

SUBMISSION TO THE WORKERS' COMPENSATION ACT COMMITTEE OF REVIEW


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Saskatchewan
Federation of Labour



Submission to the Workers' Compensation Act Committee of Review

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Introduction

The Saskatchewan Federation of Labour (SFL) represents 100,000 workers across the province in hundreds of different jobs and sectors. The SFL represents the interests of union and non-union workers. We work on a variety of issues such as occupational health and safety, human rights, the environment, political action, collective bargaining, women's issues, aboriginal and youth issues, apprenticeship, and shift work. Our work also involves partnerships with community groups across the province, some of which include social justice and anti-poverty groups, health coalitions, farm groups, seniors, and student organizations. Simply put, the SFL represents working people in Saskatchewan. No other group has so wide a constituency as ours, and no other group has a greater interest in the Workers' Compensation Board (WCB).

The past two years of the COVID-19 pandemic has been difficult for workers in Saskatchewan. The majority of outbreaks have occurred in workplaces, and many workers have become sick and some have sadly died, as a result of contracting COVID-19 in their workplace. As the province still continues to fight the COVID-19 pandemic, the ability for workers in Saskatchewan to access WCB benefits in a fair and timely manner is of the highest importance. The SFL welcomes this opportunity to offer feedback on how the WCB and its processes can be improved to the benefit of working people in the province.



1. Meredith Principles

Recommendation: Adhere to the Meredith Principles.

In the early portion of the twentieth century, Judge Sir William Meredith defined the principles that would come to serve as the foundation for workers' compensation in Saskatchewan. The Meredith Principles are an important basis upon which the SFL's recommendations to the Committee of Review are based.

The five core principles are:

- No Fault Compensation. Workers are not required to prove blame for their injuries in order to receive compensation for those injuries.
- Security of Benefits. A dedicated fund with enough assets to provide compensation to the worker for all future costs caused by the injury.
- Collective Liability Costs are shared by employers through compulsory mutual insurance wholly paid by employers.
- Independent Board. Autonomous from government control, the board is composed of worker and employer representatives, with the board deciding claims and collecting assessments.
- Exclusive Jurisdiction. Workers and employers are protected against the cost, delay and uncertainty of litigation, by making board decisions final and conclusive.

The SFL insists the Committee of Review include in its report a call for continued and absolute adherence to the Meredith Principles as the foundation of our Workers' Compensation system. Any variation from, or wearing down of, the Meredith Principles would be considered as unacceptable by the SFL.



2. Board Structure and Governance

Recommendation: Continue to expand the WCB to the meet recommendation in the 2016 Committee of Review Report to expand the board structure to include seven members.

The SFL strongly supports the expansion of the WCB. The current format of a being a five person board (consisting of a full-time board chair, one labour representative, one employer representative, one part-time labour representative and one part-time employer representative), has helped to ensure that the board is able to more effectively deal with the backlog of WCB appeals and reduce heavy workloads.

The SFL welcomed the expansion of the board, as recommended by the consensus report of the WCB Committee of Review in 2016 as well as the 2011 Committee of Review report. While we are pleased to see that the board has since been expanded to five people with the addition of two part-time members, one member being appointed by employers, and one member being appointed by labour, it is disappointing that the recommendation to expand the board to seven members made in the 2016 Committee of Review's report has not been entirely met. Other jurisdictions in the country continue to have a much larger board structure.

It remains our view that the current, revised board structure, complemented by well-resourced and highly trained support staff, is still more cost effective than any third party appeals system, and ensures consistency in decision making. However, we would like to see the WCB follow through with the seven person board expansion as recommended in the 2016 report. We continue to strongly oppose any outsourcing of the board's work to a third party or external process as it is inconsistent with the history of the WCB in Saskatchewan. Ensuring compensation and appeal decisions are made in-house by an accountable Board of Directors is necessary for the process to maintain its legitimacy from the perspective of injured workers.



3. Psychological Injury

Recommendation: Update policies to expand psychological injury coverage for those who have suffered from workplace harassment, and develop policies for workers dealing with psychological health issues stemming from the COVID-19 pandemic.

Psychological injuries among workers in Saskatchewan have continued to rise. All workers should have access to benefits regardless of whether their workplace injury is physical or a psychological injury. This should include the ability of those who have been victims of workplace harassment to file a claim for psychological injury. The WCB's establishment of a dedicated psychological injuries unit in 2019 has been welcomed and has helped to reduce claim times for workers.

Many physical injuries also include mental health injuries that can affect a worker's recovery. WCB should continue to work to ensure that mental health issues are assessed for all WCB claims to determine if additional resources may be required.

The COVID-19 pandemic has also had a major impact on the psychological health of members, particularly those in the healthcare sector, as well as other frontline workers who have had to work directly with the public and put their health and safety at risk, especially before vaccines were widely available. Special consideration should be given to workers for claims regarding psychological injuries related to COVID-19 to ensure these claims are dealt with fairly and in a timely manner.



4. Prevention

Recommendation: End employer rebates, invest in prevention, create additional safety associations, and evaluate safety association activities.

The WCB's prevention budget has continued to increase minimally since the last Committee of Review report in 2016. There must be sufficient resources invested in prevention programs to ensure they are effective in meeting their goals. Though there has not been a surplus returned to employers in the past few years as the funding percentage has not risen above 122 percent, \$281.5 million was returned to employers in 2016. Future surplus funds should instead be invested into injury prevention.

Budget allocations in the 2020 WCB Annual report show minimal increases to Occupational Health and Safety, and decreased funding to safety associations and WorkSafe. While the pandemic may be a possible explanation for these decreases, considering the WCB's healthy financial position, and the fact that Saskatchewan's injury rate remains unacceptably high, more funding needs to be allocated to prevention.

WorkSafe initiatives include four perimeters: awareness campaigns, education and training, targeting strategies and partnerships. Awareness campaigns, such as the ongoing campaign to make workers aware of their three workplace rights, are important and effective in raising awareness of workplace safety. To reduce injuries and engage in safe workplace practices, we continue to ask that more funding and staff are dedicated to education and training.

The last WCB Committee of Review report considered, but ultimately did not recommend, the establishment of additional safety associations. There are still only seven safety associations in the province. The 2016 Committee of Review found the WCB has the resources to bring new safety associations on board. The WCB must take action to have more safety associations created for industries currently without one. We also recommend that the WCB evaluate the effectiveness of all safety associations through a third party to provide unbiased assessments of their activities.



5. Benefits

Recommendation: Continue to increase the maximum wage rate.

There has been much improvement since the past two WCB Committee of Review reports to increase the maximum wage rate. Tying the increase to the maximum wage rate to be indexed to the average weekly wage has better reflected the reality of the earnings of workers in Saskatchewan, and the maximum wage rate has increased from \$69,242 in the year of the last Committee of Review report, to \$91,100 in 2021. However, while the rate has increased, Saskatchewan still remains below that of other western provinces. It continues to be our position that SFL members who are injured at work should not have to endure the hardship of dealing with an injury as well as a drop in earnings. We ask this Committee of Review to consider further increases to the maximum wage rate.



6. Presumptive Coverage

Recommendation: Expand presumptive WCB coverage to include workers affected by illnesses or diseases contracted while at work, including COVID-19.

The current COVID-19 pandemic has shown how quickly a virus can spread throughout the workplace. The majority of outbreaks in Saskatchewan occurred in workplaces, and hundreds of workers became sick, and sadly, even died due to contracting COVID-19 in the workplace. Many workers who became ill due to an outbreak in their workplace reported difficulties in filing a WCB claim and had to deal with a lengthy claims process while fighting a dangerous and potentially lethal virus that has also proven to cause long term health problems for those who do recover.

Placing workers in a position to have to prove they contracted an infection from the workplace is difficult and time consuming. Many workers have put their own health and safety on the line simply going to work every day and increasing their risk of becoming ill.

The Saskatchewan WCB already has presumptive coverage policies for firefighters diagnosed with occupational diseases, and the WCB Act was amended in 2016 to recognize presumptive coverage for psychological injuries incurred through work. The WCB Act should be further amended to include presumptive coverage for workers who have been affected by illnesses or diseases contracted while at work, including COVID-19, where the nature of the worker's employment created a risk of contracting the illness or disease that was significantly greater than the ordinary exposure risk of the public at large. This should be done as soon as possible and follow the direction of the presumptive coverage policy for COVID-19 claims enacted by the British Columbia WCB.



7. Stakeholder Advisory Committee

Recommendation: Monitor the effectiveness of an expanded board prior to considering whether or not a Stakeholder Advisory Committee is needed.

One recommendation that has been made in order to address all of the evaluation, assessment and monitoring of WCB operations and board functions is through a Stakeholder Advisory Committee.

This Stakeholder Advisory Committee would consist of equal labour and employer representatives, appointed by their respective stakeholder groups. They would report directly to the board and to stakeholders, and their function would be set in legislation. It would be an ongoing group who would meet on a regular basis. This Committee would ensure the Committee of Review recommendations are properly addressed.

This ongoing group would become familiar with WCB issues, and could then be utilized to review current issues, such as surplus distributions, WCB policies, Experience Rate Reviews and legislation. They would be able to monitor activities of the WCB operations and the board.

To facilitate proper governance, criteria must be established for the appointment of board members. WCB board members – with their role equivalent to that of the Court of Queen's Bench – must be examined for experience, knowledge, and initiative to take further education. Board members must obtain additional education regarding adjudication of decisions, tribunal decision making based on the principles of the Inquiry Model, and board governance principles.

Proper governance also includes evaluation of board functions, by an unbiased third party. Stakeholders at present do not have a mechanism to assess if the board is functioning properly in terms of proper board governance and adjudication principles. Board members must be evaluated on a regular basis by their stakeholders or the Stakeholder Advisory Committee.

The SFL's recommendation with regards to a Stakeholder Advisory Committee is silent on whether or not it would replace the existing WCB Committee of Review. We would need to see a period of time utilizing a Stakeholder Advisory Committee before such an assessment and recommendation could be made.

However, considering the current expansion of the board, and if the recommendation from the 2016 Committee of Review report is followed through on to further expand the board to seven members, a Stakeholder Advisory Committee may not be necessary. We recommend taking the time to monitor the effectiveness of a fully expanded board in order to determine whether or not a Stakeholder Advisory Committee is necessary.



8. Anti-Oppression and Anti-Discrimination Training for Board Members

Recommendation: Initiate mandatory Anti-Oppression and Anti-Discrimination training for all board members.

Saskatchewan's workforce is diverse, and the Saskatchewan WCB should reflect that diversity. Because diversity is not always present in the make-up of the board, we recommend members undergo anti-oppression and anti-discrimination training. These types of training would help board members recognize the oppressions and inequities that exist in our society for many Saskatchewan workers and help them be more aware of the power they have and the effects their actions have as a board member. Enacting this training for all board members would show leadership and would set an example for others with the hope that it is adopted throughout the entire organization.



Conclusion

The SFL fully supports the WCB Committee of Review process. It has proven to be an effective process that has resulted in important changes and allows all stakeholders the opportunity to focus on the WCB's operations and the provisions of *The Workers' Compensation Act, 2013* to seek continued improvements. We continue to encourage further work to fully implement all previous Committee of Review recommendations and that future Committee of Review recommendations be acted upon promptly.

The SFL thanks the Workers' Compensation Act Committee of Review to provide our input into the review of *The Workers' Compensation Act, 2013*.