

EXPERIENCE RATING IN THE QUÉBEC WORKERS' COMPENSATION SYSTEM

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Presentation outline

1. Portrait of prevention incentives in Québec

- Fines under OHS legislation
- Experience rating mechanisms
 - Categories of experience rated employers
 - Principles
 - Exceptions

2. Practices associated with experience rating

- Contestation and appeals
- Cost transfers to general fund

3. Take home messages

- Experience rating as a motor for the contestation industry
- Role of litigators and private insurers in the context of legislative reform
- Fault is back in a no-fault system

1. Portrait of prevention incentives in Québec

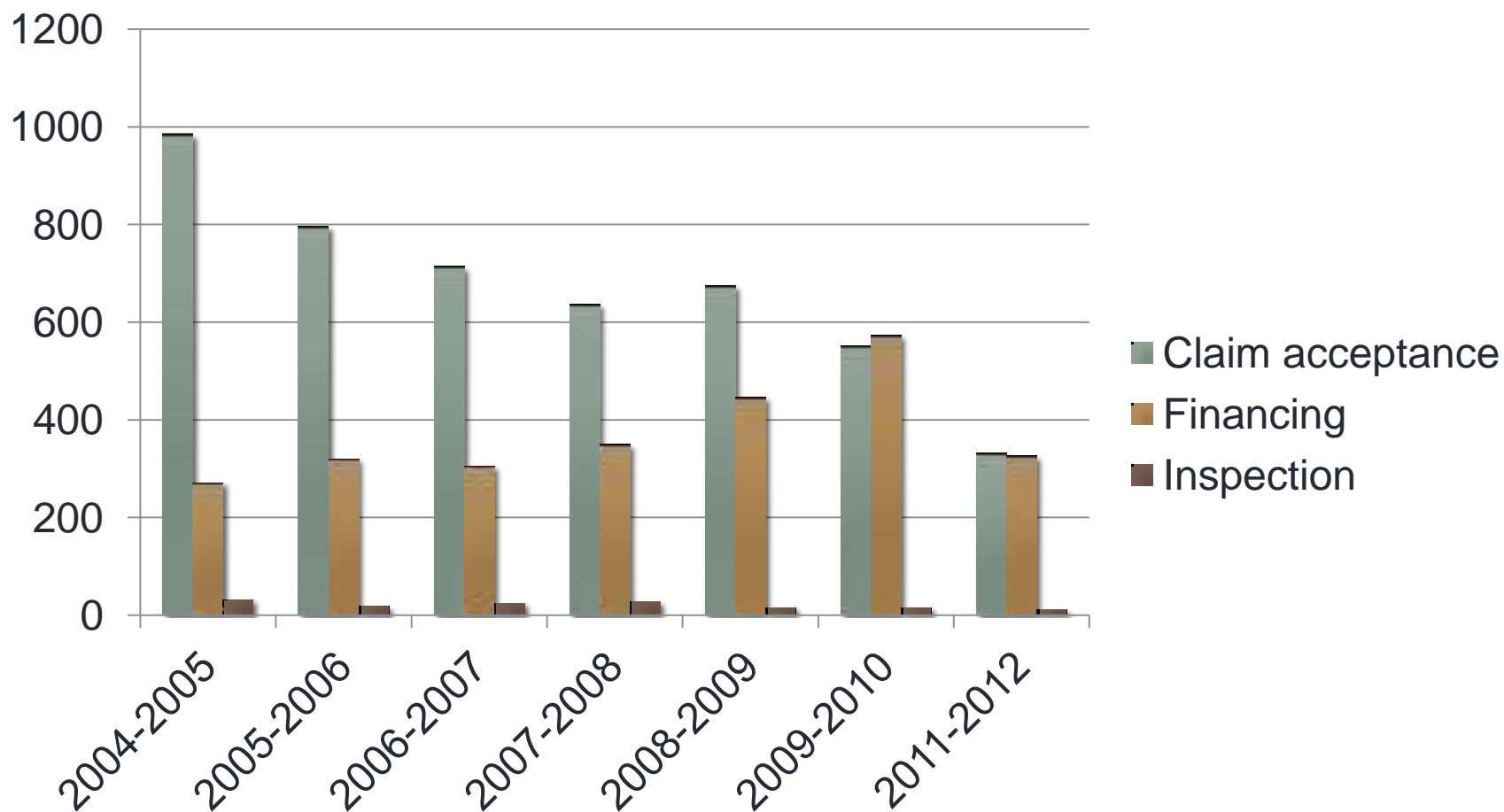
Fines that could be imposed on a corporation for failing to comply with inspector's order

Québec fines tripled in 2010...

	Québec	Ontario	Alberta	B.C.	Federal
Maximum Fine	3,000\$ 2nd + offence: 6,000\$ / 12,000\$	500,000\$	500,000\$ - 1,000,000\$ Depending on nature of notice	618,730+ 2nd + offence: 1,237,461+	1,000,000\$

Marcel Simard, 2000 updated, Lippel, 2011

Publicly available judgements of the CLP



Experience rating mechanisms

- Categories of experience rated employers
 - Retrospective adjustments (\$400,000 + assessments)
 - Personalized adjustments (\$7000 - \$400,000 assessments)
 - «*Mutuelles de prévention*» : private contract between groups of employers and the CSST 284.2 AIAOD
 - Principle : costs of all claims are imputed to individual employers
 - Affects individual employers who are experience rated
 - Affects class of establishments to which they belong if they are not experience rated
- (s. 326 AIAOD)

Who benefits from experience rating?

- 88% of assessments are experience rated
- 71% of employers are **not** experience rated
 - CPQ, Camiré
- 25% of costs **not** imputed to an employer's account because of cost transfers:
- Costs transferred to general fund or employer's funding unit
- The more costs transferred, the more small employers must pay (general fund shared by all)

Larouche, 2007

Which costs?

- Costs included in experience rating
 - Health care related to an occupational injury or disease
 - If injury judged to be healed health care provided for the injury afterwards is not imputed to the employer (source of litigation)
 - Benefits:
 - Includes all benefits including costs of rehabilitation programme, travel costs, survivor benefits
 - impact varies incrementally for revenue replacement benefits by quarter years (significant drive for medical contestations)
- Early return to work
 - If worker is paid by employer for early return to work salary replacement benefits are not payable and therefore not experience rated

Exceptions

- Employers who are experience rated can avoid imputation of costs to their accounts:
 - If a **third party** is responsible for the injury (s.326(2) AIAOD)
 - If the employer would be «**unduly burdened**» were the costs to be imputed to its file
 - If the worker is «**handicapped**» at the time of the injury (s. 329 AIAOD)
- Special rules apply for occupational disease (s. 328 AIAOD)

Injuries attributable to third parties (326(2) IAIOD)

- **Violence:**
- Are the incentives appropriately applied?
 - Bank robberies
 - Health care sector
 - Violence between colleagues (debate)
- **Tripartite relationships**
 - When client employers and temporary employment agencies are involved both categories of employers can externalize the costs to the unit or the general fund if the accident is attributable to the behaviour of the other
 - Lippel et Laflamme, 2011

Unduly burdened employers

- Increase in allegations that workers abused the system by not declaring **pre-existing injury**.
(s. 27 or 326 AIAOD)
- Workers suffering from other health problems **preventing reassignment**
 - Pregnancy
 - Cancer
 - Worker died (employer's petition denied)

Entreprises Scorpio LB inc.,
2012

Handicapped workers

- Incentive to obtain medical records for all previous health problems to prove vulnerability
 - Is personality a handicap?
- Smoking is a handicap
 - Increases healing time for fractures
 - Allows asbestos mines to obtain cost relief for lung cancer claims
 - Up to 92% of costs transferred to the general fund

MINE JEFFREY INC c. CLP,
2009 QCCS 981;
2009 QCCLP 4666

Able to work... But retroactively handicapped



2. Practices associated with experience rating

Ratio of Claims and Appeals: 1999-2010

Year	Claims (CSST)	Accepted claims(CSST)/ % acceptance	Appeals (CLP) / % claims
1999-2000	164890	143517 (87%)	20922 (13%)
2004-2005	152799	132906 (87%)	27141 (18%)
2009-2010	115720	95597 (83%)	32393 (28%)

Lippel, *AJIM*, 2012

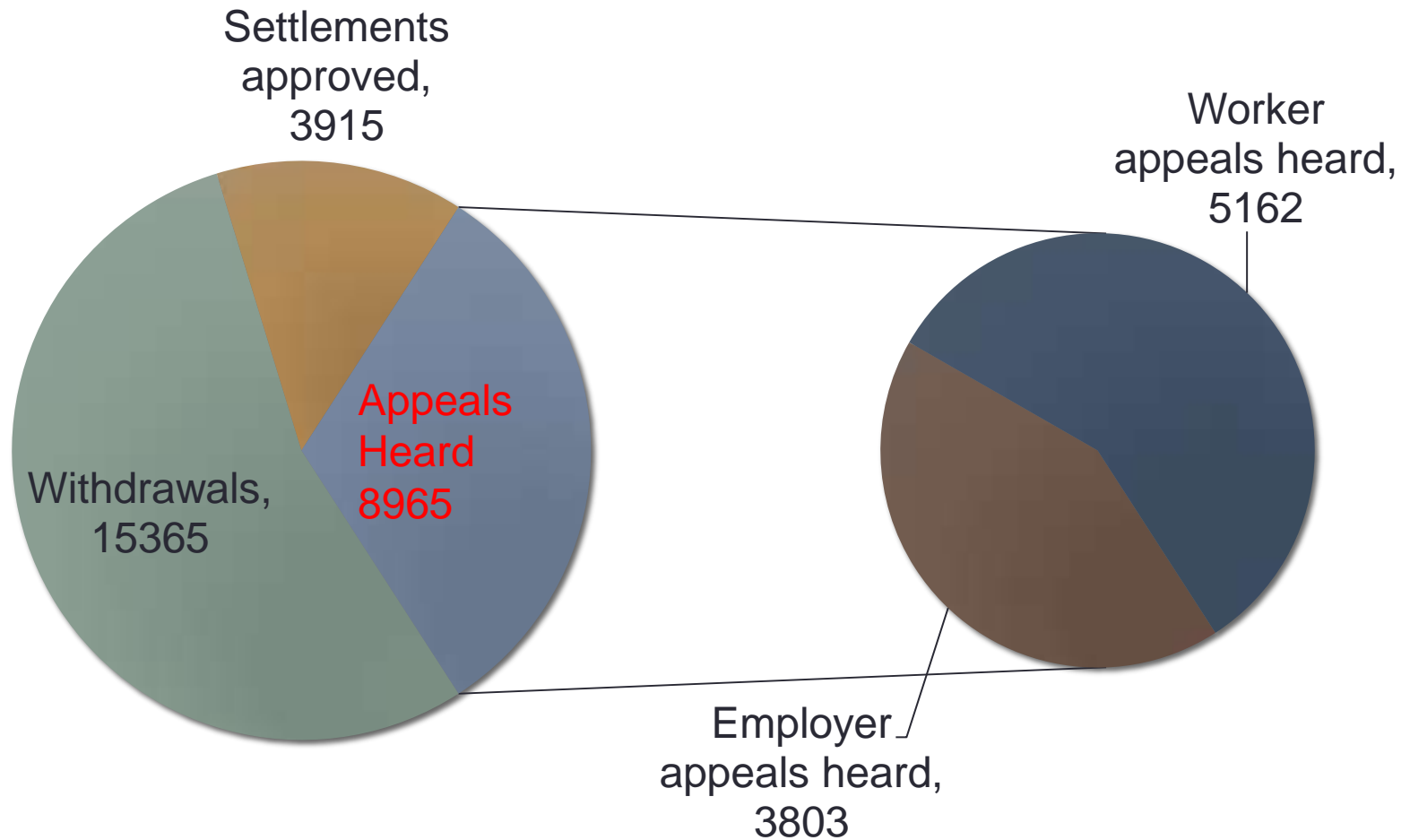
Distribution of appeals to the CLP

- Appeals on issues of financing
 - Only employers can participate in the appeal

Year	Financing/total	% total appeals
2006-2007	2829/26396	11%
2007-2008	3541/27933	13%
2008-2009	4744/28355	17%
2009-2010	5057/32393	16%
2010-2011	4322/27976	15%
2011-2012	4503/32246	14%

Source: CLP, Letter, 14/9/2012

CLP April 2011- February 29th 2012



3. Take home messages

Litigation industry thrives

- Experience rating as a motor for the contestation industry
 - OHS legal consultants to employers proliferate
 - «les multi-nationales de la contestation médico-légale»
 - Employers preempted by the *mutuelles*
- Camiré committee for legislative reform:
 - 3 employer representatives
 - A law firm
 - AON - an important «mutuelle de prévention»
 - A third employer

What has happened to the no-fault system?

- Looking to blame workers for failing to declare pre-existing injuries at time of hire
- Looking for those responsible for the accident
 - Workers themselves
 - Employees of the employer or others
 - Third party employers
 - Other third parties
- But not the employer...
- Yet asbestos mines are protected from costs because workers who smoke are handicapped.
- They are also protected from law suits for asbestos related disease suffered by their employees.

Thank you

<http://www.droitcivil.uottawa.ca/chaireendroitsst>