



Office of the  
Saskatchewan Information  
and Privacy Commissioner

October 29, 2021

Louise Greenberg, Chairperson  
Workers' Compensation Act Committee of Review  
300-1870 Albert Street  
Regina, SK, Canada, S4P 4W1

Email: [wca-cor@gov.sk.ca](mailto:wca-cor@gov.sk.ca)

Dear Louise Greenberg:

Re: Submission to the Committee of Review

Thank you for your letter dated October 8, 2021, requesting to meet with me and my staff to hear about any concerns that we have with respect to any matters concerning *The Workers' Compensation Act, 2013 (WCA)*, *The Workers' Compensation General Regulations, 1985*, *The Workers' Compensation Act Exclusion Regulations, 2014* and the administration of the Act and regulation. My office has taken the opportunity in the past to make representations to the Committee of Review (COR) and appreciate its ongoing interest in our views.

As the COR is most likely aware, my office has made a number of recommendations in the past that have now been addressed. As such, this submission will be brief as there are only a few more additional concerns that I have and hope to see addressed through amendment to the WCA.

The first one involves section 173 of the WCA. It deals with a worker's access to their own information, which I am concerned places undue restrictions on the provision of access for reasons not contemplated by either *The Freedom of Information and Protection of Privacy Act (FOIP)* or *The Health Information Protection Act (HIPA)*. In particular, section 173(4) of the WCA provides:

**173(4)** The board shall provide any medical report that the worker, worker's representative or worker's dependant has requested pursuant to subsection (2) to the worker's or worker's dependant's physician instead of providing it to the worker, worker's representative or worker's dependant if the board is of the opinion that the medical report:

- (a) **contains information of a sensitive nature;** and
- (b) **if provided directly to the worker, worker's representative or worker's dependant, would cause harm to the worker or any other person.**

[Emphasis added]

Parts of HIPA that do not apply to the Saskatchewan Workers' Compensation Board for purposes of the WCA include Part V, which contains the following restriction as to when access to the individual's personal health information may be appropriate:

**38(1)** Subject to subsection (2), a trustee may refuse to grant an applicant access to his or her personal health information if:

(a) in the opinion of the trustee, knowledge of the information could reasonably be expected to endanger the mental or physical health or the safety of the applicant or another person;

The language in section 173(4) of the WCA should mirror that of section 38(1)(a) of HIPA, as otherwise creates a much lower standard than can be justified. Further, what would the board deem to be sensitive, when personal health information is by its very nature considered as such?

My second recommendation has to do with the section of the WCA that deals with an employer's access to worker's information. Section 174 of the WCA in particular authorizes the release of the worker's information to the employer for limited purposes as follows:

**Employer's access to information**

**174(1)** In this section, "employer's representative" means a person authorized in writing by an employer to represent that employer.

(2) If an employer has requested a reconsideration of or applied for a review of a decision made pursuant to this Act with respect to a worker's claim for compensation, notwithstanding that the employer is not a party to the reconsideration or review, the board may on written request, in accordance with this section, grant the employer or the employer's representative access to the information that the board used to make its decision with respect to:

(a) the facts of the situation in which the injury occurred; or

(b) the percentage of the cost of compensation that has been assigned by the board to the injury cost record of that employer with respect to the injury of the worker arising out of and in the course of the worker's employment with the employer.

**(3) The person receiving the information pursuant to subsection (2) shall use that information only for the purposes of the reconsideration or review.**

[Emphasis added]

I see no consequence laid out in the WCA if an employer contravenes the above and breaches the worker's privacy. The board however does have the ability to impose penalties in the following cases:

**Administrative penalties**

**183(1)** The board may make an order imposing a penalty in an amount not exceeding \$10,000 against an employer if the board is satisfied that the employer has contravened section 52, 105 or 122, subsection 158(1) or section 164.

In order to ensure that employers, many of which will not be bound by any federal or provincial access and privacy law, would be held accountable by the board for any breach of privacy involving the worker's information, I recommend that section 174(3) above be added to the list of provisions in section 183(1) of the WCA.

Thank you for your consideration of my office's recommendations. If you have any questions regarding the foregoing, my office will be available on November 3, 2021 to elaborate.

Yours truly,



Ronald J. Kruzeniski, Q.C.  
Saskatchewan Information and Privacy Commissioner

cc. Diane Aldridge, Executive Director of Compliance, Information and Privacy  
Commissioner