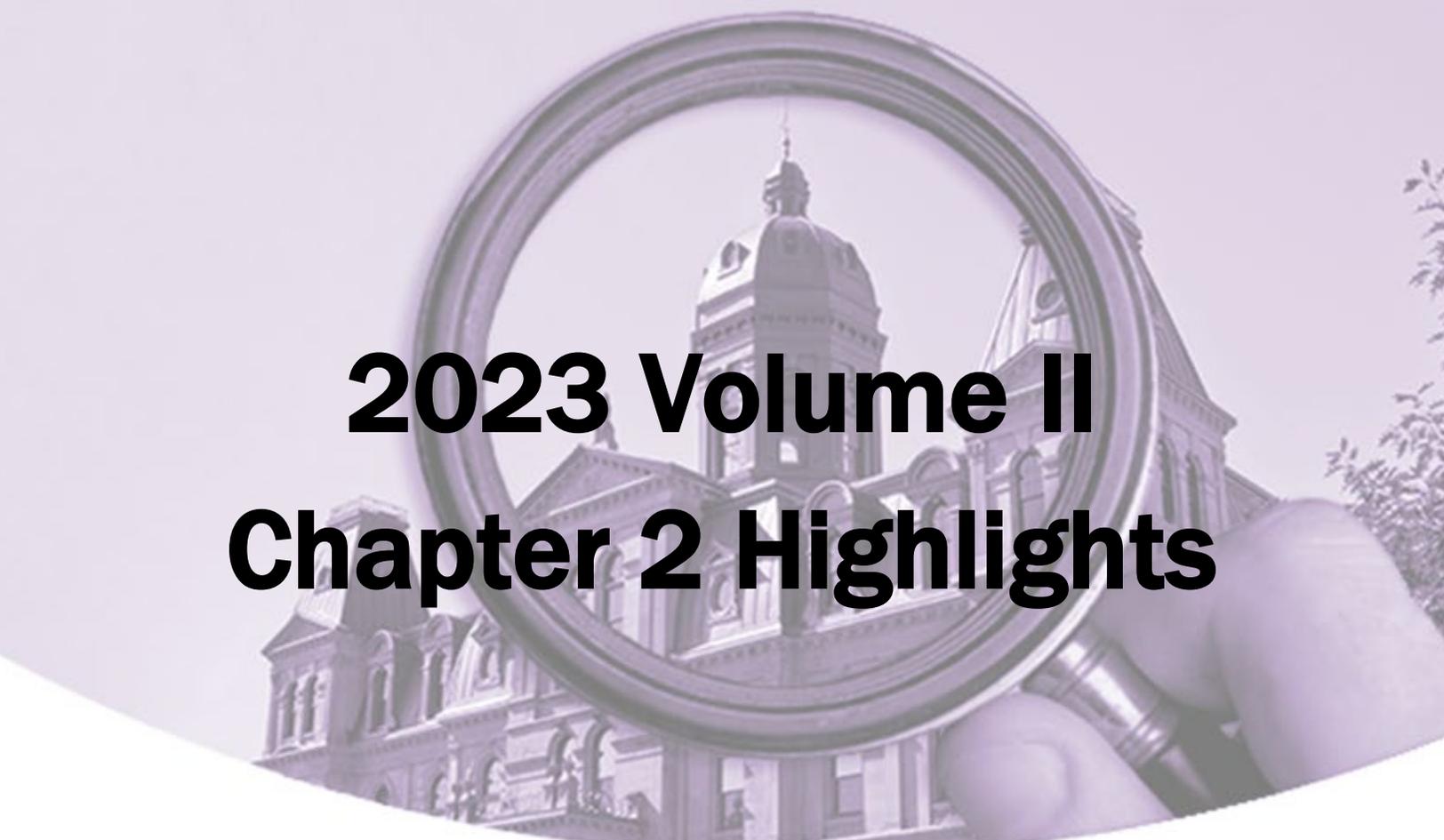


Workers' Compensation Payment Mechanisms in the Public Sector – Department of Finance and Treasury Board



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2023 Volume II Chapter 2 Highlights

Regional health authority employees are compensated at lower levels than others	Some compensation mechanisms incur additional costs to government	No documented business case supporting treating employees differently
The Government of New Brunswick's compensation benefit payment methodologies are inconsistent, with no documented rationale for doing so		

Overall Conclusions

Our audit work concluded that the government of New Brunswick's compensation benefit payment methodologies are inconsistent, with no documented rationale for doing so. Overall findings are as follows:

- regional health employees are compensated at lower levels than government department and public school system employees
- the compensation mechanisms for Parts 1 and 2 incur additional costs to government
- although compensation structures appear to align with legislation, policy, and collective bargaining agreements, there is no documented business case to support treating employees differently

About the Audit

Introduction to the Audit

- 2.1 Workers' compensation is a mechanism to ensure workers who are injured at work have access to medical care and receive compensation to cover a portion of their lost wages while they are out of work. As per section 7(1) of the *Workers' Compensation Act* (Act):

“when personal injury or death is caused to a worker by accident arising out of and in the course of his employment ..., compensation shall be paid to that worker or his dependents...”

- 2.2 Workers' compensation operates on the premise that employers agree to fund the workers' compensation program in exchange for workers giving up the right to sue employers.
- 2.3 The intention of our work is not to recommend one payment model over the other, but to ensure government understands the costs, benefits and outcomes pertaining to each methodology.

Why we Chose this Topic

- 2.4 Every year, thousands of New Brunswickers are injured in the workplace. Despite efforts made to reduce work-related deaths, 13 employees lost their lives to workplace-related accidents and occupational disease in 2022.
- 2.5 It is important that taxpayers understand the compensation structure for government employees, and that government has documented business cases to support its selected compensation models.

Auditee

- 2.6 Our auditee was the Department of Finance and Treasury Board (the Department). We also made inquiries and obtained audit evidence from WorkSafeNB.

Audit Scope

- 2.7 We examined the workers' compensation payment structure for injured employees within the following parts of government:
- Part 1 – Government departments and agencies
 - Part 2 – Public school system (teachers, bus drivers, school district employees)
 - Part 3 – Health care employees

- 2.8 The audit covered the period from January 1, 2020 – December 31, 2022. Information outside of this period was also collected and examined as deemed necessary. As part of our work, we reviewed collective bargaining agreements, relevant policy, and legislation.
- 2.9 More details on the audit objectives, criteria, scope, and approach we used in completing our audit can be found in Appendix II and Appendix III.

Audit Objective

- 2.10 Our audit objective was to determine if the Department of Finance and Treasury Board’s compensation mechanisms for injured workers are consistent or have justifiable variations among employment groups that demonstrate value for money.

Conclusion

- 2.11 Our audit work concluded that the government of New Brunswick’s compensation benefit payment methodologies are inconsistent, with no documented rationale for doing so. Overall findings are as follows:
- regional health employees are compensated at lower levels than government department and public school system employees
 - the compensation mechanisms for Parts 1 and 2 incur additional costs to government
 - although compensation structures appear to align with legislation, policy, and collective bargaining agreements, there is no documented business case to support treating employees differently

Background

- 2.12 The Department of Finance and Treasury Board is responsible for wage mandates, for management and non-union employees, as well as for leading collective bargaining for the 25 collective agreements across Parts 1, 2, and 3 of the Public Service.
- 2.13 The Government of New Brunswick is self-insured and therefore does not pay assessment rates. Instead, the full cost of is borne by the Province and does not financially impact other employers as there is no collective liability. The Government of New Brunswick continues to pay administration costs associated with the management of claims to WorkSafeNB.
- 2.14 The table below details the numbers of bargaining and non-bargaining employees in various parts of government between 2018 and 2022.

DEC. 31, 2018 - DEC. 31, 2022						
EMPLOYMENT TYPE		2018	2019	2020	2021	2022
BARGAINING	PART 1	6,279	6,123	6,120	6,730	5,386
	PART 2	17,598	17,970	18,278	18,053	19,053
	PART 3	16,871	16,954	17,014	17,191	17,732
	TOTAL BARG.	40,748	41,047	41,412	41,974	42,171
NON-BARGAINING	PART 1	4,264	4,169	4,196	3,425	4,521
	PART 2	207	224	226	243	245
	PART 3	1,383	1,419	1,475	1,524	1,625
	TOTAL NON-BARG.	5,854	5,812	5,897	5,192	6,391
TOTAL		46,602	46,859	47,309	47,166	48,562

Source: GNB Workforce Profile 2022 (unaudited)

Workers' Compensation Payment Methodology Inconsistent

- 2.15 The *Workers' Compensation Act* is administered by the Department of Post-Secondary Education, Training and Labour. The Act establishes a payment methodology for all New Brunswick employees, including the public sector. The Department of Finance and Treasury Board administers government policies, and has established policy to support alternative methods of payments for Parts 1 and 2 of government.
- 2.16 Government has operated under the following two workers' compensation payment structures for a number of years:
- 85% of net loss of earnings for Part 3 employees
 - 100% salary continuance for Parts 1 and 2 employees

85% of Estimated Net Loss Earnings

- 2.17 As per Section 38.11(2) of the *Workers' Compensation Act*:
- "Where injury or recurrence of an injury to a worker referred to in subsection (1) results in a loss of earnings beyond the day of the injury, the Commission shall estimate the loss of earnings therefrom and shall pay compensation to the worker in an amount equal to eighty-five per cent of the estimated loss of earnings."*
- 2.18 It should be noted that most employees in the private sector are compensated at 85% of estimated net loss of earnings as per the Act.
- 2.19 Regional Health Authority employees (Part 3) are compensated at 85% of net loss of earnings. For tax purposes, these payments are tax free, and do not include CPP and EI contributions. Government pension, vacation and sick leave benefits do not accrue for the duration of the claim. Additionally, the *Workers' Compensation Act* establishes that the estimated loss of earnings are subject to a maximum earnings cap. In 2022, the yearly maximum assessable earnings was \$69,200 per worker.
- 2.20 The *Workers' Compensation Act* dictates that WorkSafeNB set aside an amount for workers' pension benefits for workers who have received consecutive benefits for more than two years.

- 2.21 During 2022 there were a total of 1,131 employees in Part 3 who had WorkSafeNB claims for regular loss of earnings. The cost to government for these injured workers was approximately \$11.6 million.

100% Salary Continuance

- 2.22 Government Administration Manual Policy AD-3109 applies to non-unionized employees within Parts 1 and 2 of government. This policy directs that employees within government departments (Part 1) and school districts (Part 2) be paid 100% salary continuance for the duration of their claim.

- 2.23 Policy AD-3109 states its authorities as being:

- the *Workers' Compensation Act*
- section 6(1)(h) of the *Financial Administration Act* (FAA)
- section 7 of applicable non-bargaining personnel policies
- applicable collective agreements

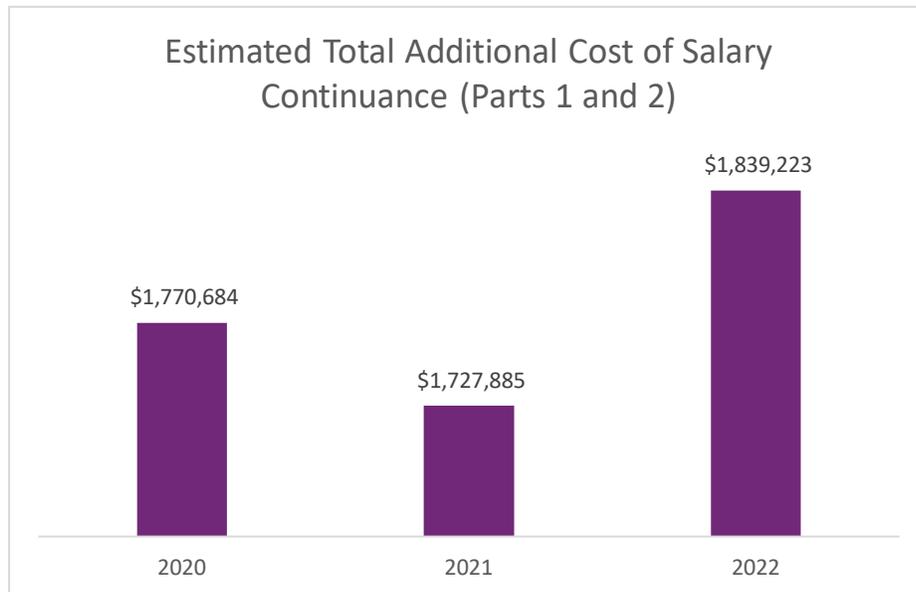
- 2.24 FTB officials informed us the FAA permits government to determine and regulate payments to the Public Service, thereby providing GNB with the authority to administer salary continuation to employees on a workers' compensation claim. We reviewed the FAA and determined that Section 5(3) of the FAA states:

“Despite any other Act, the [Treasury] Board may prescribe the duties of ... the departments with respect to accounting procedures and financial commitments.”

- 2.25 However, we noted section 6(1)(h) of the FAA no longer exists and Policy AD-3109 has not been updated to reflect this change. The Department informed us that the policy is currently under review.
- 2.26 During 2022, there were a total of 676 employees within Parts 1 and 2 of government who had WorkSafeNB claims related to salary continuance. The salary continuation cost to GNB for these injured workers was approximately \$5.7 million.
- 2.27 Payments continue to be processed and paid by the employer at 100% of the employees' salary before injury. For most cases contributions continue for CPP, EI and government pension. Vacation and sick leave benefits continue to accrue. For income tax purposes, salary continuance payments are considered income and taxed accordingly.

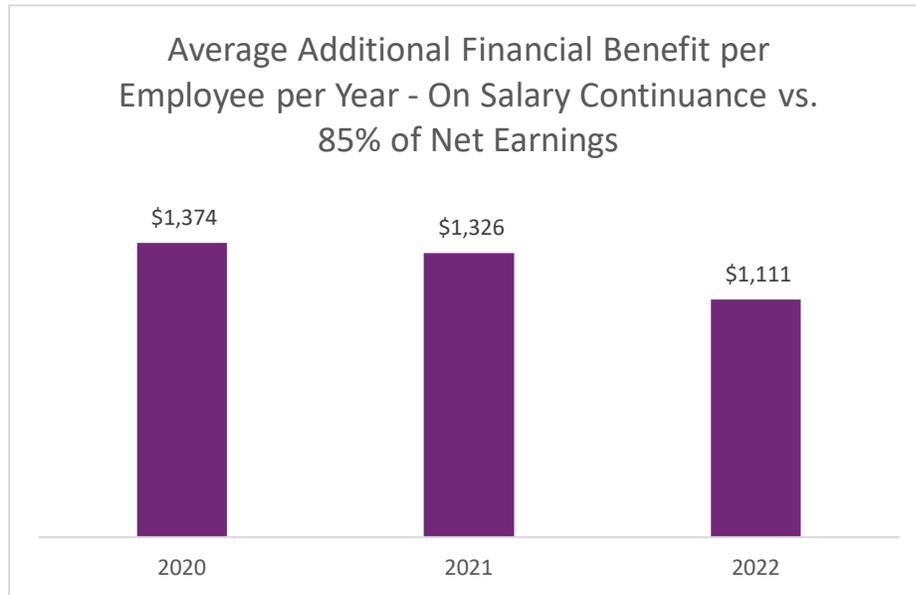
Lack of Business Case Analysis to Support Salary Continuance Payment Methods

- 2.28 The Department was unable to provide an explanation or a business case to support the policy decision to compensate Part 1 and 2 employees differently than Part 3. There has been no analysis done to compare differences in benefits provided, costs, employee equity and program outcomes.
- 2.29 Based on information we received from the Department and WorkSafeNB we were able to determine the estimated total additional cost to government of salary continuance vs. 85% of estimated net earnings was as follows:



Source: Prepared by AGNB based on data from WorkSafeNB (unaudited)

- 2.30 The graph below details the average additional financial benefit to employees obtaining salary continuance (Parts 1 and 2 of government) vs. 85% of net earnings (Part 3):



Source: Prepared by AGNB based on data from WorkSafeNB (unaudited)

- 2.31 A portion of the additional cost of salary continuance is related to income taxes remitted to the federal government.
- 2.32 For illustrative purposes, we have provided fictitious examples below, assuming each employee had pre-claim employment income of \$100,000 and \$50,000 (excluding pension, health and other benefits).

Employees Salary Greater Than the Legislated Yearly Maximum Assessable Earnings

	Salary Continuance	WorkSafeNB 85% of Net Earnings
Annual Salary	\$100,000	\$100,000
Maximum Earnings on WorkSafeNB	N/A	\$69,200
85% of Net	N/A	\$42,557
Less: Canada Pension Plan	\$3,500	\$0
Employment Insurance	\$953	\$0
Provincial Tax	\$11,041	\$0
Federal Tax	\$14,718	\$0
Net Pay	\$69,788	\$42,577

Source: Prepared by AGNB

Employee Salary Below the Legislated Yearly Maximum Assessable Earnings

	Salary Continuance	WorkSafeNB 85% of Net Earnings
Gross Annual Salary	\$50,000	\$50,000
85% of Net	N/A	\$32,620
Less: Canada Pension Plan	\$2,651	\$0
Employment Insurance	\$790	\$0
Provincial Tax	\$3,552	\$0
Federal Tax	\$4,631	\$0
Net Pay	\$38,376	\$32,620

Source: Prepared by AGNB

Recommendation

2.33 We recommend the Department of Finance and Treasury Board develop a business case for the use of alternative payment methodologies outside the *Workers' Compensation Act*. Such documentation should include an analysis of the benefits provided, costs to government, employee equity and program outcomes.

Appendix I: Recommendations and Responses

Par. #	Recommendation	Department's Response	Target Implementation Date
We recommend the Department of Finance and Treasury Board:			
2.33	develop a business case for the use of alternative payment methodologies outside the <i>Workers' Compensation Act</i> . Such documentation should include an analysis of the benefits provided, costs to government, employee equity and program outcomes	<p>In response to a recommendation from the Auditor General's Office as a result of an audit which focused on Workers' Compensation Payment Mechanisms in the Public Sector, Finance and Treasury Board will:</p> <p>Complete an analysis of the payment methodologies for GNB employees receiving loss of earnings (salary continuation or 85%) while on approved claim. The analysis will include benefits provided to injured workers, costs to government and any implications to collective bargaining. The analysis will also look at program outcomes across the Parts and any correlation or impact from prevention programming and return to work initiatives in the respective Parts. The analysis will align with work in progress to revise the GNB policy on Workers Compensation, AD-3109. This analysis is not intended to prescribe a change to the current payment methodologies.</p>	Fall 2024

Appendix II: Audit Objective and Criteria

The objective and criteria for our audit of the Department of Finance and Treasury Board are presented below. The Department of Finance and Treasury Board and their senior management reviewed and agreed with the objective and associated criteria.

Objective	To determine if the Department of Finance and Treasury Board’s compensation mechanisms for injured workers are consistent or have justifiable variations among employment groups that demonstrate value for money.
Criterion 1	The Department of Finance and Treasury Board should ensure that workers’ compensation methods align with applicable legislation, policy, and collective bargaining agreements.
Criterion 2	The Department of Finance and Treasury Board should ensure that variations among workers’ compensation payments methods are documented, evidence-based and rationalized.

Appendix III: Independent Assurance Report

This independent assurance report was prepared by the Office of the Auditor General of New Brunswick on the Department of Finance and Treasury Board and its loss of earnings due to injury payment mechanisms in Parts 1 and 2 compared to Part 3. Our responsibility was to provide objective information, advice, and assurance to assist the Legislative Assembly in its scrutiny of the Department of Finance and Treasury Board with respect to these mechanisms.

All work in this audit was performed to a reasonable level of assurance in accordance with the Canadian Standard on Assurance Engagements (CSAE) 3001 – Direct Engagements set out by the Chartered Professional Accountants of Canada (CPA Canada) in the CPA Canada Handbook – Assurance.

AGNB applies the Canadian Standard on Quality Management 1 – Quality Management for Firms That Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements. This standard requires our office to design, implement, and operate a system of quality management, including policies or procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with the independence and other ethical requirements of the Rules of Professional Conduct of Chartered Professional Accountants of New Brunswick and the Code of Professional Conduct of the Office of the Auditor General of New Brunswick. Both the Rules of Professional Conduct and the Code are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

In accordance with our regular audit process, we obtained the following from management:

- confirmation of management’s responsibility for the subject under audit
- acknowledgement of the suitability of the criteria used in the audit
- confirmation that all known information that has been requested, or that could affect the findings or audit conclusion, has been provided
- confirmation that the findings in this report are factually based

Period covered by the audit:

The audit covered the period between January 1, 2020 to December 31, 2022. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters outside of this period as deemed necessary.

Date of the report:

We obtained sufficient and appropriate audit evidence on which to base our conclusion on December 8, 2023, in Fredericton, New Brunswick.