



WHO WANTS TO FINISH LAST?

Recommendations to end two decades of the most expensive workers' compensation insurance premiums in Canada

PRESENTATION TO THE 2013 STATUTORY REVIEW ON WORKERS' COMPENSATION

SPEAKING NOTES

April 1st, 2013

Speaking Notes – Presentation to the Worker’s Compensation Statutory Review Committee

Good morning. My name is Richard Alexander, Executive Director of the NL Employers’ Council.

I am speaking today on behalf of the members of the employer’s council, and with the support of many of the other business associations in the province. The reason that you have seen so much of me lately is that worker’s compensation is one of the most important issues facing our membership.

Over the last few years, the NLEC has launched the single biggest lobby of the organization’s history – to draw attention to some significant issues facing our worker’s compensation system in this province.

Worker’s Compensation is an entirely employer funded, no fault insurance system.

Workers compensation is an important system -- but in Newfoundland & Labrador the cost of this system is excessive.

Newfoundland & Labrador has had the highest worker's compensation employer insurance premiums of any province in the country for two decades.

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Between 2000 and 2012 employers in NL have paid anywhere from 33-89% higher than the Canadian average.

Currently, employers in this province pay 42% higher than the Canadian average.

In 2013, all Newfoundlanders & Labradorians should expect better.

In September, the NLEC released a study conducted by award winning economist Dr. Morley Gunderson, Professor at the Centre for Industrial Relations and the Department of Economics at the University of Toronto. Gunderson studied the impact these worker’s compensation premiums are having on our province. Gunderson’s concluding comment was:

“Newfoundland and Labrador is perched on the opportunity for a permanent transition from a ‘have-not’ economy to a ‘have’ economy given the new developments that are occurring.

Reforming the workers’ compensation system will be important in that transition not only in its own right, but also because of the signal it will send to perspective employers and the job creation associated with that signal. There seems no better time for action in this important area.”

Why would Gunderson say this?

After studying the 20 year history of the worker’s compensation system in this province, Gunderson called our Worker’s Compensation premiums “excessive” and said that the inability to control these excessive costs gives our province the reputation of being “unfriendly” to business opportunities.

These excessive regulatory costs negatively impact not just employers but they cause Newfoundland & Labrador communities to suffer from lost investment opportunities and the jobs associated with those investments.

Gunderson said that having workers’ compensation costs that are out-of-line with those of other jurisdictions serves as a signal that a province is unable to contain its costs in this area, and therefore, that they may not be able to contain them in other areas.

We are competing in a global economy and internal efficiency is a precondition to be competitive externally.

Newfoundland & Labrador’s systems must be efficient and promote productivity.

This system tarnishes our reputation as a province and is holding us back.

In fact, in his study, Gunderson quantified what the effect would be three years after bringing our worker’s compensation premiums down to just the Canadian average.

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He found multiple positive impacts, three most significant are:

- 60.6 million increase in investment
- The creation of nearly 2000 new jobs
- And a \$330 million increase in GDP
- All this for just being average.

Imagine then, what the impact has been on our province of 20 years of these high premiums.

Despite these high costs, Newfoundland & Labrador is one of only 4 jurisdictions in Canada whose Worker's Compensation system is underfunded. This means the benefits that are currently being promised to injured workers are not secure, even with the highest premiums in the country over the last two decades.

This Statutory Review MUST focus on bringing the cost of the system in line with the Canadian average, and securing payment of worker's compensation benefits for injured workers.

During the last 20 years there have been multiple attempts to make the system financially secure and provide employers with competitive insurance premiums.

We have been through four statutory reviews, multiple WHSCC strategic plans and numerous consultations with business and labour.

All of these attempts have fallen short.

As the Statutory Review Committee, this is your opportunity to finally make meaningful legislative change that make our system competitive, reduce the cost to our province's employers and protect the security of injured worker benefits long term.

This is your opportunity to succeed where these other attempts have fallen short.

And we are here to help you do that.

I want to be clear that the NLEC's comments surrounding our Worker's Compensation system should not be perceived as an attack on government or the Commission.

Our government and the Commission's Board, management and staff did not create the problem we have today – they inherited it.

Today's comments are also NOT an attack on injured workers in this province.

The Newfoundland & Labrador Employers' Council is NOT looking for cuts to injured worker benefits.

We ARE looking to protect the long term best interest of the Worker's Compensation system in our province.

WHY,

Why is our worker's compensation system in Newfoundland & Labrador so expensive?

It is NOT because workplaces in this province are unsafe.

No, our injury rate has dropped 67% since 2001 and today, thanks to the hard work by employers, employee's, government and the commission, and the investment of millions of dollars by employers in the province, we have one of the lowest injury rates in the country.

Newfoundland and Labrador, is today, one of the safest provinces to work in Canada.

The answer to why our system is the most expensive in Canada can be answered simply:

Our system covers 98% of the workforce – the most extensive coverage in Canada.

In 2010, The Canadian Average of workforce covered was 82%.

No one, including the Employers Council, wants groups of worker's in this province to be unfairly excluded from receiving worker's compensation benefits.

However, the high cost of such extensive coverage is jeopardizing the benefits provided to injured workers in this province and negatively impacting our economy.

If you have the most **extensive** system you will have the most **expensive system** -- unless you also have the most **aggressive** legislation.

And we do not have aggressive legislation in Newfoundland & Labrador.

We need new legislation.

In order for you to effect meaningful change in our system where other review committees have fallen short, our legislation must be rewritten to eliminate loopholes, correct inequities and reduce key cost drivers within our system.

Our written submission includes 14 recommendations that do just that. This submission represents years of hard work and research. Many employers contributed to the development of these recommendations, and the NLEC Workplace Safety and Compensation Committee, Board of Directors and staff spent many, many hours debating and researching various recommendations, weighing the pros and cons of each and finally settling on recommendations that are achievable and responsible.

I will not take you through each recommendation today, but I will outline three major areas within Newfoundland & Labrador's Worker's Compensation system where legislative change is needed:

#1: A return to insurance principles

Workers' Compensation is an employer funded insurance system. It is not a social program.

The system is designed on principles known as the "Meredith Principles" -- five basic cornerstones to the original Canadian workers' compensation laws -- which have survived since 1913.

The independent management of the workers' compensation system was enshrined in these principles. Let me read you one of these principles:

The governing board is both autonomous and non-political. The board is financially independent of government or any special interest group. The administration of the system is focused on the needs of its employer and worker clients, providing service with efficiency and impartiality.

This principle has been compromised by our legislation.

In comparison to other provinces, the Workplace, Health, Safety & Compensation Commission lacks the independence from government required to run the system efficiently.

Decisions that were made in the past for political reasons have contributed to the excessive workers' compensation premiums that employers pay today.

Legislated statutory reviews, like this one, are a prime example of turning operational decisions into political decisions. Decisions that impact the future sustainability of what is supposed to be an independent system.

Running an insurance system that is financially stable, requires decisions that are made in the long term best interest of the system. Politics should not, and must not, enter into the decision making process.

We need an insurance board that is truly arms length from government.

We call on the review committee to recommend legislative changes that will reduce political influence on the worker's compensation system, allowing it to run as an independent insurance program.

#2: Duration

The length of time it takes someone to return to work in this province is perhaps the single biggest area where our worker's compensation system is an extreme outlier from the rest of Canada.

This is a key cost driver of our workers' compensation system.

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2010 duration numbers from the Association of Workers' Compensation Boards of Canada show the Canadian Average (excluding Ontario who's statistics are not reported) duration is 65 days.

It shows NL's duration at 122.33 days. That's 57 days, or almost 90%, longer than the Canadian Average.

Just compare our statistics to the second worst province of Nova Scotia.

We are talking about our average return to work times following injury being 24 days longer than the second worst province. 24 days is almost an additional 5 work weeks. A month and a week.

Why?

Why does it take so much longer for a worker injured in Newfoundland & Labrador to return to the workplace?

The commission will use a variety of statistics to explain this discrepancy. Part of the reason is that we cover 98% of the workforce, including seasonal industry and some industry groups that are not covered in other provinces.

And in fact, the fish harvesting industry (which is one such industry) had an average claim duration in 2010 of 162 weeks -- a full 160% longer than the NL average.

Given the fact that claim duration in Newfoundland and Labrador is the longest of any province in Canada, claim duration in the Fish Harvesting Industry has one of, if not the worst return to full medical clearance rates in the country.

Clearly, this industry represents a challenge for our commission and our current system of Early & Safe Return to Work has failed this industry.

Every worker's compensation system in this country has its own challenges, and ours is no different. It is BECAUSE of our challenges we should be working harder

to reduce this extreme outlier in our system, as opposed to trying to explain it away.

Whatever the reason, these numbers are staggering. What does this duration statistic say to potential investors? The impact of negative perceptions about our province as a place to do business is significant.

There is no medical evidence to support a workforce in Newfoundland & Labrador that takes more than 10 work weeks longer, on average, to recover from workplace injuries than what is standard in the rest of the country.

A sprain is a sprain, regardless of what industry or province it happens in.

Is this the message that hard working Newfoundlanders and Labradorians want to send to potential investors in our province? Whatever the reason, this is not a statistic that anyone would be proud of and we are calling on your committee to finally address this long standing problem.

As I said earlier, if you have the most extensive system, you will have the most expensive system, unless you have the most aggressive legislation governing that system.

We need to be more aggressive.

We need stronger legislation around duration.

Practitioners of disability management will tell you that expectation setting is key to successful return to work plans. The biggest single determinant for a worker returning to work following an injury is that the worker expects to return to work. And it is in the best interest of the worker to be back in the workplace – because resuming their normal daily routine speeds recovery, makes them better off financially and is good for their psychological well being.

Standardized, medically accepted, disability duration guidelines tied to expectations for coverage is the norm in private insurance.

As an example – if you have an uncomplicated broken bone, there is a medically accepted duration guideline for full recovery of 6-8 weeks. If you are unable to

return to work for 3-4 months and there is no objective medical evidence to support continuation of the claim, the expectation for coverage has been met long ago.

These situations happen within our current system.

There needs to be a better understanding amongst all parties – workers, employers, the Commission and the medical community as to what these accepted guidelines are.

And the expectation for coverage under Worker's Compensation Insurance must align with these medically accepted recovery times for injuries unless there is objective medical evidence to support a longer recovery time.

This is not about kicking workers off claim before they are recovered. It is about setting expectations and limits within our employer funded system.

The NLEC is asking for you, the Statutory Review Committee, to recommend a change to our legislation that enshrines these expectations for recovery time and benefits coverage in our Worker's Compensation Act.

If we don't do this....costs increase, benefits to other injured workers are jeopardized, and the province's businesses, communities, and employees are viewed as unproductive and uncompetitive -- impacting investment in this province.

#3: Equality & Fairness for all workers:

In Newfoundland & Labrador, we have loopholes, loopholes, in our workers' compensation system.

One of these loopholes is the calculation of worker's compensation benefits for seasonal workers.

A recognized principal in worker's compensation legislation in all jurisdictions is to restore benefits to the worker at a rate no greater than what they would have received had the injury not occurred. This is a principle of all insurance.

Our legislation allows, in some cases, for seasonal workers to actually be better off financially on worker's compensation than if they had they not been injured.

This is because our worker's compensation legislation calculates benefits for seasonal workers the same as they do for non-seasonal workers, regardless of their employment history.

Workers compensation systems in other provinces recognize that, in fairness to all workers, seasonal workers should not be better off financially on worker's compensation than if they had not been injured.

Our province must do the same.

Worker's compensation is intended to be an income replacement program not an income supplement.

This is an unintended loophole that is contributing to the excessive costs of the worker's compensation system in this province and jeopardizing the security of benefits for all other workers.

We are asking for you, the Statutory Review Committee, to address this, and other loopholes existing in our system -- ensuring fairness and equality for all workers.

Conclusion:

It is important to remember that Worker's compensation is NOT a social program funded by government, it is an insurance system fully funded by employers.

In preparation for our Statutory Review submission we travelled across the province twice, the first time holding focus groups with employers to discuss their challenges and recommendations, and the second to attend the public consultations.

We have talked with many employers in this province, some who have presented to this committee, and some who were unable to.

Through these discussions, the impacts as outlined in the Gunderson research are clear: Our current system is too expensive and it is disadvantaging our employers, and “killing” investment, jobs and wages.

Locally owned businesses across this province have told us of losing out on contracts against firms from other provinces due to their excessive worker’s compensation costs, of the inability to hire or expand due to their high premiums, and of their worker’s compensation premiums being the difference between being profitable, or having to shut their doors.

You heard from some of these employers yourself. One employer in central Newfoundland told you that this system is “killing his spirit as an entrepreneur”

Employers in this province are tired of funding a system that finishes in last place.

Because even after two decades of paying the highest worker’s compensation insurance premiums in the country, the benefits provided to injured workers in this province are still not secure.

In 2013, all Newfoundlanders & Labradorians should expect, and deserve, better.

It would be irresponsible to discuss any increase in benefits until our system is financially secure.

Your committee must first recommend the removal of inefficiencies, inequities and loopholes that currently exist within our system that are driving up its cost.

Two decades is too long.

This is your opportunity to finally eliminate the tarnish this system represents on our province’s reputation. To eliminate its negative impact on our economy, to protect the long term best interest of the system and finally secure injured worker benefits.

The challenges within our system like those I’ve outlined today are MAJOR challenges that require MAJOR changes.

Other statutory review committees have made administrative or policy recommendations in some of these areas. These have not been effective.

We urge this committee to have the guts to do what's needed and make recommendations that go far enough. We need new legislation.

Be the Statutory Review Committee that is remembered for assisting Newfoundland and Labrador in its permanent transition from a 'have-not' economy to a 'have' economy.

We are not asking to be the best in Canada, but we encourage you to please make meaningful legislative change to our Worker's Compensation system that finally takes us out of last place.

We do not think that is too much to ask.

Thank you