Committee of Review Paper 2015

Our presentation for 2015 is similar to our 2011 presentation with the following additions:

Currently the Saskatchewan WCB calculates days lost in the following manner:

If a worker is on a return to work program and has to go for medical treatment once a week for an hour, the WCB will pay for the treatment and the hour of lost wages (this is what they will charge to the employers account). However for the record, if the worker had to follow this program for 8 weeks they would be absent from work for 8 hours, However the employers record would not show 8 hours lost – it would show 8 days lost.

WCB tells us that it only costs the employer 8 hours, however in this age of registries the 8 days reported raises a lot of red flags.

This forces the employer to one of two things with return to work – neither are good for the system.

1. Hide the incident. Make sure that it is not recorded as a workplace incident, this way it does not show up on the employer's record.

2. Drop return to work programs.

This needs to change to reflect the actual time lost.

This brings us to a second inequality. Many large companies that have a company Doctor or Nurse on staff end up having fewer incidents recorded with WCB. As many minor incidents are dealt with in house.

While we have no problem with companies having an in house Doctor or Nurse, all companies should either be allowed to use their own health professionals no companies should be allowed to have their own health profesionals.

Our third point is WCB and the government should quit saying that we have the second worst injury rate in the country. The more factual statement is that we have the second worst claim rate. Every jurisdiction uses different criteria for what makes a claim an injury.

For example, New Brunswick has a three day waiting period. Because the majority of claims are less than a week, if you went from a one day waiting period (like we have) to a three day waiting period the claims could drop by 25% to 40%. The same number of incidents are occurring – there would be just fewer ‘injuries’!

WCB and the government needs to use correct language!

What follows is the updated version of our 2011 presentation.

For WCB, the relationship between the two stakeholders in the WCB (Workers and Employers) is best represented by the Tao symbol Yin – Yang.

This is a symbol for the parties indicating a mutually-arising, interdependent, and continuously transforming relationship.

Currently the relationship is out of balance. It is more adversarial. To remedy this, the Heavy Construction Safety Association is presenting the following seven items:

Committee of Review Paper 2011

Our WCB system has been serving the province since the Meredith principles were adopted here. While the system is good, there are signs that it could be improved.

This issue was raised in the WCB book “The Story of Workers’ Compensation in Saskatchewan – 1997”. On page 88 it states:

“Despite individual provincial success stories there is a national mood of dissatisfaction with the compensation system and the sense of partnership between business and labour has been put under great strain.”

To restore the faith in the system, a first step would be to give equal recognition to both of the primary customers of the WCB – the workers and the employers. This is not without precedent, currently both Ontario and BC WCB’s have rebranded. Ontario is now “Workplace Safety and Insurance Board”, BC is WorkSafe BC.

To recognize the equal nature of both parties – Saskatchewan’s WCB should be renamed to recognize the equal relationship that workers and employers should have – like BC and Ontario.

The following seven recommendations would also help to make the WCB more responsive to both of their customers.

Item 1

WCB has done a good job in publically promoting safety through activities/promotions like “Worksafe” and “Mission Zero”. However, when it comes to helping to promote safety in the workplace through the application of the WCB act and how it impacts safety in the workplace, there is some room for improvement. Our WCB frequently talks about how our record is the second worst in the country. In safety, responsibility is important, accountability more so. In many cases the only party brought to account is the employer. This must change or it will further weaken our system.

For example, Manitoba has a section similar to our section 30 - only they enforce it with up to a three week penalty for workers who contravene the section.

In Alberta, they define what an accident is and the WCB is accountable to ensure only injuries that are a result of a workplace accident are insured – and they have the power to order medical tests to verify the injury. Alberta has many tools to hold many people accountable, not just employers.

To improve our system, we need to look at what other jurisdictions have done and take the good parts of legislation for Saskatchewan (after all the Meredith report was originally done for Ontario).

To achieve this we recommend the following:

Use our section 30 in cases where it is applicable (this is not unlike the penalty in Federal E.I. where a waiting period is tacked on to someone who quits a job).

Allow others to be held accountable in the system by re-instating our old section 107 (or something similar) – no insurance company would give up the right to manage the medical treatments they pay for (this would hold the WCB, workers and the medical community accountable as well as employers). Not only is it morally right to hold WCB accountable, they have a fiduciary duty to the employers who fund the system to do so.

Item 2

The WCB needs to be an organization that runs effectively to meet the needs of its two primary customers – injured workers, who collect benefits and employers who fund the system – not an easy task when you consider that the primary customers often have conflicting views on how WCB should run.

When looking at the Meredith principles the first principle – "**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." – The focus for WCB needs to be on being fair and impartial in the adjudication of the claim.

When speaking to employers, many anecdotes seem to indicate that the WCB is not fair or impartial to employers – there appears to be a bias towards workers. The only time the worker is supposed to be given the benefit of the doubt is when the evidence is equal, tie goes to the workers (section 23(3)).

We can see evidence of this bias in the legislation; the legislation needs to change to reflect that the WCB is fair and unbiased.

To achieve this we recommend the following:

Amend section 19.1 (duties of the board) to add the following:

“Treat employers and their staff in a fair and reasonable manner”

Failure to include employers in the duties of the board would indicate the WCB is not interested in fairness or impartiality to employers.

Item 3

At a recent WCB course, WCB indicated that they have trouble with workers feeling that they are entitled to benefits. If the WCB is an insurance company then it is important to realize that workers are not entitled to benefits, but rather must qualify for benefits. One of the reasons workers may feel that they are entitled to benefits is that their first point of contact with the WCB is usually with a “claims entitlement officer” – this sends the message that workers do not need to qualify for benefits – they are entitled.

To correct this we recommend the following:

Change the title from “claims entitlement officer” to “claims adjudicator” or “claims officer”.

Any other reference in the act that says “entitlement” should be changed to “claim”.

Item 4

When there is an issue with a decision of the WCB the first thing that is often told to employers (and workers) is that they should appeal or send a submission to the “Committee of Review”. It would appear that WCB is interested in fast decisions not correct decisions.

We have developed a system in Saskatchewan where our system is the most generous and quickest to pay of all of the WCB’s in Canada as well as the easiest to collect benefits from. Our WCB then goes on to use data from AWCB to show how we are the second “worst” jurisdiction in Canada without accounting for level of benefits or the different jurisdictions requirements for qualifying for benefits (WCB equates the Claims rate with the state of safety – they are two different issues.).

The last few “Committee of Review” have raised the level of benefits – they generally have no responsibility for the cost of the changes; WCB usually does not worry about the cost – their reasoning is that the committee of review has recommended it.

To avoid becoming like many WCB’s who have an unfunded liability (and the potential to cut benefits) any changes must be fully costed and hold a party accountable for the costs.

To correct this we recommend the following:

The WCB does not seem to be accountable to the funding stakeholder (Employers). As a starting point – we need to see accurate costing of benefits coming out of the Committee of Review. Assign accountability for the costs of the proposed benefits (assign to WCB or better yet the provincial auditor). If the costs are higher than originally forecast – change to the proposed benefit would have to be made.

Item 5

Given that the majority of employers are small, if they have an issue with the WCB they are told to appeal. For most of these employers, they are being asked to be the "Watchdog" of the WCB. Most of them do not have the resources to do this. So they do nothing with the claim.

Insurance companies, as a rule, have a medical department (as part of their oversight process) that has the power to look out for the interests of the insurance company and over rule medical decisions where it is in the Insurance Company interest. This power was removed many years ago (committee of review 1992 asked to have section 107 repealed) from the medical department of the WCB.

If workers have a problem, they can receive assistance from the Workers Advocate (which is funded by the WCB which is wholly funded by the employers of this province – section 115(h)). To not look at this issue would show undue bias towards workers.

To assist all employers (especially small employers) and the perceived integrity of the WCB we recommend the following:

Re-instate the power of the WCB medical department to overrule on claims.

Provide help for appeals for employers by funding an employer's advocate.
To not look at this issue would show undue bias towards workers (B.C., Alberta and Ontario all have employer advocates).

Item 6

The construction industry is a seasonal industry. WCB appears to work on the premise that everyone works Monday to Friday, 9 to 5, 49 weeks out of the year.

Alberta (which has a higher recordable rate than Saskatchewan – but a lower time loss record) has a large portion of their industry working seasonally. In comparing our W1 to Alberta's, we notice that they have two questions that we do not.

"Are you a seasonal worker"

“Have you been given a layoff notice”

Alberta seems to recognize that seasonal work is different than year round work.

To assist all employers we recommend the following:

Add two questions to the W1 form:

“Are you a seasonal worker”

“Have you been given a layoff notice”

Look at how seasonal workers wages are calculated

AND ensure the worker has filed a W1 before proceeding with a claim.

Item 7

We recommend the introduction of a waiting period for injured workers prior to receiving benefits, as is the case in other public insurance programs and recommend a 3 day waiting period.

Exemptions to the waiting period **may** be considered if:

- The injury results in hospitalization; and/or,
- The time loss lasts longer than 20 working days and there is clinical, objective medical evidence to support a causal relationship between the injury and the workplace accident; the board may retroactively pay the claimant for the waiting period in these situations.

Waiting periods in workers compensation system programs are similar to deductibles, a common feature of most insurance programs. The primary motivation for introducing a waiting period is to improve employee accident reporting and give employers a tool to ensure that accidents are reported. A second benefit would be to achieve cost savings by discouraging frivolous claims.

A waiting period means that an injured worker would be required to wait a specified number of days after a workplace injury before income replacement benefits are paid. It is similar to a waiting period in other public insurance programs such as federal Employment Insurance. Waiting periods for WCB benefits exist in New Brunswick, Nova Scotia and Prince Edward Island.

For example, the Nova Scotia Act has a waiting period of 2 working days and the New Brunswick Act & PEI have a waiting period of 3 working days. Waiting periods in these

provinces do not affect the worker's right to medical aid from the date of injury, however compensation benefits do not commence until after 2 and 3 days respectively.

A current problem now is that once a worker is injured, in theory they are still an employee of the company, however in practice they respond more to what the WCB says rather than what their employer says. The longer waiting period would help ensure that a worker reports to their employer in the event of an injury. In this light section 51 should have a clause added to the effect:

To achieve this we recommend the following:

Section 51 should have a clause added to the effect:

"Co-operate with their employer and participate in return to work programs offered at their place of employment"

Co-operation starts with the reporting of the incident to their employer first. By amending section 51 in combination with a three day waiting period we can eliminate the problem of workers feeling they work for the WCB and not their employer.