

Presentation

To

The WSIB Funding Review
(Chair – Professor Harry Arthurs)

Thunder Bay, Ontario

Presented by: Jules Tupker

April 13, 2011

Good Afternoon,

My name is Jules Tupker and I am pleased to be here today to respond to your "Green Paper" on funding Ontario's Workplace Safety and Insurance Board.

I am retired now but in my working career I was an employee of the City of Thunder Bay for twenty two years and during that time became active in the union and over time became the president of CUPE Local 87 (municipal workers) for a number of years. My union work with the city led me to becoming a National Servicing Representative with CUPE for eleven years, servicing twenty five bargaining units throughout Northwestern Ontario.

During my union career I assisted many employees with their WSIB issues, including filing claims and assisting with their appeals. I have a fair knowledge of the workings of the WSIB however I do not have a great deal of knowledge on the problems being experienced by the WSIB as presented in your Green Paper and I have to tell you that my presentation today is based more on perception and observation than on personal experience or knowledge of WSIB operations.

Throughout my working career I was always concerned with the welfare of my co-workers and in my retirement I have expanded that concern to all the citizens of Thunder Bay. My whole life I have tried to speak up for those employees and citizens that are unable, for various reasons, to speak for themselves.

I am a member of the United Way of Thunder Bay Board of Directors and am also currently Campaign Co-chair for the 2011 campaign. I am on the Board of the Thunder Bay Food Bank and I am active in the Thunder Bay Health Coalition and in a number of other organizations dealing with people that need assistance.

Over the past few years since I have been retired I have met many citizens in Thunder Bay that are struggling because of financial difficulties and a number of these people are disabled workers that have permanent disabilities and are receiving WSIB benefits. I can tell you that I am shocked to see the conditions that these disabled workers have to live in because of lack of sufficient funding from the WSIB.

In researching for my presentation I contacted the Injured Workers support Group in Thunder Bay and discovered some facts that verified what I had personally concluded; those being that a large number of injured workers live in poverty and have no hope of ever returning to good paying jobs. My research also led me to the Provinces "Sunshine List" that revealed that over 280 administrators and managers in the WSIB were earning over \$100,000.00 per year and in fact their salaries totalled more than \$38,000,000.00 in 2010. That is an average of well over \$130,000.00 per year.

These figures echo a trend that has been happening for the past twenty to thirty years of executive wages throughout the country increasing at an astonishing rate while the wages of the working/middle class have been falling further and further behind and the income of more and more poor people has fallen below the poverty line.

I raise these points because I have read your Green Paper and I have a fear that you will hear numerous presentations from employers and their lawyers and accountants crying about how hard done by they are with the premium rates that they now have to pay and that an increase in premiums would be impossible to absorb. I fear that you and your panel will be under a great deal of pressure from those employers and the government to take action that will result in the workers, who have suffered workplace injuries while working for those employers, bearing the brunt of any action that you and your panel may decide upon. I am here to raise my voice for those workers.

Issue 1: Funding

In reading your Green Paper I am amazed that other provinces have been able to maintain a funding ratio of 100% yet Ontario is only at 54% and that Ontario has been trying to eliminate this disparity since the 1980's. This in what was at the time the wealthiest province in the country. Business and industry was booming and yet no one could see to it that the workers injured in these businesses and industries were provided for. I find this astounding.

On page 7 of the Green Paper there are eight explanations for the shortfall in funding and I would like to make comments and suggestions on them at this time:

1. Health care and other benefit costs have been rising steadily;

I would like to point out that wage discrepancies have been rising steadily also and research has shown that health costs are higher in societies where wage disparity is greater (Spirit Level by Richard Wilkinson and Kate Pickett). Maybe if the government moved to rectify wage disparity the health care costs would decrease.

2. Premiums have not kept pace with rising costs and new commitments;

An easy resolve to this problem is to increase premiums at a reasonable rate; perhaps the rate of inflation on an annual basis.

3. Employers resist paying higher premiums.

Of course they resist. However they did sign an agreement that they would provide compensation in exchange for not being sued by injured workers. They seem to forget that these

workers were injured while performing duties for these employers. Compensation is defined in the Webster dictionary as “that which is given or serves as an equivalent for services, debt, want, loss or suffering”. There is a cost involved in honouring that agreement.

4. Negative economic conditions make the WSIB and the Ontario Government reluctant to impose higher premiums.

Economic conditions have not always been poor. What happened when times were good? If the WSIB and the Government had implemented an annual CPI increase as I suggested above from the beginning then the funding shortfall would not have been so high and perhaps an exception could have been made in times of poor economic conditions.

5. Experienced-based premium-setting-premium rebates for employers with “good” records, premium surcharges for those with “bad” records – have drained funds from the system;

The system of rebates should be scrapped because I believe that employers have for years hidden workplace injuries from WSIB in order to get these rebates and to not be charged for having a “bad” record.

I am always amazed when I see a company involved in heavy industry such as a lumber mill or paper mill announcing that they have gone “injury free” for a long period of time, sometimes even up to a year. This is impossible.

6. The WSIB’s investment portfolio has experienced poorer-than-anticipated results, largely due to the collapse of global financial markets in 2008;

Admittedly these are things that are unexpected but should be anticipated. My investments were also affected but prior to 2008 my portfolio grew and in the past year it has started to grow again. I expect the WSIB’s will follow the same path.

7. Stakeholders including employers, health care providers and workers abuse the system.

During my working days I encountered all three of these abusers but they are a part of doing business no matter what business you are in. Making these individuals accountable will improve the system.

8. The WSIB operates inefficiently;

If inefficiency is known then something should be done about it. Making workers accountable for their actions through good management skills will bring positive results. As I stated earlier, there are over 280 managers and administrators earning over \$130,000.00 per year. Surely they should have the skills to do something about inefficiency in the workplace. If they can't do anything about it then maybe someone should be looking at the managers and administrators.

On page 8 you list the four initiatives that the WSIB is implementing or attempting to implement. The first two initiatives in my labour oriented mind mean –consolidate the workload, lay off workers and reduce any labour costs that you have, i.e. wages and benefits. The third initiative of finding a better investment strategy is something that everyone including me and my investment advisor are always looking for. The final initiative again raises alarms in my labour oriented brain in regards to returning injured workers back to work sooner (before they are ready to return), reducing health care provisions and finding other ways to diminish the lives of injured workers. These four initiatives are what I talked about in my earlier comments about my fear that employer pressure will push you toward these types of actions as a resolve to the funding problems. I may have a labour bias in my thinking but more times than not I have been proven right.

To further make my point I refer you to your own comments about the wording in Bill 135 as shown on page 10 of the Green Paper that says that the WSIB is now forbidden ...”to burden unduly or unfairly any class of Schedule 1 employers with payments, (a) in any year in respect of current benefits; or (b) in future years in respect of future benefits”. Again my labour oriented mind can hear the employer’s lawyers listing innumerable burdens that they define as “undue” and “unfair”. But who will be there to represent the injured workers when the funding becomes insufficient and the decision is made to reduce the benefits and services for the injured workers.

Page 9 of the Green Paper points out two flaws in Ontario’s Compensation System such as the fact that other provinces require their compensation schemes to maintain full funding and that most other province’s compensation schemes have established reserve funds to meet special expenses. Again I am amazed that Ontario, the formerly richest province in the country and the so-called hub of business and industry, has never implemented these two key cornerstones of workers compensation theory.

Key Question 1:

What should the WSIB set as a funding target?

I would suggest that the WSIB set a full funding target with a reserve fund of five percent to cover emergency situations.

Key question 2:

What is a reasonable time frame for the WSIB to reach its funding target, having due regard to the possible impact on premiums and/or benefits?

I would suggest that five (5) years would seem reasonable time frame to reach full funding. Remembering that there has never been full funding and the system has been able to survive up until this point.

Issue 2: Premium rates

I am amazed that the province has not been able to establish premium rates that would meet the expenditures of the day. These are basic accounting principles that every person and/or household should live by. Sad to say a number of injured workers are burdened by the same dilemma as the WSIB in that they do not earn enough to meet the current expenditures of the day, so they can relate to the WSIB's problem albeit for a different reason.

Your Green paper again spells out quite clearly the situation. I believe employers should be required to make payments that maintain the fund. It is their obligation to ensure that injured workers are compensated for their injuries. That was what they had agreed to.

Key question 3:

Is the current WSIB premium rate setting methodology appropriate? If not. What changes would improve it to ensure that premium revenue covers costs?

I wonder why the government sets the premium rates but does not contribute to the fund when it reaches a shortfall and yet pulls money from the fund. In fact government and some of its agencies received some \$372 million in financial support from the WSIB in 2009 (see page 6 of the Green Paper). I believe that the WSIB should set the rate based on sound financial theories that would ensure that full funding is maintained. Tying the rate to the CPI might be appropriate in maintaining the fund over the years.

Key question 4:

Should premium rates increase until the WSIB's funding target is reached?

Yes. Rates increases will have to be applied until the full funding target is reached and then annual increases and or decreases will become automatic with changes to the CPI.

Issue 3: Rate groups

Coming from a union background, I am a firm believer in “all for one and one for all”. I believe that all businesses should be covered by the WSIA. There should be no Schedule 1 and Schedule 2 employers. All employers should be in Schedule 1. By including all employers in the process the premiums costs would be spread out over a much larger group thereby, I am sure, lowering the premiums for everyone.

The Green Paper tells me there are 828 classification units and that there are 154 rate groups. These numbers are remarkable to me. How can there possibly be that many? Who looks after determining what classification a business falls under and what rate group a business falls under? That must take a lot of work by a lot of people. If experience determines the rate group, can a business then move to a different rate if their experience goes up or down? If that is so, then I again have to wonder if employers will fudge their records by having injured workers not make claims in order to get into a lower rate. This all sounds very confusing to me.

Key question 5:

Is WSIB’s rate group structure appropriate, given the principle of collective, no fault liability?

I don’t believe it is. As I said in my opening comment on this issue, I believe that all employers should be included under the WSIA and that a smaller number of rate groups should be adopted. I cannot give you a number, but 154 seems to be too many. British Columbia has 65. That sound reasonable.

Key question 6:

What opportunities exist to improve the rate group structure?

We don’t have to reinvent the wheel here. Other provinces seem to have a better, less complicated rate group structure. Why not look at what other provinces are doing well and implement those ideas.

Issue 4: Employer incentive programs

The Green Paper points out that the monetary difference between rebates and surcharges favours the rebates by over \$18 million in 2009. The Green Paper also lists criticisms of the program.

As I have stated earlier, I believe employer incentives encourage employers to not report injuries. Pressure is put on injured workers to not fill out the WSIB forms but to come to work and “lay low until you feel better”. I have seen these situations on numerous occasions and no matter how much I encouraged employees to fill out the forms, they quite often did not want to piss off the boss and did what they were told to do. Most times nothing came of the situation but in some cases reoccurrences did happen and of course there was no record to fall back on.

The Green Paper describes two practice based incentive programs that apparently are hard to assess for effectiveness or integrity and they cost the WSIB over \$34 million. Combine these costs with the \$18 million given away on rebates and the WSIB is out another \$52 million.

Key question 7:

Is the present design and operation of the WSIB's employer incentive programs appropriate? If no, how should they be changed?

No. I do not believe these incentives and rebates work. A better incentive might be to tell employers that they will not suffer an extra premium rate increase if their injury experience improves or remains the same but a penalty will be applied if their experience rate increases. It may not change the employers habit of fudging the claims but at least the WSIB will not have to pay out millions of dollars every year for possible little improvement in the program. The money could be used to improve health and safety programs.

Key question 8:

What other incentives might be used to promote increased safety in the workplace and re-employment of injured workers while ensuring equitable treatment of employers and maintaining the WSIB's premium revenues?

Please refer to my response to question 7 above.

Issue 5: Funding for occupational disease claims

I'm afraid I know very little about occupational diseases. The Green Paper states that claims are rising and I can only assume that it is because workers that were not protected over the years are now living longer because of better health care but are still experiencing symptoms just the same. I also assume or hope that safety practices have improved over the years and that occupational diseases will decrease at some point, however with more and more exotic chemicals coming out, occupational diseases could get worse.

Key question 9:

How should occupational diseases claims be funded?

I believe that occupational diseases should not be funded separately. They should be funded from the general fund. I have found that separate special funds have a tendency to run out of money leaving organizations scrambling to find ways to meet the shortfall.

Key question 10:

Should they be a collective liability for all employers or charged back to specific employers?

As I stated in question 9 above, funding should come out of the general fund however this may be an occasion where a special rate group could be created

Key question 11:

Should the WSIB establish a special fund for occupational disease claims?

No. Please refer to my response to questions 9 and 10.

Issue 6: Indexation of partial disability benefits

The Green Paper indicates that indexation has been a hit and miss proposition leaving partially disabled workers having to cope with increased costs on their own. Being injured on the job in any way can be very traumatic on an individual and her/his family. Any loss of income has an adverse effect on the individuals involved. A loss of income no matter how small can never be recouped. I am shocked to learn that the WSIB's reduction in indexed benefit payments adversely affected 150,000 injured workers, but positively benefitted the WSIB by having its financial liabilities reduced. The WSIB should be ashamed to admit that cutting indexing to disabled employees helped their bottom line. They are supposed to be protecting disabled employees.

Key question 12:

Should the present indexation formula - that provides limited inflation protection for partially disabled workers - be replaced. And if so, by what?

I believe that full indexation tied to the annual CPI should be implemented. Workers injured on the job deserve to be compensated for their injury and ensuring that compensation maintains its value over the years is appropriate.

Conclusion:

Over the many decades that the WSIB has been in existence it has been lauded by thousands of injured workers and it has been cursed by maybe nearly as many, but none the less it has been able to carry out to a great degree of success, what it was created to do. It has done this despite, what I believe to be, poor fiscal management on the part of the administration of the WSIB and the government of Ontario.

The WSIB has been declared, by some powerful people, to be in an unfunded liability “crisis”.

Last year I read Naomi Klein’s book called The Shock Doctrine and in it she describes how power brokers in both the public and private sector create what they call “crises”. These power brokers use these so called “crises” to then convince the general public that drastic action has to be taken by the government and business to resolve these “crises”. In the end however, the power brokers walk away with ultimately more power and profits and the general public ends up paying the price.

I see in this WSIB funding “crisis” a very similar scenario. The power brokers (both government and business) claim that the WSIB is in serious financial trouble and that drastic action has to be taken.

I envision business walking away from this “crisis” with a better financial situation than it has now and I envision the injured workers bearing the brunt of any changes that may be put into place.

The WSIB was established to protect employers from being sued by their workers that were injured at their workplaces. It was also established to provide “compensation” to the injured worker for her/his injury.

The injured workers are not responsible for the Unfunded Liability and they should never be punished because of it.

Thank you Professor Arthurs and the members of your panel for your concern in this issue and for listening to my presentation.