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# Legislative Assembly of Saskatchewan

## DEBATES and PROCEEDINGS

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### **Bill No. 58 *The Workers' Compensation Act***

**Mr. Forbes:** Thank you very much, Mr. Speaker. It's a pleasure to rise today to enter into the debate on Bill No. 58, *An Act respecting Compensation for Injured Workers and making consequential amendments to certain Acts*. And it is an important piece of legislation that we're debating tonight and one that I think that we need to make sure we consider this fully and take a look at what are all the implications of this.

Now it's interesting because we know that, and as I mentioned in earlier remarks on Bill 85, that actually the first form of this bill was something in 1908, 1909 — prior to our Workers' Compensation Board, but a way to recognize workers and injuries in a way that would be fair to both employers and to employees to make sure when injuries do happen that there is some sort of insurance scheme that makes it work for all parties involved. And of course it's taken a long time to get it to this state. And we have to make sure that it represents all interests, that it's both fair and reasonable but affordable and doable.

And so what we do now is, in the legislation, that every five years there's a committee of review that is struck with equal numbers of employees, workers, and with employers or employer representatives. And that way they can take a look at what are the issues that have emerged over the past few years and address them in both legislation or regulation or policy, updating it. And it's an important function of good legislation that there's some form of built-in consultation.

Unfortunately we're seeing with other bills, that doesn't seem to happen. But with occupational health and safety and with workers' comp, we have those committees of review that are just a matter of process. And everyone can expect it, and everyone knows that every five years we will be having these consultations. And then they go out and they travel about, and they hear what people have to say about concerns.

And this year, or it actually was a couple of years ago the final report came out, and there's some 50-some recommendations, a little bit different than in previous years. I

remember reading previous reviews that are much more in depth. But you know, at the end of the day we want to see an improvement and I think this is what is so critical about this. So there's some 50-some recommendations in this, and this piece of legislation addresses some of it, and some of it doesn't. And I think that I want to talk about a couple that are in the piece of legislation, the maximum wage rate . . . And the governance is not addressed.

But a couple of pieces I just want to highlight. And I will speak more in a few minutes around privacy, the issues of privacy when it comes to workers and their claims and their files. The Privacy Commissioner has some thoughts about that that I think needs to be put on record.

The other one that the folks who did the review came up with suggestions around funding of the workers' advocate office, the OWA, office of the workers' advocate and occupational health and safety. Both of those functions or parts or areas are funded by the Workers' Compensation Board, but are run out of the Ministry of Workplace Safety.

And so the funding is there, but because of this government's initiative, the lean initiative, there is an impact. The committee of review felt that was unfair, that particularly in today's situation in Saskatchewan which has been for several years that we have such a high injury rate, that they needed to make sure that there was appropriate funding for those two offices. Of course the occupational health and safety that in fact that we would have fewer accidents, and we can all support that and we can all get behind that. And that means better implementation of the regulations and legislation that we have in place. And that should not be a party or victim of cost reductions. We think that's just too, too important. And I would agree with the committee of review that because Workers' Comp is paying for it and it's part of what they do, that that's really important.

And the other part is around the office of the workers' advocate. And we all know, and I would imagine that we all have had people who've had WCB [Workers' Compensation Board] claims come and visit us about concerns they have about how they've been treated at WCB. And it's so important, the role of the office of the workers' advocate in ensuring that they have an advocate when they go to make their claims or their appeals, that that office is fully funded. And it is a shame, and it's not a good thing that they may be victim of reduced expenditures because of the lean initiative. And so that was one thing that the committee of review wanted to highlight. And they did so, and we'll be raising that.

But that's an important issue because again the whole issue around workplace safety both in terms of prevention . . . That's the number one thing, that if we can prevent injuries, that's what we want to do. But if they do happen, that we want to make sure everyone is treated fairly and that nothing happens untoward because there just wasn't enough resources when in fact there probably was enough resources. But if there was a government policy in place that blocked that, that was going to be a problem.

So, Mr. Speaker, I do want to talk a little bit about the issue around the maximum wage rates and the maximum benefit level. And this has been one that often raises a lot of

concerns because when an injury happens, and if it's a problem that the wages are just not keeping up — or their benefits I should say, their benefits are not keeping up — that is truly unfortunate because they may have families to raise. They may have circumstances where it's important that they are receiving appropriate benefits.

And the unfortunate thing too as well is some of these folks, particularly if they're working in construction or in one of the mines or one place where they actually do receive fairly high wages, that because of the situation as it is now, that it's just not the same level of benefits that they probably should receive just because of the mortgage that they may have or the different commitments they have. And it's just not fair that these folks who were doing very well in high paying jobs and then have an accident, then find out that actually their benefits are not that high.

So as the committee of review noted, it's one issue that they've repeatedly heard during their sessions — what's the maximum annual benefit? — and that there was, as you might imagine, two sides of the coin. One side, the employers thought that 55,000 at the maximum level was quite appropriate, and that should be left at that. And in fact that level, that was the cap that was specified in the Act currently, has been in place since 2005. But I understand that it had been raised actually as cost of living and then met that cap in 2005. And so what they want to do now is set the maximum benefit level higher. I understand it might be immediately to 59,000. That's a recommendation out of the committee of review. I'll check my notes when I refer to the minister, what he said, but over the next four years increases annually to a percentage of the annual average wage in Saskatchewan until it reaches 165 per cent of that average annual wage. And then it will remain and it will be indexed at 165 per cent.

So that sounds like a reasonable solution. I'd have to find out more about that when we actually get into committee about that and ask what the implications are for income that is lost, who would be the kind of claimant who might get that benefit. I would imagine that people who are working at lower wage circumstances would not be eligible to get the maximum because that's just not . . . but those who are much higher than that, and we know there's several sectors or several types of employees who would actually be making significantly higher than that, and at the time, and we know particularly now with the cost of housing that clearly they would be carrying mortgages and that type of thing, and it would be a difficult situation.

And so I want to take a minute to review what the minister has said here when he talks about the committee of review. But he talks about the positive step forward for the indexation of the benefits for injured workers and that this is an important thing. He talks about the maximum wage rate, and of course that it would be increased to 59,000 for workers injured after this bill comes into force. And so there will be a group that may be less vulnerable.

And I am worried about those who saw an increase in 2005 but have not seen an increase . . . And that would make it, to 2013, some eight years without even a cost of living increase. And that's significant. So I don't know what the minister is going to do about that. I think that's really not fair and we should have further discussion. And we will

when we get into committee about that.

So I think that's very important. I think that some of the other issues . . . He talks about Workers' Comp borrowing, that type of thing, talks about clarity to a number of WCB internal processes, including the fair practices office, which is very, very effective. And I think that's an important thing. I think that's a key part of some of the new initiatives that the Workers' Comp Board has been able to work in the past several years.

One of the other issues that the committee of review asked about was actually expanding the board of the Workers' Compensation Board from three. There's a Chair now and a representative from labour and a representative from labour. The folks at committee of review thought we should be taking a look at five, so that could expand the ability or the capacity of the board to do more work and be more effective in its work. It's one that they have not accepted, and again we'll have more discussions about that.

But I do want to raise one other question, and that is around privacy. The committee of review raised the issue of privacy in a couple of different ways. And it's one that we always want to make sure that we have the appropriate amount of information that needs to be shared. And the emphasis is on needs to be shared as opposed to we think we need to know everything just in case there's something that's missed.

And of course the Information and Privacy Commissioner here in Saskatchewan has written a letter to the minister about this, who wrote it November 19th, 2012 regarding Bill 58, *The Workers' Compensation Act, 2012*. And you know, he talks about . . . He's not quite agreeing with the minister when the minister says the bill represents a positive step forward for workers' compensation in Saskatchewan. And he said that there is still an issue that warrants focused attention of the Legislative Assembly and is not addressed in Bill 58.

And he talks about the long-standing concerns that his office has raised for a number of years over the interpretation of the Workers' Compensation Board of *The Freedom of Information and Protection of Privacy Act* and the current workers' compensation Act. And he lists several, several concerns and talks about the annual reports, his recent annual reports and some of the concerns that have been raised around the way Workers' Comp does its business.

"Overall . . ." I quote:

Overall, the complaints and concerns we hear regarding WCB include the following:

WCB demands personal health information that is not relevant to the compensable injury;

WCB shares more information about an injury with an employer than is necessary or relevant; and

WCB does not let claimants see their own case management files unless

and until an appealable issue has been identified, and even then may not allow the claimant to view their entire file.

So you have, you have some odd things happening. WCB sharing more information with employers and then not sharing it with the person who the file is about. So this is something that we need to talk about. And actually I'm going to raise this as well within Bill 85 as well because I know there are severe concerns about privacy and the imbalance between what the employer gets to know and why, and what the employee's rights are. So we're really concerned about this.

He goes on to say:

We are also concerned about WCB's position that OIPC does not have jurisdiction in many cases that involve WCB.

And it goes on, and so we have a lot of work, a lot of work. And this will be one of key areas for our questions when we go to committee, is around the office of the privacy and information commissioner and their thoughts with WCB because we do hear that. And not only . . . I mean when people are hurt it's, you know, you feel just the violation of your limits of what you'll be able to do but also the fact that you're not being treated fairly. And somehow WCB needs to be brought up to date in terms of the privacy expectations that we have now in a modern Canada and a modern Saskatchewan.

So it does have some specifics. He talks about amending the Act to specify the board is subject to *The Freedom of Information and Privacy Act*. That would be only logical, it seems to me, but I think we'll have to have a conversation in committee about that. And the other recommendation is repeal the exemption *The Workers' Compensation Act, 1979* has in parts II, IV, and V of *The Health Information Protection Act*. So I think we need to talk further about this.

So I know that many, we've got a lot of different speeches to hear tonight and we want to make sure we get as much work as we can get done. So again, to the government side, we will have a lot of questions particularly around the privacy aspect of the Bill, especially those issues the Information and Privacy Commissioner has raised. We'll be wanting to know more information about the maximum benefit levels, and particularly those folks who haven't seen a raise in a while. And some of the other issues that the committee of review has raised, and particularly around funding for the office of the worker's advocate and occupational health and safety initiatives that happen, we just think this is a priority. And we all share that; we know this is a priority for the government because they often say that and will spend a lot of energy and resources to get that word out. But we really need to put our money where our mouths are and really get that job done. It's about time that we do.

We see, as percentages, the numbers squeaking down but actually in the data we see from this committee of review, the actual real numbers are actually climbing up. And that's just not the way it should go. So with that, Mr. Speaker, I would move that this bill then go to committee. Thank you.