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**Submission to the Public Hearings on the
Workers Compensation Act of Manitoba**

I would thank you for this opportunity to have a ten-minute input for this presentation. In ten minutes it's almost impossible to express ones dissatisfaction and anger with the way in which the Workers' Compensation Board of Manitoba (WCB) have handled victims of work injuries. I would have much preferred to see the Minister of Labour, the Premier or the Legislative Authority appoint a Royal Commission. The Commission would have more power to examine the WCB administration and its affects upon workers and employers. The Commission would also then be able make recommendations more in line with the intent of the Act and Section 15 and 10b of the Charter of Rights and Freedoms.

I also would hope that this mandated Review committee is not looking at more ways in which to cut costs and benefits as was done in 1992. But "to provide and manage the no fault insurance aimed at preventing law suits against firms who pay into the fund, and at the same time fairly compensate workers who have been injured."

The Canadian Occupational Safety publication recently published an article. That article stated that the Supreme Court of Canada, under Section 15 and Section 10b of the

Charter of Rights and Freedoms, ruled in favor of a number of workers in Nova Scotia, to overturn the Nova Scotia WCB decision to extend insurance for workers suffering from chronic pain.

This could be really good news. On one hand you have workers who have suffered unfair practices over the years who now may get a chance to be represented by precedent seeking lawyers who will be paid for services as their cases are heard successfully under the charter. On the other hand you have companies who pay into the fund mismanaged by bureaucrats and provincial governments to make the bottom line look great, who may challenge the fairness of assessments under the charter.

Very soon The WCB bubble is going to break especially if use of the Charter becomes a trend. This is bad news for the Workers Compensation Boards across Canada. That kind of decision should be a wake up call for the them to look at the real issues and examine poor decisions made by non-professional adjudicators and Review officers who weave their own web when dealing with injured workers. In doing so they over and over again apply the Act unfairly or politically just to keep costs down, at the expense of the injured workers.

An example of how these people apply the Act unfairly and you can see how prejudice and sexism they are as you examine a statement they use the making a decision for denying benefits. Get this! This statement isn't even eliminated by the Appeal Commission as fact. The statement made by Brooke E. Smith employers' attorney, of Houston, Texas. **“The probability that a person will be diagnosed as having RSIs, CTS increases if the person is female, over the age of forty, overweight, has diabetes, arthritis or hormone disorders or has ever had a hysterectomy. Personal habits such**

as use of tobacco, alcohol, and caffeine and failure to exercise regularly contributes to the likelihood of that person will develop RSIs or CTS.” Now the lack of exercise could be a contributing cause, rather than looking at personal habits, sex or weight.

The board should focus on tasks that cause the injury, because in the end if the worker is not placed on rehabilitation usually that person will drop out of the workforce and maybe placed on social assistance. This harms the worker and the company who has to find and train a replacement.

Right now the Board promotes fraud by referring injured workers to EI or Social Assistance. These are separate programs funded by other government sources including the worker and the employer. This in turn puts a strain on social programs funded through these agencies otherwise meant for use by other qualifying recipients. The injured worker is then reduced to the level where he loses his self -confidence and so on.

So, How can we make the boards be more responsible? Well one of the positive things that WCB has implemented is to promote safe workplaces through various grants. The participants working with the funds allocated by the WCB annually, research ways to promote, educate and teach prevention. Those grants are available to various groups willing to take the time and energy to help reduce accidents in the workplace and promote wellness among workers who have suffered tragic accidents.

In some cases those groups put faces on injured workers, one such group is The Workers of Tomorrow group. Others may help struggling companies on subjects such as “how to prevent workplace injuries”, by introducing new safety techniques and help in finding ergonomic solutions for workplaces with those issues.

Palliser Furniture has been very successful in this particular area. They meet their objective goals of reducing injuries and set up a return to work program. I've spoken with workers there that are very satisfied and happy with the program.

I believe another way they can reduce costs is to appoint an ombudsman to replace the Fair Practice office since that office really don't have any impact on the requests they receive from companies or injured workers, and normally advises them to follow the appeal process.

The workers advocates are funded by the WCB and this may qualify as a conflict of interest if challenged through the courts under the Charter of Rights and Freedoms. I would recommend that injured workers have access to lawyers versed on legislative law who can better represent them during appeals.

The medical profession is absolute fed up with the way in which the adjudicator's approach them for request for information. The adjudicator will refer the worker to submit to a medical examination under section 21(1). This kind of tactic puts the medical professionals at odds with each other.

One of the biggest complaints that is being dealt with on a daily basis is the fact that when a worker is called in by the Board for a medical review, the doctors treat the patients horrifically, the patients leave feeling violated and embarrassed, like being victimized again. Then on a one-time visit those WCB Doctors make a diagnosis? What is up with that, don't they communicate with the patient's doctor? Sometimes when they do, and with the shortage of physicians they expect that attending doctor to drop what they are doing and cater to their needs. The doctors that I have contacted are feed up with the tactics of the WCB and the type of protocol being used. There is no

communication with the attending Doctor, and before one knows it the Medical Review panel gets into a situation where they piss off the attending physician and no longer can the Board expect cooperation or information from the attending doctor and in the end the worker gets screwed.

Section 21(1) and 21(2) is very adversarial as it pits the Medical Professionals against each other and attacks their credibility. Workers feel uncomfortable and afraid. They find it to be an intrusive examination by doctors who are usually less qualified than a preferred specialist and may only see this particular worker once and then form an opinion on the diagnosis. That decision affects the ability of the worker to participate in rehabilitation or return to work programs. Sections 21(1), 21(2) and section 22 are other areas that could be challenged in the Supreme Court of Canada under the Charter of Rights as Conflict of Interest, or you could Repeal these sections.

Today many Doctors would prefer not to deal with the Workers' Compensation Board because of their adversarial actions. They find it a waste of time to attend Medical Reviews as their time is valuable and they have already given their professional opinion to the WCB regarding the condition of the worker. In my own opinion the adversarial behavior by Workers at the WCB has created an atmosphere of anti trust when dealing with worker issues in consultation with those professionals.

Another area that needs to be addressed is section 43(2) establish an extended health care plan for injured workers and their families who have been terminated from employment or are on long term claims.

While all Workers' Compensation Board cases are not negative. There are some very successful resolutions. However, the board needs to review their standards on

internal hiring. They also need to revamp their guidelines regarding policy and procedure for internal training of workers. The Board deals with many professionals, so it's about time that behavior and attitude address those professionals in a professional manner.

Challenges faced by injured workers who are on long term disability whether or not in receipt of benefits.

- Injury
- Loss of income
- Pain
- Loss of family benefits because of termination from job and non-available through funding under WCB.
- Negative and bad credit rating while dealing with Banks, Credit Unions, and utilities that you can never overcome even when you bring those from arrears.
- Family breakup.
- Children's schooling and development
- Loss of home
- Loss of vehicle or loss of use.
- Violence
- Depression, Suicide and so on.

So when it comes to dealing with those issues I have witnessed them firsthand. There are all kinds of people in the province who know the struggles of injured workers, and they too are disgusted. There are programs that help workers deal with those issues, but until a workers has been placed on benefits, only those who work with or council them witness the tragedy.

Some of the recommendations that I would make are:

1. Always communicate with the attending physician regarding diagnosis of the injuries and treatment recommended.
2. If the board needs more medical information have the attending physician refer the workers to a specialist. This would avoid conflict of interest.
3. Review only the facts of the case. “Out of 200 cases I filtered through only about 12 cases were vague on facts”. This means that more information was required, not a reason to deny benefits.
4. That injured workers have access to lawyers who are versed in legislative litigation.
5. That section 21(1), 21(2), and section 22. Be Repealed.
6. That changes made in 1992 be reversed.
7. That employers participate in the rehabilitation processes for duty to accommodate using their business network to help relocate injured workers to another job or task while the rehabilitation process takes place.
8. That employers who terminate injured workers have punitive damages attached to their assessment unless the injured workers decides to take the issue before the Human Rights Commission or begins legal action in civil court.
9. That vocational rehabilitation programs be completed especially if there is an academic element attached.
10. That section 60(4) Legal Precedent be Repealed. It will be challenged in the courts.
11. Personal traits like age etc receive clarification so those older workers receive consideration when trying to establish an earning capacity or complete a vocational rehabilitation program.

There are many issues that should be addressed however, you won't hear from those who have been mistreated by this WCB system. Those affected would be health care professionals who are fed up with the system, Banks, Credit Unions, Dentists, Chiropractors, Mental Health Workers, other health care providers and injured workers who have given up or are dead.

I've always contended that reviews such as this become super highly charged because when workers, unions and employers get together about WCB concerns and to express their dissatisfaction with the administrators of the Act, then the atmosphere becomes hazardous as if one knocked over a hornets nest.

The Board of Directors should direct the Chief Executive Officer to comply with WCB legislation. Stop skirting those laws or we may see a lot of cases sent to the Supreme Court, and that court may have authority to lay charges against individual workers who do not apply the law with the greatest of due diligence.

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