

"The Historic Compromise"



Economic Crisis

While capitalist economies go through cyclical ups and downs, it is clear that the present economic crisis was brought about largely via the irresponsible practices of banks and other financial institutions as they sought any and all means to increase their profits.

It is also clear that it has taken some politicians too long to recognize the serious nature of this crisis. For months, hardly a day has gone by without news of massive layoffs. While it has been workers in manufacturing that have suffered the most, workers in all sectors have been served with permanent pink slips. Yet, to date, governments have done precious little to help most of these workers keep their jobs or to assist those already on the streets to find new employment.

Blaming the victim?

In times of economic upheaval and uncertainty it is usually the most vulnerable among us who tend to get the shortest end of the stick. At least that is the fear of one such group – injured workers.

Recent history shows that their fears are real. The recession of 1990-1993 resulted in legislative amendments that cut benefit levels and all but eliminated cost of living provisions put in place in the mid 1980s. All together these changes reduced the value of injured worker benefits by nearly 30%. Although the Liberal Party government of Dalton McGuinty has legislated three 2.5% cost of living adjustments for each year between 2007 and 2009, injured workers remain about 20% below their income levels compared to 1996. They are, in reality, still paying for the last recession.

They fear that more cuts are on the way. Employers, who boldly state that they, and they alone, pay for the compensation system, are arguing that their assessment levels are too high, thereby making them uncompetitive with national and international companies. For its part, the Workplace Safety and Insurance Board (WSIB), in the person of its Chair, Steve Mahoney, has initiated a consultation process with rising costs being the prime issue and an unfunded

liability of approximately \$11.5 billion dollars the main target.

Unfunded Liability – Don't Panic

What is an unfunded liability? It is a sum of money calculated by taking the total future costs of all workers' compensation claims that are currently 'on the books' and subtracting from that the amount of financial reserves the WSIB has put away. At the moment, as stated above, the WSIB owes \$11.5 billion dollars more than it has in current assets.

But there is no reason to panic. Adopted from the private insurance industry, the actuarial category of unfunded liability has no place in a public compensation system. Why? Because a public workers' compensation system established by law cannot cease operating the way private insurance companies are able. As long as there are workers and employers in business in Ontario the WSIB will collect enough in assessments to make all the payments due to injured workers in any given year.

In any event, employers and the WSIB really do not care about the unfunded liability. How can we say this? Well, according to figures recently released by the WSIB, if employers' rates had been kept at 1996 levels there would have been no unfunded liability by 2006. Instead, the WSIB drastically reduced employers' rates by about 25%. The result: a huge detour on the road to zero.

Employers' Liability & Workers' Right to Sue

The whole discussion about the unfunded liability, and particularly the methods adopted to place it on the path to zero by 2014, has been lifted from its proper historical context. Before Sir William Meredith submitted his draft Workmen's Compensation Act to the Conservative Party leader and Premier, Sir James Whitney in 1913, there were workmen's compensation laws in Ontario. At least that is what they were named. In reality, they were employer liability laws – laws that provided employers with a virtually ironclad defence against employees who might take the bold – and most often, futile – action of suing them for damages in the event of

accident and injury. To be exonerated of any liability, employers had to demonstrate to the courts only one of the following: that the worker had voluntarily assumed the risks inherent in his/her job, that a co-worker had contributed to the accident, or that, in some way, the worker was at fault.



However, the immunity that these laws offered employers became less certain in the stormy political climate of the early 1990s. Workers were organizing unions. There was talk of socialism in the air. Workers began to win cases in the courts – especially those heard by juries of their working-class peers. It was in this context that employers and governments began to search for solutions. The remedy they found came in the form of “no fault” workmen’s compensation laws. Under such legislation, workers would receive guaranteed compensation but they would have to relinquish their right to sue their employers in return.

Remembering “The Historic Compromise”

This is the historic compromise that lies at the heart of Ontario’s present worker’s compensation law. It was a compromise workers’ and their unions were very reluctant to make. It was a compromise they made in good faith. It is a compromise that highlights that employers do not pay for the compensation system by themselves. Workers paid – and continue to pay – by giving up their right to sue.

There was no doubt that it was understood as a matter of rights. Fred Bancroft, a journalist by trade and the main spokesman for the Trades and Labour Congress, told Sir William Meredith early in his Royal Commission hearings that “in the complex industries, where there are big machines and the risks

are so great, we claim it is a right that the workmen have to protection by legislation, and if not protection by prevention of accidents then for some measure of relief to the dependants of those injured in industries.” While Meredith rebuked labour’s demand for “generous” compensation, asking Bancroft on several occasions to substitute “fair” for “generous,” he never challenged the concept of a worker’s right to compensation.

Moreover, compensation for injured workers was not to be dependent on the economic climate. In the over one thousand pages of testimony before Sir William Meredith there is no discussion of paying injured workers less when the economy turns sour. Those who suggest injured workers should settle



for less in such times are thus breaking, or, as in the last recession, conveniently forgetting, the historic compromise. Meredith’s law voided employee lawsuits in times of high profits while simultaneously shielding employers from the potentially devastating effects of large-scale accidents in poor economic times. Meredith never intended for employers to have their cake and eat it too.

And, what about full funding or having no unfunded

liability? Meredith, Bancroft and Frank Wegenast, the principle spokesman for the Canadian Manufacturer’s Association (CMA), all agreed on the need for a reserve in the event of bad times. Interestingly, according to Wegenast, the CMA did not want any future WCB to “build up a reserve calculated to be adequate absolutely to compensate in the future all the accidents in the present.”

Social Legislation

Importantly, they also all agreed on the “social” nature of workmen’s compensation legislation. In the last sitting of the Commission Meredith stated: “I suppose everybody recognizes, at least I certainly do, that this bill is more than a mere compensation to workmen Bill. It is social legislation and it is intended to provide for the workman and save the community from bearing the burden of his impairment.” To this, Wegenast replied: “Yes.”

When employers, government and WSIB officials recite Meredith’s principles, as they often do, they need to remember that they rest on the historic compromise and his strong desire for a compensation system that would be “fair” – one securely buffeted from the ill winds of economic change and partisan political influence.

The IWHP is a group of injured workers, advocates and researchers who are uncovering and writing the history of injured workers in Ontario. You can contact us at: The Bancroft Institute for Studies in Workers’ Compensation & Workplace Health and Safety, 416-461-2411; Robert Storey, Labour Studies & Sociology, McMaster University, 905-525-9140, Ext. 24693, storeyr@mcmaster.ca.

