

QUEBEC'S OCCUPATIONAL HEALTH AND SAFETY PLAN: FEWER ACCIDENTS, HIGHER COSTS

The purpose of Quebec's Occupational Health and Safety Plan is to prevent industrial accidents and occupational diseases and to compensate the victims of such hazards. Strangely, while the number of these accidents and occupational diseases is dropping, the costs of compensation continue to rise, increasing the \$2.55-billion annual bill entirely paid for by employers.¹ This program alone represents the equivalent of 65% of corporate taxes paid in Quebec.² Savings could be realized by targeting the most flagrant examples of inconsistencies, inefficiencies and injustices in the current plan in order to ensure its sustainability while helping workers.



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This diagnosis of Quebec's Occupational Health and Safety Plan is hardly surprising. Since the costs of the CSST are 21% higher than those of the Ontario plan,³ certain inconsistencies clearly deserve to be highlighted. Two recent reports⁴ place renewed emphasis on this situation, detailing various problems and rekindling the debate.

A surprising rise in costs

In principle, the Occupational Health and Safety Plan is basically a no-fault insurance program provided by Quebec employers for themselves and for the benefit of their employees who suffer employment injuries (an expression that includes industrial accidents and occupational diseases). Employees receive financial compensation if they fall victim to such injuries: this is the compensation component. The prevention component, on the other hand, aims to reduce the occurrence of such injuries.

Prevention activities have produced excellent results in Quebec in recent years. While the province's insured wages have

increased, there has been a dramatic drop in the number of employment injuries. From 1999 to 2008, the number of compensation cases fell by 41% adjusted for payroll growth.⁵ The number of deaths linked to industrial accidents has also fallen rapidly, dropping from 197 in 1999 to 62 in 2009, a 75% reduction when the size of the insured workforce is considered.⁶

And yet, costs have not fallen. Contrary to what has taken place in other provinces, the average cost of an income replacement indemnity (IRI) in Quebec, adjusted for inflation, has grown from \$6,120 to \$10,352 between 1999 and 2008, an increase of 69%.⁷ The

Plan's total costs increased by over 20% over the same period, again in constant dollars (see Figure 1). Three factors partially explain this cost explosion: treatment delays, overtreatment and overcompensation.

Treatment delays

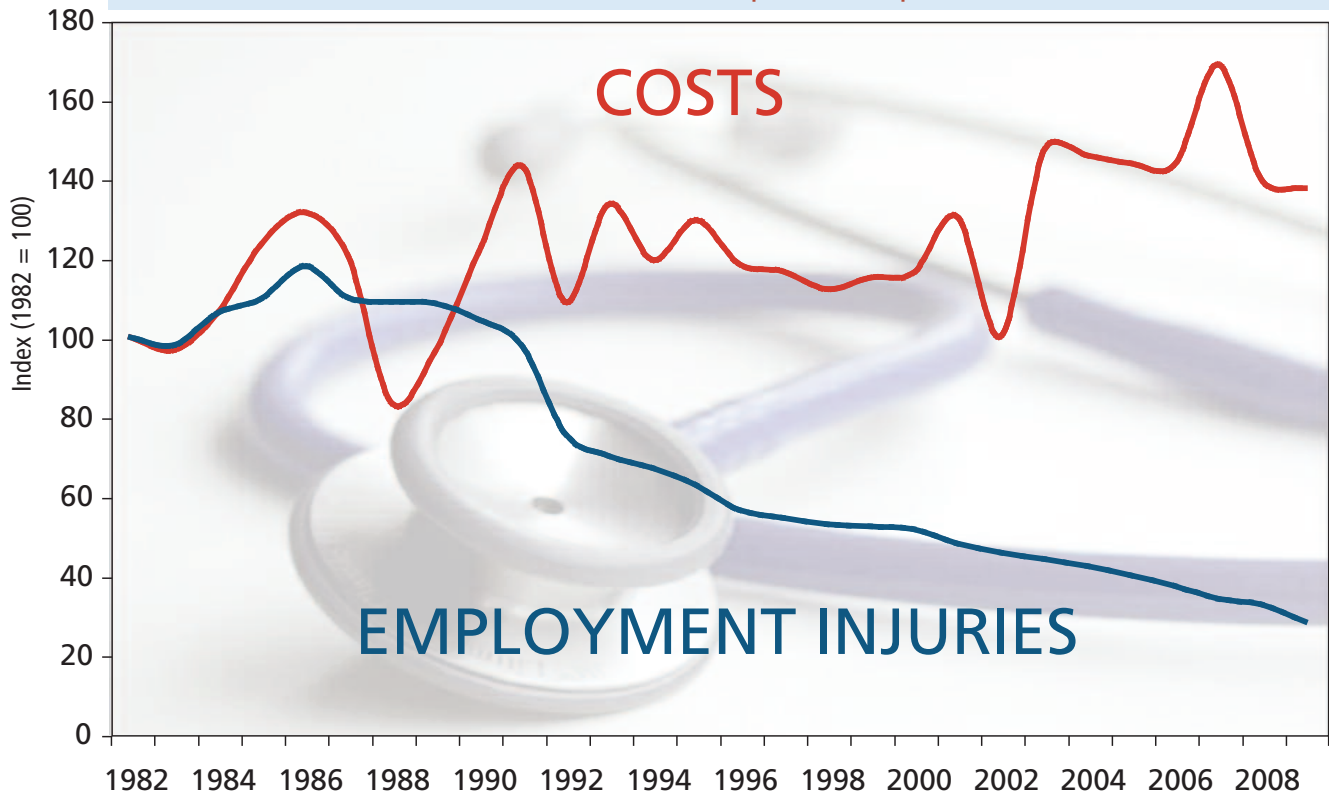
Each year, 15,000 workers having suffered employment-related injuries require specialized treatments, whether it be



1. CSST, *Schedule of rates: classification units 2011*, p. 6.
2. Ministère des Finances du Québec, *2009-2010 Public Accounts*, vol. 1, December 2010, p. 151.
3. Advisory Committee on the Economy and Public Finances, *Québec and Its Challenges*, Document 1, December 2009, p. 15 [data for 2008-2009].
4. Groupe de travail chargé de faire des recommandations concernant le régime québécois de santé et de sécurité du travail [hereafter “Groupe de travail Camiré”], *Rapport du président du Groupe de travail*, December 2010; SECOR, *Optimisation de la gestion et de la prévention de la chronicité : Rapport présenté au Comité de gouvernance de la CSST*, March 2010.
5. The 29% decrease in compensation cases happened at the same time as a 19% increase in the insurable wage bill. See: Conseil du patronat du Québec, *Mémoire du comité patronal consultatif, Soumis au groupe de travail présidé par monsieur Viateur Camiré, chargé de faire des recommandations au conseil d'administration de la CSST sur le régime québécois de santé et de sécurité du travail*, October 2010, p. 21.
6. Groupe de travail Camiré, *op. cit.*, footnote 4, p. 145.
7. Conseil du patronat du Québec, *op. cit.*, footnote 5, p. 22.

FIGURE 1

Changes in the number of industrial accidents and occupational diseases and in the costs of the CSST's compensation plan (1982 to 2009)



Sources: CSST, *Statistiques selon le groupe prioritaire et le secteur d'activité économique*, 2003 and 2009; Paul Butcher, *Évolution des dépenses des CSST et du taux d'accident au Canada, 1975-1987*, November 1990; Groupe de travail Camiré, *op. cit.*, footnote 4, p. 145; Statistics Canada, CANSIM Table 326-0021.

surgery, physiotherapy or occupational therapy. These treatments allow them not only to recover from their injuries, but also to return to work. The shortest possible treatment delays are clearly in the workers' best interest. Similarly, shorter delays also reduce the costs of the Plan by reducing the duration of compensation. Unfortunately, in practice, the duration of treatment and compensation have been rising steadily.

From 2000 to 2008, the average duration of compensation in Quebec rose from 68 to 91 days. This 34% increase happened while Alberta was successfully reducing its average duration of compensation by 38%.⁸

The reasons seem clear: in Quebec, wait times for surgery for workers who suffered employment injuries have increased by 166% over the last ten years. Workers who require surgery following employment injuries wait an average of 33 weeks, 4 times longer than the general population (8.2 weeks on average).⁹

Of course, waiting for surgery very often means ongoing pain and incapacity, the risk of chronic injury, and the possible aggravation of permanent after-effects, not to mention the psychological consequences. An absent worker even runs the risk of losing his right to return to work because of such long delays, since the right to regain one's former position expires after one year for businesses with 20 or fewer employees (two years for larger companies).

Faced with these risks, most of the occupational health and safety organizations in the other provinces, including those in Ontario, British Columbia and Alberta, have put measures in

Despite a drop in the number of employment injuries, the Quebec Occupational Health and Safety Plan's total costs increased by over 20% in constant dollars from 1999 to 2008.

8. SECOR, *op. cit.*, footnote 4, pp. 36 and 98.

9. Ministère de la Santé et des Services sociaux, *Accès aux services médicaux spécialisés, chirurgies réalisées, ensemble du Québec*, January 1, 2011; Groupe de travail Camiré, *op. cit.*, footnote 4, p. 99.

place to accelerate treatments. Alberta's Workers' Compensation Board, for example, relies on specialists who have otherwise reached the maximum number of work hours in the public plan in order to reduce waiting times for workers requiring surgery. In Nova Scotia, operating rooms that would otherwise be unused during off-peak periods are put to good use, with the Workers' Compensation Board paying personnel rather than the general health system.¹⁰

"Overtreatment" in physiotherapy and occupational therapy

As for physiotherapy and occupational therapy, the unjustifiably long duration of compensation in Quebec is due not to a delay in receiving treatment, but rather to the administration of too many treatments spaced out over too long a period. While the other provinces' plans generally reimburse a maximum of treatments of this kind, the CSST has been unsuccessful in imposing such a limit. Despite regulatory changes in 2007, the situation has not improved. The Quebec average is 53 treatments.¹¹ However, medical experts agree that it is those treatments received in the weeks following the employment injury that are considered effective for "simple" injuries and that beyond 20 treatments, this is no longer the case.¹² Yet, in Quebec, 60% of injured workers receive over 20 treatments; 14.5% of them actually receive over 100 treatments. Basic insurance principles dictate that only treatments which are effective should be authorized.

Almost half of injured workers in Quebec require physiotherapy or occupational therapy treatments. Employment injuries result in 2.5 million of these treatments in Quebec, which is more than in all other provinces combined.¹³ A strict limit, contrary to the current situation, could restrict the number of treatments to 30 (with exceptions). Such a limit, which would still be higher than those which prevail everywhere else in Canada, could reduce by nearly 59% the number of treatments without harming the workers' health.

The phenomenon of "overcompensation"

Following an industrial accident or occupational disease, a worker receives an income replacement indemnity (IRI). The

very principle of Quebec's Occupational Health and Safety Plan is to lessen the financial impacts of employment injuries for workers. Yet in practice, some workers receive indemnities from the CSST which are greater than the salary they would have earned had they kept working. Two cases illustrate this incongruous state of affairs: compensation for atypical workers and the combination of compensation with retirement income.

In Quebec, nearly one in five jobs is part-time employment¹⁴ (or "atypical," which also includes jobs that are on-call or seasonal). However, for the purpose of calculating the IRI, the gross annual income considered cannot be less than the annualized minimum wage, calculated for full-time work. This manner of calculating compensation, however, does not provide a realistic evaluation of the financial loss actually

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suffered by many of these atypical workers. For example, a worker earning \$12 an hour and normally working 15 hours a week will earn \$9,360 a year, but the CSST will compensate him as if he were earning an annual salary of \$19,813, or more than double his actual salary.¹⁵ The compensation paid out by the CSST, based on the annualized minimum wage, will therefore be higher than

what the worker would have earned working.¹⁶ This does not replace the income that was effectively lost, but rather compensates for a theoretical income.

In Ontario and British Columbia, for example, compensation is first paid out according to the worker's actual earnings at the time of the injury. If an injured worker is unable to carry on his employment for more than 10 to 12 weeks, compensation will then be calculated according to the worker's income history over the past 12 to 24 months, in order to compensate for the longer term loss of earning capacity. Indeed, according to a recognized insurance principle, compensation must not procure an amount greater than the amount that a person would have received if the accident had not taken place. In fact, the payment of compensation greater than the worker's salary, and sometimes far greater, contradicts the CSST's objective, which is getting the worker back to work.¹⁷

A second example of overcompensation concerns workers who continue to receive compensation even after having retired and withdrawn from the active labour market. By combining workers' compensation and retirement income,

10. SECOR, *op. cit.*, footnote 4, p. 100.

11. Groupe de travail Camiré, *op. cit.*, footnote 4, p. 95.

12. Walter O. Spitzer *et al.*, *Scientific Approach to the Assessment and Management of Activity-related Spinal Disorders*, Harper & Row Publishers, 1987 cited in Conseil du patronat du Québec, *op. cit.*, footnote 5, p. 12.

13. Conseil du patronat du Québec, *Les recommandations patronales au comité Camiré*, November 2010, p. 30.

14. Emploi Québec, *Employment in Québec: Key Figures*, 2010, p. 16.

15. Groupe de travail Camiré, *op. cit.*, footnote 4, p. 107.

16. Conseil du patronat du Québec, *op. cit.*, footnote 5, p. 59.

17. SECOR, *op. cit.*, footnote 4, p. 113.

total income can easily surpass the salary obtained while working. This situation can also arise when a retired and professionally inactive individual declares a relapse, recurrence or aggravation of a past employment injury, which reactivates CSST benefits. Once again, in this situation the CSST compensates a purely theoretical loss since there is no actual loss of employment income in the case of a worker who has voluntarily withdrawn from the active workforce.

Both in the case of the compensation of atypical workers and in the case of those who combine compensation with retirement income, the compensation paid out by the CSST is no longer justified by the replacement of lost income and even sometimes results in greater income than the worker's actual salary.

Another injustice arises when the retired worker will not return to his former job and is no longer available for a "temporary assignment" offered by his employer. A temporary assignment refers to the right of the employer to entrust workers with a task that corresponds to their residual capacity. Such tasks generally consist of lighter duties. Temporary assignments allow workers to continue being active in their workplace while respecting their functional restrictions and capacities. They also allow employers to avoid unnecessary indemnity costs being added to their experience file. Indeed, given the CSST's incentivized rating plans, an employer's premiums vary depending on the benefits imputed to his file. Without the possibility of temporary assignment, an employer assumes the costs of these unjustified benefits without being able to do anything to reduce the financial consequences resulting therefrom.

Both in the case of the compensation of atypical workers and in the case of those who combine compensation with retirement income, the compensation paid out by the CSST sometimes results in greater income than the worker's actual salary.

Finally, the worker who has completed rehabilitation, but for whom no suitable job is available with his employer, benefits from an entire year of job search assistance – 52 weeks – paid for by the CSST. The other provinces, however, provide a maximum of 15 weeks.¹⁸ Moreover, this generous period of job search assistance is not subject to any specific requirements, contrary to what is imposed in the case of employment insurance for example. A recipient of employment insurance must be able to demonstrate that he is actively participating in a veritable job search process.¹⁹ As this is not the case with the CSST, it is no surprise that nearly 80% of beneficiaries claim and receive compensation during the entire allowable 52-week "job search" period. In its current state, the system the CSST has set up does not encourage return to work. Why not therefore adopt the same requirements as the Canadian Employment Insurance Plan?

Conclusion

These examples illustrate some of the inconsistencies and inefficiencies of the current Quebec Occupational Health and Safety Plan. If the Plan's costs keep rising while employment injuries are being reduced, there is good reason to ask how appropriate the CSST's rules are to the situations actually faced by insured workers. Whether by shortening the delays for surgery, by only reimbursing necessary and useful physiotherapy and occupational therapy treatments or by only replacing real losses of employment income, there are problems and corresponding solutions which have long been known and debated. Now is the time to act.



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18. SECOR, *op. cit.*, footnote 4, p. 58.

19. Service Canada, *Employment Insurance Regular Benefits*, March 2010, p. 44.