, 129-132.

³⁹ While several cabinet ministers argued that Maynard had too much power and should be replaced, Peckford could not be convinced to do so. Blanchard (former Deputy Minister of Labour and Minister of Labour) interviewed by author.

⁴⁰ "Report of The Review Committee Workers' Compensation Act. February 1988," 3-12.

⁴¹ *Ibid.*, 5.

⁴² *Ibid.*, 1, and 66-70.

⁴³ Haynes (Past President of Injured Workers' Association) interviewed by author.

⁴⁴ Dee and McCombie, *Workers' Compensation in Ontario*, 12.

⁴⁵ Haynes (Past President of Injured Workers' Association) interviewed by author.

⁴⁶ Bursey (long-time WCC executive), Maynard (former MHA and WCB CEO), and Withers (Employers' Council - Past President) interviewed by author.

⁴⁷ Penelope Rowe (Chairperson, WCC Board of Directors 1989-2000) interviewed by author.

⁴⁸ Maynard quipped that Wells likely rushed "to get me out the door." Maynard, former MHA and WCB CEO, interviewed by author.

⁴⁹ *Workers' Compensation Annual Report*, 1989, CEO Statement (first paragraph) states:

The 1989 year can best be characterized as a period of transition for the Workers' Compensation Commission of Newfoundland and Labrador. The term of the former Board of Directors expired in February. There was a change in Chief Executive Officers in May. A new Appeals tribunal came on the scene in June. In August, a new Board of Directors was appointed.

⁵⁰ *Ibid.*

⁵¹ Workers' Compensation Commission, Board of Directors, "Financial Strategy," 4.

⁵² *Ibid.*, 2.

⁵³ *Workers' Compensation Annual Report*, 1989, 24. 'Balance Sheet' reveals an unfunded liability of \$35 million which was up from \$11 million in the previous year.

⁵⁴ *Workers' Compensation Annual Report*, 1990, 3.

⁵⁵ Workers' Compensation Commission, Board of Directors, "Financial Strategy." The cost drivers included a variety of issues such as: increased duration of claims; higher health care delivery costs; delays in obtaining medical assistance; indexing benefits, and increases in the cost of rehabilitation.

⁵⁶ Jim Gill, "1991 Workers' Compensation Statutory Review Minority Report *Betrayal*," November 1991.

⁵⁷ Roger Grimes, "Statement By Honourable Roger Grimes, Minister of Employment and Labour Relations on Changes To Workers' Compensation," (delivered at news conference in St. John's, July 2, 1992).

⁵⁸ *An Act to Amend the Workers' Compensation Act*, RSN. 1992, Chapter 29.

⁵⁹ Hall and Taylor, "Political Science and the Three New Institutionalisms," 936-957.

⁶⁰ North, Douglass Cecil, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), 95.

⁶¹ J.G. March and J.P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: Free Press, 1989), 166.

Chapter Eight

Conclusion

This paper reviews the evolution of workers' compensation laws in Newfoundland since the late 1800s and determines which factors have influenced their development. As with any set of laws examined over 100 years, the nature and degree of policy determinants in Newfoundland has changed along with - because of, or in reaction to - the ebb and flow of mixed and interrelated factors including historical, ideological, legal, institutional, economic, social, and political responses to industrialization, modernization, and major events such as industrial disasters. That said, the review indicates that core aspects of the laws have been remarkably stable over time, subject mainly to incremental change. The Newfoundland laws were based squarely on the laws of England prior to 1949 and of Canada after 1949. While there are occasional major policy shifts within the context of these national frameworks, once introduced the laws and systems surrounding them have proven highly durable.

Having made these observations the paper also introduced (Chapter Two) the theoretical concepts of path dependency and increasing returns as an approach for understanding this degree of system durability and associated incrementalism. The history and documented influencing factors reflect the basic increasing returns prediction that the likelihood that a law, institution, or process will be changed steadily decreases the longer it remains in place. To the extent that workers' compensation policy in Newfoundland can and does change, however, the main influences uncovered in this paper include: historical context

and tradition; emulation of policy models in other counties and provinces; economic development and diversification; social and political responses to industrialization and modernization; ideological biases and preferences; strength and persistence of labour activism; Canadian Confederation; interest group activism (including eventual emergence of employer and injured worker lobby groups); institutions, especially the WCB and its associated structures and processes; major events (wars and industrial disasters); change of Government and associated policy windows/policy entrepreneurs (Chapter Five); individuals (especially as policy entrepreneurs); benefit equity complaints, e.g., 1970s inflation and inefficient means to compensate for long term disability; and, finally, system costs and affordability. The remaining paragraphs merely highlight and summarize key policy determinants, events, issues, individuals and organizations discussed in the paper.

In what was an otherwise an underdeveloped, predominantly non-wage-based economy in the 1880s, economic policy appears to have been an initial determinant for the emergence of a law in Newfoundland. Interested in attracting labour to its shores to support its economic development goals, particularly completion of the railways, Newfoundland legislators adopted the English *Employer Liability Act* in 1887 to ensure it offered similar standards of protection as was available to workers in England. The readily available example of the English law passed a few years earlier made emulation the straightforward option.

Reliance upon British law remained a potent form of policy determination within Newfoundland. Major amendments in 1902 and 1908, for example, were copied directly from earlier English amendments. Newfoundland continued to rely on English experience, tradition and culture as it modified its version of their *Employer Liability Act* beyond 1908. Practically that may not be too surprising, but the continuing trust in external British authority contradicts other evidence which indicates that through the late 1800s and into the 1900s Newfoundland struggled to develop a separate identity and colonial independence. While this may suggest it was difficult for Newfoundland politicians to develop alternate solutions other than those predicated upon British rules, it more likely became impractical to do anything other than adhere to the established model thus illustrating the potent nature of increasing returns in path dependency theory (Chapter Two). As discussed, once the English (and eventually Canadian) law was established it heavily influenced and in many ways limited future policy options. A simple pattern was followed up to 1949 - when Newfoundland conditions warranted legislative change there was strict reliance on the English experience for solutions.

The initial legislative amendments in Newfoundland were required due to emerging labour relations conflict in a developing economy. For example, the first modifications to the 1887 Act were required after 1900 secondary to economic growth and new demands from an increasingly diversified workforce and growing trade unions (Chapter 2). Specifically, there was an ideological rift between employers who believed workers should be able to “opt out” of coverage under the legislation and those who insisted that

workers' rights be fully protected. It is also interesting to mark the emergence of organized labour in this era as the beginning of its continuing efforts to influence the direction of the law. Organized labour has been highly influential at various points in the history, not the least of which occurred in 1949 when it - the Newfoundland Federation of Labour and individual labour leaders - played a central role in the growth and development of the new Canadian workers' compensation system (Chapter Five).

But the Newfoundland environment was always not conducive to major change in the law, particularly prior to 1949. Incremental policy changes predominated when, for example, Newfoundland of the 1920s and 1930s was saddled with miserable economic performance, increasing public debt and eventual bankruptcy (Chapter Three). Government preoccupation with economic crises meant that the concerns and influence of labour leaders were greatly diminished. Although labour advocacy was a policy determinant, to the extent that some positive changes occurred, other factors often outweighed government's ability or willingness to meet their desire for sweeping change. As witnessed (Chapter Three), Smallwood's and Browne's bold bid for the Newfoundland government to adopt the progressive new Canadian model was side-stepped in 1926 in favour of a series of incremental changes. That episode illustrates how incremental policy results when the competing interests of capital and workers vie for policy influence. Incrementalism, as stated at the end of Chapter Three, reduces the stakes in political controversy and encourages losers to accept their losses without disrupting the political system.

During the initial decades the system and its institutions were not complex. For example, outside of one or two keen government members, such as the young Edward Morris, there were few (if any) others interested in policy development after the original Act was passed in 1887. Matters were obviously restricted to individual cases and courts. But by 1900, policy choices were made in the context of government, industrialists, and trade union viewpoints. The policy development landscape eventually included the likes of Coaker's elected unionist party. And, whether it was Morris and Sir Robert Bond's associated battles of one-upmanship, or Bond's apparently self-serving reasons for introducing various legislative amendments, or Cashin's favourable 1919 amendments catering to the interests of the Returning Soldiers' Association, the complexity of interplay was often heightened by ulterior motivations (Chapter Two). While such examples highlight how the policy development environment grew somewhat complicated after 1900 in line with industrial development and the growth of class interests, it was a relatively straightforward political and institutional environment.

The policy development environment showed initial signs that it would become more complex following the advent of Commission of Government and rebirth of organized labour in the 1930s. The communication breakdown between the Commission of Government and local labour leaders created a stalemate situation in which policy development was drastically impeded in the 1930s and 1940s (Chapter Four). Subsequent activities in the newly created Labour Relations Office (1942), such as public consultation as part of legislative review in 1947, demonstrate the requirement for

improved governmental responsiveness regarding policy development. In 1948 and 1949, organized labour interacted so effectively in the political sphere that many of its leaders became members of Smallwood's Liberal government (Chapter Five). That helped set the stage for the post-1949 policy window which saw the adoption of the Canadian model and now included the WCB and its specialized bureaucrats. By the 1960s, definitive interest groups, such as unions, St. Lawrence miners, and the Law Society, were vying for greater influence upon workers' compensation and occupational health and safety policy (Chapter Five). The terrain was further complicated by the St. Lawrence Royal Commission in the late 1960s, an unmistakably important policy determinant which, in part, helped set the stage for another policy window of opportunity in the dynamic Moores-Maynard years (Chapter Six). The advocacy of organized labour for improved benefits during the 1970s was a clearly identifiable policy determinant leading to a series of progressive legislative amendments and benefit improvements.

After 1980 - for essentially for the first time ever - Newfoundland employers became motivated to defend and promote their interests in the workers' compensation system because of increasing costs. In 1983, a new employer advocacy group - known as the Employers' Council - called for greater levels of employer influence over the workers' compensation policy decisions. Then, on the heels of a new wage-loss system in 1984, a new corporate Board of Directors' and an external appeal tribunal were created in 1986. Also, by 1988 an Injured Workers' Association was formed to represent their own interests in the system. In short, the policy development landscape was changing

dramatically with the emergence of new systems and institutions, new actors, and more articulate expression of ideological viewpoints. In particular, the history reveals increasing interplay with and heightening importance of the WCC and its associated institutional structures and processes.

As a measure of the growing complexity of the system, when the first statutory review process occurred in 1966, only 15 written briefs were submitted and there were no public hearings. But the 1988 statutory review process involved 24 written briefs and 26 public hearings (with 114 oral presentations). Since 1959 there have been six Statutory Review Committee reports: May 1966, July 1972, June 1977, December 1981, February 1988, November 1991, and May 1997. Statutory review processes themselves are interesting mechanisms for tracking the growing complexity of interactions and preferences of actors. By nature, the role of these processes is to assist in the identification and formulation of policy alternatives. They open up the system for close scrutiny, at the call and on behalf of government, on a regular basis. From government's perspective, the process is a vehicle from which to gauge private and public reactions to the current state of affairs. An analogy might be that the process allows government to sit pond-side and unobtrusively peer through the reeds as the various interests stake their positions. Government can shape its own views depending upon the relative directions and strength of private and public opinions. Viewed in this light, the statutory review processes are an example of a mechanism which operates to articulate and shape the range of acceptable alternatives for final decision making. Alternatively, they may be viewed as political

liabilities at times when the system - which is inherently biased toward incremental change - does not require major change but the spectacle of the review process draws out negative complaints and raises expectations that cannot be easily met.

On this matter, however, it must be understood that major workers' compensation policy choices in Newfoundland are and have always been decided by the government of the day. In other words, the final call regarding policy, i.e., legislative, choice remains with the government. Therefore, to affect substantive change groups or individuals had to have the ear of a sympathetic government, even to affect modest changes such as the FPU logger coverage amendment in 1914 (Chapter Two) or Smallwood's marginal reform efforts in 1926 (Chapter Three). Organized labour, for example, realized all of its goals as soon as it aligned itself with the Smallwood government in 1949, but very few of its objectives were met prior to 1949 when it did not enjoy close relations with government (Chapter Five). The question of who was the final decision maker related to the workers' compensation system became somewhat more complex after 1949. Following the introduction of the new WCB in 1951, government allowed the WCB policy experts to take the lead on certain policy matters (Chapter Five). While government necessarily retained final authority for legislative changes, there was a sense of WCB autonomy and shared decision-making authority between the WCB and government. In that environment, therefore, those interested in influencing policy outcomes could appeal to either the WCB or government leaders in hopes of having their concerns addressed. In 1959, however, the Smallwood government reasserted pre-eminence as final decision

maker within the system warning that "up to now, (they, the WCB) have been a little municipality, a little kingdom of their own." Smallwood instituted the statutory review process to oversee management of the system and report back to government at least once every five years. After 1959, government controlled final decision making exclusively with absolutely no sense of shared authority until after Smallwood's departure in 1972.

Perhaps as a result of Smallwood's influence and control measures, the WCB through the 1970s did not play a leadership role. In fact, it has been described as a stagnant bureaucracy up to the end of the 1970s (Chapter Six). By 1984, however, it went from the obscure WCB to the empowered WCC, providing governmental-like leadership and final decision making proxy such as control over a complete rewrite of the legislation. For the second time since 1951, the credibility of WCC bureaucrats rose so that they gained more influence on policy decisions at the highest level. However, the factors driving this new found credibility with government were different than in 1951. The first period (1951 - 1959) occurred during honeymoon years when the WCB was new and government was otherwise preoccupied with matters associated with building a new province (Chapter Five). The second period (1981 - 1984), on the other hand, arose for a number of reasons: policy bias of the Moores' administration favouring stronger administrative capabilities within government agencies; Peckford's willingness to empower the WCB and very closely follow the direction of its bureaucrats led by a former, influential political colleague (Maynard); recommendations for greater WCB influence in the 1981 Statutory Review Committee report; general unrest within the system with few obvious solutions;

and, the sinking of the Ocean Ranger which was a turning point for the WCB in this regard (Chapter Six).

As an interesting aside, the history provides striking examples of how catastrophes, such as the Ocean Ranger sinking and St. Lawrence, create potent policy windows of opportunity which precipitate policy significant action. But other less obvious factors influence the policy development as well. In the liberating Charter of Rights and Freedoms era of the 1980s, the system adjusts to demands from individuals more willing than ever to appeal workers' compensation decisions in defense of their individual rights. From wars to inflation, from Smallwood's falling out with labour after 1959 to Moore's commitment for change in the 1970s, the paper consistently demonstrates that local workers' compensation policy choices are often affected by factors influencing the broader social, political and economic environment.

Partly as a reaction to the new found authority of the WCC in the 1980s, but primarily as a reaction to escalating costs and general expansion of workers' compensation benefits and programs and benefits, employers encouraged government to change the governance model. As early as 1983, the Employers' Council recommended abolishing the old Commissioner system (headed by the influential Maynard) and replacing it replacing it with a Board of Directors. In fact, a Board of Directors system replaced the government-appointed WCB Commissioners in 1987 (Chapter Seven). Between 1987 and 1993, the Board of Directors did not have the same level of direct influence in final decision

making as did the Maynard-led WCC of the early 1980s. There were various reasons why that was so, but the primary factor was that government was forced to take control of the system because of financial difficulties. In retrospect, the cost implications of the 1984 changes irrevocably altered the course of workers' compensation policy development and may be viewed, in isolation, as the primary determinant of events for the remainder of the 1980s and 1990s (Chapter Seven). The 1984 to 1993 period shows that dramatic benefit gains can be quickly eroded and may even suggest that workers' compensation is a system which is more stable when incremental policy processes are pursued (although that is speculative and discount the possibility that large scale changes can be effectively managed with thoughtful planning, research and cost analysis).

Indeed, in 1990 financial concerns were unquestioningly the dominant, overriding policy determinant. While the Board of Directors was unable to control costs, or otherwise limit benefits and programs, without significant legislative direction from government, it played a vital advisory role by effectively communicating key financial information to government and the 1991 Statutory Review Committee. In this light, the Boards of Directors helped define the agenda and refine the range of alternatives for final decision making by government. Whether future Boards of Directors are able or will be called upon to exercise more than incremental guidance may simply depend upon changing times, circumstances and personnel. Or perhaps, given the diverse backgrounds of their memberships, Boards of Directors may be especially prone to incremental decision making - opting to reduce the stakes in controversy and encourage graceful losses -

leaving tough policy decisions to government.

To conclude, the main intention of this paper has been to document the major policy determinants which have affected the development of workers' compensation laws in Newfoundland from colonial to modern times. It reveals an increasingly complex and costly environment, especially since 1981, characterized by ongoing struggle for mutually incompatible preferred outcomes by labour and employers through an evolving network of institutions (WHSCC, Board of Directors, appeal tribunals, statutory review processes, etc.) with Government as final referee. Intuitive judgment suggests these dynamics are conducive to incremental policy development and political theories touched upon in the paper, such as path dependency, increasing returns and policy windows, suggest the system fundamentals will remain stable subject to occasional policy shifts. As for how, when, and why policy shifts occur, the history provides insights based on past experience and, as path dependent theorists would agree, the past can be an effective predictor for the future.

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Blanchard, Ted. Began at provincial department of labour in 1950 and went on to become CEO of the Labour Relations Board by the mid-1960s. Served as Deputy Minister of Labour through the 1970s and 1980s, and as Minister of Labour in the Peckford government beginning in 1985.

Burse, Max. Long-time employee of the WCC from 1961-1991. Retired as Executive Director Policy and Special Services.

Dwyer, Gerald. Former Baie Verte union leader [1960 -1987]. Went on to be Worker' Advisor at Federation of Labour regarding workers' compensation.

Haynes, Austin. Past President of Injured Workers' Association.

Maynard, Ed. Elected MHA in 1972 and held various cabinet posts through 1970s. Became Chairman of the WCB in 1979, later CEO of the WCC where he remained until 1989.

Parsons, Bill. Labour leader. Early involvement through U.S.W.A. Past President of the Federation of Labour. Went on to become Executive Director, Building and Construction Trades Council and Building Trades Petroleum Development Association.

Peddle, John. Former union leader who went on to become President of the Newfoundland and Labrador Hospital and Nursing Homes Association.

Price, Elaine. President, Newfoundland and Labrador Federation of Labour.

Rowe, Penelope. Social policy advocate and former journalist. From 1976 to date Rowe has been Executive Director of the Community Services Council of Newfoundland and Labrador. Chairperson, WCC Board of Directors 1989-2000.

Saunders, Martin. Former U.S.W.A. member (Baie Verte mines) and eventual Canadian Labour Congress representative in the province.

Tucker, Marilyn. President, Newfoundland and Labrador Employers' Council.

Withers, Vince. An employee of Newfoundland Telephone since 1958, he eventually became President and CEO of Newfoundland Telephone's parent company, NewTel Enterprises Ltd. A member of the St. John's Board of Trade and Past President and one of the founders of the Newfoundland Employers' Council.



