



Winnipeg Construction Association

Submission to the

Workers Compensation Act Review

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Presented by

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for the

Winnipeg Construction Association



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

Introduction

This presentation is submitted on behalf of the Winnipeg Construction Association – the oldest, and largest commercial construction association in the province. The WCA represents approximately 460 companies, of all sizes, engaged in various capacities in the industrial, commercial, and institutional construction industry in the province. Our members are responsible for approximately 75% of the commercial construction work in Manitoba.

This association has had a very long and positive history of working with governments – both local and national - on behalf of the construction industry. We have participated, or have been consulted, in matters relating to education and apprenticeship, skill shortages, industry wages, and workers compensation. We are actively involved in promoting workplace safety in Manitoba through the Manitoba Construction Safety Association.

The Winnipeg Construction Association is a member of the Manitoba Employers Task Force and we acknowledge the earlier presentation made to the WCB Act Review Panel and endorse its recommendations.

In very general terms the Winnipeg Construction Association is satisfied with the operation of the Workers Compensation Board of Manitoba and does not recognize the need for any major legislative changes or policy shifts. Despite frequent reports that Manitoba has one of the highest workplace accident rates in the country, Manitoban's enjoy some of the lowest workers compensation rates in Canada. At the same time, we are not seeing hundreds of workers or employers protesting that the system is unfair. The logical conclusion is that the system is working. We submit that the WCB has been capably managed over the past decade and has posted operating surpluses for many of those years

That is not to suggest that we should not examine the WCB legislation and policy on a regular basis and make incremental changes and that, we believe, is the task at hand. We enter into this discussion with the belief that the system must continue to be carefully balanced and fair to all of those involved and we are of the firm belief that any of the proposed changes must be preceded by a complete financial impact analysis.

In reviewing the various briefs that have been submitted to the review panel, we found it useful to reflect on the principles that were established when workers compensation was initiated and articulated by Chief Justice Meredith more than 80 years ago. Those principles were as follows:

- Employers bear the direct cost of compensation and in doing so, receiving protection from lawsuits arising from injuries;
- Workers give up the right to sue their employers and receive compensation benefits at no cost for work-related injuries;
- Negligence and fault for the cause of injury are not considerations;

- The system is to be administered by a neutral agency and would have exclusive jurisdiction over all matters arising out of the enabling legislation. This neutral agency became the Workers' Compensation Board (WCB).

For your consideration, the Winnipeg Construction Association offers the following recommendations:

Directors' Liability

The WCA recommends that the Workers Compensation Act be amended to remove the section(s) which effectively allows the Board to sue directors of WCB covered companies to recover damages paid to injured workers. One of the key tenants in the compensation board system – and one of the Meredith principles – provides that the employer be protected from such action.

While the WCB claims this policy is not used today, it has in the past taken employers to court in an attempt to recover claims paid. To further confuse the issue, the WCB will sell employers additional coverage for directors – so that the WCB can't sue them! Clearly this is a policy that is inconsistent with the objectives of the WCB and commitments to the employers community and must be changed.

Waiting Period

The WCA recommends the introduction of a waiting period for injured workers prior to receiving benefits, as is the case in other public insurance programs.

Exemptions to the waiting period may be considered if:

- the injury results in hospitalization; and/or,
- the time loss lasts longer than 20 working days; the board will retroactively pay the claimant for the waiting period.

Waiting periods in workers compensation system programs are similar to deductibles, a common feature of most insurance programs. The primary motivation for introducing a waiting period is to achieve cost savings by discouraging frivolous claims. Such claims tend to be very short term in nature and are likely to be dissuaded by a waiting period of two or three days. All things being equal, fewer claims will result in lower overall claims costs.

A waiting period means that an injured worker would be required to wait a specified number of days after a workplace injury before income replacement benefits are paid. It is similar to a waiting period in other public insurance programs such as federal Employment Insurance and public auto insurance schemes (such as MPI). Waiting periods for WCB exist in New Brunswick, Nova Scotia and Prince Edward Island.

Return to Work

The WCA suggests that no further requirements to accommodate injured workers be enacted in law. It is our opinion that existing human rights legislation adequately addresses employers' "duty to accommodate".

The Workers Compensation Act is intended to compensate individuals until they can return to modified or pre-accident employment. Many employers will facilitate a return to modified duties, recognizing it as a

necessary part of the recovery process. In the vast majority of situations a return to work is agreed upon between the worker and the employer. In other situations, such as when a disagreement regarding the employee's ability to do certain tasks, the WCB will become involved. Although a policy exists, it should more clearly define the responsibilities and expectations of all parties.

Expedited Treatment for Injured Workers

The Winnipeg Construction Association encourages that WCB to consider policy or legislative changes that allow the Board to contract, purchase or arrange for expedited medical treatment or diagnostic testing for injured workers. The intent of this recommendation is not to force someone back to work early – rather it is to ensure that injured workers receive expedited diagnosis and treatment.

We believe that an early recovery from injury and an early return to work is critically important to the injured worker. In many cases, the disability period is often prolonged due to delays in accessing necessary diagnostic tests or timely medical treatment. These delays often add months or years to the recovery process.

Permanent Impairment Awards

The Winnipeg Construction Association is of the opinion that the “Dual Pension system” methodology is sound and should remain unchanged and is consistent with most other jurisdictions in Canada. We would suggest that the policy of adjustments, while likely founded on sound actuarial analysis are confusing and would merit further review by experts in this field.

Wage Loss Benefits

The WCA recommends that the Maximum Annual Earnings cap be retained. The 2004 Maximum Annual Earnings cap for Manitoba was \$56,310.00 which, when based on a 40 hour week, equates to approximately \$27.00 per hour. We believe that the greater majority of injured workers fall under the aforementioned maximum.

We are of the opinion that removal of the Maximum Annual Earnings cap is not only unwarranted but contrary to the practice of every other jurisdiction in Canada. As well, any worker whose employment pattern would be categorized as irregular or seasonal should continue to be subject to the determination of Average Earnings.

All provincial jurisdictions have an Annual Earnings cap which is adjusted annually to reflect that particular jurisdictions economic growth during the previous 12 month period. In Manitoba the adjustment is based upon the percentage increase in the Manitoba Industrial Average Wage.

WCA further recommends that recipients of Minimum Wage be compensated on the 90% of net formula as are all injured workers. To treat minimum wage earners differently than you would someone earning slightly greater than minimum wage would create an obvious anomaly and one which would, in our opinion, remove the incentive for an early return to work.

The WCA recommends Wage Loss Benefits For Loss of Earning Capacity remain at the existing level.

Currently injured workers receive 90 per cent of net income for the first year and 80 per cent of net income after two years. The premise of the Act is defined as assured benefits, not full income replacement and we support this notion.

Occupational Disease and Stress

The Winnipeg Construction Association supports the ETF recommendation that the "Dominant Cause" provision of the Act is an integral part of determining the work relatedness of Occupational Diseases and, for that reason, must continue to be a factor in this determination.

The dominant cause provision prevents the employers from being held financially liable for diseases that are, for the most part, related to lifestyle or other factors unrelated to the work environment. The current legislation relies upon medical evidence and/or studies to ascertain whether the dominant cause of an occupational disease is related to the work environment which, we believe, is in keeping with the Meredith principle.

The WCA is of the opinion that the current definition of acceptable stress is fair, reasonable and consistent with the majority of jurisdictions throughout Canada. On this basis, we recommend that the existing legislation/practice remain unchanged. It is our opinion that broadening of the interpretation of acceptable stress is not only inconsistent with the spirit and intent of the Workers Compensation Act but would place an unmanageable and unfair financial burden on the employers of Manitoba.

Funding of Agencies and Programs

The Workers Compensation Board, through premiums collected from the 70% of Manitoba employers that are WCB registered, funds the Department of Workplace Safety and Health. The WSH Department provides inspection services and enforcement of the Workplace Safety and Health and regulations and this jurisdiction clearly extends beyond the employers that fund the program. A great deal of work is underway with the farming community – an area that has traditionally experienced a very high rate of accidents and fatalities – however this community pays little, if any, premiums to the WCB. The Winnipeg Construction Association is concerned about this apparent inequity.

Further, the WCB has become very involved in the promotion of a safety culture in all Manitoba workplaces with its Safe Work program. The WCA is very supportive of this initiative however, once again, a group of employers is funding a larger program that should be shared by the entire employer community in Manitoba.

The Winnipeg Construction Association recommends a review of the role of both the WCB and WSH with emphasis on funding relationships, goals and objectives, prevention activities, and regulation enforcement and that this review take place immediately.

Expansion of Mandatory Coverage

Under the current legislation, types of industries that are specifically identified must provide WCB coverage to employees. All other workplaces may purchase coverage on a voluntary basis. It has been suggested that this results in approximately 70% of Manitoba employers with WCB coverage.

It is not correct to infer that the remaining 30% of the workplaces are without some type of coverage for their employees. In fact, many of these employers offer comprehensive employee benefits programs include short and long term disability programs.

However, there may be other employers and employees who could benefit from the extension of WCB coverage – the farming sector is one such group. Any mandatory expansion of coverage into these areas should be based on risk factors and injury experience and be made in consultation with those affected.

Industry Funded Safety Programs

In 1990, the Winnipeg Construction Association spearheaded the creation of an industry driven safety program for the building sector modelled after similar groups in other provinces. The Manitoba Construction Safety Association has been delivering a wide range of construction training over the past 14 years and is highly regarded in this community. MCSA staff have met with hundreds of companies and delivered thousands of hours of safety training over this period of time. The Manitoba Heavy Construction Association has a similar “sister” program for contractors in the heavy construction industry.

A growing number of these construction companies are successfully completing the Certificate of Recognition (COR) program which is recognized as the standard across the country. COR certification initially requires an independent audit of the applicant’s safety program and a bi-annual audit from that point forward. Companies that have received COR certification will have these credentials recognized across the country and this is becoming extremely important for contractors working in other provinces. In most cases it has taken companies two years to complete COR certification and the cost can be in the tens of thousands of dollars.

What we have seen however, is that once these companies have completed the process, a fundamental change occurs and they adopt a permanent safety culture. We know that this safety culture results in safer workplaces, greater productivity, employee retention, and lower WCB costs.

Four years ago, contractors in Manitoba received a one-time, 10% rebate of one year’s WCB premium upon completing the COR certification process. This was discontinued in 2000. We felt at the time, and we continue to feel, that this small rebate was an important incentive for companies considering the certification route.

Construction is an incredibly competitive industry and we would assert that while a small to medium sized construction company is working toward developing an accredited safety program, they are at a competitive disadvantage. These companies have to pay for a full or part time safety officer at this time, and any potential WCB premium savings are years away. Consequently, their overhead is higher and this is reflected in the work they bid. The WCB merit rebate was the offset against this investment in safety.

WCB discontinued this in 2000 suggesting that the new rate model would do the same thing – which it does not. A recent analysis provided by the WCB proved conclusively that COR certified companies are paying

premiums far in excess of their target rate, and well below the lowest threshold in their premium category. Clearly some form of rebate is warranted here.

Manitoban's have seen that the Autopac 'merit' discount program work for auto insurance in rewarding safe driving behaviour – why should this not be considered in workers compensation insurance? We reiterate our desire to see a WCB rebate for COR certified construction companies.

In closing, we wish to thank you for listening to our presentation. We offer our ongoing support in this process of review of the Workers Compensation Act and any activities that result from this initiative. We would welcome further discussion of any of these points and are prepared to expand on any one of these points.

On behalf of the Winnipeg Construction Association, thank you very much.