MORNEAU SHEPELL

WORKERS COMPENSATION BOARD OF MANITOBA ("WCB")

STAKEHOLDER CONSULTATION REPORT

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INTRODUCTION

This review is the result of a Workers Compensation Board of Manitoba ("WCB") Request for Proposals ("RFP") for a consultant to undertake a "comprehensive review of the assessment rate system currently used in Manitoba". Morneau Shepell responded to this RFP and partnered with the author of this Report specifically to undertake the stakeholder consultation phase of the review. This Report is the result of that consultation.

In terms of delivering appropriate premium revenue and contributing to keeping the WCB financially sound, the current rate model in Manitoba has been working well. Notwithstanding this result, the WCB recognizes there are stakeholder concerns related to rate setting. They summarized those concerns for us as follows:

- Labour has expressed concerns that experience rating encourages employers to suppress claims and engage in aggressive claims management practices, and that the existing model focuses too much on costs and not enough on health and safety.
- Employers generally support experience rating but some have expressed concerns over rapidly increasing rates that reach unreasonable maximums.
- The complexity of the model was of concern to stakeholders and the WCB.

The WCB's goals for the rate setting model were set out in their Request for Proposals. They are:

- Promote and enhance prevention and injury reduction,
- Promote effective workplace disability management programs,
- Be fair, and
- Maintain financial soundness.

The purpose of the consultation phase was to solicit feedback from stakeholders on the relative strengths and limitations of the existing rate model, including its impact on employers and workers. The WCB wanted to hear stakeholder views on what is needed from the rate model in the future, with emphasis on the model's fairness, financial soundness, and relationship to injury and illness prevention and disability management.

In the written submissions and oral presentations from stakeholders, a number of issues beyond the scope of this exercise were raised. Some of these out-of-scope issues, like the maximum assessable earnings limit and the funding of Safe Work Manitoba initiatives are related in a significant way to the matters on which I was asked to comment. Therefore, I have included a brief section in this report that addresses some of these other issues.

The findings from the consultation phase are intended to help identify the options to be explored by the WCB. Morneau Shepell will complete the actuarial analysis of these options, consider their impact to the overall compensation system and its stakeholders, and make recommendations to the WCB on design changes to the rate model (if required).

BACKGROUND ON EXISTING MODEL

The current Manitoba model was introduced in 2001. It was intended to focus on the promotion of "workplace health and safety", two of its four guiding principles were prevention and return to work. It marked a significant departure from a foundational feature of the rate setting models that existed at the time in all Canadian jurisdictions (and remain to a large extent). That departure was to remove some of the constraints of an industry classification system from the rate-setting model.

In the Manitoba model, an individual employer's premium rate is not necessarily influenced by the average rate for its industry classification. While the underlying mechanics of the model assign industries into specific "risk categories" based on the experience of the industry, the range of potential rate adjustments within each risk category is very wide. The end result for employers in the same industry classification is a system where the highest rated employer can have a rate that is five times the rate of its lowest rated competitor. Each employer moves to a premium level within the risk category based on their own historic costs, which are taken as a predictor of the costs they would present to the system in the future.

From the point of view of equitably distributing the costs of the system and incenting employers to better health and safety practices, there are both potentially positive and negative consequences from this approach. There is a key assumption that underlies this fundamental change. That assumption is that results, as measured by an employer's claim costs, are related directly to health and safety factors that the employer has direct control over. Through this assumption, the existing Manitoba model moves away from the view that risk factors are related to the type of business the employer is undertaking (i.e. the performance of the industry). Positive or negative consequences flow from the extent to which this assumption holds true or not.

Meredith spoke about industries with exposure to the "risk of steam and electricity" paying a higher rate commensurate with that risk. Speaking from the early 20th century experience, he concluded that there were risk factors inherently unique to certain classes of industry. We know today that some employers are simply better at managing the workplace to minimize any inherent environmental risks in their industry.

The existing model recognized and gave effect to an underlying rationale that is still valid. That rationale is that a substantial number of factors that drive occupational health and safety results (factors like the attitudes of senior managers towards "safety culture", training, safety practices and technology) are unique to individual employers and not to "classes of employers". A really "good" or really "poor" performing employer should be able to reap the rewards of exceptionally good performance, or pay a price for exceptionally poor performance. The employer rate is not constrained by the performance and resulting premium rates established by a cohort of his peers in the same business classification.

Possible negative consequences of the change are that the model design has resulted in a great deal of rate volatility and removed a significant element of collective liability from the system. Furthermore, the assumption that the claim costs are a direct result of an individual employer's choices is harder to defend when applied to small employers. In the context of Manitoba, where

75% of employers have less than $250,000 in annual payroll, using only an employer's recent cost history as a risk profile measure has led to unusual and unintended results. There may be an element of randomness or chance in the incidents, giving rise to claim costs that an individual employer cannot protect against. This may be particularly true with small employers. Similarly, the model can award a 40% discount relative to the risk category average rate to a great number of small employers who had little or no claim costs in recent history. It is reasonable to assume that some of those employers may not "deserve" that rate discount because their low claim costs is simply the result of chance rather than better workplace health and safety practices. A small employer may have low claim costs simply because their size gives them a limited exposure to having a claim rather than because they are truly a "lower risk" to the system. For small employers, the absence of claim costs over a number of years is not necessarily indicative of lower risk. Notwithstanding that, the existing model would still move them towards a 40% rate discount.

The move to a model that focused more on an individual employer's risk was introduced in conjunction with other rate model design features that also worked to remove "collective liability protection" from the system. For example, not including some sort of pooling mechanism for high cost claims or having a 200% rate increase limit (over and above the average rate for each risk category) has shifted the direction towards a system that makes individual employers responsible for their claim costs.

Any fair and objective evaluation of the strengths or deficiencies of the existing rate model ought to compare the objectives that the WCB and stakeholders want to support through its rate model, versus the outcomes that result from its design features.

In my discussions with stakeholders who had been involved in the consultation for the existing model, it was clear that the intention in 2001 was to improve the occupational health and safety outcomes in Manitoba. They intended to implement a rate model that shifted responsibility to individual employers for their costs. Some stakeholders agreed with the concept of "punitive rates" in an effort to deal with employers who had "consistently poor results" in terms of frequency and duration of claims. I want to be clear, punitive rates can be a valid policy decision for a jurisdiction to adopt. The questions that we wanted to address in our discussion with stakeholders was whether these punitive rates had the desired result of improving outcomes and whether they were in fact focused and limited to "poor performers".

Finally it must be said that that there is nothing technically wrong with the existing system and that it has performed very well in maintaining full funding of the Manitoba program. It is an innovative attempt to link employer performance to assessment rates.

Any fair and objective evaluation of the strengths or deficiencies of the existing rate model ought to compare the objectives that the WCB and stakeholders want to support through its rate model, versus the outcomes that result from its design features. If the WCB and its stakeholders are satisfied with the outcomes of the existing model, we believe that only small change is warranted. If there is a general lack of satisfaction, then fundamental change is required.

WHAT WE OBSERVED AND HEARD FROM STAKEHOLDERS

Throughout May, June and July, we engaged in a targeted consultation process where we met with representatives of key stakeholders from both the employer and labour community. We also met with individual employers who were invited to make submissions to us. In addition, there were a number of written submissions sent to the WCB, which we reviewed in detail.

From a financial perspective, the rate setting model has to collect sufficient premium revenue to ensure full funding. Full funding ensures that the benefits promised to injured workers are secure. We found that in Manitoba, labour stakeholders were strong supporters of full funding. Similarly, employer stakeholders, who can recall a time when Manitoba was not fully funded, are quite properly concerned that any changes to the rate setting model do not put full funding at risk. The fact that there is a consensus on this point, and the fact that Manitoba is not faced with recovering from an unfunded liability, meant that the discussion around rate setting focused on whether the costs of the system are fairly borne by employers and the impact of the rate setting model on stakeholder behavior and on health and safety outcomes.

We found that in Manitoba, labour stakeholders were strong supporters of full funding. Similarly, employer stakeholders, who can recall a time when Manitoba was not fully funded, are quite properly concerned that any changes to the rate setting model do not put full funding at risk.

A summary of the relevant points raised by all participants is included in Appendix A. The essential points raised by stakeholders in our discussions can be summarized as follows:

LABOUR'S PERSPECTIVE

- The existing model provides little incentive to injury prevention,
- There is no link to "best practices" in workplace health and safety,
- The focus of employer's attention is on claims management and return-to-work rather than injury prevention,
- The existing model "financially rewards" employers who do not "deserve" rewards, and
- The existing model provides a significant incentive for claims suppression.

EMPLOYER'S PERSPECTIVE

- Rates increase quickly but only decrease slowly in response to improved experience,
- Rate volatility is felt through the spectrum of small to large employers,
- Some employers feel they are being punished in a supposedly no fault system,
- Some large employers believe becoming self-insured is a viable option,
- Employers, in particular small employers, have lost the protection of collective liability and consequently seek to avoid the rate impact of claims,

- There is a developing sense that the status quo is not an efficient system,
- There is less financial incentive to injury prevention than return-to-work efforts,
- A concern that some legitimate return-to-work activities are being branded as "claim suppression", and
- A significant concern by certain sectors over the impact of increasing premium amounts due to the higher maximum assessable earnings level.

There were three distinct but related themes that are woven through the stakeholder consultation: dissatisfaction with the volatility of rates, concern over the balance between collective liability protection and punitive rates, and the relationship between the model's incentives and outcomes. These themes are important because they go to the core of stakeholder confidence in the system.

Going into this review we were aware of the commonly held perception that the current rate model in Manitoba resulted in rates going up like a rocket and coming down like a snail. This comment was made by Paul Petrie in "Fair Compensation Review", a report prepared for the Minister of Family Services and Labour. We heard the same comment from employer stakeholders. This prompted us to look at the issue of volatility and the responsiveness of the model.

There were three distinct but related themes that are woven through the stakeholder consultation: dissatisfaction with the volatility of rates, concern over the balance between collective liability protection and punitive rates, and the relationship between the model's incentives and outcomes.

Closely related to rate responsiveness is the issue of the balance between individual responsibility and the protection of collective liability. We were particularly interested in the extent to which employers were protected by collective liability from a random and serious claim. Having removed the constraints of a classification system on rates, it is possible in Manitoba for employers in the same business to have a very wide variation in their premium rate. Employers expressed concern to us that under the existing model the highest rated employer can have a rate that is five times the rate of the lowest rated employer within the same industry. Concern was expressed that the model allows a risk category average rate to go to 800% above the average assessment rate and that an individual firm can be assessed 200% above their risk category average.

Comparing rates between jurisdictions is difficult due to the differences that exist between legislated benefit levels and the economies of scale that allow larger jurisdictions to have a lower administration rate component versus smaller jurisdictions. However, the rate setting philosophy of each jurisdiction is demonstrated through its rate levels.

Looking at the spread of rates from the highest to lowest in each jurisdiction is an interesting (yet rough) measure of the extent to which employers are made responsible for their own costs. There are several jurisdictions, including Manitoba, where the potential highest rate is in excess of $25.00. There are more jurisdictions where the potential rate is in the $18.00 range and some are under $10.00. Whether any employers actually reach these potential rates would be a way to look at the "responsiveness" of the system. A potential rate of $25.00 is high in relation to the

system's overall costs as reflected in the relatively low average rate of $1.50 in Manitoba. Saskatchewan has a similar average assessment rate and is the only other jurisdiction with a maximum 200% experience rating surcharge. However, even with that rate of surcharge, the potential highest rate in Saskatchewan is in the area of $11.50, less than half the rate that can be reached under the Manitoba rate setting model. We mentioned earlier in this report that some stakeholders confirmed the existing model was intended to 'punish' those employers with poor claims experience. The high rate ceiling in Manitoba is a clear result of this 'punitive' aspect of the existing model.

We heard from employers whose business viability was threatened by very high premium rates relative to their competitors. Given the stated objective of the model was to drive better health and safety outcomes, we explored two important questions:

1. Are these employers who are experiencing high rates the "poor performers" the model was designed to hold accountable? and,

2. What sort of behavior are those responsive rates driving?

As part of our review, we did take a cursory look at the historical employer data. It does suggest that employers with higher rates drop out of the system (either go out of business or become a different business entity) with greater frequency than employers with lower rates. However, we would not want to overstate what can be concluded from this high level analysis.

Those hypothetical cases revealed that the model in Manitoba is very responsive to the occurrence of a single claim and tilts very much in the direction of individual employer responsibility and away from collective liability protection.

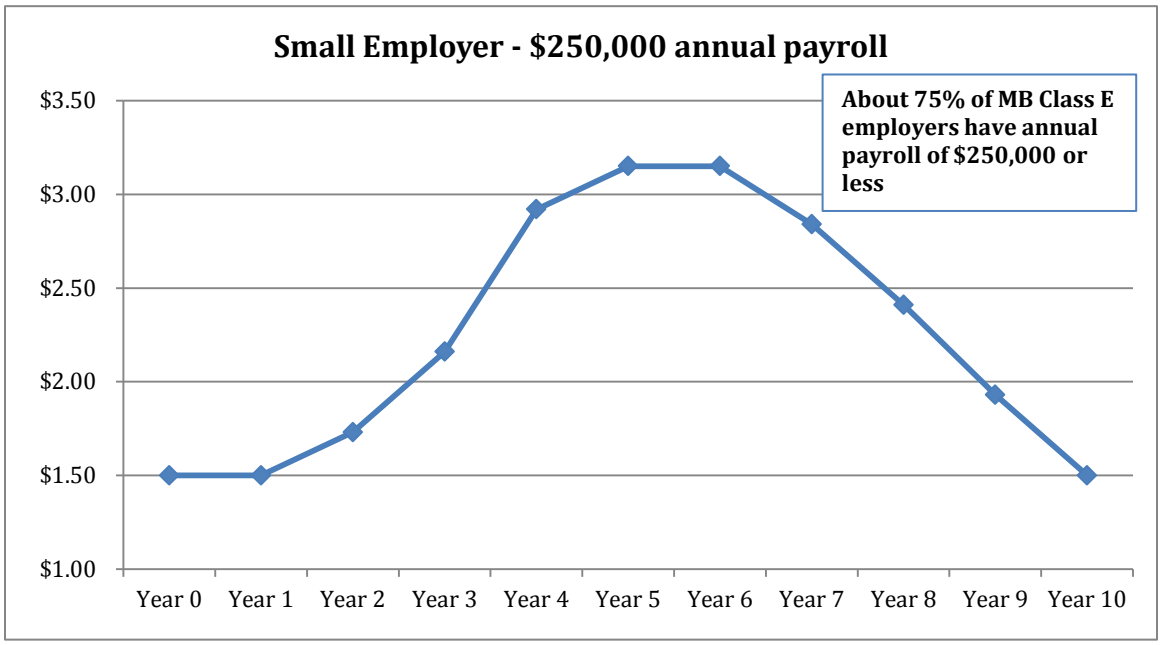
In trying to get at the issue of distinguishing "poor performers", we presented hypothetical examples to stakeholders. Our hypothetical examples assumed the occurrence of just one additional claim and measured the existing rate model's responsiveness relative to other jurisdictions. Those hypothetical cases revealed that the model in Manitoba is very responsive to the occurrence of a single claim and tilts very much in the direction of individual employer responsibility and away from collective liability protection. It is fair to say that an employer with a single claim may, or may not, be a "poor performer".

Manitoba is really distinct in this regard relative to other Canadian jurisdictions. A small or medium sized employer with a relatively modest claim can see their rate go up dramatically, plateau at a high level for a relatively long period of time, and then decrease slowly back to its original level. Over that period of time that employer may pay considerably more in additional premiums as a result of the claim than the cost of the claim itself.

Consider the following example of a Manitoba employer with $250,000 in annual assessable payroll that is paying a rate of $1.50 in risk class 4. Suppose that employer has a moderately expensive claim (over and above the claim cost experience commensurate with a $1.50 rate) with the following costs:

- Medical costs of $10,000 in year 1 of the injury
- Partial wage-loss costs of $500 per month ($6,000 per annum) in years 1 through 5
- Total costs of $40,000 in the five year injury year period used for rate-setting.

The chart below shows the rate path under the existing model for this employer.



We met with several employers whose real experience mimicked this hypothetical example. Some of these employers had done the math and rightly concluded that the system was not providing them with collective liability protection. In fact, the model was punishing them financially for having a moderately expensive claim. From the perspective of these employers, the rate setting model does not appear to be fair. Moreover, their view was that because they were paying more in incremental premiums (due to the additional claim) than the cost of the claim itself, the workers' compensation system was not "the most efficient way of compensating injured workers".

The categorization of employers as "poor performers" is subjective. Notwithstanding that, a cursory look at the claims history and the occupational health and safety record of some of these employers (those who presented to us as having been particularly affected by the volatility and responsiveness of the existing rate setting model) leads us to a conclusion that it is not just the "poor performer" who has been subjected to punitive rates. Over time, the unintended outcome has been that some employers who are following best practices in occupational health and safety but were 'unfortunate' (in the statistical sense) to have a claim, are treated in the same way as the truly 'poor performer' that was the intended target of the existing model. I spoke with one employer stakeholder (who had been involved in the development of the existing model) who said that the true nature of the system "only hit home 7 years ago when we had one accident".

Because rates spike so high and stay at that level for so many years, in the long run there will be more and more employers who are not necessarily “poor performers” and don’t “deserve” yet nonetheless experience punitive rates.

OPTING OUT

We said at the outset that there were themes running through the consultation with stakeholders. We described one of those themes as the relationship between the model's incentives and the system's outcomes. In our view, two seemingly unrelated phenomena (employers wanting to be self-insured and employer claim suppression) are in fact related. They are expressions of employer dissatisfaction with the system, a belief that it is neither fair nor efficient, and an attempt to get out from under it. In some cases, employers are searching for what appears to them as a more cost efficient way to protect their workers.

WHY DO EMPLOYERS WANT TO BE SELF-INSURED?

Self-insurance, in the context of workers' compensation, refers to the exemption of some employers from paying premium rates. They are required to pay the claims of their injured employees as adjudicated and administered by the WCB plus an administration fee. It is usually the very large and stable employers that are exempt from paying premiums because, in theory, there is little risk of their going out of business and not being there to pay the future wage loss and health care benefits promised to injured workers with established claims. For example, the Provincial Government is a self-insured entity in many provinces. Assuming the administration fee being charged for self-insured claims is appropriate, these exempt employers are clearly not being subsidized by other employers in the system nor are they contributing more than their fair share to the system.

If a self-insured employer adds the liability for the future costs of established claims (as liability accounting rules require) to the claim costs paid and administrative charges, the total cost should be close to what the premium would be if they were an assessed employer. From a cost accounting point of view there should be no real advantage in being self-insured. However, there may be a cash-flow advantage since the premium paid to the WCB is for pre-funding of benefits whereas self-insured is a pay-as-you-go arrangement. However, the risk transfer from an assessed employer to the WCB makes the premium paying arrangement much more attractive since the employer does not face the risk of the cost of catastrophic claims.

The fact that there are employers in Manitoba looking to become self-insured provides interesting insight into the ability of the model to strike the proper balance and drive subsidization out of the system. Under any system one would expect that the rates for very large employers would be stable, relatively predictable and fairly easy to justify. You would not expect to hear a great deal of dissatisfaction from the very largest employers in the system. In fact, in Manitoba, we did hear concerns over the rate setting model from very large employers that felt they would be better off being self-insured, outside the rate setting model.

Some of the concern from large employers was driven by the overall increase in their assessment revenue. For a few of these employers, the recent increase in the maximum assessable earnings level (combined with an increasing assessment rate) had an added impact on the revenue they were required to pay. We will address the issue of the maximum assessable earnings level later in this report. Some employers, even well informed ones, mistakenly equated the gap between "direct costs" (i.e. paid claims in the year) and "premium revenue" as evidence of system inefficiency or WCB mismanagement. Notwithstanding this fact, it is surprising that

premium rates of even the very large employers are as responsive to claims as they are and that this has captured the attention of these large employers.

What remains is a sense (from stakeholders) that the existing rate model, because of its punitive and volatile nature, does not price the insurance fairly, even for the very large employers where pricing should be more accurate because their costs are a more reliable indicator of their underlying risk.

In theory, if everyone in the system is paying an appropriate rate then no industry, no identifiable group of employers and no particular size of employers should be subsidized by others and everyone should be paying their "fair share" of the costs. In a clear and transparent system that is well balanced and fairly distributing the costs through premium rate setting, large and sophisticated employers should be able to readily see that there is no real financial advantage in being either "self-insured" or "premium paying". If there is a perception of dramatic difference and large employers are seeking to become self-insured as a result, it may be an indication that the rate setting model is not pricing their experience properly.

CLAIMS SUPPRESSION - A FORM OF OPTING OUT

Having employers who want to be self-insured is only one expression of opting out of the system. Clearly, there are some employers who seek to avoid the financial consequences of the rate model in a variety of ways. In our consultations with labour representatives, they focused on a broad spectrum of employer behavior that they characterize as "claims suppression".

For labour stakeholders, claim suppression was a priority in our consultations. As a result of the report done by Paul Petrie, the WCB commissioned a study into claim suppression by Prism, a firm specializing in economic analysis. The report, released in March 2014, is very helpful in putting some perspective around this issue. Claims suppression is a narrow definition of a broad range of activities and the author estimated that about 6% of unreported workplace injuries in Manitoba involve "overt claim suppression" consisting of situations where an employer uses threats or coercion to induce a worker not to file a claim. The WCB has announced that they are responding and taking action to address this problem.

From our perspective, the interesting findings are that about 19% of unreported workplace injuries involve "soft claim suppression" where employers simply continue to pay an employee's wage rather than report a claim and 14% of accepted no-lost-time claims involve "misreporting" where a lost time claim is reported as a "no time loss" claim and the worker continued to receive wages or was provided some "modified alternate work". This compels some consideration of why an employer would continue paying wages rather than fall back on its insurance protection. To us, this activity is a symptom of a loss of confidence in the system by some employers who feel that the workers' compensation system is not the most efficient way to compensate injured workers.

WHAT DO WE MEAN BY AN EFFICIENT SYSTEM?

The reference to an "efficient system" is worth elaborating on in order to provide the context to the views that were expressed to us by several employers.

Meredith promoted the current model of workers' compensation as "the most efficient system for compensating injured workers". Stakeholder support for the system, in the long run, depends on that being a reality. If the system seems to be inefficient, support for the system is eroded.

There are scenarios described in the report *Claim Suppression in the Manitoba Workers Compensation System* (Prism) that referred to "soft claim suppression", where an accident is reported but the employer continues to pay wages or where the employee is on sick leave instead of filing a compensation claim for lost wages. We heard comments that employers view these situation as a "win – win" for the injured worker and the employer. The employer's view is that the injured worker "wins" by receiving full salary (instead of 90% under the WCB system) while also getting the benefit of medical care through the WCB or our publicly funded health care system. At the same time, the employer is able to avoid having wage loss payments charged to their account and a possible rate increase.

These employers believe that significant rate increases will result from having wage loss payments charged to their account and that it is "more efficient" to simply pay wages to the employee directly. This notion that the system is no longer "efficient" stems from these two ideas:

1. An employer can provide a higher income benefit than the WCB through salary continuation with less overhead expenses.

2. Wage loss payments paid through the WCB can (in certain situations) result in significant rate increases. The subsequent assessments paid over the next 10 years can appear excessive relative to the actual cost of the claim for certain types of claims.

We do not endorse nor concur with the employer's view of the injured worker's "win". For those claims that eventually turn into long term injuries or where the physical condition of the worker deteriorates many years down the road as a result of the injury, the security of going through the WCB system significantly outweighs any short term wage replacement gain.

CLAIMS SUPPRESSION – FINAL THOUGHTS

Petrie has already commented on design features of the rate setting model that may encourage employers to engage in certain undesirable behavior as opposed to addressing occupational health and safety performance. He made the following observation in his report:

> *Because the primary claims cost driver is severity of the injury and duration of the claim, the Assessment Rate Model provides an incentive to minimize duration of the claim wherever possible. Many employers have effective disability management programs designed to return the injured worker to safe, productive employment without undue delay. Some employers have programs to provide alternate employment to return the injured worker to light duties to avoid a time-loss claim.*

The Prism research paper on claims suppression said that:

> *Misreporting consists of an employer submitting an EIR in which an injury is described as involving no lost working time when, in fact, the injury required time off work. Misreporting potentially denies workers lost earnings benefits to which they would otherwise be entitled. Misreporting may also 'game' the experience rating system by making an employer's incidence of lost-time injuries appear to be lower. Finally, if the prevention system relies on WCB lost-time data, misreporting could lead to a misallocation of prevention resources by masking situations that require more proactive prevention efforts.*

Our consultation confirmed that employers are very aware of the effect of claim duration on their rate and their ability to drive their rate down or prevent its upward trajectory by shortening duration. We have not done any independent study of the issue of claim suppression, nor do we feel it is necessary at this point. We have read the available reports and we have listened to anecdotal accounts of a whole range of activity that may or may not be claim suppression, however you define it.

OUR ANALYSIS OF STAKEHOLDER COMMENTS

LOSS OF COLLECTIVE LIABILITY PROTECTION

Employer stakeholders are clearly not satisfied with the extent to which they have lost the protection of collective liability. This loss is real and is a serious problem because it goes to the issue of employer support for the system. It strikes at the question of whether the system is serving the legitimate interests of employers, whether it remains the most efficient system for compensating injured workers and whether the costs of the system are being distributed fairly.

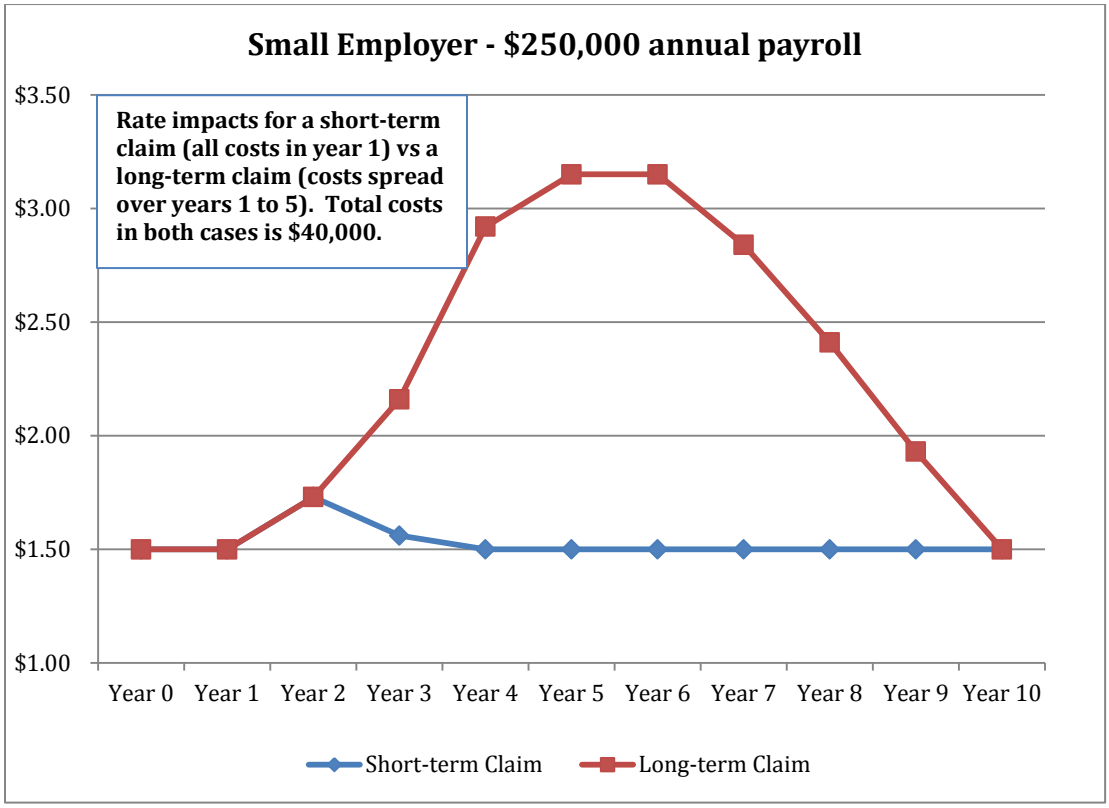
FOCUS ON CLAIM DURATION

Petrie was correct in saying that the existing rate model provides an incentive to minimize duration of a claim wherever possible. It is important, however, to stress that this incentive is an outcome of the model's design. Specifically, how employer's claim costs are measured for rate setting purposes. This is an issue that can be addressed within an experience rating system and it should not be viewed as a reason to abandon experience rating.

The Manitoba rate model uses actual payments in a recent 12 month period for injuries that occurred in the last five accident years (i.e. a 1/5 model). A consequence of that design choice is that the *single occurrence* of an injury does not necessarily affect an employer's rate, whereas if that occurrence becomes a *long term claim* it can affect an employer's rate for five years (or longer). In contrast, a jurisdiction that uses five years of payments on five years of injuries (5/5 model), the injury payments that occur in year one remain in the employer's rate setting experience for five years. For Manitoba, the claim costs in year one only affects the rate in the first year since the 12 month payment window shifts. From that standpoint, the cost of short term claims (ones that do not extend beyond a year) only create upward rate pressure for one year. An employer under a 5/5 model has a greater incentive to "prevent" injuries since that initial experience remains on record for five years.

For an employer under a 1/5 model, it is still important for an employer to "prevent" since ultimately, the best way to reduce injury costs and rates is to prevent injuries from occurring in the first place. But, the employer can also see an immediate benefit in year two under the 1/5 model if the injured worker returns to work and there are no injury costs in the second year. In contrast, a long term claim under the existing model can have an impact on an employer's rate for as long as ten years.

In the previous section, we used an illustrative example to show the rate impact of a long term injury with claim costs of $40,000 over a five year period. In the chart below, we also show the impact of a $40,000 claim where all the claim costs occur in the first year and the claim is closed by the end of year one.



For a claim that has cost the same amount to the system over a five year period, these are two very different rate outcomes. In the short-term claim example, the system provides protection to the employer through a 10% rate increase limit (year 1 of the rate transition schedule). In the second year, there are zero costs for the short-term claim in the 12 month window so there is no further upward rate pressure for this claim. On the other hand, the long term claim continues to exert upward rate pressure. Consequently, it is no surprise that employers have put a greater emphasis on claim duration in Manitoba.

In his report, Petrie recommended that the costs incurred in the first two weeks of a time loss claim be charged to the industry sector. While there are some merits to this recommendation, it does not address the real issue of rate volatility in the existing model. In the graph above, charging the first two weeks to the industry sector provides zero rate relief in the long term claim example since the ongoing claim payments continue to provide upward rate pressure. While it may help in the short term claim example, that employer already has a 10% rate increase limit built into the system (via the system's rate transition schedule) that protects it from an unreasonable increase in the first year.

An emphasis on duration and return to work is not necessarily negative. The Prism study found that:

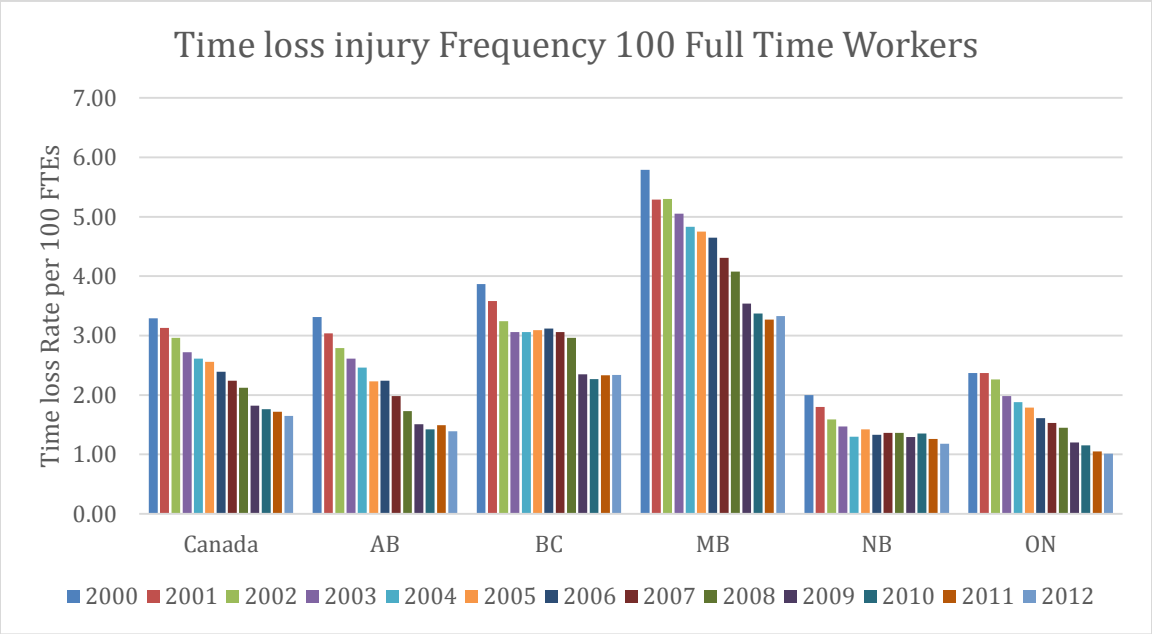
> *The survey data suggest that modified duties played a role in return to work in around 15.5% of injuries. The vast majority (87.1%) of survey respondents with experience of modified duties reported that these modified duties were consistent or a good fit with their recovery from injury. Around 32.3% of respondents with experience of modified duties felt that their modified duty arrangements were inconsistent or not a good fit with their training and experience.*

All the studies confirm that early and safe return to work is to the advantage of injured workers, physiologically, financially, and psychologically. Many employers in Manitoba are doing the right thing in assisting injured workers to return to work. It would be unfortunate if legitimate return to work initiatives by employers become suspect and stigmatized because of bogus and overly aggressive return-to-work activities of a few who are motivated by the immediate financial reward available through reducing claim duration.

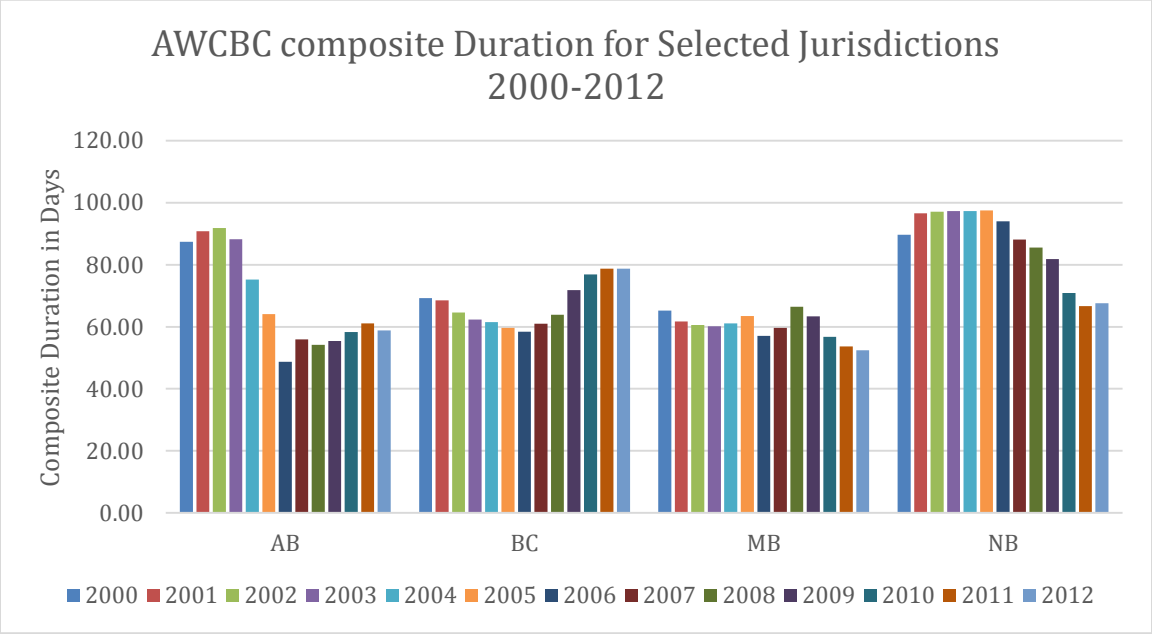
HAS IT BEEN WORTH IT?

As we said earlier in the report when discussing the background on the existing model, some of the features that make the model so responsive were a deliberate attempt to drive better occupational health and safety outcomes by holding employers financially responsible for their claims. Labour, and some employer stakeholders, have raised the issue that the existing model does not meet its proclaimed objective of improving health and safety in Manitoba workplaces. Has the existing model delivered on its intended goals? While this is a difficult question to answer, a high-level indication can be gleaned from national reporting statistics.

Below are two tables that compare Manitoba's results to those of four relevant comparator jurisdictions along with a Canada-wide average. The first table shows the frequency of time loss claims expressed as a rate per 100 full time workers.



The second table shows the average severity of time loss injuries as measured by composite duration.



In both tables, the trends in Manitoba appear to be largely in line with those occurring in other jurisdictions. All jurisdictions have experienced reductions in time loss frequency over the period examined, while the results on claim severity are somewhat mixed. What is clear from the two charts is that Manitoba has a higher claim frequency relative to other jurisdictions while claim duration appears to be slightly better than other provinces[1]. All five provinces show an improvement from 2000 to 2012 in both frequency and duration, with the exception of BC claim duration.

The other jurisdictions do not have rate models that are as responsive or tilted towards employer accountability as the existing Manitoba model, yet have achieved similar results in terms of claim frequency and severity. While not conclusive, this does suggest that Manitoba's highly responsive, employer-centric model is not generating improvements that are significantly different than average.

In our view, the Manitoba compensation system has paid a heavy price for a modest return.

The price paid has been:

- Undermined stakeholder confidence in the workers' compensation system,
- A loss of collective liability protection,
- Employers questioning the efficiency of the system, and
- A punitive approach in the existing rate model that has created a desire to "opt out" out of the system, either through a self-insured option or claims suppression.

The modest return has been the improvements in lost time incidence and claim duration that are largely similar to those obtained in other jurisdictions with less responsive rate models. An exceptionally responsive rate model does not seem to have delivered "exceptional" results in terms of prevention objectives related to frequency of workplace incidents.

This does not mean that experience rating ought to be abandoned. All those other jurisdictions, with lower rate volatility and responsiveness and with greater degrees of collective liability, still have some form of experience rating. What it does suggest is that:

- There are limits to the effectiveness of experience rating to drive health and safety outcomes,
- Experience rating incentives are capable of resulting in unintended behaviors, and
- If the WCB wants to drive better health and safety outcomes, other initiatives (working in concert with experience rating) have to be examined and seriously considered. Changes to the rate model alone will not solve the problem.

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[1] *Claim duration statistics for Ontario are unavailable from AWCBC.*

ALIGNING EXPERIENCE RATING WITH BEST PRACTICES

Stakeholder concern that the existing model was not promoting better health and safety outcomes was not simply being leveled as a criticism of the model. A more important aspect of these expressions was that reliance on the rate setting model, to promote better health and safety outcomes, detracted from consideration of other approaches to promoting best practices and improving health and safety outcomes in Manitoba. We found that there is a consensus amongst labour and employer stakeholders that we met with; improvements in workplace health and safety are desirable and that more progress ought to be made.

Although it is really beyond the scope of our inquiry, we were interested in the question of how the rate setting model might drive better health and safety outcomes apart from punitive experience rating, which does not appear to be working. In our discussion paper we asked a series of questions, including:

- Should the WCB consider administrative penalties (based on measures related to failure to meet best practice standards) for employers that consistently contribute greater costs to the system versus their peers?
- Should rate adjustments be linked only to satisfactory workplace safety and health practices, only to claim cost experience, or to a blending of both?
- If safety practices were incorporated into the rate model process would it result in WCB having to administer an overly complex and inefficient system?
- How could that issue be addressed, especially for smaller employers?

Establishing best practices in health and safety is seen as the first step to the development of a "health and safety culture", which is widely viewed as the best way to achieve the goal of safer workplaces. Both employer and labour stakeholders have commented that the existing model has failed to drive improved health and safety outcomes. Labour and some employer stakeholders have referred to the fact that there is no incentive in the existing model to "best practices" in occupational health and safety. Sometimes they express this directly and sometimes only indirectly as in comments like "the model delivers (either premium reductions or premium increases) to employers who do not deserve it".

We believe that if Manitoba is going to achieve better health and safety outcomes they need to look at how incentives or penalties related to best practices could be layered onto the rate model in a cost effective way. Clearly, auditing every employer in the province to determine if they "deserve" a penalty or a rate reduction is not feasible. However, other jurisdictions have developed programs that seem to be well received that go beyond rate setting in providing incentives to meet best practices (e.g. PRIME for Newfoundland and Labrador) or imposing penalties for poor performance (e.g. Alberta).

We heard some criticism from employer stakeholders about safety associations. Our experience is that these associations work in other jurisdictions and that they play a positive role in education and promotion of best practices among their members.

CONCLUSIONS AND RECOMMENDATIONS

RATE SETTING CONSIDERATIONS

Rate setting is a mix of science and practical considerations. The science is the statistical validity of cost experience, actuarial pricing methods and other technical considerations. The practical considerations are the alignment of the system to the WCB's vision and goals and the business realities of each jurisdiction. In the design of any model there are decisions that have to be made around conflicting objectives (for example, collective liability protection and employer responsibility for claim costs). The goals that you have set for the system should dictate where you want the balance point to be between these conflicting objectives.

In Reshaping Workers' Compensation for Ontario, (1980) Paul Weiler said, at pages 85-86:

> *It is one thing to adopt the principle of merit rating: it is quite another to decide precisely how to do it. We have three objectives in mind, often in a state of tension with each other.* ***First, we must define with some precision the appropriate costs which will be allocated to the individual employer, those which will maximize the incentives toward safety*** *(and not those which will deter hiring and rehabilitation of handicapped workers, for example). Yet,* ***secondly, we must not go too far towards eliminating the insurance feature of the workers' compensation system.*** *There is a high element of chance in industrial accidents. Notwithstanding some of the moralistic rhetoric, the program does not assume that it is because the employer is at fault that an injured (and occasionally careless) employee is to be compensated. A single serious and fortuitous accident can significantly distort the compensation picture of an employer, particularly a small firm whose overall experience is insufficient to give much credibility to a deviation from the average.* ***Finally, though, we cannot become too sophisticated in reconciling the conflicting goals of collective insurance and individual responsibility. The system must be kept relatively simple****; not just to ease the administrative burden upon the Board but also to keep it comprehensible to the average businessman, whose appreciation of fairness of the mechanisms we are trying to reinforce.*

What we have tried to do in this report is assess the strengths and weaknesses of the existing system and make recommendations for a rate model that:

- Reflects the goals set by WCB for the system
- Will contribute to sound financial results
- Is clear and transparent to stakeholders
- Is defendable and objective
- Is an accurate reflection of the current employer population and characteristics
- Will stand the test of time

Meredith wanted everyone to pay their "Fair Share" of the costs of workers' compensation based on the "risk" they present to the system. The rate setting methodology prevailing in every jurisdiction in Canada uses actual claims experience as a proxy for risk and some form of rating to allow the premiums of workplaces (collectively or individually) with statistically reliable increasing claim costs to go up, relative to those workplaces with statistically reliable declining claim costs. No jurisdiction assesses a flat rate premium on all employers. Any system that differentiates on the basis of "risk" will provide financial rewards (reduced premiums) to employers whose actual past performance demonstrates declining claim costs relative to other employers in the system. The challenge is to build the system in such a way that minimizes an incentive to inappropriate behavior.

In our discussion with stakeholders there were three distinct but related themes that were woven through the commentary - the volatility of rates, the punitive nature of the system and the relationship between the model's incentives and outcomes. My reaction to what I have heard is that employer stakeholders want a rate setting model that is less volatile and less punitive. They want a model that provides more "collective liability protection" to employers. Both labour and employer stakeholders recognize the connection between the incentives in the rate model and the potential for inappropriate employer behavior. I think that both recognize that there are limitations to what can be achieved through rate-related financial incentives and that some incentives may have unintended consequences.

My reaction to what I have heard is that employer stakeholders want a rate setting model that is less volatile and less punitive. They want a model that provides more "collective liability protection" to employers. Both labour and employer stakeholders recognize the connection between the incentives in the rate model and the potential for inappropriate employer behavior.

There is a legitimate concern that the model itself contributes to claims suppression. In a 2008 report for the Ontario WSIB (*Experience Rating Review),* Morneau Shepell reviewed recent studies of the impact of experience rating. Their review concluded that "all well-designed incentive programs create both an incentive for positive behavior and a risk of negative behavior." That risk can be minimized in a well-designed model but cannot be eliminated. However, to completely abandon experience rating introduces an even greater risk - that poor performers who are subsidized by good performers have an incentive to remain poor performers.

The stakes are very high in Manitoba in terms of the impact of claim costs on rates. Because there is so much to lose there is much to be gained by gaming the system. The extent of the potential savings will clearly impact on the inducement to claims suppression. Moderating the responsiveness of the rate setting model will reduce the stakes and the incentive to game the system.

Having said all that, there is no one right model for rate setting. Each jurisdiction must decide what they want from their rate setting model and where they want to set the balance between collective liability protection and making employers responsible for their claim costs. In

designing their rate-setting model each jurisdiction asks "what is fair?" in terms of making individual employers responsible for their claim costs and may come up with a different answer. However, you cannot lose sight of the fact that the Meredith model of workers' compensation has the support of employer stakeholders because it offers them the protection of collective liability. Removing that protection removes the whole raison d'etre for employer support for the system, and runs the risk of seriously undermining it.

ISSUES RELATING TO THE EXISTING MODEL

Our conclusion is that the Manitoba model has reached that point of eroding support for a number of employers we spoke with. We can only assume there are more out there and that, as time goes on, more employers will end up in a similar situation.

We acknowledge that these are "subjective" assessments of the existing model. However, broadly speaking, we view the existing model as:

- Putting too high an assessment on some employers that have claims,
- Not charging enough of a premium on employers who do not have a claim, and
- Responding too quickly and dramatically when the employer without a claim ultimately has one.

It is a system that is volatile and punitive and does not account for what Weiler referred to as the "high element of chance in industrial accidents". I understand that this element of "chance" is controversial to speak of in the world of occupational health and safety prevention where the operational philosophy is that all accidents are preventable. I am not critical of that view in that context. My concern is that if you import that philosophy to the workers' compensation rate setting context and make employers financially responsible for their claims, there will be a tipping point where you start to undermine the system.

Perhaps it is simply asking too much of the rate setting system and maybe the rate model should stop at simply ensuring that the relatively good performers do not subsidize relatively poor performers. There needs to be serious consideration of other policy responses to improving health and safety outcomes in Manitoba.

The existing model was designed to hold poor performers accountable in an effort to improve health and safety outcomes in Manitoba. No doubt it has punished many poor performers. We did not hear from any of these employers and would not have expected to. However, in the process, many employers who might better be characterized as simply "unfortunate" have also been caught up in a "punitive" model. More importantly, health and safety outcomes in Manitoba have not been markedly different and have trended very closely with every other Canadian jurisdiction.

Policy makers should be seriously asking the question whether punishing employers financially through the premium rate setting system is the best way to achieve better health and safety outcomes. Perhaps it is simply asking too much of the rate setting system and maybe the rate model should stop at simply ensuring that the relatively good performers do not subsidize relatively poor performers. There needs to be serious consideration of other policy responses to improving health and safety outcomes in Manitoba.

MODEL DESIGN AND CLAIMS SUPPRESSION

We also suspect that there is a link between the responsiveness of the existing model and the fact that claims suppression is such an issue with labour stakeholders. The present model responds disproportionately to "claim duration" as opposed to claim frequency or short-term claim costs. To the extent that employers are held financially responsible for a claim's duration, their attention is drawn to the management of that aspect of a claim. Some stakeholders suggested that this is at the expense of focusing attention on the prevention of claims and others have suggested that this has led to inappropriate return-to-work practices.

In our view, it is intuitive that where the rate setting model creates an opportunity for the system to be "gamed" to an employer's financial advantage, some employers will take advantage of that opportunity. I expressed that view in my consultations with stakeholders and was never challenged on it. Our conclusion is that some of the activity viewed as claim suppression would be eliminated by simply removing the opportunity to gain a substantial financial advantage through inappropriate courses of action.

COMPLEXITY

We found the present model to be complex and few stakeholders actually understand how an employer's premium rate is calculated from the initial step of determining the annual average assessment rate. In some cases a change in the overall system of compensation, such as the removal of the cap on insurable earnings, has not been widely understood by stakeholders in terms of its impact on assessment rates. In a system that fails to match assessable earnings with insurable earnings, an element of subsidization and inherent unfairness is created. This is really a policy decision. If stakeholders want a system where the claims of injured workers earning over the cap on assessable earnings are a part of the collective liability of all employers, they should be addressing that policy question. When systems are complex and opaque it is difficult to isolate and address these policy issues.

RECOMMENDATIONS

We recommend that the rate setting model be made much less aggressive and that the "punitive aspects" of the model be removed. We think it is important that the balance be adjusted towards greater collective liability. In our consultations, we met with employers who have been punished by the rate model.

Over time, more and more employers will experience the true nature of the rate setting system. Some will deserve escalating rates but there will always be a few who will be punished undeservedly for events they had little control over. As this group grows over time, there will be a concomitant erosion of employer confidence in the system and a growing number of employers seeking to "get out from under" what they see as burdensome rates and an inefficient system. There will be more pressure on the claims adjudication/administration system and more employers being attracted to inappropriate means to reduce that burden. This is important because stakeholder support for the Meredith model for workers' compensation is essential to it being sustained.

There are a number of different ways that other jurisdictions balance the interests of collective liability and individual employer responsibility for claim costs. Some of these features have been specifically recommended in our consultation with stakeholders. These are:

- Adjust the "range" of rate adjustments available under experience rating.
- Modify the experience window used for experience rating.
- Implement a cap on the costs per claim attributed to the employer.
- Introduce a closer tie between an employer's rate and the average for its industry group, particularly for small employers.
- Introduce a participation factor for experience rating.
- Conduct an annual review for potential reclassifications of industry groups and/or large employers.

Each of these items is discussed in more detail below.

The existing model allows an employer's rate to range from 40% below the risk category average rate to 200% above. This wide range of outcomes was introduced to allow employers a large amount of leeway to move to their target rate as part of the fundamental change implemented at the last review. However, the mismatch between the maximum discount and the maximum surcharge available, coupled with the high maximum rate for each class, results in a punitive situation for employers in certain situations. This punitive aspect can encourage inappropriate employer behavior, including claims suppression. As such, I recommend that the WCB consider using smaller adjustments that are more balanced around the risk category average rate.

In terms of the experience used to calculate rates, the existing model uses one year of payments (from Oct. 1st, to Sept. 30th) on the most recent five accident years. As discussed earlier, this experience window tends to focus an employer's attention on claim duration rather than claim frequency. Other experience periods can be obtained by either increasing or decreasing the payment and/or the accident years included in the window. For example, including more payment years in the experience window would put more emphasis on claim frequency than is present in the existing model because claim costs for even a short-term claim would affect an employer's rate for a longer period (i.e. the costs would not drop out of the experience period after one year). The choice of experience window can also affect the stability of an employer's experience and hence their assessment rates. I recommend that the WCB consider different experience windows for rate setting with an emphasis on including more payment years in the window to establish a better balance between claim frequency and duration.

Under the existing model, there is no maximum limit on the amount of claim costs that can be charged to an employer's account for an individual claim. That is, if an expensive claim has costs of $500,000 in the rate setting experience window, the entire $500,000 of costs would be considered when determining the employer's rate. Other jurisdictions have implemented various forms of a cap on the amount of claim costs that can be charged for any one claim in rate setting. The purpose of this cap is to provide some collective protection to employers for infrequent, high cost events that can have a significant impact on the assessment rate for the employer. With this feature, costs under the cap are allocated directly to the employer's account

while costs above the cap are shared collectively by the system. The intent is to hold the employer accountable for a portion of the costs while also preserving some form of collective liability protection. This protection is generally very valuable to small employers where one expensive claim would represent a material increase in their regular workers' compensation costs. I recommend that the WCB implement a maximum claims limit for rate setting purposes in order to improve the collective liability protection offered by the system.

In certain submissions that we received, stakeholders expressed the view that more insurance protection should be offered to smaller employers while larger employers should be allowed to accept more risk. A participation factor can be used to accomplish this goal. Under the existing model, the cost experience for large and small employers is treated exactly the same. That is, regardless of size, an employer's target rate is determined based on their cost experience and the model begins stepping them towards their target rate. An implicit assumption of the model is that the cost experience for large and small employers alike is equally reliable, or credible, for determining the risk that the employer poses to the system. In practice, the cost experience for small employers is subject to statistical fluctuations and is often not a reliable indicator of their risk. Recognizing this fact, a low participation factor can be used for small employers to give their past cost experience less influence in determining their rate. For larger employers, a greater participation factor can be used given their more reliable cost experience. In this way, as an employer gets larger and their own cost experience becomes a more reliable indicator of their underlying risk, their rate is determined more by their own cost experience. Finally, use of a participation factor also improves the collective liability of the system because most employers' rates do not move completely in step with their actual cost experience. I recommend that the WCB investigate the use of a participation factor in experience rating.

Currently, an employer's industry group assignment only determines what risk class they are in. Within that risk class, employers are free to move within a very wide range (40% below to 200% above the risk class average) based on their actual historical costs, as discussed above. This arrangement emphasizes individual employer accountability rather than collective liability because an employer's rate is almost entirely determined by their own cost experience. Moreover, because an employer's rate is determined directly by their costs as opposed to having some part of their rate determined by the costs for their broader industry group, the potential for inappropriate employer behavior is increased. For these reasons, I recommend that the WCB introduce a closer tie between the industry group average rate and an employer's rate, in particular for small employers whose individual experience may not be credible.

Finally, in order to maintain the relevance and equity of the system over time, I recommend that the WCB regularly review and reclassify employers and/or industries to another risk class as needed. Under the existing model, employers with over $7.5 million in assessable payroll have the ability to move to another risk class independent of their industry group. It is our understanding that reclassifications of these large employers and industries typically occur on a reactive basis in the current model. A more proactive review based on objective criteria can help ensure that the system remains equitable for employers and increase employer confidence in the system. As part of this, I recommend that the size threshold for an individual employer to be able to move independently from its industry group also be reviewed to determine whether

employers of that size have sufficiently credible cost experience to warrant movement and have the ability to manage the risk associated with moving independently.

We said earlier that there is no one "right model". All of these mechanisms should be examined, their impact on the system assessed, and a decision made as to whether they serve the interests of the Manitoba stakeholders.

We have also considered the idea put forward by some stakeholders and recommended by Paul Petrie that claim costs for the first two weeks be shared through the system. It was suggested to us that because some employers have the ability to immediately provide alternate work for injured workers and other employers do not (for example, the construction industry does not), the system unfairly burdens those who do not have immediate alternate work available. However, as we discussed in the previous section, it is not the claim costs in the first two weeks of a claim in Manitoba that drives rates up in the existing model. Further, we are not convinced that if the costs of the claim were being shared by all employers, a substantial incentive to not report a claim is removed.

OTHER APPROACHES TO IMPROVED OUTCOMES

If you accept that there are limitations to what can be achieved through rate setting, making progress towards the goal of safer workplaces can only be achieved by looking seriously at other approaches. We recommend that the WCB, in conjunction with Safe Work Manitoba, consider new approaches to improving occupational health and safety outcomes, including financial incentives and penalties. Other jurisdictions have adopted programs that offer financial rewards to employers who meet a certain standard of performance or are "certified" as meeting some objective standard of health and safety best practice. Similarly, some jurisdictions have adopted financial penalties for "poor performers" that are layered on top of a rate setting formula that already penalizes poor performance. What distinguishes these programs is that the rewards or penalties are applied on the basis of pre-determined criteria. Thus, they are not subject to chance statistical vagaries. They are aimed at rewarding or punishing the employer that "deserves" to be rewarded or punished based on understood and acceptable criteria.

One particular program that the WCB should explore is the experience rating program in Newfoundland and Labrador (PRIME). That program has an interesting component where an employer that qualifies for an experience refund (based on claim costs only) can only receive that award if the organization has met certain health and safety practice criteria for its workplace. In essence, the PRIME program attempts to reward only those that "deserve" a reduced premium rate.

Similarly, we have concluded that that the focus of the existing model on duration has been an incentive to inappropriate return to work activity for some employers. Having said that, the value of safe and early return to work is widely acknowledged and claims duration still has to be managed. It is important that legitimate return-to-work programs are supported. We heard from some employer stakeholders that they would welcome guidance on what the WCB considers to be legitimate return-to-work activity. We recommend that the WCB endorse best practices in return-to-work and we believe that this is an area where the WCB should provide leadership and foster stakeholder cooperation.

OTHER ISSUES RAISED BY STAKEHOLDERS

MAXIMUM ASSESSABLE EARNINGS

Several employer stakeholders raised the maximum assessable earnings level in Manitoba as an area of concern. In particular, employers from the health care, government and construction sectors have recommended in their submissions that the maximum assessable earnings limit be reduced in order to be in line with other jurisdictions. For 2014, Manitoba's maximum assessable limit of $119,000 was 29% higher than the next highest jurisdiction in Canada (Alberta - $92,300).

All other jurisdictions in Canada cap an injured worker's compensable earnings for wage replacement awards and they use that same cap for the assessable earnings when determining an employer's premium. In 2006, Manitoba removed the cap on compensable earnings but did not remove the cap on assessable earnings. In effect all employers collectively paid the additional costs for the claims from high wage earners. Clearly, however, higher wage earners are not evenly distributed amongst Manitoba employers.

It is important for Manitoba stakeholders to understand that the significant growth in the maximum assessable earnings limit in recent years is linked back to this 2006 decision. Without this parity between compensable and assessable earnings, an indirect subsidization is created where all sectors (even those with low wage earners) end up paying additional premiums to cover the shortfall between income replacement benefits paid to high earners relative to the premiums that can be collected (based on capped earnings).

It is also important that all employers pay their fair share of system costs. All other jurisdictions have aligned the compensable and assessable earnings limit for a very good reason; the premium revenue paid is commensurate with the insurance coverage being purchased. We see no reason as to why this fairness principle would not apply to industries with high earners. A decision to only lower the maximum assessable earnings limit, without consideration of the maximum compensable earnings limit, would create subsidies in the system and possibly further erode the overall perception of fairness by all employers. Therefore, it is vital that these two limits be kept in sync.

WCB CLAIMS MANAGEMENT

Both labour and employer stakeholders raised concerns about the WCB's administration of the claims adjudication/administration systems. This is to be expected any time the door is opened to an examination of workers' compensation. Clearly this is beyond what we have been asked to comment on. However, we would comment that our experience is, no matter how good a WCB is at rate setting or all the other things they do, the organization's reputation and confidence in the system is determined by how well they adjudicate and administer claims. That is where the WCB, employers, injured workers and their representatives interact on a daily basis.

SUMMARY OF CONCLUSIONS AND KEY RECOMMENDATIONS

We believe the existing model has eroded the protection of collective liability and lead to a loss of employer confidence in the system, which will grow over time. We also believe that the punitive aspects of the model and its focus on duration are incentives to unintended employer behavior.

- **We recommend that the WCB consider a rate setting model that is less aggressive and that the "punitive aspects" of the model be significantly reduced and collective liability protection be enhanced.**
- **We recommend that the WCB, through its rate setting system design, adopt features that create a more balanced focus on injury prevention and claims duration.**

Accepting that there are limitations to how successful you can be in achieving better health and safety outcomes through punitive rate setting:

- **We recommend that the WCB, in conjunction with Safe Work Manitoba, consider new approaches to improving occupational health and safety outcomes, including financial incentives and penalties.**
- **We recommend that the WCB endorse best practices in return-to-work and we believe that this is an area where the WCB should provide leadership and foster stakeholder cooperation.**
- **We recommend that the WCB explore the possibility of incorporating non-claims cost related employer performance measures into experience rating, while maintaining some form of claims cost measures.**

CLOSING COMMENTS

I am pleased to present this report to the WCB and I hope that it is of assistance in achieving a fairer, more balanced rate setting system. I also hope that it provides helpful guidance on addressing the issue of how to achieve the goal of safer workplaces in Manitoba.

I want to acknowledge the administrative assistance of Agatha Chandran of the WCB. The stakeholders of Manitoba were engaged in this process and I hope this report captures their input. In particular, I want to thank the Stakeholder Advisory Group who were a great sounding board and helped from the beginning to the end of this project. I found them to be sincerely engaged in the challenge of building a better and sustainable workers' compensation system that serves the legitimate interests of all Manitoba stakeholders.

APPENDIX A - LIST OF ISSUES RAISED BY STAKEHOLDERS

Qualitative Issues	Our Comments
Clear Guidance is needed from WCB on the issues of claims suppression	We heard from several employers who were frustrated that all employers were being painted by the "claims suppression brush". Some employers would like guidance on: What is good prevention and return-to-work practices? What is (or is not) considered to be 'claims suppression'?
Lack of collective liability	Addressed in our Report
Self-Insured viewed as a viable option	We addressed this issue in our Report. We don't agree the view that it is a viable option for large employers. In some cases we see it as a result of poor understanding of premium vs. direct costs and the rate volatility of the existing model.
Model too complex	Several employers we met had engaged outside firms to build a tracking system to monitor costs given the complexity.
Petrie recommendation of "first 2 weeks charged to industry" has merit.	Some employers express support for this, some do not. Of those that do not, they recognized that this recommendation does nothing to address rate volatility for long duration claims (i.e. the $40,000 example).
Mandatory safety association levy is unfair	Several groups felt it added overhead and unnecessary costs to the system and that businesses shouldn't be forced to participate.
Model is punitive and overly responsive to claim costs	We met with several employers that felt that this approach was especially punitive in a situation of rapidly increasing payroll. There is nothing technically wrong with this approach. However, it should be the result of a clearly expressed policy decision.

The fatality policy is too arbitrary	One employer presented a sound argument with respect to this issue. He said he did not have a problem with assigning a $250,000 claims cost charge to his account (if that is indeed representative of the average cost of a fatality). To him, it was fair to let that work its way through the model and let the corresponding rate change happen. What he objected to was layering of an additional 25% increase on top of that. He felt this was arbitrary and excessive, and detracted from collective liability.
The model creates an incentive for claims suppression (however defined)	Our examples shown to labour and employer groups were very useful to show them how a rate setting system can enable that type of behavior. Labour also recognized that the rate setting model can reduce certain types of suppression, but rate setting can't eliminate the problem entirely.
The current experience rating approach does nothing to promote best practices in health and safety	There was strong support, especially from labour groups, to build in a link to 'practices' to promote and reward good safety culture.
Incorporation of a "safety practices" component in the rate model	Feedback on this item was mixed. Labour felt strongly that a link to safety practices is required to promote investments in safety. Some stakeholders felt that industry sector safety associations should be used to drive safety culture. One response stressed that the administrative burden of any safety practice program should be kept in mind. Finally, one response advocated for cost-based experience rating only, with safety practices being addressed through the OH&S Act.
Claims suppression by self-insured employers	One labour rep from a public sector self-insured entity felt that changing the rate model would have no impact on the claims suppression exerted by that employer. This is out of scope for rate setting but relevant to other areas of WCB.

Optional feature that allows the first two weeks of a wage loss claim to be paid directly by the employer	In the context of the existing rate model, this may not necessarily have a large impact on rates. If the rationale for this proposal is to help minimize rate responsiveness, this could also be addressed through many other design choices.
Model produces volatile rates that are difficult to budget for	This affects large and small employers alike, although the actual dollar amounts involved are greater for large employers.
Experience rating should provide small employers with more insurance, large employers should be allowed to accept more risk	One stakeholder raised the option of different maximum rate adjustments for employers of different sizes.
Claims suppression and compliance with the OH&S Act are best dealt with through more rigorous enforcement of OH&S standards and larger penalties rather than through rate model	While more rigorous enforcement and larger penalties may help, we believe that the design of the rate model can also help influence employer's behavior.
There was concern expressed over our reference in the Discussion Paper to WCB as an "insurance" system	Labour felt strongly that the WCB should be viewed differently given its protective role for injured workers, i.e. not as a typical insurance arrangement where the payor is the insured. In fact Meredith referred to his model as "compulsory mutual insurance". Maybe we should be looking at workers' compensation as two systems. It is a system for the administration of the fair and equitable compensation of injured workers funded by employers through a system of compulsory mutual insurance.

Technical Design Issues	Our Comments
High Maximum Assessable Earnings level is unfair	This is outside the scope of our review. A higher maximum assessable earnings level is an outcome of the decision to remove max compensable earnings in 2006. The two levels must be kept in sync to avoid subsidization between employer groups. One stakeholder raised the option of reinstating a maximum compensable earnings limit, which could be an approach to bring the levels in sync.
Claim Duration Points used to adjust model is a form of 'double dipping'	This is an accurate description of the model. It penalizes an employer for a long duration claim, and an additional adjustment of +5% based on a scoring system that uses claim duration probably results in some double dipping.
$7.5 M in payroll to qualify for an employer to be on its own (i.e. move independently of its industry group) in the model is too low	We heard from one employer that was on his own in the system and felt that his experience was too volatile to be considered credible.
The cost of denied claims should be excluded from the rate model	This is a common practice in several jurisdictions where the cost of denied claims is shared proportionately across the system.
WCB should make the industry classification table available to stakeholders.	This is a fairly straightforward and reasonable request.
Application of the balancing factor is unfair	Some stakeholders felt that the application of the balancing factor results in inconsistent outcomes depending on employer size and risk class. This may be due to a misunderstanding of the need for a balancing factor to ensure that the rate model raises the required revenue. Re-stating the average rate to account for balancing may minimize this issue.
$100 minimum assessment is unfair	One employer felt that the minimum assessment resulted in a subsidization of large employers by small employers. Given the administrative costs of registering and assessing an account, along with the accident

	risk accepted, it is unlikely that the minimum assessment is resulting in any large scale subsidization.
Use a 3 year cost window for experience rating rather than the 5 year window used currently	Various cost windows should be reviewed as part of the actuarial modeling of alternative rate models.
The cost of long latency occupational disease claims should be excluded from the rate model	This is handled differently in different jurisdictions and is more of a question of the Board's philosophy regarding responsibility for occupational disease claims than a rate-setting model feature.
Claims under appeal should not be included in the rate model until a decision has been reached. Make decisions retroactive to the date of appeal	Out of scope for current review. However, most jurisdictions would include/exclude a claim from the rate setting model based on its current status. By excluding a claim that is currently accepted (but under appeal), the WCB could open itself to an additional administrative burden as some employers could seek to appeal claims purely to temporarily remove them from the rate setting exercise.