



# FAST FACTS



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## Workers compensation: halfway to reform

It is difficult to read the report of the Manitoba Legislative Review Committee on the *Workers Compensation Act* without a growing sense of anger and, in the end, dismay. While the report make many laudable and necessary recommendations, the anger comes from the recognition that much of what is positive merely undoes the incredible damage that the Filmon government inflicted on the workers compensation system during its 11 years in office.

The Conservative government:

- cut the WCB rates. Not only did injured workers see their benefits reduced; workers who had been off the job for more than two years received an additional cut. The rates for permanent disabilities—the so-called meat chart—was also cut.
- made it more difficult to win compensation for occupational disease and denied any compensation for occupational stress.
- gave employers an incentive to oppose individual workers claims by introducing experience rating, a system under which the premiums that each employer paid reflected the number of claims that the Workers Compensation Board accepted from that employer's workforce.

The Legislative Review Committee recommends ending a number of Tory measures. It calls for an end to the odious practice of reducing benefits by ten per cent if a worker has been on compensation for more than two years and proposes significant increases for some benefits.

But the Committee failed to come to terms with two of the most significant problems with the workers compensation system—the difficulty in having occupational diseases compensated and experience rating. Furthermore, it takes a far too cautious approach to expanding WCB coverage.

### Occupational disease

Under the *Manitoba Workers Compensation Act*, compensation is only provided if work is shown to be the dominant cause of the disease. This might sound fair, but in many cases it is not possible to determine the dominant cause of a disease. It is not possible because none of us are identical in physical attributes and characteristics and we degenerate over time at different rates. In the case of illnesses related to chemical exposure, each of us during our lifetimes can be expose to innumerable chemicals in limitless combinations. All of these chemicals have differing impacts on health depending on the other chemicals they interact with. Each individual responds to chemicals in different ways—and over time and exposure their responses change.

Researchers increasingly understand that disease and illness are multifactorial in causation: that means that there are numerous causes for most illnesses. They are also recognizing that in the case of heart disease, these determinants of ill health can include the way that work is organized and paced. This research has significant implications for workers compensation. It suggests that while few illnesses and soft tissue injuries are purely work-related, many conditions that were once thought not to be work-related have a significant relationship to the work experience. In other words we can be sure that many illnesses are caused in part by work, but we cannot demonstrate that work is the dominant cause. And in these cases, the worker receives no compensation.

The gap between the number of work-related diseases in Manitoba and the number that are compensated is enormous. Dr. Allen Kraut of the MFL Occupational Health Centre has estimated the number of new occupational



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diseases that arose in Manitoba in 1989 to be between 1,600 and 2,960. In that year, when the rules governing the compensation were more liberal, the Manitoba WCB accepted only 225 occupational disease claims. Since the Filmon government introduced the dominant cause rule, only 50 to 60 claims are accepted each year.

Despite this, the task force recommends sticking with the dominant cause rule. Just as disheartening—and far more perplexing—is its decision not to call for an end to the rule denying compensation for stress, even when work is demonstrated to be the dominant case of the stress.

## Experience rating

Experience rating is the term used to describe a form of funding of workers compensation in which employers pay variable rates depending on their WCB claims records. The fewer claims that the WCB accepts from an employer's workforce, the lower the employer's premiums. Experience rating gives employers an incentive to monitor and oppose WCB claims and to appeal decisions to grant their employees benefits.

The monitoring, opposing and appealing of claims can resemble a return to the days before workers compensation, when injured workers had to take their employer to court to win any compensation. And if they won, they could be sure that the employer would appeal the decision, and keep on appealing it, through the court system.

The Legislative Review Committee makes no recommendations to do away with experience rating. But, one of its recommendations demonstrates how experience rating brings injured workers into conflict with their employer. Currently workers who are having difficulty establishing a claim with the WCB can request that a medical review panel (MRP) examine their application. Employers have argued that since their WCB rates are affected by the decision of the WCB to accept or reject a claim, they ought to be able to request that a MRP examine claims that they feel are questionable. The Committee is recommending that employers also be allowed to request that MRPs review worker claims. The solution, however, is not to allow employers to start obstructing individual worker applications for compensation, but to sever the direct link between the outcome of each claim and their premium rates, by bringing an end to experience rating.

## Restrictions on coverage

Only 70 per cent of Manitoba workers are covered by workers compensation. From the time workers compensa-

tion was established in Manitoba in the early twentieth century, the model has been to have the Act list those industries that are covered, even though a more logical approach would have been to list those industries that were excluded.

The simple solution is to have all workers covered. This may be the eventual result of the Legislative Review Committee recommendation that "WCB coverage of workplaces should be extended gradually over a three- to five-year period." But the next recommendation, namely, that "The extension of coverage should only occur after employers and workers in those industries where extension might occur have had a full and free opportunity for consultation and discussion" provides employers with far too much room to stall, delay, and intimidate both their employees and the government.

In short, there are a number of important improvements, a number of very troubling gaps, and an excess of caution and delay on what should be a matter of straightforward action. The most depressing realization of all is that the business community is likely to mount so savage an attack on many of these recommendations that it will take a serious political fight to win even modest reforms.

*Doug Smith*

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