



MFL Response to
Morneu Shepell
Discussion Paper on
the Rate Setting
Model by Douglas C.
Stanley

MFL Response to Morneau Shepell Discussion Paper on the Rate Setting Model, by Douglas C. Stanley

Issues for Stakeholder Consultation:

1. Rate Setting and the Cost of the System

Security of benefits for workers and the fundamental principle of the WCB being “fully-funded” program are key. From the labour movement’s perspective, a fair WCB system: 1. Is adequately funded so that workers are able to receive the benefits they are entitled to when they need them, 2. Rewards actual investment in health and safety and prevention measures, 3. Does not provide reward or incentive to employers who hide claims, misrepresent the seriousness of workplace injuries or aggressively manage claims in order to reduce their premiums to WCB.

2. What is Fair in Rate Setting?

The MFL agrees that employers’ premiums must pay for the full costs of the current year’s injuries (current year’s costs and future costs of those injuries).

3. What is Each Employer’s Fair Share of the Costs?

This discussion paper states that as a result of the actuarial and accounting tools as well as a substantial body of data, when we speak about “risk” in the worker’s compensation system, we are referring to a real measurable relative factor as opposed to an abstract notion of “hazard”. While the tools may be more robust than in the past, measuring the “real” risk in a workplace environment is only possible if claims are not being suppressed.

The MFL strongly disagrees with the statement that “workers’ compensation coverage is no different than these other forms of insurance”, referring to home, disability, home or life insurance. In a traditional insurance model, the entity that pays the premiums and the one that makes the insurance claims are the same. That entity can make judgements about how robust their coverage should be based entirely on self-interest. If a person has a minor car accident for example, they can choose to fix the damage themselves and not report the accident so that their premiums do not go up.

A workers’ compensation system is inherently different and does **not** fit into a traditional insurance model. WCB has one entity paying premiums (employers) and a different entity (injured workers) collecting the benefits. When an employer decides to prevent or limit the cost of a claim it is the injured worker who is denied the benefit. One entity (employers) benefit at the expense of the other party (injured workers). We need to move away from this flawed idea that the WCB system is the same as any other insurance model.

The actuarial and accounting exercises required to determine the groupings of employers and the basic premiums they are required to pay, is of more concern to the employers and accountants. As long as the system is fully funded, rewards actual investments in health and safety and prevention and doesn't provide incentive to reduce the cost of claims after an injury occurs at the expense of injured workers, the MFL supports any method or model that meets these tests.

We also note that workers gave up their right to sue their employers when they are injured at work in exchange for a fair workers compensation system. When we are balancing the financial concerns of employers, let us remember that this is not charity. Workers traded the right seek what in many cases would have resulted in large financial awards through the courts in exchange for a no-fault certainty of wage continuation and other benefits when they are injured or made sick at work.

4. What is Fair for Small Employers?

The MFL supports a model that meets the tests outlined in the section above. We are open to exploring methods that meet these goals for small employers, as long as they also meet the overall goals listed above.

5. In addition to "fairness", what are we trying to achieve in rate setting?

In 2000, there was a consultation on a new rate model for Manitoba WCB, which set four guiding principles that the new rate model would have to support:

- 1) It should incent employers to reduce workplace accidents,
- 2) It should incent employers to develop effective return to work programs for injured workers
- 3) Actuarial Soundness – ensure that the system is adequately funded to ensure its sustainability,
- 4) Fairness – it should allocate costs fairly among employers.

Do Stakeholders still support these principles?

The MFL supports these four guiding principles for the rate model. We have long argued for a system that rewards actual prevention/safety/injury reduction, ensures that injured workers have timely access to the highest quality treatment and rehabilitation so that they can return to health and to work, is sufficiently funded to meet the needs of injured workers and is fair and transparent to employers and workers alike.

The current rate model has created serious unintended negative consequences that run directly counter to these principles.

Under the current system, employers are not incented through lower premiums to implement proven prevention and workplace safety programs. The current WCB's Assessment Rate Model creates significant financial incentives for employers to engage in claims suppression, a reality that causes time loss injury rates to be under-reported. As a result, time loss injury rates cannot be relied on as meaningful measures of workplace injuries.

Also, because the Assessment Rate Model confers financial benefits on employers that experience reductions in time loss injury rates, the focus on these rates often turns injury reduction initiatives into financially driven exercises that miss opportunities to make real, sustainable improvements in workplace safety and health. Measures that do not translate into immediate time loss injury rate reductions tend to be neglected in favour of short-term financial gains. In the worst cases, claims suppression and overly aggressive return to work programs replace a true focus on injury and illness prevention.

As part of his review, Paul Petrie heard from some employer representatives that, "the focus on controlling claim costs requires considerable administrative time and effort, often at the expense of time devoted to safety."¹

Petrie also heard evidence that in some workplaces the alternate duties are sometimes harmful to the worker's recovery, are sometimes non-productive and sometimes are demeaning.

Fairness: this must be about more than ensuring that each employer pays its fair share in premiums. The MFL takes a broader view of fairness as it relates to the system. It should be fair to all stakeholders in the WCB system.

The current WCB experience rating system violates the foundational principles of the workers compensation system established by Ontario Chief Justice William Meredith in 1913, by:

- Reintroducing fault into a system that was designed to be "no-fault";
- Undermining the "collective liability" principle by tying individual worker claim costs to the employer's assessment;

¹ Fair Compensation Review; a Report to the Minister of Family Services and Labour," Paul Petrie, January 30, 2013 p. 20

- Promoting the adversarial system to deprive workers of the “guaranteed benefits” that was a hallmark of the historic trade-off;
- Compromising the “independence” of the WCB by allowing illegal claims suppression to continue unchecked; and eroding the “exclusive jurisdiction” principle by inducing more and more workers to accept private insurance benefits instead of filing WCB claims.

Petrie came to the conclusion in his review that, “...the balance the historic compromise was intended to achieve has been tipped in favour of employers in Manitoba primarily as a result of the Assessment Rate Model and its focus on controlling claims cost.”²

6. Achieving Safer Workplaces

In response to the questions posed in this section of the discussion paper, the MFL submits that yes, there are limits to the effectiveness of premium adjustments, both up and down, as an incentive to creating a safer workplace – **if they are tied only to cost of claims**. There is real benefit to providing financial incentives to employers to implement proven injury prevention and workplace safety and health programs geared towards creating safer workplaces. This would result in the overall cost of claims going down for everyone.

Merely adjusting the financial penalty for employers who operate unsafe workplaces does not solve the problem. Changing the system so that it rewards employers who invest in actually preventing and reducing workplace accidents and develop fair and effective return to work programs for injured workers are still important objectives for the rate setting system. We have concerns with the current model, and the unintended negative consequences of tying rates exclusively to claims costs, but those guiding principles remain relevant.

The MFL does not agree with the assumption that providing financial incentives for employers who implement proven prevention and safety practices would automatically result in an overly complex system. The financial incentives for making investments in injury reduction and safety programs must outweigh any financial incentive to game the system through an aggressive focus on reducing claims costs after the injury has occurred. It must make more financial sense for employers – large or small – to focus on proven workplace safety practices than it does to suppress WCB claims. Safe Work Manitoba has the potential to provide additional support for small employers who need assistance developing a workplace safety/injury prevention program.

7. Experience Rating and the Issue of Claim Suppression

The MFL agrees that a fair balance should exist within the system. The rate model as it currently exists has tipped the balance in favour of employers at the expense of injured workers. We

² Petrie Report, p. 21

agree that one of the unintended consequences of the current rate model is that it incents employers to focus on controlling claims costs, often at the expense of making improvements to health and safety in the workplace. While there may be other factors contributing to under-claiming, such as a lack of knowledge about reporting requirements under the act, the single biggest contributor to claims suppression is the financial incentive built into the rate model.

The Petrie recommendation to remove time loss claims of less than two weeks from the experience rating calculations, and charge them to the industry sector, presents an innovative approach to reducing claims suppression. As the vast majority of suppressed time loss claims are of shorter duration, as it is more difficult to suppress a longer claim for a more severe injury, removing the financial incentive to suppress those shorter claims would significantly reduce claims suppression as a tactic in the system. While some employers might object to this change, with the argument that employers with bad safety practices might be subsidized by the group, those employers who invest in prevention would be rewarded with a reduction in WCB premiums, and that incentive to invest in prevention will reduce the overall claims costs for everyone over time.

There is also the criticism of this recommendation which states that a larger percentage of minor claims would default to a two-week time loss claim if there was no direct financial penalty to employers. This criticism ignores the fact that the WCB has a very robust process already in place to investigate fraudulent claims, and assumes the worst of workers and the medical professionals who treat them. This recommendation would not have any impact on workers. WCB also encourages and even pressures employers to return injured workers to modified duty work if they are not fit to resume their normal work immediately. Surely WCB would not stop this practice if this proposal was implemented.

Experience Rating Responsiveness and Rate Volatility

The MFL agrees that the current rate model provides incentive to avoid increased rates by reducing claims costs to a far greater extent than it incents aiming for a lower-than-average rate. The high “upside” potential does provide an incentive for employers to focus on inappropriate cost containment practices. Creating a larger “downside” potential would only have the desired effect if it was tied to investing in health and safety practices and not directly to claims costs. Trading incentives for employers to reduced claims costs in an effort to lower their premiums is not an advantage over the current system where employers are incented to reduce claims costs in an effort to keep their premiums from going up. The incentive to suppress claims would remain the same.

More proactive enforcement of health and safety requirements under the Workplace Safety and Health Act, prosecution of employers who are negligent in their responsibilities to provide a safe workplace under the corporate criminal negligence provisions of the Criminal Code, as well as other administrative penalties for lack of compliance on health and safety requirements

would provide a powerful deterrent to employers who seek to avoid their safety responsibilities. Increased enforcement and administrative penalties for employers who seek to suppress claims would be beneficial in conjunction with the appropriate changes to the rate model. Enforcement on its own is not the solution to a rate model that incentivizes undesirable behaviour, but it can be part of a broader solution to the problem of claims suppression.

While it was mentioned above under section 3, the MFL strongly opposes a move towards viewing the WCB as an insurance model just like any other form of insurance. This system is different from an insurance model, because the entity paying the premiums will always be different than the entity making the claims. If an employer attempts to reduce claims costs by suppressing claims, those reduced costs come at the expense of the injured workers who are entitled to benefits.

In summary, the MFL has long supported the goals that the WCB model should provide incentives for employers to reduce workplace accidents and develop appropriate return to work programs for injured workers. Simply reducing the cost to employers through the experience rate setting system, without adding incentives for employers to make strategic investments in safety and prevention measures is a move backwards on workplace safety and health. We want to see a WCB system that rewards employers who take workplace safety seriously; not the employers who are intent on gaming the system to contain their WCB costs. We need a rate model that 1. guarantees that the system is adequately funded to provide injured workers with the benefits they need, when they need them, 2. does not provide financial incentive to suppress claims or rely on aggressive return to work policies that put workers' recovery in jeopardy, 3. provides incentives for employers to make real investments in proven workplace health and safety and injury prevention programs, and 4. is based on principles of fairness for all stakeholders in the system.

TP.dm.coped342

h:\executive\2012-2015\2014\June 5&6\draft mfl response to morneau sheppell discussion paper on the rate setting model_final (2).docx