



PEI Federation of Labour's
Submission to the Legislative Review Advisory
Committee on Workers' Compensation

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1.0 Introduction

The Prince Edward Island Federation of Labour, the Island's largest central labour organization, welcomes the opportunity to participate in the current Legislative Review of the Workers' Compensation Act. This is only the second such review since the Act was amended in 2001 to require the Workers' Compensation Board to appoint an Advisory Committee to review the provisions of the Act every five years. But unlike the initial review which was very limited in scope, we are pleased that this review will allow input and discussion around all provisions of the legislation.

The mandate of the Workers' Compensation Board of Prince Edward Island is to administer the province's workers' compensation system as defined by the Workers' Compensation Act, as well as the health and safety programs required by the Occupational Health and Safety Act. Moreover, the WCB's mission states that the "...WCB exists to promote safe workplaces and to protect employers and injured workers through a sustainable accident insurance program." Therefore it is only logical that this and future legislative reviews allow interested parties to address all aspects of our workplace health, safety and compensation system.

For our part, we fully intend to do just that.

The Federation's 10,000 members work in almost all sectors of the provincial economy in occupations ranging from heavy equipment operator to retail clerk, health care attendant and social worker. Their unions, will also be appearing before this Advisory Committee to share their concerns about the Island's health, safety and compensation system and the need for real improvements that meet the needs of working people.

Annual conventions of the Federation of Labour have seen rigorous debate around resolutions detailing the workplace safety and compensation views of our membership. These same resolutions form the basis of our submission today. However, as much as we welcome this review, labour is anxious that the input offered be carefully considered and acted upon.

Workers, union and non-union alike, are upset and frustrated by the failure of the WCB to deal with our concerns in a timely and positive manner.

Since the early nineties workers have paid a huge price as governments in this province and across Canada responded to employer pressures and gutted workers' compensation laws and destroyed the historic balance between worker and employer interests. Be it compensation or workplace health and safety, most of the legislative measures enacted over the past decade or more, have benefited employers not workers. It's time the

government of Prince Edward Island puts aside the employer agenda and acts on the concerns of Island workers. **IT'S TIME TO MAKE IT FAIR**

2.0 Cuts Targeted Workers

Like other jurisdictions in Canada, Prince Edward Island's workers' compensation legislation is based upon the historic Meredith principles:

- no fault insurance,
- collective liability for employers,
- employer responsibility for the costs of workers' compensation as a cost of doing business,
- a prohibition against legal action by an employee against the employer,
- adjudication and administration by an independent commission
- and, prevention of accidents and promotion of safety.

Put in place to help workers injured at work, workers' compensation programs are supposed to protect workers and their families from the adverse consequences of workplace injuries and diseases. Over time the workers' compensation system evolved to cover our ever changing workplaces and the new technologies, work processes and dangers found in them. No matter how slowly, progress was achieved in the ongoing struggle to protect workers.

However, all this changed in the nineties as governments across the country reacted to employer demands that compensation benefits be cut and entitlement restricted in order to deal with an "alleged" unfunded liability crisis. The resultant cuts were numerous, deep and directed exclusively at workers.

In short order this province's worker's compensation laws were amended to bring in reduced wage loss benefits, estimated capable earnings and deeming, as well as the elimination of life long pensions, a more restrictive definition of accident and, the three-day waiting period. All took a heavy toll on injured workers and their families. In addition to coping with the personal and family pressures associated with workplace injuries and illnesses, they also had to make do with less income protection, inadequate rehabilitation and return to work assistance and, the injustices associated with deeming.

At the same time, worker calls for more aggressive enforcement of health and safety laws and better workplace safety training were largely ignored. The focus instead shifted to addressing employer demands for lower assessment rates, so much so that union negotiated top-up benefits were legislatively restricted.

Today, the situation is unchanged. The inequities remain leaving the Federation of Labour no choice but to strongly condemn the absence of any fairness and balance in Prince Edward Island's workplace health, safety and compensation system. Clearly, real improvements in benefits and services for workers are long overdue. **IT IS TIME TO STOP THE HURT!**

3.0 Restoring the Balance

As already stated, workers not employers have suffered the consequences of political decisions made to reduce WCB costs. Yet judging by the Board's 2005 Annual Report and strategic plans, there appear to be no plans in place to restore balance and fairness to the Island's workplace health, safety and compensation system.

Yes, there is continued talk about the Board's commitment to the delivery of "appropriate, effective and quality compensation services for workers." But victims of workplace accidents and diseases are offered absolutely no hope of future improvements in key areas such as entitlement to benefits, benefit levels and deeming. Needless to say, this is unacceptable to Island workers.

Frankly, we are disappointed that the WCB's board of directors has not used its authority under subsection 30(2)(c) of the Workers' Compensation Act to undertake its own review and to recommend to the Minister changes beneficial to workers. Despite the current healthy state of the Board's finances and the low average assessment rates charged employers, it is obvious that labour cannot count on the WCB to take the initiative in restoring greater balance to the system.

The Prince Edward Island Federation of Labour firmly believes that legislative improvements helpful to workers are justified and affordable. Through this submission, we intend to inform Advisory Committee members of the many weaknesses in our workers' compensation laws and to propose specific amendments to the W.C. Act, which if enacted, would help rectify current inequities facing workers.

3.1 Benefits - Wage loss benefits payable to injured workers in PEI are among the worst in Canada. The waiting period for benefits, a low compensable earnings ceiling, the two-tier wage loss benefits formula and, the legislated ban on collateral benefits, in combination, render Islanders second class citizens when it comes to financial protection from workplace injuries. Those responsible for this sad situation should ask themselves if they would accept similar inferior treatment of family and friends under Canada's CPP disability program. More than likely the answer would be a resounding NO.

1. Wage Loss Benefits - Restricting wage loss benefits payable to an injured worker to

80% of the worker's loss of earning capacity for the first 38 weeks and an amount equal to 85% thereafter (Sec. 40) is arbitrary and unfair. There is no rationale behind this formula other than to reduce WCB costs on the backs of injured workers.

Wage loss benefits should reflect the total financial losses and other hardships suffered by injured workers. Reducing benefits below 90% of net on the grounds that the after tax incomes of workers in receipt of benefits are supposedly not significantly impacted ignores other important considerations. These include the injured worker's possible loss of pension contributions and credits, vacation and U.I. coverage, as well as childcare and transportation obligations. Nor is there any accounting for the personal hardship associated with workplace accidents such as pain and suffering and job impacts.

The Federation of Labour therefore recommends that the W.C. Act be amended to ensure that wage loss benefits shall be payable in an amount equal to 90% of the worker's loss of earnings after the date of the accident.

2. Waiting Period - Prince Edward Island is one of only three jurisdictions in Canada with a waiting period for workers' compensation benefits. Also brought in at the request of the employer community, this April, 2002 amendment (sec. 40 (1.2)) exists solely to lower WCB costs at the expense of injured workers. It is safe to say though that the financial pain is greatest for low-income workers most of whom can ill-afford to lose three-fifths of their initial weekly wage loss cheque.

That the WCB board of directors have no plans to remove the three-day waiting period for benefits is very disturbing and, we feel, demonstrates the board's insensitivity to the financial plight of injured workers and their families.

As in New Brunswick and Nova Scotia – the other provinces with a waiting period, injured workers in PEI are being unfairly forced to work through injuries or, to file for group insurance or sick leave benefits rather than report lost-time compensation claims.

Without question, this has seriously distorted lost-time accident statistics. Notwithstanding a decline in reported lost-time accidents, the reality is that Island workplaces are not safer. Accidents are still happening but regrettably, are either not reported or, not shown as lost-time claims.

A 2001 review of workers' compensation in Nova Scotia examined this issue at great length and noted that injured workers, according to WCB estimates, lose an estimated \$308,851 to \$1,235,405 per year because of that province's two-day waiting period. A separate New Brunswick study estimated that 12% to 20% of all accidents were not reported owing to its three-day waiting period.

No doubt the same is now happening in PEI. Statistics provided in WCB annual reports show a downward trend in lost time compensation claims since 2002 with the number of such claims dropping from 1,486 to 1,051 in 2004 – a decline of 29.2%. Over the same period non-compensable claims have risen by 713 or 56.7%. While some will argue that these are positive outcomes from the Board’s focus on accident prevention, we remain convinced that it more than likely reflects the reality of more workers not reporting workplace accidents to the WCB .

Labour maintains that workplace accidents are the financial responsibility of employers not workers. We believe it is time the WCB and PEI government recognize as much and require **all** employers to fulfill their obligation to fairly compensate workers injured on the job by providing for payment of compensation benefits the day after the accident.

As it stands now, some employers are not affected by the waiting period provisions of the Act resulting in a double standard for Island workers. We refer here to employees of self-insured employers (the PEI government and the government of Canada among others) whose accident wage losses are covered directly by their employer on a voluntary basis; in addition some unions have negotiated collective agreements covering payment of the waiting period.

However, leaving it to individual employers and workplaces to determine if the waiting period will be removed is wrong. This only promotes gross inequities in the workers’ compensation system to the point where workers with similar injuries are treated differently. And this is to say nothing of the adverse consequences of workers not reporting job accidents which is the purpose and intent of our workers’ compensation laws.

The Federation of Labour is not alone in its thinking on this important issue. Nova Scotia’s review committee in **unanimously** recommending elimination of that province’s waiting period stated

“Injured workers see the waiting period as an unfair penalty when the accident or illness was not their fault. It is contrary to the no-fault principle of public workers’ compensation. Many workers have ongoing commitments they must meet during a waiting period, such as day care costs and monthly parking or transit fees.

A key concern...is the impact of the waiting period on minimum wage workers who can least afford to be penalized for not working. For these workers, the waiting period is a definite incentive to continue to work regardless of the consequences for their health.”

We could not agree more.

The Federation of Labour therefore recommends that the W.C. Act be amended to provide for removal of the waiting period for wage loss benefits.

The Federation further recommends that the W.C. Act be amended to require the “employer” to compensate an injured worker at the regular rate of pay for the day of an injury, provided the worker reports the injury.

This is the case in five jurisdictions in Canada (Alberta, Ontario, Quebec, Manitoba, and Newfoundland) and in keeping with the fundamental principle that employers, not injured workers, should pay the full cost of workplace accidents. Also, it would ensure all injured workers are treated the same under the province’s workers’ compensation laws. Such is not the case today since neither individual employers or the WCB are obligated to pay any wages lost the day of an injury. To the extent some employers cover an injured worker the day of the accident and others don’t, workers are not treated equally.

3. Top-up and Collateral Benefits - Section 42(3) of the Act makes it very clear that any top-up payments received by a worker pursuant to a collective agreement with an employer are to be treated as collateral benefits by the WCB. The Act further states in Sec. 42(1) that all collateral benefits are to be deducted from the wage loss benefits of the injured worker.

These provisions clearly demonstrate the punitive approach of the W.C. Act insofar as worker rights and benefits are concerned. They certainly fly in the face of the WCB’s core value – to “treat people with fairness, care and respect.” More importantly, however, restrictions against top-up and collateral benefits generally constitute outright interference with the free collective bargaining process and the right of workers to freely negotiate all terms and conditions of employment. The measures in question are unfair to injured workers and should be removed.

An example of this arbitrary interference with free collective bargaining is negotiated severance pay. Federation members are adamant, and rightfully so, that these are monies earned throughout the worker’s employment history and agreed to in lieu of other wage or benefit improvements. Therefore, in no way should they be considered as collateral benefits and deducted from the compensation benefits of injured workers.

The same can be said of employer top-up benefits which frankly are no business of the Board’s. In Ontario and British Columbia there are no legislative restrictions against employers paying injured workers top-up benefits or, other collateral benefits. PEI, we feel, should follow their example.

The Federation of Labour recommends that the W.C. Act be amended to remove all restrictions on salary top-ups, including severance pay, and to allow individual

employers and workers to determine the payments, if any, in excess of legislated benefit levels.

The Federation of Labour further recommends that the W.C. Act also be amended to ensure that workers receiving compensation benefits are not obligated to apply for CPP disability benefits and, if in receipt of such benefits, shall not have their workers' compensation benefits reduced.

We object to the current legislation (Sec. 42(1.2)) which allows the WCB to determine an injured worker's entitlement under CPP disability benefits where the worker refuses or fails to apply and, to then deduct 50% of the projected benefits. Using CPP income to reduce compensation benefits is contrary to the intent of workers' compensation and that it be solely funded by employers through assessments.

4. Minimum Benefits - Only the W.C. Acts in Atlantic Canada have no minimum benefits provisions to protect workers totally and permanently disabled because of workplace accidents. In light of the failure of compensation boards in the Atlantic Provinces to address this matter, it is incumbent upon government to act. The cost of guaranteeing a reasonable level of minimum benefits is minimal, we understand, and would help ensure those injured workers affected are not left financially destitute. Forcing these workers onto the welfare rolls is morally wrong and simply lets employers avoid paying the true costs of workplace accidents.

The Federation of Labour recommends that the W.C. Act be amended to ensure all workers totally disabled beyond two years receive weekly compensation benefits equal to at least 50% of PEI's average weekly earnings.

5. Maximum Insurable Earnings - The W.C. Act (Sec. 46) requires that the injured worker's earnings in excess of the maximum earnings ceiling are not to be considered in calculating compensable earnings. For 2006 the maximum annual earnings was \$43,300. It is adjusted annually to reflect the percentage increase in the Consumer Price Index.

PEI currently has the lowest compensable earnings ceiling in Canada. Because of this more Island workers stand to receive a lesser amount of workers' compensation benefits if injured on the job. It also means that PEI employers pay less in assessments.

Effective 2006 the government of Manitoba removed that province's maximum compensable earnings ceiling. Of those jurisdictions with ceilings, the highest is the Yukon at \$69,500 and the average ceiling for 2006 was \$57,468. The level of coverage afforded injured PEI workers therefore was \$14,168 or, almost 25% below the national average. We believe this difference in coverage is highly inequitable and must be rectified.

The Federation of Labour therefore recommends that the W.C. Act be amended to eliminate any limit on insurable earnings.

3.2 Coverage - Excluded from coverage under the W.C. Act through regulation are out workers, volunteers, farming and, fishing. Although this list isn't extensive since the legislation was changed in 2004 to cover workplaces with less than three employees, we still maintain that the scope of coverage should include all workers and volunteers.

With respect to outworkers, the trend today towards more flexible work arrangements makes their inclusion imperative. As more and more employers encourage workers to perform work in their homes, we now have the indefensible situation where some workers are covered by workers' compensation and others are not. To afford protection to a clerical worker, for example, but deny it to a garment industry pieceworker operating at home or away from the control or management of the company supplying materials is illogical. Clearly, the definition used to exclude outworkers is outdated.

The current situation relating to volunteer workers also is in need of improvement for several reasons:

- **First**, The Occupational Health and Safety Act applies to all workplaces under provincial jurisdiction including those with volunteer workers. Extending compensation coverage to all volunteers would reinforce that these workers and their employers have legislated OHS obligations and responsibilities and in return are protected in the event of workplace accidents and illnesses.
- **Secondly**, just as employees working for an employer who is not covered by workers' compensation are free to sue their employer, another employer, or other workers as a result of a workplace accident so, too, can volunteer workers excluded from compensation coverage. Again, this is not in the best interests of workers or employers and a better solution is immunity from lawsuits in return for guaranteed benefits for volunteer workers in accordance with our no-fault workers' compensation system.
- **Thirdly**, the cost of extending compensation to all volunteer workers, regardless of the level of risk, is small in comparison to the potential liability now carried by all parties concerned, namely – employers using volunteer labour, their paid employees and the WCB which is legally responsible for ensuring that workplaces with volunteers also fully comply with all applicable health and safety laws.

As for questions relating to the determination of the loss of earnings incurred by volunteer workers injured in the workplace, we propose that they continue to be treated the same as other workers. In cases where volunteer workers have a regular job the level of coverage

and re-employment criteria should be based on those earnings since they best reflect the injured volunteer's actual pre-accident earnings. Where the volunteer worker has no earnings they should receive compensation benefits based on the earnings of a paid employee doing comparable work in the same workplace.

Effective January 2007 farming falls under the province's Occupational Health and Safety Act. The same rationale, we feel, should now be used to cover those engaged in farming under the W.C. Act, especially considering over half of the workers in question are presently covered on a voluntary basis. Similarly, protection should be legislated for persons involved in fishing.

The Federation of Labour therefore recommends that the list of workers and industries excluded by regulation from application of the W.C. Act be revised and workers' compensation coverage expanded to include: outworkers, volunteers, farming and fishing.

3.3 Entitlement - Over the years the WCB has been reluctant to adopt a progressive approach to the interpretation of the definition of accident. In this regard, our Board is not alone. But it is important to recognize that workers pay dearly, as do their families, whenever workers' compensation laws are crafted to deny benefits to workers who suffer work related injuries or illnesses.

1. Chronic Stress - As stated in previous submissions, labour is strongly opposed to earlier changes to the Act whereby the definition of "accident" does not include stress, other than an acute reaction to a traumatic event (Sec. 1(1.1)).

Today's workplaces are increasingly complex and work induced stress is commonplace and, we might add, very real and disabling. To refuse to recognize as much and to deny related claims for workers' compensation is wrong and not in keeping with the purpose of workers' compensation.

It bears noting that the same approach was taken by this province's WCB with respect to chronic pain. It took the October 2003 ruling by the Supreme Court of Canada that injured workers' chronic pain disability should be treated in the same manner as other workplace injuries and diseases, before this illogical application of the W.C. Act was changed. Surely it isn't necessary for injured workers in PEI to launch court challenges over the exclusion of stress as a compensable illness.

Denial of benefits to workers suffering from disabling chronic mental stress arising out of and in the course of their work, in our view, is every bit as discriminatory as was the earlier exclusion of chronic pain as a compensable condition. All injured workers deserve to be treated equally and fairly regardless of the nature of their workplace injury. Quebec

and Saskatchewan have moved to recognize stress claims where the worker is able to show a relationship between the illness and the work. Prince Edward Island should do the same and not limit stress claims to ‘an acute reaction to a traumatic event.’

The Federation of Labour therefore recommends that the W.C. Act be amended to repeal those discriminatory sections which deny compensation entitlement for work related mental stress and in particular subsection 1(1.1).

2. Occupational Disease- Since its addition to the W.C. Act in the early nineties, we have opposed exclusion from the definition of occupational disease “an ordinary disease of life” (Sec. 1(u)(iii)). We fail to see the logic of this provision other than as grounds to limit efforts by workers to establish legitimate occupational disease claims. Surely the challenges faced by workers in this regard are onerous enough without adding unnecessary roadblocks.

The Federation of Labour recommends that the W.C. Act be amended to delete all reference in the definition of occupational disease to the words “ordinary disease of life”.

3.4 Rehabilitation and Return to Work - Workers’ compensation should never reduce an injured worker and the worker’s family to poverty or make them a charge on society. This is the common conclusion of countless compensation review committees over the years. But, as a result of **DEEMING**, the shift to wage loss based workers’ compensation in place of the former meat chart system centred around total and partial life long disability pensions has in fact led to the impoverishment of all too many workers.

For us, re-establishing the worker in productive and suitable work best benefits the injured worker in the long run. This means that progressive rehabilitation, retraining and return to work legislation, programs and services, not deeming, must form the foundation of our workers’ compensation system.

1. Deeming -The labour movement here and elsewhere in Canada has long opposed the deeming process. Our position remains unchanged. Failing legislative changes outlawing deeming, at the end of the day workers will still be deemed fit for phantom jobs and forced to resort to welfare for survival.

Reducing the benefits of permanently disabled workers deemed fit for non-existent jobs is grossly unfair and must be stopped. The W.C. Act should be changed to eliminate deeming other than in those special circumstances where an injured worker, without good reason, declines a “bona fide” offer of employment or retraining. Until a real job becomes available that the injured worker can perform safely, we believe he/she should remain on full compensation benefits.

Returning the injured worker to meaningful employment is a fairer and more just way to reduce the costs of paying wage loss benefits. It is beneficial to employers and the WCB while providing injured workers with self-esteem and personal fulfilment. More importantly, it is what injured workers want most!

The Federation's concerns with deeming have been outlined in previous submissions and won't be expanded upon here. Suffice it to say that we remain convinced that of those workers deemed each year, many face a bleak future marked by poverty, misery and despair. Despite improvements to the WCB's deeming process, the complaints persist and more often than not confirm that deeming only serves to further penalize victims of workplace accidents.

The Federation of Labour therefore recommends that the W.C. Act be amended to remove the deeming process by deleting in Section 41(1)(b) the words “the net average amount the Board determines the worker is capable of earning” and substituting the words “the earnings that the worker is receiving from employment”.

2. Medical Aid and Rehabilitation - Crucial elements for the successful administration of any workers' compensation system are necessary medical aid and rehabilitation to assist an injured worker to return to work.

Rehabilitation restores health, improves physical and social well-being and aids the recovery of injured workers, including functional capacity. Indeed, the importance of medical help cannot be overstated.

It causes us concern therefore that the W.C. Act states only that the Board “may” provide medical aid to any worker entitled to compensation (Sec. 18). While we accept that the medical aid provided is at all times subject to the control and supervision of the Board, nonetheless it is important that there be a strong legislative onus on the WCB to deliver medical aid.

The Federation of Labour recommends that the W.C. Act be amended to clearly state that a worker entitled to compensation “shall” be entitled to such medical aid as is necessary as a result of the accident or occupational disease.

3. Vocational Rehabilitation - The Federation is also concerned that the W.C. Act makes very limited reference to vocational rehabilitation (Sec. 18(11)). Again the Board “may” take such measures, as it may consider necessary or expedient.

Although vocational services are offered by the WCB as part of the injured worker's overall rehabilitation program, it is critical that there be clear legal direction to the Board

in this matter as is the case in other provinces. It cannot, in our view, be left solely to the workplace parties to arrive at their own solutions.

The Federation of Labour recommends that the W.C. Act be strengthened to require that the Board “shall” undertake all necessary measures, including vocational rehabilitation services, to aid in getting injured workers back to work.

Surely, if the W.C. Act can require the injured worker to cooperate in vocational and occupational rehabilitation then it is not unreasonable to mandate the Board to provide all necessary vocational assistance as part of an effective return to work plan.

4. Return to Work - A more positive alternative to deeming is enactment of the necessary measures to ensure bona fide return to work options are available for injured workers. Therefore it is imperative that workers be given not only full and comprehensive rehabilitation services but also, the strongest possible legal right to return to work as soon as they have reached maximum medical recovery.

The legislative provisions enacted in 2001, although a good beginning, still do not go far enough to ensure the right to return to work (Sec. 86). This part of the Act must be strengthened to address current weaknesses including early termination of re-employed workers and the application of the return to work legislative provisions.

Presently the return to work requirements only apply to accidents that occurred since 2001. Also, the construction industry remains excluded, as do all employers who regularly employ fewer than 20 workers. An employer’s obligation to re-employ is only for a maximum of two years after the date of the accident and, only applies where the worker has been employed by the employer, at the date of the injury, for at least 12 continuous months.

Given the nature of the Island’s economy, these shortcomings in the application of Section 86 leave far too many injured workers without return to work protection. This is not acceptable especially when one considers that many of the workplaces excluded employ workers more at risk to accidents and therefore in need of better legislated assistance.

Human rights laws do not deny workers protection on the basis of workplace size, industry or, length of employment and with good reason. As a minimum the province’s workers’ compensation legislation should mirror the protection afforded workers through the Human Rights Act.

The same rationale, we believe, should apply to prohibit the unfair termination of workers re-employed under the return to work provisions of the W.C. Act. This requires offering job protection beyond the six months currently provided for in Section 86.7(1).

Finally, it is imperative that in all unionized workplaces the bargaining agent for the injured worker be fully involved in the return to work process. Neither the legislation or Board policies currently make reference to the union's role which, considering the latter's legal obligations under other laws, is a serious shortcoming and needs to be addressed if return to work programs are to be successful. As is the case in Newfoundland and Labrador and, also strongly recommended by the National Institute for Disability Management and Research, we suggest that the W.C. Act provide for joint return to work committees to facilitate the involvement and cooperation of all the workplace parties.

The Federation of Labour therefore recommends that the Return To Work provisions of the W.C. Act be strengthened as follows:

- **The legal obligation to re-employ injured workers (Section 86) apply equally to all employers covered by workers' compensation, regardless of size or, length of service.**
- **All employers be bound by the return to work requirement for a minimum period of three years.**
- **To protect against unilateral accommodation by the employer, which does not respect the interests of the injured worker or the rest of the bargaining unit, including seniority rights, joint re-employment committees be legislated at the workplace.**
- **The WCB be given the power, reinforced by stronger penalty options, to order employers to re-instate injured workers where employers fail to meet a rigid test of "undue hardship".**
- **There be special protection against unfair dismissal of re-employed injured workers.**

5. Alternate Employment - Re-employment of injured workers benefits all employers by reducing future collective liability costs. Under the current system, however, employers with good re-employment programs are penalized since their costs are driven up by employers, who do not return injured workers to work. Obviously, a more level playing field is required.

To ensure more employers become proactive in implementing adjustment measures for the benefit of employees with reduced work capacity, we urge the WCB to strengthen the monetary penalties applicable to companies which do not comply with Sec. 86. Pre-accident employers who do not re-employ the injured worker as required could be assigned the value of the ongoing reduction in benefits arising from the deeming process.

Consequently, the pre-accident employer would have a higher accident cost experience and would receive a higher assessment rate. We are confident that this penalty provision, if adopted and, rigidly applied would have the desired effect and result in more employers re-employing injured workers.

All monies generated through this levy or premium surcharge should, we believe, be placed in a special fund dedicated to financing the vocational rehabilitation and re-employment of workers disabled at the workplace. Subject to any wage subsidization program incorporating appropriate job protection measures, incentives for new employers to hire injured workers could include:

- The WCB absorbing the cost of retraining the worker and making any modifications required in the workplace to enable the worker to function despite his or her physical disabilities;
- Charging to the second injury fund any costs of compensation arising out of further injury to the worker;
- Financial assistance in the form of credits or grants.

The WCB itself must also become more proactive in developing alternate employment options for injured workers who do not return to their pre-injury place of employment. The current attitude that there is “no obligation” for the WCB to find employment for the worker is shortsighted and must change.

Assisting injured workers with job market searches isn’t sufficient. Working more closely with industry rate groups, the WCB can do more to develop and make available, where necessary, suitable employment opportunities with alternate employers.

The Federation of Labour therefore recommends that the W.C. Act return to work provisions (Sec. 86) be improved to increase monetary penalties for non-compliance by employers and to obligate the WCB to actively pursue alternate employment options for injured workers.

4.0 Administrative Issues

Legislative provisions concerning the administration of a law carry important meaning given that they usually identify and give direction to those responsible for applying the statute. In the case of the W.C. Act, the WCB board of directors is responsible for administration matters (Sec. 19) and all decisions of the Board are open to appeal through the Appeals Tribunal (Sec. 56). After examining these parts of the Act, we propose several changes.

4.1 Board Appointments - The Federation is satisfied with the composition of the WCB board of directors – a chairperson and as many members, equal in number, representative of employers and workers respectively, as Cabinet may determine. Likewise, we welcome the fact Cabinet, prior to appointing Board members, shall consider submissions respecting membership made by workers and employers.

However, we do have concerns about the term of office for all Board nominees and the process for gathering nominations from workers.

The Federation is anxious that the accountability of nominees which we feel is crucial to sustaining confidence in the WCB structure, be preserved and enhanced. For this to happen the nominating process should be more formalized and the tenure of members made more finite. Presently nominees receive three-year appointments which are renewable indefinitely; there is no formal recognition of the role or structure of the trade union movement in the submission of nominations.

Providing for an orderly change in the make-up of the board of directors would lead to an influx of new perspectives on health, safety and compensation matters and, in our view, is warranted. In addition, nominations should be solicited from the largest central organizations, the PEI Federation of Labour in the case of labour, to ensure ongoing accountability on the part of board members to their respective constituencies.

The Federation of Labour recommends therefore that Section 19 of the W.C. Act be amended to provide that nominations for the WCB board of directors be obtained through central employer and worker organizations; nominees shall be appointed for a three-year term of office and may be re-appointed for one additional term.

4.2 Appeals System - Appeal procedures relating to workers' compensation matters vary widely by jurisdiction. In PEI Section 56 of the Act establishes the framework for appeals of WCB decisions by persons with a direct interest.

From the perspective of injured workers it is critical that the appeals system be fair, impartial, user friendly and timely in holding hearings and rendering decisions. Upon examining the appeals system we offer the following comments.

1. Internal Reconsideration - The internal reconsideration process should be optional and not part of the official appeals procedure. Currently injured workers must apply in writing for reconsideration of a Board decision by the Internal Reconsideration Officer before being able to formally appeal the reconsideration decision, if still unacceptable, to the external Appeals Tribunal. This serves only to delay access to the Tribunal and isn't in the best interests of the injured worker.

The Federation of Labour therefore recommends that the W.C. Act be amended to remove internal reconsideration as a “mandatory” first step in the appeals system.

2. Time Limits - The existing time limits for appeals – 90 days to proceed with internal reconsideration and, an additional 30 days thereafter to file a notice of appeal with the Appeals Tribunal is far too short. Considering most WCB’s have no time limits the current rules are very unfair.

Many injured workers are unfamiliar with workers’ compensation legislation and policies. For the most part they are usually ill prepared to deal with unfavourable Board decisions concerning their claim for compensation. To impose a very narrow window of opportunity for the launching of appeals places undue pressure on workers. It also overlooks the time needed to consult and gather information in support of workers’ compensation appeals which often involve difficult medical issues.

The Federation of Labour therefore recommends that Section 56 of the W.C. Act be amended to provide that the time limit for filing appeals with the Appeals Tribunal shall be no less than one year from the date of the Board decision being appealed and that the Board may reconsider a matter, at the request of the injured worker, where new or additional information arises.

3. Appeal Participants - The Federation is of the view that appeals launched by injured workers should be limited to the appellant and his/her representative. Both the Board and the employer need not be involved at this stage. The WCB decision, including reasons, has already been rendered and placed before the Appeals Tribunal. It is up to the injured worker, without the presence of WCB staff, to convince the Tribunal to alter that decision. With the exception of Return To Work appeals, employers should also be prohibited from taking part in appeal hearings of workers.

The introduction of the Office of Employer Advisor in 2004 has made the appeals process more adversarial in nature. This is hardly surprising since the Office has been aggressive in making employers aware of their right to challenge WCB decisions in favour of injured workers. The willingness of this Office to initiate employer appeals, prepare interventions and, to actually present the appeal arguments, all at no cost to the employer, makes it imperative that injured workers now be represented at appeal hearings. Making the process more adversarial in nature is, we feel, not a positive development for injured workers.

The Federation of Labour recommends that Section 56 of the W.C. Act be amended to clarify that for the purpose of worker appeals, excluding Return To Work decisions, only the worker and their representative shall be considered to have a direct interest and allowed to participate.

4. Decisions - Sub-section 56(24) of the W.C. Act provides the Appeals Tribunal 90 days following completion of the hearing to make available a written summary of its decision with reasons. It is in the best interests of all parties to render decisions sooner.

The Federation of Labour recommends that the W.C. Act be amended to require decisions to be issued within 30 days of the appeal hearing being completed.

The current appeals system having been in place for several years other changes are warranted including better tracking and reporting on appeal outcomes. Annual Reports of the Appeals Tribunal should incorporate success/failure statistics, the nature of appeals, time frames for hearings and additional information which would help stakeholders to better assess the effectiveness of the appeals process.

5. Application of Board Policies - The Appeals Tribunal, according to subsection 56(17) of the Act, shall be bound by and fully implement the policies of the Board. We disagree with such a legal requirement and suggest that the Advisory Committee closely examine this issue.

Legal jurisprudence is clear that policies of quasi-judicial bodies like WCBs must be consistent with the law and where they are not, they are open to challenge. Only in this way can the implementation of Board policies beyond its jurisdiction be effectively guarded against.

The Federation of Labour recommends that the W.C. Act be amended to clarify that the Appeals Tribunal shall respect the Act and follow Board policies where they are consistent with the law, including the Charter of Rights and Freedoms.

6. Appeals Tribunal Membership - Members of the Appeals Tribunal are appointed by and hold office at the pleasure of Cabinet (Sec. 56(7)). The current practice is for nominees to be appointed for fixed terms which are renewable indefinitely. This limits turnover in the make-up of the Appeals Tribunal and the introduction of new worker and employer representatives, as well as chairpersons and vice-chairpersons.

The Federation of Labour recommends that subsection 56(7) be amended to provide that all Appeals Tribunal members, including the chair and vice-chair, are to be appointed for a maximum of six years – two terms of three years each and all worker nominations to come through the PEI Federation of Labour to ensure better accountability.

5.0 Advocate Services

Like other jurisdictions, Prince Edward Island has implemented a service dedicated to

assisting injured workers in dealing with the workers compensation system and, in particular, the appeals process. The Worker Advisor Program is administered by the Department of Community and Cultural Affairs. Although funded by the WCB, it operates independently and at no cost to the injured worker.

More recently, the Office of the Employer Advisor was created to assist PEI employers and employer associations with both the W.C. Act and the Occupational Health and Safety Act, as well as with WCB policies, procedures and practices. The Employer Advisor provides independent advice, assistance, representation and training in the areas of claims management, classifications and assessments, and workplace health and safety, and appeals.

The Office also regularly meets with WCB directors and officials to review and make recommendations on legislation and policy, and updates employers on developments through a monthly newsletter.

After reviewing both advocate services, it is obvious that the employer service is much broader in scope and far more proactive in delivering assistance to the employer community than is the worker advisor service. And this despite the fact the Office of the Employer Advisor only commenced operations in early 2004. But already its involvement on behalf of employers includes formal participation in and reporting to meetings of the Employers Council Inc. on employer concerns and issues, as well as meetings with government Ministers and officials. In short, the Office of the Employer Advisor has become a lobby vehicle for the employer community on all workplace health, safety and compensation matters.

Obviously, there is a serious imbalance between the advocate services provided employers and those offered to workers. Although workers need the greatest help in dealing with the workplace health, safety and compensation system, they get the least assistance and for the most part it appears to be limited to compensation appeals. This is unacceptable, in our opinion, and must be addressed by the Legislative Advisory Committee.

The Federation believes that the worker community should have timely access to comprehensive advocate services covering all aspects of the workplace health, safety and compensation system. Furthermore, it must be a service in which they can have full confidence and trust and also, hold accountable. As the province's largest central labour organization, the Prince Edward Island Federation of Labour is, we feel, best suited to offer the level of advocate services required by Island workers.

The Federation of Labour therefore recommends that Section 85 of the W.C. Act be amended to provide for a comprehensive Worker Advisor Service funded by the WCB and administered by the Prince Edward Island Federation of Labour.

6.0 Policy Issues

Much of the decision-making under the Workers' Compensation Act is driven by WCB policy. Board policies are generally drafted in a user-friendly format and easily accessible through the WCB's website. All policies are periodically reviewed and we are pleased that the Board views consultation with stakeholders as an important aspect of the policy development process.

But the sheer volume of policies being developed or reviewed on an ongoing basis makes it very difficult for workers and their organizations to provide input. An advocate service attached to the Federation of Labour would help remedy this situation. However, the Board should also be encouraged to look at organizing policy development around time frames and themes that will ensure interested stakeholders can fully participate.

Regarding existing policies, our members have raised several concerns which we want to share with the Advisory Committee. In doing so, we realize that WCB staff, while responsible for administering policy are not the official authors. This is the legal responsibility of the board of directors.

6.1 Access To Board Files - The Federation has received complaints from its affiliates about the release of files especially as it relates to medical information about injured workers, to third parties without the approval of the worker.

Section 83 of the W.C. Act determines who may have access to Board files and under what conditions. Currently both workers and employers may access the files "where there is a bona fide issue in dispute with respect to the compensation of a worker." The worker has full access while the employer's access is restricted to what information the Board considers relevant to the issue in dispute.

Policy 04-03, File Release clarifies the law on access to board files. Since October 2003 it states the worker is entitled to a copy of their file even in the absence of a bona fide issue in dispute. It also requires the worker to be advised whenever information is being released to the employer which is possible without an appeal hearing been launched. The same policy allows the Board itself to share medical information about the injured worker with health care providers. There is no requirement that the worker be informed where the WCB shares medical information.

Access to the compensation files of injured workers by employers and their representatives is far too liberal. Both the Act and related Board policy fail to adequately protect the interests of workers as it relates to medical and other sensitive information. No safeguards exist to prevent these files being shared by employers with other parties or,

being used to launch challenges to Board compensation decisions.

The Federation of Labour recommends that Section 83 of the W.C. Act be amended to remove employer access to WCB files relating to injured workers or, at the very least be limited to those documents relevant to any appeal in which the employer is a participant.

6.2 Medical and Rehabilitation Appointments - Another concern raised by Federation members is the scheduling of medical and rehabilitation appointments. Employers are not adverse to insisting that injured workers involved in return to work programs schedule all medical and rehabilitation sessions for non-working hours. This puts added pressure on workers and interferes with the recovery process. It is also at odds with the Board's return to work policies under which the injured worker is expected to take part in medical examinations and rehabilitation while remaining in the workplace.

While compensation is payable when the worker needs time off to receive medical and rehabilitation services employers must be made aware of the worker's rights and responsibilities in this regard.

The Federation of Labour recommends that WCB return to work policies be strengthened to clarify that employers shall respect and facilitate injured workers attending medical and rehabilitation appointments scheduled during working hours or, be subject to monetary penalties.

6.3 Payment of Benefits - Injured workers need and deserve timely payment of their workers' compensation benefits. Interestingly, while the WCB has policies covering time frame limitations for claims filing and recovery of travel expenses, it appears no policy is in place to ensure the prompt payment of benefits, especially the initial compensation cheque. Our information is that the average calendar days from injury to the first payment being issued is approximately 47 days, the highest of all compensation boards in Canada. This needs to improve.

The Federation of Labour recommends that the WCB develop a policy calling for prompt payment of initial compensation benefits and, no later than 30 days after the injury.

7.0 Making Island Workplaces Safer

The trade union movement has a long and proud history of advocating for healthier and safer workplaces. Workers – our members – pay a heavy price for accidents that often are the result of insufficient training, poor employer safety practices, inadequate workplace inspection services and, weak or poorly enforced health and safety laws. Nobody knows

more than ourselves the enormous costs associated with job accidents and occupational diseases both in economic and human and social terms.

Prince Edward Island's official workplace accident statistics indicate that over 2,000 workers are injured at work each year. However, this says nothing of unreported accidents and illnesses, near misses or, the personal pain and suffering endured by injured workers.

In 2005 the WCB recorded 4,153 accident claims. Claim costs were over \$14-Million. But this fails to account for the indirect costs of accidents – lost production, equipment damage, replacement wages, etc, which using conservative estimates would likely be in excess of \$50-Million annually.

As already noted the mandate of the Occupational Health and Safety Division of the WCB is to promote the development of healthy and safe workplaces. This, the Board acknowledges, is accomplished through education and enforcement of the Occupational Health and Safety Act and Regulations.

But regrettably, the WCB is not doing enough to make Island workplaces safer. The Board must make occupational health and safety a greater priority and become far more aggressive in reducing sub standard practices and conditions of work. To be effective, workplace safety laws must be current and well policed, however.

7.1 Stronger Enforcement - Feedback received from Federation members paints a grim picture about the Island's Occupational Health and Safety Act and Regulations – **our laws are not being enforced.**

The WCB has deliberately assumed less and less responsibility for enforcement by making the role of safety officers one of educator and facilitator, rather than enforcer. Not surprisingly, workers have become disillusioned with government occupational health and safety programs.

Today, the internal responsibility system, which labour still supports, is being used by both employers and governments to avoid their own responsibilities in the area of health and safety. The former to avoid providing healthy and safe workplaces and the latter, to avoid providing enforcement and to shift the responsibility for creating a healthy and safe workplace to the workplace parties.

Indicative of the WCB's soft approach is the absence of published statistics on OHS enforcement. To the extent matters like work refusals and the number of inspections, accident investigations, orders issued and stop work orders are tracked, the results are not readily available. Nor is prosecutions and fines information. Also, the WCB's Safety

Matters At Work, Experience Counts Program isn't being fully reported on so as to allow all stakeholders the opportunity to assess its true value, especially as it relates to workplace safety and return to work issues.

We are convinced that the number of reported workplace accidents would be much higher if not for the 3-day waiting period for compensation benefits, or employee fear of employer reprisals. Surely, it is not asking too much to expect aggressive enforcement of the province's workplace safety laws...to attach the same priority to the protection of the health and safety of workers as is given to fish and wildlife protection or enforcement of motor vehicle and public health laws.

A weak economy, globalization and high unemployment make workers think twice about speaking up about health and safety concerns or, exercising their individual right to refuse unsafe work. Even when health and safety committees are effective, the current system provides no leverage in the workplace to push forward truly progressive reforms. OHS laws therefore must be effectively enforced by government inspectors trained to be biased in favour of protecting the health and safety of workers, rather than capital.

Federation members frequently report that WCB safety officers rarely inspect their workplaces and, where inspections occur they often fail to insist that a worker health and safety representative is part of the workplace inspection tour.

A common complaint is that employers are advised in advance of pending visits by safety officers and not enough stop work orders are issued. That there is no real effort made to hold employers accountable for compliance with **all** current laws and regulations, including necessary safety training for joint committee members and individual workers is another criticism. In addition, we hear concerns about the shortage of Occupational Health and Safety Officers and the need for more WCB spending on workplace health and safety. Finally, our members are suggesting that labour should be afforded the opportunity to play an active role in the development of the WCB's annual health and safety conference.

The Federation therefore recommends implementation of a revised WCB workplace safety action plan incorporating:

- **a larger budget for health and safety,**
- **more Occupational Health and Safety Officers,**
- **increased workplace inspections,**
- **increased use of stop work orders,**
- **increased prosecutions and heavier fines for health and safety violations,**
- **better tracking and reporting on workplace OHS activities,**
- **a rigid protocol for workplace visits by inspectors, and**
- **establishment of a joint employer/labour safety conference planning**

committee.

7.2 More Effective Joint Occupational Health and Safety Committees - The Prince Edward Island Federation of Labour is of the firm belief that a stronger approach to enforcement must be complemented by more effective health and safety education and training to better prevent job accidents and workplace illnesses.

We know that the best vehicle for addressing safety issues in the workplace is the joint occupational health and safety committee actively supported by a quality regulatory system. This is why we are seeking the Advisory Committee's support for amendments to the Occupational Health and Safety Act, which if adopted, will strengthen the internal responsibility system.

Specifically, the Federation recommends that the OH & S Act be amended to:

- **Provide joint committees with decision-making powers;**
- **Require the employer to obtain agreement from the committee prior to implementing decisions including safety programs and policies which affect worker health and safety;**
- **Provide certified members with the power to write provisional improvement orders to get the employers to act on hazards not serious enough to require immediate shutdown but serious enough that it cannot wait to the next committee meeting;**
- **Provide workers equal access to information;**
- **Provide workers equal time to research hazards and assess hazardous substances/processes, including the power to bring in their own technical advisors;**
- **Provide a standardized certification-training program for JOHSC members, including sector specific training.**
- **Provide certified members with the unilateral right to stop work;**
- **Provide wage protection for all workers affected by health and safety work stoppages.**

1. Joint Occupational Health and Safety Committee Training - A serious deficiency in the present legislation is the absence of any specific requirement that

members of workplace health and safety committees receive formal training on their role and responsibilities and how to effectively carry out their duties. Certified JOHSC training exists in Ontario, Newfoundland and New Brunswick and, certification leads to:

- strengthening of the internal responsibility system,
- better compliance with OHS laws,
- safe work practices,
- better functioning JOHSCs and,
- more knowledgeable JOHSC members.

Presently in PEI the Act states that the employer shall provide such training as is necessary to ensure the health and safety of workers and also, shall provide such additional training of joint occupational health and safety committee members as may be prescribed by the regulations. Clearly, this must be strengthened, preferably by an amendment to the Act, to require fully paid training leave for all JOHSC members.

The PEI Federation of Labour therefore recommends that the Occupational Health and Safety Act be amended to provide for compulsory certification of all members of Joint Health and Safety Committees in workplaces with twenty or more regularly employed employees.

We further recommend:

- **that the certification curriculum be of two weeks duration and include separate workplace adaptable blocks covering basic and workplace hazard specific training,**
- **that the training program incorporate adult learning techniques and be developed and delivered through the WCB and a Train-The-Trainer model using workplace JOHSC representatives,**
- **that worker and employer JOHSC members receive certification training jointly,**
- **that all employee costs relating to certification be paid by the employer.**

The certification program proposed by ourselves will likely be the first formal training many JOHSC members receive. Therefore it is important that it be comprehensive and of a high caliber and incorporate key components found in Ontario's certification process including:

- health and safety law

- hazard identification, assessment and control
- investigation techniques
- prevention resources
- training on significant workplace hazards.

In support of our recommendations we must emphasize that **certification training won't work unless it is legislated**. As much as Island employers talk about the importance of health and safety training too few voluntarily offer it to workers or JOHSC members. To the extent training is provided it usually has been negotiated by unions; and frequently safety training lacks the necessary depth in that it is often limited to half day and day-long sessions. This being the case only a small fraction of JOHSC members likely ever receive proper training in their duties and responsibilities under the Act.

Opposition to certification by employer groups must be rejected by the WCB if it truly supports the development of more effective joint health and safety committees. Those employers who are proactive in OHS matters have nothing to fear from legislated training and certification. Ontario's experience clearly demonstrates that the end result of JOHSC certification has been to ensure participants have the necessary information to understand and support the internal responsibility system by learning to identify, assess and control workplace hazards and to improve health and safety performance.

2. Joint Occupational Health and Safety Committee Duties - The introduction of a legislated certification program for JOHSC members is only part of the package of changes needed to strengthen this province's Joint Health and Safety Committee system. Equally important as training is the role and responsibilities of JOHSCs.

JOHSCs shall advise the employer regarding a policy or program required by the Act. However, Section 23 makes it the responsibility of the employer subject to consulting with the JOHSC, to establish and review the program. It is not enough for Committees to simply advise the employer. As is the case with Part II of the Canada Labour Code (OHS Provisions) we believe Island JOHSCs need a stronger and more specific role defined by law as opposed to the guidelines in place provincially.

The Federation of Labour therefore further recommends that the OHS Act be amended in Section 25 to ensure that the JOHSC shall fully participate in all duties of the committee and not simply advise the employer; expanded duties should include:

- **participation in the development, implementation and monitoring of the workplace health and safety programs and policies,**
- **participation in the implementation of workplace changes that may affect occupational health and safety, including work processes and procedures and,**

- **participation in all of the inquiries, investigations, studies and inspections pertaining to the health and safety of employees, including any related consultations with third parties.**

3. Employer' s Training Responsibilities - It is unreasonable to expect workers to determine whether or not a hazard exists or how to properly protect themselves from hazards unless they receive the proper training and instructions. The Act, moreover, makes it abundantly clear that the employer is responsible to provide the necessary training, supervision and protective equipment to ensure an employee's health and safety. Unfortunately, all too often this doesn't happen. If the WCB is serious about preventing accidents and strengthening JOHSCs and the internal responsibility system, we believe government and the Board must take concrete measures to ensure workers are properly informed and trained.

The Federation of Labour therefore recommends that WCB safety officers more rigidly enforce the OHS Act relating to employer duties and in particular, the legal obligation of employers to provide health and safety training to workers.

We further recommend that the legal onus on employers be strengthened by adopting the same training of workers provisions found in Section 19 of Saskatchewan's health and safety regulations whereby

1. **An employer shall ensure that a worker is trained in all matters that are necessary to protect the health and safety of the worker when the worker:**
 - a) **begins work at a place of employment, or**
 - b) **is moved from one work activity or worksite to another that differs with respect to hazards, facilities or procedures.**
2. **The training required by subsection (1) must include:**
 - a) **procedures to be taken in the event of a fire or other emergency;**
 - b) **the location of first aid facilities;**
 - c) **identification of prohibited or restricted areas;**
 - d) **precautions to be taken for the protection of the worker from physical, chemical or biological hazards;**
 - e) **any procedures, plans, policies and programs that the employer is required to develop pursuant to the Act or any regulations made pursuant to the Act that apply to the worker's work at the place of employment; and**
 - f) **any other matters that are necessary to ensure the health and safety of the worker while the worker is at work.**

3. **an employer shall ensure that the time spent by a worker in the training required by subsection (1) is credited to the worker as time at work, and that the worker does not lose pay or other benefits with respect to that time.**
4. **an employer shall ensure that no worker is permitted to perform work unless the worker:**
 - a) **has been trained, and has sufficient experience, to perform the work safely and in compliance with the Act and the regulations; or**
 - b) **is under close and competent supervision.**

Stronger **training of workers** legal requirements, we feel, will make the job of JOHSCs much easier and, more importantly help reduce workplace accidents and illnesses with significant benefits to workers, especially younger employees, and employers alike. **Training works, it only remains to make it happen!**

4. Right to Appeal a Safety Officer's Findings - Another issue impacting on JOHSCs which we would like the WCB to consider is the consequence of Safety Officers **not writing orders** in response to a workplace complaint, an observed violation of the Act or regulations or, unsafe or unhealthy working conditions.

Section 10 of the Act provides for an appeal of the officer's "**order**" to the Director but there is no mention of the right of parties to appeal the **findings** of an officer, including a decision not to uphold a work refusal, when no order is written. Furthermore, the OHSC Act doesn't indicate the right to a further appeal in these situations to an independent arbitrator, as is the case with orders.

We recommend that the law be amended to more clearly provide that any workplace party that considers itself aggrieved by any finding, or determination of an officer may appeal to the Director and, if desirable, to an independent arbitrator.

5. Right to Refuse Unsafe Work - There is also a need to improve the right of workers to refuse unsafe work. Presently, the right to refuse is qualified by the ability of the employer to re-assign the work refused to another employee provided he/she is made aware of the refusal (Sec. 29). This should not be allowed as it only serves to place added pressure on workers to perform unsafe work.

The Federation of Labour therefore recommends that the Occupational Health and Safety Act be amended to remove the ability of the employer to assign another worker to perform the work that a worker has refused to do for safety reasons.

6. Workplace Ergonomics - Finally, we remain concerned that the WCB has yet to

develop a comprehensive regulation dealing with workplace ergonomics. Other jurisdictions have realized that more and more accidents relate to poorly designed work equipment and procedures and that reducing related injuries requires better regulation of workplace conditions. A broad and progressive ergonomics regulation, properly enforced, will do just that.

The Federation of Labour recommends that the necessary steps be taken to develop and implement a progressive regulation on workplace ergonomics.

8.0 Improvements Are Affordable

Prince Edward Island workers have endured a disproportionate share of the pain because of the extensive cuts to our workers' compensation system since the nineties. For the most part these cuts were implemented for the sole purpose of eliminating the WCB's unfunded liability and to reverse rising employer assessment rates. That injured workers continue to bear the full burden of the many restrictive changes imposed by government at the request of employers is wrong.

This province's WCB is financially healthy. The December 31, 2001 unfunded liability of \$29.7-Million has been virtually eliminated and as of December 31, 2006 stood at approximately \$.3-Million or 99.7% fully funded. Elimination of the unfunded liability has happened much sooner than the 20 years (2021) projected when the Board committed to a funding strategy that addressed the retirement of the unfunded liability in 2001.

According to the Board's 2005 Annual Report any accumulated operating surplus, upon retirement of the unfunded liability, is to be refunded through assessment rate decreases in the years 2007-2011. This is hardly fair given that the WCB Funding Strategy of 2001-2020 is based on "principles which balance equity for PEI employers **and** benefits for PEI workers."

Since 2004 employer average assessment rates have dropped from \$2.39 to \$2.22 in 2007. At the same time the WCB has recorded hefty operating surpluses of \$14.4-Million (2004) and, \$12.4-Million (2005). And, as already noted, using current accounting methods, the Board is now virtual fully funded, including the cost of administering current claims into the future. That these healthy financial results follow implementation of the three-day waiting period is not surprising and further demonstrates that workers are paying a heavy price for past legislative changes aimed at restricting access to compensation benefits.

All of this has been accomplished without significant investment in health and safety accident prevention measures which if undertaken, would lead to substantial savings in the costs of workers' compensation. Nor has there been any concerted effort by the Board to generate revenue by putting in place more effective measures to ensure all employers have

registered with the WCB and are paying their assessments on accurate payroll information. Other possible sources of new revenue, which could be pursued, include charging higher administrative fees to self-insured employers and increasing substantially the minimum fee charged employers for workers' compensation coverage. The current minimum of \$50 is far too low for the level of protection provided employers.

The Federation of Labour has never subscribed to the employer argument of the nineties that the WCB of Prince Edward Island was in financial jeopardy and would only survive if severe cuts to the compensation benefits of workers were imposed by government. Nor do we support the twisted employer logic that the WCB cannot operate with an unfunded liability. Interestingly, employers today are now pressuring government to relax unfunded liability rules for pension plans and themselves have always operated with long term debt.

We believe it is time to balance fairly the interests of workers and employers – to put aside arbitrary negative funding scenarios and to acknowledge that workers' compensation benefits, including entitlement, must be improved to levels comparable to other more progressive jurisdictions.

The Federation of Labour recommends that the Board Funding Strategy be revised to account for needed improvements in benefits for injured workers.

9.0 Conclusion

It is important to remember that injured workers claim compensation as a result of being hurt in workplaces that all too often are unsafe and in blatant violation of the province's health and safety laws. To force these same workers to endure low benefits or loss of income because they were unfortunate enough to get hurt trying to make a living is, quite frankly, unacceptable.

Workers' compensation is a no fault insurance program not social assistance. As long as workers are denied the right to sue their employers, injured workers and their families have every right to demand fair compensation protection. Employers, on the other hand, can best lower their costs by investing in occupational health and safety and aggressively promoting workplace safety training and compliance programs. This, we suggest, is the approach needed to restore fairness to the province's workplace health, safety and compensation system.

In closing, we urge the Legislative Review Advisory Committee to heed the input provided by ourselves on behalf of all Island workers and to report to the Minister of Community and Cultural Affairs on the necessity of government acting quickly to re-establish fairness in Prince Edward Island's workplace health, safety and compensation system.

