

ADDITIONAL SUBMISSION TO PROFESSOR HARRY ARTHURS REGARDING INDEXATION OF BENEFITS

Ontario Network of Injured Worker Groups
Ontario Federation of Labour

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Thank you for the opportunity to provide feedback on the provisional outline of your report presented at the stakeholder meeting on November 2 and 3, 2011. This brief submission will deal only with the indexation of benefits for partially disabled workers.

Our position remains that a truly fair resolution of this issue requires 1) the prospective reintroduction of full CPI indexing for all workers; 2) the retrospective adjustment to full CPI indexing of the earnings basis for those affected by de-indexing in the past (“catch-up” indexing); and 3) the restitution of benefits withheld in the past due to de-indexing, with interest. To the extent that the outline fails to fulfill these goals we urge you to reconsider.

You have quite rightly recognized that the restoration of full indexing is a matter of fundamental fairness, an “essential” that must be dealt with even before the WSIB emerges from levels of funding that you have designated as the Tipping Zone. The proposal to immediately restore full indexing on a prospective basis reflects the urgency, while the limitation placed on catch-up indexing and the absence of restitution on “practical” grounds represents caution in the face of your concerns regarding affordability and the sustainability of the system while in the Tipping Zone.

With respect, we believe that attempts to strike a balance in this manner are misguided. The restoration of full benefit indexing - past, present and future - is a matter of fairness. De-indexation did not reduce the WSIB’s unfunded liability (UFL), it simply dumped part of it back onto injured workers. That burden must be lifted from their shoulders, and doing so costs what it costs. The damage of the past can only be balanced by payments from employers.

However, even if your final report retains the same broad outlines presented at the stakeholder meeting, we believe that changes can be made within that framework that would likely produce a much fairer result for injured workers. In brief, future experience gains are likely under the conservative, “no wishful thinking” assumptions you have incorporated into the proposed Corridor System. Past experience and Bank of Canada policy indicate that gains are likely with respect to the funding already earmarked for benefit indexing. Continuous improvement of the catch-up indexing and payment of restitution should be the first priority for the use of those likely gains and any other future savings, e.g. from better than expected investment returns or lower claims costs achieved through improved health and safety or return to work.

Partial relief

Unfortunately, the current proposal would lock-in part of the injustice caused by de-indexing. Your proposal for full indexing on a prospective basis is of course welcome. The injustice results from the partial nature of the catch-up indexing, which you have limited to a present cost of \$0.5 billion dollars on an accrual basis.

You propose dividing that funding among previously injured workers on the basis of a division into three cohorts. Those injured after 2005 would receive nothing, as they have suffered no indexing losses thanks to the corrective adjustments resulting from Bill 187. For the rest, workers injured prior to 2000 will receive catch-up indexing that results in an average of twice the dollar adjustment to ongoing benefits assigned to workers injured in 2000 through 2005.

You explained at the consultation that this distribution of catch-up indexing will result in an across the board repair of 40-45% of the remaining post-Bill 187 indexing deficiencies within each cohort. We agree that if immediate catch-up indexing is to be limited, this is a fair method of distribution. Those who continue to suffer disproportionately (an average ongoing loss of 21% for those in the pre-2000 cohort) require greater corrections in nominal dollar value than those who have experienced the loss for a shorter period and have both suffered fewer past losses and received a proportionally greater benefit from the Bill 187 corrections (average continuing loss of 5% for the 2000-2005 cohort).

The bleeding continues

But the situation of especially the pre-2000 cohort will remain quite unfair – unthinkably so within the overall context of the proposed Corridor System. Take as an example, a worker injured at age 20 in 1997, the mid-point of the pre-2000 cohort.¹ She continues to suffer from an ongoing 21.4% de-indexing loss, even after the Bill 187 corrections. Following a fresh correction that prospectively relieves 42.5% of the remaining loss,² she will continue to lose 12.3% of her wage loss benefits for the remaining thirty years of her entitlement.

Within the context of the Corridor System, this is unbearable. You have presented two options for premium rate levels going forward. In Option A, rates would be set at \$2.52 and continue at this rate for approximately 15 years, before gently declining for several years and then dropping to around \$2.00 when the WSIB reaches the Full Funding Zone in 20 years. The average premium rate over the 20 and 30 year periods ending in 2010 was \$2.53 and \$2.51 respectively.

The implications are immediate. Keeping the system “affordable” requires a continued sacrifice of 12.3% by the worker in our example year after year, while employers continue to pay average rates. She will sacrifice through the Tipping Zone, the Recovery Zone and even the Comfort Zone (!). And when the Board enters the Full Funding Zone and premium rates again drop to 20% below their historical levels, she will continue to sacrifice 12.3% of her wage loss benefits - every year for ten more years.

Obviously this is not acceptable. The preferred solution would be to set premium rates at the \$2.76 level suggested in Option B but, instead of using the additional funds to hasten another employer premium holiday, dedicate them to rectifying the injustice of de-indexing. Based on the figures you presented, that level of premiums would be sufficient to immediately institute full catch-up indexing and begin the restitution of past losses.

¹ This is the mid-point in terms of de-indexing, which began in 1995. The cohort includes workers injured as far back as the 1950’s – possibly even earlier.

² For reasons that will become clear, we would like to see any initial catch-up distributed as a percentage adjustment. As opposed to a fixed dollar amount, this is both a fairer reflection of past losses and a better platform for continuous improvement.

But whatever the premium rate and whatever the size of the immediate corrective adjustment, ongoing improvements to catch-up indexing and/or restitution should be a part of your final report. Experience tells us that whatever can be done immediately can also likely be improved upon as time goes by. The “no wishful thinking” approach used in your development of the Corridor System only makes this more likely.

Conservative assumptions, not regressive results

As a matter of principle, we agree with a “no wishful thinking” approach to valuing the WSIB’s liabilities. However, we are mindful of the practical consequences and political drawbacks of that approach. Injured workers have suffered unnecessarily in the past even as conservative assumptions have proved ... conservative.

The most obvious example is indexing itself. When de-indexing was first introduced in 1995, the Board’s liabilities were valued using a projected inflation rate of 4% per annum. The original Friedland formula was $(3/4 * CPI) - 1\%$. The expected annual inflation adjustment for the majority of workers under the de-indexing scheme was therefore 2%.

There have now been 17 annual adjustments to worker benefits since de-indexing began. The average **full** indexing adjustment over that period has been 1.8%. In other words, all of the projected savings from the original de-indexing plan would have been realized by simply doing nothing and continuing to fully index benefits.

The reason is simple. After a short ramping up period, the Bank of Canada's inflation targeting policy came into full effect in 1995, at the same moment as the Friedland formula. The Bank’s single-minded focus on meeting its target rate of 2% average inflation has resulted in meeting that goal. This month the Bank has extended that target rate to 2016, while its laser-like focus on pursuing that goal to

the exclusion of any consideration of e.g. unemployment, has become a firmly entrenched fact.³

The actual application of the Friedland formula and Bill 99's modified Friedland formula resulted in a further transfer of liabilities to injured workers from the WSIB, which then passed the "savings" on to employers in the form of a premium holiday. Even though the Board eventually lowered its inflation assumptions for valuing benefits to 2.5% for full indexation and 0.5% for partial indexation, experience gains from lower than expected inflation have continued. As noted in ONIWG's *Supplementary Submission*, experience gains from lower than expected inflation booked since 1998 have totaled \$1.033 billion, more than enough to offset the Bill 187 corrections.

The bleeding must stop

We believe that going forward there should be a "corrective Friedland" formula dictating a minimum annual adjustment of 2.5% for those workers who have been de-indexed in the past. Such corrective measures should continue through the point of full catch-up indexing (when accumulated Friedland adjustments for each annual cohort equal accumulated full indexing adjustments) to provide restitution.

This is a responsible course of action. Annual 2.5% adjustments are already being notionally set aside for these workers as a result of the reintroduction of full indexing. It is the amount you are recommending be set aside for these workers, it is the amount the government will have to allocate to them, and it is the amount that employers will complain is too high. Creating a 2.5% floor for those who are morally entitled to further catch-up indexing and restitution simply ensures that these accrued liabilities are continuously recycled for that purpose, rather than diverted into employer premium reductions. Workers should not be forced to fight employers over the same funding for full indexing over and over again.

³ The Bank of Canada's monograph "Renewal of the Inflation-Control Target - Background Information - November 2011" can be found at http://www.bankofcanada.ca/wp-content/uploads/2011/11/background_nov11.pdf. On the firm, consistent and unnecessary one-sidedness of the Bank's approach, see Lars Osberg, "Why Did Unemployment Disappear from Official Macro-Economic Policy Discourse in Canada?" at <http://www.csls.ca/festschrift/Osberg.pdf>.

Setting this amount as a floor rather than reducing it to some sort of rolling average or “first priority” for experience gains is necessary to place at least this contribution to re-indexing and restitution beyond the realm of constant contention. While the existence of some years where the full indexing rate is more than 2.5% may put the re-indexing workers’ average adjustments over 2.5%, the effect will be marginal and offset.

Of the past 17 full indexing adjustments, only 3 exceeded 2.5% (2.8% in 2001, 3.2% in 2003, and 2.6% in 2006). In each case, the very next annual adjustment resulted in an average rate below the 2.5% valuation. While similar downward movement would not bring workers entitled to the corrective Friedland all the way back to a 2.5% average, it is important to remember that their numbers will decline over time, while experience gains from years with inflation less than 2.5% would continue to be accrued for the significant and growing cohort of fully indexed workers, including all newly injured workers.

In addition, it should be kept in mind that higher than expected inflation would tend to be offset by positive effects on assessable payroll and the Board’s investment portfolio. Full catch-up indexing and restitution should be the named first priority for all such experience gains and changes in assumptions. This priority status and the continued use of the corrective Friedland formula should only end when each annual cohort has received full restitution.

While much is made of the difficulties in measuring restitution to the dollar, that is no bar to making an attempt. As mentioned during the stakeholder meeting, the first attempt to make a major inflation adjustment in 1974 took the form of a 2% adjustment for each year since the date of injury. Such approaches are unsatisfactory for a number of reasons, not least the exclusion of the estates of workers who have passed away or, for post-1990 injuries, workers who have passed out of the system at age 65.

But the perfect should not be the mortal enemy of the good. If it is truly too administratively cumbersome to do individual assessments, then the current level of benefits can act as a benchmark for measuring past losses. Nearly all of the affected workers are receiving locked-in long term benefits. This can be used as a constant against which the necessary restitution can be measured through the assessment of past losses as a general percentage of benefits paid over the years each annual cohort has received benefits. These losses can then be compensated through the continued payment of the corrective Friedland adjustment for a period

after full catch-up. There is no reason why such adjustments could not continue as stand-alone payments for workers who have passed 65.

The appropriate formula for calculating past losses and setting a horizon for restitutionary payments is a matter of mathematics and prudence, not politics. You indicated during your presentation that the most important factor influencing your decision on this issue was fairness and that this clearly favours full indexing. In that spirit, we ask that in completing your report, you and your consultants undertake the task of fundamentally reviewing what is also feasible and affordable in light of the above.

All of which is respectfully submitted,

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