

PRESENTATION
TO THE
WSIB FUNDING REVIEW
PROFESSOR HARRY ARTHURS, CHAIR
HAMILTON, ONTARIO
18 APRIL 2011

JOINT PRESENTATION BY THE
C.A.W. LOCAL 707
AND
C.A.W. LOCAL 112

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Professor Harry Arthur, Chair
WSIB Funding Review
Workplace Safety and Insurance Board
200 Front Street West,
Toronto, On. M5V 3J1

10 April 2011

Dear Sir,

Re: Submission on the WSIB Funding Review

The Canadian Auto Workers union represents workers in all sectors of our economy; we have a proud history in representing the concerns and interests of our members to the best of our abilities.

Both, Scott and I, are here today to represent the concerns of our members from the automotive and aero space industries with respect to the Funding Review process undertaken by the WSIB.

Neither, Scott or I are academics, as a matter of fact we are elected to office off the shop floor by our membership; subsequently the interests of our members are near and dear to our hearts, specifically directed to issues under WSIB umbrella.

More than likely you have received numerous submissions, and each one of them has its own merits; what makes this one any different? The fact that we strongly believe in providing the best representation to our membership and their families; as well as beyond the work place jurisdiction, it is why it is different.

The voices of workers either unionized or not should be listened to not just heard. No worker chooses to go to work and return home injured. Then one should ask the question, why should the worker become a victim of the system in times of need of benefits?

We are concerned about the fear-mongering that has occurred over the unfunded liability and that the funding review has a restricted mandate. A band aid will not heal something that is broken; neither will the restrictions of your mandate.

Interesting to note is that the mandate of your office is to solve the financial balance for the system that has eroded over the years through various reasons. What about the injured worker's balance of life and the lack of consistency from the WSIB?

Over the years the Workers Compensation System become more complex and severely adversarial. Further more, these trends gave way to the growth of consultants businesses who do not share a common goal with the rest of the parties they represent; they are out to make a quick and fast dollar regardless of who provides the venue for them.

And to add more, the employer community was provided incentive programs that eroded the financial balance of the WSIB as opposed to positively and successfully assisting the injured workers. The employers' flavour of the century is to have disability prevention as opposed to managing disabilities; subsequently reporting of injuries is not properly done.

If the WSIB is serious to make positive changes than the WSIB should seriously consider and administer practices that are fair.

Further, to achieve positive changes, to improve the financial situation of the WSIB, maintain workers' benefits and employers rates reasonable than all work places in the Province of Ontario must financially contribute to the WSIB.

MEREDITH PRINCIPLES

Before we could get into the issues of interest it should be noted the reasons why there is a Worker's Compensation Board.

"Judge Sir William Meredith was not yet a Chief Justice when he was appointed to an Ontario Royal Commission in 1910. His task was to create new workers' compensation legislation for his province. His final report three years later identified the issues at the core of the struggle, and the concepts on which a long-lasting solution could be built. These concepts - since called the "Meredith Principles" - provided the rationale around which employers and workers could achieve permanent agreement for a reliable, fair and manageable system for new stability to the workplace.

There are five Meredith Principles

- **No-fault compensation:** Workplace injuries are compensated regardless of fault. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury. Fault becomes irrelevant, and providing compensation becomes the focus.
- **Collective liability:** The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.
- **Security of payment:** A fund is established to guarantee that compensation monies will be available. Injured workers are assured of prompt compensation and future benefits.
- **Exclusive jurisdiction:** All compensation claims are directed solely to the compensation board. The Board is the decision-maker and final authority for all claims. Nor is the Board bound by legal precedent; it has the power and authority to judge each case on its individual merits.
- **Independent board:** The governing board is both autonomous and non-political. The Board is financially independent of government or any special interest group. The administration of the system is focused on the needs of its employer and labour clients, providing service with efficiency and impartiality.”

In our opinion it is important to return to basics if we need to move forward and properly represent the interests of our members.

The Annual Report of the Auditor General of Ontario (2009) page 315 states: “Employers want low premium levels while workers want high benefit-payment levels. These competing interests influence benefits, coverage, and premium rates, which can have a negative impact on the size and growth of

the UFL. It is incumbent on the WSIB and the Government to try to balance such views against the need to maintain financial stability”.

Well the UFL it is not part of Ontario government debt; the government has not accepted (fiscal) responsibility for paying injured worker benefits.

Position of C.A.W. Local 707 - C.A.W. Local 112 -WSIB funding review

1. System Funding and the Unfunded Liability

It is our interpretation, after discussions with technical advisors in January of this year that the variables presented to us by WSIB are too many and that the present system is based all on speculations. In our opinion there is no need for a fully funded system - neither is it advantageous. There are disadvantages as it will cause problems with benefits both for workers and problems for employers in order to maintain the current level of benefits.

One of the Meredith principles states, “The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility”.

According to the C.A.W. Economist, Jim Stanford, the reasons why we have an unfunded liability is: “Employers in the past avoided some of the full cost of the injuries that occurred on their watch. Employer underfunding is the root of the cause of the problem; and that is arithmetically true as well as analytically”. “The UFL is very volatile; dramatic swings reflect changing investment returns, actuarial

assumptions, premium revenues, recessions, changes in benefits.

From a layman person point of view, one would wonder what the time frame would be to reach any funding target. And what exactly is the WSIB proposing in order to guarantee that they will reach any reasonable target? And then the state of the economy needs to be addressed considering that we are going through difficult economic times that workers are affected tremendously. Many work places have closed; the recession has caused dramatic changes in many communities across the province causing a negative impact on day to day living.

2. **Premium rates**

We strongly suggest and support that all employers in the Province of Ontario must participate in payment of fees and have WSIB coverage.

If all employers participate in a collective liability as indicated by the Meredith principles then the financial responsibility to the system is carried equally.

Further, it is recommended to be a flat rate of benefits as opposed to how each industry is being charged. The reason for a flat rate structure is to ensure that all employers are equally responsible.

3. **Rate groups**

As a point of interest, there are over 200 staff working at the WSIB to make sure that the correct rate group is assigned to employers. There are over 150 rate groups in Ontario and many employers are playing the

system to obtain a lower rate group. Administratively this is a nightmare and quite expensive; funding that may be used much more constructively and beneficial to all parties.

If the number of groups is reduced and all parties pay into a collective liability it will reduce the individual liability and it will maintain the principle of no fault insurance. More and more the WSIB is structuring to a private insurance model that is totally contrary to Meredith principles.

If the need for rate groups is to differentiate between various sectors of the economy than again all sectors of the economy must participate accordingly.

4. **Employer incentives**

The incentive programs were initially started to improve the OH&S programs, to re-employ workers with the pre-accident employer where feasible. It was supposed to be a way to promote fairness in promoting / enforcement of health and safety as opposed to employer incentive programs.

The programs create an adversarial environment between workers and management as these programs have a high impact in the workplace.

It individualizes the employer and it gets transferred to worker as opposed to help the worker and it becomes competitive. Time and time again our members indicate to us that if the claim is not for loss time than by simply obtaining health care in house there is no need for reporting the injury.

This compounds the issue since Bill 99, introduced the 72 month rule. If

injuries are not reported in a timely manner and the worker suffers a recurrence of injury or the original injury becomes permanent in nature than the worker is deemed to have suffered a non-work related injury. The employer keeps its costs down for not reporting injuries, the incentives paid by WSIB to the employer becomes substantial. Billions of dollars were paid to employers in the province through the SIEF fund.

It is wrong to reward employers for misusing the system and losing sight of the injured worker.

The legislation already has provisions for merit rating that adjust rates according to the actual conditions of work and is based on inspections. The question is why this section of the act is not currently used? Interesting enough it is the closest thing to equity sought by many employers.

The positive incentive for worker and employer is in re-hiring of injured workers as well as hiring of injured workers.

We propose the elimination of Experience Rating which simply encourages hiding claims; and to eliminate the SIEF which serves no positive role in encouraging employers to hire injured workers. Eliminating both these funds would substantially reduce Board costs.

We recommend instead establishing an incentive program that provides a reward for hiring injured workers.

5. **Occupational Disease Claims**

It should be collective liability considering it takes the pressure from employers in looking at claims on individual claims (look at Meredith principles). Occupational disease is a type of injury that may affect a worker that spent significant amount of exposure to chemicals with various employers in the course of working life.

These types of injuries are significantly under reported. Workers suffer in silence and many of them loose their lives simply by going to work and being exposed to chemicals in the work place.

Industrial illnesses take lengthy periods of time before is identified and when it is normally it is too late for the worker. Much more the reason to have a collective liability paid by all employers of the Province.

We strongly support maintaining the funding for occupational disease claims in the general funding structure of the board rather than instituting a separate occupational disease fund.

6. **Benefits indexation**

WSIB is a non profit organization they need to have surplus in order to operate however the surplus should be enough to fund each year and to operate for a period of time without drastic cost increase.

The unfunded liability exists as result of inadequate contributions made by employers in the past to cover the true full cost of injuries of the past and future. The cost of the claims lies directly with the employers since the

UFL is so volatile and it is not an appropriate variable target.

As a true value for the full cost of past and present injuries the employer contributions must be increased or distributed equally among the employers of the province.

Benefits must be indexed in order to secure a reasonable standard of living for future and present workers.

Conclusions

- As indicated at the beginning of this document, both of us are elected representatives and our passion extends to our members and their families as well as to the working women and men in this Province. It is with great sadness to see that injured workers have to endure hardship after hardship and no positive results.
- We are proud Canadians as well, with strong social values and desire to provide help to achieve social justice. The WSIB need to consider the human factor and needs to place a human face to the issues under debate. Injured workers rights must be protected now and in the future.
- 100 years ago Justice Meredith took a proactive approach and had a vision that helped workers and employers equally. We ask that you, Professor Arthurs, look and listen to the people of our Province and proactively create a vision that will protect the rights of injured workers.

- Workers' Compensation is a collective liability to all employers, a "cost of doing business". The UFL is too volatile to be an appropriate target, a long-run swings in either direction in the funding ratio indicates an imbalance between revenues and expenditure. The system will always need cushions against experience and assumption changes.
- The UFL exist because premiums have been too low since they were cut by one third by the Harris Government without correcting the problem.
- With appropriate premium structure premiums can be raised without economic damage.
- Eliminate experience rating and the SIEF.
- Maintain and improve workers' benefits.

In order for this review to be successful the Board needs to be reminded of the Meredith principles, it needs to assist people in making work places safe. WSIB needs to follow its own policies, enforce the Workplace Safety and Insurance Act and step up enforcement without providing costly incentive programs.

Yours truly,

Nadia Anton-Collins, C.A.W. Local 707
Scott Mcilmoyle, C.A.W. Local 112