

February 13, 2017

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Manitoba Workers' Compensation Act
Legislative Review Committee 2016
Past, Present and Future

Dear Sir/Madam:

Re: Past, Present and Future: Workers Compensation in Manitoba Discussion Paper

The Canadian Association of Petroleum Producers (CAPP) represents companies, large and small, that explore for, develop and produce natural gas and crude oil throughout Canada. CAPP's member companies produce about 85 per cent of Canada's natural gas and crude oil. CAPP's associate members provide a wide range of services that support the upstream crude oil and natural gas industry. Together CAPP's members and associate members are an important part of a national industry with revenues from crude oil and natural gas production of about \$120 billion a year. CAPP's mission, on behalf of the Canadian upstream crude oil and natural gas industry, is to advocate for and enable economic competitiveness and safe, environmentally and socially responsible performance.

On behalf of CAPP and our members, we would like to thank the Workers Compensation Board of Manitoba (WCB), *Workers Compensation Act* Legislative Review Committee 2016 (Review Committee) for the opportunity to comment on the Past, Present and Future Workers' Compensation in Manitoba discussion paper.

The following specific comments are respectfully submitted to the Review Committee for consideration.

CONSULTATION ISSUES:

Alignment of the Act with the Meredith Principles

Question for Discussion:

Can the Act be amended to better reflect the system's foundation principles in a modern context?

- Our members support continuously reviewing the Act to ensure that it always reflect the system's founding principles. Continuous review will help modernize the Act while remaining true to the system's core principles.

Alignment of the Act with workplace illness and injury prevention initiatives outlined in *Manitoba's Five-Year-Plan for Workplace Injury and Illness Prevention*

Question for discussion: How can the Act be amended further to fulfill the Plan and further reinforce its prevention mandate?

- We recommend a gap analysis be conducted to compare Manitoba WCB to the Alberta, BC and / or Saskatchewan WCB's. It would be ideal and very beneficial if there was some alignment to harmonize with the Western provinces.

Provisions in the Act respecting the approach to addressing mental health in the workplace

Question for discussion: What do you see as the main challenges of compensating for injuries to mental health in the workplace, and how do you think they should be addressed?

- Mental illnesses should be treated as workplace illness, and should be adjudicated based on the legislation and WCB policy. CAPP and its members recommend that the WCB harmonize and incorporate a similar model as in the British Columbia Workers' Compensation Act's legislation, specifically the highlighted areas as follows:

5.1 (1) Subject to subsection (2), a worker is entitled to compensation for a mental disorder that does not result from an injury for which the worker is otherwise entitled to compensation, only if the mental disorder

(a) either

(i) is a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or

(ii) is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment,

(b) is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis, and

(c) is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

- The BC policy at page 5 defines predominant and significant as used by the BC Board:

The Act requires that the mental disorder be predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment. There are two parts to this requirement as set out below.

The first part is the determination of whether the significant stressor or cumulative series of significant stressors arose out of and in the course of employment. This requires the Board to determine the following:

- Did the significant stressor or cumulative series of significant stressors arise in the course of the worker's employment?

This refers to whether the significant stressor, or cumulative series of significant stressors, happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the worker's employment.

- Did the significant stressor or cumulative series of significant stressors arise out of the worker's employment?

A significant stressor or a cumulative series of significant stressors may be due to employment or non-employment factors. The Act requires that the significant stressors be work-related.

A work-related stressor is considered "significant" when it is excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker's employment.

Predominant cause means that the significant work-related stressor, or cumulative series of significant work-related stressors, was the primary or main cause of the mental disorder.

- Our members would like to provide the following excerpt taken from WorkSafeBC's Mental Disorder Directive, which is an adjudicative guideline to assist decision makers. It explains "predominant" in this way:

Deciding whether the work-related stressors were the predominant cause requires consideration of other non-work-related stressors in a worker's life and the role of the different stressors in causing the mental disorder. In most cases, a psychological assessment will provide important evidence with respect to identifying and discussing the relative impact of different stressors in causing the diagnosed mental disorder. The work-related stressors need not be the sole cause. Nor is it necessary that the work-related stressor or stressors outweigh all other stressors combined. It may be that the work-related stressor was still the primary cause of the mental disorder even though the worker had a number of other stressors which, when considered together, were also significant in causing the mental disorder.

Ensuring the WCB is current with emerging trends in injury and illness, the most up-to date health and safety knowledge, and medical practices

Question for discussion: What legislative changes do you think are required to ensure that the WCB remains a modern, responsive administrative tribunal?

- In order to ensure that the WCB remains a modern and responsive administrative tribunal, we recommend that legislative changes are continuously monitored for emerging issues and concerns to remain effective and are able to respond to the needs of all stakeholders.

The WCB's existing funding model, in particular with respect to comparing the WCB's funded value with Boards in other Canadian jurisdictions

Question for discussion: Are changes required to the funding model established and administered by the WCB? What model best protects against risk while also providing value for employers, and retains benefits to workers?

- Our members would support a similar funding model to that of the current funding model the Saskatchewan WCB has in place, i.e. the range of 105% - 120%. This model best protects against risk, provides benefits for workers, and provides value for employers.

Consideration of the establishment of maximum assessable earnings level (or a cap) for Workers

Question for discussion: Should Manitoba have a cap on the maximum insurable earnings within the workers compensation system?

- We support the establishment of a maximum assessable earnings level (or a cap). We recommend that the WCB adopt the Alberta model of capping insurable earnings. This captures up to 90% of the workers' 100% salaries.

Consideration of the creation of an Employer Advocate Office

Question for discussion: Should the Act provide for an employer advisor office? The Review Committee has also been asked to examine the 100 recommendations of the 2005 review of the Act, *Working for Manitoba*, to consider which of the recommendations have been implemented and with what effect.

- We recommend that the WCB create and provide an employer advisor office. This would be beneficial for employers in the province of Manitoba, and also provide fairness in the system.

Again, CAPP appreciates the opportunity to provide comments. If you have any questions, please do not hesitate to contact [REDACTED]

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