

Bright Lights Presentation to WCB/WSIB Chair and President

November 27, 2008

Introduction

Thank you for coming once again to meet with the Bright Lights Injured Workers. We believe we have an important relationship with the WCB/WSIB's senior management. Although issues are sometimes complicated and emotional, we value these discussions as we all share the belief that injured workers are the most important aspect of the workers' compensation system.

In our invitation letter of October 2, 2008 we listed a number of concerns: how to view compensation for serious long term disabilities (sometimes called "persistent" claims), the deeming policies, the Early and Safe Return to Work policies, experience rating and the new service delivery model. Since then, the financial and economic crisis that has unfolded raises additional issues and concerns we feel necessary to raise today. We appreciate that this raises new and complex issues but since they will affect injured workers directly, this is not just a time for concern about actuarial matters, it is a time for concern for injured workers.

How the Economic Downturn Will Affect Financial Targets and the Unfunded Liability

In previous meetings we have expressed our concern that the Board is already more than adequately funded to meet all contingencies. Further increasing the Board's assets is an unnecessary drag on Ontario's economy, taking money out of the companies when it could have been used to grow the business and the economy. That is a particularly acute now, when all levels of government are looking at deficits and other measures to put more money into our economy. Continuing to reduce the unfunded liability at the present time runs counter to the actions being taken by our government to fight the recession.

During consultation on the Bill proposing to extend workers' compensation coverage in the construction industry we saw submissions from a number of members of the Canadian Federation of Independent Business. These employers are also asserting that employers' rates cannot go up, that the unfunded liability must still be eliminated on schedule, and that with the decline in value of the Board's assets, they say you must reduce injured workers' benefits.

Their view is obviously a great concern for injured workers. We appreciate that you have spoken frankly with us before about the arbitrary deadline in the Board's longstanding goal of eliminating the unfunded liability. Your view is now more important than ever. We would like to know how the Board will respond.

Questions

1. In light of the coming recession and the actions that governments are taking to support the economy, will the Board amend the targets around retiring the unfunded liability?
2. Will the Board commit to ensuring that injured workers are not penalized by policies or practices adopted in response to any impact that the financial and economic crisis is having on the Board's investment fund?"

How the Economic Downturn Will Affect Injured Workers

The loss of earnings awards policy and practice of the Board presumes “full employment” after LMR. Every injured worker who completes a LMRP is deemed fully employed to age 65 and their WCB/WSIB benefits are reduced based on full time market wages for the field. However, research into WCB data has consistently indicated, even in good economic times, that injured workers have a **significantly higher rate of unemployment** than able bodied workers. Here are some examples:

- 1981 – WCB survey of pensioners: 40% unemployed
- 1988-90 – WCB survey of injured workers on permanent partial disability benefits: over 50% unemployed five years post injury (1995 Butler, Johnson & Baldwin)
- 1993 WCB FEL Study: 78% unemployed at 3 years post injury
- 2001 Study of Pre-1990 Claims Unit: 60% unemployment at time of interview
- 2004 Deloitte’s Value for Money Audit of WCB/WSIB Labour Market Re-entry Program: survey of 877 injured workers who completed a Labour Market Re-entry Program 56% unemployed at follow up after

Injured workers call this “super unemployment”, and it is a regrettable but accepted fact of our economy. The findings of the Deloitte Value for Money Audit of the LMR Program Final Report (April 7, 2004, p. 65), that after LMR Programs, most injured workers do not find employment, are consistent with the experience of the Bright Lights and Injured Workers’ Consultants legal clinic. We know, of course, that having completed a LMRP they will be deemed to have jobs they do not have and without an income, they end up in poverty.

Also, the Deloitte’s survey covered injured workers who **completed** LMR. The audit reported a 12% drop out rate, and recommended more injured worker involvement into the planning process (p. 77). It is fair to predict that the unemployment rate of the injured workers who failed to complete their LMR would be higher than the ‘graduates,’ thus further pushing up the 56% unemployment rate.

We appreciate that this is a program that you have ‘inherited’. The auditors at Deloitte’s point out that the goal of Labour Market Re-entry is to make injured workers “employable” not “employed.” That is correct, but it would be difficult to believe that

the LMR Programs have a realistic definition of “employable” when the majority of their graduates cannot obtain employment. The magnitude of the suffering and the failing of the system for permanently disabled injured workers should not be underestimated. We hope you share our concern that these unemployment rates are not acceptable.

Permanently disabled injured workers will be very vulnerable to the coming recession. With massive layoffs and loss of jobs across the province, even fewer injured workers will find work after LMR as they compete against the growing number of able bodied, skilled workers with recent employment history for the shrinking number of employment opportunities. It will be difficult to reconcile this with the current wage loss deeming policy and practice of the Board presumes “full employment” after LMR.

The recession will significantly increase the unemployment rate. Continuing the practice of presuming that full employment is available to injured workers increases the poverty of injured workers. This injustice is not what Bill 187 intended and runs contrary to the Provincial Government’ Poverty Reduction Strategy and to then Labour Minister Peter’s letter to this group in May 2007 committing to “eliminate deeming”. He also mentioned that “the WSIB has indicated its commitment to develop policies that define how these concepts work in practice to ensure they support and meet the spirit of the proposed legislation.” (copy attached)

We have no doubt that the WCB/WSIB has its financial experts looking into the impact of the recession on revenues and financial targets, but we do not know whether the Board is looking into policies or practices that recognize the reduction in the availability of employment for injured workers.

Questions

3. Is the Board addressing the impact that the economic crisis will have on the availability of employment for injured workers? How is the Board’s strategic thinking aligning itself with the government’s Poverty Reduction strategy?
4. Will the Board replace the interim policy and bring in a loss of earnings policy that eliminates deeming as intended in Bill 187?

Cost of Living

We would like to acknowledge the work of the Board in supporting and implementing the 2.5% increases, even if they do not make up for the 24% lost due to the lack of inflation protection for the past decade. With the final legislated adjustment coming up in January, the need for a long term solution becomes more pressing.

While the government now has the flexibility to address this on an ad hoc basis by regulation, this is not a matter that should be left to ongoing political discretion. Injured workers saw that the previous two provincial governments had no qualms about taking action to reduce inflation protection and benefit levels. We feel that Professor Weiler

was correct that protection against erosion by inflation should be provided as a matter of right:

*"In addressing this issue as a matter of principle, there should be no question about the entitlement of workers' compensation claimants and pensioners to inflation adjustments as a matter of **right**."*

(p. 69, Reshaping Workers' Compensation for Ontario, Paul C. Weiler, A report submitted to Robert G. Elgie, M.D., Minister of Labour, November, 1980)

Professor Weiler also pointed out that full inflation protection does not require an increase in employers' rates, it costs employers nothing. Since premiums are based on a percentage of payroll, the amount of dollars in that percentage will increase as the payroll increases with inflation. In view of low inflation due to the coming recession, and in view of the need for the Board to adjust its financial strategy, this would be a good time to commit to full adjustment for cost-of-living and factor that in to any future plans for reducing the unfunded liability. While we acknowledge that this is a matter for the legislature, we also appreciate that the Board's recommendations play an important role

Question:

5. What options are under consideration for future COL adjustment?

Universal Coverage

Injured workers were pleased to hear that Mr. Mahoney spoke in favour of universal coverage for all workers at the Standing Committee hearings this fall. The legal clinic and an injured worker made a submission in support of the recent Bill to extend workers' compensation coverage to all construction workers. Injured workers will continue to seek full coverage of all workers and hope the WCB/WSIB will continue to do so as well.

In the meantime, there are other steps the WCB/WSIB could consider. For example, an injured worker has noted that her secondary service provider for LMR does not have WCB/WSIB coverage because it is not required (private schools). She asks rightly: why does the Board not insist on doing business with firms that have WCB/WSIB coverage? She says, not only it would mean doing the "right thing"; it also looks bad that the WCB/WSIB is not requiring WCB/WSIB coverage.

Question:

6. Will the WCB/WSIB look into making it a condition of doing business with the WCB/WSIB that all firms have voluntary workers' compensation coverage?
7. What can we both do to get universal coverage of workers' compensation?

Experience Rating

The unintended consequences of Experience Rating on injured workers have long been a main concern of this group. We are pleased that the Board has launched a review and that there have been discussions with senior management about alternative approaches to improving workplace safety. We sincerely hope significant changes will be made soon and that Ontario will be able to provide leadership in this area for the rest of the country.

There are concerns about the role that will be played by Morneau Sobeco, a private company that is in the business of advising employers in workers' compensation matters and has been involved in implementing 'claims based' experience rating systems in other provinces. We hope our concerns will be allayed by their report which we understand will be made public very soon.

In the meantime we are concerned about the continued reliance on numbers of reported lost time injuries as an indicator of health and safety in Ontario's workplaces. Research shows that there is significant under reporting of workplace injuries. For example, we refer you to the research summarized at page 40-41 of the Injured Workers' Annual Report produced by the Ontario Network of Injured Workers' Groups for its recent provincial conference. It is now well accepted that under experience rating claims management techniques have developed to reduce the cost of injuries, rather than reduce the injuries themselves. The most common way to do this is to prevent lost-time injuries by managing the claim with immediate work offers. The system does not track the nature of those offers or their suitability to the recovering worker, nor whether the worker actually lost time or not (since benefits are terminated with the job offer.

It is well understood that under the current conditions, accident statistics are not a good indicator of occupational health and safety. The Board's Road to Zero campaign and the Ministry of Labour's injury reduction targets continue to rely on a reduction of reported lost time injury rates as indicators of improved health and safety. In our view this leads to a misdirection of resources and a misconstrued understanding of the health and safety environment of Ontario's workplaces.

Questions

8. What role will Morneau Sobeco play in the Boards ongoing review of experience rating?
9. Will the Board consider alternatives to the use of reported lost time injuries to measure health and safety improvements?
10. Will the Board recommend to the Minister of Labour to identify a different goal to reach and measure health and safety in Ontario's workplaces?

Permanent Disability Benefits

In the past year we have heard the Board express concerns about long term claims as “persistent claims” and problematic. The last time we met with you, injured workers expressed concerns about the use of the derogatory actuarial term “persistent rates” and we understood that the Board would look into changing the terminology. Injured workers are feel that the concern about these benefits may be misguided and would like to better understand the issue and offer their perspective. Injured workers see these as success stories of the Board’s support for people who need it and encourage the WCB/WSIB to be proud of their role in this.

Question

11. What are Board’s concerns about benefits and permanent injuries and what are the statistics that give rise to these concerns? Will the Board meet with us on this issue so that we can analyse the issue together?

Early and Safe Return to Work Policy Changes

We made a number of submissions on these policies and are interested in what the Board is going to do on this issue. We saw that at the Standing Committee Mr. Slinger mentioned that the Board is moving beyond a free market “self-reliance” approach which is encouraging. However, we must deal with adjudicators, Appeals Officers and the Appeals Tribunal who look at WCB/WSIB policy, which is unchanged.

Question

12. What is the Board doing about the Early and Safe Return to Work policy changes?
13. Is there a study of the results of the pilot projects that the Board could share with injured workers?

We would like to thank you for hearing our concerns and look forward to ongoing discussions on these matters.

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**Attached: Paul Weiler
Deloitte’s LMR study
ONIWG Injured Worker Annual Report
Steve Peters**

Reshaping Workers' Compensation for Ontario

Paul C. Weiler

*A report submitted to Robert G. Elgie, M.D.
Minister of Labour, November, 1980*

Page 69:

"In addressing this issue as a matter of principle, there should be no question about the entitlement of workers' compensation claimants and pensioners to inflation adjustments as a matter of *right*."

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"... But we have been told again and again that Ontario business and the Ontario economy simply cannot afford the cost. This fear is unjustified. The explanation is implicit in the very notion of inflation, which consists of changes in money values, not real values.

Once we decide as a community what the appropriate level of compensation for injured workers is to be – in light of all the considerations and complexities I have already set out in this chapter – and once we award an individual disabled worker a certain share of the real economic pie, our refusal to keep the monetary amount of his pension in line with the changing rate of inflation must mean that someone else in the economy will receive a net increase in his share of real goods and services. In effect, someone will reap a windfall profit from inflation at the expense of the disabled worker. In the case of workers' compensation benefits, the immediate beneficiary of such inaction would be business."