

March 7, 2013

By facsimile

Ms. Elizabeth Witmer
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Mr. David Marshall
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Dear Ms. Witmer and Ms. Marshall:

Re: IAVGO's boycott of the Rate Framework Consultation

This is to let you know that IAVGO is boycotting the Rate Framework Consultation. This Consultation, with its focus on "insurance equity", is just another example of the Board's unwillingness to address the problems inherent in its experience rating programs. Indeed, the discussion paper for the Consultation reveals the Board's contempt for the recommendations of Professor Arthurs in the recent Funding Review. Instead of addressing the problems Professor Arthurs and others have identified, this Consultation would further entrench an incentive system based on "insurance equity" amongst employers with little attention to the harm experience rating inflicts on injured workers. The discussion paper considers the legislative purposes of the system, worker health and safety and return to work, only in passing as afterthoughts secondary to insurance considerations. In the meantime, injured workers continue to suffer from the employer behaviour incited by experience rating.

The Board's continued refusal to implement Professor Arthurs' recommendations on experience rating is a betrayal of the workers and organizations that devoted so much time and effort to participating in the

Funding Review. More importantly, it highlights the Board's unwillingness to address a system that encourages claim suppression, undermines health and safety, and makes return to work into a high-stakes game with the deck stacked against injured workers.

Professor Arthurs implored the Board to promptly declare that the only purposes of its experience rating program were those set out in the *Workplace Safety and Insurance Act, 1997* – not insurance equity – and to commit to ensuring that its programs were fulfilling those purposes. He recommended that if the Board failed to make such a commitment, it should abandon its experience rating programs because they are illegal. The discussion paper, with its focus on insurance considerations, reveals the Board's continued failure to commit to an experience rating system consistent with its legal obligations and in the best interests of injured workers. We therefore call on the Board to abandon its experience rating programs. They are illegal and immoral.

Professor Arthurs called for immediate action.

In my view, the WSIB is confronting something of a moral crisis. It maintains an experience rating system under which some employers have almost certainly been suppressing claims; it has been warned – not only by workers but by consultants and researchers – that abuses are likely occurring. But, despite these warnings, the WSIB has failed to take adequate steps to forestall or punish illegal claims suppression practices.

...

Unless the WSIB is prepared to aggressively use its existing powers – and hopefully new ones as well – to prevent and punish claims suppression, and unless it is able to vouch for the integrity and efficacy of its experience rating programs, it should not continue to operate them.

- Funding Fairness: A Report on Ontario's Workplace Safety and Insurance System, p. 81.

Professor Arthurs recommended immediate action to protect injured workers against the employer abuses incited by experience rating. Most striking here is recommendation 6-2.6, where Professor Arthurs wrote that the Board should "commit itself to making the changes in its rules, structures and processes necessary to protect workers against claims suppression and other abuses that may occur in the context of experience rating programs." He was

careful to include a tight time frame: he emphasised that if the Board "cannot or does not commit to making such changes within 12 months from the receipt of this report, and fails to initiate all necessary changes within its competence within 30 months, it should discontinue its experience rating programs."

Professor Arthurs rejected the notion that experience rating could be based on insurance equity. This, he explained, would be contrary to section 83 of the *WSIA*, which limits the purpose of experience rating programs to reducing injuries and occupational diseases and encouraging return to work. He recommended that the Board declare that the only purposes of its experience rating programs are "*solely* to encourage employers to reduce injuries and occupational diseases and to encourage workers' return to work."
(Recommendation 6-1)

This recommendation leaves no room for an experience rating system based even partly on insurance equity. Instead, the yardsticks for measuring the Board's experience rating program are those set out in section 83: reducing occupational injuries and diseases and promoting return to work.

To that end, Professor Arthurs made many more specific recommendations that the Board could and should have already implemented. He recommended that the Board:

- Adopt a "firm" policy to protect the integrity of its experience rating programs. (Recommendation 6-1)
- Train staff to detect claims suppression and require them to report it. (Recommendation 6-2.3)
- Establish a special compliance unit, headed by a senior officer and sufficiently resourced to detect and initiate the process for punishing employer abuses. (Recommendation 6-2.3)
- Require employers to designate a Health, Safety, and Insurance Officer (HSIO) responsible for ensuring compliance with the *WSIA*. (Recommendation 6-2.1)
- Require that HSIOs ensure that every worker gets a Board-prepared document briefly summarizing their rights under the *WSIA*. (Recommendation 6-2.1)

- Require that each HSIO make sure that every worker is told of their right to file a claim in the event of a workplace accident or illness. (Recommendation 6-2.1)
- Amend its experience rating policies to provide that employers found to have violated the *WSIA* or other occupational health and safety legislation be automatically ineligible for favourable premium adjustments or rate rebates. (Recommendation 6-2.3)
- Conduct a time-limited, carefully-monitored experiment to determine whether experience rating can be modified to improve health and safety and return to work. (Recommendation 6-3)

The Board's failure to implement Professor Arthurs' recommendations.

It is now over a year since the Board received the Funding Review report, which we understand was delivered to the Board in December 2011 or January 2012. None of the above recommendations have been implemented. The Board has not even declared the purpose of its experience rating programs is to promote health and safety and to encourage return to work. Nor has the Board publicly committed to making the changes necessary to protect injured workers from the harmful effects of experience rating.

In the most recent meeting of the Chair's Labour and Injured Worker Advisory Committee on December 6, 2012, I asked for an update on the Board's implementation of Professor Arthurs' recommendations on experience rating. You both refused my request, suggesting that I instead wait for Mr. Stanley's discussion paper and make submissions to him. Your refusal to update this committee only increased our suspicions that the Board had no intention of implementing Professor Arthurs' recommendations.

Indeed, our suspicions have been confirmed. The discussion paper reveals the Board's continuing refusal to acknowledge that its experience rating programs should only continue to exist if they reduce occupational injuries and diseases and promote return to work. Instead the discussion paper contemplates "insurance equity" as the main focus of the Board's experience rating system. To the extent that any of the harms associated with experience rating are considered in the discussion paper, it is in the context of designing an ER program with "an insurance equity objective."

This is no way to deal with a moral crisis.

Our disappointment and frustration with the Board's approach.

We are disappointed and frustrated by the Board's decision to initiate a consultation process on experience rating focused on insurance equity. This is unfair to the injured workers and worker stakeholders who participated in the Funding Review.

Our main concern is that the continued disregard for Professor Arthurs' recommendations and the renewed focus on insurance considerations will hurt injured workers. Each day, we see injured workers who suffer because of the insurance equity focus of experience rating. Because of "insurance equity", employers are incented to reduce the costs of injured workers' benefits. Sometimes this results in improved health and safety and return to work. But for many injured workers these incentives result in employer pressure to hide their accidents, fake return to work jobs, and being forced to return to work before they are ready. These injured workers face fierce opposition and abuse from their employers, and sometimes also from their co-workers. Their claims are denied and delayed because of spurious employer appeals. They live in poverty and are driven to mental illness and sometimes addiction. These injured workers will continue to suffer under a redesigned experience rating system still based on insurance considerations.

The Board's failure to implement Professor Arthurs' recommendations is unfair to stakeholders who participated in the Funding Review. IAVGO, along with many other worker stakeholders, participated in the Review in good faith. We put in three sets of thorough and thoughtful written submissions. We made presentations to Professor Arthurs. We spent days in stakeholders meetings with Professor Arthurs. Despite our limited resources, we devoted weeks to this process. And we did all of this because we trusted the Board's assurances that Professor Arthurs' recommendations would be implemented.

We believe that Professor Arthurs' recommendations were too soft on experience rating. We would have liked for him to recommend the immediate termination of this expensive, ineffective, and hurtful incentive scheme and its replacement with an approach that actually encourages workplace health and safety and return to work. But we accept that Professor Arthurs' recommendations were more modest. And while we will continue to advocate for the abolishment of experience rating, we demand that the Board fulfill its commitment to implementing the Funding Review recommendations.

Through its approach to experience rating reform, the Board has shown contempt for our good faith efforts in the Funding Review. The Board evidently has no intention of implementing Professor Arthurs' recommendations on experience rating. Instead we are left to participate in a Rate Framework Consultation that offers nothing but the deepening and broadening of the Board's reliance on claims cost incentives. Prevention and return to work, the legislated purposes of experience rating, are treated as afterthoughts.

We will not help you legitimize your attempt to prop up an experience rating program that is in moral crisis.

Yours truly,

IAVGO



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