

SUBMISSION #87



Submission to:

**Workers Compensation Act
Review Committee 2004**

By:

The Winnipeg Chamber of Commerce

June 1st, 2004

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Introduction

DESCRIPTION:

The Winnipeg Chamber of Commerce, the voice of business in Winnipeg since 1873, is the community's leading business organization, and embraces all business and professional firms and associations with an interest in business.

MEMBERSHIP BASE:

The membership of The Winnipeg Chamber of Commerce consists of 1,450 corporate and 2,600 individual member representatives. With two-thirds of members being small businesses of 10 or fewer employees, The Chamber membership reflects the overall makeup of Winnipeg's business community.

MANDATE:

MISSION STATEMENT

To foster an environment in which Winnipeg business can prosper.

VISION

Winnipeg, at the centre of North America...

- a cost-competitive, technologically innovative city with a skilled labour force and modern infrastructure to support existing and emerging industries
- a city where citizens take personal responsibility for and pride in community development
- a city with a bright economic future

ROLES

1. *Community Leadership* – serve as a catalyst for a healthy and prosperous community that offers a strong foundation for business location and expansion.
2. *Public Policy Influence* – initiate and effect change in government policy and practices to support a growing and thriving business community.
3. *Member Business Support* – provide programs and services that create a competitive advantage for individual business members.

ADMINISTRATION:

The Winnipeg Chamber of Commerce is administered by a Board of Directors of 12 members, with six elected each year for a two-year term, plus the Executive Committee

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members and two most immediate past chairs. The Board of Directors must approve all policy positions, and the elected Chairperson of the Board is the official who voices Chamber issues and responds to issues of the day. Policy is developed by committees, which present position papers for review and implementation by the Board of Directors. Chamber programs are developed and conducted by a group of committees assisted by staff. Internal committees, in conjunction with senior staff, oversee management of The Chamber's operation.

OFFICERS:

There are eight senior officers of The Chamber, including the Chairperson, the Incoming Chairperson, two Vice-Chairpersons, the Treasurer, the Past Chairperson, and the President – the senior staff person.

STAFF:

The staff The Chamber is managed by the President. Senior staff includes a Vice-President of Membership & Marketing, Director of Public Affairs, Director of Finance and Operations, and a Director of Information Services. Total staff strength is 16 in the Secretariat.

POLICY ORIENTATION:

The Chamber's legislative submissions are designed to provide an accurate reflection of business thinking on issues of the day, and are intended to represent constructive inputs to the formulation of public policy. The Chamber acknowledges that legislators must, in the final analysis, choose the best course for our community, Manitoba and Canada. The Chamber endeavours to approach issues from the point of view of the economic welfare of the population. Civic, Provincial and Federal policies based on sound economic principles receive The Chamber's support. It has no hesitation, however, in vigorously opposing programs that would work to the detriment of the business community.

POLICY DEVELOPMENT:

The policy positions of The Chamber are developed primarily at the committee level. Committees have a Chairperson, a Vice-Chairperson and a Staff Liaison representative. Each committee is made up of a group of volunteer specialists.

PROGRAM DEVELOPMENT:

The Chamber develops programs that afford members opportunities to make business contacts and gain information on issues or concerns to the business community. The primary goal is to help our members be better at business. Examples include membership luncheons, AfterBusiness Mixers and VIP events.

HISTORY:

In 1873, a group of Winnipeg business and professional people applied for and were granted a Charter for The Winnipeg Board of Trade. This Charter was granted six months in advance of the Charter given to the community to form The City of Winnipeg. Six years later, the Federal Boards of Trade Act was legislated in Ottawa, allowing local organizations to have National Charters, and the Winnipeg group obtained a National Charter. Both Charters were kept in place, and the original Provincial Charter is now the one under which we operate The Chamber Club. In the 1950's, there was a movement to change Boards of Trade into Chambers of Commerce, and Winnipeg adopted that name change. Since 1873, the association, now known as The Winnipeg Chamber of Commerce, has experienced steady growth in size, scope, prestige and effectiveness.

On behalf of the over 1,400 member companies of The Winnipeg Chamber of Commerce, herein referred to as "The Chamber", thank you for the opportunity to share our views with the Workers Compensation Review Committee on this important subject.

At the outset of this presentation, it is important to note that The Chamber supports safe, healthy and productive workplaces. However, when a workplace incident occurs, members of The Chamber and members of the business community expects the Manitoba Workers Compensation Board to provide a reasonable level of support and services to injured workers to ensure an early and safe return to the workplace. The Chamber expects a compensation process that respects both the dignity and privacy of injured workers while, at the same time, functions in a fiduciary and financially prudent manner.

The Chamber supports the premise of fairness and balance and where appropriate, an expedited process of claim management to facilitate return to work, as soon as medically possible. The Chamber will not support and will take great exception to a system that embraces Workers' Compensation Board policies and/or legislation that create imbalances that disadvantage either workers or employers.

The Chamber believes that the Meredith principles should form the basis of this review and must apply to any amendment of the Act. As well, The Chamber supports cost containment and cost management, that is, any changes in benefits under the Act, after factoring in economic equalization, should **not** be out of balance with those seen in other jurisdictions.

The Chamber recognizes the importance of transparency, accountability and fairness in a compensation system. For this reason, any changes that result from the review of the Act must be reasonable, practical and sensitive to the needs of all stakeholders.

The Chamber offers, for your consideration, the following recommendations concerning the Workers Compensation Act of Manitoba:

(1) **Directors Liability**

The Chamber recommends that the Workers Compensation Act be amended to remove an apparent loophole, under which directors of covered employers can be sued by an injured worker (or by the Workers Compensation Board on their behalf), for additional damages.

Manitoba's worker compensation system was developed on the basis of the Meredith principles. The Meredith principles explicitly provides for a trade off, in which workers receive prompt access to defined benefits, and employers agree to fund the payment of those benefits. It is a no-fault system, in which issues of negligence of either the worker or the employer are not relevant to the payment of benefits.

In 1998, the Workers Compensation Board initiated three lawsuits on behalf of injured workers against individual directors of three employers who had coverage under the Act. In doing so, the Board took the position that the directors were "third parties", who were not themselves covered under the Act. The injured workers in these cases were already receiving the benefits they were entitled to under the Act. The Appeal Commission heard two of these cases. In majority decisions, the actions were allowed to proceed in court against the directors. However, the Appeal Commission decisions make it clear that these actions may be within the letter of the law, but are not within the spirit of the Act.

These court actions are inconsistent with the Meredith principles. It is the view of The Chamber that these cases have identified a loophole in the current Act, which should be addressed.

- Firstly, these cases introduce "fault" into a no fault system, given that the actions of directors and employers are inextricably bound together.
- Secondly, covered employers are already paying premiums and they should be able to rely on the certainty of costs that the Act promises, should a worker become injured. However, a successful lawsuit against a director can lead to financial ruin for the director and may impact the employer as well, especially in one-director companies or in family run businesses or enterprises.
- The current solution, in which directors may purchase special coverage from Workers Compensation Board to purchase immunity from being sued, is effectively a double taxation by the Workers Compensation Board, in a system that is fully funded by those same employers. The employer already pays premiums based on

their injury experience, and the employer should not also be required to pay an additional levy for its directors.

(2) Defunct Firms

The Chamber recommends that the Appeal Commission be given the right to designate a deemed employer, for the purposes of an appeal, where the employer in the appeal is defunct (no longer in business or no longer covered by the Act).

This recommendation is based on Section 248 of the British Columbia Workers Compensation Act. It allows a group of employers (some of whom must be from the defunct employer's subclass) to be identified as a deemed employer, and to have the same rights to participate in an appeal as the original employer.

There are a limited number of cases (such as those dealing with new occupational diseases) where it is important to have a balanced presentation of scientific evidence and industry practices to an appeal panel. This presentation would also include the consequences of the decision and its impact on future claims and the remaining firms in the industry sub-class or related industries.

In the absence of this provision, it is unclear whether the Appeal Commission can designate economically affected employers as a "party of direct interest". Adding this provision, allows for fully informed decisions to be made by the Appeal Commission. It is also consistent with the equitable balance of advocacy encouraged inside both the Workers Compensation Board and in the appeals process.

(3) Consultation

(A) The Chamber recommends that the process for stakeholder consultation on policy development be identified within the Act.

Although the current review appears to be directed at the Workers Compensation Act, members of The Chamber and the business community are concerned that some of the issues that arise between initial claims adjudication and final closure are a direct result of the Board's policies and procedures and are not directly related to the Act. In the past there have been numerous attempts to establish a process for policy consultation. Although there are some success stories, there are instances where policy changes have had a significant impact on the business community, although members of the business community were not properly consulted prior to implementation of a new policy.

(B) The Chamber recommends that the Workers Compensation Board consult with the employer community (The Chamber /

Employers Task Force / Manitoba Employers Council) prior to establishing assessment rates, budgets or investment strategies for the forthcoming year.

Winnipeg Chamber members and Winnipeg and Manitoba employers believe that full disclosure and transparency on these and other issues that affect stakeholders will prove beneficial to not only the employers and the business community, but also to the Board of Directors and Workers Compensation Board staff.

(4) Independent Audit Process Required of WCB

The Chamber recommends that an independent audit be conducted every five years on the Workers Compensation Board, to coincide with the Board's 5-year planning process. The results of the audit should be subject to public disclosure.

The Workers Compensation Board is an employer-funded agency, where transparency, accountability and efficiency are essential. An audit process of this nature will provide the necessary "score card" to determine the level of financial, fiduciary and functional conformity.

(5) Funding of Agencies and Programs

The Chamber recommends that a review, independent of the government, be conducted to determine the appropriateness of Workers Compensation Board funded programs and entities that do not reflect the "spirit" of the Act or the Meredith Principles.

This review should include, but not be limited to cost allocations from the Workers Compensation Board to:

- **The Workplace Safety and Health Branch;**
- **The Office of the Minister of Labour and Immigration and its operating departments;**
- **The Worker Advisor Office;**
- **The Community Initiatives and Research Program;**
- **The Appeal Commission; and,**
- **Subsidization of non-covered industry sectors.**

Employers fund Manitoba's Workers Compensation Board system in a manner similar to the principles recommended by Justice William Meredith, almost a century ago. In essence, employers have agreed to pay all reasonable costs necessary to provide treatment and benefits for injured workers, in exchange for freedom from litigation. Manitoba employers respect that agreement and in return, expect that the Workers Compensation Board - the caretakers of the process - assume the role of prudent managers of the levies entrusted to them. Chamber members and the business community is becoming concerned that the Workers Compensation Board is moving away from that historical agreement and is now funding activities or agencies that are not directly related to the care and maintenance of injured workers. The Chamber believes that a complete and thorough review is not only warranted, but long overdue.

(6) **Expansion of Industry Coverage**

The Chamber supports voluntary compensation coverage, but is of the opinion that any consideration for expansion of coverage in other industries be based on risk factors and injury experience and be made in consultation with those affected.

Over the past four to five years, Manitoba's Workers Compensation Board has given serious consideration to the expansion of coverage. The expansion of coverage to some groups is perceived as a "money grab" to include low risk employer groups as cash enhancers to the Workers Compensation Board system. Any consideration for expansion of coverage must be carefully examined and be in the best interest of the employers and employees of those involved.

(7) **Stress**

The Chamber is of the opinion that the current definition of acceptable stress is not only fair and reasonable but that it is also consistent with the majority of jurisdictions throughout Canada. On this basis, The Chamber recommends that the existing legislation/practice remain unchanged.

Any amendment to the current definition of acceptable stress would, in our opinion, open the door to claims of stress relating to employer/employee decisions or actions that form part of the daily employment functions. For example, terminations, demotions, transfers, discipline, changes to work hours or conditions and changes to productivity expectations. As well there are those situations where employees are simply unable to cope with the duties of the position that they were hired for. It is also impossible for either the Workers Compensation Board or the employer to be cognizant of all stressors that might have precipitated the onset of stress. For example, job security, family illness, financial problems, domestic issues, gambling and /or substance abuse issues to name a few. It is, in the opinion of The Chamber, easily understood why the majority, if not all, of the other

Canadian jurisdictions have limited acceptance of stress to only those situations that are a result of an "acute reaction to a traumatic event" arising out of and in the course of employment.

It is the opinion of The Chamber 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.

(8) Dominant Cause - Occupational Disease

The Chamber recommends that the "*Dominant Cause*" provision in Section 4(4) of the Act is an integral part of determining the work relatedness of Occupational Diseases and, for that reason, should continue to be a factor in this determination.

The Chamber further recommends that a case-by-case evaluation of Occupational Disease claims would be far superior to a "*Schedule of Occupational Diseases*" which has the tendency to supplant accountable adjudication.

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. Specifically, the workers right to be compensated for the residual effects of an injury or disease arising out of and in the course of ones employment. The Chamber is of the mind that a "Schedule of Occupational Diseases" could result in a worker's claim being inappropriately denied or, conversely, inappropriately accepted. For this reason, The Chamber would strongly suggest that the status quo be maintained.

(9) Workers Compensation Board Governance

(A) The Chamber recommends that the role of the Workers Compensation Board Chair be structured similarly to that of other Manitoba crown corporations. The Chair should be limited to the role as provided for and contemplated by the Workers Compensation Act - as a non-voting Chair of Board of Director Meetings with no administrative role at the Workers Compensation Board offices. The Chamber further recommends that the Chair be a part-time position that is compensated on a per-diem basis for attendance at board meetings, plus reasonable compensation for additional meetings, consultations or preparatory time.

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- (B) In order to retain experience and preserve corporate memory, The Chamber recommends that Board of Director's Terms of Appointment should be fixed terms of three years for a maximum of two terms. In addition, the terms should be staggered within each stakeholder group.
- (C) The Chamber recommends that a Quorum consist of at least two members from each of the three representative groups, i.e. two employer representatives; two worker representatives; and, two public interest representatives.
- (D) The Chamber recommends that the Employer Representatives appointed to the Board should be those nominated by the employer community, through the Employers Task Force AND/OR the Manitoba Employers Council, which represents the vast majority of the employers under the Act, in Manitoba.
- (E) The Chamber recommends that the Worker Representatives appointed to the Board should reflect the make-up of the workers under the act, and not just the requests of the Manitoba Federation of Labour. At least one of the three appointments should be a non-unionized worker.
- (F) The Chamber recommends that the Public Interest Representatives appointed to the Board occur as a result of consultation with the worker and employer community, and that those appointments be jointly agreed upon.

In closing, The Chamber thanks you for receiving our presentation, and for listening to our presentation today. It is important for The Chamber, on behalf of over 1,400 members, to reiterate our position that prevention must be everyone's primary goal. However, when workplace injuries do occur, we as Manitoba employers and '*the voice of Winnipeg business*', expect a compensation system that is sensitive to the needs of injured workers but is also a system that is managed in an expedient and cost effective manner.

Thank you.

Dave Angus
President & CEO
The Winnipeg Chamber of Commerce