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‘IN UNITY THERE IS STRENGTH’

Preliminary
Submissions on

Funding

Presented by the Ontario Network of Injured Workers’ Group

1. Introduction

The Ontario Network of Injured Workers was founded in 1991 and since then has actively advocated on behalf of injured workers; this is done primarily on a systemic basis. We intervened in three Supreme Court of Canada cases that effected the rights of injured workers including the *Martin & Laseur v Nova Scotia*; the latter case involved a Charter challenge to the strict limits to the Nova Scotia chronic pain regulation. We also routinely meet with Senior levels of the Ministry of Labour, including the Minister of Labour and also with senior management at the Workplace Safety & Insurance Board. At these meetings the Ontario Network of Injured Workers’ Groups advocate for systemic change to benefit all injured workers.

Our group members are injured worker organizations in the province of Ontario. ONIWG is a democratically governed organization, with 22 member groups from all parts of Ontario. These individual groups also work closely with other groups and agencies in their individual communities in order to advance the interests of injured workers. The individual injured workers’ group typically works with and has strong ties to both local labour councils and to local labour unions. They often will work with local legal clinics, who provide much needed advice and support. They also work with the local offices of the workers’ advisor, local Members of Provincial Parliament, and in many cases local municipal governments. It is these community roots that have enabled events like Injured Workers’ Day (June 1) and Day of Mourning for Workers Killed and Injured on the Job (April 28) to be successful province-wide events.

2. Preliminary concerns

Before addressing the specifics of our submissions we would like to address some preliminary issues.

The first surrounds the perceptions of the review and the need for this review. Our concern stems from the opening comments of the Green Paper which we feel set an inappropriate tone for the review. The paper opens with the following quote from the Auditor-General of Ontario:

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 unfunded liability. It is incumbent on the WSIB and the Government to try to balance such views against the needs to maintain financial stability.

We feel that this perpetuates the fallacy that injured workers are the beneficiaries of rich payments that are paid for by the generosity of the employers of Ontario. This is not the case.

Injured workers and their families have paid a steep price for being injured on the job. In 2010, 491 workers paid the ultimate price; they died on the job¹. Injured Workers want nothing more than to be compensated for these costs; they deserve no less. It is the employers of Ontario that are the beneficiaries of the system. Instead of facing lawsuits for the steep costs of injuries, they pay Workers' Compensation premiums to avoid these costs.

We are also concerned with the scope of the review and the fact that it does not include a discussion of the expansion of coverage of the Workers' Compensation system to include all workers in Ontario.

There are two reasons for our concern. First we are having a funding review because of the concerns surrounding the unfunded liability at the Workplace Safety & Insurance Board. In 2003 Brock Smith reviewed the issue of coverage and found that 38% of all Ontario workers had no Workers' Compensation Coverage and he recommended expanding coverage. Douglas Hyatt from the Rotman School of Business stated that this 38% of all Ontario Workers represent approximately 1.3 million workers. He indicated that if these workers were covered by Workers' Compensation that the Workplace Safety & Insurance Board would generate an additional \$200 million dollars in annual premium.

It is shocking that a review of the financial status of the Workplace Safety & Insurance Board would not include the study of a means of generating \$200 million dollars in annual premiums. We would suggest that this initiative, by itself, would reduce the unfunded liability at the Workplace Safety & Insurance Board by approximately 20%.

The second reason for our concern revolves around the injustice of exempting 38% of Ontario's workforce from Workers' Compensation coverage. For many of these workers an injury at work will leave them with no income replacement benefits and an excessive reliance on our social housing, social assistance and our public Health Care system. This is not

¹ WSIB Monthly Monitor.

only an unfair burden to place on 38% of Ontario's workforce; it is an unfair burden to place on the taxpayers of Ontario.

We recommend coverage for all workers and all employers in Ontario. In fact, if all wages were subject to WSIB assessments in Ontario, and all were charged the same flat rate, the rate per \$100 of payroll could easily fall to well under \$2.00.

3. System funding

It seems clear that the UFL has grown primarily due to a premature reduction in employer assessment rates. In 1991 average premiums per \$100.00 in payroll was \$3.20. In 1997, the last time the government was concerned about a financial crisis at the Workers' Compensation Board, the assessment rate was \$3.00 per \$100.00 in payroll. These assessments were steadily decreased in the late 90's until by 2001 the average assessment rate stood at \$2.13 per \$100 dollars in payroll. This means that in spite of the supposed financial crisis that justified significant benefit reductions to injured workers, employers in Ontario had their costs reduced by 29%. Even with the recent announced increases in the premium rates, employers are only paying \$2.30 per \$100.00 in payroll; this is a 23% reduction in premiums from the 1997 rate.

This has had a significant impact on the funding levels of the Workplace Safety & Insurance Board. If employers had not enjoyed a premium reduction and had the province allowed the Workplace Safety & Insurance Board keep the savings from the reduced benefits for injured workers there would be no unfunded liability. The WSIB produced a chart for the Chair's consultation in the spring of 2009 which demonstrates that if employers' assessment rates had simply been kept at the 1996 level, by the year 2006 there would be no unfunded liability. The unfunded liability would have been totally eliminated and Ontario's workers' compensation system would be fully funded.

These premium decreases were directed by the government. The WSIB is supposed to be independent and ought to operate at an arms length from the government. However in the crucial area of setting premium rates, the WSIB is not independent. This must stop. A premium setting mechanism needs to be established that bases premiums on the revenue needs of the WSIB. The policy ought to be rigidly followed and the government must stop the interference with the rate setting mechanism. If this does not happen, it is inevitable that the WSIB will again suffer from repeated financial "crises".

We also do not believe that achieving full funding of the WSIB is a worthwhile policy objective. The unfunded liability is not a debt. In his report, the only rationale that the Auditor-General gave for the concern over

the unfunded liability is that the Workplace Safety & Insurance Board's "trend" to sell off investments in order to finance current operations. However the WSIB's own figures tell a different story. From 1996 until 2006 the assets of the Workplace Safety & Insurance Board continuously went up. It was only in 2007 and 2008, years marked by significant investment losses in the Workplace Safety & Insurance Board's investment portfolio, that the Workplace Safety & Insurance Board lost assets. Since that time the WSIB has regained \$3.028 Billion of the \$3.191 billion that was lost in 2007 and 2008.

However we do not feel that a decrease in the funding level of the WSIB is appropriate. Instead we would advocate that the Board set its premium level to achieve a steady state system of 60% level of funding; once achieved the goal ought to be to maintain this level of funding. We also recommend that assessment rates be set over the long term; annual adjustments of premium rates ought to be avoided. This allows employers to plan long term for their Workers Compensation payments. We feel that the suggested steady state target could be reached in three to five years with modest increases to employer premiums.

If this review determines that full funding is the only acceptable funding level, then we feel that the only acceptable time frame to achieve full funding is 30 years. If you are going to treat the unfunded liability like a debt, then you should treat it like a debt. 30 years is consistent with both the time frames of the issuance government debt and with the time frames for repayment of conventional mortgages on homes. The latter debt is a familiar debt to many Canadians. This repayment ought to also be achieved by modest premium increases.

4. Premium rates & Rate Groups

We support the move to a flat rate system with only one rate group that more closely reflect the principle of collective.

There are two reasons for our position.

First there are currently 154 rate groups in Ontario. This causes a lot of confusion and employers playing the system to get into a lower rate group. There are about 200 staff at WSIB that work in this area of making sure employers are in the correct rate group. Managing the rate groups costs the WSIB millions per year.

Secondly we feel that having multiple rate groups is inconsistent with the principles of collectively liability. The more individualized an employer's assessment is, the closer we move to an individual liability system. We feel

that this undermines both the no fault principle and the collective liability principles that underpin our Workers' Compensation system.

We recommend that there be a single rate group. This will return the system to a collective liability principle. We also recommend eliminating Schedule 2 and bring all those businesses into the collective liability structure. Having one rate group is not an unusual method to fund a social insurance system. This is how our health system is funded in Ontario; federally both Canada Pension Plan and the Employment Insurance system have one premium rate for all workers. We would certainly need a transition period to move from our present system to a flat rate, comprehensive system. But as the biggest change for any individual employer would be a reduction from \$10 down to under \$2, we don't much hardship there.

5. Employer incentives.

Employer incentive programs are inappropriate and with a few exceptions ought to be eliminated for a number of reasons.

First, there is no real evidence that they actually improve occupational health and safety, nor is there evidence that incentives encourage re-employment. Instead employer incentives create an adversarial relationship between workers and management – far too often rupturing the employment relationship. They also are a financial drain on the system. From 1995 until present employer incentives have cost the Workplace Safety & Insurance board more than \$3.0 Billion. For these reasons we recommend eliminating all the existing employer incentive programs except the workwell audits.

Instead of maintaining an ineffective and expensive employer incentive system we recommend the creation of an excellence fund to help cost share actual health and safety improvements in the workplace and support the employment of injured workers by cost sharing reasonable accommodations in the workplace that remain with the worker. We also suggest examining the German system of grants and levies to promote employment of injured and disabled workers.

6. Funding for Occupational Diseases

Funding for Occupational Diseases should be integrated into the regular funding formula and should be part of the collective liability system.

We should not set aside a special fund for occupational diseases for two reasons. First we do not feel that this fund would ever be adequately funded. Because we will not know how much future industrial disease claims will cost, there be many pressures by a variety of stakeholders to minimize the amount of money that is set aside for occupational diseases. Because of these pressures, the fund for industrial diseases will never be adequately funded.

We also believe that an inadequately funded special fund for occupational diseases will lead to very stringent adjudication of disease claims. This will be driven not by the science surrounding the causes of occupational disease, nor by the law regarding the compensation of occupational diseases. Instead this stringent adjudication will be driven by the lack of adequate funding in the special fund for industrial diseases.

7. Indexation of partial disability benefits

In our discussion of the funding levels at the Workplace Safety & Insurance Board, we pointed out the connection between the funding levels at the WSIB and the steep reductions in employer premiums. The funding levels at the WSIB would have been worse had injured workers had full indexation. The unfunded liability would have been approximately \$2.0 billion higher and the funding ratio would have been approximately 6% lower.

Essentially injured workers have partially financed the steep reduction in employer premiums through the loss of the purchasing power of their benefits. The impact of this has been significant. Injured workers injured in 1995 have lost approximately 1/5 of the purchasing power of their benefits.

We insist that there be full inflation protection for injured workers with quarterly increases based on the Consumer Price Index for Ontario. We also recommend that benefits be adjusted to reflect full cost of living protection retroactive to 1995.

Respectfully submitted by the Ontario Network of Injured Workers' Group
Peter Page
President

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