

Rate Framework Consultation

Interim Discussion

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Overview of the Consultations

- In the Fall of 2012, the WSIB announced that I would be leading a comprehensive engagement with stakeholders on reforms to Employer Classification, Premium Rate Setting and Experience Rating.
- Through to the end of 2012, I was engaged in initial discussions with key stakeholders, as I immersed myself in Ontario's workers' compensation system.
- In January 2013, my Discussion Paper was released. I outlined the issues and challenges with the current structures and approaches and identified a number of questions, principles and possible options for stakeholders to consider.
- Public hearings were held in Toronto and Thunder Bay in April. The following is a summary of the submissions I received:
 - 25 oral presentations (18 in Toronto & 7 in Thunder Bay)
 - 43 written submissions (including letters and emails)

Outline of Presentation

- An overview of the Out of Scope issues raised:
 - Employers' views
 - Labour/Injured Workers' views
- An overview of the In Scope issues raised:
 - Employers' views
 - Labour/Injured Workers' views
- Following each section, I will provide some of my thoughts and responses to the views presented to me.

Out of Scope Issues

- In the submissions and presentations from stakeholders, issues beyond the scope of this exercise were raised.
- Some of these are related in a significant way to the issues I was asked to comment on.
- Some are unrelated but none the less important for me to comment on.

Employer's Views: Out of Scope Issues

- Proposal to withdraw the Fatal Claim Policy.
- Suggestion of a Royal Commission on all aspects of workers' compensation.
- The removal of 72-month lock-in.
- Several employers spoke about problems with claims administration.
- Coverage was raised by some employers.

Out of Scope Issues: My Response

- The Fatal Claim Policy does introduce arbitrary moral judgements into what is a no-fault compensation system.
- There are reasonable options to reflect the seriousness of fatalities in the premium rate setting process.
- In assessing an employer's claim costs, some systems assign a "cost" to a fatal claim that reflects the fact it had the potential to be a total disability claim.
- More than anything else employers and injured workers judge compensation systems on the quality of their claims administration.
- Coverage could be more easily administered in a system that defined exclusions from the general application of a classification system that is supported by Regulation.

Labour/Injured Workers' Views: Out of Scope Issues

- Concerns about claims administration and reduction in benefits for injured workers.
- Is this another “cost containment” exercise, using UFL as excuse?
- Expanding coverage to all employers and workers in Ontario.

Out of Scope Issues: My Response

- Workers' Compensation policy requires broad based employer/labour support.
- Fair and adequate funding of the system is essential to broad-based employer support for the system.
- Injured workers are entitled to the benefits described in legislation and to the fair administration of their claims.
- This exercise is about ensuring the security of those benefits through the proper funding of the system.
- Coverage is an issue that should be considered from a worker protection point of view, as it has no substantial financial implications.

Employers' Views: In Scope Issues

The sections to follow outline employers' responses on the following three areas of focus:

- Employer Classification
- Premium Rate setting
- Experience Rating

Employer Classification: Questions I Asked

- What principles should underlie a classification system that “fairly distributes” the cost of workplace injuries amongst employers?
- Is rate shopping a problem or is it a symptom of a problem? Does it lead to an inconsistent application of the classification policy?
- Does the system today still achieve the objective of ensuring employers pay a fair share of injury costs and align premiums to claims costs?
- Can you relate the classification system to the legislative framework? Does it facilitate inter-jurisdictional comparisons? Is it a system that allows for growth and change?

Employers' Views: Employer Classification

- Views expressed range from “there is no problem with the present system” to “this is THE problem”.
- General interest in the NAICS – some said “show me what it will look like”, others outright support it.
- There was recognition of the challenge of designing a system that serves large employers who have consistent claims cost experience and small employers with sporadic or no claims cost.

Employers' Views:

Employer Classification cont'd

- Even those who advocate retaining the present system recognize that because it has not been “maintained” and because there is no flexibility built into the system, it has created problems.
- Some supported the notion that “rate shopping” is a symptom of a problem.
- Suggestion that the current system does a poor job of ensuring employers pay a fair share of costs and that premiums align with claim costs.

Employer Classification: My Response

- Employers are very aware of the problem of cross subsidization in the classification system.
- A substantial number of employers in Ontario question whether the existing system groups them with employers having a similar risk/cost profile.
- I acknowledge that not all employers experience problems with the existing classification system. The WSIB was asked to provide further information on the extent of problems with existing system.
- I believe there is a “real problem” and ad hoc fixes to the current system are not a solution.
- All the reasons put forward in the 1989 system review for adopting SIC as a basis of classification, now support the adoption of NAICS as the basis for classification.

Premium Rate Setting: Questions I asked

- Do we still accept the principle that every year employers pay the costs of injuries in that year?
- What is your reaction to this comment about a rationale for placing limits on rate increases?
- To what extent does that infringe on the principle against passing costs to future employers?
- How should rate setting distribute the cost of the UFL?
- How important is it that the premium rate be reflective of a rate group's recent cost experience?
- What kind of rate volatility are employers willing to live with as a trade-off to linking the premium rate to most recent experience?

Premium Rate Setting: Employer's views

- There is near uniform support for recognizing the obligation to collect premiums from employers on an annual basis, to cover the “full cost” of accidents, i.e. current and future costs.
- Simplicity and transparency advocated.
- There is support for an “employer centric model” of rate setting, which integrates “experience rating” into the rate setting process.
- Support for capping claim costs (collective liability) and for setting a costing of fatalities to reflect the seriousness of the loss.

Premium Rate Setting - UFL Apportionment: My Response

- The WSIB was asked to provide more information, in a technical session on the possible attribution of the UFL.
- There is no one precise method for apportioning the UFL on an industry class basis.
- Using new claims costs to apportion the UFL might not be fair and reasonable for the UFL generated prior to 1998 and from 1998 to 2012.
- The general conclusion is that using new claims costs to apportion UFL recovery may lead to a certain level of subsidization, as demonstrated by the reasonable methods identified.

Experience Rating: Questions I Asked

- Could an experience rating plan be an instrument through which workers' compensation may be modified towards a fairer allocation of the costs of industrial accidents among employers as a group?
- If experience rating is simply a further tweaking of the system to ensure everyone is simply paying their "fair share" should it be integrated into the rate setting process?
- Are the three principles (definition of costs, insurance features, simplicity) that Weiler identified above still valid principles to build experience rating on?
- Is it possible to test that assumption once classifications are established and make further adjustments based on the results?
- Is it clear which category WSIB's current programs fall into? What should the WSIB's focus be going forward? *(driven by OHS policy objectives or by an objective to fairly allocate the costs)*

Experience Rating: Questions I Asked cont'd

- Could you design ER programs or features within the rate setting process with an insurance equity objective which avoid the incentives for undesirable behavior that are a feature of the existing programs?
- Should experience rating be used to correct deficiencies in classification and rate setting systems?
- Do either of these approaches have a tendency to encourage the undesirable claim suppression behavior identified as problematic by Arthurs?
- Does the current WSIB retrospective system meet those criteria?
- Is revenue neutrality an important fundamental principle of any experience rating system? Does it have to be applied on an annual basis?

Experience Rating: Employers' Views

- There is uniform support for the notion that premium rates should reflect an employer's cost experience.
- There is support for the broad notion that legislation allows for "insurance equity" goals in experience rating.
- The concept of Risk Banding is supported.
- There is support for a prospective system.
- Revenue neutrality is strongly supported.
- The construction industry urges an industry specific approach.

Experience Rating: My Response

- When we talk about experience rating we shouldn't limit our thinking to the existing programs.
- The literature supports achieving equitable premium rate setting using cost experience as a way to avoid the negative consequences of subsidization.
- The literature does support the idea that there could be "design elements" of an ER system that contribute to undesirable employer behavior.
- The WSIB ought to be aware of the potential for claim suppression in the design of a premium rate setting system that uses cost experience.

Experience Rating: My Response cont'd

- Incentives and penalties related to OH&S are clearly within the mandate of the CPO.
- The WSIB ought to confine itself to *funding* considerations in the design of a new rate process and await recommendations from the CPO on OH&S driven programs, including incentives and penalties.
- The objective of the rate setting process is to collect the premium revenue you have projected to need to pay benefits – revenue neutrality in any experience adjusted rates is absolutely necessary.

Labour/Injured Workers' Views: In Scope Issues

- Why focus on fairness for employers?
- Experience rating may incent claim suppression and other undesirable employer behaviours, including spurious back to work activity.
- Should simply have a flat premium rate.
- Labour/Injured worker community are not overly concerned with full funding.

In Scope Issues: My Response

- Not all back-to-work efforts should be seen as suspect; “legitimate” return to work programs should be encouraged.
- A flat rate (current average rate) applied to all employers would result in massive subsidization of the employers who contribute the most costs to the system.
- The flat rate system put forward as an example (Employment Insurance) has many critics calling for experience rating of employer premiums.

Some Concluding Observations

- Employer Classification, Premium Rate Setting and Experience Rating should work together in a way that achieves the WSIB's funding policy objectives.
- Employer Classification is the foundation on which Premium Rate Setting and Experience Rating are built.
- Greater transparency and simplicity in how the system works to produce an annual premium rate is an important objective.

Some Concluding Observations

- There are two prevailing descriptions of the purpose of experience rating.
- One that comes primarily from the insurer perspective is that it is:

A procedure that utilizes the individual risk's [insured employer] past loss experience to forecast future losses. It is an effort to modify the ratemaking process by recognizing an individual risk's potential for incurring claims.

(Parry and Math, 1993, p. 658)

Some Concluding Observations

- The other description is framed in terms of providing safety incentives to employers, where employers are viewed as responding to an economic incentive to operate a safe workplace:

To the extent that a firm's own injury experience is reflected in its premium, there is an induced incentive for it to consider investing in safety. If its injuries fall so will its workers' compensation premium.

(Smith 1993, p. I-152)

Some Concluding Observations

- The distinction between the two descriptions is one that emphasizes accurate prediction of future losses in order to collect sufficient premium, while the other emphasizes safety-related behavior incentives.
- I am concerned only with experience rating that fulfills that first purpose.
- The existing experience rating programs will be tested against that objective – are they a mechanism to “accurately predict future losses in order to collect sufficient premium”?

Discussion