

December 15, 2021

Workers Compensation Act
Committee of Review (COR) Submission

About Us

First founded in 1953, Kelly Panteluk Construction Ltd. (KPCL) is a second-generation earth moving company with a long track record of safely constructing key infrastructure projects in Saskatchewan. With a modern fleet of more than 220 pieces of heavy construction equipment, we employ up to 300 employees during peak construction to help us move as much as eight million cubic meters of construction materials every year. We remain committed to the health and wellbeing of our employees that is sustained through our comprehensive and robust Safety Management Program. This program is founded on best practices and includes a return-to-work program that facilitates the elimination of or minimization of the loss to an impacted worker.

Introduction

The issues and recommendations we have outlined below are based on our past experiences and dealings with the WCB of Saskatchewan.

Opportunities for System Improvements

Issue: Board Governance

The 2016 Committee of Review report recommendation 2 stated

“Modernize Board structure to reflect the diversity of skill sets required to guide the work of the WCB. This can be achieved through:

- *Investing time in improving performance by gauging the effectiveness of WCB against its performance metrics*
- *Developing a formal skill set matrix and recruitment process for choosing Board members*
- *Expanding the Board structure to include seven members - three full-time members and four part-time members with equal representation from both employer and employee groups.”*

This recommendation was introduced in preliminary legislation in 2018, but has not been carried through to completion and currently is waiting for third reading before it can be implemented.

An effective Board is one that provides overall governance and strategic oversight to an organization rather than operational support. Or simply put, boards are tasked to lead, not manage. The existing WCB Board is comprised of three full-time members that are highly involved in operational functions, including the final appeal process. Acting in this capacity, the WCB board members act and perform the duties of a senior management group of employees as opposed to the role and responsibilities the member of a Board would perform.

The existing governance structure is not reflective of the size and complexity of the WCB today nor is it representative of its stakeholders and is missing representation from areas of the workforce such as open-shop employers and workers. In the Board's current form, its three member size constrains the breadth and depth of experience members can bring to their decision making and given that the board members look and behave more like employees than board members, decisions being rendered by the board increases the perception of bias that neither serves employers and workers.

KPCL recommends the adoption of a traditional Board governance model to better provide oversight and strategic direction to the WCB as well as represent the interests of all stakeholders.

Additionally a broad review should be conducted to assess whether the majority of stakeholders (employers and workers), as well as professional capacity, is represented on the Board. This review would be fundamental to expanding a wider base of expertise and removing bias.

Issue: Appeals Process

The appeals process is comprised of a series of internal reviews that may be undertaken when a disputable issue is identified by an employer or worker. The initial review is completed by the originating decision maker and depending on the circumstance the appeal may be escalated to the Appeals Department for reconsideration, before being taken to the Board for a final decision.

In each of these stages, it appears that the decision-makers have a perceived interest to uphold the integrity of decisions previously made and are evaluated on their effectiveness in doing so in annual reports to stakeholders. As outlined in the previous issue, the existing Board is highly involved in the operational functions of the organization including the final appeal process. This gives the appearance of bias. To remove this appearance in the final appeals process the panel members reviewing the appeal need to be at arms length from the organization similar to the present day judicial system whereby an appeal goes through the court of appeal in Saskatchewan, which is comprised of an independent panel of three judges that were not involved in

determining the original judgement. This type of process removes the the originating decision maker(s) from the appeal.

KPCL recommends implementing an Appeals Tribunal that is separate and apart (arms length) from the the WCB.

Issue: Employer Advocate Office

The WCB has a significant number of policies and procedures that may impact an employer or worker when a decision is being made at any time throughout the claim. Should an disputable issue arise, to either an employer or worker, the party raising the dispute must designate significant resources to understand and navigate the complexities of dispute. However, many small to medium sized employers raising a dispute are placed at a significant disadvantage since they do not have the internal resources to adequately manage through WCB's existing process.

An employer must allocate additional resources and financing, often employing the use of third-party or legal representation, to navigate through WCB's dispute resolution process. This is both time and cost-prohibitive and can deter even the most sophisticated employer.

Conversely, workers' have at their services, the Office of the Worker's Advocate that can aid them in navigating a claim and/or appeal process. This service works on their behalf to review the claim for disputable issues, make submissions for reconsideration throughout the appeals process, and represent the worker at any stage of their claim. This service is partial to and provided at no cost to the worker.

While the Employer Support Centre was created in 2019 to help employers, the scope does not fully encompass functions where employers require the most assistance, navigating complex claims and appeals. The assistance provided by the Support Center is limited to only providing information and the claim work is still left up to the employer. Additionally, while we recognize that an employer can contact the Fair Practices Office, this undertaking again requires allocation of additional resources.

KPCL recommends the creation of a Employer Advocate Office, parallel to the Office of the Worker's Advocate, to provide employers with advice, representation and assistance for managing claims, and appealing disputable issues.

Issue: Communication Among All Parties

An injury has a direct impact to all parties. Workers and employers alike share concern for an injured worker's health and wellbeing throughout their recovery. For employers, this is a business-altering event that has a direct impact to the existing workforce that often extends beyond the injured worker and can have an emotional impact on co-workers, and resources available for ongoing operations.

Subject to privacy regulations, employers require access to relevant information in an injured worker's claim file for the purposes of:

- Facilitating return to work planning
- Understanding medical and vocational rehabilitation and decisions made by WCB
- Contemplating or advancing a review or appeal

Communication from WCB to employers is often limited or non-existent, leaving employers that want to provide a meaningful return to work program without access to relevant information necessary to accommodate the worker. This leads to a disruption in timely and relevant information available to expediate the return to work process. In some cases, return to work can be wrongfully perceived to be an optional endeavour where participation is at the discretion of the worker rather than the expectation of all parties.

Additionally, there is a perceived resistance to provide employers with relevant information from medical professional(s), the WCB, and in some instances, the worker themselves to expediate a return to work program. While employers have a legal obligation to offer return to work to an injured employee, the worker has the ultimate authority to determine the success or failure of the program. This can be demonstrated or exemplified through the comparison of workers with similar injuries that have significantly different return to work participation even though each of the workers has been accommodated with the same return to work duties and tasks.

Employer's wishing to contemplate or advance a claim are often at a considerable disadvantage, spending considerable time and additional resources attempting to facilitate a claim that is made that much more difficult without the benefit of having transparency and supporting rationale of the decisions made that impact a worker's claim.

KPCL recommends developing an online service for employers and workers to have real-time access to relevant information on an injured worker's claim for the purposes outlined above. References to other provinces should be made to guide the WCB in adopting similar practices, such as WCB Alberta that provides online access to physician's reports.

Issue: Considering Pre-Injury Employment Conditions in Return to Work Program

Special considerations are given to an injured worker, and, do not necessarily capture the essence of the employer or industry the worker is employed in at the time of an injury. The current WCB policy manual is better suited to uniform rather than varying employment conditions. This can result in considerable disruption and perceived unfairness amongst co-workers.

There is a perceived notion that an injured worker is no longer accountable to previously agreed conditions of employment, including conditions such work location, transferability between locations, hours of work, schedule, and so on. We have been informed by WCB that pre-injury employment conditions are voided immediately following an injury. This significantly reduces accountability for all parties to cooperate and expediate any return to work planning and in some cases severely limits the options the employer has to accommodate the worker.

KPCL recommends including an area on W1 and E1 forms to understand if an injured worker has been offered participation in a return to work program, and any initial or subsequent medical forms to understand if medical professional(s) are aware of employers' return to work program.

Issue: COVID-19 Pandemic

Throughout the COVID-19 pandemic, the WCB has mitigated the cost to employers for claims accepted in 2020 and 2021. We recognize that this has alleviated the pressures to many employers during these challenging circumstances.

We caution the WCB to assume that the COVID-19 pandemic landscape will be predictable in the new year and moving forward. New variants, like the recent omicron variant, continue to evolve and spread globally, with higher rates of transmission and increased immunity to vaccinations, posing an ongoing risk to employers and workers. Even through the use of a stringent vaccination and testing program, along with other safety measures undertaken, employers are unable to control or fully eliminate the exposure to COVID-19 within their workplaces and are at the avails of their work force to eliminate risks outside of their workplaces.

KPCL recommends that the WCB continue to provide cost-relief to employers for COVID-19 claims accepted from the occupational disease fund for the duration of the COVID-19 pandemic.

Summary

In conclusion, we believe the opportunities identified will provide increased accountability, transparency and a stronger WCB that is more representative of the stakeholders it represents. We welcome any further dialogue on our submission.

Sincerely,



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