

# Experience Rating, Claim Suppression, and Disability Management: Workers Compensation at the Crossroads

Paul Petrie, November 4, 2024

## Introduction

In the mid 1980s, the funding mechanism for provincial workers' compensation systems in Canada transitioned from a "collective liability" system to an "experience rating" system. This transition coincided with the "neoliberal revolution" that emphasized deregulation and privatization of public institutions. It shifted the economic principle of managing occupational risk collectively, to the notion of managing fault at the individual claim level.<sup>1</sup> This transition has significant consequences for injured workers, as well as for disability management professionals who provide leadership in restoring injured workers to safe, productive, and sustainable employment.

The reintroduction of an adversarial system into workers' compensation entitlement, incentivized by experience rating, has led to significant levels of under-reporting of workplace injuries, as well as overt claim suppression by some employers — both of which are prohibited under workers' compensation law. The cost savings to employers, resulting from this "disentitlement" to legitimate compensation benefits, was accomplished while employers still retained full protection from the legal liability for workplace injuries and deaths that workers had agreed to in exchange for no-fault compensation entitlement administered through an inquiry system.

This shift from the inquiry system (under collective liability) to an adversarial system (under experience rating) raises important questions for compensation boards that rely on experience rating. To the extent that experience rating incentivizes illegal claim suppression, the integrity of the compensation system itself is called into question.<sup>2</sup>

---

<sup>1</sup>MacEachen, E. (2000). The mundane administration of worker bodies: From welfarism to neoliberalism. *Health, Risk & Society*, 2(3). [www.tandfonline.com/doi/abs/10.1080/713670167](http://www.tandfonline.com/doi/abs/10.1080/713670167)

<sup>2</sup>Before experience rating was adopted as the primary mechanism for funding the workers' compensation systems, funding mechanisms were based on the collective liability principle, one of the cornerstones of the "Historic Compromise." Under the Historic Compromise crafted by Justice Meredith in 1914, workers gave up their legal right to sue negligent employers in exchange for no-fault compensation in an inquiry system funded collectively by employer assessments.

## Collective liability v. Experience rating

Before addressing the impact of experience rating on injured workers and their entitlements under compensation law, let's review how these two funding mechanisms impact the work of disability management (DM) professionals.

*Table 1: Comparison of collective liability and experience rating systems*

Collective Liability System	Experience Rating System
<ul style="list-style-type: none"> <li>Employer assessments are based on industry average of claim costs.</li> </ul>	<ul style="list-style-type: none"> <li>Employer assessments* are based on individual employer claim costs.</li> </ul>
<ul style="list-style-type: none"> <li>Each employer in the industry pays the same assessment rate per \$100 of payroll.</li> </ul>	<ul style="list-style-type: none"> <li>Each employer pays a different rate, depending on their claim costs.</li> </ul>
<ul style="list-style-type: none"> <li>Incentive is on prevention initiatives at the industry level.</li> </ul>	<ul style="list-style-type: none"> <li>Incentive is on controlling claim costs at the individual claim level.</li> </ul>
<ul style="list-style-type: none"> <li>DM focus is on safe, productive, and sustainable employment.</li> </ul>	<ul style="list-style-type: none"> <li>DM focus is on return to light duties ASAP to minimize time loss.</li> </ul>

\*Employer assessments are the annual premium each employer pays into the workers' compensation accident fund to cover the cost of all work injuries, and the cost of the bureaucracy to administer the compensation systems.

### Example of Experience Rating Assessment: ACE Construction

The following hypothetical example for ACE Construction illustrates the impact of experience rating and the employer's claim costs on the employer's assessment rate. The example uses the WorkSafeBC ER (experience rating) system — calculations are detailed in Appendix 1.

ACE Construction operates in the residential construction industry classification with a base assessment rate of \$3.62 per \$100 of payroll. ACE has an annual payroll of \$2 million. The base assessment rate for ACE is \$72,400 (\$3.62 X \$2,000,000). Under the collective liability system, all employers in residential construction would pay the same base assessment rate calculated on their payroll, regardless of their claim costs.

Under the BC experience rating system, the employer's assessment rate can range from a maximum assessment (**surcharge**) of 100% of the base rate with very high claim costs over the prior three years (\$144,800), to a minimum assessment (**discount**) of 50% (\$36,400) with very low claim costs. ACE Construction's assessment rate can

fall somewhere in this range of \$108,400 depending on its claim costs over the prior three years.

The following two scenarios illustrate the impact using the WorkSafeBC ER calculator.

*Table 2: Two scenarios showing impact of the ER calculations*

<b>Scenario 1:</b> ACE's claim costs average \$50,000 over the prior 3 years
<b>Outcome:</b> ACE would pay a “ <b>surcharge</b> ” of 35.5% above the base rate = <b>\$98,000</b>
<b>Scenario 2:</b> ACE's claim costs average \$5,000 over the prior 3 years
<b>Outcome:</b> ACE would receive a “ <b>discount</b> ” of 11% below the base rate = <b>\$64,400</b>

It's not difficult to do the math — these scenarios are \$45,000 apart. If ACE Construction, with a \$2 million payroll, could reduce its average claim costs **paid by the WCB to its injured workers** by \$45,000, **it could save \$33,600 in the annual assessments it pays to the WCB**. Imagine the savings for an employer with a whopping \$20 million payroll, or even higher. This is a powerful financial incentive to control the cost of any (and possibly every) claim after the injury occurs. Effectively, the experience rating system embeds financial incentives to reduce the employer's assessment it would pay to the WCB by reducing the claim costs paid to its own workers by the WCB.

## Does Experience Rating Promote Safety Improvements?

At first glance, the system of experience rating appears to be a more equitable method of collecting assessments from employers to fund the compensation system — the employer with the highest injury costs pays the highest assessment.

Theoretically, the individual liability approach with experience rating should provide a financial incentive to control the hazards and risks that cause the injuries in the first place. But does it?

Research indicates that the embedded financial incentives inherent in experience rating have not supported effective health and safety in the workplace — quite the contrary. There is substantial evidence that experience rating may, in fact, inhibit effective health and safety programs. In 1986, Professor Terrence Ison (one of Canada's leading

experts on workers' compensation law), detailed some of the consequences of adopting experience rating. Table 3, below, provides examples.

Table 3: Consequences of experience rating, as outlined by Terrence Ison <sup>3</sup>

<ul style="list-style-type: none"><li>• ER increases administrative costs of the system by:<ul style="list-style-type: none"><li>▪ implementing aggressive control measures for claim costs;</li><li>▪ fostering an increased adversary system through employer protests and appeals; and</li><li>▪ shifting away from the no-fault inquiry system that was one of the foundational Meredith Principles.</li></ul></li></ul>
<ul style="list-style-type: none"><li>• ER provides an incentive for some employers to discourage workers from filing claims with the compensation board, resulting in claim suppression which is illegal under the <i>Compensation Acts</i>.</li></ul>
<ul style="list-style-type: none"><li>• ER can have an anti-therapeutic effect by introducing overly aggressive control measures of claim costs that can aggravate and/or prolong the disability.</li></ul>
<ul style="list-style-type: none"><li>• ER can promote premature return to work before the worker has recovered sufficiently to safely perform the work duties.</li></ul>
<ul style="list-style-type: none"><li>• ER can shift the already limited health-and-safety staff and resources from prevention to claims management activities.</li></ul>

With respect to the contention that experience rating functions as a prevention incentive, Ison's assessment was direct:

The assertion that experience rating has a beneficial influence on occupational health and safety, or at least on safety, is contrary to the evidence, and unsupported by logic. Moreover, the position is worse than that. Experience rating probably has negative influences on health and safety. (p. 728)

In 2012, the Institution of Occupational Safety and Health published a special issue of *Policy and Practice in Health and Safety*, with a comprehensive review of the literature that focused exclusively on experience rating. This issue provided international perspectives on experience rating, and insightful articles on the impact of experience rating in the Canadian context.

---

<sup>3</sup> Ison, T.G. (1986). The significance of experience rating. *Osgood Hall Law Journal*, 24, (4) 723-742. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2129183](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2129183)

In that critical literature review, the centerpiece of the issue, authors Mansfield, et. al<sup>4</sup>, state:

Although experience rating is intended to stimulate safer workplaces, a growing body of literature reveals that it has not achieved that effect, and that, in some cases, it has contributed to unsafe workplaces. The absence of a safety effect may arise because employers focus on managing claims rather than prevention. Also, financial incentives may discourage employers from reporting injuries and put those employers who do report at a disadvantage relative to their peers. Furthermore, there is evidence that experience rating stimulates employer behaviors which can undermine the physical and mental health of injured workers. (p.7)

The authors point out that experience rating is seen as introducing an adversarial adjudication process that motivates employers to challenge claims. They state that:

...experience rating can be seen as bringing back the adversarial process of the tort system that no-fault was designed to eliminate. With experience rating, the focus is once again on the interrogation and investigation of the injured worker. (p.9)

The authors further note that employer claims management strategies can be humiliating to workers and may inflict further psychological, medical, or financial stress due to the adversarial nature of the claims management process employed by some employers. They also note that rehabilitation plans may be more responsive to the financial interests of the employers rather than to the effective rehabilitation of the worker. In the end, the authors called for a more balanced research approach to provide definitive answers to how experience rating motivates employer and worker behavior, and how it affects overall workplace health and safety.

Later in 2012, the Institute for Work & Health hosted the “International Symposium on the Challenges of Workplace Injury Prevention Through Financial Incentives”. The symposium explored a range of issues around experience rating and alternate forms of prevention incentives<sup>5</sup>. Marion Endicott provided an injured worker’s perspective and noted that the insidious impact of experience rating on suppressing claims was difficult to document with scientific reliability. She described experience rating as an “addiction” embraced by compensation boards to respond to the political pressure to control

---

<sup>4</sup>Mansfield, L., MacEachen, E., Tompa, E., Kalcevich, C., Endicott, M., Yeung, N. (2012). A critical review of literature on experience rating in workers’ compensation systems. *Policy and Practice in Health and Safety*, (10.1), 3-25. <https://doi.org/10.1080/14774003.2012.11667766>

<sup>5</sup>IWH International Symposium on Injury Prevention through Financial Incentives <https://www.iwh.on.ca/events/prevention-incentives-2012>

individual claim costs, even though it undermined the fundamental principles on which the Canadian compensation system was based.

## The Nature and Extent of “Claim Suppression”

A 2012 review of the funding of the Ontario Workplace Safety and Insurance Board (WSIB), entitled “Funding Fairness”<sup>6</sup> devoted a chapter to experience rating incentives. The author, Harry Arthurs, acknowledged that there was some support for the proposition that experience rating may reduce claims, but pointed out that there was also evidence that experience rating created incentives for abuse, such as claim suppression. He stated that this created “a moral crisis” for the WSIB, since it had “failed to take adequate steps to forestall or punish illegal claim suppression practices.” (p. 81) He concluded that:

Unless the WSIB is prepared to aggressively use its existing powers — and hopefully new ones — to prevent and punish claim 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.” (p. 81)

The “moral crisis” identified by Harry Arthurs presents special challenges for disability management professionals, coordinators, and others entrusted to restore injured workers to safe, productive employment. Knowing how the compensation funding system works can assist disability managers in navigating the challenges that sometimes result from the so-called “unintended consequences” of experience rating. An effective disability management program relies on a supportive employer and a workplace culture that respects the rights of injured workers which can be challenging under experience rating.

The Institute for Work & Health<sup>7</sup> provides the following definition of claim suppression:

...any overt or subtle actions by an employer or its agent which have the purpose of discouraging a worker from reporting a work-related injury or disease, or claiming [compensation] benefits to which he or she would likely be entitled. (p.11)

---

<sup>6</sup> Found online at: <https://www.wsib.ca/sites/default/files/2019-03/fundingfairnessreport.pdf>

<sup>7</sup> Saunders, R., Cardoso, S., O’Grady, J. (2020). Estimates of the nature and extent of claim suppression in British Columbia's workers’ compensation system. Found online at: [https://www.iwh.on.ca/sites/iwh/files/iwh/reports/iwh\\_report\\_claim\\_suppression\\_bc\\_dec\\_2020.pdf](https://www.iwh.on.ca/sites/iwh/files/iwh/reports/iwh_report_claim_suppression_bc_dec_2020.pdf)

Because claim suppression is illegal under workers' compensation legislation, it is challenging to investigate and difficult to detect. The hidden nature of claim suppression activities sometimes fosters a denial that it even exists. Recent research in Manitoba and British Columbia provides reliable evidence about the nature and extent of claim suppression and under-reporting of workplace injuries.

## Curbing Claim Suppression in Manitoba

In November 2013, consultants with Prism Economics and Analysis completed an independent, comprehensive study of claim suppression for the Manitoba WCB.<sup>8</sup> The Prism Economics study provided four separate survey measures which together indicated:

- that employer “overt claims suppression” ranged from 6% to 29.8%;
- that 11% of respondents had experienced, or were aware of, instances of overt claim suppression; and
- that this proportion increased to 36.3% when wage continuation was included as a form of claim suppression.

In response to the Prism claim-suppression study, the Manitoba Government introduced important prevention and compliance amendments and established a consolidated prevention entity as an independent arm of the WCB. The Manitoba WCB made some changes to the experience rating system and introduced policy changes to place greater emphasis on incentives for developing effective prevention programs. In 2015, the Manitoba WCB created a new Compliance Department to educate employers of their rights and responsibilities regarding injury reporting, and to investigate claim suppression activities. Where appropriate, they were to apply administrative penalties up to \$6,000 for violations.

Appendix 2 provides more details regarding Manitoba's enforcement response to claim suppression.

---

<sup>8</sup>Prism Economics and Analysis. (2013, November). *Claim Suppression in the Manitoba Workers' Compensation System: Research Report*. Manitoba Workers' Compensation Board. [https://www.wcb.mb.ca/sites/default/files/Manitoba\\_WCB\\_Claim\\_Suppression\\_Report\\_-\\_Final-1.pdf](https://www.wcb.mb.ca/sites/default/files/Manitoba_WCB_Claim_Suppression_Report_-_Final-1.pdf)

## British Columbia's Claim Suppression Problem

In 2019, the BC WCB Board of Directors commissioned independent research into claim suppression. This research was carried out by the Institute for Work & Health and Prism Economics.<sup>9</sup> The comprehensive 127-page Claim Suppression Study, released in 2020, documents the results of four scientific surveys which indicate extensive under-reporting and significant illegal claim suppression.

The Study findings indicated:

- over 2/3 of the workers who reported a time loss injury to their employer said the employer did not submit an employer report of injury to the Board (as required by Section 150 of the *BC Workers' Compensation Act*);
- 13% of all workers surveyed reported that the employer pressured them not to file a claim (in violation of Section 73 of the *Act*);
- more than 1/5 of the 107 employers who responded to the employer survey said they allowed injured workers to access their sick leave plan or medical benefits plan (which contravenes Section 119 of the *Act*); and
- more than 25% of employers surveyed believe that other employers in their industry misrepresent time-loss claims as healthcare-only claims, "all the time or almost all the time."

After reviewing the literature and the data in their Claim Suppression Study, the authors concluded:

We cannot say with certainty, therefore, whether the [under-claiming rate of 61.5% in the] survey undertaken for this report over-estimates or accurately estimates the incidence of under-claiming of WorkSafeBC benefits. In any event, there is no reason, based on the survey data to suggest that the actual under-claiming rate would be less than the 40% estimated by Shannon and Lowe, and it may be higher. (p. 118)

In 2022, I prepared a summary report of the IW&H and Prism Claim Suppression Study for the BC Minister of Labour and the WCB Board of Directors, titled "Claim Suppression: The Elephant in the Workplace."<sup>10</sup> Based on a conservative analysis of

---

<sup>9</sup> [https://www.iwh.on.ca/sites/iwh/files/iwh/reports/iwh\\_report\\_claim\\_suppression\\_bc\\_dec\\_2020.pdf](https://www.iwh.on.ca/sites/iwh/files/iwh/reports/iwh_report_claim_suppression_bc_dec_2020.pdf)

<sup>10</sup> Petrie, P. (2022). *Claim Suppression: The Elephant in the Workplace*. Available online at: [https://assets.nationbuilder.com/workereducation/pages/51/attachments/original/1648094008/Claim\\_Suppression\\_Review\\_March\\_2022-3\\_\(1\).pdf?1648094008](https://assets.nationbuilder.com/workereducation/pages/51/attachments/original/1648094008/Claim_Suppression_Review_March_2022-3_(1).pdf?1648094008)



the Claim Suppression Study data and WCB claims data, I estimated the unclaimed time-loss injuries in 2019 alone at 45,000, with a likely range between 40,000 and 50,000 unclaimed time-loss injuries. This represents 46.3% of the total projected claimed and unclaimed time-loss injuries in 2019 in line with the conclusions in the Claim Suppression Study and other research.

Based on the Claim Suppression Study findings and WCB claim-costs statistics, I also estimated that the 45,000 unclaimed time-loss injuries in 2019 resulted in approximately 225,000 lost days for unclaimed work injuries, resulting in a loss of approximately \$50,000,000 in compensation and healthcare benefits to injured workers, their families, and the public through the taxpayer-funded Medical Services Plan and other income support programs covered outside the WCB accident fund. This apparent subculture of under-reporting and claim suppression also presents challenges for providers of disability management services in meeting their professional responsibilities. Appendix 3 documents the calculations of the level of under-reporting of work injuries and their associated costs.

Two recent FOI requests provide data which show that, over a four-year period between 2020 and 2023, there were:

- a total of 88,855 claims that were adjudicated without an employer's report of injury, contrary to Section 150(6) of the *Act*;
- zero investigations and zero penalties, under section 150(6), for employers who did not report the injury;
- 909 investigations under Section 73 of the *Act* prohibiting claim suppression; and
- only one modest penalty (\$2,921) imposed under that Section 73 for claim suppression.

In January 2024, the WCB appointed a manager of claim suppression and established a unit with four officers to investigate claim suppression activities. The new investigation unit recently imposed a \$5,339 penalty that generated wide and quite interesting media coverage.<sup>11</sup>

While there are indications that BC is beginning to take some early steps in the direction of responding to claim suppression activities, there lies ahead an established subculture, at least in some industries, of extensive under-reporting and significant claim suppression activities contrary to legal requirements. BC now faces the “moral

---

<sup>11</sup> Dacre, C. (2024, May 23). *WorkSafeBC fines Kelowna company over 'claim suppression'*. Castanet. <https://www.thesafetymag.com/ca/topics/safety-and-ppe/furniture-manufacturer-fined-for-allegedly-dissuading-worker-from-reporting-injury/491317>. For more local coverage see: <https://www.castanet.net/news/Kelowna/488770/WorkSafeBC-fines-Kelowna-company-over-claim-suppression-#:~:text=WorkSafe>

crisis” identified by Harry Arthurs in 2012, where enforcement of the legal requirements and prevention initiatives must be prioritized if BC is to reverse the pervasive subculture of under-reporting and illegal claim suppression.

As Harry Arthurs’ conclusion in “Funding Fairness” suggests, if the BC WCB is unable to effectively prevent and punish claim suppression, and is unable to vouch for the integrity and efficacy of its experience rating program, it should discontinue operating that program.

Effective disability management programs can also play a key role in leading the way forward to a workplace culture that respects and protects workers’ rights under compensation legislation, and reinforces the integrity of the compensation system.

So far, this paper has examined claim suppression data from Manitoba and BC. It is important to keep in mind that each province has its own experience rating system, each with different criteria for determining the level of surcharge and discount, each with its own industry classification system, and each with its impact on a worker’s entitlement to compensation and the occurrence of illegal claim suppression. The Association of Workers’ Compensation Boards of Canada provides a detailed summary of the experience rating systems in Canadian jurisdictions.<sup>12</sup>

## Yukon’s New Funding Model

The Yukon Workers’ Safety and Compensation Board (Yukon Board) offers a fresh new approach to funding their workers’ compensation system that no longer relies on experience rating. Instead, it places prevention at the forefront of their funding mechanism. In 2015, the Yukon Government revised their *Workers’ Safety and Compensation Act* to place the priority on protecting worker health and safety as a key element in their assessment funding model. The Yukon Super-Assessment Policy<sup>13</sup> offers a creative “modification” of experience rating, using a collective liability model.

Under the Yukon super-assessment system, the Yukon Board sets the “normal range” of claim costs for each Yukon industry sector based on aggregate claim costs for that industry. All employers whose claim costs fall in this normal range have the same assessment rate, a clear application of the collective liability principle.

---

<sup>12</sup> AWCBC Experience Rating Programs in Canada, Summary Tables, 2019. Found online at: [https://www.wsib.ca/sites/default/files/2019-04/appb\\_experienratingprogramsincanada.pdf](https://www.wsib.ca/sites/default/files/2019-04/appb_experienratingprogramsincanada.pdf)

<sup>13</sup> For more details see: <https://www.wcb.yk.ca/policies/employer-assessments/5-8-super-assessment>

Employers whose claim costs are three times above the normal range (“outliers”) face a possible super-assessment. However, the super-assessment is NOT applied if an outlier employer (i) has implemented an effective health and safety program, and (ii) their compliance record with the health and safety regulations shows that they have taken adequate prevention measures to control the risks common to their industry. If a super-assessment is applied, it is the same for each employer whose claim costs are above the normal range, again reinforcing the collective liability approach.

To determine whether the employer has implemented an effective health and safety program, the Yukon Board will review all the employer’s relevant files relating to workplace health and safety, claims, and assessments, in order to determine their overall safety management practices. The super-assessment is applied only to outlier employers whose claim costs are significantly above the normal range, AND who have not met their prevention responsibilities under the *Act*.

Yukon’s new funding model provides a policy approach that has the potential to minimize claim suppression. It also provides policy leadership in Canada to re-establish the principle of collective liability for funding compensation systems, and places priority on prevention initiatives for controlling claim costs. The Yukon super-assessment system establishes a model in which the financial incentive that too often drives under-reporting and claim suppression, is removed. This is a model in which good disability management programs can thrive.

The Yukon government has provided leadership in establishing a funding mechanism based on collective liability, that emphasizes prevention and avoids the “moral crisis” resulting from experience rating. In my view, this fresh, new approach provides a progressive model for other compensation jurisdictions in Canada to consider as an alternative to experience rating.

## The Impact of Claim Suppression on Disability Management

This paper has detailed some of the impacts of experience rating on injured workers and their statutory rights under workers’ compensation legislation. The impact of experience rating on injured workers also has significant, some would say profound, implications for those who provide disability management services to those workers. Disability managers must navigate the obstacles and meet the challenges that experience rating creates in restoring injured workers to safe, productive, and sustainable employment.

Over the last 30 years, the National Institute for Disability Management and Research (NIDMAR) has demonstrated national and international leadership in disability management. NIDMAR's leadership in establishing best practices for disability management provides some of the supports needed for disability management professionals to navigate these challenges.

NIDMAR's mission to reduce the human, social, and economic costs of disability has been achieved through:

- education and training, most notably through Pacific Coast University for Workplace Health Sciences;
- development of professional standards through the Certified Disability Management Professional (CDMP) designation and the Certified Return to Work Coordinator (CRTWC); and
- establishment of Disability Management Program standards that are detailed in NIDMAR's 2023 Disability Management Implementation Guide, the Consensus-Based Disability Management Audit tool (CBDMA), and the more streamlined Workplace Disability Management Assessment.

These achievements provide a solid foundation for supporting the practice of effective and ethical disability management. Disability professionals are the front-line defense against under-reporting and illegal claim suppression activities, and in the best position to establish ethical practices that fully comply with legal requirements.

The Canadian Society of Professionals in Disability Management provides comprehensive Ethical Standards and Professional Conduct guidelines for disability management professionals.<sup>14</sup> These standards provide the framework for maintaining the integrity of the disability management profession and the confidence of all workplace partners.

One of the key provisions in the Ethical Standards and Professional Conduct for disability management professionals states:

They will refuse to participate in employment or business practices that conflict with moral, ethical, or legal standards regarding the employer including practices that result in illegal or implied discrimination in any employment practices (p. 5).

---

<sup>14</sup> Canadian Society of Professionals in Disability Management (2024). *Ethics and Conduct*. CSPDM.ca. <https://www.cspdm.ca/professionals/ethics-and-conduct/>

Disability management professionals can set the standard for ethical practice under experience rating that avoids the “moral crisis” invoked by under-reporting and claim suppression activity. Effective disability management programs provided by certified disability management professionals offer the best solution to restore injured workers to safe, productive, and sustainable employment that minimizes the risk of reinjury.

The time is long overdue for compensation boards to more fully recognize the fundamental value of effective disability management programs to minimize the human, social, and economic costs of workplace disablement. Compensation boards should consider incentivizing more effective disability management programs by embedding, in their funding mechanism, recognition of fully implemented disability management programs that meet the high standards established by NIDMAR.

## Workers Compensation at the Crossroads

The available evidence indicates that the financial incentive to control individual claim costs under experience rating leads some employers to under-report workplace injuries and, in some cases, engage in illegal claim suppression activities. This creates an uneven playing field for employers who meet their reporting requirements and must compete with employers who are cheating the system.

The path forward to undo the negative impacts of experience rating requires vigorous enforcement of the reporting requirements and claim suppression activities. The integrity of the workers’ compensation system itself is called into question when there is little in the way of effective enforcement to hold non-compliant employers accountable for violation of the legal requirements in the *Act*.

Recent research has confirmed what Harry Arthurs called the “moral crisis” in workers’ compensation that comes from the failure of some compensation boards to control the negative consequences of experience rating. In 2012, Arthurs concluded that failure to control the negative consequences of experience rating calls into question the integrity of the compensation system, and calls for the discontinuation of experience rating as the funding mechanism for the system. A more equitable and less corrosive funding mechanism, based on the original collective liability principle, provides a long-established resolution for compensation boards who find themselves at this critical crossroads.

In my view, the time has come for provincial governments in Canada to initiate independent reviews of their experience rating systems to determine if the consequences of their system contravene the legal rights of injured workers enshrined in their workers’ compensation legislation.

An independent review of experience rating systems based on reliable data would ensure that the funding mechanism for the compensation system does not compromise the basic purpose of workers' compensation legislation which is to provide injured workers with fair, no-fault compensation and effective rehabilitation that is established as a fundamental right in compensation law.

## Conclusion

This paper presents evidence and analysis to support the following seven key points.

1. Research shows that experience rating provides a financial incentive that promotes under-reporting of workplace injuries and claim suppression activities by some employers.
2. Under-reporting and claim suppression deprive injured workers of their legal rights to compensation and rehabilitation services provided under workers' compensation law.
3. Experience rating incentivizes a “quick fix” approach to claims management that too often leads to the “walking wounded” syndrome and the risk of reinjury.
4. Experience rating has a significant impact on the work of disability management professionals who must identify and avoid the negative and illegal consequences of under-reporting and claim suppression activities.
5. Experience rating does not provide an incentive to promote improved prevention programs and, in some cases, has contributed to unsafe workplaces.
6. Some compensation boards are taking positive steps to include a prevention incentive within their funding model to shift the focus from controlling claim costs to controlling the conditions that cause workplace injuries in the first place.
7. Failure to enforce the legal protections against under-reporting and claim suppression can present some compensation boards with a “moral crisis” requiring a review of their funding mechanism.

Based on my review of these issues, I offer the following recommendations for consideration.

First, that compensation boards incentivize more effective disability management programs by embedding, into their funding mechanism, recognition of fully implemented disability management programs that meet the high standards established by NIDMAR.

Second, that provincial governments initiate independent reviews of their experience rating systems to determine if the consequences of their system contravene the legal rights of injured workers enshrined in their compensation legislation.

Lastly, that compensation jurisdictions consider modifications to their funding mechanism based on the principle of collective liability as illustrated by the Yukon super-assessment system to avoid the “moral crisis” where experience rating causes under-reporting and claim suppression.