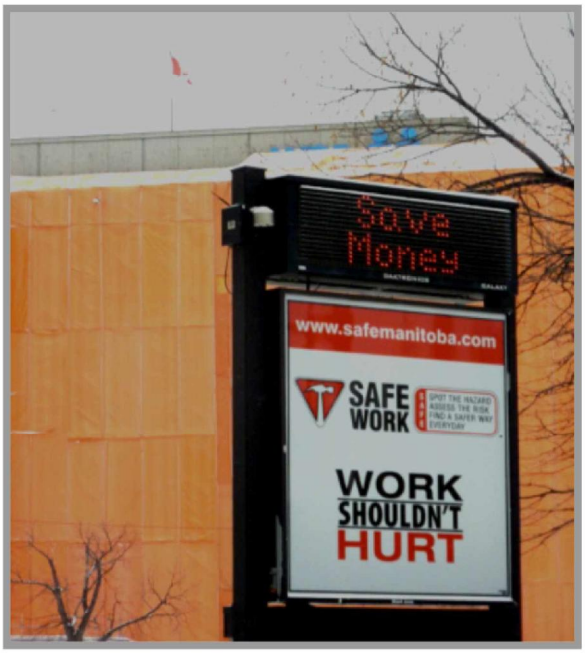
Compensation & Safety Services



FAIR COMPENSATION REVIEW

A review of the Impact of the Manitoba WCB assessment rate model on fair compensation for workers and equitable assessments for employers

A Report to The Minister of Family Services and Labour
January 30, 2013
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Manitoba

Introduction

On November 6, 2012 Minister of Family Services and Labour, the Honourable Jennifer Howard, announced a review the Workers Compensation Board (WCB) process for setting employer premiums to identify the options to strengthen employer incentives for effective injury prevention while targeting the illegal practice of claim suppression. The purpose of this review is to identify options to ensure fair compensation for workers while maintaining equitable assessment premiums for employers. The specific issues the Minister identified for review are as follows:

1. To what extent is the WCB experience rating system an incentive for preventing workplace injuries and diseases?

2. What other strategies are available to enhance injury and disease prevention initiatives?

3. To what extent is experience rating an incentive for promoting claims suppression, appeals, excessive cost relief activities and premature or overly aggressive return to work strategies?

4. What controls and strategies are available to minimize claims suppression, appeals and excessive cost relief activities where they are found to exist?

5. What strategies are available to enhance safe and productive return to work programs?

6. Does the current WCB experience rating model provide appropriate incentives in a timely manner for promoting prevention initiatives?

7. To what extent are employers of different sizes treated equitably? What strategies are available to minimize inequalities where they are found to exist?

8. Are there other negative or unintended consequences resulting from the current rate setting model? If so, what measures would eliminate or mitigate these effects?

9. Is there a sufficient investigative process in place to deal with complaints of claim suppression and are the penalties sufficient to deter employers from this practice? How could investigative and penalty process be improved?

This review is presented on the 100th anniversary of the Royal Commission Report, generally referred to as the Meredith Report that established the foundational principles that continue to shape workers compensation systems in Canada today. Mr. Justice Meredith's 1913 report was founded on "the historic trade-off" in which workers relinquished their right to sue an employer for negligence causing workplace injuries or death in exchange for prompt, no-fault compensation benefits. Since this review has been carried out within the frame of those five principles, they are summarized below for reference:

No-fault compensation: Workplace injuries are compensated regardless of fault. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury. Fault becomes irrelevant, and providing compensation becomes the focus.

Collective liability: The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.

Security of payment: A fund is established to guarantee that compensation monies will be available. Injured workers are assured of prompt compensation and future benefits.

Exclusive jurisdiction: All compensation claims are directed solely to the compensation board. The board is the decision-maker and final authority for all claims. The board is not bound by legal precedent; it has the power and authority to judge each case on its individual merits.

Independent board: 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.

These principles continue to form the basis of workers‟ compensation law in Provincial jurisdictions in Canada by virtue of the commitment of the founding partners, employers and workers, to continue to rely on the historic compromise that established this law.

Experience Rating

The collective liability principle has guided the policies for collecting sufficient assessments from employers to ensure that the accident fund is able to meet the costs of compensation including future benefits for workplace disablement and death. Mr. Justice Meredith explained this funding principle as follows:

“...in determining the proportions of the contribution to be made to the accident fund to have regard to the hazard of each industry, and to fix the proportions of the assessment to be borne by the employer accordingly, and not to require that the proportions for each class or sub-class be uniform; and also to permit the Board, if in its opinion the character of any class of industry justifies that being done, to require a larger contribution to the reserve fund by the employers in any such class than is required from employers in other classes.”

Based on this guidance, workers compensation boards established classes of industry based on relative hazard and collected from those classes, sometimes referred to as rate groups, an assessment rate to reflect the degree of hazard and relative risk of injury. More hazardous industries would pay a higher assessment rate and lower hazard industries less. This funding method was sometimes referred to as the modified flat rate method.

In the 1970’s Canadian jurisdictions began introducing experience rating on a relatively wide basis. Experience rating adjusts the flat rate assessment on the basis of the individual employer’s claims cost experience. Different jurisdictions have different experiencing rating methodologies and formula for calculating the firm’s assessment rate. The Association of Workers Compensation Boards of Canada (AWCBC found on line at www.awcbc.org/en/) provides a comparative analysis of the different experience rating systems in Canada. The Yukon is the only jurisdiction that currently does not use a form of experience rating as a funding mechanism.

Manitoba's $1.50 average assessment rate for 2012 was the second lowest rate among all Canadian jurisdictions, with only Alberta lower at $1.22. Five jurisdictions had average rates of more than $2.00. Manitoba's maximum assessable payroll set at $104,000 (2012) is the highest of any WCB in Canada and goes up to $111,000 in 2013. The average maximum assessable payroll in all other jurisdictions in 2012 was $67,275 with the next highest rate at $86,700 in Alberta and the lowest rate in Prince Edward Island at $49,300. Manitoba is the only jurisdiction in Canada that does not cap its wage loss benefits at the maximum assessable earnings.

Manitoba's experience rating system, generally referred to as the Assessment Rate Model, is a relatively aggressive system when compared to other jurisdictions. Manitoba first introduced experience rating in 1989 and used the individual firm's claims cost over the previous 5 years. Under that system a firm's rate within a category could range from plus or minus 40% of the category's average rate to reflect the claims experience. A new model was introduced in 2001 that ranged from 40% below the category average rate to 200% above that rate. Again, a five-year window was used for calculating claims cost. Manitoba's 40% maximum amount that a firm's assessment rate can decrease below its category average rate is generally in line with most other jurisdictions. However, Manitoba's maximum upper limit of 200% is significantly higher than Alberta's 40%, British Columbia's 80%, and New Brunswick's 100%.

In theory, experience rating was intended to reward employers who maintain safer workplaces with lower premiums while those with more workplace accidents and injuries would be penalized with higher premiums. This approach was meant to remedy deficiencies in the flat rate systems by adjusting premiums on the basis of injury costs, thereby providing incentives for employers to invest in health and safety.

A recent review of the literature on experience rating in workers compensation systems indicates that in practice experience rating appears to fall short of the objective of promoting the implementation of safety and health programs in the workplace. The authors state:

"Although experience rating is intended to stimulate safer workplaces, a growing body of literature reveals that it has not achieved that affect and that, in some cases, it has contributed to unsafe workplaces. The absence of a safety effect may arise because employers focus on managing reported claims rather than prevention. Also, financial incentives may discourage employers from reporting injuries and put those employers who do report at an economic disadvantage relative to their peers. Furthermore, there is evidence that experience rating stimulates employer behaviors which can undermine the physical and mental health of injured workers." (Mansfield, L.; et. al.; "A Critical Review of Literature on Experience Rating in Workers" Compensation Systems," Policy and Practice in Health and Safety 2012; Vol. 10.1; P. 4.)

Under the Manitoba Assessment Rate Model, an employer's assessments can rise quickly when that employer's claims cost is above the average for that employer's rate group. However, when the employer's claims cost is reduced, the assessment goes down relatively slowly by comparison. The expression that assessments, "go up like a rocket, and come down like a snail" is often repeated when describing the Assessment Rate Model. There is also general agreement that the Assessment Rate Model is complex and difficult to understand by many employers. Appendix 1 contains a detailed description of the Assessment Rate Model for reference.

During the course of my review it became apparent that the Assessment Rate Model, which focuses primarily on claims cost, provides a strong incentive for employers to control those costs wherever possible. By comparison, I found little persuasive evidence that the Assessment Rate Model provided a substantial direct incentive to develop and implement effective safety programs. The WCB administration acknowledged this concern in a 2011 report to the WCB Board of Directors which stated:

"The aggressiveness of the model can drive employers and employer advocates to focus their attention and efforts towards seeking cost-relief instead of implementing safety and return to work programs."

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

An example of the financial advantage of a light duty program is illustrated by a study in a large food producing firm. The firm maintained two types of light duty positions; one type designed to meet production requirements, and one created solely to suit employees with various restrictions to "limit the number of WCB claims". On average, there were approximately 20 workers in light duty positions at any given time; 13 to fulfill production requirements and 7 non-production positions solely to suit the employee's limitations. Under that program, WCB claims had been reduced from 40 to 7 over the prior year.

The company did an analysis to determine the financial impact of three scenarios: (1) accommodate injured workers in both types of light duty positions, (2) fill only light duty positions for production requirements, and (3) discontinue all light duty positions and leave it to the WCB to cover the injured workers. Analyzing the projected impact over a five year period, the applicable $5.35 WCB rate would decrease by full discount each year to $3.09 in year 5 for the first scenario which included non-production light duty positions to limit the number of WCB claims. The additional cost of the light duty positions "solely to suit employees" cost an estimated $1.5 million over the five year period. Under the second scenario involving only production light duty positions, the WCB rates would go up to $7.50 over the course of five years. Under the third scenario with no light duty positions, the WCB rate would increase to $19.05 over the five year period.

The conclusion of the analysis was that by "investing" $1.5 million for the non-production light duty positions solely to suit employees (scenario 1), the company would save a net $750,000 on their assessment premiums over five years. Scenario 2 would cost the company a $2.5 million increase in their WCB assessments over the five years. Scenario 3 would cost the company $13.3 million over the five year period. It is readily apparent from this analysis (described in more detail in Appendix 1) that sophisticated claims management can have a dramatic impact on a firm's WCB assessments, especially for larger firms. The financial return for creating non-production positions solely to suit employees with various restrictions to "limit the number of

WCB claims" has the clear potential to provide an incentive to circumvent statutory reporting requirements.

During the course of my review I was provided a December 8, 2011 draft report of a WCB commissioned survey of 800 employed people 18 years and older that was representative of the Manitoba population. The survey was designed to evaluate injury reporting patterns and practices. Almost 10% of the respondents did not think an employer was responsible for reporting an injury to the WCB when time at work is missed and the employer does not pay. About 20% of respondents did not think an employer was responsible for reporting to the WCB when time is missed "... but when the employer pays the employee for time missed". The draft report concluded:

"There appears to be some confusion about when an injury should be reported to the WCB. Results seem to indicate that the more severe the injury, the more likely respondents are to say that an employee or employer should report the injury to the WCB; however, there are still many that do not think employers are responsible for reporting injuries to the WCB in situations where they should (i.e., on the job injury resulted in time loss at work)..."

While that report is not definitive, it is an indication that there is a need to improve knowledge of injury reporting responsibilities. To its credit the WCB initiated radio ads in 2012 emphasizing injury reporting responsibilities.

A 2011 WCB report on "Claim Reporting" indicates their special investigation unit staff have identified situations where some employers engage in late or non-reporting of claims including:

- avoid reporting a claim and pay workers directly during their period of disablement,
- persuade workers to use sick time or vacation time instead of filing a claim,
- establish bonus programs based on injury free days that use peer pressure to inhibit claim reporting,
- discipline workers, force them to resign, or lay them off after they suffer an injury or illness,
- induce workers not to file a claim, or to abandon claims that have been filed.
- allow immigrant workers to not file a claim because they do not understand their rights and obligations under the Act.

During the course of my review I heard persuasive evidence of under reporting of claims and claims suppression activities consistent with the list in the WCB's report. I have detailed in Appendix 2 the interviews and reports of these activities. While it is not possible, given the limited scope of my review, to identify the extent of under reporting and claim suppression activities in Manitoba, it is apparent that it is more prevalent in some industry sectors. It is well established that, to date, there has been no penalties or other effective deterrents applied to control and eliminate these activities. It is also clear that the Assessment Rate Model rewards

employers who engage in these activities and gives them an advantage over the majority of employers who meet their injury reporting obligations under the Act.

As the Minister's announcement of this review indicates, claims suppression is illegal under the Act. Failure to enforce the fundamental right of making a claim for a workplace injury can undermine the perception of fairness of the system and if claim suppression is pervasive enough, it can raise serious questions regarding the integrity of the system, since it is directly contrary to the purpose of the legislation. To address this issue head on, workers, through their representatives in organized labour seek to have experience rating discontinued entirely.

Employers and their representatives express the view that the Assessment Rate Model is generally working well and should be retained. They point out that the accident fund is balanced, and the overall assessment rates are among the lowest in Canada. They acknowledge that where employers don't meet their obligations under the Act, they should be held accountable.

I have been asked in this review to identify:

- Controls and strategies to minimize claims suppression
- Strategies to enhance injury and disease prevention initiatives
- Strategies to minimize inequalities among employers
- Ways to improve the investigation and penalty process

The following are my recommendations regarding these issues.

Injury Reporting

It became apparent during the course of my review that the workplace injury and illness reporting responsibilities and procedures are not well defined and or understood in many workplaces. To ensure that workers and employers are fully aware of their injury reporting responsibilities under the Act:

1. I recommend that the Act be amended to require that every workplace post a standard Injury Reporting Notice prepared by the WCB outlining the current statutory responsibilities for injury reporting under the Act to provide increased clarity for these responsibilities.

The Injury Reporting Notice should identify:

- the statutory responsibilities of the employer (s. 18(1&2)) and the worker (s. 17(1 &2)) for reporting workplace injuries and diseases to the WCB;
- the consequences of not meeting these responsibilities and requirements for employers (s. 18(4)) and workers (s. 17(5));

- the worker's responsibility to seek medical treatment when necessary (s. 19(1)) and to complete an application to the WCB when appropriate (s.19(2));

- the prohibition for the employer to in any way induce, inhibit or otherwise prevent a worker from making a claim (19.1(1&2)), and the penalty for doing so (s.109.7(1)); and

- the employer's duty to notify the WCB when the worker returns to work (s. 18.1(1&2)) and the worker's parallel duty to so notify the WCB (s.19(4)) and the respective consequences for not meeting that obligation (s. 18.1(2)) and (s.19(5)).

The Notice should be written in plain language so that the respective responsibilities can be understood by all affected parties and where appropriate translated into the predominant language(s) in the workplace. The new provision in the Act requiring posting of the Notice should include a provision for an administrative penalty for failing to meet this requirement. The Notice should be supplemented by a notice prepared by the employer detailing the specific injury reporting procedure at that workplace including: to whom; where and how the injury is to be reported.

There appears to be confusion in some workplaces regarding whether an injured worker has the right to seek medical treatment from a physician of his or her choice. Why this is the case is unclear. The WCB's "Injured on the job?" poster states: "If you're hurt at work, follow these three steps: (1) See the healthcare provider of your choice; (2) Tell your employer; (3) Call WCB. The right for the worker to seek treatment from a physician of his or her choice is established in section 27(12) of the Act.

While this does not appear to be a widespread problem, it has the potential to interfere with the worker's ability to make a legitimate claim. Interference with a worker's right to seek treatment from a health care provider of his or her choice would appear to be contrary to section 19.1(1) of the Act and would, if proven, attract an administrative penalty under section 19.1(3). The right for a worker to seek treatment from a physician of his or her choice should be included on the Injury Reporting Notice.

Section 17 of the Act specifies that in every case of injury by an accident to a worker, the worker must, as soon as practicable give **written notice** to the employer stating the nature and cause of the injury and the time when, and place where the accident occurred. The WCB has historically provided the so called "green card" for workers to comply with this requirement. The green card is a 6" X 6" form that provides the worker a straight forward mechanism to meet this requirement. The card includes a carbon copy so the worker can provide a copy to the employer and retain a copy for his or her records. I heard persuasive evidence that some work places restrict access to and or withhold the green cards. Some workplaces don't maintain a supply. To ensure an effective and consistent mechanism for workers to comply with section 17:

2. I recommend that the Act be amended to require all workplaces covered by WCB be

required to maintain an adequate supply of green cards and make them readily available to workers to meet the worker's reporting obligation under section 17 of the Act.

The employer's supplementary notice detailing the specific injury reporting procedure at that workplace should specify where the green cards are kept. The use of the green cards should in no way limit or inhibit the employer from recording a more detailed report of the injury and accident.

Suitable Alternate Employment

One of the most difficult problems that arose during the course of my review is the challenge faced by both employers and workers in identifying suitable alternate employment, often referred to as "light duties" following a workplace injury. A number of cases illustrating this problem in a range of industry sectors are contained in Appendix 2 which outlines evidence and reports from workers and their representatives of problems with light duty assignments.

Section 22(1) of the Act requires a worker to take all reasonable steps to reduce or eliminate any impairment or loss of earnings resulting from an injury and to cooperate with the WCB in developing and implementing programs for returning to work, rehabilitation or disability management or any program the WCB considers necessary to promote the worker's recovery. The WCB"s literature emphasizes that, where a worker is disabled from performing the work at which he or she was employed at the time of the injury, the alternate suitable employment must be safe, timely and productive.

Section 49.3(7) provides that if the worker and the employer disagree about the worker's fitness to return to work, the WCB must determine if the worker is medically able to perform the suitable work. The evidence and reports I have received indicate that the WCB's oversight on determining suitable employment is not fully utilized. I heard evidence, which I found significant, that in some workplaces the alternate duties are sometimes harmful to the worker's recovery, are sometimes non-productive, and sometimes are demeaning. As the WCB literature emphasizes, the injured worker and the worker's health care provider should be involved in the return to alternate duties. The WCB literature also indicates that a union and/or an occupational safety and health committee representative may be involved when requested.

Workers and physicians complain that some of the forms employers use to identify generic limitations and restrictions do not allow a reasonable basis for the physician to determine whether the alternate duties are safe and productive. Employer representatives are sometimes frustrated because they do not receive sufficient medical evidence from the physician to determine whether their alternate duties are medically suitable on a timely basis. Wherever possible, the employer will be seeking a timely response from the physician to minimize costs associated with a time loss claim. Physicians are frustrated because a worker attends their office without an appointment requesting that a complex generic limitations and restrictions form be completed while the patients that have appointments are displaced. The worker is often frustrated that he or she is caught between the employer's requirements and the physician's challenges, when what the worker is seeking is a diagnosis and treatment, often while in pain. In some cases

the worker is asked to pay for completion of the form. This conundrum is intensified when the worker attends a hospital emergency department where the physician's challenges are more complex and the injury is likely more severe.

To ensure that the employer receives sufficient medical evidence to determine suitable alternate duties and to ensure that the physician has sufficient details to determine if the worker is medically able to perform the specific requirements of the alternate duties:

3. I recommend that the WCB prepare a standard form that provides a template for describing the alternate duty position in sufficient detail for the worker's physician to make an informed judgment regarding the medical suitability of the alternate duties and the WCB pay the physician appropriately for completing that form. I further recommend that the form contain a provision for the worker to indicate whether he or she has the necessary skills and abilities to safely perform the proposed alternate duties and that those duties are reasonably productive.

A copy of the completed form should be provided to the employer, the WCB and the worker without delay. Where either the physician or the worker do not agree that the alternate duties are medically suitable and/or productive and within the worker's abilities, the WCB should investigate the medical evidence, and if necessary seek the advice of a WCB physician, and make a determination regarding the suitability of the position consistent with section 49.3(7) of the Act.

One claim can have a considerable impact on the assessment rate for a small employer. Small and medium size employers do not have the same capacity as larger employers to arrange for suitable alternate duties and it may take a week or two to adjust work duties to create a safe, productive position. A short term claim can result in a small employer's rate increasing in some cases. The following recommendation is intended to address that problem that is inherent in the Assessment Rate Model.

Many larger employers have programs in place to make alternate duties available the day following the injury to avoid the claim becoming a time loss claim. However, those employers indicate that is often difficult to get the necessary medical information to support assignment to an alternate position on the day of injury so a time loss claim can be avoided. Some employers become hyper-vigilant to secure the necessary documentation to return an injured worker to suitable employment on the following shift. In some cases the worker is assigned to unsuitable and/or non-productive duties as documented in Appendix 2.

To ensure that employers do not bear the immediate direct costs of any delay in arranging suitable and productive alternate duties:

4. I recommend that the first two weeks of any time loss claim be assigned to the employer's industry sector to be funded collectively by that sector out of the accident fund.

I appreciate those larger employers with sophisticated alternate duty programs may see this as a slight advantage to medium and smaller size firms that do not have the same capacity to have alternate duty programs in place. However, the trade off for ensuring safe and productive suitable alternate employment for the injured worker is sufficiently beneficial to the objectives of the

workers compensation system to justify its adoption. By collectively sharing the cost at the industry sector level, those sectors that have already developed and implemented effective disability management programs will see little impact from this provision. Those sectors that are still in the process of developing and implementing effective disability management programs will have an incentive to make progress in this key area for restoring injured workers to timely, safe and productive employment.

I appreciate that sector specific funding may require some adjustment to the Assessment Rate Model which is now based on the class E system. For reasons detailed later in this report, providing industry sector solutions to industry sector problems is a broad policy goal that requires consideration for other recommendations. Any adjustment to the Assessment Rate Model to accommodate sector specific funding options should ensure that assessment equity for employers of all sizes is maintained.

Claims Suppression

Claims suppression is a difficult and elusive term to define. The WCB defines claims suppression as a situation where an employer or someone acting on behalf of an employer induces a worker not to report a worker's compensation claim. The WCB also recognizes that claims suppression may also refer to situations where the workplace culture may give workers reason to believe they will be treated badly by the employer if they report a workplace injury.

There does not appear to a full appreciation of the claims suppression provision in section 19.1 of the Act among both employers and workers. In 2012 the WCB ran a series of radio ads prompting Manitobans to report workplace injuries to the WCB. In my view, more is needed to better educate employers and workers to identify what constitutes claims suppression and what the penalties are for a violation of the provisions in section 19.1 of the Act.

Section 19.1(1) prohibits an employer or person acting on behalf of an employer from attempting to compel or induce a worker by intimidation, coercion, promise, the imposition of a pecuniary or other penalty, threat, including a threat of dismissal, or by any other means, not to apply for or pursue an application that has been made for or receive compensation. Section 19.1(2) prohibits an employer or a person acting on behalf of an employer from taking or threatening to take discriminatory action against a worker for reporting or attempting to report an alleged violation of section 19.1(1).

5. I recommend that the WCB prepare a pamphlet directly addressing claims suppression including examples of what constitutes claims suppression, with reference to the penalty for violation of section 19.1 and to the WCB's commitment to investigate complaints and to apply penalty assessments where violations are found.

The Regulation under the Act for administrative penalties sets the penalty amount for violation of sections 19.1 (1) & (2) at $450. The WCB acknowledges that it has never imposed an administrative penalty for a violation of these two sections. The WCB indicates they rely on education and awareness as the primary method of ensuring that employers meet their obligations under the Act. However, the WCB administration has recently reorganized several

departments to ensure greater compliance with the Act and has assigned the WCB legal counsel to assume responsibility for a new Compliance unit and the Special Investigations unit.

I heard evidence from a number of individuals as recorded in Appendix 2 who have experienced interference in making a claim to the WCB which has all the hallmarks of claims suppression. It does not appear that the existing investigation capacity is adequate to identify non-compliance, and the current penalty level is insufficient to act as a deterrent to prevent claims suppression.

6. I recommend that the new WCB Compliance unit be sufficiently staffed with experienced investigators and equipped with a robust policy to fully investigate all complaints of claims suppression.

7. I also recommend that for every complaint lodged under section 19.1, that the new Compliance Unit undertakes an investigation and provides a decision in writing with reasons to support the decision. Where a penalty is imposed, the penalized employer should have the right of appeal to the Appeal Commission. Where the complaint is not upheld, the worker should have right to request a reconsideration of the decision under section 60.1(2) and (3) of the Act. I further recommend that the WCB provide a detailed report annually of claim suppression complaints, investigations and penalties.

The WCB advises that claims suppression matters can be difficult to investigate since witnesses are often reluctant to come forward with evidence. If that is the case, it seems to me that provision should be made to strengthen the prohibition against discriminatory action in section 19.1(2) similar to the reverse onus provision for discriminatory action in section 42.1(4) of the Workplace Safety And Health Act. That section places the onus on the employer to prove that the discrimination did not take place when the worker establishes a basic case that discriminatory action was taken against him or her.

8. I therefore recommend that section 19.1(2) be amended to provide an onus on the employer to prove the discriminatory action did not relate to the alleged claim suppression where the worker provides evidence to establish a case of discriminatory action under that section of the Act.

It is important that such a provision be formulated in terms similar to other reverse onus provisions (e. g. Workplace Safety and Health Act) to ensure that the tests for applying the reverse onus provision can be adjudicated in an established and consistent manner.

The Regulation under the Workers Compensation Act for administrative penalties establishes the penalty under sections 19.1 (1) & (2) at $450. Worker representatives point out that a $450 penalty becomes a cost of doing business and is simply insufficient to serve as a deterrent for an act that is illegal under the statute and contrary to the fundamental principles of the Workers Compensation System. The administrative cost to investigate and process a penalty assessment under this section would far exceed the cost of the penalty at the expense of the accident fund and the employers who pay the fund’s assessments.

By comparison, an employer who fails to comply with the WCB reemployment obligation under section 49.3 faces a much more substantial penalty of $5,000 or the amount equaling the worker's net average earnings with that employer for the three months before the accident,

whichever is greater. This penalty doubles for a second violation within a 5 year period, and triples for a third violation within the 5 year period. This penalty applies to an employer with 25 or more workers.

There is some merit in having a schedule of penalties that scales the amount as a per cent of the firm's payroll so that small employers are not unduly penalized and large employers receive a proportionate penalty sufficient to serve as a deterrent for their size of business. Since the average assessable payroll for an employer with 25 workers is approximately $1,000,000, that may be an appropriate payroll benchmark for the $5,000 penalty established under section 49.3 of the Act for application to a violation under section 19.1 of the Act. The amount of the penalty should be proportionate to the size of the employer's payroll with small employers paying less and larger employers paying more to ensure an effective deterrent.

In considering an appropriate scale, the minimum penalty for the smallest employers with payroll under $200,000 should at least cover the cost of the investigation and the processing of the penalty. I propose consideration of a minimum penalty of $2,500 for employers with an assessable payroll under $200,000. For larger employers with payroll of $5,000,000 or more I propose a penalty of $10,000. An appropriate scaling between $2,500 and $10,000 merits consideration. The WCB has the authority to set the amount of the penalty for a violation under section 19.1 and, in my view, should raise the amount of the penalty without delay to the amount specified under section 49.3 with appropriate adjustments based on size of assessable payroll.

9. I therefore recommend that the WCB raise the penalty assessment for violations of the provisions of section 19.1 to the same level as the penalty assessment under section 49.3 for all employers with an assessable payroll of $1,000,000 as soon as possible with a similar escalating provision for repeat offenses, and that the WCB develop a schedule of penalty amounts to correspond to the firms assessable payroll to ensure a sufficient deterrent.

10. I further recommend that the WCB credit any funds collected for such violations to the industry sector account of the penalized employer to indemnify the employers in that sector who are otherwise meeting their reporting obligations and paying their fair share of the accident fund.

One of the issues that was raised repeatedly during the course of my review is the effect of company sponsored bonus programs that are based on reported claims and reward workers for periods when no time loss claims are recorded. I have no doubt that many safety recognition programs are well intended and are not designed to suppress claims reporting. However, there is some evidence to show that reward programs based on recorded injuries can have the effect of applying peer pressure to suppress claims reporting. Safety reward programs based on injury records that have the effect of suppressing legitimate claims is contrary to section 19.1 of the Act, and in my view should attract consideration of a penalty assessment under that section. I appreciate that this is a complex issue and care must be taken not to undermine genuine efforts to promote a positive safety culture in the workplace. However, the WCB has an obligation under the Act to ensure that workplace programs do not contravene the intent of section 19.1.

11. I recommend that the WCB's claim suppression pamphlet address the issue of safety bonus and reward programs that have the potential to undermine reporting of workplace

accidents and injuries and provide clear examples of programs that would contravene section 19.1 of the Act.

12. I also recommend that the WCB develop a policy for identifying safety reward and bonus programs that are inconsistent with the requirements of section 19.1 of the Act. Where such programs show a pattern indicating a likely inhibition of claims reporting in that workplace, and no steps are taken to correct that situation, then a penalty under section 19.1 should be considered.

Worker representatives have expressed concerns about aggressive claims management practices among some employers. In one case an employer retained an out of province paralegal firm that, according to WCB sources, was apparently appealing about 90% of WCB claims for that employer. This aggressive approach to appeals is, according to the union, accompanied by a pattern of challenging the acceptance of a majority of claims at the first level of adjudication, by precipitating unnecessary investigations that delay payment to the worker for a legitimate claim. Both employers and workers have statutory appeal rights under the Act, and nothing should inhibit either party from exercising those rights where there is a basis to appeal. However, the workers compensation system is based on an inquiry model rather than an adversary model. Overly aggressive claims management practices can have the potential to inhibit workers from filing a claim to avoid the hassle of a confrontational approach. Where a pattern of overly aggressive claims appeal activities exist that inhibit claims reporting, the WCB Compliance unit should investigate to determine if there is a likely violation under section 19.1 of the Act. The WCB claim suppression pamphlet should provide a clear example of such a violation.

Where an employer is deliberately intent on suppressing workplace injuries, that employer will likely take steps to avoid reporting an injury with the WCB wherever possible. Section 18(1) of the Act requires the employer to report an injury to the WCB within 5 days of being notified by the worker or otherwise learns of the injury. Section 18(4) makes failure to file a claim within that period an offence subject to an administrative penalty of $225. By comparison, where the worker fails to report an injury to the employer in writing within 30 days, the delay is a bar to the claim, unless excused by the WCB.

Where the WCB pursues prosecution under section 109.1(1), the maximum fine on summary conviction is $7,500 for a corporation. Prosecution under section 109.1(1) requires considerable expenditure of time and funds by Crown counsel and does not appear to be a prudent use of Crown Counsel's resources. By comparison, maximum fines under the Ontario WSIB for claim reporting violations are $100,000 for a corporation and a recent report on the Ontario experience rating system recommended that maximum be increased to $500,000. Given the interrelationship between failure to report injuries and claims suppression, a more substantial administrative penalty for failing to report injuries is required. This is particularly true for repeat offenders.

13. I recommend that the penalty assessment for violating the provisions of section 18(1) be increased to the same level as the penalty assessment under section 49.3 for all employers with assessable payroll of $1,000,000, unless excused by WCB. This should be implemented without delay with similar escalating provision for repeat offenses. I further recommend that there be an appropriate appeal mechanism to ensure that the affected parties have recourse to a final review.

14. I further recommend that the WCB scale the amount of the penalty to size of payroll to ensure that penalty assessments are an effective deterrent.

15. I also recommend that penalty assessments collected from employers for these violations are credited to the penalized employer's industry account, to indemnify the employers in that sector.

I note that the WCB has recently agreed to participate in a claims suppression study with the Ontario WSIB. That survey will provide the WCB and the workplace partners with a more detailed analysis of the nature and extent of claims suppression in Manitoba than can be provided in this review. This is a commendable step by the Board and will provide a valuable baseline to assess the possible impact of the recommendations in this review by way of a subsequent follow-up study. This will also provide the workplace partners with a representative and reliable source of information to gage the extent of claims suppression in Manitoba. Periodic review of claim suppression provides a good health check on the system, and such a study can be carried out periodically once the methodology is in place.

16. I recommend that the WCB conduct a detailed follow-up study of claim suppression every two to three years to monitor unintended consequences of the current assessment rate model and make public the results of those studies.

Prevention Incentive Programs

There are effective safety programs in place in many workplaces that are designed to control the hazards, conditions and practices that cause injuries. As indicated earlier in this report, I found little persuasive evidence that the Assessment Rate Model provides a substantial direct incentive to develop and implement effective safety programs. The primary driver for these programs is the employer's genuine commitment to safety together with the Workplace Safety and Health Act, which prescribes the minimum standard for such programs and the enforcement of that standard by the Workplace Safety and Health Division. The WCB also provides valuable support for developing and maintaining effective safety programs through their Prevention Department.

The Workplace Safety and Health Act and the effective enforcement of the regulations and standards under the Act are the foundation for maintaining safe and healthy workplaces. The following initiatives should be viewed as a complement to be built on that foundation, and not a substitute for the priority of enforcement.

The WCB has established a prevention incentive program in the construction sector, generally referred to as COR (Certificate of Recognition) that does provide a direct financial incentive for implementing safety programs as part of the Assessment Rate Model. Firms that qualify on a safety program audit receive a 10% reduction in their assessment for the first year, and 5% in subsequent years. This program is paid for by an additional assessment for the construction sector to cover the costs of that incentive program. A number of additional criteria must be met to be eligible for a discount including no fatality or administrative penalty or offence under the Workplace Safety and Health Act in the previous year. By focusing primarily on controlling the hazards, conditions and practices that cause injuries, the COR program does provide an incentive for preventing injuries.

In a June 2011 report to the WCB directors, the WCB administration acknowledge: “Except for the COR incentive in the construction industry, there is no connection between the rate model and employers choosing to implement accredited safety and health programs.” There is a far wider agreement that experience rating systems are more effective in controlling the cost of claims after the injury has occurred through effective disability management programs, and in some cases rewards illegal suppression of claims. During the course of my review, I heard credible evidence that the focus on managing claim costs in response to the Assessment Rate Model sometimes comes at the expense of resources that would otherwise be available for safety programs. This is consistent with the research literature cited earlier that indicated experience rating in some cases has contributed to unsafe workplaces because employers focus limited resources on managing reported claims rather than on prevention. Recognizing this dynamic, some jurisdictions are complementing the claims cost control incentive of experience rating with prevention incentive programs that provide a direct financial incentive for implementing effective occupational safety and health programs.

Section 7(4) of the Manitoba Workplace Safety and Health Act prescribes the required contents of a workplace safety and health program. In the course of my review I found a strong interest among the workplace partners to provide recognition for effective safety and health programs where they exist and to promote development of more effective programs where they are required. However, employers do not want to be unduly burdened by additional costs to fund such a program. Large established employers have or are expected to have effective and fully functioning safety and health programs. Small employers are expected to have a less formal program designed to identify and control the hazards in their operation.

There is general recognition among safety and health professionals and practitioners that it is not particularly difficult to compile the documentation for a safety and health program. The real challenge is to effectively implement that program to ensure that the hazards, conditions and practices that cause the injuries are controlled at the point of production in the day to day work environment. An effectively implemented safety and health program promotes a safety culture that enhances safe production and sound business practices. A documented safety and health program that is not effectively implemented breeds cynicism in the workforce with the recognition that the employer is “talking the talk, but not walking the walk.”

Determining whether and to what extent a safety and health program is effectively implemented at the workplace level requires a well constructed safety program audit tool and well trained auditors to independently and objectively evaluate the program. If the WCB is going to fund additional prevention incentive programs through the accident fund, it has an obligation to assure the workplace partners that the safety program evaluation is reliable and fully meets or exceeds the standards in the Workplace Safety and Health Act and Regulation and has application and relevance for the industry sector in which it is carried out. The Workplace Safety and Health Division has statutory responsibility for enforcing implementation of safety programs and should have oversight on the development of the audit tool and the validation of audits. While a generic audit tool is a necessary starting point for developing a standard approach for evaluating effective safety programs, industry sector adaption of the tool is necessary to ensure relevance and results regarding measurable outcomes. With these considerations in mind:

17. I recommend that the WCB partner with the Workplace Safety and Health Division in consultation with representatives of employer and labour organizations and with existing safety associations to develop a robust generic audit tool with a strong implementation component; and that this generic audit serve as a basis for developing industry specific audit tools to evaluate safety programs in specified sectors. I further recommend that this audit tool be presented at a joint employer and labour forum in 2013.

18. I further recommend that the WCB develop a policy for recognizing and certifying industry sector safety associations or equivalent organizations and establish criteria for those associations or organizations to adapt the generic audit tool to application in their sector with a high level of quality assurance that maintains the consistency and integrity of the audit for presentation at the 2013 forum. Full consideration should be given to effective participation of worker representatives in these associations and organizations.

19. Finally, I recommend that the WCB expedite the development of a Prevention Incentive Program as part of the Board's assessment system for implementation in qualifying sectors for the 2014 assessment year similar to the incentive program now in place for the construction industry sector.

It is important that the funding mechanism for the prevention incentive program does not serve to inhibit its implementation. Where industry sectors already have existing organizational structures in place that meet the WCB criteria, favorable consideration should be given to those organizational structures to avoid unnecessary overhead costs and duplication of existing programs. For example, Regional Health Authority employers indicate they have the necessary infrastructure in place to implement a sector wide initiative. The transportation and mining sectors also have organizational structures that address safety and health programs and requirements.

It is also important that the prevention incentive program be financially sustainable. If the prevention incentive programs achieve their intended results, reductions in injuries and claim costs should be achieved. These savings should be used to fund the prevention incentive program over the long term to minimize the need for a separate levy to fund the programs. The first year funding for the 2014 prevention incentive could be achieved by a small levy on all class E employers (except construction which currently has a separate levy). Another feature that merits consideration is the objective of achieving continuous improvement after the initial 10% rebate is granted in the first year. Qualifications for rebates in subsequent years should be based, at least in part, on improved audit scores going forward. Similar compliance criteria that now applies to COR, including no fatality or administrative penalty or offence under the Workplace Safety And health Act in the previous year, is important to ensure the integrity of the prevention incentive program.

A less formal prevention incentive program for employers with fewer than 20 full time workers is required to ensure that their participation does not involve unnecessary expense or time consuming paperwork. The WCB Prevention Department has developed an internet friendly self audit tool that may serve as a basis for implementing a less formal program.

20. I recommend that high priority should be given to expediting the development and implementation of the prevention incentive program in 2014 to prevent the occurrence of injuries to counterbalance the current focus on controlling the cost of the claims after the injury has occurred.

Workplace safety and health committees and safety representatives established under sections 40 and 41 of the Workplace Safety and Health Act play an integral role in the implementation of a workplace safety and health programs. They also play an important role in fostering and promoting worker participation in the workplace safety and health program.

21. I recommend that the audit tool make provision for participation of the health and safety committee in any audit of the workplace safety and health program and that the committee co-chairs be provided with an opportunity to sign off on the audit. For a less formal program for smaller employers, the workplace safety representative should sign off on the audit.

In most cases, workplace safety and health committees operate in relative isolation in their own workplace. While committee members are entitled to training, there is limited interaction between safety and health committees from other workplaces. Many committees find themselves "re-inventing the wheel" when it comes to innovative safety initiatives. To foster more interaction and sharing of best practices between safety committees in different workplaces:

22. I recommend that the WCB and Workplace Safety and Health jointly sponsor a one day conference for safety and health committee co-chairs and members in the latter part of April each year to promote development and exchange of best practices for their committees.

It is well established in the prevention literature that a strong safety culture in an organization is consistently and independently associated with good safety performance and lower injury rates in that workplace. Positive worker attitudes to and perceptions of safety are associated with better individual safety performance and reduced risk of injury. Put another way, it's not enough to provide safe equipment, systems and procedures if the culture doesn't encourage healthy and safe working atmosphere. Safety surveys are one tool that is available to measure and evaluate a workplace safety culture.

A positive safety culture is generally considered to have three key elements: working practices and rules for effectively controlling hazards, a positive attitude towards risk management and engagement of workers in that management, and the capacity to learn from accidents, near misses and safety performance indicators and brings about continual improvement. Recognition of workplaces with positive safety culture provides an opportunity to identify best practices and promote factors that lead to improved safety culture.

23. I recommend that the WCB's Prevention Department develop a safety culture survey tool that can be efficiently administered by the safety and health committee. I further recommend that the WCB establish a procedure for reviewing and evaluating safety culture surveys submitted voluntarily each year and establish a standard of excellence for

recognition of workplaces with a high level of achievement at the annual safety and health committee conference.

Disability Management

It is well established that fair and effective disability management programs provide the best available vehicle for restoring injured workers to safe and productive employment in a timely manner. Some employers have developed effective disability management programs to the benefit of their workforce, with the added advantage of achieving reduced costs associated with disablement from work. It appears from my review that there is still much work to be done to ensure that more workplaces establish fair and effective disability management programs, particularly in some industry sectors. A balanced and effective disability management program reduces any likelihood of claims suppression.

The National Institute for Disability Management and Research (NIDMAR) has developed an internationally recognized approach to disability management with support from the Canadian Government and some provincial WCB's. In 2006 the Manitoba Board partnered with NIDMAR to evaluate disability management in Manitoba workplaces that had experienced a high number of workplace injuries and illnesses. NIDMAR's disability management program has been evaluated through independent research and, in my view, provides the gold standard for disability management. NIDMAR"s disability management audit tool is designed to ensure the principles and practices in the program are effectively implemented at the workplace level.

24. I recommend that the WCB again partner with NIDMAR to develop a generic disability management program in consultation with the workplace partners that can be used by Manitoba employers to develop their disability management program and, where the WCB certifies industry sector safety associations and organizations, can be adapted by those associations and organizations to meet the specific needs of employers in that industry sector.

25. I further recommend that the WCB explore the option for implementing an incentive program for disability management programs in industry sectors based on the NIDMAR audit to correspond with the prevention incentive program recommended above.

Section 49.3 of the Act contains a progressive provision to establish the employer's obligation to re-employ injured workers for firms with more than 25 workers. The current approach by the WCB is to become involved to assist in the return to work plan if requested. In my view, a more proactive approach by the WCB would improve the success rate of return to work outcomes, particularly for seriously injured workers. Identification of potential re-employment problems before they become entrenched and early intervention to assist in the resolution of those problems will help minimize the cost associated with belated interventions.

26. I recommend that for workers with serious injuries and/or where time loss exceeds 90 days, that the WCB send the worker and the employer a copy of their "Return to Work" pamphlet. I further recommend that the WCB prepare a form to meet the reporting requirements of sections 18.1(1) for employers and 19(4) for workers to be completed by the employer and co-signed by the worker indicating agreement with the return to work

plan; and that when there is an indication of disagreement with that plan, that the WCB become involved without delay in accordance with section 49.3 of the Act.

During the course of my review I heard reports of very effective WCB intervention to resolve disputes around return to suitable employment in accordance with the Act. There were also reports of little or no involvement where significant problems existed. It may be that this inconsistency is the result of some case managers being more proactive than others, and it may also suggest that further WCB resources are required to adequately meet the WCB responsibilities to return injured workers to safe and sustainable employment. A review of the WCB‟s capacity to meet this obligation is appropriate at this time.

The Assessment Rate Model

The WCB's Assessment Rate Model has resulted in a balanced and stable accident fund with a lower average assessment rate when compared with most other Provinces. The Rate Model is complex and difficult to understand by most employers and workers and their respective representatives and is described in more detail in Appendix 1.

Employers generally support a continuation of the Assessment Rate Model, but acknowledge that employers who do not meet their obligations under the Act should be held accountable for confirmed violations. Most employers acknowledge that there are instances of claims suppression, but argue they are not extensive and do not threaten the integrity of the system. However, some employer representatives advise that the focus on controlling claim costs requires considerable administrative time and effort often at the expense of time devoted to safety.

Worker representatives contend that the Assessment Rate Model should be discontinued and the traditional flat rate assessment by industry sectors should be restored to meet the requirements of a stable accident fund. In their view, the Assessment Rate Model promotes aggressive claims management activities that undermines legitimate compensation entitlement to workers and fosters a pattern of illegal claims suppression that is allowed to continue unchecked.

The Manitoba Federation of Labour submits that Manitoba's experience rating system violates the foundational principles of the workers compensation system established by Ontario Chief Justice William Meredith in 1913, by:

- Reintroducing fault into a system that was designed to be "no-fault";
- undermining the "collective liability" principle by tying individual worker claim costs to the employer's assessment;
- promoting the adversarial system to deprive workers of the "guaranteed benefits" that was a hallmark of the historic trade-off;
- compromising the "independence" of the WCB by allowing illegal claims suppression to continue unchecked; and,

- eroding the "exclusive jurisdiction" principle by inducing more and more workers to accept private insurance benefits instead of filing WCB claims.

I accept the Federation's concerns as genuine and I have found some evidence that supports those concerns in the course of my review as documented in Appendix 2. It is clear that the balance the historic compromise was intended to achieve has been tipped in favour of employers in Manitoba primarily as a result of the Assessment Rate Model and its focus on controlling claims cost. In my view, restoring that balance is the first priority, and I have attempted to identify the next available steps to restore that balance with the recommendations in this report.

I encourage the workplace partners, who together "own" the workers compensation system by virtue of the historic compromise, to work together with the WCB and the Minister of Labour to restore the balance to the system in Manitoba. The first priority is to eliminate claims suppression where it exists and ensure that fair and equitable benefits are paid for workplace injuries and diseases. It is equally important to promote effective prevention initiatives to control the hazards, conditions and practices that cause the injuries in the first place and, when injuries do occur, to implement fair and balanced disability management programs to restore injured workers to safe and productive employment in a timely manner.

I have recommended some changes to the Assessment Rate Model including a provision to fund the first two weeks of any wage loss claim collectively within the industry sector. I appreciate that there are actuarial challenges associated with this recommendation that need to be worked out. The first two weeks following an injury is the point in the system where incomplete and inadequate claim reporting occurs and where claims suppression activities take place. I have also recommended incorporating prevention incentive programs and disability management incentive programs within the Assessment Rate Model to promote prevention activities to reduce risk and the resulting injuries and to restore injured workers to productive employment in a timely fashion using the existing COR program as a model.

The WCB undertakes periodic reviews of the Assessment Rate Model to ensure its fiscal stability and responsiveness to the requirements of the Act. The WCB consulting actuaries are currently in the process of a review of some elements of the rate model. I have had an opportunity to review the initial proposals from the actuaries and have discussed some of the proposals with the actuaries and senior Assessment Department staff. Those proposals will be given due consideration by the WCB, and where appropriate, the WCB will consult with the workplace partners and consider their views.

I have not recommended other substantial changes to the assessment rate model for two reasons. First, the complexity of the rate model is such, that changes in one element of the model can impact other elements in ways that are not readily apparent at the outset. In some cases, making adjustments that work in a two to three year window can have unintended cumulative impacts that are difficult to control. For example, waiving the balancing factor in years where financial results are favourable will have an unintended cumulative impact. Projecting the impact of changes to the Assessment rate Model, given the complexity of these issues requires actuarial expertise and is beyond the scope of my review and outside my area of expertise.

The second reason is that substantial changes to the Assessment Rate Model require consultation with employers and workers and their respective representatives and the possible changes for consideration have not yet been fully defined. Having said that, there are several options that have been raised for review by the WCB that merit general comment and are discussed below.

The WCB is considering the option of reducing the threshold for large firms moving between risk categories. Currently, an employer with over $7.5 million in payroll may move to a different rate category, after it has reached the lowest assessment rate in its current industry category, allowing it to achieve a lower rate than that assigned to employers in its original rate category. The option being explored is whether the payroll limit should be reduced to $5 million in payroll which would allow another 35 firms to take advantage of this lower rate option. The actuaries propose that to be eligible for this option, the firms must be without a compliance penalty for the last 36 months. I would propose consideration of two additional criteria for eligibility; that the firm qualify on a comprehensive safety program audit, and also qualify on an audit of their disability management program.

The Assessment Rate Model can be problematic for smaller employers whose rates can become very high on the strength of a small number of high cost claims. This situation is exacerbated by the difficulty that many small employers encounter in arranging viable return to work opportunities. There may be merit in exploring whether employers with under $200,000 in assessable payroll can participate in the Rate Model at a reduced rate (e.g. 75% of their claim costs). Most jurisdictions use a three year window of claims cost experience for determining the rate. Consideration should also be given to this option in Manitoba.

The WCB's commitment to periodically review the assessment rate model is commendable. I previously recommended that the Board conduct a claims suppression study every two to three years to determine whether and to what extent the Assessment Rate Model is generating or fostering unintended consequences that are illegal under the Act. Given the strong concerns of workers and their representatives regarding claims suppression, a follow-up survey should be conducted in 2015.

In their January submission in support of this review the Manitoba Federation of Labour stated:

"While some reduction in claims costs may be the result of safer and healthier workplaces, it is clear that much of the reduction has been achieved through unethical and in many cases illegal behavior, behavior that Manitoba's WCB has been unwilling to address. The negative impact on workers has been significant, with far too much employer attention and resources going to claims cost reduction rather than genuine safety improvements and with far too many injured workers being denied compensation benefits they deserve. In the process, the legitimacy of the WCB among workers has been significantly eroded. And as unethical employers shirk their fair share of workers compensation costs, experience rating places an unfair burden on employers that are genuinely committed to workplace safety and health and refuse to engage in claims suppression."

The confidence in the WCB system by the partners to the historic compromise that created the system is essential if the integrity of the system is to be maintained. Based on the limited scope of my review I have proposed a range of changes designed to restore a greater degree of

confidence in the system than now exists. Whether these changes will be implemented, and if so, whether they will be sufficient to restore confidence in the system remains to be seen. What is required at this important crossroads is an opportunity to test the proposed changes to determine if they are sufficient to correct the current imbalance. If they do not restore the confidence of workers, who are an equal partner in the system, then a complete review of the WCB funding mechanism is required.

27. I recommend that the Minister initiate a full review of the WCB system for maintaining the accident fund three years from the date of this review to determine whether the current system ensures fair compensation for workers and equitable assessments for employers, or whether additional major changes to the funding the accident fund are required to maintain the integrity of the system.

Appendix 1

Experiencing Rating and the Assessment Rate Model

Experience rating is a method for adjusting employers' compensation premiums to reflect their injury costs. The stated purpose of experience rating is to encourage employers to focus on injury prevention, effective disability management, and return to work activities.

As outlined in my report, this theory is not always achieved in practice. The available research suggests that the absence of a safety effect may arise because employers focus on managing reported claims rather than controlling the hazards that cause those injuries. Financial incentives focusing solely on claims cost may encourage employers not to report all injuries and put those employers who do report at an economic disadvantage.

The Assessment Rate Model must be viewed within the context and the purpose of the specific provisions in the Workers Compensation Act. That is the appropriate frame for evaluating the Assessment Rate Model.

Experience Rating and the Manitoba Workers Compensation Act

The provisions of the Workers Compensation Act that provide for the accident fund are contained in sections 73 through 97 and are detailed and complex. It is not the intention of this appendix to review that detail here. The purpose of this appendix is to outline the relevant provisions of the act that relate to the recommendations contained in my report and their relationship to the Assessment Rate Model.

Section 73 of the act provides for the establishment of 5 classes for purposes of raising funds for the accident fund. For purposes of experience rating, class E, that includes all industries not excluded by regulation and not included in classes A to D. Section 78 authorizes the board to create new classes or to consolidate or rearrange existing classes. Section 79 authorizes the board to assign each employer to the class, subclass, and group or sub-group that the board considers appropriate. Section 81 of the act authorizes the board to collect sufficient funds from employers to maintain an adequate accident fund.

Section 82 of the act has particular relevance for this review and states:

Rates for kinds of employment in same class

82(1) The board may establish rates of assessment among sub-classes, groups or sub-groups in the same class with such differences in rates among them as the board considers fair and just, and where in the opinion of the board the hazard in a sub-class, group or sub-group differs from the average in the class, sub-class or group to which it is assigned, the board may

(a) confer or impose a special rate, differential or assessment to correspond with the relative hazard of the sub-class, group or sub-group; and

(b) adopt a system of rating to take into account the relative hazard of the sub-class, group or sub-group.

Reduced assessments and refunds

82(2) Where, in the opinion of the board, the record and experience of accidents among the workers of an employer is better than the average record and experience of accidents among the workers of other employers in the same class, sub-class, group or sub-group, the board may reduce the amount of any assessment made upon that employer, or refund a portion of any assessment paid by that employer.

Increased and additional assessments

82(3) Where, in the opinion of the board, the record and experience of accidents among the workers of an employer is worse than the average record and experience of accidents among the workers of other employers in the same class, sub-class, group or sub-group, the board may increase the amount of any assessment made upon that employer, or make a special additional assessment upon that employer.

Section 82(1) authorizes the board to establish rates among sub-classes, groups or sub-groups in the same class based on "the hazard in a sub-class, group or sub-group" and to "adopt a system of rating to take into account the relative hazard of the subclass, group or subgroup." This opening or "gateway" provision in section 82 establishes the principle of differentiating assessment rates based on the relative hazard of a sub-class, group or sub-group as the primary basis for establishing different rates. In the context of workplaces, the generally accepted definition of "hazard" is any source of potential damage, harm or adverse health effects on something or someone under certain conditions at work. This gateway provision in section 82 emphasizes the primary approach of differentiating assessment rates based on the hazards that cause the injuries as a means of controlling claims cost. The focus of section 82(1), therefore, is on the priority of prevention.

Section 82 (2) further refines that differentiation, by authorizing the board to take into account the record and experience of accidents among the workers of an employer, and where that experience is better than the average among other employers in the same class, sub-class, group or sub-group, authorizes the board to reduce the amount of any assessment on that employer, or refund a portion of any assessment paid by the employer. Section 82 (3) authorizes the board to increase the amount of assessment the employer's record and experience of accidents is worse than the average record of other employers in the same class, sub-class, group or sub-group. The focus of sections 82(2) and (3) is in the claims cost after the injury occurs.

The Assessment Rate Model places the emphasis primarily on claims cost rather than relative hazards. The recommendations in my report regarding prevention incentives attempts to address this imbalance by providing an incentive within the assessment rate model to address the issue of the relative hazard of the employer. The metric commonly used for assessing the relative hazard is the quality of the employer's safety and health program as evaluated by a safety program

audit. This approach places the emphasis differentiating assessment rates with a focus on prevention of injuries, not on controlling the cost of injuries after they occur.

The Current Assessment Rate Model

The WCB website provides the following description of the Assessment Rate Model:

Rates for all employers are calculated using a rate setting model that seeks to:

- promote safe workplaces to reduce the number of injuries,
- promote effective disability management in the event of workplace injuries,
- ensure fairness for all employers, and
- ensure the WCB generates adequate revenue.

The rate setting model accomplishes these objectives through a structure where all employers share the costs needed to pay the claims of injured workers and the cost of running the workers compensation system based on their own claims experience, the claims experience of their industry, and how these circumstances compare to average employers throughout the province. Further, the model has limits in place to ensure excessive claims costs do not hinder employers ability to continue in business while still ensuring there is a connection between their claim experience and their rates.

The basis for all rates begins with the WCB's annually announced average rate. The average rate is the rate all employers would pay to fund the WCB's revenue requirements if the rate model were not experience based. In 2013, the average rate remains at $1.50.

Once the average rate is established, the rate setting model then calculates what each employer's rate should actually be based on their direct costs to the workers compensation system.

Employer's premiums are then calculated based on their rates and payroll for 2013.

The following *8 Steps* explain how your rate was determined for 2013.

Step 1 - Restated Rate

Your 2012 rate is the starting point to establish your 2013 rate. Since the average rate remained at $1.50 for the third year in a row, your 2012 rate remains as the starting point for the calculation of your 2013 rate.

Step 2 - Establish a “Target Rate” for Each Employer

Your target rate represents what you would pay if the WCB's rate model did not place limits on your rate and is the key factor in determining if your rate will increase or decrease in 2013. Your claim costs from October 1, 2011 to September 30, 2012 are compared to average employers' claim costs for the same period. The ratio of your costs compared to average employers’ costs is multiplied by the average rate ($1.50) to determine a target rate.

Generally, if an employer’s 2013 target rate is above their 2012 assessment rate, the employer will receive a rate increase to a maximum of no more than their target rate, or conversely, if their target rate is below their 2012 assessment rate, the employer will receive a rate decrease to no less than their target rate.

Employers with no claim costs or minimal costs would have a target rate of zero, or close to zero; however an assessment rate would still apply because of shared WCB costs.

Step 3 - Apply the Basic Change Limit

The WCB rate setting model has built-in limits to prevent your rate from increasing or decreasing too quickly. Rate changes are limited based on the number of years your rate has trended in the same direction. As such, consistent claims costs over the years will move an employer more quickly toward their target rate, whereas a random event in one year will have a more limited impact.

The following table illustrates what percentage an employer's rate can move in either direction based on the number of years they have trended either up or down.

Year	**-**	**+**
First*	5%	10%
Second	10%	20%
Third	15%	30%
Fourth	20%	40%

Fifth +	25%	50%

**First means the first year that an employer changes from a rate increase to a rate decrease or vice versa.*

Step 4 - Apply the Claim Duration Change Limit

Costs of claims for each employer are quantified for the purposes of the rate setting model by frequency and duration. Both the duration and number of injuries are measured against the average for all employers and then weighed against the employer's prior year rate to determine if a further rate increase toward the target rate is warranted.

The Claim Duration Change Limit is based on a point system and an accumulation of points can generate an additional 5% increase or decrease to your rate. The point system, detailed below, is based on the number of time loss claims and the length of time they were in pay for the same period used for costs. If the claim duration limit is trending in the opposite direction of the basic change limit, an employer will not receive either a 5% increase or decrease.

If the additional 5% (either up or down) is not warranted, the Claim Duration Change Limit will not apply and the Basic Change Limit remains as determined in step 3.

Occurrence in 12 months ending Sept. 30	Points
Claim reaches 2 weeks time loss	1
Claim reaches 26 weeks time loss	Additional 1
Claim reaches 104 weeks time loss	Additional 4
Fatality	6

Step 5 - Apply the Category Rate Range

All employers are assigned to an industry based on their business activities. Each industry is assigned to one of nine risk categories based on claim cost trends over a period of several years. Each risk category has a rate range from 40 percent below to 200 percent above the category average rate.

This step ensures that an employer's rate stays within the industry rate range. The average rate for each category is a fixed percentage of the overall current year's average rate as detailed in the following table (for example, the average rate for Category 120% is calculated as $1.50 X 120% = $1.80):

Category - Fixed Percentage of Average Rate	Category Average	Highest rate in category	Lowest rate in category
15%	.23	.69	.14
25%	.38	1.14	.23
40%	.60	1.80	.36
70%	1.05	3.15	.63
120%	1.80	5.40	1.08
200%	3.00	9.00	1.80
300%	4.50	13.50	2.70
500%	7.50	22.50	4.50
800%	12.00	36.00	7.20

2013 Average Rate = $1.50

Step 6 - Apply the Additional Increase for a Fatal Accident

Employers who experience a fatality in their workplaces will be assigned $250,000 per fatality to their claim cost record regardless of the actual costs associated with the claim. The $250,000 is used to calculate the employer's target rate.

In addition to the Basic Change Limit and the Claim Duration Change Limit, the employer will receive an additional 25% increase limited by their target rate.

Step 7 - Apply the Balancing Adjustment to <u>All</u> Employers

Before running the 2013 rate setting model, the WCB determines how much revenue is required for current and future claim costs and to operate the WCB system. To ensure the WCB meets its 2013 revenue requirement, a final balancing adjustment is applied equally to all employers. Note that the balancing adjustment can move an employer's rate outside of the current rate range.

In 2013 the Balancing Adjustment is +2.99%.

Step 8 - Apply the Safety Association Levy for Represented Industries

The WCB collects revenue on behalf of four independent safety associations from the employers who are obligated to participate based on their industry. If you are classified in one of the following industry codes, the amount required to fund the safety program is the last item added to your rate.

Industry Code	Program	Contact Number	% of Assessment Rate

310-10	Agricultural Manufacturers of Canada - AMC Safety	204-987-7461	6.32%
407-02 to 407-09 and 408-02 to 408-09	Manitoba Heavy Construction	204-947-1379	9.78%
All other industry codes starting with "4"	Construction Safety Association of Manitoba	204-775-3171	6.35%
701-06	SAFE Hospitality	204-694-7233	6.81%

Note: The addition of the safety program levy may also move an employer outside of the current rate range.

The WCB has approved an opportunity for a discount for employers in the construction industry (10% in the first year of accreditation and 5% in subsequent years when all criteria are met). To be eligible for the discount, construction firms must receive safety accreditation through the above noted construction safety program. Please contact your safety program representative for further information.

Calculating Your Premium

Once your rate is calculated, your premium for the coming year is calculated by multiplying your rate by your payroll and then dividing by 100.

It is important to note that the payroll you report is the assessable payroll which means you only include your individual worker's earnings up to the annual maximum earnings level. The maximum assessable earning level in 2013 is set at $111,000 per worker.

Attached to this appendix is an excerpt from a power point presentation prepared by an employer in the food processing industry that illustrates the potential impact of the Assessment Rate Model on its WCB assessment rate based on its "enhanced" light duty job program. That program had light duty positions that did productive work for the employer, but also had a special class of light duty positions that were non- production positions created solely to suit employees with various restrictions to "limit the number of WCB claims." By creating non-production light duty positions solely to suit employees with various restrictions to limit the number of WCB claims, the employer could save more than $3,250,000 (net) on their WCB assessment premiums over a five year period.

This employer presentation illustrates how, by spending $1,500,000 over 5 years to create non-production light duty jobs, they could reduce their WCB premiums by $2,254,000 over the 5 year period; yielding a net profit of $750,000. By using only production light duty positions, the company's assessment rate would increase by an estimated $2,546,000. The addition of the non-production light duty positions, therefore, would save the company a projected $3,296,000.

When one employer in a sub-class employs this type of non-production light duty position to limit the number of WCB claims, it should come as no surprise that other employers who compete with that employer will consider implementing similar strategies. Without any check on the "unintended consequences" of the Assessment Rate Model, the proliferation of light duty positions created solely to suit employees with various restrictions designed to "limit the number of WCB claims" will increase with the potential of limiting legitimate entitlement under the Act and encouraging illegal claims suppression.

EXCERPS FROM A POWER POINT PRESENTATION FOR COMPANY A FOR "ENHANCED LIGHT DUTY"

Currently [Company A] has been accommodating workers with job restrictions and placing them in Light duty positions. This practice reduces WCB claim costs, and it assists in transitioning workers back to full functionality, but is it worth it financially? [Company A] has two types of Light duty positions.

Type A: Positions that are required to fulfill production requirements (box room, feed lines)

Type B: Positions that are created solely to suit employees with various restrictions **and limit the number of WCB claims.** The Cost of accommodating these workers with restrictions in positions not required to fulfill production requirements is $300,000 per year.
In order to determine the project objective of determining how low or how high the WCB rate can go, 3 scenarios were analyzed over a projected 5 year period.
Scenario 1: Status Quo – Continue reducing claims and claim costs to WCB. Accommodate all worker restrictions with Light duty positions (**Both Type A & Type B)**.

		WCB Premium Savings (Cost)	**Light Duty Costs**	**Total Savings/ (Cost)**

Scenario 2: Required Light Duty Positions only- Fill only the required light duty positions to fulfill production requirements, once these have been filled, worker is covered by WCB. (**Type A only)**
Scenario 3: Discontinue Light Duty Program – As soon as a worker has job restrictions they are to be covered by WCB.

Scenario 1 outcome: Full WCB premium discount is achieved each year. WCB rate goes from 5.35 in 2004 to 3.09 in 2009. The WCB rate decrease amounts to a $2.25 million dollar savings over 5 years. The cost of light duty workers over 5 years is approximately $1.5 million dollars.
Scenario 2 outcome: WCB rates increase. WCB rate goes from 5.35 in 2004 to 7.50 in 2009. The WCB rate increase amounts to an increase of premiums of $2.5 million dollars over 5 years. Light duty positions that do not aid in fulfilling production requirements are no longer accommodated and are not included in efficiency variance.
Scenario 3 outcome: WCB rates increase. WCB rate goes from 5.35 in 2004 to 19.05 in 2009. The WCB rate increase amounts to an increase of premiums of $13.3 million dollars over 5 years. No Light duty program exists. [Company A] does not accommodate workers with job restrictions.

The Table below summarizes the scenario outcomes over 5 years. Scenario 1 was considered "the most beneficial option and is the only scenario that impacts [Company A] favorably."

Scenario 1		$2,254,000	$1,500,000 (5 years)	$750,000
Scenario 2		($2,546,000)	0	($2,546,000)
Scenario 3		($13,279,000)	0	($13,279,000)

Appendix 2

Injury Reporting and Claims Suppression

This appendix contains summaries of reports and interviews regarding WCB claim reporting issues and some allegations of claims suppression. I have recorded these stories as they were presented to me to accurately reflect the concerns of the individuals interviewed and the reports received. As I complete this review, there are other requests for meetings which I have been unable to accommodate because of time constraints in preparing my final report. I found all of the workers I met with and whose reports are contained here to be forthright and straight forward and I believe their concerns should be given consideration.

It was not possible given the terms of my mandate and the limited time frame for conducting this review to investigate these stories. The investigation of allegations of claims suppression is more properly the responsibility of the WCB who has the statutory mandate to investigate these matters.

I wish to thank the workers who stepped forward to tell their stories. I also wish to thank the Manitoba Federation of Labour and Jean-Guy Bourgeois for arranging meetings with a number of union representatives, with the Occupational Health Centre staff and with the Young Workers of tomorrow. I also wish to thank the United Food and Commercial Workers Union (UFCW) local 832 and Rob Hilliard for arranging meetings with workers with translator support.

The stories summarized in this appendix are not a representative sample of claims reporting issues and claims suppression concerns. Rather, they are a focused sampling of stories that were brought to my attention during the course of what was essentially a six week review process carried out over a three month period. As noted in my review, the WCB has commissioned a more systematic survey of claim suppression which will provide the WCB and the workplace partners with a more representative basis to gage the nature and extent of claims suppression in Manitoba.

The following stories are intended to reflect the concerns raised during the course of my review from the perspective of the individuals who presented this information. They are presented pretty much in the order in which they were received.

#1. A workplace safety and health committee co-chair described an injury when he dismounted from a large forklift. He "rolled his ankle" and as his knee buckled he heard a snap. He advised his supervisor who directed him to the nursing station to initiate an accident investigation. He was advised that he could be accommodated without medical attention. He decided to go to his doctor although this was not encouraged by the employer representative. He was advised he had to be at work the next shift.

His doctor recommended he be off work for one to 2 weeks until the swelling in his knee went down. The worker decided to disregard his doctor's advice and accept the light duty accommodation. Because he was unable to weight bear on his injured leg, his accommodated job was to sit outside the entrance to a department to advise workers to wipe their feet before

entering. He pointed out that there was already a sign above the door advising workers to wipe their feet. He indicated the light duty assignment was demeaning and unpleasant.

This worker described the company's safety rewards program which is organized by departments. There is a pizza lunch for every department that does not exceed a minimal quota of medical aid claims. At the end of the year the department with the lowest rate gets a company-sponsored barbecue. He indicated there was also a year-end bonus system that included improvement in the lost time injury and medical aid claims rate over the previous year. At the time of our interview the bonus had not yet been announced. He stated: "it's looking like about $200...for 2012."

This worker indicated that the peer pressure to minimize reportable injuries is well entrenched in the workforce. He stated he received a "coaching letter" for his "unsafe act" when he stepped off the forklift. This worker gave his evidence in a straightforward manner without embellishment and I found him a credible witness.

 # 2. A second worker who was employed at a poultry processing operation described her job of splitting chicken breasts on a circular saw that was highly repetitive. The job included moving containers of product weighing up to 75 pounds. In October while moving a container of fat and skins, she slipped on the wet floor and injured her shoulder. Her arm was sore at the end of the day and she filled out a green card to report the injury, and went to see her doctor. Her doctor advised her to take time off to heal the shoulder. Her employer tried to argue that she didn't report the accident and was angry with her because she filed a claim with the WCB. Once the WCB investigated the claim, it was accepted. She stated "I was honest and I had a good doctor"

The employer then offered her light duties on the production line which she said she was unable to do. She stated: "[the company nurse] said I would not get paid by WCB if I refuse light duties and she handed me a Blue Cross form." The worker subsequently agreed to work in the laundry folding gloves. She agreed to return to her regular job on January 2nd, although she still had ongoing symptoms and was worried about the long term effect.

 # 3. A worker employed as a driver sustained multiple injuries when he rolled his truck. He stated: "I cracked my pelvis and I couldn't walk for 2 months and I was on heavy medication." His employer said he was uncooperative because he wouldn't participate in a light-duty accommodation. After a couple of months he agreed to sit in the office and shred papers. However, sitting for prolonged periods increased his pain and he had to get up and walk and sometimes lie down because of the pain. He stated: "I was on modified duties for a year. I was followed and I was filmed. They knew when I was going to the doctor." He said: "The company slammed me at every turn and made me out to be a terrible person. The WCB didn't help me, every step was a fight. It took 2 years with physio before I could walk straight." The worker said his employer would "... Go to incredible lengths and expense to make a claim go away." He added: "experience rating is the motivator."

 # 4. A fourth worker was interviewed with the assistance of a qualified interpreter. She stated she was first injured in 2011 and was "...not allowed to claim." She said her repetitive strain injury was caused by a deficient blade on a skinner knife. She asked her employer "... Please let me do

another job." The nurse let her work light duties for 2 days. Her doctor recommended time off and the WCB called her supervisor. She stated "there were 5 meetings... I'm very scared."

After the meeting her supervisor let her move to a lighter job trimming, but she was called back to her regular job "for just a few hours" which was very difficult for her shoulder. She said she had the feeling her supervisor was "punishing me because I told him I cannot work." She stated she tried to do her job for a week but it was "very painful" and she asked for Friday off without pay. She came back to work on Monday and her arm was swelling. She talked to the supervisor and had a meeting with the manager. She was given one week of light duties and then returned to her regular position. She said she was told: "if you complain again you will work harder and your rate [pay] will be lower." She stated: "the more you complain, the more negative attention you get". The worker stated "a lot of workers are in pain...and take Tylenol. We go home in pain. We are very stressful. We are scared. We are not reporting when it happens." When asked if the nurse ever recommended seeing a doctor, she responded "no."

 # 5. This worker was also interviewed with the assistance of the interpreter. She stated she had worked more than 8 years "cutting chicken." She hurt her wrist and reported to her supervisor and filled out a green card. She wanted to see her doctor. She asked him for one week light duties which he approved, but her supervisor wanted her to return to her line work. She stated: "I asked for a week off without pay. He said no only 2 days off back to work on Monday." "... It was too bad, I couldn't do it." Her immediate supervisor had no light work. She then went to another supervisor who allowed her to put paper liners on trays but it was painful and she couldn't keep up the pace. She then asked for 2 weeks vacation time and was allowed to do that. She was still in pain when she came back to work.

#6. That same worker said on another occasion she slipped off her workstation and fell down to the floor injuring her back and side. Two co-workers helped her up. She was in pain and her pants were wet from the wet floor. She asked to go home to change. This was denied and she had to work in the cold room for the rest of her shift. She said, "I was very painful and I couldn't work anymore. Finally he let me go to my doctor who said one week off. After 2 days my supervisor made me come back. He said he would allow me to sit on a chair. When I got to work there was no chair. He said the chair had been taken by someone." She indicated she went back to work with Tylenol and it took over 3 months for her condition to improve.

 # 7. This worker has worked in the food processing industry for 15 years. Although English is not her first language, she is mostly able to communicate without the interpreter's assistance. In 2011 she fell and injured her back and left arm at work. She applied for WCB and was off work for several months and still had symptoms when she returned to her regular job. She said the WCB told her "report any recurrences." In October 2012, the pain in her left arm and back worsened and she went to see her doctor who recommended physiotherapy.

She asked him to put in a claim. The doctor advised her to wait for approval from the WCB. She said the WCB didn't approve physiotherapy and she is now using Tylenol every day and during the night. She has recently been prescribed a pain patch. She said by Friday every week she is very bad. She had to take time off without pay. If she reported being sore at work they tell her to go home without pay. She said she feels her doctor is afraid of the WCB and doesn't want to deal with the company.

 # 8. The same worker indicated a coworker beside her on the line cut her hand with scissors. The manager took her out and put some antibiotic on the cut and a bandage and sent her back to the food processing line. The coworker indicated the manager said she couldn't go home. He said it was okay because he used antibiotic on the injury. She advised her coworker that she should go home. The coworker again asked to go home and the manager allowed her to work light duties. She did not make a claim.

(It is worth noting that the interpreter who is a qualified social worker indicated that he deals with many immigrants who work in non-union workplaces. He said in his experience the compensation system is based on insurance and stated "the worker has to prove the claim. They often look at workers as if they are liars.")

 # 9. Another worker interviewed has been a co-chair of his workplace safety and health committee for 13 years. He described his work as a driver involving heavy physical labor including lifting 165 pound kegs. He has sustained 11 back injuries at work over the years and was injured once when he was accidentally crushed by a tailgate. In June 2008 he re-injured his back when he drove over a large hole that jarred his vehicle. His feet and his legs went numb. His Dr. recommended surgery but the compensation Doctor said surgery was risky and he should learn to live with it. He was able to secure a lighter job but his back got progressively worse. In June 2011 he experienced a major deterioration. He filled out an injury report but the employer opposed the claim and appealed. When he asked the employer why they were appealing his claim he said my boss said, "We appeal everything."

 # 10. The above worker noted there was a number of "walking wounded" at his job site. One of his coworkers had a shoulder injury and had to have his arm in a sling. His light duty job was reaching down into bins and lifting plastic which was against the medical restrictions. As safety committee co-chair he intervened on the injured worker's behalf and they corrected that situation.

 # 11. The above worker also indicated that another worker at his workplace slipped and fell and hurt his leg and couldn't climb the stairs to the lunchroom where he was assigned light duties. So he was rolled up the ramp in a wheelchair. His light duty was reading the paper. He noted that the company HR department would call the worker's doctor directly and advises, "We can give them a job." The company has also arranged with a local clinic to have workers in to see a doctor right away so light duty can be assigned without lost time. However the light duty positions are not necessarily meaningful work. He described one injured worker assigned to fill out timecards even though the company "has a machine to do that." He noted the company also has "free pizza day" based on lost time records. He said, "I don't go for free pizza".

 # 12. This worker is the manager of a produce and deli section in a large retail food store. Workers in her department often lift over 4,000 pounds in a shift. She sustained a strain injury and went on light duties. There were no additional workers assigned and other staff members were forced "to do double duty". In her case the WCB case manager came out to the workplace to make sure the light duty was appropriate. However, the worker said this is not always the case. In some cases the worker is assigned light duties and still expected to do their full job under the guise of light duty. She stated "it is very inconsistent."

 # 13. The UFCW Union illustrated concerns about aggressive claims management practices by a paralegal firm in the case of a young worker in his early 20s who suffered a serious eye injury when a piece of cardboard, thrown by another worker, hit him in the eye. The second worker claimed that the injury occurred when they were both engaged in horseplay. The injured worker claimed he had not been involved in horseplay. The paralegal firm objected to the claim being accepted on grounds that the injured worker had taken himself out of the employment relationship by engaging in horseplay.

The paralegal firm gathered witness statements that confirm the horseplay version of events stated by the worker who threw the cardboard resulting in the claim being denied. The injured worker emphatically denied being engaged in horseplay and when he read the witness statements provided by the paralegal firm he advised that none of those "witnesses" had first hand evidence and in fact, two of them were not even in the store when the incident happened. The union was able to secure 2 new witness statements from workers who were present that confirmed the injured worker's version. The union subsequently secured documentation from the employer confirming that "it took a lot of coaxing for [the 2nd worker] to come forward and tell us about the horseplay in the back room". It took approximately one year for the injured worker to establish his claim through the review process. The young worker sustained a permanent partial loss of vision and was granted a permanent partial impairment award for the loss.

 # 14. The union also documented a case of a retail clerk who witnessed a shoplifter carry a TV out of the store without paying. The clerk, along with one of the assistant store managers, followed the shoplifter into the parking lot. The worker attempted to stop the theft and was assaulted by the shoplifter who then drove away. The assistant store manager helped her get up and they returned to the store. She was advised to go home take 2 Advil, drink some rum and she would be fine. When the worker returned for her next shift she advised the employer should wish to file a WCB claim. In the presence of a shop steward the manager told the worker that if she filed a claim the paralegal firm would prove she violated policy by following the shoplifter outside the store and her claim would be denied. The worker proceeded to file a WCB claim. The union states the employer subsequently convened a safety and health committee meeting without inviting the shop steward who is a member of that committee. The minutes of that meeting did not reflect the shoplifter incident and subsequent injury. The union representative indicates the Workplace Safety and Health Division issued an order to the store for having health and safety committee meetings without notifying worker committee members.

 # 15. A United Steelworker representative described a situation where he and a coworker were positioning a 60 foot long 2 inch X 4 inch steel beam using pry bars. The beam weighed approximately 4000 pounds. The coworker's pry bar slipped and the beam dropped. The worker stated: "the weight of the beam jerk my whole body forward." He described how his whole body felt numb after this happened and he reported the injury. He was advised to sit down for a while. About 15 minutes later he was asked if he could finish his shift and he said he couldn't. The employer asked him if he wanted to take a few days off on vacation time to shake it off.

The worker stated he was young at the time and came back to work the following day to "...try to work it out." Nine years after this incident he still experiences spasms in his back associated with pain and stiffness and a knot in his upper back where he felt the most intense pain when the

incident occurred. He remains concerned about the long-term consequences of this injury that he was encouraged not to report at the time it happened. He regrets not filing a claim at the time.

 # 16. The same worker showed me a visibly swollen knuckle on his right hand that he had injured about a month prior to our meeting. He injured his hand while attempting to unlock a large crane hoist by releasing a difficult lever that was stuck. When he managed to release the lever, he felt a pop in his hand associated with intense burning pain. He reported the injury and went to his doctor without delay because of the intense pain. His doctor advised him to take a week off work and come back the following week when the swelling was down so he could better evaluate the injury.

He went back to work with his doctor's note and was directed to take a physical limitations form back to his doctor to fill out so the employer could assign him light duties without missing time. The worker refused on grounds that his doctor advised him to rest his hand. He was then off work on the Thursday and Friday. The employer phoned him at home on Sunday night to advise that they had light office work available for him. The work involved removing stickers which required the use both hands and the knuckle swelled up and the back of his hand turned blue. His doctor was upset with him because he was aggravating the condition, but the worker has continued with the light duties. When asked why he didn't follow his doctor's advice, he stated: "quite honestly, they make you feel like an A...hole if you missed time from work." He is now awaiting surgery to repair the damaged tendon.

 # 17. The MFL Occupational Health Centre is a nonprofit community health centre specializing in workplace health and safety funded by the Winnipeg Regional Health Authority and by donations from individual, unions and other groups. The OHC is committed to working with all Manitobans who are interested in creating safer and healthier workplaces. The Centre has coordinated a "Food Processing Roundtable" to document and evaluate systemic practices in some workplaces that discourage many workers from reporting their injuries to WCB. The following are some of the observations presented by Occupational Health Center staff members:

- Some immigrant workers rely on documentation from employers that enable them to stay in Canada that the employers send to the Canadian government. If these workers talk about being sore or hurt, management suggest to these workers that they are not suitable for this work. This practice silences them during the waiting time for permanent residency.

- At some plants, workers are often instructed not to go to a doctor for 5 days and to let the health unit manage their injury. Workers are often treated with ice or heat and then go back to work. If they are in too much pain to return to their usual job, they are temporarily assigned to light-duty jobs.

- If workers insist that they need medical attention, they are given the business cards to go to select health professionals who usually do not report these visits to WCB. Workers often return immediately to work without work restrictions.

- Workers often think that when they report their injury to the health unit that the caregivers will forward this information to WCB on their behalf. They find later that often no WCB claim has been started. They are surprised that their own benefits plan ends up paying for their treatment.

- Some employer health unit staff members phone doctors and take issue with their reports and try to get them to change the restrictions.

- Workers that report line speed or repetitive strain as the cause of injuries on their accident reports are often subject to management pressure to omit mention of these terms and rewrite the cause of injury.

- Some supervisors change claims from work related to non-work-related and try to convince workers that they do not have recurrences of a previous compensable injury.

-. Some health units no longer provide injured workers with a copy of their accident report.

- Workers who are on extended light duties often feel singled out for chats about the suitability for this imply meant and feel pressure to return to their regular job.

- Many productivity incentive programs for individuals or crews include bonus schemes for no incidents or nurse visits.

- Family members often accompany workers to healthcare appointments and try to act as interpreters, but misunderstandings often persist due to language barriers between care providers and injured workers

- Long bus rides to and from work often make it difficult for workers to return phone calls to WCB during daytime office hours. Many workers cannot understand the information/instructions that they get in letters from WCB. When they do not respond to WCB, their benefits often stop. Workers who try to make phone calls to WCB from work are often accompanied by a supervisor or nurse, who may try to manage the communication and this intimidates the worker.

- Physiotherapists have expressed the need for WCB to be better able to determine if workers with repetitive strain injuries are getting sufficient time to heal before returning to work or if healing is delayed by returning to work too early.

- Workers readily identified too fast line speed as the main source of their pain and injuries.

- Workplace safety and health representatives are frustrated with the lack of meaningful dialogue about prevalent systemic hazards and practices such as dull knives, ad hoc rotation, reduced stretch breaks, unrelenting repetition, and especially too fast line speed. They believe this contributes to key ongoing workplace hazards issues not being addressed at the source. The result is injury and delayed healing for many workers.

- Workplace safety and health representatives from a meatpacking plant recently said that at least half of the workers are working in pain at any given time.

- In the past, workers were leery to submit written documentation about alleged claim suppression to their workplace safety and health representatives and union representatives. This is slowly changing. With the help of interpretive services, some workers are now starting to also submit written documentation in spite of their fear of reprisals. The following illustration was provided:

#18. A worker with an injured back was taken to his supervisor's office without the requested presence of his workplace safety and health representative to sign an accident investigation report that attributed his back injury to improperly lifting a box. The worker insisted that he appropriately used his legs for the lift as he always does. The worker told his supervisor that his sore back was due to no rotation during an entire shift and that rotation is part of the collective bargaining agreement. The angry supervisor finally released the unsigned accident investigation report. The worker brought the accident investigation report to the union representative who in turn submitted the report to the workplace safety and health committee for review. This worker did not initially report the injury to WCB because the nurse told him that there would be alternate work for 5 days and then if his back was still sore he could report it and go to the doctor. A week later when the worker met with the union representative about the accident investigation, the union representative advised the worker that he was entitled to have reported his injury immediately and to go to his doctor. She arranged for an interpreter to now help the worker report his claim to WCB.

 # 19. A worker representative described an incident where a worker injured his wrist using a pickax to break up concrete. The problem got worse during his shift and he reported it to the employer and went to see his doctor for physio. The worker lived close to the plant and rode his bike to work. The employer protested claim to the WCB and said the worker wiped out on his bike on the way home and the claim was denied without investigation. The worker received a letter from his doctor supporting the claim and stating that the wrist injury was due to the pickax work. The representative went to the WCB and provided a detailed description of the work and the claim was asked eventually accepted. However, the worker was without income for 4 months. The representative stated that this type of situation encourages workers to go on short term disability plan to avoid the hassle of making a WCB claim.

 # 20. A union safety representative provided a description of a member of his union who slipped and fell off a roof that didn't have guardrails. He landed on a sand pile and dislocated his knee. The employer kept him on the payroll because they wanted to avoid a visit from a workplace safety and health inspector regarding guardrail violations.

 # 21. One safety committee co-chair indicated that the injury reporting process at her Provincial government correctional facility was well-established and worked well. Green cards were readily available to record any workplace injury. A copy of the green card was reviewed by the committee to determine if there was a hazard to be addressed. The employer had established a "supportive employment program" to assist and facilitate injured workers returning to productive employment.

 # 22. Another safety committee member in a different provincial government department described a situation where green cards for reporting injuries are not accessible. She stated there was no training on how to report claims and indicated that the seasonal nature of the workforce led to many inconsistencies in claims reporting.

 # 23. A young worker described a situation on his first job where he was working as a dishwasher at a large restaurant. He cut his hand badly with a knife and went to emergency to get stitches. He was waiting in emergency when he received a call from his employer on his cell

phone. The employer advised "... Don't say it happened at work and we will pay your wages while you are off." He agreed to this arrangement because, at the time, he didn't know better.

 # 24. The above worker described a situation where a coworker got his hand caught in a dough machine "broke his hand." He too was advised not to report it as a work injury and the employer would cover the worker's wages. It was a long-term injury and the coworker was paid a few thousand dollars. He noted that the guarding on the machine had been removed. He pointed out that if a serious injury had been reported to the Workplace Safety and Health Department there would have been an inspection and compliance orders written on the employer for the guarding violation. However, there was no claim established and workplace safety and health were not notified.

 # 25. Another young worker described working in the packaging section of a manufacturing firm. One of his coworkers broke his arm when a loading lever malfunctioned. The employer said the coworker was not operating the machine properly which caused the accident. The employer gave the worker the option of making a claim and being "written up" for the safety violation and put on probation. If he didn't make a claim he could go on light duties until he was healed. He chose light duties.

 # 26. I was provided with a copy of a medical letter from an occupation health physician to a worker's family physician documenting the history of a worker's musculoskeletal problems. The worker related the problem to the use of a high-speed rotary blade knife that transmitted vibration through the grip that affected the hand, forearm and upper extremity. Within a few months of using the rotary blade knife, the worker developed right shoulder and neck problems which were related to the vibration and the sustained neck flexion for downward gaze to use the knife. She went to the company nurse on at least 3 occasions and was provided with ice and told not to seek medical attention elsewhere. The problem progressed to the right medial elbow. Again she was advised by the company nurse not to report the incident or seek treatment elsewhere. The occupational health physician stated: "It was clear in my interview that her musculoskeletal pain has been a very significant stressor in her life and that she has been vulnerable to pressures to not report or seek help for her pain, as she cannot afford to lose work time or her job." She recently experienced a knife puncture at the base of her thumb. She went to the nursing station where the injury was bandaged. She was counseled to not seek health care elsewhere and no incident report was submitted and no claim was reported to the WCB. The physician stated: "in hearing her narrative and particularly developments with her recent hand injury, I am concerned that she has developed a complex of chronically overused and hypertonic muscles in her hand, forearm, shoulder, neck and upper back that has not received medical or any treatment despite progression of symptoms and impairments." The physician noted that the WCB was aware of the worker's medical visits to her family physician but in their correspondence there was no indication that the employer had reported the incident to the WCB.

 # 27. A nurse's union representative expressed concern about the employer's aggressive claims management program being carried out by a consultant who was a former WCB employee. She indicated the employer was reducing claim costs primarily through the appeal process. The representative provided an example of a night shift nurse who was struck on the side of her head by a patient at 2 AM while she was taking the patient's pulse. She reported the injury to her employer, saw her physician and made a claim to the WCB. She was called into work 2 days

later according to the representative, “because she didn’t get knocked out” by the patient. The letter to the WCB objecting to the claim alleged that the nurse was “abusive of her vacation and was using the claim to extend her vacation”. The employer consultant also argued that the incident didn’t support time off work. The claim was accepted by the WCB and the consultant wrote a letter of intention to appeal to get the nurses claim file and medical records, but did not pursue an appeal. The representative said the nurse considered that her character “had been slammed” but she never had an opportunity to challenge the misrepresentation. The representative indicated this aggressive approach puts a chill on the other healthcare workers who hesitate before exposing themselves to this aggressive claims management practice. It also takes the focus away from the accident and the need to identify corrective action.

 # 28. The representative described another case when a nurse strained her back by reaching and pulling in an awkward position. She filed a claim. The consultant opposed the claim on grounds that the worker was 3 months pregnant at the time of the claim and the strain was due to that condition. The representative said the WCB doctor endorsed that theory even though there was no investigation by the WCB about the incident. The nurse decided it wasn’t worth the hassle to pursue an appeal which would take months to process and she didn’t want that process to upset her personal life with the impending birth.

 # 29. The nurse’s union representative indicated that the focus in the healthcare sector was now on managing claims costs at the expense of prevention activities. She stated that the nurses union had recently established a new health and safety officer position to work with safety and health committees to try to restore the balance. She also pointed out that some healthcare facilities had achieved positive return to work outcomes based on the disability management program from the National Institute for Disability Management and Research.

 # 30. A representative of the Canadian Union of Public employees reported that in some school districts they have encountered a problem with reporting injuries that result from assaults from special needs students. He indicated there was a reluctance to report these incidents because of repercussions for the students. He stated there was an understanding that these incidents would be dealt with “internally.” He described “a culture that discouraged filing a claim for injuries that resulted from assaults.” He described it as “a subtle form of suppression, but one that should be addressed.” He said similar issues exist for violence from mentally challenged patients in care homes.

 # 31. Another worker met with me to describe his long and very complicated dispute with the WCB over his multiple injury claims. He described in detail the difficulties he had encountered with referral to inappropriate light-duty positions. He arranged for a functional capacity evaluation at his own expense which he stated was ignored by the WCB. I explained to this worker that I was unable to become directly involved in individual claims which he understood. He stated the purpose in meeting with me was to make the point that the WCB system operates “to suppress claims to stay within its budget.”

 # 32. A worker’s advisor indicated that it is common to hear about injured workers being apprehensive about filing WCB claims. He indicated this is sometimes related to workplaces that have bonus programs for no time loss injuries where peer pressure is used. This also occurs with new Canadian workers who are often unfamiliar with injury reporting and fearful of losing their

jobs and residency status if they make a claim. He indicated that workers' advisors tend to hear about these concerns most often from the manufacturing sector. He also indicated that when the atmosphere in a workplace inhibits reporting injuries when they occur, there is sometimes a delay in seeking medical attention. This can lead to the WCB denying the claim because of late reporting. He advised that this is a relatively common situation for worker appeals. (A review of the Appeal Commission website lists 478 appeal decisions for claims involving a delay in reporting).

 # 33. The workers' advisor indicated that he was currently dealing with a case of a worker who injured his shoulder at work and was placed on light duties. The light duties involved clean-up using a broom and shovel to clean up garbage, putting it in a garbage can and disposing it in the dumpster. These duties were outside the work restrictions from the Doctor, but the worker agreed to them. He subsequently injured his other shoulder while trying to lift the garbage can up over the edge of the disposal bin which was above shoulder level.

 # 34. A safety committee member who worked in a foundry provided documentation regarding welder who reported a welding flash that had occurred on the previous evening shift. The worker was issued a disciplinary warning letter for the delay in reporting, even though the medical literature shows that the onset of symptoms for welding flash are often delayed up to 6-8 hours after exposure.

 # 35. The same committee member described the foundry attendance management program covering missing days which include sick days, family days and days off work for Workers Compensation. The committee member provided documentation that included warning letters for periods of absence that included time loss for WCB claims. The documentation also included a dismissal letter for a probationary employee for absences that included one shift away for a WCB claim.

 # 36. The committee member stated that there were subtle ways of suppressing claims at the foundry when you get hurt. He stated: "you get forms for the doctor to fill out. If he won't fill them (half the time), it is up to you to get them filled out on your own time. When you get back you have to give them to your supervisor, so if you are on nights you have to show up at work at 11 PM and hand them to him. Even if your doctor says to be off work for a day or 2 then report for modified work, the supervisor tells you that you have to remain at work and report to the training room or you will not be paid. While in the training room they expect you to watch safety and training videos. After a couple of days of this the company tries to get you back to work in the plant even if this is outside of your work restrictions. We had a worker hurt his back and was sent to the hospital. When he returned to work with his modified work form he was sent back to his regular job and told to get to work. I happened to be on shift and asked what was going on when I saw him. He told me about his restrictions and as a union representative I approach the supervisor and had a discussion with him about this. The result was for the worker to report to the training room. He had been there for a week doing nothing because he doesn't speak or read English very well. Even though you were doing no meaningful work you were told to book all your doctors and physical appointments on your own time. After a short time in the training room they try to push you out to work in the plant even though your doctor's note says not to. We have had a number of employees re-injure themselves or have their recovery delayed by this practice. A number of employees lately have refused to report to the training room because of the

lack of meaningful work and having to sit on a hard plastic chair for 8 hours. Other employees have told me they have gone on short-term disability instead of compensation because of these practices." I had an opportunity to interview the safety committee member and found him a very credible witness. He came back the next day after our interview to provide the documentation to support the points he made.

 # 37. A local union president provided a written submission documenting an incident that occurred in early January 2013. A coworker injured his back which was witnessed by other workers. However, the worker refused to report his injury. When asked by the union president why he refused to report the injury, the worker stated, "I have had too many offenses already and there is a previous event that will be investigated in the near future. I don't want to affect the "performance pay program." the worker explained to the president that he had seen what had happened to two coworkers who had injuries and he didn't want to be exposed to what they went through. The union president stated, "Our joint workplace safety and health committee is constantly struggling to put these events together in investigations as workers are now reluctant to give out details because they will be used for discipline. In some cases the company gives out discipline before the event is investigated by the committee." The president indicated that, "If you are found responsible for safety incidents you will be disciplined, thus pressuring workers not to report and in some cases not claiming injuries. This is why, I believe, that the event today has gone unreported. Any lost time injuries has a negative effect on our overall safety performance. This program focuses in on workers not working safe and therefore hiding the events when they get injured in fear of being reprimanded, suspended and in a few cases terminated. There is a huge financial implication on workers (regarding the performance pay program) if incidents occur, the focus is on them that they are to blame." The president explained that the pay performance program has a safety element to it including lost time injuries. On a semiannual basis, this could result in several hundreds of dollars lost. He stated, "That pits workers against workers, therefore there is this constant pressure over our heads over how it will affect performance pay." The president concluded: "Our local union is in need of help to find a way to have the company held to account for what is going on with this overall. If it is not corrected then it will lead to more of the same. More claim suppression and more events not going to be reported."

 # 38. This worker explained that his employer had a safety incentive program with different levels of dinners (pizza, chicken or steak) when a given number of time loss free days is achieved. He stated: "coworkers are sometimes resentful when they lose out on one of these dinners because of a lost time injury." He said the common expression on the shop floor when a time loss claim occurs is: "there goes our chicken dinner."He indicated the injured worker is often stigmatized for spoiling the record.

 # 39. A building trades union representative described an incident in October 2012 where a member of his union dislocated his shoulder at work and sought treatment at emergency. The doctor booked him off work and he returned to the hotel where he was staying. His employer sent someone to his hotel to pick him up because he was unable to drive. They brought him to work and assigned him to do time sheets. The first day that took less than an hour to do. They then sent him home with safety films to watch as a light duty job. He was off for 3 weeks on company pay and the employer dropped off more safety movies every few days. The

representative said the worker's claim was accepted for no time loss and he was getting paid by the company to stay in his room.

 # 40. A worker contacted me through his MLA to describe his ongoing battle with the WCB to gain recognition of his claim for an injury he sustained as a miner. He described in detail the incident more than 20 years ago when a 675 pound anode fell striking a glancing blow on his upper arm and shoulder. He sustained multiple injuries including two broken bones in his neck. He was put on light duties at the mine. He said he attempted to return to work on 4 occasions but was not successful. In the last attempt his arm gave out when moving and 80 pound rod which resulted in a near miss for a coworker. The employer advised him that there were no longer light duties available and they arranged for the WCB to meet with him to discuss retraining. He claimed that the WCB never came through with the retraining and he became seriously depressed without work and required psychiatric treatment. He said a WCB psychologist overruled his psychiatrist and he continues to be engaged in an ongoing battle with the WCB. I explained to this gentleman that I had no jurisdiction to look into individual claims. He said he understood this from his MLA. He indicated his purpose in telling me his story was to make the point that the main source of suppressed claims is the WCB itself. I said I couldn't comment on the merits of his claim but I would include his comment in my report.

 # 41. A worker e-mailed the following report to me: "I have been an employee of (a national food chain) for 23 years. I first started in the meat department. I was a meat wrapper/department supervisor. After about 10 years, I started to notice a pain shooting up my right arm, which gradually got worse after the years went by, I lived with the pain, and even had my shoulder partially dislocated twice. My doctor diagnosed arthritis. I tolerated this for another 6 years, and then finally couldn't take it anymore so after some more testing on my arm, they decided it was carpal tunnel and I got operated on about 6 years ago. The surgery helped for a bit. All along, compensation covered anything to do with this arm. Then about 2 years ago, while still in the meat department, the pain never went away, then gradually got worse again, so I put in for a transfer to another department. Lifting 50 pound cases of hams and 70 pound cases of turkeys was no longer doable. I got a new job title as store CAO, which still involves lifting, but just not as heavy stuff. Last March, I noticed a lump developing on my right elbow and a burning pain sensation. I went to my doctor who requested I start physio. So I started. At first, compensation refused to cover me, saying I couldn't prove I did this at work, even though they covered the same arm many times before. My physiotherapist wrote them letters, finally they decided to cover me, but now they say I am cut off physio because I have gotten a new job, so my arms should not be hurting anymore. Even though the 21 years of doing that other job, I guess according to them should magically disappear. The damage already done to this arm, I'm still using it to do this other job, so the damage already done is not reversible. So now I am cut off physio. I still have the burning pain in my arm I have to use kinesio tape to hold my forearm into my elbow, and am now trying to figure out what to do next. I guess revisit my doctor. I understand them cutting off people who abuse the system, but what about the hardworking people, who are just trying to stay working???"

 # 42. This is another e-mail I received from an injured worker: "I was diagnosed with tennis elbow from repetitive drilling at work. My claim was accepted and tests by the sports clinic confirmed I needed surgery. The WCB sent me to one of their doctors who performed the same tests and yet they showed I was fine! So they refuse to cover the surgery and the time loss. I

collected group insurance and I suppose the taxpayers of Manitoba paid for my operation. Before the operation I had my dominant arm in a sling for months as my employer was trying to have me work outside my restrictions. This led to my other elbow being overused in the same diagnosis was assessed by the sports clinic. This time the claim was refused, stating I couldn't have injured it on light duties etc.! I was at the appeals commission for this 2 months ago and am waiting for the results. I will then need to appeal the board's decision not to cover my surgery next as it also will include the payment of scarring and future loss of movement! The Manitoba workers compensation board is a nightmare to deal with! Claim managers are totally rude and completely ignorant to me. I personally feel they are of little use to the workers of Manitoba and it should be scrapped! Let us sue the employers in an open court where people can have a fair hearing!"

 # 45. Another e-mail: "I have not been happy with what is happening with my compensation claim. I ripped my meniscus in my knee and I need surgery to repair it. The day after this injury happened I reported it to compensation. The injury was less than a day old and they wanted me back at work even if I was only there to read a book. I informed them that it was impossible for me to walk up the staircase where the bathrooms and lockers are located plus the fact that I was in severe pain since it was only one day since it happened. Also the fact that I don't drive so to get to and from work I needed to take 2 Buses Each Way. When WCB contacted my boss he also told them that the stairs were very steep and that there were a lot of them. They asked him what was located around the store and he said a dirty old auto body shop across the street. They told him that he should go over and ask them if one of his employees could use their bathroom if I needed to go. He told the lady from compensation that he would never do that because he thought it was disgusting. So I was off work for 2 weeks until they told me that I would have to go back and make sure that I use the bathroom at home before I left for work. I went for an MRI and it showed that I needed surgery, physio and a leg brace. The brace cost me $795 which I paid for with my credit card thinking that I would be paid back but compensation refuse to pay because I had arthritis in my knees already. The prescription was for the meniscus tear but she argued with me and said that I would have to appeal it. Plus the fact that I have been physically working on my knees for the last 36 years where does she think that the arthritis came from. I phoned Manitoba medical and they agree that compensation is responsible for paying for the brace but said that not to bother fighting with them to send the bill to them and it will be covered by my Manitoba medical. I was going to all my physio appointments and it was helping my pain level a lot but compensation cut me off after 15 visits because they thought I could just do exercises at home (which I can't because I don't own the equipment) and the girl told me that I could self medicate with painkillers. So now my pain level is back to severe. The doctor at the clinic says that I cannot work longer than 6 hours in a shift but compensation is making me work 8. Who do I have to listen to, my bosses telling me that I have to do what compensation is telling them to do. After 6 hours my leg is burning with pain and I have to stay and work another 2 hours and then take 2 buses to get home. Isn't it just common sense to help out an injured employee and let them go to physiotherapy because my understanding is the recovery from surgery will be quicker if the muscles around the injury are strong? I am so frustrated with the whole system. Besides the fact that my entire life has been put on hold because of my injury I have to fight this woman on the phone. I have never been one to make waves so I am just doing what I'm told. I get home from work and just cry because the pain is so bad, just getting on and off the buses in the middle of a Winnipeg winter is so scary when your leg has no strength and can give out at any time. I have been waiting for my surgery for 4 months now and some days I

just want to quit my job and be done with all the hassle! Thank you for taking the time to hear me out."

 # 44. Another worker provided a 17 page written submission detailing his difficult involvement with the WCB as a result of his spinal cord injury. I will not attempt to summarize the details of his claim. He indicates he is in the process of pursuing legal action against the WCB. He concluded his long description by stating: "at this point I do agree that no one holds WCB accountable for the way they treat people, even after the review office came back with the decision to reinstate my pension, it was one year before that was done and the only reason it was done was [a government official] made a call. I struggle with life more often than not this fight with WCB has taken most of my life since 1990, 22 years of having people follow you of changing your words to work for them, being lied to and manipulated. For years I thought WCB was there to care about me and help me find a better quality of life but they are not at the end of the day. You are a number and you are costing them money and they want to limit that amount so you are living on the poverty level and they will keep you fighting till you are exhausted and feel there is no end and give up and go away. I don't think I'm ready to go away yet"

 # 45. During the course of my review I had an opportunity to take numerous taxis to attend meetings. More often than not I would have a conversation about the weather, the Jets, their home country, etc. When it felt appropriate, I discussed workplace injuries to gain an appreciation of their experience. Two conversations stand out. Both were precipitated by my question: "What do you do if you are injured on the job?" One of the workers was unsure and thought he would be covered by employment insurance. I asked him about WCB and without hesitation he called his supervisor and had a brief conversation in another language. He then reported in precise detail how all drivers were covered by WCB but the taxi owner had to have voluntary coverage. Although he did not know the reporting procedures, he was able to access that information quickly and accurately.

 # 46. My conversation with the other taxi driver was also interesting. In response to my question he hesitated before answering and then said, "I guess you have to call the WCB." After a brief silence he said: "I had an injury at work." He then described a job he was doing as a truck driver delivering product from a warehouse. He said the product was very heavy and he had to load the truck and unload it at the delivery point. At the time he was going to school full-time studying to be an automotive mechanic. He was also working full-time as a truck driver to support his schooling. He described the back injury he experienced when lifting and twisting with a heavy box. He reported the injury to the owner as soon as he got back to the warehouse. She advised him to just take it easy for the rest of the shift and it would work itself out. He said he came back to work the next day and the back pain had increased. He told the owner that he didn't think he should be lifting, but she assured him that the best thing to do was to keep working and it would probably be better in a few days. He had difficulty completing his shift that day. When he came back the next day he told the owner that he would be unable to continue the heavy lifting. He said he eventually filed a claim with the WCB but it was denied because he delayed in reporting to the employer. When I asked how that was possible when he told the owner on the day the injury happened, he said, "She lied and they believed her." He said he had to give up the automotive mechanic course because it was too heavy and hard on his back. He said he lost $9000 in tuition fees when he dropped out. He indicated that driving the cab was difficult for him because of the sitting and especially when he had to lift heavy suitcases into and out of the trunk.

He said he takes medication during the day when he's driving and has physiotherapy once or twice a week so he can manage. I arranged for him to meet with an experienced workers compensation representative to assist him in trying to untangle his claim with the WCB.

 # 47. This worker provided a detailed submission by e-mail, only a portion of which is referenced here. He provided details several injuries while working at a chemical plant. He described an incident that occurred during his first week on the job as follows: "I was washing chlorine bleach drums for re-filling. I finished that task earlier than anticipated, so I was given some 50% caustic soda drums to wash (caustic soda is concentrated drain cleaner, and extremely corrosive). Though I was wearing (my own) steel-toed boots, the residual caustic soda from the drums ate through the leather and ultimately caused a 1.5 square-inch bone-depth burn on my left foot. The burn took about four months to heal, and I had to purchase shoes half a size too big to walk anywhere. I will retain a noticeable scar for the rest of my life. Though several employees, including members of the H&S Committee, were aware of this incident, none advised management or suggested I file a WCB claim, or made the required report to the Workplace Safety and Health Division." He also stated: "There were two forklift collisions in my time there, one of which I witnessed; in the first, an employee in the yard carrying too high a forklift load and driving too fast crashed into another lift which had slowed to cross one of the three rail spurs that run into the yard. The affected employee, in addition to being shaken and angry, spent a couple of days unable to bend his back fully without pain; no WCB or Workplace Safety and Health involvement occurred." He stated: "The plant also made meaningful use of incentives" and pointed out that: "There were two displays showing the number of days without a lost-time injury; neither was updated routinely and neither was accurate. Each serious chlorine gassing incident [described in his submission] was unquestionably such an injury—the affected employee missed all but the first couple hours of his shift. Additionally, the plant workers were treated to a steak barbecue at the end of August 2011, to commemorate "four years without a lost-time injury."

 # 48. This e-mail was received the day before completion of my report and I have included the full text without editing:

"Five years ago, I applied for a cleaner's job and shortly after I got hired, the position changed to maintenance. I told the manager, I could not and would not do certain duties because of my age (60's), am very petite and could not handle some duties (ex: heavy lifting). I was promised that I would never have to do heavy duty jobs. There were men for that.

One day, the manager changed, by then I was there long enough to see preventable health & safety issues and along with other employees, we voiced our concerns about lifting and moving heavy tables. We wanted casters put on the legs, this was ignored. My partner (man) was over 6 feet tall and I'm 5'1." When we had to haul tables around (which was everyday), we had to pick them up to move them. Because he was taller, all the weight was at my end and I had to walk on my tip toes with my elbows bent in order to keep the tables off the floor. Also, to place them in position, they had to be dragged on the carpet. I tore my rotator cuff doing this and needed surgery.

When I told my boss about my accident, he tried very hard to talk me out of going to WCB. He said that: I'll regret surgery; to get another opinion; try acupuncture; WCB isn't always right and

not to allow them to dictate to me. Meanwhile, I could hardly pick up my arm, could not do the simplest things anymore (ex: brush my hair). MRI showed a tear concurrent to my injury. My nightmare began. WCB doctor suggested physio before my MRI results, kept aggravating it more and I still had to go to work. After surgery, more physio and back to work full time in 3 months. I could not fulfill my duties. Employer said that if WCB and Doctor cleared me then I should be capable of doing everything on my list including lifting heavy objects. WCB later admitted that it was a mistake sending me back full time rather than a graduated return. That it takes 6 months or even longer to heal and some don't really heal because of re-injuries. WCB had to put restrictions on what I was able to do. The employer was not happy. They shunned me, bullied me, psychologically harassed me, intimidated me, asked me to quit because they couldn't accommodate my restrictions, my job description got bigger, gave me harder duties and no one was allowed to help me, they wanted me to re-injure myself. The CEO told me not to go to the Union. They watched my breaks (which WCB told me to take extra breaks as needed because of my pain and muscle cramping). I was told that a lawyer was consulted to get "rid" of me. On top of 7 1/2 hours of work, I had to go to physio twice a week. This went on for 4 months. I was exhausted and stressed so bad that, actually, I did not care what happened to me. I was very sick, hated the work place, hated myself, could not stand anyone around me, and got bad migraines, dizziness to the point where I was falling but was afraid that my employer would see me falter. The doctor gave me a hard time, WCB kept on pushing me to go back to work, physio kept pushing me to do more and more, basically, I was harassed by everyone. I had to take my husband into the doctor's office because they treated me like I was 2 different people. When I was myself, they talked to me aggressively and treated me like I was a scumbag looking for a freebie. I told my doctor that my shoulder was so sore that I could not wear a bra and he said aggressively, just do it. When my husband was with me, they treated me with a little more respect.

I hated the whole world through no fault of my own. Suddenly, after I got injured, the casters were put on the tables and people could move them with one finger. We had asked them to do this for a few years and we were ignored. I was such a hardworking, productive person before my injury and this is what it came down to. There is so much ignorance and the doctors treat you differently when you are a WCB claimant. Even the doctor said that it happened to me because of my age and it could have happened anytime. But they refuse to see that it happened at work due to employer's ignorance of safety. That is discrimination against me because I wasn't the only one who got hurt. I was the one who knew my rights and stood up for myself instead of suffering for the rest of my life.

Another petite, much younger woman got injured quite badly and because she didn't go to WCB, they treated her like a princess. She was a fairly new immigrant which might have something to do with it. She would not tell me what they said.”