Improving Workplace Safety And Health In Manitoba
Submission to the Manitoba Workplace Safety and Health Review Committee

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The Manitoba Branch of the Canadian Centre for Policy Alternatives applauds the Manitoba government for holding this review of health and safety law and is grateful for the opportunity to make this presentation. The CCPA undertakes and publishes research on social and economic policy in Manitoba and nationally.

The government's discussion paper touches on a wide range of issues. This brief will, with varying levels of detail, respond to the main issues raised in the paper.

The goal of 15 per cent injury reduction

The Government's discussion paper states that:

In 1998, the time-loss injury rate as measured by the Workers Compensation Board peaked at 5.7 time-loss injuries per 100 workers. The 15 per cent reduction target is only a first step towards making Manitoba workplaces among the safest in Canada.

Reaching that target would mean that 3,000 fewer Manitoba workers would be subjected to the pain and suffering of a time-loss injury. It would also reduce Workers Compensation Board time-loss injury claims costs by about $25 million. The corresponding savings to the provincial economy would exceed $50 million.

No one can oppose the goal of reducing workplace injuries. However, it is important to recognize that the government is not in reality setting a goal of a 15 per cent decrease in accidents. It is in fact, setting a goal of a 15 per cent reduction in the number of time-loss claims accepted by the Workers Compensation Board. It is heartening that the chair of the Workers Compensation Board is also chairing this review, since he will undoubtedly recognize that the number of time-loss compensation claims accepted by the WCB understates the number of workers who are injured on the job in Manitoba.

In the early 1990s the government passed a series of amendments to the Workers Compensation Act that encouraged employers to suppress and appeal claims with the Board. For the past decade the political atmosphere in the province has stressed claims control and reduction. For example, the amendments made it much more difficult for a worker to receive compensation for an occupational disease. The Manitoba Federation of Labour Occupational Health Centre's Dr. Allen Kraut has

estimated the number of new occupational diseases that arose in Canada in 1989 to be between 77,900 and 112,000. In that year Canadian workers compensation boards only accepted 37,927 occupational disease claims. In other words instead of following policies that would have worked to make sure that the victims of occupational diseases receive the compensation that they require, the government has in fact followed policies that make it harder for those victims to receive compensation.

It is also important to note that approximately one-third of the Manitoba workforce is not covered by workers compensation. The WCB itself has in recent years spoken of the need to increase the Board's base of coverage. Should that happen, the number of accepted claims would increase. This should be viewed as a positive, not a negative development.

In short, there are very good reasons to believe that under a fair and just workers compensation system we would see a dramatic increase in the number of accepted WCB claims, even if the number of workplace accidents, injuries and illnesses in this provinces remained the same.

Finally, and this is a worst case scenario, the goal of a 15 per cent reduction in accepted claims could lead to the development of a WCB culture that gives a greater emphasis to rejecting claims in order to meet this goal. It is beyond the scope of this paper, but the government must also soon take steps to address the assault on workers compensation during the 1990s.

Improving safety for young people

There are numerous issues facing younger workers, the most significant of which are likely to be brought to your attention by the Workers of Tomorrow organization. This brief will restrict itself to comments related to young workers who are employed in small-scale service-sector operations (defined as workplaces with fewer than 20 employees) since many young people start their working lives in such workplaces.

When there are 20 or more workers in a workplace the law requires that a workplace health and safety committee be established. Problems with these committees are discussed elsewhere in this report. In workplaces with between 10 and 19 workers, workers are required by law to select a non-management employee as a workplace health and safety representative. There are no requirements for workplaces with 9 or fewer employees.

However, the province does not keep any records of how many workplaces with 10-19 workplaces have such representatives, nor does the province know what those representatives are doing. There is no mandatory training for workers in such situations. It is completely open to speculation as how many workplaces actually have such representatives.

At a bare minimum, the government must require employers report the name and contact information of the representative, and demonstrate that this worker has received independent health and safety training.

It has been noted in a number of studies that workplace health and safety committees are most effective in a unionized environment. The current labour law makes it all but impossible to organize and sustain a union in a small-scale workplace. In 1992 a Special Commission appointed by the British Columbia Government recommended amendments to provincial labour law that would allow for what was termed sectoral bargaining. Under this proposal workers in a single industry, such as fast food, would be members of a union local that would negotiate with a council of employers to reach a standard collective agreement. This would provide these workers with the advantages of collective representation, which includes more effective health and safety representation.

Improving disease prevention

As noted above, and has been acknowledged by the WCB, the levels of industrial disease in Manitoba are not fully reflected by the numbers of occupational disease claims that have been accepted by the WCB. One of the first steps in improving disease prevention would be to develop policies that provide a more accurate picture of the level of industrial disease in our province. The Workers Compensation Board legislation currently requires that work must be the dominant cause of a disease before compensation can be granted. At the moment, medical science cannot accurately answer this question with any degree of certainty. However any time a medical panel rules that work was a cause, but not the dominant cause, of disease, there is a certainty that a worker will not receive compensation and will not show up in the industrial disease statistics. Furthermore, the WCB Act also denies benefits for certain diseases, such as stress, even if work is the dominant cause of the disease. This is manifestly unfair and is designed solely to suppress and control claims. For these reasons this restriction ought to be eliminated.

The government should:

Repeal the requirement that work be the dominant cause of occupational disease before granting compensation; and

Ensure that no work-related illness be barred from compensation.

The WCB should also be mandated to establish an Industrial Diseases Panel. This panel, made up of representatives of business, labour, and the medical community, would be charged with creating and maintaining a schedule of industrial disease. The panel would develop criteria for the acceptance of claims. The panel would play a role both in compensation and prevention in that it would be linking hazardous products and practices with workplaces and diseases. The schedule established by this committee should serve as a floor, not a ceiling.

A series of studies conducted in Scandinavia and the United States have traced the link between work organization (the pace of work, the degree of control a worker has over how the job is done, the degree of teamwork involved in the task) and a variety of illnesses including heart disease. The studies demonstrate that it is the bossed not the bosses who are most likely to suffer from serious work-related stress. Issues such as work control and design must be made more democratic. This issue is further addressed by our proposal regarding Work Environment Boards later in this brief. However, the role of work organization must be recognized as being crucial in a longterm disease prevention policy.

Other proposals discussed elsewhere in this paper are intended to assist joint workplace health and safety committees.

Improved enforcement

Historically, workplace health and safety inspectors have been given a mandate to educate and persuade, rather than to punish. A review of the annual reports of the department of labour over the past 80 years will unearth regular comments to the effect that prosecution is used as a last resort and against only the most recalcitrant of employers. Prosecutions are rare unless a worker is injured or killed.

In fact, punishment and persuasion can be part of an effective health and safety strategy. Inspections and prosecutions can make workplaces safer. Studies show that in Britain and the US, accident rates have fallen every time the government has passed legislation that increased the regulation of mines. The only time this did not happen was in 1952, when the US government passed a tough bill, but did not provide the funding needed to improve enforcement. As legal scholar John Braithwaite noted in his study of coal mining regulation, "the most dramatic periods and places of improvement have been associated with the strengthening of government enforcement efforts." It is likely to be the case that inspectors who are punishing are also going to be persuading as well. Corporations and the people who direct them are forward-looking, do not view themselves as criminals, and attempt to make decisions on a rational basis. When faced with a state that takes a punitive approach to health and safety violation, a corporation is likely to obey the law. In other words, punishment is likely to do a better job of deterring corporate criminals than street criminals.

One of the reasons why inspectors are reluctant to prosecute employers for anything other than the most serious of offenses is the poor record of the courts in dealing with violations of health and safety law. The reasons for this lack of success are numerous.

Historically, the Canadian and British judiciary not only came from the same social class that employers came from, either directly or indirectly they owned or had investments in manufacturing operations. Not surprisingly, there was from the outset a reticence to judge anything done in such establishments as criminal. Secondly, the criminal law is not designed as a preventive tool — it is very rare for

prosecutions of violations of workplace health and safety laws to be initiated unless someone has been killed or severely injured on the job. In levying penalties, judges take into account whether someone was injured and how seriously they were injured. What is being policed under this model is the damage that is done to workers, not the risk which they are forced to run.

The criminal law, quite properly, operates with a high standard of proof, focuses on determining guilt, and entails involvement in a long and complex process with a very uncertain outcome. For these reasons, inspectors may well choose to initiate a prosecution only when the case is airtight or in response to a public outcry. Because so few cases go forward it is not uncommon to have a situation where the case is prosecuted by Crown Attorneys who have little familiarity with the specific law and is heard by judges would have little familiarity with industrial workplaces. This results in the situation noted by the Manitoba Government discussion paper, when it indicates that the fine levels in Manitoba are lower than those in most other jurisdictions and judges here rarely levy fines that approach the maximum levels.

Penalty assessments

The courts can and must play an important role in the area of health and safety, particularly in dealing with questions of negligence and criminal responsibility. However, for all the reasons cited above, there is considerable merit in the system of penalty assessments that is employed in British Columbia.

Employers pay these assessments to the Workers Compensation Board when the employer does not comply with workplace health and safety laws and regulations. The assessment is levied when a health and safety inspector observes a breach of regulations, as opposed to a simple increase in accepted claims (as happens under the experience rating system in Manitoba). Penalty assessments are not levied automatically, and the assessment rates are based on the threat presented to workers, the number of workers at risk, and the steps being taken to eliminate the hazard. The assessment can remain in place until the hazard is addressed. As noted above, one of the key failings of the current system is that it is most likely to respond to the injury that has already been done to a worker. Under the penalty assessment model sanctions are levied on the risk being created, not the damage done.

Because these assessments are not fines, they are collected without any reference to the court system. The employer can appeal a penalty assessment but the appeals are heard within the compensation system, where decisions are based on a balance of probabilities not the legal system's much higher standard of proof. And while the courts are not allowed to look at such matters as previous convictions, the rules of procedure in the compensation system allow for examination of an employer's health and safety record. It is a speedy and low-cost and efficient system that provides enforcement officials with a flexible and effective tool.

Workplace health and safety committees

The government discussion paper states that workers must be:

informed and empowered to participate in safety and health management in their workplaces.

As they are currently structured, workplace health and safety committees do not empower workers in the area of safety and health management, although they do provide them with the right to participate in discussions about how safety and health should be managed.

For much of the last century the reigning ideology was that since workers and employers shared a common interest in the area of health and safety, there was no reason to involve workers in health and safety decision making. The establishment of health and safety committees, which first developed through contract negotiations in the mining industry, was, in some measure, a recognition that there could well be situations where workers and employers had differing health and safety interests.

A recent survey of health and safety committees indicated a considerable degree of satisfaction with the committees. However, the survey results also suggested that over the years, the committees have become focused on safety as opposed to health issues. Indeed a recent presentation by a management co-chair of the joint health and safety committees in one of Winnipeg's largest manufacturing plants simply referred to the committees as safety committees and spoke of the need to involve committee members in addressing safety issues as opposed to health issues. In other words, the committees may meet worker expectations, but to some degree the expectations have been lowered over the past two decades. Finally, it has been observed that the committees are much more effective in unionized workplaces.

The committees have been criticized because they are purely advisory, because they are comprised of an equal number of management and employee representatives and because they have been used to justify a more hands off approach on the part of enforcement officials. As a result of these faults, there can be situations

where the committee makes a recommendation and management does not implement it;

where the committee is unable to reach a conclusion on an issue because the management and employee representatives on the committee have differing views on the appropriate solution and there exists no way to break the deadlock;

where the inspectorate takes no action because that would be interfering with the internal responsbility system (as this system is called).

All of these problems are compounded by the fact that while workers are the experts on specific work processes, they lack access to research on the health implications of many products and work processes. Indeed in many cases such information may not exist.

The committees come into existence after all the major decisions about production are already made. When a company develops a new plant there is no requirement that it consult with existing health and safety committees or with the government's Workplace Health and Safety Division in advance about its production plans. Furthermore, there is no requirement for firms to consult with workplace health and safety committees about the introduction of new technologies. This differs from other jurisdictions, such as those in Scandinavia, where workers are involved in the selection of new machinery and new equipment.

The committee system must be reformed to recognize that conflicts of interest are inevitable in workplace health and safety. Many safety improvements will be expensive — and it is dangerous to argue otherwise. It may well require a major redesign of jobs and technology to reduce issues such as repetitive strain injury.

Both the committees and the workers must be empowered. There are a number of steps that could be taken to achieve this goal.

1) At a minimum the decisions of the workplace health and safety committee must be binding. Failure to implement a committee recommendation should be grounds for the levying of a workers compensation penalty assessment.

2) The committee's powers should be explicitly expanded to include involvement in decisions regarding new equipment, new work processes, and changes in the pacing of work.

On their own these two recommendations would vastly increase the powers of the committees. But they would not significantly empower workers. As long as the committees consist of an equal number of employer and employee members many committees will not be able to reach recommendations, particularly if employers realize that these recommendations will have the force of law.

In the early 1980s the Saskatchewan government experimented with a model that addressed the balance of power issue on workplace health and safety committees. The workplace health and safety committee at the Potash Corporation of Saskatchewan was transformed into a Work Environment Board. While the Board was made up of an equal number of management and worker representatives, there was a chair over whose appointment the labour representatives exercised a veto. The WEB had a research fund that was supported through negotiations with the employer and the Workers Compensation Board. This novel experiment was discontinued with the election of the Devine government in 1982.

3) There would be some merit in the current provincial government establishing two experimental work environment boards, one at a Crown corporation such as Manitoba Hydro and the other at a large private sector industrial concern. The most obvious candidate is Hudson Bay Mining and Smelting.

4) The Workplace Health and Safety Division should establish a process for conducting Worker Impact Studies prior to the establishment of new industrial plants. Similar to environmental impact studies, these would be conducted by a tri-partite board. The most vexing issues faced by workplace health and safety committees are often engineering and equipment questions that can be very expensive to address once a plant is in operation.

5) The committee system works best in a unionized setting. To improve unionization in the province, the labour act should be amended to allow for automatic certification when a union presents the labour board with membership cards signed by 51 per cent of the potential bargaining unit.

6) There is a need for mandatory ongoing training of both employer and worker representatives on these committees. The WCB would be the appropriate funder of such training programs.

Conclusion

The Canadian Centre for Policy Alternatives-Manitoba thanks you for the opportunity to make this presentation on workplace safety and health issues in Manitoba. To conclude we offer a short list of initiatives the government should consider undertaking to improve worker health and safety:

1) Getting a clearer picture of the situation facing Manitoba workers by

reforming Workers Compensation to eliminate those measures that suppress claims

bringing more workers under the jurisdiction of the compensation board

instituting health and safety reporting process for small employers

developing a better understanding of the prevalence of occupational disease through an occupational diseases panel.

2) Establishing a more effective inspection regime by introducing WCB penalty assessments.

3) Ensuring that workers, who run the greatest risks in health and safety, are able to exercise more control over the risks that they face by reforming the health and safety committee structure.