



The Saskatchewan Workers' Compensation Act Committee of Review

2022 Report

Letter to the Minister

August 3, 2022

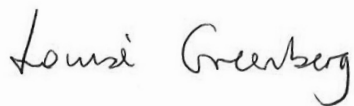
Room 348, 2405 Legislative Drive, Regina, SK, S4S 0B3

Dear Minister:

The Workers' Compensation Act Committee of Review appointed pursuant to section 162 of *The Workers' Compensation Act, 2013*, respectfully submits this report of its review of the Saskatchewan workers' compensation system.

The committee members appreciated the opportunity to conduct this review and to be of service to the workers, employers and people of the province of Saskatchewan.

Sincerely,



Louise Greenberg, Chairperson



Shawna Nelson, Acting Chair
Representative for Business



Dion Malakoff
Representative for Labour



Sandra Seitz
Representative for Labour



Blaine Dubreuil
Representative for Business

Acknowledgements

The Committee of Review (COR) would like to sincerely thank the many individuals and organizations who provided written submissions, made presentations at the hearings, spoke with committee members on issues of interest, provided detailed responses on research that we did and answered our numerous questions. We appreciated the honest feedback, dialogue and information provided to us throughout this process.

We wish to thank the Saskatchewan Workers' Compensation Board (WCB) and its staff for the work they do. We met with the board, the CEO and the executive team who engaged in discussions with us, answered our numerous questions, and were very accommodating and patient with the requests and follow-up items asked by the COR. We would like to especially thank Mick Williams from the Saskatchewan WCB for his endless patience, steadiness, timeliness and assistance in answering all of our questions and providing follow-up information.

The committee thanks the Office of the Workers' Advocate (OWA) of the Ministry of Labour Relations and Workplace Safety (LRWS) for the information they provided to us and assistance in further understanding the operations of the workers' compensation system.

The support we received from LRWS is truly appreciated. The leadership and support provided by the Honourable Don Morgan, Q.C. and Deputy Minister Greg Tuer, enabled the COR to do its work.

There are a number of individuals within LRWS that we would like to acknowledge and thank. They helped us with administration, communications, IT, our webpage, Zoom hearings, provided wise counsel, and proofread the report. These individuals are Jerry Arnold, Ryan Bosgoed, Jay Buddhew, Kate Crowley, Al Emil, Judy Fairweather, Kim Ferleyko-Allen, Waneta Hardy, Mary-Ellen Illingworth, Baljinder Kaur, Shauna Loy and Pat Parenteau.

We are truly thankful to Patrice Kelly, Project Manager for the COR. Patrice's efforts, patience, attention to details, positivity and timeliness made our review process operate smoothly and kept the wheels turning on this journey of conducting a review and fulfilling the mandate that we were given.

Overview

Abbreviations and Definitions	7
Executive Summary	8
Chapter 1 - Introduction	10
Chapter 2 - Mandate and Basic Principles	12
Chapter 3 - Highlights Since the Last Committee of Review	14
Chapter 4 - Themes and Recommendations	18
Chapter 5 - Other Issues Identified.....	53
Chapter 6 - Summary of Recommendations	54
Chapter 7 - Conclusion	57
References	58
Appendices	59

Abbreviations and Definitions

Act/WCA	<i>The Workers' Compensation Act, 2013</i>
AGM	Annual General Meeting
AMA	American Medical Association
CanLII	Canadian Legal Information Institute
COR	Committee of Review
DSM-5	Diagnostic and Statistical Manual, Fifth Edition, American Psychiatric Association
HIPA	Health Information Protection Act
LRWS	Ministry of Labour Relations and Workplace Safety
MRP	Medical Review Panel
MVA	Motor Vehicle Accident
OHS	Occupational Health and Safety
OWA	Office of the Workers' Advocate
PFI	Permanent Functional Impairment
PTSD	Post Traumatic Stress Disorder
QA	Quality Assurance
SGI	Saskatchewan Government Insurance
SHA	Saskatchewan Health Authority
WCB/Board	Saskatchewan Workers' Compensation Board
Zoom	Video conferencing software that connects people through a computer or mobile device

Executive Summary

Section 162 of *The Workers' Compensation Act, 2013* (the Act or also referred as WCA), provides the legislative authority to appoint a Committee of Review (COR), consisting of at least five people to review and report on all matters concerning the Act, the regulations, and the administration of the Act and regulations. A COR is to be appointed within five years of receipt of the previous COR's report by the minister responsible for workers' compensation.

The current COR was appointed by Order-in-Council on August 5, 2021. The timing for this appointment occurred during the health restrictions created by COVID-19. This was new territory for all of us. We had to consider where and how to meet with individuals and groups for consultations; where and how to hold public hearings; how to have conversations between COR members; and determine how information would flow with fewer face-to-face meetings.

The COR received 61 submissions from organizations (Appendix A) and 36 from individuals. Having to hold hearings and conduct meetings while respecting COVID-19 restrictions created the opportunity for the COR to use Zoom. The public hearings for both organizations and individuals were held during the first few months of 2022 using Zoom (Appendix B).

Through the course of reading the submissions, listening to presentations at the hearings and in discussions with stakeholders we have made 34 recommendations grouped within four themes:

- policies and coverage;
- health and wellness;
- customer service and communication; and
- appeals.

Policy brings order to organizations, uniformity to and consistency in decisions and brings effectiveness and compliance to programs. Policies must fit within the boundaries of the legislation that governs the organization. The Saskatchewan Workers' Compensation Board (WCB) Policy and Procedures Manual constitutes the day-to-day decision-making framework and authority for all staff decisions and actions. As of the writing of this report, there are 340 policies and procedures in the manual.

The topics that we reviewed within the policies and coverage section include:

- students in work-based learning programs;
- a comparison of some of the benefits provided by the WCB and Saskatchewan Government Insurance (SGI);
- permanent impairment;
- death benefits;
- definitions of a worker and a director of a corporation;
- prevention programs; and
- access to workers' records.

Based on the material we reviewed, we have made 12 recommendations in this section.

Health and wellness are large subjects to review with much to consider. We highlighted COVID-19 as a challenge for the WCB, particularly in dealing with long-term symptoms. COVID treatment plans and how to address the impact on the physical and mental well-being of workers and all Saskatchewan residents are in their infancy.

We centered on three topics within health and wellness - mental health, chronic pain and repetitive strain injury.

With regards to mental health, we have focused on psychological injuries, traumatic events and post-traumatic stress disorder. We received a number of submissions dealing with mental health issues and reviewed several recent court cases. Two court decisions from the Saskatchewan Court of Queen's Bench illustrate the complexity of psychological injuries, traumatic events and presumption of psychological injury in cases involving police officers. Clarifying and amending the legislation for psychological injuries to address the issue of presumptive coverage and having the Policy and Procedures Manual support the intent of the Act would provide quicker supports to workers.

We have made five recommendations to support health and wellness.

Customer service and communication are interconnected areas, and both need to be done well to be effective. Many of the submissions received referred to these issues. Dealing with people who have been injured and need help requires certain skill sets including good listening skills, the ability to show compassion and understanding, and the capacity to deal with difficult situations. Having a supportive workplace environment that provides enhanced customer service training and staff engagement as part of its culture toolbox creates better outcomes for everyone.

From our own research and consultations, we believe that the WCB can simplify their explanations and use diagrams and flow charts for workers and employers. Simplification would result in better understanding of the WCB and decision-making processes when dealing with claims. To help our own understanding of the WCB process, we created several flow charts which we like to describe as 'the anatomy of a claim'.

Nine recommendations have been made to improve customer service and communication at the WCB.

Our last themed section covers appeals and the role of the WCB Board. Within the WCB, there are three levels of appeals that an injured worker or employer can take if their claim is not accepted by the caseworker. The Medical Review Panel (MRP) is an independent body that is a separate step that injured workers may access to resolve disputes on medical issues. However, it can only proceed after an injured worker has completed the appeals process with the WCB and has received a decision from the Board Appeal Tribunal. The recommendations made for the MRP process are all directed toward simplifying and improving it to achieve better customer service.

The Saskatchewan WCB is unique within Canada as it has a full-time board that divides its duties between governance and the Appeal Tribunal function. While we don't recommend changing the current model, we do recommend publishing the Tribunal decisions in order to promote transparency and accountability, demonstrate the decision-making process and instill confidence in the decisions that are made. We have provided eight recommendations in the section on appeals.

All of the 34 recommendations presented have the unanimous support of the COR members. Each member learned much about the workers' compensation system and from each other during our time on this committee. We hope that our recommendations will help improve the lives of the worker and the employer and contribute to an injury free workplace.

Chapter 1 - Introduction

The timing for appointment by Order-in-Council for a COR occurred during the health restrictions created by COVID- 19. This was new territory for all of us.

We had to consider where and how to meet with individuals and groups for consultations; where and how to hold public hearings; how to have conversations between COR members; and determine how information would flow in light of fewer face-to-face meetings. Alongside this change in how we would operate, was the increased public use of technology and social media for communication since the last review was conducted.

We decided that our communications strategy would take advantage of radio, social media and online technology in announcing the review, requesting submissions and developing a format for receiving submissions. We also used some traditional methods such as a government news release and email communication from LRWS and the WCB to stakeholders. The COR did not make use of advertising in newspapers.

The COR wanted to make submissions easier for both organizations and individuals to send their submissions. We provided templates through our web portal and tried to make the process simple. The COR received 61 submissions from organizations and 36 from individuals.

A list of the organizations that submitted material can be found in Appendix A. Information on individuals who submitted material has been kept confidential.

Having to hold hearings and conduct meetings while respecting COVID-19 restrictions created the opportunity for the COR to use Zoom. We mostly used Zoom for our internal meetings. All of the public hearings for both organizations and individuals held during the first few months of 2022 used Zoom. Some of the presenters were very comfortable using Zoom, while others were not.

Louise Greenberg
Chairperson



Shawna Nelson
Representative for
Business, Acting Chair

Sandra Seitz
Representative for
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Practice sessions were created for those that had no prior experience with Zoom or who were uncomfortable with the technology.

For all of the limitations that were created by using a Zoom format, it did provide some advantages. People who wanted to present to the COR did not have to travel to a larger centre. For some individuals who have disabilities, using a computer to make a live presentation in the comforts of one's own home was a much easier situation.

Furthermore, for those uncomfortable speaking to a room full of people, it was less stressful speaking to a computer screen.

Using Zoom allowed the COR members to be more flexible in scheduling hearings as no one had to build in travel time to get to a community outside of their home location especially in the winter. There were also fiscal savings in travel costs for government. With Zoom, observers were able to attend the hearings and listen to presentations from their homes or offices.

Chapter 2 - Mandate and Basic Principles

Section 162 of the Act provides the legislative authority to appoint a COR consisting of at least five people to review and report on all matters concerning the Act, the regulations, and the administration of the Act and regulations. The COR is to be appointed within five years of receipt of the previous COR's report by the minister responsible for workers' compensation.

The current COR was appointed by Order-in-Council on August 5, 2021. The information gathered to conduct this review came from:

- written submissions and hearings with organizations and individuals
- interviews with relevant stakeholders, LRWS staff and WCB staff and its Board; and
- reports, data and articles from the WCB, other provincial and national jurisdictions and organizations associated with occupational health and safety.

2.1 Meredith Principles

Compensation legislation and programs for workers started in Germany, Great Britain and the United States in the late 1800s and early 1900s.

In 1910, Sir William Ralph Meredith, an Ontario lawyer, politician and judge, was appointed to head an Ontario royal commission to examine workers' compensation systems and to make recommendations.

In 1913, Sir Meredith presented his final report to the Ontario Legislature.

His report outlined a trade-off in which injured workers gave up the right to sue their employer if they were injured on the job in exchange for no-fault compensation benefits.

The Meredith principles are based on five concepts: no-fault compensation, security of benefits, collective liability, independent administration and exclusive jurisdiction.

These principles still form the foundation for the majority of provincial and territorial workers' compensation legislation across Canada.

Meredith Principles

No fault compensation: Workers are paid benefits regardless of how the injury occurred. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury.

Security of benefits: A fund is established to guarantee funds exist to pay benefits.

Collective liability: Covered employers, on the whole, share liability for workplace injury insurance. The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.

Independent administration: The organizations who administer workers' compensation insurance are separate from government.

Exclusive jurisdiction: Only workers' compensation organizations provide workers' compensation insurance. All compensation claims are directed solely to the compensation board. The board is the decision maker and final authority for all claims (wcbsask.com).¹

¹ Saskatchewan Workers' Compensation Board, The Meredith Principles. Retrieved July 4, 2022 from <https://www.wcbsask.com/who-we-are#:~:text=The%20Meredith%20Principles,-The%20Meredith%20Principles&text=These%20principles%20are%20a%20historic,are%20injured%20on%20the%20job.>

The principles outlined in the report became law in Ontario in 1914 with other provinces following suit over the years.

In Saskatchewan, *The Workmen's Compensation (Accident Fund) Act*, a no-fault workers' compensation legislation, was agreed to on February 2, 1929, and came into force on July 2, 1930.

A board was put into place with a \$25,000 grant from the province.

Chapter 3 - Highlights Since the Last Committee of Review

The 2022 COR would like to acknowledge the work done by the 2016 COR. Each review that has been done over the years builds on the work done by the previous COR. The work completed by the committee in 2016 provided the current committee with a framework to build upon. Our recommendations may differ, based on topics that were of importance at the time of submissions and hearings, but it is all cumulative like compound interest.

3.1 Progress on 2016 COR Recommendations

The 2016 COR made 11 recommendations. The recommendations and work done to date by the Saskatchewan WCB are as follows:

1. Focus on corporate culture and develop a customer-centric service delivery model. This can be achieved through:

1(a) Investing in time and training to meet customer service survey targets.

Under the Claims Transformation Program, the WCB has:

- implemented a new phone system to track calls and improve telephone contact with customers;
- completed a new Voice of the Customer framework and strategy;
- planned for disability management and return-to-work training through Pacific Coast University;
- engaged with stakeholders to inform the 2022-2027 Fatalities and Serious Injuries Strategy;
- developed a strategy focused on training, coaching and development;
- continued to advance training through the National Institute of Disability Management and Research;
- developed a quality assurance (QA) process for the prevention and employer services departments; and
- prioritized the design and implementation of new formal training for appeals.

1(b) Developing service quality standards and ensure they are met.

Under the Claims Transformation Program, the WCB has:

- developed and implemented a risk-based case management quality control program;
- implemented processes to identify claim trends and gaps in services;
- implemented a bi-monthly QA process;
- improved service quality standards to identify risk factors for claims and claim escalations;
- developed training standards for prevention initiatives delivered with the Fatalities and Serious Injuries Strategy (the asbestos training standard will launch in 2022);
- established advanced QA processes for customer care, payment and vocational recovery specialist roles; and
- formalized a long-term file review process.

1(c) Increasing WCB Claim Entitlement Services Unit hours beyond conventional business hours, including noon.

The WCB has:

- added noon hour coverage in 2017; and
- additional extended hours are to be negotiated.

1(d) Improving operational decision-making in the claims adjudication process so as to reduce the number of appeals at the tribunal level.

Under the Claims Transformation Program, the WCB has:

- implemented a decision-making policy in 2019 to provide staff with more flexibility to address unique situations;
- initiated a QA program for adjudication decisions, with an expected roll-out in 2023.

1(e) Developing open and clearly written communication to provide to injured workers.

Under the Claims Transformation Program, the WCB has:

- developed fact sheets and new claim information packages;
- centralized administrative support to provide consistency;
- redesigned the website to make it more user friendly; and
- increased verbal contact with customers.

1(f) Minimizing the number of case workers per claim.

Under the Claims Transformation Program, the WCB has:

- adopted a principle of, whenever possible, one case manager handles a claim;
- assigned a consistent case worker for all catastrophic, cancer, psychological and fatality claims; and
- been piloting new processes for all adjudication and case management to fall under the same case manager. Recommendations and implications for broader implementation will be determined in 2022.

1(g) Shortening the length of time from date of injury to initial payment by half.

Under the Claims Transformation Program, the WCB has reorganized workflow to have all payment roles function under one team and to create efficiencies in standard processes:

- Average time from claim registration to first payment decreased from 35 days at the end of December 2021 to 27 days at the end of March 2022.
- The next opportunity is to reduce time to the initial decision, which will speed up the payment processes.

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

2(a) Investing time in improving performance by gauging the effectiveness of WCB against its performance metrics.

Organization-wide metrics have been adopted with the support of the WCB Board.

2(b) Developing a formal skill set matrix and recruitment process for choosing Board members.

The WCB has prepared a skills matrix and orientation approach for Board members. The recruitment of Board members is at the discretion of the minister.

2(c) 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.

Two part-time Board members have been appointed, effective January 1, 2022.

The WCB has identified and prepared:

- training requirements for part-time Board members; and
- a governance policy and a part-time Board members' orientation manual.

3. Significantly reduce the average number of days to a decision and communicate clearly with appellants throughout the process. This can be achieved through:

3(a) Providing clear communication and explanation of appeal decisions including the explanation of medical information.

Through the CPI process, clear communication standards have been developed. A quality/trainer role has been created and filled in 2022.

3(b) Ensuring Board level appeals are to be decided within 30 days of the hearing.

Since 2015, the time to decide Board appeal tribunal decisions has decreased by 56 per cent.

3(c) Providing training for front-line staff to alleviate the number of appeals at all levels.

The WCB has adopted a policy that provides more discretion for staff with respect to policy interpretation and application. The appeals manager meets with internal staff and other leaders on a regular basis to identify areas of opportunity. It is expected that the new quality/trainer role will further identify areas for improvement.

4. Strengthen the Psychological Injury Policy (POL 01/2009) regarding Post Traumatic Stress Disorder and mental health coverage for Saskatchewan workers by:

4(a) Updating the policy to define coverage for PTSD and mental health.

The Act was amended in 2016 to establish a rebuttable presumption for workers experiencing psychological injuries caused by workplace trauma. The policy was updated in 2017 and is currently under review for further enhancements.

4(b) Employing caseworkers dedicated specifically to psychological injury claims.

In 2019, the WCB developed a specialized unit focused on adjudicating and managing psychological injury claims.

5. Assign fatality service specialists to assist individuals and families affected by workplace fatalities and minimize the number of caseworkers per claim.

The WCB created a specialized services unit, where three staff manage fatality, cancer-related and catastrophic injury claims.

6. Coordinate benefits between the WCB and SGI to ensure that no worker is disadvantaged in the event of a work-related motor vehicle accident.

A review was conducted regarding benefits. WCB recommends that policies regarding MVAs remain the same, to avoid creating inequity between WCB claimants. Currently, SGI provides top-up where their benefits are greater than those provided by WCB.

7. Repeal sections 173 and 174 of *The Workers' Compensation Act, 2013* to comply with the provisions of *The Freedom of Information and Protection of Privacy Act* (FOIPP) and update the WCB's privacy policy to align with the changes.

The provision in section 173 of the Act stating that a worker can only use their file for the purposes of an appeal was removed from the section. Sections 173 and 174 were not repealed as amendments to FOIPP in 2018 brought the two acts into alignment.

8. Establish an Employer Resource Centre, coordinated through the Office of the Workers' Advocate, dedicated to helping employers navigate the workers' compensation system.

An employer resource working group was convened in mid-2018 to investigate the gaps in supports for

employers navigating the workers' compensation system. As a result of its findings:

- the Employers Resource Centre was established in September 2019;
- a dedicated webpage, email address and toll-free number were established;
- data processing clerks from Employer Services and accounts managers in Prevention manage inquiries; and
- a strategy is being developed to increase the profile of the services available to employers.

9. Increase transparency and awareness so that the public understands the application of the surplus in the Funding Policy (POL 01/2014) through:

9(a) Consulting with stakeholders at the Annual General Meeting.

Consultations took place at the 2016 and 2017 regarding policies related to surplus funding.

9(b) Consulting with stakeholders, specifically employers respecting the Funding Policy (PO 01/2014).

Consultations were held with employers in 2015 and 2016 when surplus distribution occurred.

10. Ensure that best practices are fair and equitable for all employers and not excessively punitive for small employers. This can be achieved through:

10(a) Educating and ensuring the Rate Review Committee has the skill sets necessary to conduct their review.

The WCB conducted education to ensure the Rate Review Committee had the skill set to conduct their review. A review was scheduled for 2020 but was deferred because of the impact of the pandemic on employers. A broader review is on hold until recommendations are received from the 2021-22 COR.

10(b) Analyzing changes to the standard discount to alleviate the potential for unintended consequences prior to implementation.

As part of the 2021-22 Experience Rate Review, an analysis was conducted on changes to the standard discount to identify potential unintended consequences.

11. Strengthen ongoing communication with stakeholders regarding COR recommendations and implementation. This could be achieved through:

11(a) Making the COR report a more prominent agenda item at the Annual General Meeting.

An update on progress on COR recommendations has been included in the annual report since 2016. The recommendations are referenced at AGMs but are not a specific agenda item.

11(b) Providing stakeholders with a rationale for Committee of Review recommendation decisions made by the WCB.

As above.

What would be beneficial in reporting updates for COR recommendations is to have the material from the annual report replicated on the Saskatchewan WCB website. The website page contains less detail than the annual report. If an individual is just researching material on the website page, they would not get a full appreciation of the work done by the WCB over a period of years.

Some of the same themes within the 11 recommendations made by the 2016 COR appear in our 2022 report. These areas include customer service, appeals, psychological injury, coordination of policy between the Saskatchewan WCB and SGI and privacy policies.

Chapter 4 - Themes and Recommendations

Through the course of reading the submissions, listening to the presentations at the hearings and in discussions with stakeholders we were able to group issues presented to us based on four themes.

This chapter will summarize the issues and provide our recommendations in the following four themed sections:

- 4.1 Policies and Coverage**
- 4.2 Health and Wellness**
- 4.3 Customer Service and Communication**
- 4.4 Appeals**

4.1 Policies and Coverage

Policy brings order to organizations, uniformity and consistency to decisions, and effectiveness and compliance to programs. Policies must fit within the boundaries of the legislation that governs the organization. Policy also serves as a communication tool. Clients and users of a service or program have access to policy that advises them of the rules. It is a roadmap.

The Saskatchewan WCB Policy and Procedures Manual constitutes the day-to-day decision-making framework and authority for all staff decisions and actions. As of writing this report, there are 340 policies and procedures in the manual.

The development of new policy or amendments to existing policy should consider engaging stakeholders in a consultation process. Having stakeholder input on new policy drafts or proposed changes to existing policy makes good business sense and allows for discussion and feedback. It builds transparency and trust and strengthens relationships with stakeholders. Consultation should not be required for non-substantive changes or changes required because of legal requirements. There are a number of existing models used for engaging stakeholders including using policy advisory groups, expert committees and inviting website feedback within a defined period of time. The Workers' Compensation Board of Alberta has developed a model for stakeholder consultation which the Saskatchewan WCB should consider adopting.

The COR received a number of submissions related to policies and procedures. Issues included students in work-based learning programs, comparison of benefits between Saskatchewan WCB and SGI, permanent impairment, death benefits, definitions of a worker and a director of a corporation, prevention programs and access to workers' records.

4.1.1 Students in Work-based Learning Programs

The Saskatchewan WCA and regulations do not specifically cover students in work-based learning programs. The gap in legislation poses challenges and potential risks to the Saskatchewan WCB, K-12 schools, post-secondary institutions and employers who support students in work-based learning programs. Many other provinces provide workers' compensation coverage to students through legislation. Three Saskatchewan government ministries (Advanced Education, Education and Immigration and Career Training) each sign a Memorandum of Understanding (MOU) with the Saskatchewan WCB to ensure that students are insured.

The Ministry of Advanced Education noted in their submission that since 1990 this arrangement has provided coverage to tens of thousands of Saskatchewan-based post-secondary students while they were undertaking unpaid work-integrated learning assignments. The current arrangement of using MOUs is a risk and has not been tested in a court of law should a case be brought forward due to a student injury or fatality. The Ministry of Advanced Education commented that for students to opt into WCB coverage, they are required to sign consent and waiver of liability forms. This requires the post-secondary institution where they are enrolled to collect and manage these records. The forms need to be completed before the student starts their learning assignment.

Recommendation One

Make legislative changes to cover work-based learning programs by providing workers' compensation benefits to students.

4.1.2 Saskatchewan WCB and SGI Benefits

The Saskatchewan WCB and SGI both provide no fault insurance to their clients. Injury benefits are provided regardless of fault. When a work-related injury occurs in a vehicle, there is a coordination of benefits between Saskatchewan WCB and SGI. There are similarities between the two organizations, for example: in the way claims are handled, safety awareness activities, income benefit calculations and appeal processes. Through submissions and our conversations, we did hear about the differences between the two organizations on benefits provided to injured workers or to the families of individuals who experienced fatalities. Where the differences are the most apparent is for permanent impairment and benefits provided due to a fatality.

4.1.2(1) Permanent Impairment

The amount awarded by the Saskatchewan WCB for permanent impairment has not changed since 2003 and is one of the lowest in Canada. Section 66 of *The Workers' Compensation Act, 2013* authorizes the Saskatchewan WCB to establish a rating schedule to calculate a permanent functional impairment (PFI) award. It also established the minimum and maximum awards payable for PFI, subject to the legislation in effect on the date of the determination of the award.

Subsection 66(2) of the Act states:

- (a) Prior to January 1, 2003, the minimum amount awarded will be at least \$1,100 and the maximum not more than \$22,600; and
- (b) On or after January 1, 2003, the minimum award will be no less than \$2,200 and the maximum not more than \$45,200.

The PFI was established to award a worker who suffers a permanent impairment as the result of their work injury. This is a one-time lump sum payment in addition to their regular compensation benefits. The Saskatchewan WCB uses the American Medical Association's (AMA's) Guides to the Evaluation of Permanent Impairment (AMA Guides) as their rating schedule, consistent with other jurisdictions. Once a worker is deemed to reach maximum medical improvement, WCB medical services will provide PFI evaluations based on the most current edition of the AMA Guides.

The AMA Guides is widely used to rate impairment in workers' compensation, automobile accident and personal injury cases. The rating system has evolved over its six editions, from measures that were focused on pain and range of motion to measures that are a direct measure of a function (e.g., can a person perform a specific task). As a result of these changes, significantly different impairment ratings may be determined, depending on the version of the AMA guide that is being used.

Workers' compensation systems in Saskatchewan, Prince Edward Island, Northwest Territories/Nunavut and Yukon automatically adopt the most up-to-date guidelines when they are published (currently the sixth edition, 2007). Ontario, by legislation, currently uses the third edition published in 1991 and Nova Scotia uses the fourth (1993). The remaining jurisdictions use their own tables, referencing the AMA Guides when their guides don't include a specific impairment. We commend Saskatchewan for adopting the most updated information from the AMA guide.

The rating of impairment calculated using the AMA Guides determines the percentage value of the impairment, with the most serious impairments receiving the highest percentages. A higher payment is made to those who suffer a catastrophic injury which could include quadriplegia, paraplegia, severe brain injury, loss of limbs, or a combination of impairments. While the Saskatchewan WCB uses the AMA Guides as their rating schedule to be consistent with other jurisdictions, their maximum award payable is not consistent with other jurisdictions. Several jurisdictions relate the maximum award to their maximum earnings, whereas Saskatchewan identifies minimum amounts to be awarded and caps the maximum amounts (subsection 66(2) of the Act).

Table 4.1 Jurisdictional Scan – Permanent Functional Impairment

	Type of Award	Amount of Award	Criteria for Evaluation
AB	Monthly benefit	Calculated using rate of impairment and worker's income prior to injury; cannot exceed maximum annual earnings for the year of accident.	Alberta Permanent Clinical Impairment Guide
BC	Monthly benefit	Calculated using rate of impairment and worker's potential earnings (3-5 years); no set minimum or maximum.	The Permanent Disability Evaluation Schedule
MB	One-time lump-sum payment	Calculated using rate of impairment and worker's income prior to injury; cannot exceed maximum annual earnings for the year of accident.	The Permanent Impairment Rating Schedule
NB	One-time lump-sum payment	Calculated using rate of impairment and worker's income. Minimum award is \$500 and cannot exceed the maximum annual earnings for the year of accident.	Permanent Physical Impairment Rating Schedule
NL	One-time lump-sum payment	Calculated using rate of impairment and worker's income prior to injury; no set minimum or maximum.	Permanent Functional Impairment Rating Schedule

	Type of Award	Amount of Award	Criteria for Evaluation
NS	Monthly benefit	Calculated using rate of impairment and worker's income prior to injury; cannot exceed maximum annual earnings for the year of accident.	<i>AMA Guides to Evaluation of Permanent Impairment, Fourth Edition</i>
NT/NU	Monthly benefit (under review)	Calculated using rate of impairment and worker's income prior to injury; cannot exceed maximum annual earnings for the year of accident.	<i>AMA Guides to Evaluation of Permanent Impairment, Sixth Edition</i>
ON	Monthly benefit	Calculated using rate of impairment and worker's income prior to injury; cannot exceed maximum annual earnings for the year of accident.	<i>AMA Guides to Evaluation of Permanent Impairment, Third Edition</i>
PE	One-time lump-sum payment	Calculated using rate of impairment and worker's income. Minimum award is \$500 and cannot exceed the maximum annual earnings for the year of accident.	<i>AMA Guides to Evaluation of Permanent Impairment, Sixth Edition</i>
QC	One-time lump-sum payment		Schedule A Impairment Schedule
SK	One-time lump-sum payment	Calculated using a percentage rating based on maximum award of \$45,200. Minimum payment is \$2,200.	<i>AMA Guides to Evaluation of Permanent Impairment, Sixth Edition</i>
YT	One-time lump-sum payment	Calculated using rate of impairment and worker's income prior to injury; cannot exceed maximum annual earnings for the year of accident.	<i>AMA Guides to Evaluation of Permanent Impairment, Sixth Edition</i>

The SGI no-fault insurance system for injuries resulting from a motor vehicle collision is also a rehabilitation-based model offering benefits that parallel those under the workers' compensation system. Permanent Impairment Payment (PIP) is a lump sum payment if individuals sustain a permanent impairment as the result of a motor vehicle collision. The maximum payable under PIP for catastrophic injuries is \$258,915 and the maximum for other permanent injuries is \$211,990. This difference in the lump sum payment awards between WCB and SGI is commonly noted by injured workers.

Table 4.2 – Benefit Comparison between WCB and SGI

Permanent Functional Impairment	Saskatchewan Government Insurance	Saskatchewan Workers' Compensation Board
Catastrophic injury	\$258,915 maximum payment	\$45,200 maximum payment
Other permanent injuries	\$211,990 maximum payment	Not specified

Recommendation Two

Increase the minimum and maximum awards payable for permanent functional impairment in order to provide fairer compensation for permanently injured workers. The maximum award should be calculated using rate of impairment, reflects the worker's actual annual earnings and cannot exceed the worker's annual earnings in the year that the accident occurred.

4.1.2(1) Death Benefits

If a worker suffers a work-related fatality, *The Workers' Compensation Act, 2013* directs the Saskatchewan WCB to provide:

- an amount to assist with the necessary expenses of the death of the worker, including burial expenses (clause 80(2)(a));
- an amount to cover transportation of the workers' body to his or her usual place of residence within Canada (clause 80(2)(b)); and
- benefits, re-employment assistance and educational allowances to dependents (sections 81-90).

Saskatchewan WCB Policy (POL 05/2019) further elaborates and provides information on the support that families receive when a work-related injury occurs. WCB may provide:

- an amount to cover the necessary expenses to transport the worker's body to their usual place of residence (i.e., the community or location in the province or territory where the worker's family resides). A worker's usual place of residence is not necessarily the community or location where they were working;
- counselling for immediate family members including any costs to travel outside the family's home community; and
- other support as determined on a case-by-case basis (e.g., travel, lodging, meals, childcare, etc).

In their submission, the Saskatchewan WCB noted that they would like to change subsection 80(2) of the Act, to extend coverage of transportation of the worker's body to his or her usual place of residence, regardless if outside Canada, where it is requested by the family of the deceased.

Two submissions highlighted areas regarding death benefits. The first submission was from a mother of a 19-year-old worker who suffered a workplace fatality. In her submission, she noted that because her son was 19 years old, with no dependents but left a family behind, the estate of the deceased was not entitled to any benefits such as the one-time payment. This is in comparison to SGI's no-fault coverage which provides \$33,917 to the estate of the deceased person if less than 21 years of age with no dependents. SGI also provides payment options to an estate of a deceased individual with no spouse, dependent or no dependent, no parent or parent, or non-dependent child.

The second submission regarding death benefits was from OWA. In their submission, the OWA noted that section 93 of the Act is inequitable. Section 93 recognizes that the death of a worker (who is on compensation) for causes apart from their work injury, and the sudden end of compensation can leave a dependent spouse and children in a difficult circumstance.

If the worker was receiving compensation for 24 months or less prior to their death, subsection 93(1) provides support equal to the compensation the worker was receiving to be extended to a dependent spouse or a dependent child for a period of three months. In cases where a worker was in receipt of compensation for a period exceeding 24 months prior to their death, subsection 93(3) recognizes a greater duration of compensation for the dependent spouse only for a period of 12 months. However, subsection 93(3) does not provide for any benefits to be extended to dependent children after the death of a worker where the worker was receiving compensation for a period exceeding 24 months prior to their death.

OWA has stated that it is inequitable to extend support to a dependent child for three months when there is a lesser reliance on the short-term compensation provided by the WCB and to then provide no support to dependent children when long-term compensation creates a greater reliance. OWA believes that WCB should amend section 93 by adding a similar or same provision as clause 93(1)(b). In so doing, all dependent children whose injured worker parent dies of a condition other than the work injury would receive compensation whether the injured worker parent received benefits for less or more than 24 months.

Recommendation Three

Amend subsection 80(2) of the Act to extend coverage of transportation of the worker's body to his or her usual place of residence, regardless of if outside Canada, where it is requested by the family of the deceased.

Recommendation Four

Provide death benefits such as a one-time payment to the estate of a deceased worker who has no dependents, no parents or who has parents, non-dependent child.

Recommendation Five

Amend subsection 93(3) of the Act to add a similar or same provision as clause 93(1)(b) in order to provide equitable compensation to a worker's dependent children or other dependents regardless of if the injured worker parent had received benefits for less or more than 24 months before the worker passed away from a non-work-related injury.

4.1.3 No-Fault Insurance and New Zealand

To add to the discussion on no fault insurance programs, how they are administered, and Saskatchewan's two no-fault programs offered by WCB and SGI, we would like to highlight New Zealand. The New Zealand system has both supporters and detractors.

New Zealand has a long history in providing accident compensation to its citizens. In 1900, New Zealand created a no-fault system under the *Workers' Compensation Act*. Over decades the Act would evolve including its name and what it covered. A number of studies were done over the years by the New Zealand government to refine and adjust compensation programs and support. The *Accident Compensation Act, 2001* provides the authority to cover all New Zealanders if they are involved in an accident. The New Zealand Accident Compensation Corporation, a Crown entity, is responsible for providing a no-fault insurance program that covers everyone including children, students, adults, unemployed, retired and visitors who have suffered an injury.

We are not suggesting that WCB and SGI should be combined as one entity, but research and investigation opportunities should be considered for joint sharing of delivery or processes.

Table 4.3 Benefit Comparison Between WCB and SGI

Death Benefits	Saskatchewan Government Insurance	Saskatchewan Workers' Compensation Board
Funeral payment	\$11,094 maximum	\$14,002 maximum
Grief counselling	\$5,428 maximum	Maximum not specified
Spouse/dependents	\$76,317 maximum	Maximum not specified
One dependent	\$33 minimum/week	\$469.81/month
Two dependents	\$62 minimum/week	\$442/month/child
Three dependents	\$72 minimum/week	\$442/month/child
Four dependents or more	\$83 minimum/week	\$442/month/child
No spouse, dependent, parent or non-dependent child	\$16,598 to estate	N/A
No spouse/dependent but leaves a parent or non-dependent child	Maximum per survivor total payment	N/A
Less than 21 years, no dependents	\$33,917 to estate	N/A
Financial counselling	\$1,479 maximum	N/A
Vocational counselling	\$738 maximum	Maximum not specified
Spouse education	\$50,877 maximum	Maximum not specified

4.1.4 Definition of a Worker

The definition of a worker has changed over the years. Some people may be employed in multiple jobs including as an independent worker for a company. They may also be a contractor in a WCB insured occupation who has one employee and are considered an independent worker.

In their submission, SaskPower suggested a review of the definition of an independent worker and to allow for these workers to access WCB coverage for self-insurance versus the Saskatchewan WCB assigning coverage to the hiring company. According to Independent Worker Coverage (PRO 13/2020), personal coverage is granted to an independent worker if they are involved in multiple contracts within a particular industry within the current and past three years. What may be at issue is whether the independent contractor is in a true employer-employee relationship, and what amount of work is being done by the independent contractor for one particular employer.

The world of work is changing, and we see it especially with gig workers and platform workers. Our regulatory systems have been based on the traditional employer-employee relationship. The lines are starting to blur, and this is affecting employees and employers across all occupations. This affects benefits, pensions, workplace safety and workers' compensation programs.

We don't have solutions but know that this is a subject matter that needs addressing by employers and regulators.

4.1.5 Excluded Industries and Occupations

Section three of *The Workers' Compensation Miscellaneous Regulations* lists the industries and occupations excluded from the provisions of the Act. The COR believes that the Saskatchewan WCB should consult with industry organizations and associations to review section three of the regulations. There may be some industries and occupations that need to be considered for inclusion under the provisions of the Act. The last change to this section of the regulations was done in 2015. With the changes in technologies, safety and risk in some occupations, it would be beneficial to have a discussion on what industries and occupations be included or excluded from provisions of the Act. The COR also considered whether workers employed in the excluded occupations are aware that they are not covered by the provisions of the Act and whether their employer has provided for another form of insurance.

Recommendation Six

Review section three of the Regulations to update industries and occupations currently included or excluded from the Act that should be considered for inclusion.

Recommendation Seven

Encourage employers to advise workers employed in the excluded occupations that they are not covered by the provisions of the Act.

4.1.6 Directors of a Corporation

In a discussion with a Saskatchewan WCB employee about T4 wages and WCB coverage there seems to be confusion for directors of a corporation between mandatory coverage, optional personal coverage, receiving T4 wages and a claim being made by the director for a workplace injury. An executive officer is considered a director under the policies. The current policies allow for directors to opt in to receiving personal coverage if they are not receiving T4s. Circumstances can become confusing if they are an independent worker, are the sole director of the corporation or determine each year what they will pay themselves for a T4 and are involved in a workplace injury.

Here is background on current definitions for a director:

A director, also referred to as an executive officer in the Act, means a person chosen to control or govern the affairs of a limited company or corporation and who is registered as a director of the corporation. A director who is not active in the business is not considered a worker in the scope of the Act and personal coverage is not required. An inactive director is someone who does not perform any duties relating to the day-to-day operations of the corporation (POL 14/2014).

A director of a corporation who hires a worker(s) or contractor(s) and does not report assessable earnings on a T4, T4A or T5018 are not automatically covered under the Act but may elect optional personal coverage (Employer Coverage POL 12/2020).

Furthermore, a non-employing proprietor, partner, or director of a corporation not reporting assessable earnings on a T4, T4A or T5018, when not under contract for service with a principal and has no other means of availing coverage under the Act may apply for optional personal coverage (*General Regulations*, section 14) (POL 12/2020).

There are gaps in the current Saskatchewan WCB policies for directors as some directors will give themselves a T4 amount that is very low for tax purposes. If they are injured, they can only be covered by WCB up to that

amount. They are required to send in the previous year's T4 as well as either pay stubs from the current year or a statement from the director's accountant confirming that they will receive a T4 for the current year and the amount of coverage. The amount on a T4 from a corporation may not be determined until the end of the current tax year. Once this information is received, revisions are made retroactively, and, in a sense the current policy allows for injured directors to get coverage after the incident occurred. This is contrary to most insurance schemes; applying for coverage after an injury or an event occurs.

A loophole is created when a non-employing director issues themselves wages on a T4 through their corporation. To qualify as an Independent Worker (POL 13/2020), one must be involved in multiple contracts with at least two individuals or businesses. However, directors may issue themselves a T4, thus making themselves an employer and their registration is then mandatory. Now someone who may not be independent of the operations is shouldering the costs of premiums, which is a risk to the historic compromise on which WCB is built.

In both Alberta and Manitoba, WCB policies are clear in their definition of a worker and when this individual is a director of a corporation and performing the work as part of the business of the employer. They use clear wording in their respective acts that minimize or eliminate loopholes.

Subclause 2(1)(ii)(iii) of the Act includes a definition of workers as "an executive officer of an employer, if that executive officer is carried on the employer's payroll." To ease the confusion of a definition of a director, consideration should be given to remove the wording of executive officer from the definition of worker in the Act and coverage for a director could be similar to that provided to an owner or partner. This would eliminate loopholes and increase accountability to directors as coverage would be not mandatory and they would have to report and pay their premiums on time.

Recommendation Eight

Amend subclause 2(1)(ii)(iii) of the Act under the definition of a worker to remove the wording of executive officer. Coverage for a director could be similar to that provided to an owner or partner per General Regulations section 14 and POL 12/2020.

4.1.7 Prevention Programs

Workplace safety is the responsibility of everyone, and each has a role to play, from the individual worker to their workplace, to their industry, to the safety organizations to the Saskatchewan WCB, to government.

Formed in 2002, WorkSafe Saskatchewan is a partnership between the WCB and LRWS. Mission: Zero is its call to action to achieve zero workplace injuries, zero fatalities and zero suffering by families. WorkSafe Saskatchewan released its 2022-2027 Strategic and Operational Plan on April 21, 2022.

Each year, approximately 3,200 youth under the age of 25 are injured on the job in Saskatchewan with an average of two dying from a workplace incident. In 2021, there were 2,828 youth injuries, a 6.36 per cent increase from the 2,659 youth injuries in 2020. The 2021 youth injuries represent 15.80 per cent of all injury claims accepted by the Saskatchewan WCB. There was one youth fatality in 2021, an increase from zero in 2020.

Table 4.4 Youth Serious and Fatal Injury Claims

Year	Serious Injury Under 25	Serious Injury Total Claims	Youth as Per Cent of Total Serious Injury	Fatal Injury Under 25	Fatal Injury Total Claims	Youth as Per Cent of Total Fatal Injury
2017	200	2,492	8%	1	27	3.7%
2018	179	2,616	6.8%	4	48	8.3%
2019	192	2,689	7.1%	2	36	5.6%
2020	156	2,387	6.5%	0	34	0%
2021	173	2,285	7.57%	2	31	6.4%

Raising awareness of injury prevention for youth is extremely important. For youth embarking on their first job, having an understanding before they start work can result in awareness, development of good safety habits and the prevention of accidents. WorkSafe Saskatchewan provides training to youth, their teachers and employers using various means of communication including face-to-face meetings and presentations.

WorkSafe Saskatchewan, the Saskatchewan Federation of Labour and LRWS are working together on a program “Ready for Work”. Under employment standards legislation, 14 and 15 year-olds are required to complete the Young Workers Readiness Certificate Course before starting work in Saskatchewan.

Established in 1955, the Saskatchewan Safety Council delivers a number of safety training, programs and services across Saskatchewan. One of their strategies, the Community Safety Education Strategy, focuses on injury prevention, safety resources and supports for Saskatchewan children and youth. Creating positive behaviours in the areas of injury prevention has a lifelong effect throughout the lives of young people. The Saskatchewan Safety Council signed a MOU with the Ministry of Education in 2021. Developing a career safety education program where youth can obtain free employment safety training and an opportunity to receive a high school credit is only one example of the initiatives undertaken.

In April 2022, the Government of Saskatchewan announced that it is working with the Saskatchewan Safety Council to provide more opportunities for students in K-12 to learn about safety and injury prevention. The Saskatchewan Safety Council has been reviewing education curriculum on strengthening injury prevention and safety procedures in areas such as practical and applied arts, tourism, hairstyling and esthetics, food studies, electrical and electronics, emergency services, agriculture production, machining and wildlife management.

We can find a number of partnerships involving educational training institutes and communities. Here are two examples:

The Dumont Technical Institute (DTI) and the New Southern Plains Metis Local #160's Lakeview Centre have partnered to develop a multi-sector ticket training course to prepare individuals to go into the workforce. The training, held in March 2022, covered a number of areas including safety while using powered mobile equipment, first aid, CPR, fall protection, fire extinguishers, asbestos awareness, general mine safety and Workplace Hazardous Materials Information System (WHMIS).

In May 2022, Parkland College and the Saskatchewan Safety Council signed a partnership agreement to work together in providing industrial firefighter training to meet the needs of emergency response teams at industrial worksites throughout the province. This partnership allows a three-prong education approach for all industrial emergency responders that includes training, regular practice and recognized certification.

There are seven safety associations that represent 18 rate codes in Saskatchewan, and they receive funding through premiums provided by the employer. The safety associations can be an effective approach to injury prevention in the industries that they cover. We received a number of letters from businesses and organizations regarding the relationship between the safety associations and the Saskatchewan WCB. The COR has not taken a position in this situation, believing these issues need to be discussed between the two parties.

In their submission, the Saskatchewan WCB indicated that they believe it would be beneficial to provide them with an injury prevention mandate embedded in the Act. This would prevent any potential challenges to their support of injury prevention. They suggest changes to section 146 of the Act and would use language that does not conflict with the role of the OHS Branch in LRWS.

Recommendation Nine

Encourage the continuation of safety programs for youth and to be made available throughout high schools in Saskatchewan. The safety associations should be involved in joint efforts with WorkSafe Saskatchewan and the Saskatchewan Safety Council in these youth safety programs.

4.1.8 Access to Workers' Records

The issue of information sharing of workers' medical information with employers was raised in several submissions. Sharing medical information to help employers with return to work for their workers and planning for accommodation is prescribed in section 174 of the Act. The personal and private nature of information in its claims files requires the Saskatchewan WCB to be discrete in the sharing of this material. The onus is also on the employer to handle this information only for the purposes of reconsideration and review. The Act further requires that the worker be given notice of the request by the employer and the information that the WCB plans to share. The worker can then make an objection to the sharing of this information.

The Saskatchewan Information and Privacy Commissioner suggested in their submission that two sections of the Act need to align with language in *The Health Information Protection Act* (HIPA). Subsection 173(4) of the Act should mirror subsection 38(1) of HIPA so that the same level of standard is applied to sensitive health information. The Information and Privacy Commissioner also suggested that subsection 174(3) be added to the list of administrative penalties in subsection 183(1). If an employer contravenes subsection 174(3), the employer would be held accountable by the Saskatchewan WCB for any breach of privacy involving the worker's information. Currently, there is no consequence if an employer breaches the worker's privacy.

The submission by Jennifer Chouinard and David Samuel spoke about the issue of psychological harm that could result when personal information is shared. They also noted that where WCB has developed a definition for 'relevant' information in workplace injury claims, it has not developed a clear definition for what is 'personal' or 'sensitive' in psychological injury claims. They cite that any documentation where public safety personnel discuss traumatic events on the job should be considered as sensitive personal information. Chouinard and Samuel would like to see a narrow scope for information sharing under section 174 that would not impact the psychological safety of the injured worker.

In their submission, the Saskatchewan WCB commented that the current wording of section 174 of the Act (employer's access to information), creates a cumbersome and time-consuming process. Delays due to the back-and-forth discussions between the worker and the Saskatchewan WCB on what information gets provided to the employer may affect the worker's rehabilitation and return to work. The Saskatchewan WCB feels it could do a better job with appropriate training, processes and technology in providing information to the employer while still following privacy legislation and not disclosing any unnecessary personal medical information.

The Saskatchewan WCB proposes that it would make the decision on what is provided to the employer, that the worker would be notified of the request from their employer and would receive copies of the documentation sent to the employer if requested.

If the Saskatchewan WCB takes the initiative in providing specific information on the case of the injured worker to the employer, there needs to be consideration made on protecting the privacy of the injured worker.

Recommendation 10

Amend subsection 173(4) of the Act to mirror subsection 38(1) of HIPA in order to provide the same level of standard to sensitive health information.

Recommendation 11

Add subsection 174(3) of the Act to the list of administrative penalties in subsection 183(1) to create accountability if an employer breaches privacy of a worker's information.

Recommendation 12

Any amendments to section 174 of the Act to create an easier process for providing an injured worker's medical information to their employer would require a dispute mechanism for those workers who object to their medical information being shared with their employer.

4.1.9 Provincial Auditor of Saskatchewan

The Provincial Auditor of Saskatchewan conducted a performance audit on the Saskatchewan WCB's processes to administer compensation claims for psychological injury. A number of their recommendations and observations support the material and findings presented in our report.

The following recommendations were made by the Provincial Auditor (2022 Report – Volume 1)

1. Regularly (every three weeks) communicate with psychological injury claimants
2. Make timely (e.g., within 14 business days) psychological injury claim decisions, 57 per cent of the claims tested did not meet the 14-day target
3. Complete ongoing quality reviews for psychological injury claim and appeal files
4. Set formal guidance on what key information is needed for appeals; what to communicate for appeal outcomes; and what claim information to release to employers for appeals.

Some of the observations made in the Provincial Auditor's report dealing with policies and processes in providing information relate to appeals:

- The Saskatchewan WCB does not have documented guidance for what key information appeal officers need to support appeal decisions (e.g., information checklist for Appeals Department staff to consider during an appeal). This increases the risk that appeals officers request unnecessary information, or there is insufficient information in the file which may result in delayed or unsupported appeal decisions.
- The appeals decision template does not provide sufficient guidance to the appeals officers on what information to communicate to stakeholders regarding the results of the appeal and the rationale. Stakeholders may not understand the decision and how it aligns with the policies and legislation if the communication is inconsistent and unclear. This may increase the risk of additional appeals and escalate costs (e.g., Board appeals, additional conversations explaining the decision). The Saskatchewan WCB does not have sufficient guidance for staff on what worker information it expects to release to employers. During an appeal, an employer may request a copy of the worker's claim file which contains information about the claim and the worker's history. This information helps employers make decisions on the claim's impact

(e.g., decision to appeal, apply for cost relief).

- The Saskatchewan WCB has a privacy policy, which sets out the steps to take in sharing claim file information with stakeholders. Information to employers may include the basis for decisions without disclosing specific personal or health information. However, no formal guidance exists for staff in deciding what specific information to provide to employers for purposes of an appeal (e.g., determining what information is relevant to the claim decision).
- The Provincial Auditor concluded that effective processes to administer psychological injury claims minimizes delays in injured workers receiving appropriate support to improve their mental health and return to work.

4.2 Health and Wellness

Before 2020, the word COVID-19 was not in our vocabulary. The world-wide pandemic has impacted both our health and our work. Workers' compensation systems across Canada are dealing with time loss injuries and fatalities due to COVID. In Saskatchewan, for 2021, there were four workplace fatalities directly related to COVID and a 14 per cent increase from 2020 in the time loss injury rate (2.03 per 100 workers). Saskatchewan WCB has stated that the increase has been driven by COVID. They accepted 1,035 compensation claims related to COVID in 2021 as compared to 347 in 2020.

A challenge that is becoming apparent is long-COVID. Saskatchewan WCB clients are experiencing long-COVID symptoms. We know that work-related COVID cases have not all been documented using a standard PCR test. The number of compensation claims may not be realistic to what has actually transpired. Treatment plans and how to address the impact that long-COVID has on both the physical and mental well-being of workers and all Saskatchewan residents is in its infancy. It could take several years to assess the impact and likely have solid medical treatment plans in place. We really don't know the impact, treatments and outcomes for long-COVID.

COVID-19 has had mental health impacts on all of us. With changes to how we live and work, the pandemic has changed our routines and social interactions, may have had a financial impact or created financial pressures and made the future even more unpredictable. Experiences of stress, anxiety, depression, insomnia and substance abuse can show itself in the workplace, and this can lead to workplace injuries and possibly fatalities. This is not just a responsibility of a workers' compensation program but is the responsibility of society as a whole to develop strategies and tools to create coping mechanisms and improve health outcomes.

Three topics are covered in this section - mental health, chronic pain and repetitive strain injury.

4.2.1 Mental Health

Mental health includes our emotional, psychological and social well-being. As stated by the Center for Disease Control, it affects how we think, feel and act, how we handle stress and how we relate to others. When workers are physically hurt doing their work and need to file a claim, it can be an easier process for both the worker and employer than when dealing with a psychological injury claim. When a worker suffers chronic stress, trauma, harassment, bullying or other psychological injuries while on the job, treatment and a return-to-work program can be more difficult.

Saskatchewan workers who are covered by the Act are eligible for compensation and medical treatment if they suffer a psychological injury from being directly exposed to a traumatic event or a series of traumatic events as part of or in the course of their employment. This coverage applies to all industries and occupations covered by the Act.

Saskatchewan WCB has described a single traumatic event or a series of traumatic events to include:

- direct exposure to actual or threatened death or serious injury to a 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; and
- 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.

4.2.1(1) Psychological Injuries

Background

Psychological injuries are not always the result of visible physical injuries. They can be a result of a correctional worker witnessing a violent attack by inmates; a social worker exposed to repeated threats of trauma against children; a first responder assisting with a horrific car crash; or a nurse dealing with a traumatic death of a patient. Psychological injuries can be the result of excessive and unusual stressors that occur over time or one stressor that has lasted for a long time. Furthermore, exposure to violence or potential violence, has been clearly related to PTSD and mental health diagnoses.²

Sometimes though, psychological injuries are the result of a physical injury. A construction worker suffers a spinal injury from a serious fall; a care aide hurts her back from lifting a hospital patient; or a speech pathologist is badly hurt in a vehicle accident while traveling to see a patient. These workers undergo surgeries and rehabilitation but require a new way of moving their body and living their lives. They need to adjust to changes in the way they live. They might start to feel overwhelmed, and they can no longer work in the same way in their chosen field. They may not be supported by current or former co-workers or managers. They become disconnected, and anxiety and depression sets in. These are called secondary psychological injuries.

In 2016, *The Workers' Compensation Act, 2013*, was amended to recognize psychological injury. You need to have a diagnosis by a psychiatrist or psychologist in order to meet the presumptive clause for psychological injury. Workers who are covered by the Act, would be eligible for compensation and medical treatment.

The Workers' Compensation Act, 2013, with the amendment reads as follows:

Presumption of psychological injury

28.1(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 and in the course of the worker's employment.

² Health Sciences Association of British Columbia (2022). Psychological health and safety in the workplace – level one – mental health and the CSA standard. Retrieved July 4, 2022, from <https://www.hsabc.org/news/psychological>

In 2019, the Saskatchewan WCB created a Psychological Injuries Unit to provide better support to workers with these types of claims including quicker access to treatment and acceptance of more claims. It has recently been restructured to improve customer service. A customer care facilitator (a position formerly referred to as a case manager or worker) manages the claim from the initial adjudication through to the return to work. To help with this transition, an outline and onboarding has been developed for the Psychological Injury Unit customer care facilitators. Onboarding training also includes the Foundations of Suicide Intervention webinar course offered through Oaks Mental Health. Oaks is also working on developing a new webinar specifically for the Saskatchewan WCB for assisting those individuals who are distressed, but not at a crisis/suicidal level. This course will be incorporated into the onboarding plan for new staff.

Creating the Psychological Injuries Unit has had a positive impact on claims times by reducing the time to adjudicate and the average days of claim duration. When the psychological injuries unit first started in 2019, it took an average of 30 days to adjudicate these claims and average claim duration was around 75 days. In 2021, average adjudication times were just under 20 days and average claim duration was a little more than 63 days. One of the biggest impacts has been to change the practice of requiring a full mental health assessment prior to approving treatment for the claimed injury. WCB has reduced the use of these assessments and provided faster adjudication and access to treatment.

Complex care cases where a worker has physical and psychological injuries can be more difficult. In a situation such as this, treatment plans have to cover both kinds of injuries. A multi-disciplinary treatment team will review the claim before a treatment program is developed. Chronic psychological injuries are difficult to identify, and compiling issues can create chronic injury.

The duration and complexity of psychological injuries really challenges employers to provide modified work options that can accommodate the injured worker. This leads to extended lost time claims with little opportunity for the employers to be able to return a psychological injured worker to full employment.

Saskatchewan WCB has identified to the COR that psychological claims can be handled in the following ways:

- If the claim comes in as a primary psychological injury, it is triaged to the Psychological Claims Unit where it is adjudicated as either a “traumatic” or “cumulative” injury. Typically, a primary treatment will begin. If it becomes apparent that the primary treatment is not sufficient to restore the abilities of the worker, then a treatment program is considered (this is a similar pattern to other injuries as well). A traumatic event is faster to adjudicate and more straight forward as opposed to cumulative psychological injuries;
- If psychological or cognitive issues are identified but are not the reason for initiating the claim, they are considered as a factor that may need to be addressed to facilitate a successful return to work. If the worker’s recovery is not progressing as expected, then a multi-disciplinary assessment is done where a number of professionals/representatives health care disciplines are assembled to provide their assessment and prescribe a treatment plan. This often results in a secondary or tertiary treatment program, where multiple disciplines (often including psychological treatment) are utilized in an attempt to overcome difficulties in recovery and return to work; and
- If the claim is very complex and difficult, a senior manager with extensive claim experience will assist claims staff and provide guidance.

The COR understands that from the employer’s perspective, with the complexity and lengthy duration of psychological claims, that they are sensitive to acceptance of claims without due diligence by the Saskatchewan WCB case workers. With potential impacts of non-work-related influences on the psychological health of workers, the WCB system needs to assess and provide acceptance of psychological workplace injuries similar to physical injuries. Saskatchewan WCB is sensitive to administer claims within the intentions and legislation provided in section 28 of the Act without causing undue risk to employers by asking them to fund injuries or illnesses that are not arising from and in the course of their employment.

Psychological injuries have increased over the past five years in Saskatchewan especially amongst first responders, correction workers and health care workers. In 2017, there were 174 injuries claimed and in 2021, there were 238.

Table 4.5 Psychological Injury Claims

Psychological Injury Claims	2021	2020	2019	2018	2017
Reported*	578	613	745	537	467
Accepted **	238	274	307	264	174
Accepted time loss	199	222	223	189	134
Average duration in days***	61.3	64.7	64.8	74.1	77.6
Accepted no time loss	39	26	37	27	23
Disallowed	332	339	429	271	288
Cancelled****	0	1	1	0	0
Pending/No decision	8	0	8	2	5

* Number of psychological claims registered in the referencing year.

** Number of psychological claims registered in the year that were accepted as of December 31 of referencing year.

*** Average = total number of days paid in the year over total number of claims with days paid in the year.

****2020 Reported claim count excludes cancelled claims.

In 2020, WorkSafe Saskatchewan formed a partnership with Dr. Joti Samra, a registered psychologist and founder of MyWorkplaceHealth. The goal of this partnership is to develop a long-term strategy that will, in part, provide resources to Saskatchewan employers to help them protect the psychological health of their workers and respond to new injuries and concerns in the workplace. In April 2021, WorkSafe Saskatchewan and Dr. Samra formally launched the Psychological Health and Safety Resource Centre on the WorkSafe website. The centre provides valuable tools and information for implementing practices and procedures in workplaces that address psychological health and safety and return to work. The centre provides information for employers and workers. In the fall of 2021, three new resources targeted to small businesses were added to the website.³

4.2.1(2) Traumatic Events and Cumulative Psychological Injury Claims

Our submissions included two types of psychological injuries of significance - traumatic events and post-traumatic stress disorder (PTSD).

The Canadian Psychology Association has adopted the following definitions for a traumatic event and for PTSD:

An event is considered traumatic if the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death, serious injury, or sexual violence.⁴

Post-traumatic stress disorder, diagnosed by a registered psychologist, is a psychological reaction that can manifest itself after a traumatic event. Symptoms must last more than 30 days for a diagnosis of PTSD to be considered.⁵

³ Saskatchewan Workers' Compensation Board, Employer resource centre. Retrieved July 4, 2022 from <https://www.wcbsask.com/employers>.

⁴ American Psychological Association. (2013). Post-traumatic stress disorder. Retrieved July 4, 2022, from <https://www.apa.org/topics/ptsd>.

⁵ Canadian Psychological Association. "Traumatic stress section: facts about traumatic stress and PTSD." Retrieved July 4, 2022, <https://cpa.ca/sections/traumaticstress/simplefacts/>

A person who develops PTSD will display four types of symptoms:

1. Intrusions, including continually re-experiencing the event through intrusive thoughts or unwanted dreams
2. Avoiding stimuli related to the traumatic event, either consciously or unconsciously
3. Negative cognitions or moods related to oneself or the world around them
4. Hyper-arousal, including irritability, difficulty sleeping, feeling constantly on guard.

It is estimated that 76 per cent of Canadians report having experienced a traumatic event during their lifetime.⁶ Common events that are reported include, but are not limited to, unexpected death of a loved one, sexual assault, and seeing someone badly injured or killed.⁷

It is estimated that about eight per cent of Canadians who experience a traumatic event develop PTSD.⁸ In Canada, the estimated lifetime prevalence rate of PTSD is 9.2 per cent.⁹ The proportion varies greatly according to the type of event and the individual.

A common problem following exposure to trauma can also be major depression. Roughly 50 per cent of individuals with PTSD will also suffer from depression.¹⁰ Other co-morbid disorders may occur: anxiety disorders, substance use disorders, and other health-related conditions.¹¹

Someone who has experienced a traumatic event can develop symptoms of PTSD several months, or even years later. The development of new symptoms may be triggered by a subsequent event such as the anniversary of the event, life transitions, etc.

Presumptive coverage was identified as an issue in submissions notwithstanding the following provisions in the Act: section 28 – Presumption of certain occupational diseases re firefighters, section 28.1 – Presumption of psychological injury and section 27 which is used for other kinds of injuries.

The Saskatchewan Association of Chiefs of Police identified in their submission that employees are frequently not being given the benefit of the doubt that their claim is being adjudicated. The Saskatchewan WCB has been utilizing policy to place the onus on workers that requires them to prove their psychological injury is based on traumatic events. While the presumption is rebuttable, the chiefs of police claim that the WCB staff are utilizing policy to interpret both psychological injury and traumatic event in a narrower manner than the initial intent of the 2016 legislative amendments to the detriment of the workers. The definition of traumatic event and its narrow interpretation excluded the fact that indirect exposure to a traumatic event can cause a psychological injury. Furthermore, the chiefs of police feel that there is a pattern by the claims entitlement specialists to default to only PTSD as a psychological injury, and they are reluctant to accept other Diagnostic and Statistical Manual of Mental Disorders (DSM-5) diagnoses.

The chiefs of police do acknowledge that since adding the presumptive clause in 2016, there has been improvements to the handling of claims for psychological injury, but there are still numerous examples where the denial of benefits and treatment plans have had a negative impact on the police members in Saskatchewan.

6 Ameringen, M., Mancini, C., Patterson, B., & Boyle, M. H. (2008). "Posttraumatic stress disorder in Canada." *CNS Neuroscience & Therapeutics*, 14, 171-181. doi: 10.1111/j.1755-5949.2008.00049.x.

7 Ibid.

8 Canadian Mental Health Association. (2013). 'Posttraumatic stress disorder'. Retrieved July 4, 2022, from <https://cmha.bc.ca/documents/post-traumatic-stress-disorder-2/>

9 Ameringen, M., Mancini, C., Patterson, B., & Boyle, M. H. (2008). "Posttraumatic stress disorder in Canada." *CNS Neuroscience & Therapeutics*, 14, 171-181. doi: 10.1111/j.1755-5949.2008.00049.x.

10 Rytwinski, N. K., Scur, M. D., Feeny, N. C., & Youngstrom, E. A. (2013). "The co-occurrence of major depressive disorder among individuals with posttraumatic stress disorder: a meta-analysis" in *Journal of Traumatic Stress*, 26, 299–309. doi: 10.1002/jts.21814.

11 Brady, K.T., Killeen T.K., Brewerton, T., & Lucerini, S. (2000). "Comorbidity of psychiatric disorders and posttraumatic stress disorder" in *The Journal of Clinical Psychology*, vol. 61, suppl 7. 22-32. National Library of Medicine. PMID: 10795606.

So, is the issue about interpreting what a traumatic event means and is it being defined too narrowly by Saskatchewan WCB staff than what was the original intention? Is there an issue with the interpretation of policy for psychological injuries? Should more training be provided to WCB staff on understanding the nature of psychological injury, expanding the definition of traumatic event and encouraging WCB staff to be more trauma informed when analyzing claims for psychological injuries? WCB staff do not provide treatment but consider medical advice when developing and managing recovery and return to work plans. The Psychological Injury Unit is in its infancy stage and very likely its expertise needs to grow, and they need to get better at what they do.

The lack of treatment availability for psychological injuries and the acceptance of medical opinions by the rehabilitation psychologists was raised in submissions received.

One submission from the Saskatchewan Association of Chiefs of Police wrote about the issue of lack of availability of treatment options for psychological injuries within Saskatchewan. There are no programs in Saskatchewan to treat public safety personnel for psychological injuries specific to these jobs. The chiefs of police recommended that Saskatchewan WCB should fund out-of-province treatment options when that recommendation is made by the medical practitioners. Could WCB establish a network of psychologists or psychiatrists who have expertise in the treatment of psychological injuries of public safety personnel? What can WCB do to partner with public safety agencies to establish better proactive treatment programs? WCB staff would benefit from receiving more communication training on how to talk about trauma and trauma informed care. Comments made by police members are that WCB staff deal better with physical injury claims than psychological injury claims.

The COR heard from health care professionals such as chiropractors and rehabilitation psychologists who stated that they want to be on the multidisciplinary teams for level II and level III treatments. The chiropractors suggested that the assumption by the Saskatchewan WCB that bio-mechanical providers such as chiropractors and physical therapists work interchangeably has led to the exclusion of chiropractors from some treatments.

The COR asked the Saskatchewan WCB to respond to these concerns. They provided the following information:

The Coalition of Physical Rehabilitation Centres of Saskatchewan (CPRCS) represents clinics and assessment teams that provide secondary, tertiary, mental health programs and multi-disciplinary assessment services to WCB (they also do something similar with SGI). As of spring 2021, WCB changed the membership requirement within the coalition of rehabilitation clinics to optional in order to align with the requirements for other providers. To date, no assessment teams or clinics have withdrawn from the coalition. The purpose of WCB's agreement with the CPRCS is to ensure the members have input and adhere to the practice and accreditation standards, and to establish the fees that are paid for the services provided. The CPRCS has worked collaboratively with WCB to improve and resolve any practice related concerns. For example, some recent and current collaborations include: COVID-related challenges, revision of the job information worksheet that both employer/employees are required to fill out, updates to the assessment and treatment manuals and an improvement to the process related to notification of planned treatment schedule so WCB can provide more information to employers regarding when an employee will need to be away from work at the start of their treatment program.

The Saskatchewan Coalition of Rehabilitation Psychologists identified a number of concerns including:

- Professional expertise provided in the form of opinions, conclusions, diagnoses and treatment plans has been contested or dismissed by the Saskatchewan WCB. Members have provided examples to their association where psychologists have been asked to engage in practices that are contrary to the professional and ethical standards to which they must adhere. They feel that these experiences have

contributed to the perceived lack of respect for psychologists' opinions, and this can result in negative clinical processes and outcomes for injured workers.

- Rehabilitation psychologists are often tasked with treating serious and complex mental health conditions in a field where there may not always be universally agreed upon standards for 'objective evidence' of function and impairment. The workers referred for such treatment require timely and competent care by highly trained psychologists, which unfortunately, may not be provided due to current gaps in the system.

The Saskatchewan WCB also provided information on some of the concerns raised specifically by the Saskatchewan Coalition of Rehabilitation Psychologists:

The CPRCS is meant to represent all providers within the assessment and treatment teams that are members (which is 100 per cent members at this time). This is to help ensure inclusion of all clinics/providers and transparency. Psychologists are only one profession of a multi-disciplinary assessment and treatment team, and it is important that all care providers and stakeholders are included in these processes. In discussion with CPRCS, WCB has suggested that they could consider having a psychologist join during the WCB/CPRCS quarterly meeting for the agenda item related to mental health. CPRCS has indicated they are working to resolve the concerns related to communication with Saskatchewan Coalition of Rehabilitation Psychologists.

Spring of 2022, Health Care Services (WCB) is planning an interactive process for WCB to gain joint feedback from clinics and psychologists to improve processes related to the delivery and challenges of providing mental health services within the assessment and treatment programs. All feedback, regardless of how it is submitted, will be considered.

Two recent court decisions from the Saskatchewan Court of Queen's Bench illustrates the complexity of psychological injuries, traumatic events and presumption of psychological injury in cases involving police officers.

Court Decision #1

An application for a judicial review (2022/01/11) (2022 SKQB8) was heard by Judge Danyliuk between the estate of Jason Mercer and the Moose Jaw Board of Police Commissioners and the Saskatchewan WCB. Jason Mercer was a police officer in Moose Jaw from 1998 to March 23, 2016, when he died by suicide. During his tenure as a police officer, he was exposed to and dealt with numerous traumatic events. The judicial review was for the decision made by the WCB Appeal Tribunal which determined that the root cause of Jason Mercer's mental health issues was personal in nature and were not predominantly based on workplace traumatic events. The Appeal Tribunal had denied any claims for WCB benefits to the estate of Jason Mercer.

Four issues were considered in this application for judicial review:

- what is the appropriate standard of review to apply to this application;
- what is the applicable legislative framework, and how does it operate;
- was the decision of the Appeal Tribunal unreasonable; and
- if the application is successful, what is the appropriate remedy?

Judge Danyliuk determined that the Appeal Tribunal was not operating in full accord with section 28.1 of the Act. The Tribunal placed undue emphasis on WCB's Policy and Procedure Manual, which in turn was at odds with the statute. WCB also failed to understand and give proper effect to the statutory presumption and assessed the evidence in light of its unreasonable interpretation of the law (paragraph 73 of the decision). The Appeal Tribunal used the test set out in the Policy and Procedure Manual, which is both distinct from the

legislation and is more onerous on the worker, effectively depriving the worker of the benefit of the statutory presumption (paragraph 82 of the decision). WCB acted unreasonably, the Appeal Tribunal held Mercer to a higher standard not set out in section 28.1 of the Act and the onus of the proof of entitlement was on Mercer. The Appeal Tribunal failed to properly assess and account for the totality of the evidence before it.

Judge Danyliuk quashed the decision made by the Appeal Tribunal and returned the matter back to the Appeal Tribunal to be reconsidered.

Court Decision #2

An application of a judicial review (2020/05/13) (SKQB144) was heard by Judge Elson between Constable Jay Pierson and the Estevan Board of Police Commissioners and the Saskatchewan WCB. The judicial review examined a decision made by the Appeals Tribunal on November 27, 2018, denying Jay Pierson's claim for benefits under the provisions of the Act. The central issue was whether Jay Pierson sustained a psychological injury that arose out of, or in the course of his employment. He was a long-term member of the Estevan Police Service (since July 1998) and has been diagnosed with PTSD. The judicial review was based on the Tribunal's consideration, or lack of consideration, to the presumptive clause, section 28.1, set out in the Act. The Tribunal decision reversed an earlier ruling made by an appeals officer on October 31, 2017, which approved Jay Pierson's claim. The central issue in both decisions was whether Jay Pierson sustained psychological injury that arose out of, or in the course of his employment.

Judge Elson found that the Appeal Tribunal did not consider the presumption or its implication to Jay Pierson's claim. The Judge stated that the Appeal Tribunal failed to distinguish between events that 'cause' a psychological condition from those which 'trigger' it. The Judge directed that Jay Pierson's appeal be remitted back to the Appeal Tribunal for a rehearing. As the Judge quashed the Tribunal's decision, and the decision of the Appeals Officer, allowing the applicant's claim for benefits, is extant. The decision allowed for Jay Pierson's entitlement for benefits to continue accordingly.

In their submission to the COR, the Saskatchewan WCB acknowledged that clarity is needed regarding legislation for psychological injuries. Clearer legislation to not only confirm an injury but then retroactively confirm that it occurred in the course of and out of employment would help expedite the issue of presumptive coverage and provide immediate supports. There is frustration with the current misinterpretation of how sections 26 and 27 of the Act apply to sections 28 and 28.1 of the Act. WCB acknowledges that consultation would be done to gather particulars before any legislative changes were drafted.

Recommendation 13

Fund out-of-province treatment options when recommended by a medical practitioner for public safety personnel with psychological injuries who have no job specific medical programs to access in Saskatchewan.

Recommendation 14

Work and partner with public safety agencies to establish better proactive treatment programs for psychological injuries.

Recommendation 15

Provide more trauma informed training including communication tools for Saskatchewan WCB staff who deal with psychological injury claims.

Recommendation 16

Clarify and adjust the legislation for psychological injuries to further address the issue of presumptive coverage in order to provide quicker supports. The Policy and Procedure Manual needs to support the intent of the Act.

4.2.2 Chronic Pain

In March 2019, the federal government established the Canadian Pain Task Force to better understand and address the needs of Canadians who live with pain. The Task Force had a mandate to continue its work through to December 2021 and have released three reports.

An estimated 7.63 million, or one in five Canadians, live with chronic pain - a condition that although often invisible, is now understood as a disease in its own right. It is often interwoven with other chronic conditions and can affect people across their lifetime.

Chronic pain has serious repercussions on physical and mental health, family and community life and society. With the total direct and indirect cost of \$38.3 to \$40.4 billion in 2019, the impact on our economy and workforce is significant.

What does this mean for Saskatchewan? Using the general rule of thumb from the Canadian Pain Task Force reports, with chronic pain being experienced by one in five people for all age groups or one in four for those over 15 years of age, one can see the impact for the Saskatchewan workforce.

Saskatchewan is one of three provinces without chronic pain defined by policy. The issue of chronic pain has been reviewed by a previous COR in 2006 which recommended that Saskatchewan WCB develop, adopt and publish a policy on chronic pain and chronic pain syndrome.

Injured workers dealing with chronic pain and the disability that is a result from the pain are difficult issues faced by a worker's compensation system. Would creating a chronic pain policy assist in obtaining a diagnosis and treatment? Would it make the process more transparent to a worker, an advocate or an employer looking for more information on the topic?

Saskatchewan WCB uses an internal definition of chronic pain as follows:

Chronic pain, by definition, is pain that persists for more than six months, and is any pain, whatever its origin, that recurs or persists over an extended period of time and interferes with functioning.

This is a common and accepted definition amongst other provincial workers' compensation systems. The Continuum of Care policy (POL 08/2014) establishes the guiding principles for a care model. It provides a framework for the coordinated planning and provision of health care and return-to-work plans that are appropriate to each stage of a worker's injury and recovery. There are three levels of assessment that provide increased program complexity, scope and resources depending on the needs of the injured worker.

Creating a policy on chronic pain would make the process more transparent and make it easier for both the worker and employer to find the information. What the COR has noted is that the POL 08/2014 has not been updated since 2014.

To compare how other provincial WCBs document chronic pain in its policies and procedures, see Appendix D.

Recommendation 17

Create a stand-alone chronic pain policy which is similar to what most other provinces have done.

4.2.3 Repetitive Strain Injury

Repetitive strain injury is caused by the repeated use of a body part and is a gradual buildup of damage to tendons, muscles, nerves and other soft tissues from repetitive motions. It is most commonly found in the neck, shoulders forearms, hands, wrists, elbows and lower limbs. Repetitive work activities and/or poor ergonomics may create work injuries. Musculoskeletal disorders (MSDs) is the medical term used for repetitive strain injury.

In 2021, the Nova Scotia Workers' Compensation Board reported that sprains, strains and soft tissue injuries (64 per cent) were the most common way people got hurt at work in Nova Scotia. About 25 per cent of all time-loss injuries were to the back, the most frequently injured part of the body. The Workplace Safety and Insurance Board of Ontario have stated that MSDs account for about half of all allowed lost-time claims. They are the number one type of work related lost-time claim. Between 2009 and 2018, about 190,000 Ontario workers lost time due to sprains and strains. They have calculated that combined the direct and indirect costs are conservatively estimated to be \$19 billion from 1996 to 2006.

Knowing what has been reported in other provinces for MSDs and looking at the top injuries reported by the Saskatchewan WCB (hand, back, leg, body system and arm), you could correctly assume that Saskatchewan would have similar MSDs statistics in the percentage of strains, sprains and soft tissue injuries occurring in the workplace.

During our hearings, we learned of the challenge of not reporting symptoms of a possible repetitive type of injury when it is first noticed. Not reporting the date and time to the employer when the symptoms are first noticed by the worker can create risks of having a claim denied later on when the worker decides that they can no longer do their job. How would a determination be made for the date of injury if the symptoms have been ongoing for a period of time and no proof to substantiate in the claim when the injury first started? A repetitive strain injury needs to be documented when it is first noticed, and the employer notified as one would for an acute injury.

With the high percentage of lost-time claims occurring due to repetitive strain injuries, it is essential to have effective employer health and safety programs to minimize the risk of injuries and workers following safe work practices to protect themselves and their co-workers. These programs need to be routinely reviewed and updated.

4.3 Customer Service and Communication

Two topics raised during our submissions and consultations are those familiar with many organizations – customer service and communication. Customer service and communication are not stand-alone activities; rather they are interconnected, and both need to be done well to be effective.

Providing customer service that satisfies the customer and meets their needs is a never-ending mandate of any organization. The Saskatchewan WCB has recognized that the needs of the province's workers and employers have changed, and they are working to adapt the way they serve their customers. They created a Business Transformation Program to begin this process. This program is a five-to-seven-year plan which will improve and adapt the way the Saskatchewan WCB delivers its products and services. The focus of the transformation

is better customer service including self-serve options and using improved web and mobile technology. If any company wants to make changes, they must engage with their customers to understand their needs. The Saskatchewan WCB started an initiative called the “Voice of the Customer” which serves as a tool to receive feedback from its clients.

Communication occurs both internally within an organization and externally to its customers, stakeholders and the public. It may be one-way, where the information is being provided to the user or two-way, where there is a back-and-forth dialogue or exchange. More and more communication today is being done using technology such as web portals, apps and Internet sites. What makes it more challenging is having access to the technology. Some people don’t have a tablet or a computer and must use a mobile phone to access the Internet and social media. Organizations, including government, are having to rethink the design of their websites to make them more user friendly especially for those using mobile phones to access information and fill out and submit forms.

Limitations imposed by the COVID-19 pandemic created a focus for the WCB to continue to implement improvements to meet the needs of its customers. One such improvement was developing more online services and offering virtual WCB and health-care appointments.

One of the signals for how well an organization functions and provides excellent customer service is employee engagement. Positive employee engagement helps to create a positive culture within an organization. When the culture of the organization is supportive and employees feel good about working there, the behaviours extend to providing good customer service. One of the challenges noted in the employee engagement surveys conducted by the Saskatchewan WCB is staff recruitment and retention. Their end goal needs to be a workplace culture that attracts qualified people who want to work there and grow within the organization. The WCB has identified a number of measures to improve recruitment and retention: modernizing systems and processes through the Business Transformation Program; competitive benefits; more corporate training and talent developmental opportunities for staff; a review of compensation for out-of-scope staff; an in-scope job evaluation project; telework pilot program; a psychological health and safety strategy; increased leadership development and support; and co-op and work placement hiring.

One aspect of modernizing systems and processes within the Saskatchewan WCB is to provide more online services for employers and workers. There is a pilot project underway for the automatic adjudication of claims and to segment claims by risk to ensure that customers receive quicker and more tailored services. As part of the pilot project, the Saskatchewan WCB is also engaging in proactive worker and employer communications which is directed to more active information sharing and recovery and return to work planning.

4.3.1 Customer Service

All of the submissions we received, and the material presented in the public hearings touched on customer service. Everyone had a story, an experience to share. Some had positive experiences while others did not. There is no magic wand to create the perfect environment for the ultimate customer experience. Workers and employers needing to access the Saskatchewan WCB are doing so because they require help. Customer service staff need on-going training in best practices, especially when dealing with individuals who are injured and have unique needs.

In its 2021 annual report, the Saskatchewan WCB states that it strives to eliminate injuries and restore abilities by providing excellent, customer-centred services to workers and employers. Its focus was to continue implementing improvements to stabilize its operations and meet the evolving needs of its customers, especially within the dynamic nature of COVID-19. The Saskatchewan WCB set a goal for 2021 of 38 days for the 12-month average duration of time loss claims. The average duration of claims in 2021 was 40.24 days.

As the largest employer in Saskatchewan, the Saskatchewan Health Authority (SHA) experiences a high percentage of claims, as the highest number accepted by the Saskatchewan WCB are from the SHA which includes hospitals and care homes (3,696 claims in 2021) (note, care homes would include both private and those operated by the SHA). The SHA has a dedicated team to work on claims, along with employees and the Saskatchewan WCB. The SHA felt that efficiency and communication would be improved if it could deal with a dedicated team of adjudicators who are familiar with the health care environment and with the SHA. SaskPower had a similar concern and suggested that case management would improve with a single point of contact with the larger customers.

Recommendation 18

Provide enhanced customer service training to staff which includes how to show compassion and understanding, how to listen, and how to deal with people who are experiencing difficult life situations and who may not get approval for an injury claim.

Recommendation 19

Create a dedicated team of adjudicators to deal with specific employers who submit a large number of injury claims. Dealing with a dedicated team will improve efficiencies and communication as they would be familiar with the employer on an ongoing basis.

4.3.2 Communications

Education and communication with medical providers are key in getting workers back to their job. The SHA suggested that an education and communication strategy with the Saskatchewan Medical Association, the College of Physicians and Surgeons of Saskatchewan, and the Saskatchewan WCB be developed to underscore the obligations/role of the primary practitioner in the return-to-work-process, and the need to provide details on functional abilities, restrictions and limitations of the injured worker.

From our own research and consultations, we believe that the Saskatchewan WCB can simplify their explanations and use diagrams and flow charts for workers and employers. Simplification would result in better understanding of the WCB and decision-making processes when dealing with claims. To help our own understanding of the WCB process, we created several flow charts (See Appendix C).

Material needs to be clear on the Saskatchewan WCB website. Maneuvering around the website and looking for information is neither simple nor easy. Different users are looking for different information. The pamphlet from the Saskatchewan WCB on “Information for the Worker” needs to be more transparent and provide complete information on all available benefits in the same way that SGI does in their pamphlet “Your Guide to No Fault Coverage.”

Inserting a table listing all the benefits that a worker may be entitled to receive would be very helpful. Providing full disclosure and transparency would assist injured workers and employers to understand what is available from the Saskatchewan WCB.

The Saskatchewan Chamber of Commerce noted the need for an increased use of plain language in written communication from the WCB. This is not only for WCB changes, but in communications with employers to discuss policy, claim determination and back-to-work transition plans. The Saskatchewan WCB needs to examine opportunities and ways to improve communication tools with employers.

Two submissions commented on the status and implementation of the previous COR recommendations. There was consensus on increasing and improving communication of the status and implementation of previous COR

recommendations. In their submission, Merit Contractors Association commented that their members believe that previous COR recommendations appeared to have either been partially implemented or ignored. It may be an impression versus reality, but there is skepticism and the WCB communication needs to improve. The Saskatchewan Chamber of Commerce commented on not being provided with rationale about why previous COR recommendations were not implemented. There is not enough transparency. While the Saskatchewan WCB annual reports provide a comprehensive update on the status of the COR recommendations, the WCB website does not. Consideration should be given to providing more detail on the Saskatchewan WCB website for work being done to address the COR recommendations.

4.3.2(1) Communication and Prevention

379

fatalities in Saskatchewan
over
10 years
(2011-2020)

24,737

serious injuries over
10 years
(2011-2020)

#1 cause

of acute fatalities
(2011-2020) was
motor vehicle crashes

72 per cent

of occupational disease
fatalities (2011-2020) were
asbestos-related
(2,500 annually)

28.7 per cent

of all serious injuries
(2011-2020) were
in health care and
transportation

One of the goals of the Ministry of Labour Relations and Workplace Safety (LRWS) is to reduce the provincial time-loss injury rate by 25 per cent by 2030 with the ultimate target of achieving zero time-loss injuries. According to 2021 data, Saskatchewan has a time loss injury rate of 2.03 per cent per 100 workers. A time-loss injury is an injury sustained on the job by a worker, keeps the worker away from work beyond the day of injury and results in the loss of productive work time. If you look at the number of 24,737 serious injuries from 2011 to 2020, 28.7 per cent of all serious injuries were in health care and transportation, and 59.2 per cent of all serious injuries in 2020 were for back, leg, shoulder and arm.

LRWS has identified a number of key actions in high work loss environments to lower the time loss injury rate. Actions include a refresh of the priority employer program to focus on prevention to drive compliance; continue directed inspections with a focus on employers with serious injuries and/or high time-loss injury rates; and work with the Saskatchewan WCB to develop and launch the WorkSafe Saskatchewan Fatalities and Serious Injury Strategy 2022-2027.

To focus on prevention and lowering time-loss rates and serious injuries, good communication is essential. It needs to be directed to both the employer and worker using traditional and non-traditional formats for getting through to audiences. If you want to make an impact in changing people's behaviours, it requires ongoing communication. You have to keep sharing the message, use different stories to tell the message, and keep repeating it until it starts to stick in one's head.

4.3.2(2) Communication and Return-to-Work Program

A return-to-work program is a clearly developed plan to accommodate a work-related injury in the workplace, providing alternate or modified work for injured workers. It is about getting injured workers back to work. The sooner a worker can safely return to their workplace, the better it is for them, their families and their employer. Having a return-to-work plan is a partnership approach between the worker, the employer, the medical care providers and the workers' compensation board.

21 per cent

of occupational disease fatalities (2011-2020) were firefighter cancers

59.2 per cent

of all serious injuries in 2020 were for back, leg, shoulder and arm injuries

18 per cent

of all accepted claims were for hand injuries

WorkSafe Saskatchewan has stated that studies have shown that workers often recover faster and have a better chance of returning to full-time employment if they return with modified work rather than recovering at home. After a six-month absence, there is only a 50 per cent chance that an injured worker will return to the job. After one year, that chance drops to 20 per cent, and after two years, to 10 per cent.

Alternate or modified work duties contained within a return-to-work plan could include reduced working hours or duties; changing tasks, functions, equipment or work area; working from home; training other workers; or upgrading skills and certification.

The Saskatchewan WCB has a return-to-work program and information is provided on its website. It is not apparent if all employers, injured workers, medical practitioners and WCB case workers are aware or understand the full benefits of return-to-work programs and the benefits it can provide.

Recommendation 20

Develop a communication strategy with the Saskatchewan Medical Association, the College of Physicians and Surgeons and Chiropractors' Association of Saskatchewan on the important role of the primary practitioner in the process to help guide the injured worker to return to work including providing details on their functional abilities, restrictions and limitations.

Recommendation 21

Develop an easy-to-understand guide (the anatomy of a claim) which may include diagrams/flow charts for workers and employers to better understand the claim submission, and decision making and appeal processes within the Saskatchewan WCB.

Recommendation 22

Update the Saskatchewan WCB pamphlet "Information for the Worker" by providing a complete list of all available benefits that a worker may be entitled to.

Recommendation 23

Simplify the language used in written communication with workers and the employers. Using plain language in the various communication methods by the Saskatchewan WCB would be helpful.

Recommendation 24

Increase and improve communication on the status and implementation of COR recommendations including more information being provided on the Saskatchewan WCB website. Include the rationale on why recommendations were not implemented.

Recommendation 25

Enhance communication methods and tools using traditional and non-traditional formats to focus on prevention and lowering time loss rates and serious injuries. These communication methods need to be directed at both the employer and worker.

Recommendation 26

Develop a communication strategy to increase the understanding and use of return-to-work programs with injured workers, employers and WCB case staff. Use of this program would encourage an injured worker's continuous involvement at the workplace while complying with medical restrictions during their recovery.

4.4 Appeals

Within the Saskatchewan WCB, there are three levels of appeal that an injured worker or employer can take if their claim is not accepted by the caseworker. A person with a direct interest in a claim may take these steps following this sequence:

Level One: request review by the caseworker;

Level Two: submit an appeal to the Appeals Department;

Level Three: submit an appeal to the Board Appeal Tribunal.

Appendix C provides details on an anatomy of a claim including the three levels for reconsideration and appeals for a claim by a person with a direct interest.

The information we received in the submissions and during the hearings focused on three areas – the Medical Review Panel, the Board and the Board Appeal Tribunal. Though the Medical Review Panel is the final step in the appeal process and is an independent body, we would like to review it first before we discuss in depth the Board and the Appeal Tribunal.

4.4.1 Medical Review Panel

The Medical Review Panel (MRP) is the final step in the appeal process for injured workers. Section 60 of *The Workers' Compensation Act, 2013* establishes a MRP as the forum by which injured workers may resolve disputes on medical issues. The MRP is an independent body of medical practitioners.

The Medical Review Panel can only proceed once an injured worker has completed the appeals process with the WCB and has received a decision from the Board Appeal Tribunal. The MRP cannot be used to appeal an adjudicative decision but may be convened when there is substantial disagreement related to medical evidence. The panel's findings are binding on the board and the injured worker.

Subsection 59(2) of the Act enables a worker or the deceased worker's dependent to request an MRP. Subsection 59(3) requires that this request for MRP be accompanied by an enabling certificate. Enabling certificates must be completed by a physician or chiropractor and contain the following information: that there is a genuine medical question to be determined; what it is in the board's decision they disagree with; and that they provide sufficient particulars of the question to define the issue.

In the submission received, comments were made on:

- the complexity and frustration with completing an enabling certificate required for an MRP; and
- not understanding the process for how an MRP works including that it was the last step or avenue for a worker to appeal their case decision made by the WCB.

Under the Board's current requirements, physicians and chiropractors completing enabling certificates are required to supplement their rationale by providing medical support for their position. Such support includes providing medical literature or research in support of their opinion, or they may reference another physician's comments that would support their position on the medical question. Physicians and chiropractors can find this amount of detail requested unreasonable and some are unwilling to complete an enabling certificate for an injured worker. Providing this amount of detail requires time which can be difficult for some physicians as they are pressed for time.

According to statistics available in the WCB 2020 Annual Report, between 2016 to 2020, only 24 per cent of the MRP Certificates were accepted. There is also a high rejection rate for the Medical Review Panel Enabling Certificate applications.

What is frustrating for the medical professional is that their involvement is required in order to complete the enabling certificate application. A request for a MRP cannot be made without them. They also have little information other than the Board Appeal Tribunal's decision from which they are expected to form their objective opinion of whether they agree or do not agree with said decision. OWA has stated that there are many occurrences where physicians, after reviewing the Board decision, are not willing to complete an enabling certificate for an injured worker. They may be familiar with the injured worker's medical history and are unable to objectively find anything in the Board Appeal Tribunal decision that they can disagree with and provide sufficient information for them to objectively counter that decision.

OWA has made the following recommendations in their submission:

- that the WCB chief medical officer and chairperson of the Medical Review Panel consult with physicians and chiropractors to determine reasonable and clear expectations to support completion of acceptable applications with the information physicians and chiropractors have at hand;
- that WCB provide a sufficient particulars definition in their Medical Review Panels (POL 18/2010), informed by the consultation noted above; and
- that authority be delegated to the WCB Chief Medical Officer and the chairperson of the Medical Review Panel to determine acceptance of enabling certificate applications.

Table 4.6 Medical Review Panel

Medical Review Panel	2021	2020	2019	2018	2017
Enabling Certificate Applications Received	3	8	23	26	20
Enabling Certificate Applications Accepted	1	3	4	4	4
Medical Review Panel Examinations Conducted	2	2	3	4	9
Medical Review Panel Decisions Accepted	2	1	1	2	4

The Saskatchewan WCB recognizes that improvements are required in the MRP process. The WCB's submission identified that changes to sections 59, 60 and 61 of the Act could simplify and improve the process related to MRPs and thereby customer service. Proposed amendments include better defining "a worker who claimed compensation" so that they understand they are only eligible to apply for an MRP if there is a medical question

on an accepted injury claim. The WCB feels that many workers interpret that section as qualifying anyone who has asked for compensation, even if their claim has consistently been denied. This can lead to frustration for their customers and additional work for WCB to help clarify the intent of this section of the Act.

WCB proposes the following:

- Clause 59(3)(c) – Clarify for physicians what constitutes “sufficient particulars”. This can be confusing for physicians which can add delays to the process.
- Clause 60(3) - Clarify when and in what numbers the Board can appoint alternate chairs.
- Clause 61(1)(a) & (b) – Consider a process for potentially excluding the following from the lists:
 - physicians or chiropractors who have recorded opinions or advocated for the worker as this hinders WCB in ensuring an unbiased review process. It can be exceedingly difficult to find a medical professional who is prepared to commit to sit on a MRP where they may find themselves at odds with colleagues in the same city on the same panel. Given the limited population of medical specialists in Saskatchewan, the legislation should not automatically disqualify a physician or chiropractor simply because they have rendered a previous opinion related to a specific injury or worker;
 - any physician or chiropractor who has already advised WCB that they are never prepared to sit on such panels; and,
 - provide remedies or a defined process to remove any selected specialist who fails to confirm or decline to participate on the panel, despite repeated requests from the Board for a response.

Pending legislative changes, the Board could consider amending policy to provide the clarity needed regarding subsection 59(1) and subsection 59(3)(c) by defining both of the terms in question.

Recommendation 27

Simplify the language and requirements and improve the processes in Sections 59, 60 and 61 of the Act in order to increase the acceptance of the MRP Enabling Certificate applications and make it easier to find medical professionals who will sit on an MRP.

Recommendation 28

Improve the content and communication tools used to describe the role and function of the MRP in order to provide better understanding to workers and employers that it is a legislated dispute resolution mechanism to only deal with medical issues after all internal Saskatchewan WCB appeal processes have been completed.

Recommendation 29

Work with the Saskatchewan Medical Association and the Chiropractors’ Association of Saskatchewan to create a better understanding for the primary practitioner on the importance of providing proper documentation in the medical assessment of the injured worker when they first present themselves.

4.4.2 Saskatchewan WCB Board

The Saskatchewan WCB is unique within Canada. It is the only province with a full-time board that divides its duties between governance and the final appeal function. The board sits as the highest level of appeal at the WCB.

The board also has exclusive jurisdiction to determine several types of applications under the Act. Operating as an administrative tribunal, the board has decision-making responsibilities over matters such as:

- worker appeals regarding injury claims;
- employer appeals of worker claims;
- employer classification appeals;
- employer assessments;
- fines and penalties;
- Medical Review Panel applications and outcomes;
- determination of the right to sue; and
- overpayments and collections.

The board oversees the development and monitors the effectiveness of processes for such applications and appeals to ensure that workers and employers receive fair and timely decisions. The Saskatchewan WCB Annual Report (2020) states that as a result of continuous process improvement efforts and the dedication of additional time and resources focused on the appeal process, progress was being made in improving the turnaround times for appeals pending before the board.

Effective governance recognizes that boards of directors have a responsibility to influence the culture of the organizations they govern. The board examines its code of conduct as part of the annual review of its governance framework and the development of its key governance documents. The current code of conduct establishes a set of principles. Foremost among them is the obligation of accountability to workers, employers, the general public and government. This obligation includes the competent, conscientious and effective performance of the duties of the board.

The WCB Annual Report (2020) states that the board recognizes the importance of a clearly defined governance framework that supports its accountabilities as stewards of the workers' compensation system. To that end, the Board began a comprehensive review of its governance policy and other key governance documents in 2019, and the resulting revisions were approved effective January 1, 2020. As an initial step in its 2020 governance review, the board tasked the CEO and senior leadership with conducting their own assessment of the governance policy, committee structures and governance processes, and providing that feedback to the board for consideration during its 2021 annual board retreat and governance review. At that time, the Board would also complete its annual review of the board's code of conduct and its orientation and education plan. Each year, the board also establishes a plan for the upcoming year on a number of key governance issues.

Some employers feel that the Saskatchewan WCB doesn't support them enough in providing sufficient information to allow them to prepare for the appeal process and tribunals. They would like more information from the worker's file and assistance in preparing their case for appeal. WCB established in 2019 an Employer Resource Centre office dedicated to helping the employer, but it will not advocate on behalf of the employers to resolve disputes about claims. How could resources be made available to the employer similar to what the OWA provides to the worker in assisting them to prepare for an appeal. Is there an organization that could provide resources to assist the employer?

Recommendation 30

Increase communication to employers, especially smaller companies regarding the assistance that is available to them from the Employer Resource Centre.

4.4.2(1) WCB Board Appeal Tribunal, Should It Be Independent?

In March 2020, COVID-19 safety concerns prompted a decision to relocate board members and the majority of the Saskatchewan WCB employees from WCB offices to their homes to begin working remotely. As with many organizations throughout Saskatchewan, working remotely presented a significant undertaking including the need for the development of many new processes to accommodate the virtual workplace and safe alternatives to face-to-face hearings. Despite these challenges the Appeal Tribunal recognized the importance of timely decisions and used virtual meetings to hold its hearings. By dedicating additional resources to process appeals and applications, the Appeal Tribunal was able to reduce the impact of COVID-19 on its turnaround times.

Currently, the three full-time WCB Board members constitute the Appeal Tribunal Panel. The Board members have stated that their direct involvement in the appeals process as Tribunal members gives them special insight into the effectiveness of the WCB's policies and greatly assists them in performing their role in the oversight of the WCB. The current model provides an opportunity for either the employer or worker to make a written submission to the Tribunal to provide additional relevant information on the appeal.

Comments were provided in some of the submissions about whether the Tribunal Panel should be a separate entity as in an independent structure from the WCB or maintain the same internal Tribunal model. The WCB Tribunal is considered an administrative tribunal. The Tribunal is about interpreting the file or injury and hearing additional information from the appellant which they feel has not been properly factored in by the case worker or the appeal officer. It does have some latitude to interpret the file or injury and the case file without being directly tied to the procedures or past rulings which may be the situation for the case worker or appeal officer.

In Saskatchewan, administrative tribunals are created by government to assist in carrying out its decision-making responsibilities. Administrative tribunals are designed to make quicker decisions and are less complicated than a judicial system. Tribunal members have the expertise in the subject matter to make decisions. The Office of the Ombudsman Saskatchewan and the Dispute Resolution Office in the Saskatchewan Ministry of Justice and Attorney General have produced an excellent document entitled Practice Essentials for Administrative Tribunals (2009). It provides information and resources on best practices for administrative tribunals.

Tribunals in Saskatchewan are governed by administrative law which is one area of common law. Administrative law focuses on rules of procedural fairness and the principles that apply in determining whether members of the tribunal have acted fairly in carrying out their decision-making responsibility.

As the former Saskatchewan Ombudsman, Kevin Fenwick, Q.C., commented in Practice Essentials for Administrative Tribunals (2009), fairness can mean many things to those who appear before an administrative tribunal. It includes what a tribunal decides how it makes its decisions, and how it treats people while it is making those decisions.

Along with fairness in the tribunal process is the principle of reasonableness. Reasonableness means that a transparent process is used to access the information considered by the tribunal which reaches a decision based on that information and that the decision is objectively reasonable. We raise it because of a recent 2019 Court decision by the Supreme Court of Canada (Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65) regarding the question of judicial review. The decision established that the Court of Queen's Bench in Saskatchewan has the inherent jurisdiction to review administrative decisions by judicial review. The Vavilov decision places a greater burden on administrative tribunals to clearly demonstrate the reasoning process adopted including proving that the tribunal considered the arguments and the issues raised by the parties.

In considering whether to have the Tribunal panel as part of the WCB organization or as a separate entity begs the question about what we are trying to fix with the current system. Would an independent tribunal panel act more fairly than the current tribunal model within the WCB? Would an independent panel make better decisions? Should the current model following the principles of an inquiry-based hearing model be changed? Is the WCB Tribunal showing reasonableness in its decisions? We can't speak to the fairness or reasonableness of decisions that the WCB Appeal Tribunal panel has made as these decisions are not published. However, we can address several important factors that are required to make good, fair and reasonable decisions by an administrative tribunal.

Factors to consider:

- tribunal independence and impartiality - the tribunal's ability to make decisions without interference from government, lobbying, the operations and organization within WCB;
- training on writing decisions;
- ongoing professional development, including training in the areas of governance, adjudication, decision making, diversity in the workforce;
- training helps provide peer review;
- attending conferences and forums that cover WCB issues;
- publishing tribunal appeal decisions (to be discussed in the next section);
- diversity in the make-up of panel members; a representative selection of decision makers; and,
- appointing tribunal members with the background, expertise and knowledge in the areas that cover workers' compensation.

The WCB annual report (2020) has listed some of the professional development training provided to the board members. They have received training through organizations such as the Foundation of Administrative Justice, the Canadian Council of Administrative Tribunals, the Saskatchewan Administrative Tribunals Association and various industry and educational conferences and courses. The board members have earned certificates in adjudication for administrative agencies, boards and tribunals from the Osgoode Hall Law School of York University as part of their ongoing professional development and in 2017 received training through the Institute of Corporate Directors. In 2020, the board members received additional training in continuous process improvement, and they actively participate in this initiative throughout the year.

Based on what we have observed, the board members are continually addressing professional development, and this has a positive impact on hearing appeals, making decisions and providing written direction. All of the Board members have background, expertise and knowledge in the areas that cover worker's compensation. What is noticeable though, is the lack of diversity in the make-up of panel members. In the future, consideration should be given to a more diverse selection of individuals as members on the Board and the Appeal Tribunal. This creates more inclusion, a better representation of the Saskatchewan workforce, provides credibility and enriches the dialogue and discussion for appeals.

Table 4.7 WCB Appeals Activity

Appeals Activity	2021	2020	2019	2018	2017
Appeals Received	231	273	234	267	301
Accepted	91	70	77	116	94
Denied	129*	154*	154	144	186
Total Appeals Decided*	220	224	231	260	351
Appeals Withdrawn	22	35	12	17	36
Appeals Pending	120	112	90	99	87
Average number of days to decision	170	160	130	115	118
Hearings	109	87	85	110	91

*The total appeals denied for 2020 and 2021 include Medical Review Panels and barred section 169 applications. Two important things to note:

- Appeals may carry over the previous year or be decided the following year.
- Years prior to 2019 include non-appeal applications.

Another tool to use in evaluating the WCB including its administration, its Board and how it operates and makes decision, and its appeal tribunal model is to be independently reviewed. Every five years, a mandated COR is appointed by an order-in-council to review the Act and the WCB's administration. Along with submitting its report to the minister responsible for WCB, the report is made public. Making the written submissions received from organizations and its written report public provides a form of accountability and transparency in evaluating the WCB and how it functions.

An area for improvement is the time it takes to hear appeals once an application is made. Metrics are pointing to progress but changes or using innovative methods can be made to shorten this time period. In 2021, the Tribunal received 231 appeals, held 109 hearings, reviewed and wrote decisions on 220 appeals and decided 17 non-appeal applications (for barring of lawsuits, orders for collection of overpayment and Medical Review Panels). Appeal wait times have decreased by 46 per cent since 2015. There is a 6.25 per cent increase from 2020 - from 160 to 170 days.

It appears to be cost effective to handle appeal tribunals within the WCB based on what we researched and what we have heard. The training and understanding of the policies and procedures required by adjudicators on the Tribunal are best served by the current board versus an external/independent model.

Recommendation 31

Future appointments to the Saskatchewan WCB Board need to consider a more diverse selection of individuals to create a better representation of the Saskatchewan workforce.

Recommendation 32

Maintain the current model for the Board Appeal Tribunal as an internal structure within the Saskatchewan WCB.

4.4.3 Publishing Appeal Tribunal Decisions

Saskatchewan, Prince Edward Island and the Yukon are the only jurisdictions that do not publish their workers' compensation appeal decisions. Appeal decisions are published on the respective jurisdictional website responsible for workers' compensation systems and/or use the Canadian Legal Information Institute (CanLii) website. Jurisdictions remove all personal identifiers from the decisions before making them public. We

heard from several submissions wanting to have access to view Saskatchewan's Appeal Tribunal decisions, particularly those affecting injury claims.

In *Chapman v Saskatchewan Workers' Compensation Board* (2017 SKQB 134), the Court found that WCB failed to determine the decision in favour of the worker for the purpose of subsection 23(3), where evidence is approximately equal if the weight attached to the evidence presented by the two sides was approximately equal. This failure to make its reasons intelligible or transparent did not allow the Court to understand why the WCB made the decision it did or determine whether its conclusions were within the range of acceptable outcomes.

We feel that it is important to publish decisions made by the Appeal Tribunal for the following reasons:

- It provides information to interested parties and the general public about the Tribunal's decision-making process, the practices that it follows and the evidence test they apply.
- It provides evidence to demonstrate that the decision-making process is in accordance with the provisions of the Act, policies and the rules of natural justice.
- It provides meaningful reasons for the decisions made by the Tribunal.
- OWA staff are often seeking supplemental reasons to understand the application of legislation and policies in WCB's decision making process, as well as to clarify what evidence was used to arrive at its decision.
- The reasons provided in a decision explain to other potential appellants the criteria or adjudicating issues or the procedures for pursuing a remedy.
- It can save time as other potential appellants can view previous decisions and may decide to not pursue an appeal.
- It acts as a peer review as others who have background in this subject area can review cases and comment on them. Furthermore, it can be a learning tool and assist other adjudicators in examining other cases in other jurisdictions.
- It builds on the strength of having an internal appeal tribunal process within the WCB and makes it more of a transparent process.
- It increases the accountability of the Tribunal and instills confidence in the overall process.

Table 4.8 Jurisdiction Scan – Publication of Appeals Decisions

Jurisdiction	Publication of Decisions	Website
Alberta	Yes	Workers' Compensation Appeals Tribunal; Canadian Legal Information Institute
British Columbia	Yes	The Workers' Compensation Appeal Tribunal; Canadian Legal Information Institute
Manitoba	Yes	The Appeal Commission
New Brunswick	Yes	Canadian Legal Information Institute
Newfoundland and Labrador	Yes	The Workplace Health, Safety and Compensation Review Division
Northwest Territories	Yes	Canadian Legal Information Institute
Nova Scotia	Yes	Canadian Legal Information Institute
Ontario	Yes	Workplace Safety and Insurance Appeals Tribunal
Quebec	Yes	Canadian Legal Information Institute
Prince Edward Island	No	N/A
Saskatchewan	No	N/A
Yukon	No	N/A

Recommendation 33

Amend section 23 of the Act stating all decisions shall require reasons for the decision, and to include clarification of the significance of the evidence used to make the decision.

Recommendation 34

Publish the Board Appeal Tribunal decisions with a purpose to promoting transparency and accountability, demonstrating the decision-making process undertaken and instilling confidence in the decisions made by the Tribunal. Criteria can be developed within policy on protecting the identity of the claimant and the kinds of decisions to publish.

Chapter 5 - Other Issues Identified in Submissions

The COR received written material and heard presentations at the hearings that were related to individual claims. The mandate of the COR does not allow us to address and resolve individual claims. When individuals used information based on their claims in their presentation, we listened, asked questions to gain an understanding about their particular situation and tried to guide them to the service providers that could further assist them. For some individuals, having the opportunity to tell their story and to be listened to, helped them to deal with the frustration, angst or anger that they were feeling. They knew that we could not resolve their individual issue, but we listened to them, gave them time to tell their story and didn't judge them. People want to confirm that they are being listened to and that their concerns are understood.

Some of the material presented to the COR that we have not elaborated on in our report includes:

Right to sue: The ability to sue goes against the Meredith Principles that the Saskatchewan WCB and other workers' compensation systems use as the standard for no-fault insurance.

Committee of Review to meet every three years: Meeting and conducting a review more frequently than every five years would not speed up implementation of recommendations. Some recommendations take time to implement especially if changes to legislation are required or new funding needs to be sought.

Establishing a stakeholder advisory committee: The mandate of such a committee can be addressed through other means. The Saskatchewan WCB Board has expanded to five members with the ability to add two more. This will add more diversity to the skill sets of the Board. Evaluating how the Board is performing overall and whether they are implementing the recommendations from the COR can be accomplished through peer review, by publishing the decisions made by the Appeal Tribunal, and by stakeholders and other government and community-based organizations engaging in conversations with staff and Board members.

Increasing the presumed retirement date to age 67 years or older: With more individuals working beyond the age of 65 years and starting their retirement at a later age, there are many policy implications beyond workers' compensation to consider along with the practicality of a changing workforce.

Duty to accommodate: The question of whose responsibility it is, and who ensures that an injured worker is accommodated at their workplace does not solely rest with the Saskatchewan WCB. Under Saskatchewan's employment standards and human rights legislation, the employer has a legal duty to accommodate an injured worker. The injured worker also has a legal obligation to participate in the development and implementation of rehabilitation and return-to-work plans with their employer and the Saskatchewan WCB. The return-to-work plan may include changing job tasks so that the worker can safely return to work during recovery. Furthermore, the worker's union must assist in the accommodation process wherever possible. Depending on the situation, there are many possibilities to enable a duty to accommodate so that the worker can continue to work. Engaging in a process to achieve accommodation is important. The Saskatchewan Human Rights Commission has information on their website on the duty to accommodate (www.saskatchewanhumanrights.ca).

Chapter 6 - Summary of Recommendations

Policies and Coverage

1. Make legislative changes to cover work-based learning programs and provide workers' compensation benefits to students.
2. Increase the minimum and maximum awards payable for permanent functional impairment in order to provide fairer compensation for permanently injured workers. The maximum award should be calculated using rate of impairment, reflect the worker's actual earnings and cannot exceed the worker's annual earnings in the year that the accident occurred.
3. Amend subsection 80(2) of the Act to extend coverage of transportation of the worker's body to his or her usual place of residence, regardless of if outside Canada, where it is requested by the family of the deceased.
4. Provide death benefits such as a one-time payment to the estate of a deceased worker who has no dependents, no parents or who has parents, non-dependent child.
5. Amend subsection 93(3) of the Act to add a similar or same provision as clause 93(1)(b) in order to provide equitable compensation to a worker's dependent children or other dependents regardless of if the injured worker parent had received benefits for less or more than 24 months before the worker passed away from a non-work-related injury.
6. Review section three of the regulations to update industries and occupations currently included or exclude from the Act that should be considered for inclusion.
7. Encourage employers to advise workers employed in the excluded occupations that they are not covered by the provisions of the Act.
8. Amend subclause 2(1)(ii)(iii) of the Act under the definition of a worker to remove the wording of executive officer. Coverage for a director could be similar to that provided to an owner or partner per General Regulations section 14 and POL 12/2020.
9. Encourage the continuation of safety programs for youth and to be made available throughout high schools in Saskatchewan. The safety associations shall be involved in joint efforts with WorkSafe Saskatchewan and the Saskatchewan Safety Council in these youth safety programs.
10. Amend subsection 173(4) of the Act to mirror subsection 38(1) of HIPA in order to provide the same level of standard to sensitive health information.
11. Add subsection 174(3) of the Act to the list of administrative penalties in subsection 183 (1) to create accountability if an employer breaches privacy of a worker's information.
12. Any amendments to section 174 of the Act to create an easier process for providing an injured worker's medical information to their employer would require a dispute mechanism for those workers who object to their medical information being shared with their employer.

Health and Wellness

13. Fund out-of-province treatment options when recommended by a medical practitioner for public safety personnel with psychological injuries who have no job specific medical programs to access in Saskatchewan.
14. Work and partner with public safety agencies to establish better proactive treatment programs for psychological injuries.
15. Provide more trauma informed training including communication tools for Saskatchewan WCB staff who deal with psychological injury claims.
16. Clarify and adjust the legislation for psychological injuries to further address the issue of presumptive coverage in order to provide quicker supports. The Policy and Procedure Manual needs to support the intent of the Act.
17. Create a stand-alone chronic pain policy which is similar to what most other provinces have done.

Customer Service and Communication

18. Provide enhanced customer service training to staff which includes how to show compassion and understanding, how to listen, and how to deal with people who are experiencing difficult life situations and who may not get approval for an injury claim.
19. Create a dedicated team of adjudicators to deal with specific employers who submit a large number of injury claims. Dealing with a dedicated team will improve efficiencies and communication as they would be familiar with the employer on an ongoing basis.
20. Develop a communication strategy with the Saskatchewan Medical Association, the College of Physicians and Surgeons and Chiropractors' Association of Saskatchewan on the important role of the primary practitioner in the process to help guide the injured worker to return to work including providing details on their functional abilities, restrictions and limitations.
21. Develop an easy-to-understand guide (the anatomy of a claim) which may include diagrams/flow charts for workers and employers to better understand the claim submission, and decision making and appeal processes within the Saskatchewan WCB.
22. Update the Saskatchewan WCB pamphlet "Information for the Worker" by providing a complete list of all available benefits that a worker may be entitled to.
23. Simplify the language used in written communication with workers and the employers. Using plain language in the various communication methods by the Saskatchewan WCB would be helpful.
24. Increase and improve communication on the status and implementation of COR recommendations including more information being provided on the Saskatchewan WCB website. Include the rationale on why recommendations were not implemented.
25. Enhance communication methods and tools using traditional and non-traditional formats to focus on prevention and lowering time loss rates and serious injuries. These communication methods need to be directed at both the employer and worker.

Appeals

26. Develop a communication strategy to increase the understanding and use of return-to-work programs with injured workers, employers and WCB case staff. Use of this program would encourage an injured worker's continuous involvement at the workplace while complying with medical restrictions during their recovery.
27. Simplify the language and requirements and improve the processes in sections 59, 60 and 61 of the Act in order to increase the acceptance of the MRP Enabling Certificate applications and make it easier to find medical professionals who will sit on an MRP.
28. Improve the content and communication tools used to describe the role and function of the MRP in order to provide better understanding to workers and employers that it is a legislated dispute resolution mechanism to only deal with medical issues after all internal Saskatchewan WCB appeal processes have been completed.
29. Work with the Saskatchewan Medical Association and the Chiropractors' Association of Saskatchewan to create a better understanding for the primary practitioner on the importance of providing proper documentation in the medical assessment of the injured worker when they first present themselves.
30. Increase communication to employers, especially smaller companies regarding the assistance that is available to them from the Employer Resource Centre.
31. Future appointments to the Saskatchewan WCB Board need to consider a more diverse selection of individuals to create a better representation of the Saskatchewan workforce.
32. Maintain the current model for the Board Appeal Tribunal as an internal structure within the Saskatchewan WCB.
33. Amend section 23 of the Act stating all decisions shall require reasons for the decision, and to include clarification of the significance of the evidence used to make the decision.
34. Publish the Board Appeal Tribunal decisions with a purpose to promoting transparency and accountability demonstrating the decision-making process undertaken and instilling confidence in the decisions made by the Tribunal. Criteria can be developed within policy on protecting the identity of the claimant and the kinds of decisions to publish.

Chapter 7 - Conclusion

The four themes presented in this report – policies and coverage, health and wellness, customer service and communications and appeals – tried to capture the details and stories we read about and heard from the submissions, the hearings and our discussions with stakeholders. It is a moment in time as these are the issues and concerns presented to us within a certain time frame. We understand that there will be other issues that will surface over the course of the next five years before another review occurs.

The approach we used in our communication strategy and how we operated during the health restrictions created by COVID-19, is a model that could be used for other consultations and engagements that the Government of Saskatchewan may conduct in the future.

The 34 recommendations presented in this 2022 report have the unanimous support of the COR members. These recommendations are meant to improve, enhance and grow a workers' compensation system in Saskatchewan that already functions well. It is a no-fault insurance system that came into force in 1930 and has continued to make improvements over the decades.

We would like to sincerely thank those individuals and organizations who came forward and shared their issues, concerns and recommendations to us. Your opinion matters and we hope that we were able to capture and present the information in a manner that reflected what you told us.

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Appendix A: List of Written Submissions and Presenters - Organizations

Allen Construction	Office of the Workers' Advocate
Alt Hotel	Ombudsman Saskatchewan
Atlas Hotel	Preston Early Learning Centre
BCL Consulting Group	Psychology Association of Saskatchewan
Canadian Mental Health Association	Public Service Alliance of Canada Prairies
Canadian Payroll Association	Public Service Commission
Chiefs of Police	Ranch Ehrlo Society
Chiropractors' Association of Saskatchewan	Restaurants Canada
Chouinard and Samuel	Saskatchewan Association for Safe Workplaces in Health
City of Moose Jaw	Saskatchewan Association of Rehabilitation Centres
Commissionaires North Sask Division	Saskatchewan Chamber of Commerce
COPE Local 397	Saskatchewan Coalition of Rehabilitation Psychologists
Creative Options	Saskatchewan Construction Safety Association
CUPE Saskatchewan	Saskatchewan Federation of Labour
Double Tree	Saskatchewan Government and General Employees' Union
Eagles Nest	Saskatchewan Health Authority
Gold Eagle Lodge	Saskatchewan Heavy Construction Association
Hilton Garden Inn	Saskatchewan Teachers' Federation
Kelly Panteluk Construction Ltd.	Saskatchewan Workers' Compensation Board
Kirsch Construction	Saskatoon Business Association
KMS Construction Ltd.	Saskatoon Inn
McDonald's Canada	SaskPower
Merit Contractors Association	SaskWater
Merit National	Temple Gardens
Ministry of Advanced Education	Union of Safety and Justice Employees
Ministry of Education	University of Saskatchewan
Ministry of Immigration and Career Training	
Office of the Information and Privacy Commissioner	

For privacy reasons, organizational submissions that contain personal information and submissions from individuals have been kept confidential.

Appendix B: Schedule of Public Hearings

Public hearings were held in January and February 2022. Because of public health restrictions related to COVID-19, hearings were held online using Zoom.

Schedule of Public Hearings (Zoom)		
Date	Time	Presenter
Tuesday, January 18, 2022	1:30 - 2:00 p.m.	Saskatchewan Coalition of Rehabilitation Psychologists
Tuesday, January 18, 2022	2:15 - 2:45 p.m.	Individual
Wednesday, January 19, 2022	1:30 - 2:00 p.m.	Saskatchewan Federation of Labour
Wednesday, January 19, 2022	2:15 - 2:45 p.m.	Individual
Thursday, January 20, 2022	2:15 - 2:45 p.m.	Individual
Friday, January 21, 2022	1:30 - 2:00 p.m.	Individual
Friday, January 21, 2022	2:15 - 2:45 p.m.	Public Service Alliance of Canada Prairies
Friday, January 21, 2022	3:00 - 3:30 p.m.	Individual
Tuesday, January 25, 2022	1:30 - 2:00 p.m.	Saskatchewan Government and General Employees' Union
Tuesday, January 25, 2022	2:15 - 2:45 p.m.	Chiropractors' Association of Saskatchewan
Tuesday, January 25, 2022	3:00 - 4:00 p.m.	Saskatchewan Health Authority
Wednesday, January 26, 2022	1:30 - 2:00 p.m.	Individual
Wednesday, January 26, 2022	2:15 - 2:45 p.m.	Individual
Wednesday, January 26, 2022	3:00 - 3:30 p.m.	Individual
Thursday, January 27, 2022	1:30 - 2:00 p.m.	Chouinard and Samuel
Thursday, January 27, 2022	2:15 - 2:45 p.m.	Canadian Payroll Association
Thursday, January 27, 2022	3:00 - 3:30 p.m.	Individual
Tuesday, February 1, 2022	7:00 - 7:30 p.m.	Individual
Tuesday, February 1, 2022	7:45 - 8:15 p.m.	Individual

Appendix C: Anatomy of a Claim

Initial Role of:			Role of the WCB – Claim Management			Role of the WCB – Reconsideration and Appeals	
Worker	Employer	Primary Care Providers	Upon receipt of an injury report, the WCB gathers information in a process called adjudication. Based on legislation and policy, a decision is made to accept or deny the claim.			A person with a direct interest in a claim may request:	
			No Time Loss	Time Loss	Claim Not Accepted	Reconsideration	Appeals
<p>If a worker experiences a work injury, they should:</p> <ul style="list-style-type: none"> • seek medical attention (if needed); • notify the employer of the injury; and • notify the WCB using the Worker's Initial Report of Injury (W1) form. 	<p>When notified of a work injury, the employer must submit the Employer's Initial Report of Injury (E1) form to the WCB.</p>	<p>A primary care provider is a family doctor, nurse practitioner, chiropractor, dentist, optometrist or physiotherapist.</p> <p>They are responsible to:</p> <ul style="list-style-type: none"> • complete a primary assessment and outline treatment; • submit Physician's Initial Report (PP1) to WCB; • adhere to WCB reporting requirements and standards or care. 	<p>Upon acceptance of a no time loss claim, a letter is sent to the injured worker and employer.</p> <p>Payment(s) is issued.</p>	<p>Upon acceptance of a time loss claim, a letter is sent to the injured worker and employer.</p> <p>The claim is assigned to a claims adjudicator or a claims manager.</p>	<p>If a claim is not accepted a letter is sent to the worker and employer.</p> <p>The file is closed.</p>	<p>If a client does not agree with a decision on their claim, they may request that the decision be reconsidered by their case manager.</p> <p>If the client still does not agree with the decision, they may ask for reconsideration by an appeals officer.</p> <p>The decision of the appeals officer is considered the final decision.</p>	<p>If a client does not agree with the final decision, they may file an appeal with the Board Appeal Tribunal (BAT).</p> <p>The BAT is the final level of appeal.</p> <p>In conjunction with an appeal, a medical review panel may be convened for bona-fide medical questions. The panel is not an additional level of appeal.</p>

Accepted Claim – Time Loss Injury – Short Term

Worker	Employer	Direct Access Health Care Providers	Accredited Health Care Providers	WCB
<p>Completes the Worker's Initial Report of Injury (W1).</p> <p>Submits medical and travel expenses to WCB.</p> <p>Works with WCB, the employer and health care providers on a return-to-work plan.</p> <p>Once medically cleared:</p> <ul style="list-style-type: none"> • returns to full duties without modification; or • returns to work under a temporary modified work plan; or • returns to work on a permanent modified work plan. 	<p>Completes the Employer's Initial Report of Injury (E1).</p> <p>Works with WCB, the injured worker and health care providers on a return- to-work plan.</p> <p>Modifies the workplace and job duties as required under the duty to accommodate.</p>	<p>Direct access health care providers include:</p> <ul style="list-style-type: none"> • physicians; • chiropractors; • dentists; and • optometrists <p>Direct access health providers can assess and treat an injured worker without a referral or approval from WCB.</p> <p>The role of a direct access provider includes:</p> <ul style="list-style-type: none"> • assessment of injury; • provision of treatment plan; • informing employer of expected date of recovery and restrictions; • requesting WCB to arrange diagnostic and specialist services; • participating with all parties in return-to-work planning; and • adhering to WCB reporting requirements and standards of care. 	<p>Accredited health care providers include:</p> <ul style="list-style-type: none"> • audiologist; • mental health professionals; • exercise, massage, physical and occupational therapists; • nurse practitioners; and • pharmacists. <p>They must be accredited through the WCB to accept referrals.</p> <p>Referrals must be authorized by WCB before treatment begins.</p> <p>Accredited providers provide treatment as required.</p> <p>Providers must adhere to WCB reporting requirements and standards of care.</p>	<p>The claims adjudicator initially manages an injury claim and:</p> <ul style="list-style-type: none"> • determines earning loss benefits based on medical reports and verification of income • approves medical and travel expenses; and • participates with all other parties to recommend a return-to work-plan. <p>Longer term claims are transferred to a case manager.</p>

Accepted Claims – Time Loss Injury – Long Term

Worker	Employer	Health Care Providers	Employability Assessment	Return to Work	Vocational Rehabilitation	Permanent Injury	Other Services
<p>Takes responsibility to mitigate loss of earnings.</p> <p>Works with WCB, employer and health providers on return-to-work.</p> <p>Once medically cleared:</p> <ul style="list-style-type: none"> • returns to full duties without modification; or • returns to work with temporary modifications; or • returns to work with permanent modifications. 	<p>Collaborates with the WCB and union (if applicable) to accommodate the return-to-work.</p> <p>Modifies workspace and duties to accommodate medical limitations.</p> <p>Sets up and/or strengthens injury prevention programs.</p>	<p>Provide the best care possible.</p> <p>Provide an informed opinion on medical limitations and ability of claimant to perform required work functions.</p>	<p>If recovery is delayed, or there is a risk of chronic disability the injured worker will be referred to an assessment team.</p> <p>As assessment team consists of a physician, two plus other medical professionals, and if required a specialist and psychologist.</p> <p>The assessment teams will recommend:</p> <ul style="list-style-type: none"> • a return to primary care; or • advanced treatment; or • a return to work plan. 	<p>The goal is for full employment within medical limitations.</p> <p>An injured worker may be referred to advanced treatment through a rehabilitation centre.</p> <p>Benefits may include:</p> <ul style="list-style-type: none"> • partial wage loss benefits; • temporary helper benefits; • personal care allowance; and/or • self-employment benefits. 	<p>Injured workers who require vocational rehabilitation may be referred to a multi-disciplinary case management team.</p> <p>The team will work with the injured worker to establish an individualized vocational plan.</p> <p>The worker may be entitled to long-term earnings replacement.</p>	<p>When medically appropriate an injured worker may be assessed for a permanent functional impairment (PFI).</p> <p>They may also undergo a disfigurement award assessment.</p> <p>The worker may qualify for an independence allowance and/or a permanent need for personal care allowance.</p>	<p>Other benefits include:</p> <ul style="list-style-type: none"> • Family support for seriously injured workers; • Assistance for workers in transition from WCB to SGI; and • Support for dependents of workers that have been fatally injured.

Reconsideration and Appeals

(may be requested by any person with a direct interest in the claim)

If a Party Disagrees with a Decision	Level One Reviewing and Reversing Decisions	Level Two Review by an Appeals Officer	Level Three Board Appeals Tribunal (BAT)	Medical Review Panel (MRP)	Other Actions
<p>There are three levels of review for a WCB decision.</p> <p>Level One:</p> <ul style="list-style-type: none"> request a review by the caseworker assistance may be provided from the service quality coordinator at this stage <p>Level Two:</p> <ul style="list-style-type: none"> submit an appeal through the appeals department <p>Level Three:</p> <ul style="list-style-type: none"> submit an appeal to the Board Appeal Tribunal. 	<p>At the first level, the decision must be reconsidered by the person who made the original decision.</p> <p>New information that is submitted by the worker may be considered at this stage.</p> <p>If the case manager recommends a change to the original decision, and the change is approved by a manager of the operations staff, it may be reversed on a worker's file.</p> <p>A letter of decision will be sent to the worker and employer.</p> <p>If the request to reverse a decision is not successful it may be moved to the next level of appeal.</p>	<p>An appeals officer may confirm, change or reverse any decision except one that has been made by the Tribunal.</p> <p>The appeals officer will conduct a thorough investigation of the evidence.</p> <p>A letter of decision will be sent to all parties to the appeal.</p> <p>If an appeal is not successful it may move to the next level of appeal.</p>	<p>A worker or employer may request a further review by the Board Appeal Tribunal.</p> <p>The BAT is the final level of appeal.</p> <p>A letter of decision is sent to all parties to the appeal.</p>	<p>A Medical Review Panel may be convened if there are substantial differences in medical evidence.</p> <p>A Medical Review Panel is not a review of the BAT decision.</p> <p>A physician or chiropractor certificate must accompany the request for an MRP.</p> <p>The WCB determines if a MRP will be convened.</p> <p>Once approved, the claimant chooses the panel members from an approved WCB list.</p> <p>A Certificate of Decision is issued following the examination.</p> <p>MRP decisions are binding on WCB and all parties.</p>	<p>Where a court action or grievance has commenced, the BAT will determine if it can proceed (s. 169, Act).</p> <p>Appeals based on constitutional and charter challenges are determined by the Board Appeal Tribunal.</p> <p>A party may apply to the Court of Queen's Bench for judicial review.</p> <p>The Court of Queen's Bench rules apply for judicial review.</p>

Appendix D: Jurisdictional Scan - Chronic Pain

Definition		Separate or Consequence Injury	Benefits
AB	Pain and related symptoms that: <ul style="list-style-type: none"> • develop from a compensable injury or condition; • persist beyond usual healing time; • are inconsistent with organic findings; and • impair earning capacity. 	Considered a separate injury.	Loss of earnings benefits.
BC	Pain that: <ul style="list-style-type: none"> • persists for six months beyond an injury or occupational disease; • beyond the usual recovery time; and • can be specific or non-specific. 	Through policy, chronic pain may be accepted as a separate injury.	Temporary wage-loss benefits. A permanent impairment award may be given.
MB	Not defined	N/A	N/A
NB	Pain that persists beyond the usual healing time, that may continue in the presence or absence of demonstrable pathology.	Pain in the absence of a workplace injury is not compensable.	Long-term loss of earnings where there is evidence of permanent work restriction.
NL	Pain that is compatible with a compensable injury except where it persists for six or more months beyond the usual healing time and results in marked life disruption.	Consequence of a work injury.	Limitations resulting from chronic pain may be considered during assessment for permanent impairment.
NS	Pain that continues beyond the normal recovery time for a particular injury. Also includes chronic pain syndrome, fibromyalgia, myofascial pain syndrome and all other like or related conditions.	Consequence of a work injury.	Income replacement and permanent injury benefits may be paid.

Definition		Separate or Consequence Injury	Benefits
NT	Pain and related symptoms that are: <ul style="list-style-type: none"> persist beyond usual healing time; and/or disproportionate to what is expected with type of injury; and/or are inconsistent with organic findings. 	Consequence of a work injury.	Any medical aid, payment, money, pension, vocational rehabilitation, counselling or other benefit payable or provided as a result of a worker's personal injury, disease or death.
ON	Pain with characteristics compatible with a work-related injury, except that it persists for 6 or more months beyond the usual healing time for the injury.	Consequence of a work injury.	Generally, a worker will receive full temporary total compensation until a maximum medical recovery (MMR) has been determined. The worker may be eligible for a permanent disability award or non-economic loss determination.
PEI	Pain that: <ul style="list-style-type: none"> continues beyond the normal healing time for the type of personal injury that precipitated, triggered or otherwise predated the pain; does not apply to cases of persistent lingering pain due to discernible organic diagnosis or psychiatric condition. 	Consequence of a work injury.	Temporary wage loss benefits. Chronic pain is assessed for a permanent impairment when it is a complication of the compensable injury.
QC	N/A	N/A	N/A
SK	Chronic pain is pain that persists for more than six months, and is any pain, whatever its origin, that recurs or persists over an extended period and interferes with functioning.	Consequence of a work injury.	Permanent Functional Impairment Rating Schedule states that "no award will be given, specifically, for pain and suffering."
YK	Pain that persists for a longer period than would be medically expected for the usual duration of injury recovery and is resistant to most health care treatment.	Consequence of a work injury.	Chronic pain may be considered in estimating the worker's post-injury earning capacity.

