

## **Positive messages from the WSIB/WCB**

[This is the press conference injured workers would love to hear the WCB Chair hold - on any other day than April Fool's Day.....]

### **News Conference: WCB Chair – April 1, 2010**

**The Chair:** Good morning ladies and gentlemen. We have called this press conference to send a positive message to the injured worker community as we embark on the new course following the Auditor General report on the unfunded liability. We have realized that the injured worker community is extremely concerned about statements that have been made by the leadership of the WSIB and we want to reassure injured workers that they are our first priority as they are the most vulnerable stakeholders and indeed, the very purpose of our 95 year old system.

The injured worker community has raised a number of concerns and we want to address them.

**Words hurt:** Injured workers have pointed out that we have used “hurtful” language in the recent discourse. At our presentation to the standing committee on Public Accounts on February 24, 2010 they were struck by our language towards reducing benefits, especially for the permanently disabled. They noted words such as “reduce our rate of long-term beneficiaries by half”, “tackle vigorously”, “most aggressive narcotic control in Canada”, “tough, tough proposals”, “some sort of pain”, “I don’t get any bonus unless I can meet this target” (pronounced by David Marshall \*). The only time the word “sensitive” was used, it was used with respect to being sensitive to premium rates. We can understand how this would have created apprehension. From now on, in our communications and actions, the principle of “sensitivity” will apply primarily to injured workers, for whom we are all working. There will be no bonuses associated with benefits, directly or indirectly. This creates a real and perceived conflict of interest and apprehension of bias.

**Actions speak louder than words:** Another concern was raised that while some of our communication was reassuring, our actions contradicted it. For example, in my 2009 consultation report I underlined that injured workers really wanted to return to health. Yet, I heard that our narcotic control strategy was in fact of great concern as workers feared being stranded at the pharmacy having to pay out of pocket as the WSIB overrode their own physician. Several injured workers who were already promised full benefits at lock-in (6 years after injury) are now being sent to LMR so that they may be “retrained” or “deemed” employable resulting in decreased or eliminated benefits. We will put a stop to this. There will be a consultation on our medical strategy but it will be based on what is best for the patient, not on the cost principle, and it will not override the treating physician. There will be no “targeting” of the “locked in” or about to be locked in population, as it has a very serious and sad profile. These are generally older injured

workers, with several injuries and are in significant pain. We did not intend to create more hurt or anxiety in this vulnerable population.

**Sacrificed at the altar of the unfunded liability.** The concern was that the new emphasis on dealing with the unfunded liability was going to penalize the injured. They said that when we told the Standing Committee we said we had to be “sensitive” about increasing employer premiums, it meant that injured worker benefits, by default, would be the major target. This was compounded by the admission that had it not been for the premiums reductions under the Harris Governments, there would be no unfunded liability today. We understand the injured worker concern now. They did not create the financial market crisis, employer premiums were reduced, yet, somehow, they have to pay the price? It makes no sense, and we agree. We will now be sending a new message: injured workers have been unfairly targeted in the past, employers have had a premium holiday for too long, and the solution must reflect this reality. We will be reminding our employer stakeholders of their responsibility to fund the system appropriately, of their past “debt” toward its finances, and that injured workers cannot be sacrificed at the altar of the unfunded liability.

**Compromise between workers and employers not a poll:** The Auditor General, the Ministry of Labour and our recent discourse have noted that injured workers want improved benefits, yet employers want rate containment, and that a compromise must be found within the financial constraints of the times. This may be a good poll, but is not Meredith’s historical compromise. Meredith did not say there needs to be a balance between “benefits and premiums”, but rather justice for injured workers as a result of the bar to the right to sue. We will also remind employers, especially small and medium employers, of the great benefit that stems from Meredith’s historical compromise: no courts, no lawsuits, predictable costs.

**Old stigma and new stigma.** In our recent discourse, we have noted that there is stigma against injured workers and we are proud to have said so. However, injured workers have noted, for example, that we did not distance ourselves from the KPMG value for money audit on LMR. This report said that compensation rates (which include “deeming”) are too high and create a disincentive to work. Injured workers see this as the same old Harris style stigma suggesting that injured workers are lazy and enriching themselves. We do not agree with KPMG’s assessment. In addition, we will commit to no longer using actuarial language such as “persistent claims” or “long term beneficiaries” that depersonalizes and de-facto stigmatizes injured workers. It was not our intention to do so, and we will be more sensitive to our most important community.

**Measuring the cost of long term disabilities is the most unfair measure of our success.** We have heard that measuring the number, rate and cost of long term disability is guaranteed to hurt injured workers. This is the wrong measure, they feel. We know that many workers will fall through the cracks as employers, especially in non-unionized workplaces, will find other ways to get rid of them. They will not become entitled to long term benefits, but will end up out of work by other means and end up in poverty instead of becoming our responsibility. From now on, our measure of success will focus

on **all** stages of the compensation process and will be based on what is just, not what the cost is. The new measures will be integrated and positive: 1) suitable, meaningful and sustainable accommodation in the injury workplace; 2) the best vocational rehabilitation for the worker; 3) just compensation. I will explain in more detail this exciting positive strategy for injured workers.

**Suitable, meaningful accommodations.** Emphasis on re-employment of injured workers is not new. We want to improve it. It is a challenge to re-employ the permanently disabled, particularly when there is no union. This focus, rather than the focus on cutting benefits will be our guiding principle. We will offer the WSIB's resources, including LMR services to this end. However, the WSIB will make it clear that it is not a system to be abused by employers wanting to avoid compensation costs. **Our emphasis on accommodation will not result in a lesser emphasis on vocational rehabilitation or compensation.** We realize that we cannot legislate employers into keeping an injured worker they do not want. Our staff will play a **protective role** for workers in need as the level playing field, we know, is not level and the imbalance in power has long been an injured worker concern.

**Vocational Rehabilitation.** We will not make the mistake of de-emphasizing vocational rehabilitation in the unrealistic hope that all injured workers will be re-employed in accommodated jobs. I looked at the profile of our locked in population: these are very disabled people, I expect that for many re-employment will not work. We cannot undermine vocational rehabilitation, therefore. The "political train" is going towards a reduction of rehabilitation assistance after the return to work stage, following the KPMG report. I will stop that train and try to reverse its direction. And yes, I heard your concern about KPMG's long term thinking about folding LMR into employment insurance. We do not consider this a legitimate part of the LMR audit, and see it only as an academic exercise. We need a truly independent consultation process to forge ahead on long term improvements of LMR.

**Compensation for Long term Injuries.** We were simply wrong to focus on this part of the equation as the measure of WSIB success. We have come to realize the opposite now. Why do we have a "lock in", first of all, after which benefits are no longer reviewed? We have a lock-in after approximately 6 years from the injury when we decide what benefits the injured worker will receive until age 65. The lock in idea came as a result of Professor Weiler, the theoretician of our "wage-loss" legislation, who responded to Professor Ison and injured workers' fear of a system of "perpetual probation" after losing lifetime pensions for permanent disabilities. After 6 years or so, it was assumed that the wage loss profile of the injured worker would be clear.

Here is what we are thinking now. At the 6 year mark, things are pretty clear. If an injured worker is still disabled by now and not working, despite his efforts, he is unlikely to work - period. I mean, the employer did not accommodate, VR did not help (we know that only 50% are employed after LMR), so the injury has made this worker essentially unemployable. He or she should have financial security, period!

I can already predict the cries from some employer lobbyists about this. But we are on the high moral ground here: I will say Wait a minute. He or she got injured in your workplaces. They cannot sue. You did not accommodate. After LMR no work was offered due to the stigma your community has in rehiring injured workers. Now, you want him or her to be in poverty? Of course I have trust in the corporate responsibility of our employer community and will be a champion of injured workers. Justice Meredith was a statesman. He stood up for what was just; he was not hampered by “political panic” and paved the way for a system based on justice and fairness. I will endeavour to continue this proud tradition.

Thank you very much!