

CHIEFS OF POLICE

December 14, 2021

Workers' Compensation Act Committee of Review
300-1870 Albert Street
Regina, Sk. S4P 4W1

Saskatchewan
Association of
Chiefs of Police

Attention: Dr. Louise Greenberg

Dear Dr. Greenberg:

Re: Saskatchewan Association of Chiefs of Police Submission to the Workers' Compensation Act Committee of Review

This letter is in response to your letter, dated October 5, 2021, inviting the Saskatchewan Association of Chiefs of Police ("SACP") to share views and suggestions about *The Workers' Compensation Act, 2013* (the "Act"), *The Workers' Compensation General Regulations, 1985*, *The Workers' Compensation Exclusion Regulations, 2014*, and the administration of the Act and regulations. We thank you for your letter, and are pleased to share the following comments on behalf of the municipal police services in Saskatchewan. While each police service has encountered issues with WCB that are unique to that service, we felt a global response on issues that come up repeatedly would be most beneficial to the important work of your committee. As such, overwhelmingly the majority of the concerns shared with the SACP pertain to the application of the Act and WCB policies by Claims Entitlement Specialists and Case Workers, as opposed to concerns with specific provisions.

Psychological Injuries

The most significant issue for municipal police services relates to the handling of claims for psychological injuries. The introduction of presumptive legislation for all forms of psychological injury has been a welcome addition to the Act, especially for police members who are repeatedly exposed to traumatic incidents and events throughout their career. When this amendment was brought forward for its' second reading on October 25, 2016, Minister Morgan stated the goal of the legislation was to reduce barriers workers may face when seeking support for these types of injuries. Minister Morgan stated:

Under this legislation, the worker is provided the benefit of the doubt that a psychological injury such as PTSD occurred during the course of employment unless there is evidence to the contrary. A worker will continue to have to be diagnosed as having a psychological injury by a psychiatrist or psychologist and provide that information to the Workers' Compensation Board. **The onus will not be on the worker to prove the injury is work related.** (emphasis added)

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Unfortunately, it has been the experience of many police services that employees are frequently not being given the benefit of the doubt when their claim is being adjudicated. Despite the fact the default of the legislation is diagnosed psychological injuries are presumed to be work related, the WCB has historically been utilizing policy to place a reverse onus on employees. This reverse onus requires employees to prove their psychological injury is derived from traumatic events. It is acknowledged the presumption is rebuttable, however WCB is utilizing policy to narrow the presumption and initial intent of the legislative amendments. Currently the issue of the rebuttal of psychological injury has been argued before the Court of Queen's Bench in a case involving the Moose Jaw Police Service, and the decision has been reserved by Justice Danyliuk. It is the SACP's hope the decision will provide direction that will clarify the expectations of both the WCB and the injured worker, to allow consistent application of the principles of the Act.

It is acknowledged that since the introduction of this amendment five years ago there have been regular improvements to the handling of claims for psychological injury, however it has been the experience of several police services that there are still some areas that require improvement, and there are still numerous examples where the denial of benefits and denial of treatment options have a negative impact on police members in Saskatchewan.

As you are well aware, section 28.1 of the Act states:

28.1 In this section:

(a) "psychological injury" means a psychological injury, including post-traumatic stress disorder, as described in the edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association that is prescribed in the regulations;

(b) "worker" means a person who works and:

(i) is exposed to a traumatic event; or

(ii) is in an occupation that is prescribed in the regulations.

(2) Unless the contrary is proven, if a worker or former worker is diagnosed with a psychological injury by a psychiatrist or psychologist, that injury is presumed to be an injury that arose out of an in the course of the worker's employment.

There are not any occupations prescribed in the regulations, pursuant to this section. The SACP respectfully submits this is something the WCB should immediately look to address, as it could help both police members, and the WCB, in the approval and analysis of psychological injury claims. We submit this would assist in eliminating the need for police officers to prove exposure to a traumatic event, when it should be generally accepted that police duties require regular exposure to traumatic events. This provision expressly states it is applicable to all forms of psychological injury incurred through work, and not just post-traumatic stress disorder. If an employee has a psychologist/psychiatrist endorsed diagnosis, the presumptive clause should be applicable. The main

reason for this enactment was the Government of Saskatchewan's acknowledgement there is stigma attached to mental health issues, which makes it more difficult for those experiencing a psychological injury to come forward seeking help. This is especially true for police members, who are expected to be strong and brave every single day. Unfortunately, it has been the experience of many police officers working in Saskatchewan, that the WCB's employees are interpreting both psychological injury and traumatic event in a narrow manner that is detrimental to workers.

Examples have been provided to the SACP where claims have been denied because a member's reaction to injury does not fit within what WCB employees deems normal or appropriate, or it does not fit within their interpretation of policy. To assist in demonstrating this point, there was one specific case where a member of a police service was diagnosed by a psychologist as having cumulative stress disorder, and the psychologist specifically commented the member experienced all of the symptoms of Post-Traumatic Stress Disorder, except one. Despite the diagnosis, and the fact the individual was a member of a police service and subjected to regular traumatic events in the course of their employment, the Claims Entitlement Specialist denied coverage for the injury because the member's psychological symptoms manifested as anger and irritability, which were deemed as not being related to traumatic events. This decision failed to recognize different people have different responses to psychological injuries.

Through the above example, and other examples provided to SACP, it appears to be a pattern of Claims Entitlement Specialists to default only to post-traumatic stress disorder as a psychological injury, and they are reluctant to accept other DSM-V diagnoses. Examples have been provided to the SACP, where members experiencing severe psychological trauma were denied benefits because the diagnosis was not PTSD, and because the member was found not to have been exposed to an "actual" traumatic event. Members have been told the denial is based upon interpretation of the policy.

Traumatic event is defined in the WCB Policy 02/2017 Psychological Injuries. According to the policy, traumatic event means a single or series of events or incidents that arose out of and in the course of employment that may result in a psychological injury. **This includes, but is not limited to** (emphasis added):

- Direct exposure to actual or threatened death or serious injury to worker and/or others.
- An event or series of events that are specific or sudden and generally accepted from a public perspective as being unusually shocking or horrific.
- Workload or work-related interpersonal incidents that are excessive and unusual in comparison to pressures and tensions experienced in normal employment. These must be beyond the normal scope of maintaining employment from a public perspective.

One member consulted for the preparation of this submission provided a personal example of their own experience with WCB. This individual experienced a severe psychological injury related to extreme and unusual circumstances at work. They received a DSM diagnosis, but their claim was denied on the basis they did not meet the definition of "psychological injury" or "traumatic event." For this particular individual, in all of the communication with the Claims Entitlement Specialist the

focus was on the lack of a single serious traumatic event. This rigid reliance on a definition, that states it is not limited to the examples provided, is causing real and significant problems for police members across Saskatchewan. The definition of traumatic event, and its narrow interpretation, also ignores the fact that indirect exposure to a traumatic event can cause a psychological injury. While frontline police officers experience first-hand traumatic events every day, senior police members also experience traumatic events, in a different way. There are also civilian members who work within police organizations who may not be personally present when an incident occurs, but who are required to perform work related tasks, such as reading the full details of a file, reviewing graphic images or videos, or who are dispatching and taking calls from members of the public, and communicating on police radios, who hear details of traumatic incidents, although not physically present, and who experience psychological injuries as a result of their work. Based upon the interpretation of some WCB employees, these members would be left without compensation, despite the obvious co-relation between their work and the potential for injury.

This thinking fails to recognize that psychological injury is a broad definition, much broader than simply PTSD, and that reactions to trauma can include more than depression and anxiety, flashbacks and nightmares. It is the respectful submission of the SACP that WCB employees are interpreting "traumatic event" much narrower than the policy permits. This type of closed-minded analysis is damaging for other members who may be experiencing a psychological injury, but who are reluctant to come forward. The SACP respectfully requests the WCB provide training on understanding the nature of a psychological injury, expand the definition of traumatic event and to encourage WCB employees to be more trauma informed when analyzing claims for psychological injuries.

Psychological Injuries – Availability of Treatment

Another area that has been raised as a significant concern relates to the availability of treatment options within Saskatchewan for psychological injuries. Currently, there are not treatment options specific to police members, or public safety personnel, experiencing psychological injuries. There are, however, a variety of programs available in Canada that specialize in treating public safety personnel, recognizing the unique nature of their specific injuries. In these programs, cohorts of individuals from similar backgrounds are created. This limits re-traumatization because there is no need to explain the nature of the job, or the things police members see, hear, and feel. By placing individuals in a similar position together, there is a sense of community and understanding that is lacking in a more generalized treatment program.¹

The nature of the duties for public safety personnel is very unique. There is ongoing exposure to traumatic events, and in some cases exposure to singular traumatic events that cause significant occupational stress injuries necessitating in-patient treatment. Many municipal police services have sought approval for out of province, public safety officer specific in-patient treatment, and that approval has been denied. While we realize section 109(c) of the Act states the Board may assume the expense for "the provision of treatment outside Saskatchewan...if, in the opinion of the Board, the condition of an injured worker as a result of the worker's injury requires treatment that cannot be

¹ See *In the Line of Duty*, Andre Marin, Ontario Ombudsman Report into how the Ontario Provincial Police and the Ministry of Community Safety and Correctional Services have addressed operational stress injuries affecting police officers, October 2012, at pages 37-38.

obtained in Saskatchewan”, the interpretation by WCB employees has been that all Saskatchewan options must be exhausted before out of province treatment can be considered. It is the respectful submission of the SACP, this unnecessarily prolongs the recovery from an occupational stress injury. When it comes to treatment of psychological injuries there are expert opinions that suggest treatment programs that fail to address the unique experiences of public safety personnel are not appropriate.

There is increasing recognition of the importance of peer support in recovery, as well as evidence that public safety personnel are often only comfortable sharing their struggles with someone considered credible, who shares common experience, and is able to listen without judgement. It is also increasingly recognized that specialized treatment for public safety personnel experiencing a psychological injury is critically important to ensuring long term recovery. The Government of Canada has been investing millions of dollars in research into post-traumatic stress injuries experienced by public safety personnel, and searching for evidence based solutions to improve the quality of life and outcomes for the brave individuals who risk their own safety and wellbeing to keep Canada safe. While there may be situations in which in province care is appropriate, when the medical professionals treating an injured employee suggest a specific treatment plan that will best suit that employee, and a similar treatment option does not exist in the province, it should not be the policy of the WCB to unilaterally deny funding for that treatment. Members requesting out-of-province treatment are being denied based upon WCB policy, the application of which undermines what is the best treatment option for that employee, simply because it does not exist in Saskatchewan. Although the presumptive legislation is supposed to reduce the re-traumatization of employees experiencing psychological injuries that is not how the legislation is being applied in Saskatchewan. It is the SACP's hope the WCB will recognize the unique nature of the work of police officers, as well as the increased risk of police experiencing a psychological injury. This unique nature requires specialized care, which is currently not available in Saskatchewan. This denial means any member who wants specific public safety personnel treatment must pay for that out of their own pocket, or hope their employers will pick up the costs. This is despite the fact their injuries have been deemed compensable by WCB. Until this treatment is available in Saskatchewan, it is submitted WCB should fund extra-provincial treatment options, when that is the recommendation made by the medical practitioners.

Delayed Treatment

Delay in the referral for psychological services has been identified by several municipal police services as a growing trend of concern. While we fully appreciate there are issues with accessibility of appointments to see psychologists, particularly due to the COVID-19 pandemic, and a lack of psychiatrists in the province, the SACP strongly advocates for the WCB to seek a solution to these problems. The WCB should consider establishing a priority system, similar to what is available for physical injuries, whereby workers experiencing a psychological injury be given priority access to treatment. Often when an individual experiencing a psychological injury finally attempts to access treatment they are in a crisis and require rapid access to treatment. The SACP encourages the WCB to consider options for improving access to timely treatment. We also encourage the WCB to establish a network of psychologists or psychiatrists who have expertise in the treatment of psychological injuries of public safety personnel.

Along similar lines, the SACP encourages the WCB to consider the establishment of more robust proactive treatment and preventative options for psychological injuries. This could include providing information about accredited providers for both employees and employers, to assist in ensuring selected treatment options will not need to be changed upon receipt of an approved WCB claim. It is acknowledged Work Safe Saskatchewan has launched an online psychological resource centre, however this appears to be a somewhat limited effort, and is not specific to public safety personnel. In a 2017 survey, conducted by Harris Poll on behalf of the University of Phoenix, 69 percent of first responders surveyed had experienced a lack of sleep, 46 percent had experienced anxiety, and 27 percent had been formally diagnosed with depression. While this is a US survey, there is no reason to believe the results would be any different for public safety personnel in Canada.²

The SACP acknowledges it is not solely the WCB's responsibility to come up with preventative strategies, and SACP member agencies are actively working on proactive strategies for early acknowledgement of psychological injuries, and training and education to improve resiliency, however it is respectfully submitted the WCB should be partnering with public safety agencies to establish better proactive treatment programs. Without this preventative work, it is anticipated more and more police officers will experience a psychological injury.

The Need for a Trauma Informed Approach

One final area of concern with psychological injuries relates to the terminology and approach taken by WCB employees when dealing with police members experiencing psychological injuries. It is respectfully submitted all employees of the WCB dealing with employees with a psychological injury should be required to take trauma informed training. Although somewhat limited, there have been case workers and claims adjudicators whose treatment of psychological injuries has been damaging to police members. Some members have described circumstances where they were told the traumatic event experienced was "part of their job". One member provided a specific example in which they were asked by the WCB employee whether or not they were personally present when the traumatic event occurred, and because the member was not directly involved in the event their claim for coverage was denied. This was despite the fact the traumatic event in question was not a specific incident, but rather was related to an excessive and unusual interpersonal incident. This decision ignores the fact that traumatic event is defined much more broadly and does not necessarily require direct exposure to a specific event. This same individual said in communications with the WCB employee they kept referring to the diagnosis of PTSD, when that was not the psychological injury in question. There seems to be little recognition that these individuals, who may not have a compensable injury in the eyes of the WCB, are still experiencing an injury that occurs in the workplace.

There have been other examples provided where WCB employees have failed to communicate in a trauma informed way with injured workers. This leaves the impression that although the WCB says it is supportive of psychological injuries, and is interested reducing the stigma related to a psychological injury, the WCB employees are not espousing those values. A psychological injury is not like a physical injury. There is not a specific time table for recovery, and recovery cannot

² <https://www.businesswire.com/news/home/20170420006384/en/University-of-Phoenix-Survey-Finds-Majority-of-First-Responders-Have-Experienced-Symptoms-Related-to-Mental-Health-Issues>

necessarily be measured in an objective manner. Some claimants have expressed concern that in the midst of their treatment, and while still experiencing acute injury, they have treatment "cut-off" prematurely, or are threatened treatment will be cut-off, when WCB unilaterally determines their compensable injury no longer requires time off work, and can be managed through more limited psychological counselling. This leaves injured workers needing to seek and pay for their own treatment, to use up all available discretionary time off, or to return to work before they are fully ready. Requiring or forcing police members to return to work prior to receiving medical clearance to do so, increases the feeling of anxiety for injured members, who are required on a regular basis to attend to traumatic events. They do not have the luxury of minimizing exposure to traumatic events, unless they seek an accommodation at work. Even then, there is indirect exposure to traumatic events. There are very limited "light duties" that allow for minimum exposure to trauma.

The WCB's decisions are not being communicated in a manner that indicates the WCB supports workers with psychological injuries. Police members with psychological injuries are frequently people who are in a fragile state, and who are desperately trying to understand what is wrong with them. When a WCB employee limits treatment, and minimizes recovery, it leaves claimants with a feeling that their injury is less important. Some injured workers have complained the treatment they receive from WCB employees after suffering a physical injury differs from how they are treated after experiencing a psychological injury. For example, one employee identified that after a physical injury they received regular phone calls from the WCB, but only ever received emails after their psychological injury, including when their claim was being prematurely terminated.

All of this is to say, through negative interactions with WCB employees, police members are becoming less and less willing to come forward with psychological injury claims. When injured workers feel mistreated, they share their experience with others. This can have a very damaging effect on police members who require psychological care.

Communicable Diseases

In consultation for the preparation of this letter, an inconsistent application of the Communicable Disease policy has been identified. As such, it is recommended the WCB consider an amendment to policy, to ensure all police members are being treated equally.

During the course of their duties, police service members are occasionally exposed to bodily fluids. Several times each year, members across the province are poked with used needles, spit upon, or bitten while on duty. Although not every exposure requires post exposure prophylaxis ("PEP"), when the risk of contracting a communicable disease is high members are being prescribed PEP by infectious disease doctors. The side effects of PEP are well known, and include tiredness, diarrhea, nausea, vomiting, and generally feeling unwell. It is not unusual for individuals to have many of these symptoms, necessitating time off work. In the majority of cases the side effects are not severe, however even mild to moderate side effects make working as a police officer difficult. Exposed members have the side effects explained to them prior to the treatment, however time off work is not usually recommended in advance. In many cases the side effects are managed through time away from work, and do not require attendance at doctor. In Regina, there was a recent example where a member who had suffered a needle poke, and had PEP recommended to him by an infectious disease doctor, was denied coverage for three days time loss, because medical verification of the absence

from work was not provided until after the absence, and was only sought due to the denial of WCB benefits.

The Communicable Disease Policy, 02/2010, is silent on this type of preventative situation. We refer you to sections 5 and 6 of the policy, which state as follows:

5. Where immunization is required by the employer for the prevention of a communicable disease, and as a result of an adverse reaction (e.g., allergic) to this compulsory immunization the worker is medically required to be absent from employment, the WCB will consider the reaction and its consequences to be compensable.
6. Where the employer provides voluntary immunizations as part of a broad program, but does not require workers to be immunized as a condition of employment, the WCB will consider any adverse reaction to voluntary immunizations as non-work-related. Therefore, any injury resulting from voluntary immunization is not compensable.

In the case of PEP treatment, it is not a compulsory immunization, nor is it a voluntary immunization required by employers. It is a medically recommended preventative treatment designed to reduce the risk of blood borne pathogens infecting exposed individuals.

The SACP strongly encourages the WCB to consider the development and implementation of a provision in the Communicable Disease Policy designed to address how Claims Entitlement Specialists are to consider PEP treatment. It is a separate issue from vaccinations. The SACP suggests the provision would address the likelihood of absence from work, due to PEP treatment, and would specifically provide for compensation in these circumstances.

As mentioned above, there is an inconsistent practice that has been developed between Regina and Saskatoon specifically.

Rigid Application of Policies and the Act

As described in the psychological injuries sections above, it has been the experience of some police services that there are Claims Entitlement Specialists and Case Management Representatives who are relying too strictly upon WCB policies without regard to the circumstances of a specific case, without considering the intent of the policy and without applying common sense. While we appreciate the policies are necessary to assist in the determination of claims, and not every injury is compensable, there have been several examples where the WCB employees or agents have, in our view, improperly used discretion to deny compensation for obvious workplace injuries. As an example of that, we have been provided with a specific example involving a police member who was physically injured while on duty. The member did not require immediate medical attention, but after a few days the injury progressively got worse, necessitating time off work, prior to seeking medical attention. Although the WCB accepted the injury as a workplace injury, they denied compensation for wage loss, claiming there was no medical evidence to support the employee's request for time-

off. It is our respectful submission, this is an example of too strict adherence to a policy, rather than a common sense decision. We provided further examples of rigid interpretation of psychological injury and traumatic event in our discussion of occupational stress injuries above. We reiterate, the decision to deny benefits is frequently being made in relation to "policy" non-compliance, as opposed to legislative non-compliance. The SACP recommends the WCB ensure all employees adjudicating entitlement to claims should be educated and counselled on the proper use of discretion, and the intent behind the legislation.

We thank you for your consideration of this letter. We will be seeking the opportunity to orally present these submissions, and to answer any questions the Committee may have.

We look forward to speaking with you.

Yours truly,



for
Chief Richard Bourassa
President of the Saskatchewan Association
of Chiefs of Police

RB/kms