

A Submission

to the

Workers'
Compensation
Review
Committee

by the

Saskatchewan
Federation
of Labour

September 18, 2001

The Preeminent Stakeholder

The Saskatchewan Federation of Labour (SFL) represents over 85,000 unionized workers across the province who are members of some three dozen trade unions affiliated to our organization, as well as seven labour councils and 800 locals.

The SFL is the largest labour organization in Saskatchewan. Our affiliated unions represent people in every sector of the economy. Our members work in uranium mines in the far north, electrical generating stations near the U.S. border, steel, pulp and paper mills, retail food chain stores and warehouses, government offices, construction sites, group homes, chemical plants and oil refineries, day care centers, correctional facilities, schools, nursing homes, saw mills and lumber camps, universities, hospitals, hotels, fast food outlets, on trains, planes and buses, in municipal governments, lunch counters, restaurants, financial institutions, in potash mines, credit unions, book stores, the Workers' Compensation Board as well as hundreds of other jobs.

In addition to the organized workforce, the Federation has for more than half a century now assumed the responsibility of speaking for all workers in the province - organized and unorganized.

The SFL is **the** organization of working people in Saskatchewan. It is our people - well over 300 thousand of them - who are covered by the Workers' Compensation Act. And it is our people - some 37

thousand of them – who in a typical year get injured, maimed or killed on the job and require a response from the Workers' Compensation Board.

It is not a lack of humility that prompts us to say we are the preeminent stakeholder in the Workers' Compensation Board. The Board's policies, activities and operation is vitally important to us, our members and the people we represent. No other group or organization has a greater interest in or reliance on the Workers' Compensation Board.

A Great Opportunity

The Saskatchewan Federation of Labour appreciates being part of this review process. In our view it is important that we regularly reassess and update our Workers' Compensation system. Saskatchewan workers and their dependents will be better served by a compensation statute and delivery system which is reliable, efficient and relevant.

The Workers' Compensation Board is a sizable and complex mechanism. The WCB extends its coverage and services to employees in more than 35,000 workplaces. The Board manages assets worth over a billion dollars. Its mandate requires the Board to rehabilitate, retrain and assist in re-employing working people whose bodies and lives have been shattered in work site

accidents or poisoned by exposure to an ever increasing list of toxic substances. The Board is at times the sole support of the spouse and children of a fatally injured worker. It is exceedingly important that the Compensation Board operate effectively.

A Solid Foundation

The origin of the present Saskatchewan Workers' Compensation Act can be found in groundbreaking legislation passed in Ontario during the second decade of the last century.

That was a time when maimed workers or widows and orphans could attempt to sue their employer for injuries or fatalities suffered on the job. However, any objective assessment of this arrangement revealed an outrageously biased legal framework weighted heavily in favour of the bosses. Employees assumed all the risk when they went to work. If they were crippled or blinded or lost a limb there wasn't even the prospect of winning compensation unless they could prove criminal negligence.

Ontario law limited claims by maimed workers to just three years earnings, but only if the worker could prove that he or she had specifically not assumed the risk associated with the job, or had not waived the right to sue. An employer could, and regularly did, demand that a worker sign such a waiver when being hired.

The injured employee also had to demonstrate that the accident was the result of defective machinery, negligent supervision or improper procedures.

If by some unlikely series of flukes a victim of a workplace accident did win a lawsuit against an employer, the judgement could impose a heavy economic impact, particularly on a small company. If the court's award drove the company into bankruptcy everybody lost - sometimes even the lawyers didn't get paid.

The system was so utterly inefficient at delivering compensation to injured workers many early trade unions maintained their own accident funds - which had limited revenue and therefore paid out only modest amounts. Unorganized working people were without even that.

An entirely new arrangement was obviously needed; a fact which many employers also recognized.

Enter Judge Meredith

In 1910 a progressive, reform-minded son of a blacksmith named James Whitney was Premier of Ontario. He appointed the province's chief justice, Sir William Meredith, to head a Royal Commission of Inquiry into a better means of compensating injured workers.

Meredith was a gifted thinker with an innovative mind. In his royal commission's final report he made the following brilliant and practical recommendations:

- No fault compensation, so that workers are not required to prove someone is to blame for their injuries in order to obtain benefits.
- Security of benefits guaranteed by a dedicated fund that provides for all future costs of injuries.
- Collective employer liability so that costs are shared through compulsory mutual insurance wholly paid by employers.
- An independent Board representing workers and employers, deciding claims and collecting assessments entirely autonomous from government control.
- Exclusive jurisdiction, protecting against the cost, delay and uncertainty of litigation by making Board decisions final and conclusive.

Predictably, Meredith's recommendations were condemned by the likes of the Canadian Manufacturers Association, which labeled them "preposterous". The Canadian Lumbermen's Association condemned the report as "socialism of the worst kind, and a most vicious measure."

This foolish rhetoric was ignored by Meredith. He pushed for the enactment of his report.

And he had some persuasive arguments such as the case of the thirteen year old boy put to work by his widowed mother, who had his hands sheared away on his first morning of work, or the young Brantford girl caught by an unfenced wire cable coming through the floor of her factory and torn to pieces. Judge Meredith argued that to deny compensation to workers such as these was inhumane.

In 1914 the Ontario legislature passed the milestone Workers' Compensation Act incorporating Meredith's principles.

Other provinces followed, such as B.C. in 1917 and finally Saskatchewan, which passed legislation in 1930 modeled on the Ontario statute.

From its earliest days Meredith's Report had the enthusiastic endorsement of organized labour. Fred Bancroft, Trades and Labour Congress vice-president, campaigned for years to have legislation passed in all provinces based on the Meredith recommendations. Union support for the Meredith Principles remains strong to the present day.

We note that the most recent annual report of the Saskatchewan Workers' Compensation Board contains a commitment to "Promote, preserve and apply the Meredith Principles".

The Saskatchewan Federation of Labour urges the Review Committee to include in its report a call for the continuation of the Meredith Principles as the foundation of our Workers' Compensation system.

Eliminating accidents

The primary objective of the Workers' Compensation Board should be to bring down the number of work related deaths and injuries. At present the WCB devotes the majority of its resources and staff time to assessing claims, determining benefit levels, rebating premiums and arranging for claimants to make an early return to work. Accident prevention has been relegated to the status of an afterthought.

In some other provinces such as British Columbia, Quebec, New Brunswick and the Yukon, the compensation boards conduct impressive, large scale accident prevention programs. Our Board's efforts are pale by comparison.

When the Occupational Health and Safety Branch was created by the Department of Labour in the 1970s, accident prevention was given an enhanced profile for a number of years. The Branch took seriously the OH&S Act provisions of the right to refuse dangerous work, the right to know what substances you are working with and the right to be involved in decision-making.

The original OH&S Branch director, Bob Sass, made his agency a worker-oriented center of expertise on workplace hazards and occupational diseases of all kinds. The Branch became one of the most worker-friendly and accessible agencies of government. It should be our aim to re-establish that arrangement.

The Federation of Labour would very much like to see **accident prevention programming greatly expanded**, with additional funding coming from the WCB. The programming should be delivered by the Occupational Health and Safety Branch of the Department of Labour, which is regarded by working people as their organization. OH&S is a better vehicle than the WCB for delivering safety training.

A real Occupational Health and Safety Centre

The Saskatchewan Federation of Labour for many years called for the establishment of **an Occupational Health and Safety Centre in this province** with the WCB providing the necessary funding. We proposed as a model the **OH&S centre such as has been in existence in Manitoba for some years.**

In the late 1990s the Romanow government set aside a modest allocation of funds for a center to be located at the University of Saskatchewan.

It was our hope that this Centre would aggressively investigate and identify threats to workers' health and be a leader in the fight to put an end to such hazards. We also wanted an extension or outreach element in the Centre's operations to widely disseminate information on such things as the myriad of complex new chemical compounds in the workplace and the symptoms of exposure.

We had hoped that the Occupational Health and Safety Centre at the University of Saskatchewan would concentrate special attention on researching hazards that are unique or very common to Saskatchewan workers. The Centre could have also acted as a local library of up-to-date data on workplace disease causing agents, and the best accident prevention techniques. The Centre should undertake studies of the health and accident threats associated with shift work.

Unfortunately we are still waiting for the Centre to evolve into such an agency. Workers would welcome a recommendation by the Review Committee that urged the OH&S Centre be transformed into the type of centre which exists in Manitoba.

Occupational Disease Panel

The SFL would urge the Review Committee to consider recommending the **establishment of an Occupational Disease Panel** to be composed of recognized experts in the area of workplace

hazards to health. The Panel would be external to and independent of the WCB but would advise the Board on such things as emerging or evolving threats to employees' health. For example the Panel could clearly spell out the job-related dangers faced by firefighters from such things as brain cancer, leukemia and heart disease and make recommendations to the Board.

Safety Grants

The WCB presently pays "safety grants" to nine employer associations in the hope that this will somehow reduce on-the-job injuries. This practice has expanded in recent years to include more employer associations and cost the Board over \$2.6 million last year. This safety grant program has inadequate guidelines and there is inadequate accountability. The program should be ended immediately.

With Safety Grants the WCB has in effect contracted out, or privatized its accident prevention efforts, turning that vitally important work over to associations representing construction contractors, farm machinery fabricators, trucking company owners, health care executives and other demonstrated non-experts in the field of occupational health and safety.

The labour movement has presented evidence to several very senior Board officials and ministers of labour that the recipient employer associations use this safety grant money to run their

general office operations, pay salaries to a variety of people unrelated to safety and to rent office equipment for the association. What these employer groups have not done with the grant money is bring down the high rate of accidents in their sectors. In some of the nine sectors there are rival associations, but only one receives grant money. It is little wonder then that the safety training is haphazard and inadequate.

Our strong objections to the safety grant program apparently did give rise in the mid-1990s to the creation of joint employer-employee advisory committees to offer suggestions about the spending of safety grants, but nothing more. All the important decisions, concerning terms of reference and objectives, are still made by the associations' management. The employee members of one advisory committee report some headway in influencing the committee's direction, but most of the employee members of safety grant advisory committees have repeatedly confirmed the shortcomings of the grant program.

Several years ago the obvious problems with the WCB safety grants program compelled the SFL to apply under the Freedom of Information Act for all reviews and assessments that had been done on the effectiveness of the program. That FOI request is presently bogged down in an appeal, but it is interesting to note that several of the employer associations objected vigourously to any such disclosure. Our position is clear. If the safety grants are

doing the good job the employer associations claim, provide us with the proof which will be contained in the reviews.

We would call on this Review Committee to recommend that the **assessments done by the WCB into the effectiveness of the safety grants program be made public.**

We would also advise that the best recommendation that the Review Committee can make is for the **safety grants to be ended** completely before more millions of dollars are wasted. That money should be spent by a legitimate agency such as the OH&S Branch of the Department of Labour.

Prevention Services

The WCB provides financing to the Prevention Services Branch of the Department of Labour. Over \$600 thousand dollars annual flows to this agency – more than is allocated to the Worker's Advocate office!

Since a sizable amount of the instructional and advisory activity the Prevention Services Branch does is in the area of acquainting employers with Labour Standards and other laws and regulations unrelated to workers' compensation, we believe the **funding for Prevention Services should come from the**

Department of Labour's budget or directly from the provincial treasury not out of the funds of the Compensation Board.

Benefit levels

WCB benefits paid to injured Saskatchewan workers have been set at 90 per cent of net wages since 1985. The maximum weekly payment is currently \$645.05 for an injured worker with a spouse and nine dependent children. For an injured worker and a spouse the amount is \$618.17. If the injured worker is single with no dependents the weekly benefit level is \$584.85. The minimum weekly payment is \$282.03, or 100 per cent of earnings if the calculations provide less than that amount.

90 per cent of net earnings, as the basis for compensation benefits, is quite common throughout Canada. It is the standard in Alberta, Quebec, the Northwest Territories and Manitoba (for the first two years of a claim, after that Manitoba drops the rate to 80%).

A number of other provinces base their compensation payments on 75 per cent of gross earnings, which is roughly equal to 90 per cent of net income.

So despite what the Review Committee will very likely hear from business lobbyists, our Workers' Compensation benefits are not out

of line or excessive. There is no good reason to reduce WCB benefits to injured workers.

We do not favour a return to the practice of basing compensation on 75 per cent of gross earnings, since that will yield slightly less in benefits to lower income injured workers.

The SFL would like the Review Committee to seriously consider the proposition that there should be **no** loss of earnings during the period of enforced convalescence or partial loss of employment due to a workplace accident. The reduction in earnings experienced by injured workers who are forced onto Compensation is one of the major problems our members encounter when involved with the WCB. Maintaining a normal income for themselves and their families would be of immense benefit to job-site accident victims as they recover.

Furthermore we would prefer to see the **employer continue to pay the normal wage and provide the regular employee benefits to the injured worker** and then have the company reimbursed by the Board.

It is our view that the **permanent functional impairment rating schedule badly needs updating** to correspond with the financial requirements workers have today rather than the 1980s. We also believe the **PFI schedule should be published** and available.

We would also urge the Committee to recommend an **increase in the allowance for funeral expenses.**

\$48,000 cap

At present section 38.1 of the Act contains a maximum insurable earnings cap of \$48,000 annually. This cap has become badly outdated. Most other jurisdictions have raised their caps at least once since Saskatchewan imposed the \$48,000 limit in 1985, and other provinces now have caps well above ours.

Well over a thousand workers are disadvantaged by the \$48,000 cap in a typical year. According to the table entitled Number and Range of Time Loss and Fatality Claims in the WCB policy manual there were 1,096 injured workers impacted by the cap in 2000. That is 8 per cent of all time loss claims accepted last year, and that percentage is growing.

Since 1985 the cost of living has gone up substantially. From a basis of 100 in 1986 the consumer price index rose to 128.2 by August of 1992. With a new basis of 100 established in 1992 the CPI has risen to 119.1 by the end of December 2000. Meanwhile the \$48,000 cap has been unchanged since 1985. If the cap had kept pace with inflation it would now be over \$60,000.

Our position is that **there should be no cap** whatsoever. Why should workers who have achieved a decent employment income be forced into having their standard of living slashed simply because of an on the job accident which they neither desired nor in most cases caused? Why should a higher than average pre-injury wage, in effect, result in a injured worker subsidizing employers' WCB premiums? A complete elimination of the cap would be consistent with the Meredith Principles and provide for fairness to injury victims.

Indexing

Apart from the \$48,000 cap, injured workers in Saskatchewan have their WCB benefits sheltered from losses due to inflation. Increases in the Consumer Price Index and the average weekly wage are reflected in adjusted benefit levels.

Indexing to protect people from increases in the cost of living is fairly common. It is part of Canada's public pension plan for seniors and many private pension plans. COLA clauses in collective agreements are a form of indexing to allow for inflation protection. Business provides its own income protection by increasing prices on what it sells.

Disabled workers are no less deserving than all the others who receive cost of living adjustments, and they are in fact less able to cope if the Act is changed to remove or reduce indexing. The

Federation of Labour calls on the Review Committee to do what is obviously the right thing and **maintain full indexing** for WCB claimants.

Delaying benefits

The Saskatchewan Workers' Compensation Board commences payment of benefits on the day following the injury. This is the practice followed by the majority of other provinces. Alberta, Ontario, Quebec, Nova Scotia, Newfoundland and the Yukon require the employer to **pay the worker for the day of the injury**. Saskatchewan's Act does not require this but should.

New Brunswick has a three day unpaid waiting period, but reimburses workers whose injuries last longer than four weeks. Nova Scotia has a two day waiting period, but waives it if the claim lasts more than five weeks.

There is no reasonable argument to be made for forcing disabled workers to serve out a waiting period before compensation is paid. A waiting period would simply encourage abuse of sick leave or disability plans. Workers don't ask to be maimed, crushed, burned, or turned into quadriplegics. They shouldn't be asked to forgo, even briefly, the payments that are meant to, at least in part, compensate them for the damage they have suffered.

Seasonal and casual workers

The method by which WCB benefits are calculated for seasonal and casual workers may attract some criticism from those advocating reduced Workers' Compensation expenditures. At present the Board uses the worker's "daily, weekly, monthly or regular" pay, or one fifty-second of the income in the 12 months preceding the injury, whichever is greater, in calculating average weekly earnings of these part-time workers. That sometimes results in a level of benefits higher than would be the case if annual earnings alone were used to compute the rate.

In considering this issue it's best to keep in mind that it is not a period of unemployment that is interrupted by a compensatable accident, it's a period of work, which may include a relatively high hourly rate of pay. Without the injury, and resulting time away from work, the claimant would have been working and earning an income at that higher than average wage rate.

Seasonal and casual workers are already disadvantaged by being laid off for portions of the year, they **should not be doubly penalized when injured, by having their compensation rate cut back.**

Pre-existing conditions

Section 50 of the Workers' Compensation Act deals with pre-existing medical conditions. It is our opinion that senior Board

officials instruct WCB staff to purposely misinterpret the language in this part of the statute. That misinterpretation has the effect of treating a physical malformation or chronic health condition in the general vicinity of an injury as an excuse to deny a claim.

We believe that every Review Committee member should read section 50 of the Act, and keep those words in mind as information is placed before you as to how the WCB actually responds to workers with pre-existing conditions. It will soon become apparent to any objective observer that the Board is ignoring the spirit, the intent and any informed legal interpretation of section 50. In particular, the prevailing WCB policy is to completely ignore the instruction in the Act which directs Board staff to not reject a claim where “the injury materially aggravates or accelerates the pre-existing condition to produce a loss of earnings or death”.

Common examples of the misinterpretation of Section 50 are the handling of claimants with scoliosis or degenerative disc disease. If either condition is present prior to the worker suffering an injury to her or his back, there will be little prospect of securing a routine claim and probably no payment of benefits.

There seems to be a complete rejection on the part of Board policymakers of the obvious fact that thousands of people have

some form of scoliosis and go to work every day and successfully perform their jobs. Those few who suffer some kind of back trauma, that would qualify as a compensatable injury in the rest of the population, should be able to establish a claim without the discrimination which is now so common.

Another too commonly used excuse for denying a claim is degenerative disc disease. The Board attributes back problems to degenerative disc disease while ignoring the effect of employment related wear and tear in a job that involves heavy lifting.

There are even cases of pregnancy and diabetes being cited as pre-existing conditions and because of such a ruling claimants have been denied benefits for such unrelated ailments as repetitive strain injuries.

The Review Committee should recognize the abuse which has crept into the system under the heading of pre-existing conditions. The Committee should recommend that the language in the Act be enforced to **end the practice of treating workers with pre-existing or underlying conditions as second class citizens.**

“Imaginary pain”

Occasionally workers are advised by the Board that despite the pain they are experiencing there has been a full recovery from the effects of their accident. The Board’s message is that it’s only imaginary or psychosomatic discomfort the worker claims to be experiencing.

It is our strongly held opinion that while imaginary pain may be experienced by imaginary workers, real workers experience real pain. Injured workers do not need to have their suffering compounded by being told that “it is all in their head”.

Until the Board can develop a scientifically and medically reliable means of detecting pain or the absence of pain, the WCB policy should be to maintain a prudent silence of such issues as “imaginary pain”. We would very much like to see a Review Committee recommendation to that effect.

It is perhaps timely here to point to a very recent study out of Statistics Canada into interprovincial productivity. The Stats Canada report found that the average gross domestic product per job in Saskatchewan was very high compared to other jurisdictions. In mining, forestry and logging, and oil and gas production the value of output per worker in this province was the highest in the country. In other sectors of the economy

Saskatchewan employees routinely ranked in the top three. Our working people do not lay down on the job, and they don't invent excuses to avoid going to work. If pain prevents a person from attending their job then that pain is real and in no way imaginary.

Stressful process

Claims dealing with stress and other mental injuries take months to be handled and most are then denied.

Since the senior Board officials are not willing to recognize the existence and legitimacy of employment induced psychological problems, we are asking for clear, broad and inclusive language in the Act to make it quite apparent that **Workers' Compensation covers job related emotional illnesses such as an inability to work because of stress.**

The crime of deeming

One of the very worst practices employed by the Workers' Compensation Board is "deeming". It is unethical, immoral, contrary to the Meredith Principles and it ignores the original intent of the Act.

It is one thing to deduct from WCB benefits any earnings a recovering worker is able to make at a light duty or part-time job.

But to make that same deduction from claimants who haven't been able to find a job is an injustice by any decent standard.

Deeming was wisely and accurately described by a previous Review Committee this way: "It is not the responsibility of the Board to guess what the worker's earnings would be if only that worker could get a job."

We would take particular exception to the practice of "incremental deeming". This procedure, which is sometimes referred to as escalated deeming, sees a progressive, annual deduction - that might correspond to as much as a dollar an hour in the benefit rate - imposed on a permanently impaired worker. The aim seems to be to pressure the injured worker to take employment even if it may be inappropriate given his or her physical limitations.

The labour movement renews its call for a complete and total **end to the objectionable practice of deeming.**

Retraining

The retraining component of the Compensation system should be a tangible reflection of the Board commitment to as much as possible make people whole again. As it stands now retraining is

far and away the most inadequate part of the Board's response to the needs of injured workers. The criteria for determining whether or not a damaged worker is offered retraining is based on the financial implications to the Board. There is little emphasis placed on the beneficial effect retraining would have on the claimant. Even if a claimant is eager to undertake a retraining course and is a perfect candidate for the training, that must be subordinated to the Board's bottom line in the handling of the case.

The criteria for making a **decision on retraining simply must be changed to remove the purely balance sheet oriented aspects and replace them with a reasonable amount of discretion** for Board staff so they may determine what is best for the recovering worker.

The Return-to-Work Program

The Board's Return-to-Work program was introduced as a means of integrating the reemployment of injured workers with the rehabilitation process. The thinking was that meaningful employment is important to everybody, perhaps especially someone recovering, from an accident.

750 injured workers went through the Return-to-Work program in 1999 and 775 the previous year. WCB figures suggest that more than three quarters of these workers used the program successfully.

Unfortunately the reality of Return-to-Work has fallen short of its original objectives. When claimants are re-employed at some light duty job, their WCB rehabilitation typically ends. There is a chronic shortage of “modified work” which would permit the claimant to go back to his or her pre-injury job. In production and blue collar settings there is ill will generated when the employer preserves all the light work for the WCB claimant, rather than developing authentic and appropriate modified work programs.

Severely mangled and head injured claimants have not been enrolled in Return-to-Work, although some are suitable candidates.

A Return-to-Work program is often implemented unilaterally by the employer, in an effort to reduce assessment rates. In many cases meaningless jobs are created just to get the worker off WCB. At the other end of the Return-to-Work spectrum, if returning employees are not able to meet production standards, or pass evaluations they may be pressured to increase output or even be let go.

If Return-to-Work is going to function in the way it was hoped it would, the WCB will have to be given some greater leverage in dealing with employers. The Board must be able to persuade companies to make greater accommodation for partially disabled returning employees.

There have been suggestions that the Workers' Compensation Act should include a section imposing a "duty to accommodate" disabled employees, including those with a temporary limitation. It's argued that especially in the case of an injured worker moving to a new employer, the Board now has no leverage – financial or otherwise – to compel the new boss to accommodate the disabled worker.

If the Act is to be amended to incorporate a duty to accommodate section the Board should institute the measure with some regard for the existing able bodied workforce. There are many places of employment where the work is heavy. Older employees often use their seniority to bid on and get the lighter duty jobs and thereby bridge themselves through to retirement. If a duty to accommodate policy at the WCB is going to displace long-time employees with injured workers, we will have to oppose it, because it will simply be creating new WCB cases among the workers displaced from the lighter duties.

A properly worded amendment properly implemented would have our support.

The SFL would also like to see **an evaluation done to determine how effective the Return-to-Work Program has really been.**

Early Intervention

The Early Intervention Program was intended as a mechanism for matching injured workers with the most appropriate medical treatment in the most timely way. With its secondary and tertiary assessment and treatment services Early Intervention enrolls approximately a thousand injured workers a year.

While the Early Intervention initiative could be made to function very well, it has not so far been a success in our estimation. The problem has not been with the aim of the project - which was to offer injured workers assessment and rehabilitation services in a timely fashion and in accessible locations. The agencies chosen to deliver these services are simply not up to the task.

Early Intervention - particularly where a claimant is not responding to more passive recovery methods such as rest and medication - can be a useful option. However, the Early Intervention physiotherapy or other rehabilitation that is being done must be administered at well equipped, accredited, professionally staffed institutions. The Wascana Rehabilitation Centre or larger hospitals should be handling the early intervention, not fitness centres, private health "institutes", or someone offering services out of the basement of their home.

Finally, **Early Intervention should be strictly voluntary.** Previous Committees of Review have rightly recommended that

while the WCB covers a claimants medical costs, the Board has no right to interfere with the treatment plans by the injured worker and her or his doctor. Claimants should not be coerced or pressured in any way to force them to take the accelerated treatment. It should be offered to the injured worker as an option, and implemented only if also recommended by the claimant's physician. **Early Intervention should never be used to get claimants out of the system before they are healed**, and Board policy should clearly state that.

Rates

According to the Board's annual report the WCB's Injury Fund totaled \$136.9 million at the end of last year. This is a respectable amount, and a desirable cushion should we have an economic downturn. The incidence and duration of claims will erode the Fund over time but premiums will also be continually replenishing it. The senior managers at the WCB certainly can not be faulted for their fiscal and budgetary responsibility.

The SFL wants to see a financially sound Board and an actuarially sound WCB Injury Fund. The huge deficits that have grown up at some other provincial WCBs are not at all desirable.

In order to maintain a properly funded Injury Fund we have to have companies paying premiums that cover the cost of

compensating people for occupational diseases and for lost limbs and lives.

Our WCB average premium rates peaked in 1997 at \$2.07 per \$100 assessable payroll. Since then average premiums have declined to \$1.73 in 2000.

Saskatchewan's present WCB rates are not at all out of line when compared to other jurisdictions.

At a time when corporate profits have been sky high for several years and our taxes and fees on business are among the lowest in the developed world, it was absolutely shameful for employers to campaign for a sizable drop in WCB premiums as they did recently.

The next time an employer group calls for lower premiums we suggest the Board adapt a tactic it has used on workers and demand the income tax returns of the businesses involved, so as to determine if there is an inability to pay WCB premiums.

Merit rebates

Merit Rebates are promoted as inducements to improve occupational health and safety practices, but they are more likely to function as incentives to hide accidents.

The literally millions of dollars spent on rebates could better be allocated to a decent accident prevention program run by the OH&S Branch of the Department of Labour, or the establishment of a decent Occupational Health and Safety Centre. **Merit rebates should be done away with.**

Appeals

The Appeals Committee at the WCB is simply Board employees who have not had involvement with the file under consideration. The second step in the process is the Board of Directors of the WCB. So far as we are aware this province and New Brunswick are the only Canadian jurisdictions with such an appeal mechanism. WCB board members in other provinces are as a rule not the final appeal panel. Several WCBs across the country have external, independent appeal processes.

Other branches of government that offer services somewhat similar to the WCB have appeal mechanisms quite different from that of the Board.

The Saskatchewan Assistance Plan provides for social assistance recipients to appeal to a committee appointed by the Social Services minister from citizens in the local community. If dissatisfied with that decision recipients may take their case to a provincial appeal board made up of other citizens completely independent of the Department of Social Services.

Unemployment Insurance appeals go to a Board of Referees, and some go on to the Umpire. Both are appointed by the minister in charge of U.I., but the appointees come from the community at large, and are totally separate from the U.I. Commission.

Not many claimants attend their WCB appeals. The success rate of appealing claimants has been low – historically one third win their cases at either the first or second step. The attitude of injured workers is that to appeal a WCB ruling is a waste of time.

The SFL is not convinced that an external, independent, arm's length appeal process would solve all the problems, but it would very likely improve the win – loss record and give the appearance of impartiality. We therefore urge the Review Committee to recommend that **WCB appeals be heard and decided by an external appeal tribunal which includes equal representation from labour**. We also ask that the labour movement – as the organization that represents working people – be extensively involved in designing the new WCB appeal mechanism.

Governance

A move away from having the Board of Directors handling appeals is not an indication that organized labour would in any way support the elimination of the Directors or our historic right to have representation among the three Board members. **The WCB should**

retain its Board of Directors who will continue to set policy for the WCB and give instruction to the senior managers. Equal representation from labour should continue and the SFL should have the right in law to name the labour representative.

The WCB and Women

A major concern within female dominated work sites and classifications is the lack of serious attention given to the health concerns of women by the Workers' Compensation Board.

Injuries and diseases commonly affecting women are often accumulative, with significant latency periods before the ailment is diagnosed and treated.

The Board needs to keep detailed statistics of all claims filed, rather than just those accepted. These statistics should then be broken down in order to identify threats to women's health, and develop adequate prevention programs.

Areas that need to be addressed are repetitive strain injury, soft tissue injuries, stress, workload, allergies and sick building syndrome, to mention just a few.

Another example of how the present system fails women is the area of violence. Injuries are currently identified by the part of the body involved, i.e. throat, arm, head, etc. rather than referring to

the injury as a violent attack causing injury and traumatic stress. With current procedures the Board or OH&S Branch will not know that what is really needed at the work site is a violence prevention program.

Board communications

The Workers' Compensation Board needs to improve its ability to communicate with the public, the media and Workers' Compensation stakeholders.

This deficiency is evident each time the Board has to deal with a complex or controversial issue such as an increase in premium rates.

The media will typically carry numerous stories about “excessive” increases in WCB premiums as though any rate adjustments were outrageous and completely unwarranted. In the past, unchallenged media reports have regularly left the incorrect impression that excessive and unjustified premium increases were the norm for all employers in every sector of the economy. In truth the larger rate hikes often apply to as few as one company, and all of the increases are warranted because of appalling injury and fatality records. The WCB desperately needs the ability to present its case to the public in an immediate, persuasive and effective way.

At present the WCB's side of the story is not getting told, we suspect because the government instructs Compensation Board executives not to speak out or call a news conference and counter the misinformation from business. The result is the WCB regularly becomes a punching bag of the employers and the media.

The Board should **hire some capable communications people and encourage them and the senior executives to defend the Board**, explain the reasons for Board decisions, counter misinformation and respond to the attacks on the WCB launched by business or other critics.

The WCB and Labour

As the major stakeholders of the WCB, **labour should not only be informed but consulted about important Board decisions**. Our advice would be of value to the Board at least on issues where the Federation and our affiliates have first hand experience. It is not acceptable for the Board to embark on an entirely new direction without the participation of Labour.

Unfortunately, labour is often only informed when new policies are already implemented. Our advice is routinely not sought, ignored or rejected. The senior managers at the Board seem to regard the trade union movement as some kind of enemy encampment.

As part of our general proposal that the Board improve its communications skills, we offer to co-operate fully in any effort by WCB officials to develop a more meaningful relationship with labour.

Treatment of injured workers

All workers must be covered by the Workers' Compensation system. There should be no exemptions, loopholes or exclusions. Every man, woman, young person, elder worker, part-time employee, semi-retired wage earner, commissioned worker, farm labourer, everyone must be enrolled by law in Workers' Compensation.

Once all workers are covered, the Board must adjust its attitude towards those Saskatchewan citizens who fall under the Act.

At present, a blame-the-victim mentality is too much in evidence at the Board. Injured workers are too often regarded as undeserving, malingering fakers. The so-called **benefit of the doubt is supposed to favour the injured worker.** This is not happening currently but needs to start happening.

Persistence in pursuing a claim is almost immediately labeled as threatening behavior.

Personal contact and direct communication between injured workers and WCB staff is increasingly rare. Voice mail, touch tone phone menus and fax machines have replaced talking to people in person. This, in our opinion, contributes to an image of the WCB as remote and uncaring. A policy change on the part of the Board is required in this area.

A very common complaint voiced by injured workers is the frustration they experience at the Board's refusal to recognize and act on medical reports which contradict the WCB's intended course of action on a claim. There must be **unambiguous language in the Act instructing the Board to accept expert medical evidence.**

Privacy and confidentiality

The WCB should be instructed to **stop demanding income tax records from injured workers.** This is an unwarranted intrusion into the personal, private lives on Saskatchewan citizens.

The Board must also stop issuing claimants files or parts of files to employers prior to or during appeals or at any other time. This practice is an unacceptable breach of confidentiality and must be ended.

WCB practices

The closer the Board can get to its original, core mandate the better off injured working people will be. The **WCB should concern itself with these critical, key issues above all else – Were you hurt? Was it at work? Where do we mail the cheques? Do you need rehabilitation or retraining or both?**

It would be a giant step forward if the Board would **concentrate on these priorities and abandon its preoccupation with inviting employer interference** in the compensation process. This fetish for pandering to company owners and managers has diminished the reputation and effectiveness of the Compensation Board.

There is no reason to contact employers and coax them to attend appeals. As far as we can recall, no previous Boards encouraged this kind of employer intervention in matters which should be between the WCB and the claimant, and if the claimant wishes his or her advocate or union.

There is **no need to extensively canvass business owners trolling for some excuse to deny a claim.** The Board should ask the employer “Is this person an employee?” and “Was she or he working at the time of the accident?” Then the Board should take on the case and all subsequent dealings should be between the injured worker and the WCB.

We would also like to see the WCB develop and **implement a sick leave/emergency personal leave/ maternity leave plan to cover injured workers.**

Disenfranchised Widows

The WCB's conduct towards the disenfranchised widows was shameful and simply continued and compounded the abuse these individuals have experienced for decades.

The **disenfranchised widows deserve to be paid exactly what they are owed** based on a calculation of their lost benefits not some arbitrary lesser amount which better suits the provincial treasurer. Those widows who are eligible should be paid ongoing benefits.

Our strongly held opinion is this. **Pay the disenfranchised widow for all their losses, and then apologize to them** for all of the suffering they have gone through.

WCB staff

The **WCB's most valuable asset** is not its over \$800 million of investments but rather the **in-scope employees** of the Compensation Board. Their specialized skills and years of experience are what allows the Board to operate. These front line employees do extremely demanding work. They actually deliver

the benefits and rehabilitation to sometimes severely damaged human beings. The WCB staff regularly cope with emotionally distraught claimants, angry, desperate applicants and grieving spouses of fatally injured workers. The in-scope staff at the Board deserves immense credit for doing a difficult job very well.

Senior management at the Board has not always treated the staff with the respect and consideration they deserve. The Board's ill-advised plunge into such things as multi-tasking and the team concept have caused real hardship on many dedicated WCB employees. These trendy initiatives alienated a majority of the staff, diluted the effectiveness of skilled workers, harmed morale and disrupted the functioning of the workplace. Much more care has to be taken in future to involve the union and its members in decision making that directly affects the work environment.

It would also aid the work of the Board if they were to **hire some people with industrial work site or trade union experience.**

Worker's Advocates

An initiative for which the provincial government can be justifiably proud was the setting up of the Worker's Advocate office in the 1970s.

Prior to the existence of the Worker's Advocates, injured workers had politicians, lawyers and private consultants to turn to for help. As a rule these people didn't have a good grasp of the Compensation system, or they charged heavily for their advice, or both.

The Advocates on the other hand quickly acquired an expertise with the Act and Regulations and a competence with Board policies and appeal procedures that was sadly lacking previously. For the first time injured workers, dissatisfied with their treatment at the WCB, had some place to go for help.

Budget cuts in the early and mid-1990s greatly impaired the work of the Worker's Advocates. The small staff was almost cut in half. Only very slowly have staff numbers been rebuilt and they are not yet to an adequate level. The advocates and their clients are still faced with unacceptably long waiting lists and delays before an appeal can be taken up. To erode this backlog and allow work on the many waiting files, a decent level of funding and a reasonable complement of staff must be available to the Worker's Advocate office.

The trade union movement urges the Review Committee to recommend to government that injured workers have the services of the Worker's Advocate office restored to an adequate level of operation – that the budget of just over half a million dollars be

substantially increased, that at least three new advocates be hired and that a northern Worker's Advocate office be opened in Saskatoon.

We also request a recommendation that there be **a statutory requirement that there be a Worker's Advocate and that it be supplied with proper resources to do its work.**

A better Workers' Compensation Board

Right now, too many legitimate Workers' Compensation claims are being denied. Too often injured workers are cut off benefits before they are healed, and they are dealt with by brief, impersonal letters rather than by some contact with a human being. Too often workers are refused reasonable requests for retraining. The Board is too slow to recognize and compensate new occupational diseases. The attitude of those who set and direct Board policy and practices is close to a "fortress mentality", which walls the WCB off from the working people it is supposed to engage willing.

The Compensation Board must reorient itself. It has to be realigned so as to become a willing ally of and a worthwhile asset to people damaged by their employment. From the CEO and chairperson on down there needs to be a recognition that the Board is there to serve workers not arbitrarily prescribe what the Board alone decides is best for an injury victim. The less

bureaucratic and the more humane the Board can become will be a measure of how successful the WCB will ultimately be. Every time the Compensation Board curbs an urge to dictate to a claimant and instead cooperatively reasons with that individual, it is a step in that direction. Every time the WCB sets aside its tightfisted, bottom line driven approach to claimants and instead shares in a properly supported full recovery of a injured worker, it's a victory for everyone involved.

We are hopeful of improvements at the Workers' Compensation Board, and hopeful too that the Review Committee will, with its recommendations, hasten that process.

Summary of recommendations

1. The Meredith Principles must remain as the basis for our Workers' Compensation system – no fault compensation, security of benefits, collective liability, independent board and exclusive jurisdiction.
2. The Board must step up efforts to reduce workplace accidents
3. Expand the safety training role of the OH&S Branch
4. An OH&S Centre at the Uof S modeled on Manitoba's centre
5. Establish an Occupational Disease Panel

6. End “safety grant” funding to employer associations
7. Make public all safety grant evaluations and assessments
8. Compensation benefits should be based on 100 per cent of pre-injury earnings
9. Update the Permanent Functional Impairment rating schedule and make it available to anyone who asks for it
10. Increase the allowance for funeral expenses
11. Eliminate the \$48,000 cap on insurable earnings
12. Continue to index WCB benefits to increases in the cost of living
13. No delay or waiting period in paying out WCB benefits
14. No change in the method of calculation benefits to seasonal and casual workers which would disadvantage these employees
15. Properly apply section 50 of the Act dealing with pre-existing conditions
16. Stop the practice of labeling injured workers pain as “imaginary”

17. The Act should clearly provide for stress and other emotional injuries to be compensated
18. Completely eliminate deeming and incremental or escalated deeming
19. Base retraining decisions on what is best for the injured worker not the micro-financial considerations of the Board
20. Improve the Return to Work program by insisting on “modified Work”
21. Make the Early Intervention program completely voluntary and deliver the services at hospitals and accredited public rehabilitation centres.
22. End merit rebates
23. Set up an external appeal system with labour representation
24. Retain the Board of Directors for policy development and direction to the executive managers
25. The WCB should be more responsive to the needs of women workers
26. Fully compensate the Disenfranchised Widows

27. The WCB should do a better job of communicating with the public and media
28. The Board needs to develop and adhere to a policy of respect for injured workers
29. The Act must cover all workers
30. A statutory requirement for the WCB to accept expert medical evidence
31. No release of any part of a claimants file to any employer
32. Stop demanding income tax records from claimants
33. Better relationship between WCB managers and in-scope staff
34. Better funding for the Worker's Advocate and opening a northern office
35. Employers should continue to pay full wage to injured workers and be reimbursed by WCB