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To: Workers Compensation Board of Manitoba
333 Broadway
Winnipeg. MB R3C 4W3

Subject: Response from the City of Brandon on the WCB Assessment Rate Model Review and Stakeholder Consultations

The City of Brandon (City) is pleased that the Workers Compensation Board (WCB) is reviewing the current Assessment Rate Model. However, the City feels that this review does not include critical components of the system that are not included in the Assessment Rate Model. The Assessment Rate Model is one part of the system that impacts an employer's WCB premiums, the WCB administrative policies and practices have a much greater impact on the employers direct costs associated with claims prior to the application of the Assessment Rate Model.

The City has experienced three increases in the Basic Change Limit as per the Assessment Rate Model. However when you look closely at the City's' increases to WCB direct costs compared to increases in Assessable Earnings, you will see the increases in both are relatively the same. Yet there is a significant disconnect between the increases in Direct Costs compared to increases in WCB premiums.

As the number of claims the City experiences is relatively stable and the direct costs are relative to assessable payroll, it is difficult to understand why premiums have gone up so much.

It is for this reason that the City makes the following five recommendations.

1. The WCB should review the Assessable Earning Cap compared to other Provinces and bring the cap into the average of other Provinces.

2. The WCB should conduct a comprehensive review of their policies and practices that impact the Assessment Rate Model.

3. That the first two weeks of a wage loss claim be charged to the industry sector as opposed to the employer's claim costs.

4. As the process of adjudications and appeals is slow, WCB decision on claims should be retroactive to the date of the appeal. While claims are in the process of being appealed those claims costs should not be part of the annual employer's direct costs until a final decision has been made.

5. Reverse the policy to not allow an organization to become self-insured.

Background on the City of Brandon and the Effect of the Assessment Rate Model

In 2010, the City experienced the first increase in the Basic Change Limit of the Assessment Rate Model and in 2011, the second increase of 25% was experienced. In 2012, the City was in its third year of an increase in Basic Change Limit of 30%. The WCB premiums the City paid are more than three times their actual direct costs.

The City quickly took action and enhanced their *Early and Safe Return to Work Program*, and launched a new safety campaign *Mission Zero – Together We Can Achieve Excellence in Safety*. Both of these initiative had a positive impact on the WCB direct costs. In 2013, the City experienced the first decrease in the Basic Change Limit of 5%.

When you calculate the difference between the target rates and actual rates. A corporation is better to pay the target rates over time as there is an equal reward for lower claims costs as there is for higher claims costs.

The City was on its way to receiving the 2nd year reduction in Basic Change Limit of 10% when WCB applied the additional increase for a Fatal Accident.

The fatal accident was a presumptive cancer claim for a Firefighter who had stopped working for the City 26 years prior to his death. The City does not dispute the cancer claim however the WCB administrative penalty associated with this claim was extreme. On top of the direct costs associated with the claim, WCB applied a fatal accident penalty of $250,000 against the City's direct costs. This pushed the City from receiving a 10% reduction to a 10% increase. In addition WCB applied a 25% increase to the City's premiums. This led to a total increase of 35%.

Since the decision was made in 2013, the City has been in constant discussion with WCB about this matter and was told that a decision will not likely be made until January, 2015. The WCB also made the statement that if the decision is found in the City's favour there may not be any repayments to the City for unfair premium increases. So if WCB acknowledges the penalties were unfair the City will be over charged approximately $800,000 over three years.

WCBs have rightfully recognized that certain injury claims such as, asbestosis and presumptive firefighter cancers, are inevitable based upon past practices that went unrecognized as a severe risk until more recent research demonstrated the risks involved. It is also accepted that the employers who employed these injured workers have no defense to these claims. Throughout North America it is recognized that the causes of, and the liabilities involved with, these cancer claims are multidimensional and involve the building materials used by third party constructors, as well as the risks involved with the job duties. From the stand point of the City and other municipalities, we have no choice but to engage in these inherently dangerous occupations.

In situations outlined above, WCB has correctly allowed for full cost relief for these types of claims and we believe that the claims accepted under the presumptive cancer firefighter provisions in the Act should also qualify for 100% cost relief. Given the percentage of Canadian deaths related to cancer each year, the number of past and present firefighters, it can be estimated that the City will experience a presumptive fatal cancer claim every 3 – 5 years.

A review of the chart "City of Brandon WCB Direct Costs vs. WCB Premiums" in the Addendum, you can quickly see how unfair the Assessment Rate Model is and the impact that will have not only on the City but also the taxpayers.

Assessable Earning Cap

In the "Discussion Paper" provided by Morneau Shepell the Rate Setting Model the following question was asked

> ***The "costs of the system" from the standpoint of the level of benefits offered or the utilization of those services, but costs will not go away simply by depressing assessment rates or avoiding recommended rate increases. Avoiding assessments today will simply pass costs on to future generations of employers and injured workers.***

Who is ensuring WCB is providing the appropriate services at a reasonable price? The level of benefit is all inclusive to WCB overhead, including prevention programs and other programs unrelated to claims management. The City is paying three times their direct costs in premiums this is an unreasonable amount to fund the WCB.

Since 2006, the Manitoba WCB has doubled the Assessable Earnings Cap. When compared to very wealthy Provinces like Alberta, BC and Ontario where their Assessable Earnings Cap is between 25% and 45% less than Manitoba's. This has a sizable impact on the premiums an organization pays. At $119,000 almost 100% of Cities, and most Manitoba businesses, payroll is classified as assessable earnings. In the "Discussion Paper" provided by Morneau Shepell, New Brunswick, NWT&NU were used as examples. The Assessable Earnings Cap in New Brunswick is half of that of Manitoba at $60,000. NWT&NU cap on assessable earning is 30% less at $84,200. In the addendum you will see a comparison using the City's assessable earning based on Manitoba, New Brunswick and NWT&NU. The end result is, a City with the same payroll and experience operating in New Brunswick would pay almost 11% less. A City operating in NWT&NU, the WCB premiums would be almost 22% less. Why is the Assessable Earnings Cap in Manitoba the highest in Canada?

Recommendation: The WCB should review the Assessable Earning Cap compared to other Provinces and bring the cap into the average of other Provinces.

Impact of WCB Administrative Policy and Practices on the System

The City does recognize that WCB premiums are more based on direct costs and so the annual rate would increase to meet the needs of the WCB costs. That being said when increases to the Assessable Earning Cap is not calculated into the Assessment Rate Model, an employer can be hit with additional increases in their premiums in one year. In 2012, the City experienced just that.

This further drives to the point that for the past 5 years the WCB continually boasts that it is maintaining an average assessment rate of $1.50, however in reality it has doubled the Assessable Earning Cap for companies, and increased penalties, thus increasing premium revenues despite trends. If you look at the *WCB 2013 Annual Report Financial Statement* you will see that 2013 Class E employers' premiums were $246 million, up two per cent from 2012 due to increased assessable payrolls, however 2013 self-insured employers' premiums, which are calculated based on claim costs incurred, were $20 million a decrease of 45% compared to 2012. They state they decreased as a result of improved claims experience in 2013. Why are self-insured premiums dropping compared to the rest of Manitoba businesses?

	2009	2010	2011	2012	2013
Class E	$217 M	$227.6 M	$227.5 M	$240.2M	$245.7
Self-insured	$29.6 M	$22.8 M	$39.5 M	$37.3 M	$20 M

When we look at injury rates in Manitoba reported in the *WCB 2013 Annual Report*, Injuries are down, especially injuries with large claim costs such as time loss injuries and fatalities, but yet claims costs have gone up sharply.

	2011	**2012**	**2013**
Total injury claims	31,707	31,018	29,777
Time loss injury claims	15,144	15,136	14,979
Fatality claims	22	36	24
Time loss injury rate (per 100 full time workers)	3.2	3.3	3.2
Average days paid for all wage loss claims	34.8	34	32.7

In reviewing the annual financial reports for the WCB from 2011, 2012 and 2013, you will find the following statements on why claims costs have increased by 44% in three years but yet overall claims reported have decreased by 6%.

> *2011 claim costs incurred increased $13 million (seven per cent) to $195 million in 2011 with short term disability costs returning to levels more consistent with prior years, survivor benefits impacted by a gain on the bi-annual indexing of these benefits and increased healthcare benefits due to adjusting the actuarial model in recognition of past years actuarial losses.*
>
> *2012 claim costs incurred increased $21 million (11 per cent) to $216 million with short term and long term disability costs impacted by actuarial adjustments and changes in administrative practice and survivor and healthcare benefits returning to normal levels.*
>
> *2013 claim costs incurred increased $52 million (24 per cent) to $268 million with short term and long term disability costs and rehabilitation services costs impacted by actuarial adjustments.*

The City has experienced some of the issues with WCB administrative practices that have inflated the City's direct costs. Thus causing increases when the Assessment Rate Model is applied.

The City recognizes that disability management is complex, however many of the WCB administrative practices make it more complicated than is necessary, which in turn is a burden on the system and can be financially punitive to employers.

In many cases WCB decisions are based on the claim manager's opinion. Over the past few years the City has had experiences with different claims managers as staff changes occur at WCB. Based on the claims manager and their experience, the City has seen significant differences in the decisions that are made by WCB. These decisions significantly impact the City's WCB direct costs.

In many cases the employer's hands are tied when it comes to return to work. The employer cannot get an injured employee back to work until WCB states that the employee can return to work. In practice this can mean that an employee goes to a doctor, the doctor forwards the report to WCB, WCB responds to the employer. This process can take upwards of 2 weeks. With the City early and safe return to work program the City is now paying for ability assessment forms to be filled out and then we provide those to WCB to speed the process up. However even with the form in hand the employer cannot return the injured employee until WCB approves.

When injured employees have returned to work as part of a modified work program WCB has a policy that WCB will pay the injured employee for medical appointments rather than the employer. This policy adds to the employer's direct costs for no reason.

Another WCB policy is that when an injured employee has returned to work as part of a modified work program, in some cases WCB pays for the employees' wages while on vacation. This is up to the discretion of the WCB claims manager. While an employee is part of return to work program the employee accrues vacation pay. If the employee goes on vacation why would he not use the accrued vacation time? The WCB policy enables the employee to accrue holiday time in a bank, then be paid by WCB for vacations and forces the employer to either put the employee off on mandatory vacation or pay the employee's bank out. This is financially punitive to an employer, it is an unnecessary direct costs and in the end the injured employee prospers from the arrangement.

These are just a few examples of how WCB administrative policies and practices unnecessarily impact an employer's direct costs that in turn drive the Assessment Rate Model.

Recommendation: The WCB should conduct a comprehensive review of their policies and practices that impact the Assessment Rate Model.

Disability Management vs. Prevention

In the "Discussion Paper" provided by Morneau Shepell, the question why do employers lean towards disability management rather than prevention? The reason is not because of the 12-month WCB claim cost window. Prevention programs take years to impact a safety culture. Whereas, disability management programs are implemented quickly and have immediate impact on WCB direct costs. The highest costs related to WCB direct costs are those for long term claims. Limit the length of long term claims and an organization reduces WCB direct costs.

In 2012, the City enhanced their Early and Safe Return to Work Program. In that year the current year claims costs were reduced by 40% and in 2013, the total years claims costs were reduced by 50% compared to 2011. In 2014 the City is seeing an upswing in direct costs, closer to 2012 levels, somewhat caused by decisions within WCB control and somewhat due to difficulties in matching injured employees with appropriate modified work.

In 2012, the City also launched a safety campaign *Mission Zero – Together We Can Achieve Excellence in Safety*. This campaign has seen an improvement in the safety culture but little in the reduction WCB related injuries. The majority of WCB reportable injuries are from activities that are frequent and routine. Many of these activities are not manageable by policy, procedures, or specific training. Municipal employees don't work in the traditional workplace of four walls and a roof and many of the situations they find themselves in are out of the control of the employer. If there was a connection between the safety culture and WCB premiums, WCB would use frequency and severity rates as an indicator rather than direct costs. For example the City is experiencing its highest premiums in its history, while having its lowest lost time injury frequency rate in over 10 years.

In other provinces it is not WCB that drives the safety culture it is the industry sector. Large industries make it mandatory that companies have their COR, or they use LTIFR as a factor in whether the company can bid on the project.

So by having the first two weeks of a wage loss claim being charged to the industry sector, causes the industry sectors as a whole to share the burden which in turn makes the industry responsible for changing the outcome. There are examples where industry receives no incentive from WCB to reduce injuries, however as an industry sector great safety cultures are created. Two examples would include the oil and gas industry and manufacturing.

Recommendation: that the first two weeks of a wage loss claim be charged to the industry sector as opposed to the employer's claim costs.

Impact of Appeals on the Assessment Rate Model

Further on the discussion of the "12 month claim cost window" is the impact of the appeals process. When an employer appeals a decision that was made in one year and WCB makes its decision on the appeal in the following year. The employer only receives a reduction in direct costs for the year the appeal decision is made, the decision is not retroactive. So if there is a large claim or number of claims awarded in one year that drives up the employer's direct costs over the threshold, the employers premiums go up for the following year. If the appeal is made and the decision is in favour of the employer. There is no retroactive decrease on premiums. In the current Assessment Rate Model this could mean even though it was found that the employer should not have experienced an increase in direct costs, the employer has still been penalized for that claim.

In September 2013, a decision was made and the on presumptive cancer claim for a firefighter, the City's premiums went up by 35%. The City has been in constant discussion with WCB about this matter and was told that a decision will not likely be made until January, 2015. The WCB also made the statement that if the decision is found in the City's favour there may not be any repayments to the City for unfair premium increases. So if WCB acknowledges they were unfair the City will be over charged approximately $800,000 over three years.

Recommendation: As the process of adjudications and appeals is slow, WCB decision on claims should be retroactive to the date of the appeal. While claims are in the process of being appealed those claims costs should not be part of the annual employer's direct costs until a final decision has been made.

Different Rate Models for Different Employers

In 1999, the WCB Board of Directors exercised their discretion to not allow Class E employers to become self-insured. The City meets the criteria and is capable of accepting the risk associated with being self-insured. As a municipality there are a number of inherent risks to the work that is done that most private organization will not accept or if they did, the cost to the tax payer would be unbearable. Although the City is accountable to the people it serves, if WCB continues to raise the WCB premiums through administrative policy and practices the City will eventually have to raise taxes or look at services it will no longer provide in order to keep the budget in check. By allowing municipalities that can accept the risk to be self-insured it removes them from the Assessment Rate Model thus reducing premium costs. The WCB premiums the City pays have not gone up due to excessive direct costs but rather due to excessive WCB administrative policy and practices.

Recommendation: Reverse the policy to not allow an organization to become self-insured.

Summary

Although the City is pleased that the WCB is reviewing the current Assessment Rate Model, the City feels that this review does not include the critical components of the system such as, the WCB administrative policies and practices, that have a much greater impact on the employers direct costs associated with claims prior to the application of the Assessment Rate Model.

The City of Brandon is willing to discuss their feedback with the WCB and other interested parties, as part of the WCB's current review process and beyond.

Yours Truly

Greg Brown
City of Brandon