



Service Employees' International Union's Submission to
the 2011 Workers' Compensation Act Committee of Review

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BACKGROUND

The mandate of Service Employees' International Union is to improve the lives of working people and their families, and lead the way to a more just and humane society. We stand for economic and social justice, for dignity and respect, for having a voice on the job and in society, and for a secure job with the opportunity to advance.

SEIU-West is the province-wide SEIU Local, which was created through the merger of Local 299 (Moose Jaw), Local 333 (Saskatoon) and Local 336 (Swift Current). We represent approximately eleven-thousand members across the province working in healthcare, education, municipalities, and community-based organizations. Our members place a high value on the important role of the Saskatchewan Workers' Compensation Board (Board), including the provision of workers' compensation programs and services and the development and delivery of injury prevention services.

While SEIU-West appreciates the opportunity to once again contribute to the Saskatchewan Workers' Compensation Act – Committee of Review process, we are disturbed that this submission mirrors previous submissions because of the minimal progress that has been made.

The fact that the provincial government and the Board have not implemented at least 35 of the recommendations made by the previous Committee of Review is deeply concerning. The ignored recommendations include the following:

- Amendments to section 38.1 to adjust the maximum wage rate;
- Amendments to the regulations to require the Board to annually publish information about registered employers, their full-time equivalents, and their accepted time loss claims and fatalities;
- Amendments to section 52 to include "a concise statement of the employer's responsibility with respect to facilitating the return to work of injured workers and the employer's duty, as enunciated by the Supreme Court of Canada, to accommodate workers with disabilities to the point of undue hardship";
- Amendments to section 60 to improve the medical review panel processes;
- Amendments to Section 120 to increase penalties from \$1,500,000 to \$25,000,000;
- Amendments to the Act to specify that the Board is subject to *The Freedom of Information and Protection of Privacy Act*; and
- Revisions to the policy on pre-existing conditions to ensure the opinion of the injured worker's health care provider is obtained before the Board makes a decision to deny or terminate benefits.

Despite recommendations being ignored in the past, SEIU-West members are hopeful that this will be a genuine and meaningful consultation process, which will produce substantive recommendations that will be implemented by the provincial government and the Board. Our workers' compensation system is too important to workers and their families to let it stagnate. Rather, we must continually work to improve it. The following pages outline SEIU-West's recommendations to accomplish that.

OVERVIEW OF RECOMMENDATIONS

1. Reaffirm commitment to the Meredith Principles and an independent tribunal.
2. Increase focus on reducing work-related deaths and accidents.
3. Increase focus on reducing musculo-skeletal injuries in the health care sector.
4. Develop and adhere to a policy of respect and dignity for injured workers.
5. Improve and strengthen early intervention.
6. Eliminate current practice of estimating future earnings capacity or potential.
7. Remove cap on insurable earnings.
8. Improve how pre-existing conditions are handled.
9. Establish a process to evaluate the effectiveness of Return-to-Work plans.
10. Increase funding for the Office of the Workers' Advocate.
11. Establish an occupational disease panel.

1. REAFFIRM COMMITMENT TO THE MEREDITH PRINCIPLES AND AN INDEPENDENT TRIBUNAL

Our workers' compensation system currently is rooted in Sir William Meredith's attempt to alleviate the need for workers to sue employers directly. In what is referred to as the 'historic compromise', Meredith proposed a no-fault insurance scheme at the beginning of the twentieth century in which employers would fund the system and compensate injured workers and, in return, workers surrendered their right to litigation. The historic compromise was based on five key principles:

1. *Compensation for workers without fault* – the focus is to be on providing compensation, not finding fault, meaning that, when a worker is injured at work, they are eligible for benefits regardless of the cause of injury;
2. *Collective employer liability and funding* – liability for work-related injuries, illnesses and deaths is a shared, collective employer responsibility;
3. *Security of benefit payment* – benefits are paid even if the employer ceases business, leaves the province or becomes bankrupt;
4. *Administration and adjudication by an independent board* – administration of the system is entrusted to an independent administrative tribunal with representation of workers and employers at the highest level of decision-making; and
5. *Exclusive jurisdiction given to the Board* – the Board has quasi-judicial independence to make decisions on entitlements to compensation benefits based on provincial legislation and the policies it adopts to implement the statutory program.¹

SEIU-West is particularly concerned about the potential of moving away from having the Board function as a quasi-judicial, *independent* tribunal with representation of both workers and employers

¹ "Sir William R. Meredith C.J.O.: The Search for Authority"; *Risk*, R.C.B. 7 Dalhousie L.J. 713 (1982-1983)

at the highest level of decision-making. We have seen political interference with other quasi-judicial, independent tribunals, such as the Saskatchewan Labour Relations Board where access to a fair, impartial hearing is now in doubt. We stand firmly opposed to this move and we would be equally opposed to any move of the provincial government to have the courts deal with injured workers.

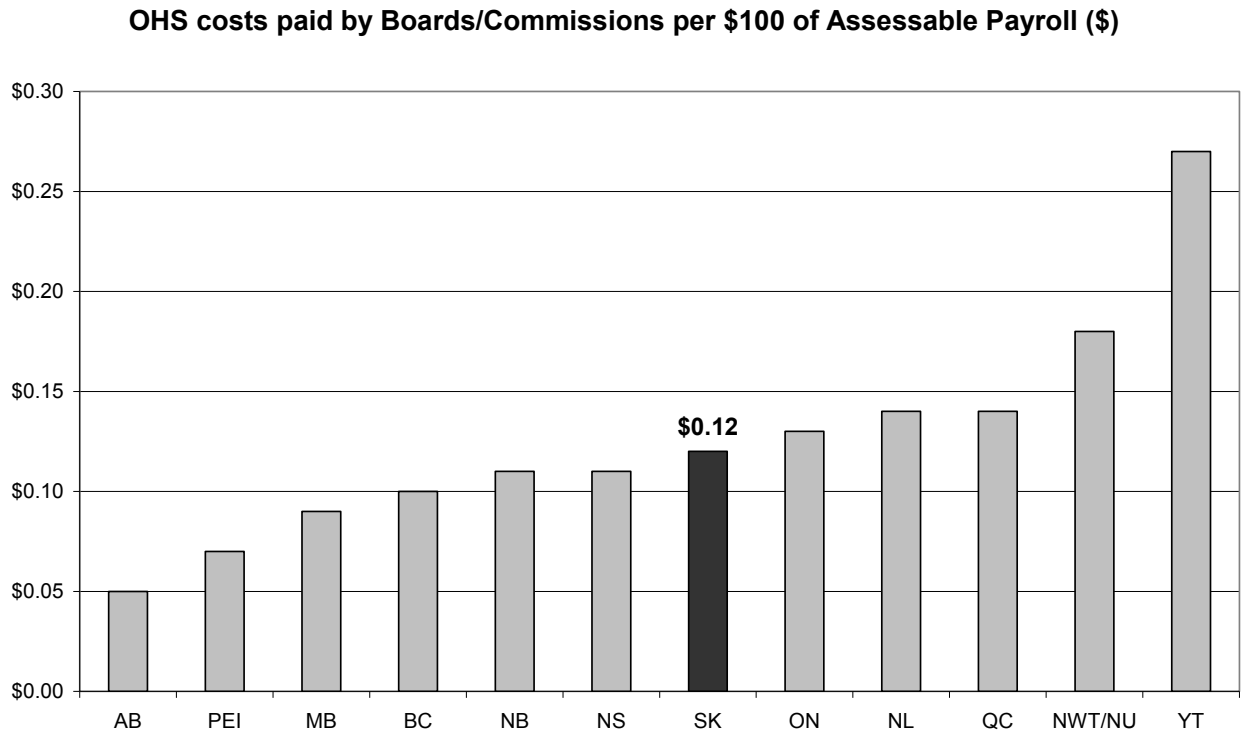
SEIU-West submits that a re-affirmation of commitment to the Meredith Principles be included in the 2011 Committee of Review Report. We also submit that the Committee's report recommend maintaining the existing system in which the Board acts as a quasi-judicial, independent tribunal with equal representation of workers and employers at the highest level of decision-making.

2. INCREASE FOCUS ON REDUCING WORK-RELATED DEATHS AND ACCIDENTS

SEIU-West members believe in the importance of the Board's dual role: meeting the needs of injured workers by providing workers' compensation programs and services as well as developing and delivering programs and services to reduce the incidence of work-related injury, illness and death.

A critical component of reducing work-related injuries, illnesses and deaths is through occupational health and safety programs. In 2009, Saskatchewan's Workers' Compensation Board devoted 12 cents per \$100 of assessable payroll to Occupational Health and Safety expenditures. According to the Association of Workers Compensation Boards of Canada (AWCBC), this level of expenditure ranks below the national average of 12.6 cents per \$100 of assessable payroll.

Figure 1 - Occupational Health and Safety Costs Paid by Boards/Commissions per \$100 of Assessable Payroll (\$)²



SEIU-West submits that the 2011 Committee of Review Report include a recommendation to increase the Board’s expenditures on occupational health and safety.

The Board recently reported that the 2010 total workplace injury rate dropped to 8.7%, which is the lowest total injury rate in 20 years. The time-loss injury rate also dropped in 2010 to 3.12% from 3.4% in 2009. While the direction of these numbers is welcome at first glance, the reality is that lower claims do not reflect fewer injuries. We know from SEIU-West members and other workers that the Mission Zero program – with its primary focus on advertising, social marketing and generally raising awareness – is not actually addressing injury prevention. Rather, Mission Zero is building a culture in which fewer injuries and incidents are reported.

SEIU-West submits that the 2011 Committee of Review Report include a recommendation that the Board recalibrate the Mission Zero program to focus intensively on actual injury prevention.

3. INCREASE FOCUS ON REDUCING MUSCULO-SKELETAL INJURIES IN THE HEALTH CARE SECTOR

The most recent data shows that back injuries have made up approximately 27.5% of injuries in the health care sector. In 2009, injuries to the neck, shoulders, arms, hands, legs and feet made up an additional 44% of injuries in the health care sector. Clearly, musculo-skeletal injuries are a major problem in the health care sector. SEIU-West members report that inadequate staffing levels and

² Association of Workers Compensation Boards of Canada. Available at: www.awcbc.org/en/statistics.asp

equipment are the prime contributing factors to the significant volume of musculo-skeletal injuries in the health care sector.

SEIU-West submits that the 2011 Committee of Review Report include a recommendation that the Board and the G22 Health Care Safety Association work with partners, including health care unions, to develop a comprehensive strategy to reduce the incidence of musculo-skeletal injuries in the health care sector, including safe staffing levels and adequate equipment.

4. DEVELOP AND ADHERE TO A POLICY OF RESPECT AND DIGNITY FOR ALL INJURED WORKERS

Many SEIU-West members have expressed significant concerns about the workers' compensation system in our province, including negative interactions with their Client Service Representatives (CSRs). Too often, there is a 'blame the victim' approach evident at the Board.

An SEIU-West member reports:

The disrespect I experienced has impacted my recovery. This disrespect was evident in everything from a simple telephone call to any direction and support or information from WCB. I felt this from tone of voice. They made feel they were in charge of my body and life. It was a 'you will do as I tell you' approach, with no compassion.

SEIU-West submits that the 2011 Committee of Review Report include a recommendation that the Board develop and adhere to a policy of respect and dignity for all injured workers.

5. IMPROVE AND STRENGTHEN THE EARLY INTERVENTION PROGRAM

The Early Intervention Program was intended as a fast track to ensure injured workers received the most appropriate medical treatment in the timeliest manner. Unfortunately, this initiative has not been successful in our estimation. Our concerns include the following:

- The agencies chosen to deliver the early intervention services are not up to the task of doing so. Unlike the public health care system, private fitness centres and rehabilitation centres have a financial bottom-line that inevitably influences the treatment and care of injured workers. Several SEIU-West members have raised concerns about the services received through some of these private facilities which are currently funded by the Board;
- During testing, injured SEIU-West members have been forced to exert themselves to the point that some have required medical attention from their Family Physician immediately following testing;
- SEIU-West members who have experienced significant pain and, as a result, reduced their exertion level during testing, are deemed "unable to properly evaluate – patient self-limited." This wrongly implies that the injured worker did not want to participate.

- The Functional Capacity Assessment is frequently used to determine restrictions. However, there are often discrepancies between the FCA and the restrictions outlined by workers' Family Physicians. The Board accepts the FCA rather than the Family Physician's assessment. This results in far too many workers being re-injured. Workers become extremely frustrated by this unfairness and often they are re-injured because they are forced to return to work with inadequate restrictions.

SEIU-West submits that the 2011 Committee of Review Report includes recommendations that the early intervention program be provided within the public health care system and that early intervention should be strictly voluntary.

6. ELIMINATE CURRENT PRACTICE OF ESTIMATING FUTURE EARNINGS CAPACITY OR POTENTIAL

SEIU-West members believe that the current practice of estimating future earnings capacity or potential – commonly referred to as 'deeming' – is unethical and contrary to both the Meredith Principles and the original intent of the Act. While it is certainly acceptable to deduct from workers' compensation benefits any earnings a recovering worker actually obtains through a light-duty or part-time job, it is unjust to make that same deduction from injured workers who have not been able to find a suitable job. The Board should not be permitted to automatically reduce a claimant's benefits based upon 'potential earnings'.

The 2001 Committee of Review acknowledged that: "Inflated or unrealistic estimations of future earnings absolves or diminishes the Board's responsibility and leaves an injured worker and family clinging to a subsistence life for both its adults and children."³

SEIU-West submits that the 2011 Committee of Review Report recommend an immediate elimination of the unjust practice of 'deeming'.

7. REMOVE CAP ON INSURABLE EARNINGS

The maximum wage rate for those injured after September 1, 1985 is currently \$55,000. This amount has not been adjusted since 2005 and requires legislative change in order to increase it.

The 2006 Committee of Review Report included two recommendations with regard to the maximum wage rate:

- Amend section 38.1 to set the maximum wage rate applicable on and after January 1, 2008 at \$59,000 per year.
- Amend section 38.1 so that commencing on and after January 1, 2009 the maximum wage rate applicable is not less than 165% of the "average annual wage" rounded to the nearest \$100 as of June in 2008 or the subsequent June each year immediately preceding January.⁴

³ Saskatchewan Workers' Compensation Act Committee of Review 2001 Report

Unfortunately, neither of these recommendations was implemented and the maximum wage rate remained constant.

SEIU-West members firmly believe that there should be no loss of earnings during the period of enforced convalescence or partial loss of employment due to a work-related injury or illness. The reduction in earnings experienced by injured workers who are forced to rely on workers' compensation is one of the major problems our members encounter when involved with the Board. Maintaining a normal income for themselves and their families would be of immense benefit to injured workers. The arbitrary, legislated cap on benefits does not allow adequate resources to maintain quality of life, raise a family, and live in dignity. Rather, it increases stress and anxiety for those who are recovering from work-related injuries and illnesses.

While most provinces have a cap on insurable earnings, SEIU-West believes that Saskatchewan should follow the lead of Manitoba, which, on January 1, 2006, removed the limit on insurable earnings.

SEIU-West submits that the 2011 Committee of Review Report recommend an immediate removal of the cap on insurable earnings as well as amendments to ensure that injured workers are entitled to adjustments to their compensation benefits as a result of newly negotiated wage increases.

8. IMPROVE HOW PRE-EXISTING CONDITIONS ARE HANDLED

The 2006 Committee of Review Report included the following recommendation:

The Board revise its pre-existing condition policy and procedures within one year to ensure the opinion of the injured worker's health care provider is obtained before making a decision to deny or terminate benefits based on the conclusion the worker's pre-existing condition is solely the reason for the disablement or other effects or is solely the reason for the prolonged period of recovery from the disablement or other effects.⁵

Unfortunately, the Board ignored this recommendation and continues to deny claims based on misinterpretation.

SEIU-West submits that the 2011 Committee of Review Report recommend that injured workers' Family Physicians be responsible for determining the existence of a pre-existing condition and the role of the work-related injury in aggravating or accelerating that condition – such important medical determinations ought not to be made by Board staff.

9. ESTABLISH A PROCESS TO EVALUATE THE EFFECTIVENESS OF RETURN-TO-WORK PLANS

⁴ Saskatchewan Workers' Compensation Act Committee of Review 2006 Report

⁵ Saskatchewan Workers' Compensation Act Committee of Review 2006 Report, p. 144

There are times when it is undoubtedly beneficial for a worker to return to work in a timely manner and be provided with modified duties. But far too often, SEIU-West members report that return-to-work plans are used as case management tools or a way for employers to force a premature return to work. In our history with return-to-work plans, workers often feel demoralized and demeaned by the tasks they are required to perform.

An SEIU-West member reports:

I am unsure why the return-to-work consultant called me when my physician had determined that I should be off from work. I thought this would be my doctor's decision. The return-to-work plan they wanted me to follow had me working outside of my classification and my duties were filing in a small office. The room was hot with poor air quality and I was working unsupervised. The working conditions of the return-to-work plan were so poor that I was unable to complete the second hour of my RTW plan in March 2011.

SEIU-West submits that the 2011 Committee of Review Report include the following recommendations:

- **That a joint union/employer process be established to properly evaluate and determine the effectiveness of return-to-work plans;**
- **That harsh penalties be established for employers who do not follow necessary restrictions;**
- **That no workers are ever forced to return to work too early; and**
- **That unions be involved in return-to-work plans as representatives of workers.**

10. INCREASE FUNDING FOR THE OFFICE OF THE WORKERS' ADVOCATE

Established in 1973, under section 161 of *The Workers' Compensation Act*, the Office of the Workers' Advocate provides important services to injured workers and their families, including advice, advocacy, and representation at appeals.

Figure 2 demonstrates that there has been a 106% increase in the number of appeals led by the Office of the Workers' Advocate since 2005. It is reasonable to expect that the Workers' Advocate has experienced significant increases in its other areas of work as well. Unfortunately, as is demonstrated in Figure 3, the Board's funding to the Office of the Workers' Advocate has increased by just 14% since 2005. These statistics confirm what SEIU-West members report: while the quality of assistance provided by the Workers' Advocate is high, it is clear that there is a shortage of staff and resources.

Figure 2 - Number of appeals led by the Office of the Workers' Advocate in 2009⁶

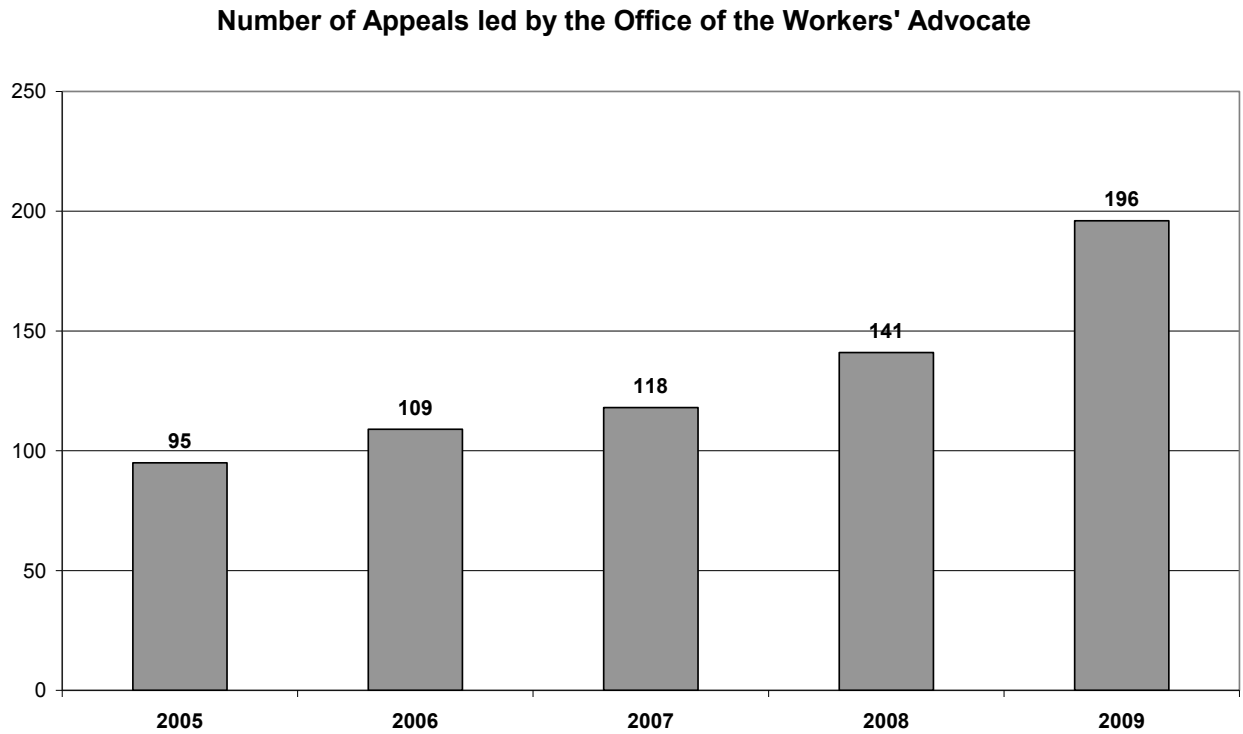
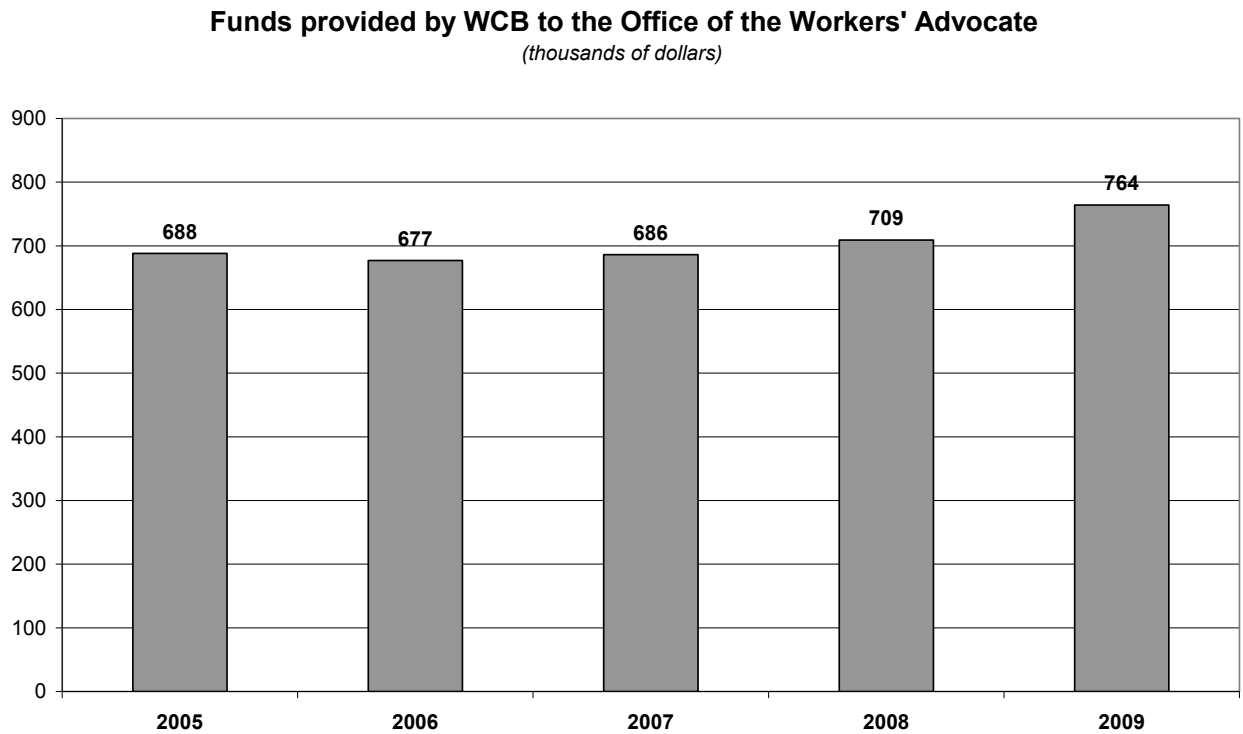


Figure 3 - Funds provided by WCB to the Office of the Workers' Advocate⁷



⁶ Saskatchewan Workers' Compensation Board Report to Stakeholders 2009, p. 19

⁷ Saskatchewan Workers' Compensation Board Annual Reports 2009, 2008, 2007, 2006, 2005

SEIU-West submits that the 2011 Committee of Review Report recommend that the Board increase its funding to the Office of the Workers' Advocate in order to ensure that the Office has sufficient staff and resources to meet the needs of injured workers.

11. ESTABLISH AN OCCUPATIONAL DISEASE PANEL

A majority of SEIU-West members work in the health care sector throughout our province. These workers experience occupational exposure to diseases and illnesses. Since 2006, there have been 45 accepted claims for Acariasis (including scabies, chiggers and mites). The commonly mentioned job classifications which these claims fell under include: licensed practical nurses, nurse aides, orderlies, patient service associates, janitors and caretakers. Since 2006, there have been 1,305 accepted claims for "Contacts with or Carriers of Disease." Again, commonly mentioned job classifications which these claims fell under include: laboratory technicians, licensed practical nurses, nurse aides, orderlies, personnel clerks, janitors, caretakers and security guards.⁸ Additionally, health care workers experience occupational exposure to biological diseases including as many as 33 blood-borne diseases such as Hepatitis B, Hepatitis C and HIV.

Hundreds of health care workers suffer needle stick injuries and exposure to body fluids each year, with each injury having the potential of a serious or even fatal biological exposure.

In addition to exposure of biological diseases, many of SEIU-West members work in older and often deteriorating facilities in which asbestos is still present. This is particularly prevalent in smaller communities where sufficient resources have not been allocated for necessary health and safety improvements. Given the long latency period associated with asbestos, many of these workers will not develop symptoms of fatal disease (such as asbestosis or mesothelioma) until twenty or thirty years after their exposure.

Unfortunately, many doctors do not receive adequate training regarding occupational exposures and their effects on human health. Other jurisdictions in Canada have recognized this deficiency and created occupational disease panels to specifically address this important function and advance this critical work on behalf of workers' compensation boards and injured workers.

SEIU-West submits that the 2011 Committee of Review Report recommend the creation of an occupational disease panel in order to better address this important area of our workers' compensation system.

CONCLUSION

SEIU-West is grateful for the opportunity to contribute to the Saskatchewan Workers' Compensation Act – Committee of Review process, but as readers may notice and as we pointed out earlier, this submission mirrors previous submissions because minimal progress has been made. In fact, 35 of the recommendations made by the last Committee of Review have not been implemented by the

⁸ *Saskatchewan Workers' Compensation Board, Occupational Disease Statistics, Available at: http://www.wcsask.ca/book_statistics/page_about_occupational_disease.page?_nfpb=true&_pageLabel=page_search*

provincial government and the Board. While we find this disturbing, we remain hopeful that this will be a genuine and meaningful consultation process, which will produce substantive recommendations that will be implemented by the provincial government and the Board.

Our members place a high value on the important role of the Board, including the provision of workers' compensation programs and services and the development and delivery of injury prevention services. Our workers' compensation system is too important to workers and their families to let it stagnate. We believe that the recommendations which we have outlined in this report would go a long way to significantly improve the system.