



# **WORKERS COMPENSATION ACT COMMITTEE OF REVIEW SUBMISSION**

**DECEMBER 15, 2021**

## **ABOUT MERIT CONTRACTORS ASSOCIATION**

Merit Contractors Association advocates for the interests of all open shop contractors in Saskatchewan. As such, we represent approximately 10,000 employers and 40,000 employees, all of which benefit from the work that Merit does to ensure the construction environment is fair for all contractors. Our association works to ensure open tendering and a fair and level playing field for all contractors.

Our members remain committed to the highest safety standards on our many jobsites throughout the province. We also remain committed to Saskatchewan's compensation system based on the Meredith Principles, which have for so long been the foundation of the WCB's structure.

## **INTRODUCTION**

Merit is pleased to provide the Committee of Review with our comments relating to how operations, policies and legislation can be enhanced to better serve the needs of workers and employers in our province. While we recognize that there is always opportunity for improvements, especially when world events cause drastic changes to our work environments, we also want to commend the WCB for its successes to date, namely

- Ensuring moderate increases to rates during the pandemic
- Building the transparency of the rate-setting process
- Improving general communications to employers
- Establishing the Employer Resource Centre

The following comments are based on consultations with our membership over the past months. We have also encouraged our members to become directly engaged in the COR review.

## 1. ISSUE: PROGRESS ON COR RECOMMENDATIONS

In our view, the Committee of Review process is an excellent means of

- Connecting with employers and employees on important issues related to WCB operations
- Identifying the most critical aspects of the current system that need to be updated to reflect a changing work environment

The outcomes are entirely relevant and provide the WCB with substantive feedback on how the system can better meet the needs of both employers and workers.

Individuals and companies that make submissions to the Committee do so with the understanding that their feedback will be considered and that the final report will become a roadmap, of sorts, to enhance the operations of the WCB.

However, as often happens with large undertakings in a bureaucratic environment, the progress in making the recommended changes is sometimes hampered by a system or culture that is not always ready for change.

The impression of many of our members is that while the Review process is valid, the implementation lacks commitment. Many of the recommendations brought forward by previous COR reports have either been partially implemented or ignored.

It should be noted that it's entirely possible that this is an impression and not reality. If that's the case, then there is a communication gap that must be addressed. For the COR to be truly meaningful, participants must be assured that the outcomes will spark change. To date, there is skepticism that this is the case.

Below is an example from the WCB website (<https://www.wcbask.com/committee-review-report-and-recommendations>) that leads the reader to question whether the recommendations of the COR are being effectively implemented.

Point #11 is one of the recommendations of the 2016 COR report. The stated progress or "Status" is unclear and appears to be an item that will be addressed at some point in the future.

11. **Review implementation and oversight:** Strengthen ongoing communication with stakeholders regarding Committee of Review recommendations and implementation.

*Status:* This recommendation will be addressed through the development of a WCB communication process.

## MERIT RECOMMENDATIONS - PROGRESS ON COR RECOMMENDATIONS

In order to maintain the integrity of the COR process in the eyes of stakeholders, we recommend that more effort be taken to provide employers and workers with an update on the progress in implementing the recommendations. Likewise, if some COR recommendations will not be integrated, sound reasoning should be provided.

Effective communication can take many forms: semi-annual reports dedicated to COR progress, a specific page on the website, or webinars. The critical outcome will be to dispel the notion that the COR process is redundant.

## 2. 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.*

While we were hopeful that this recommendation would be acknowledged when preliminary legislation was introduced in 2018, we were disappointed to see that it did not follow through to third reading and, ultimately, implementation. It is this type of inaction that feeds into the impressions referenced in section 1 of this submission.

It is our belief that the governance structure of the Workers’ Compensation Board must be updated, as the current structure is inefficient and ineffective and is certainly not reflective of the size and complexity of the WCB we know today.

The WCB in Saskatchewan has the smallest Board in Canada and is, in fact, about a third of the size of the boards in most other provinces. We believe the relatively small size of the WCB Board increases the perceptions of bias and conflicts of interest and prevents Saskatchewan workers, employers, and stakeholders from being served in the most efficient way possible.

We believe there are many advantages to having a larger Board of Directors, including

- ✓ Wider base of expertise from which to draw when making decisions
- ✓ Wider stakeholder consultation built into the Board system via Director appointment
- ✓ Ability to develop focused sub-committees for specific issues such as stakeholder engagement, audit, etc.

- ✓ Improved decision-making based on consensus of a wider base of knowledge
- ✓ Improved communication among stakeholders
- ✓ Improved accountability and transparency

It is our understanding that Saskatchewan is the only province with a full-time Board, dividing its attention among a wide array of duties, including final appeal functions. The notion of full-time Directors eventually leads to the assumption that they are also employees. An effective Board is one that maintains its distance from everyday operations so that it can clearly set a strategic path.

#### **MERIT RECOMMENDATIONS - BOARD GOVERNANCE**

Merit recommends the adoption of a more traditional Board governance model, as found in other provinces. We believe subsection 9 of the WCA should be changed to allow 9 to 13 Board members. Doing so would put Saskatchewan in line with other provinces and would enable the Board to better represent the interests of stakeholders.

With respect to Board composition, Merit recommends that

- ✓ The governance structure be converted to a more traditional Board structure which would consist of a part-time Chair and equal part-time representation of employers and workers
- ✓ The Board be further expanded to include expertise by way of actuarial or insurance professionals and safety experts to ensure a broad base of knowledge and input when making decisions

One of the flaws in the existing system is the absence of open shop worker representation on the Board. In Saskatchewan, it's estimated that 8 in 10 employees work in an open shop or non-union environment. Their views and interests are unique and often dramatically different from those of unionized employees. Yet the worker representatives are always sourced from unions. Merit believes the vast majority of workers in Saskatchewan are non-union and therefore, are not appropriately represented on the Board.

- ✓ Merit would strongly recommend that worker representation should include open shop representation in proportion to the percentage of open shop vs. union employment in the province

### **3. ISSUE: APPEALS SYSTEM**

In 2016, one of the main issues the COR heard about was the backlog of appeals. While we acknowledge the efforts to reduce wait times by 56%, we believe that a more important issue to address should be the composition of the Appeals Tribunal which is currently comprised of the three Board members. This structure may appear on the surface to be biased as the Appeals Tribunal is really reviewing the work of the system that they provide governance over.

We strongly believe that the appeals system should be removed from the WCB infrastructure to ensure there is transparency and fairness.

Every appeal, whether simply a file review or an oral hearing, should require a review by an arms-length Appeals Panel consisting of three members – an employer representative, a worker representative, and a public interest Chair. The Appeals Panel should have the full authority to subpoena and adjudicate as the WCB Board does now, with all decisions being considered final.

The inquiry system of appeals should be continued as it provides all appellants equal opportunity to present their cases without added legal costs of an adversarial, litigious system.

#### **MERIT RECOMMENDATION: APPEALS SYSTEM**

Merit recommends

- ✓ Forming an Appeals Tribunal that is separate from the Board, consisting of experienced professionals skilled in fair and timely adjudication of cases
- ✓ The Appeals Tribunal include at least three full time members. To ensure increased workloads are handled in a timely manner, additional members may perform appeals on a part-time basis as required.
- ✓ That all final appeals are heard within 30 days of the collection of relevant information.

#### **4. ISSUE: COMMUNICATION AMONG ALL PARTIES**

An injury is a life-changing event for the individual. However, it is also a business-altering event for the employer. Not only does it have an emotional impact on all employees working for that employer, it also consumes considerable time and resources to manage the claim and ensure the employee is brought back to work in a safe and reasonable fashion.

Unfortunately, in many cases, even though the employer is a critical participant in the situation, they are left out of the communication loop. We've heard from several members that their employee was cleared by their physician to start their return-to-work program, yet nobody advised the employer. In addition, an employer is not always advised when important decisions are made on the file regarding eligibility and coverage.

Employers ultimately want to be an active participant in the recovery and transition back to work for the injured worker, but they can only be effective if they are appropriately informed.

#### **MERIT RECOMMENDATION: COMMUNICATION AMONG ALL PARTIES**

The importance of fulsome and inclusive communication cannot be marginalized. For a claim to be managed successfully, the employer must be an integral part of the process. Merit recommends

- ✓ The WCB reinforce the importance of ensuring employers are part of the communication loop to the extent that the privacy policy allows. The most effective way to accomplish this would be to utilize technology for the creation of a portal where all parties could have real-time access to file information.
- ✓ In lieu of a private portal, we would recommend that case managers be made increasingly aware of the importance of employer communication and that a culture shift take place to consider employers an integral part of claim management, which includes informing employers of proposed back-to-work transition plans.

## 5. ISSUE: EMPLOYER SUPPORT FOR APPEALS

The appeal process is one that challenges employers from a number of perspectives. The time and cost of going through the appeal process, in itself, deters even the most sophisticated employer. But in many cases, an employer is so unsure of the process that they simply either choose not to pursue an appeal or they contract with a private consultant to lead the process and incur additional cost.

The creation of the Employer Support Centre (ERC) in 2019 was a giant step forward in supporting those that are paying premiums. While it provides a valuable resource, for some reason it stopped short of providing support for employers that wish to undertake an appeal. This left a significant gap in needed services.

We understand from a resource perspective that the ERC cannot take on the responsibility of actually representing appellants nor can it provide support to appeals that clearly are not warranted. However, there is still a gap in services for employers that have justifiable appeals and have no support to actually pursue the appeal. We believe the system must address the needs of those employers to be truly equitable.

### **MERIT RECOMMENDATION: EMPLOYER SUPPORT FOR APPEALS**

Employers desperately need support in managing the appeal process. Merit recommends that the ERC expand their scope to include the following responsibilities:

- ✓ An impartial intake officer would review cases brought forward and determine if an approved claim warrants employer appeal
- ✓ Should the intake officer decide in the employer's favor with regard to an appeal, then resources would be assigned to that employer to assist in
  - Fully understanding the process
  - Developing materials in support of the appeal
  - Advising how to best present the case
  - Identifying options should an appeal be unsuccessful

The employer would retain primary responsibility for moving the claim forward but would be able to rely on the ERC to answer questions and provide specific and meaningful advice along the way.

## 6. ISSUE: COVID CLAIMS

There's no doubt that the pandemic has changed lives and business in every conceivable way. The WCB has done an admirable job of minimizing the fallout of the pandemic. Rates have been contained, affected workers have been supported and, in general, risks have been mitigated.

The most effective policy to financially shield employers from the pandemic was cost relief. However, with the recent announcement that cost relief will end on January 1, 2022, employers will soon be held financially responsible for a risk they cannot reasonably prevent.

On the surface, it seems that this change in policy is further encouragement for employers to require employees be fully vaccinated. While the construction industry generally agrees in principle with that approach, it's just not that simple.

Our industry is in the midst of a dire labor shortage at a time when record-setting stimulus spending is seen as leading the way to economic recovery. In addition, employers are already tasked with the challenge of trying to manage COVID protocols on site, with significant costs related to additional cleaning protocols and testing.

It is now apparent that double vaccination of employees is NOT a guaranteed method of preventing a COVID outbreak at a workplace. With additional variants spreading quickly and staged roll-out of boosters, employers are once again helpless and vulnerable in how they manage the situation. Removing cost relief is a further punitive measure that will challenge employers as they try to manage through the ongoing pandemic and a massive labor shortage.

In spite of best efforts, it is impossible to completely prevent employees from exposure to the virus. Furthermore, it is nearly impossible to confirm how or where the original exposure occurred. With so many unknown variables, it would be patently unfair to unduly penalize employers for COVID-related claims.

#### **MERIT RECOMMENDATION: COVID CLAIMS**

In the coming years, it will be as important to shield employers from the effects of the pandemic as it is to provide income security for those workers that contract COVID in a workplace. Merit recommends

- ✓ COVID claims continue to be accepted only if there is substantiated workplace exposure, in accordance with the WCB Policy on Communicable Disease
- ✓ In light of the spread of new variants, and limited access to booster vaccines, it is not reasonable to remove cost relief at this time. Merit strongly recommends that cost relief be extended to the end of 2022, then re-evaluated with industry input at that time.

The pandemic is a special circumstance, so claims must also be treated as exceptional. Penalizing employers for an injury that they can't reasonably prevent is not acceptable. Furthermore, economic recovery will hinge on continued employment and growth. Increased premiums and risk will restrict an employers' ability to continue to provide needed employment to workers.

## SUMMARY

We commend the government on its courage to modernize a system to better meet the needs of today's employers and workers. We believe that the changes contemplated as part of this consultation will strengthen the WCB and allow it to be more responsive to the many challenges it will face in the coming years.

On behalf of the many employers and workers represented by Merit Contractors Association, we appreciate the opportunity to provide our input and thank the Committee of Review for their consideration of this submission. We look forward to the outcome and would welcome any further dialogue on our submission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karen Low', written in a cursive style.

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