

CLAC SUBMISSION FOR 2015 COMMITTEE OF REVIEW

The Workers' Compensation Act, 2013

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EXECUTIVE SUMMARY

Formed in 1952, CLAC is one of Canada's fastest-growing unions. Operating through 15 member centres, it is the country's largest national, independent, multi-sector union representing over 60,000 workers in almost every sector.

Construction Workers Union, CLAC Local 151, represents approximately 3,000 members in the construction sector in Saskatchewan, doing work that ranges from industrial construction on sites such as potash and uranium mines to commercial and civil construction on private and public spaces. Safety and injury prevention are vital to the work our members do on a daily basis.

A review of Saskatchewan's workers' compensation legislation is both welcome and needed. According to Phil Germain, Saskatchewan WCB's vice-president of prevention, "the most recent Association of

Workers' Compensation Boards of Canada (AWCBC) statistics show the national time loss injury rate average at 1.65 percent. While comparative data differs somewhat, Saskatchewan's Time Loss injury rate is almost twice the national average at 2.41 percent. Other jurisdictions in Canada are also improving their safety records just like we are but we have a lot more ground to cover."¹ In light of this, CLAC is pleased that the government is conducting a review of workers' compensation legislation.

The purpose of this submission is to recommend changes that will result in improved safety records in the workplace and to help close the gap between injury rates in Saskatchewan and those in other provinces. Based on CLAC's 63 years of experience and specific evidence, CLAC offers nine recommendations for changes to Saskatchewan's *Workers' Compensation Act*.

¹ Saskatchewan Workers' Compensation Board, "Saskatchewan's total workplace injury rate declines again in 2014."

CLAC'S RECOMMENDATIONS

Recommendation 1: CLAC recommends that the Workers' Compensation Board revise the terms *time loss* and *no time loss*, maintaining the current definitions of these terms, but changing the term names to *day of injury time loss* and *beyond day of injury time loss* respectively, in the view of creating a culture of injury prevention. (Page 7)

Recommendation 2: In conjunction with Recommendation 52 from the 2011 Committee of Review report, workers should be granted access to their files without having to file an appeal and be advised when additional information is added to the file. CLAC recommends that a worker's request for access to his or her file not be denied at any stage of the WCB process. (Page 8)

Recommendation 3: CLAC agrees with Recommendation 1 from the 2011 Committee of Review report and recommends that an additional step be taken to make *The Workers' Compensation Act, 2013* applicable to all employers in Saskatchewan with no exclusions. (Page 8)

Recommendation 4: CLAC recommends that self-employed individuals be automatically covered up to a limit of 50 percent of one's declared income. Additional coverage could be purchased by individuals through the payment of an additional premium. (Page 8)

Recommendation 5: CLAC commends the Saskatchewan government for the implementation of PRO 17/2014, which increases the maximum wage rate to \$65,130 per year as of January 1, 2015. CLAC recommends that the policy continue to remain in place but be monitored and adjusted as necessary to ensure that by 2019, the maximum wage rate will be equal to 165 percent of Saskatchewan's average wage rate. (Page 9)

Recommendation 6: CLAC recommends that further annual statistical supplements published by the WCB record and track claims where the maximum benefit level does not replace the worker's wage rate. (Page 10)

Recommendation 7: CLAC agrees with Recommendation 24 from the 2011 Committee of Review report. Appointments and a nomination process should commence with a mandate to have five members sitting on the WCB board of directors by the end of the 2016 fiscal year. (Page 10)

Recommendation 8: CLAC agrees that Recommendation 27 from the 2011 Committee of Review report is a good governance practice to implement when additional appointments are made to the board of directors. (Page 11)

Recommendation 9: CLAC commends the Saskatchewan government for updating the *Workers' Compensation Act* according to Recommendation 30 from the 2011 Committee of Review report. CLAC recommends a two-step process.

- i. Clarify the roles and responsibilities of the Fair Practices Office and the appeal process.
- ii. Align communication with the clarified roles and responsibilities of the two bodies. (Page 11)

INTRODUCTION

CLAC welcomes the government's review of Saskatchewan's *Workers' Compensation Act*. We recognize the importance of creating a culture of health and safety to ensure that Saskatchewan's workers are able to perform their jobs safely and without accident or injury.

The high injury rate in Saskatchewan has resulted in a significant number of claims for workers' compensation. In 2014 alone, 35,836 claims were made.² The goal of our recommendations is to assist in creating new methods that will result in a more efficient appeals process that maintains the dignity of the workers involved. Our recommendations cover many areas, including privacy concerns, the composition of the Workers' Compensation Board (WCB), and the avenues of appeal under the current legislation, including the Fair Practices Office.

The end goal and vision of WCB and its stakeholders flows in conjunction with WorkSafe Saskatchewan's Mission: Zero,

whose stated goal is "working toward zero injuries, zero fatalities, zero suffering."³ To achieve this goal, it is vital to continually review the province's safety culture and the language that is used in workplace health and safety legislation.

The Saskatchewan government, WCB Saskatchewan, and the relevant stakeholders have made significant progress by updating the *Workers' Compensation Act* in 2013, and are to be commended for that progress. Our recommendations are made with the purpose of continuing that momentum, recognizing there is still significant work to be done to decrease the rates of workplace accidents and injuries and enable Saskatchewan to be a leader in Canada in the area of injury prevention. Several of our recommendations build on those put forward at the time of the 2011 review; others are new recommendations based on our experience in assisting our members in the construction industry through the process of applying for and receiving workers' compensation.

² Saskatchewan Workers' Compensation Board, "Statistical Supplement 2014," 4.

³ WorkSafe Saskatchewan, "What is Mission: Zero?"

CLAC'S RECOMMENDED CHANGES TO THE WORKERS' COMPENSATION ACT

CLEARER TERMINOLOGY

One of the integral steps in the process of injury prevention is creating a workplace culture that fosters and embraces a safety culture. Workplace culture is shaped by the terminology and definitions that are commonly used when discussing workplace injuries and accidents, and the weight that is placed on them. Over time, certain terms can lose their true significance, no longer serving their originally intended purpose. As the culture in any given workplace shifts, it is important to review the way in which individuals view prevention and safety in their workplace, specifically in regard to injuries that occur at work.

A true safety culture does not celebrate false accomplishments and is proactive in how it deals with injuries, looking to create and encourage a consistent dialogue on accident and injury prevention. Although Saskatchewan has seen significant improvement over the past few years in reducing injuries and long term claims,⁴ more changes can be made to continue down this path of improvement.

Currently, the WCB defines *no time loss* and *time loss* as follows:

No time loss – Accepted claim where no time was taken off after the day of injury.

Time loss – Accepted claim where the worker had to take time off work after the day of injury.⁵

At many work sites in the construction industry, it is common to find a poster board boasting X amount of days without a time-loss injury. Our concern is that such proclamations may not accurately reflect the true state of the workplace's safety records. In line with the goals of WCB, some injuries are accommodated and a quick return to the workplace can be facilitated, with employees exchanging their tool belt and materials for a desk chair and paperwork. However, this does not change the reality that any injury involving the WCB process results in a loss of time in some capacity, whether or not the formal definitions of no time loss or time loss are used. This can include time lost at work doing the necessary incident reports, paperwork, and follow-up investigation, as well as time spent outside of work with any appointments or additional follow-up that needs to be taken care of that would not have been necessary had an injury or accident not occurred. By failing to include such injuries in the count of days without injury, employers can present an inaccurate picture of the current safety culture.

As soon as an injury or accident occurs, the clock should begin counting time lost, instead of waiting until the day after the injury. The day of the injury is a significant period of time that ought to be incorporated into the terms and definitions that define how workers classify their claims. This would also give more dignity to those who do not currently qualify for a time-loss claim, recognizing that the event that

⁴ Saskatchewan Workers' Compensation Board, "Saskatchewan's total workplace injury rate declines again in 2014."

⁵ Saskatchewan Ministry of Labour Relations and Workplace Safety, "Workers' Compensation Act Committee of Review Final Report," 74.

occurred at their workplace still had consequences for their work experience, even if there is no missed time the day following the incident.

Recommendation 1: CLAC recommends that the Workers' Compensation Board revise the terms *no time loss* and *time loss*, maintaining the current definitions of these terms, but changing the term names to *day of injury time loss* and *beyond day of injury time loss* respectively, in the view of creating a culture of injury prevention.

INCREASED ACCESS TO FILES

In the 2011 Committee of Review report, Recommendation 52 states: "All workers and employers have timely access to files without the need to file an appeal. A good rationale such as privacy legislation must be provided for any access that is denied."⁶ CLAC agrees with the premise of this recommendation, but also recommends that it go a step further to automatically grant any request of a worker for access to his or her file.

When compared to other provincial jurisdictions regarding privacy of information and workers' access to their files, Saskatchewan makes workers' dealings with WCB unnecessarily complicated. Of the 12 provincial and territorial WCB jurisdictions in Canada, Saskatchewan is the only one that requires a worker to file an appeal to access their files.⁷ To echo the comments in the 2011 Committee of Review report, this creates "unnecessary appeals when all that was sought was information."⁸

CLAC's recommendation goes a step further, recommending that workers should not have any request for access to their file denied. In terms of process, Saskatchewan could consider a few different avenues when granting workers access to their files. One approach that some provinces use is to automatically grant a request, enabling workers to access and review their files at any time.⁹ Throughout the process of applying for and receiving workers' compensation, a worker ought to be able to obtain all pertinent information collected in relation to his or her case from the WCB. To prevent unnecessary requests after access to a file has already been granted, some provinces charge a fee for any additional requests, or automatically provide the worker with new information as it becomes available as opposed to releasing the entirety of the file on numerous occasions.¹⁰

Concerning content in a file that is of a sensitive medical nature, Ontario's policy states that "information that could be harmful to a worker is to be given to the worker's treating physician and the worker advised that this has been done."¹¹ CLAC agrees with the premise of Ontario's policy, and recommends that a similar policy be devised in Saskatchewan.

Automatically granting a worker access to his or her file would streamline the appeal process and shorten wait times, give a greater sense of dignity to the worker, align Saskatchewan with other jurisdictions in Canada, and still take into account workers' privacy concerns. As per Recommendation 21 of the 2011 report,

⁶ Ibid., 54.

⁷ Association of Workers' Compensation Boards of Canada, "Confidentiality of Information / Access to Information."

⁸ "Committee of Review Final Report," 54.

⁹ "Confidentiality of Information."

¹⁰ Ibid.

¹¹ Ibid.

unnecessary appeals could be avoided by granting workers immediate access to their complete files.¹² Internal policies and systems should be created that are in line with other provinces and territories, and the Continuous Improvement Committee on Information Systems should develop a system that will streamline and separate this process from the appeal process.

Recommendation 2: In conjunction with Recommendation 52 from the 2011 Committee of Review report, workers should be granted access to their files without having to file an appeal and be advised when additional information is added to the file. CLAC recommends that a worker's request for access to his or her file not be denied at any stage of the WCB process.

MANDATORY COVERAGE

Recommendation 1 of the 2011 Committee of Review report states: "*The Workers' Compensation Act, 1979* apply to all employees in Saskatchewan with no exclusions."¹³ However, there are currently still sectors that are excluded from coverage, including entertainment artists, clergy, door-to-door carriers, and those involved in various agriculture sectors, such as dairy farming and livestock operations.¹⁴ These exclusions create inequality and leave some workers without protection in the face of a workplace injury. CLAC recommends that coverage be mandatory for all employers with no exclusions.

Recommendation 3: CLAC agrees with Recommendation 1 from the 2011 Committee of Review report and recommends that an additional

step be taken to make *The Workers' Compensation Act, 2013* applicable to all employers in Saskatchewan with no exclusions.

One concern outlined in Recommendation 2 of the 2011 report was how to determine the wage replacement level for those who are self-employed, since they do not have a readily determinable yearly salary or income level like the majority of the workforce. However, for Recommendation 1 to come to fruition, WCB coverage must be mandatory for those who are self-employed. For all employees in Saskatchewan to have coverage, all employers must be involved in the program as well. This also increases the scope of the Meredith Principle that "encourages employers to run a safe, injury-free workplace leading to a healthy, productive workforce."¹⁵

All-inclusive WCB coverage not only addresses the concerns of CLAC's stakeholders, but also, as noted in the section about Recommendation 2 of the 2011 report, health-care costs related to uncovered employers could be significantly reduced. Granting adequate WCB coverage to all workers in Saskatchewan, including those who are self-employed, would encourage a progressive safety culture across the province and ensure the protection of each worker.

Recommendation 4: CLAC recommends that self-employed individuals be automatically covered up to a limit of 50 percent of one's declared income. Additional coverage could be purchased by individuals through the payment of an additional premium.

¹² "Committee of Review Final Report," 29.

¹³ *Ibid.*, 11.

¹⁴ Government of Saskatchewan, *The Workers' Compensation Act Exclusion Regulations, 2014*, RRS c W-17.11 Reg 2.

¹⁵ The Meredith Principle is the historic compromise in which injured employees forfeit the right to sue their employers in exchange for medical coverage and income replacement on a no-fault basis. See "Committee of Review Final Report," 7.

INCREASE MAXIMUM BENEFIT LEVELS

Recommendation 8 of the 2011 Committee of Review report states: “The maximum benefit level which is currently set at \$55,000 be raised immediately to \$59,000. Over the next 4 years, it be increased annually by a percentage of the annual average wage in Saskatchewan until it reaches 165% of that average annual wage. Henceforth, the maximum be adjusted yearly to remain at 165% of the annual average wage in the province.”¹⁶

One reason injuries go unreported or individuals do not take the necessary recovery time is the financial stress and pressure of a reduced income level. As indicated in the 2011 report, the former annual maximum of \$55,000 was frozen in place since 2005, and an overhaul was needed. CLAC commends the Saskatchewan government and other entities involved in the process of formulating the current procedure and legislation for taking steps to ensure that Saskatchewan workers will be able to see their income level adequately replaced should an injury occur at the workplace that prevents them from returning to work the day after their injury.

As it currently stands, six jurisdictions have higher maximum earnings covered and methods of adjustment than Saskatchewan.¹⁷ This is in line with Saskatchewan’s sixth-place rank in average weekly earnings among the provinces and territories.¹⁸ The current maximum weekly wage rate benefit available is 116 percent of Saskatchewan’s average weekly wage rate.¹⁹

The goal of the revised legislation and the procedures in place is to have the maximum weekly wage benefit obtainable through WCB be equal to 165 percent of the average weekly wage rate in Saskatchewan by 2019.²⁰ The legislation is very broad with the mandate it gives to the board to reach this target, and CLAC recommends that each yearly increase in the rate be properly monitored to ensure that individuals are able to reach that percentage point as quickly as reasonably possible, making any necessary adjustments to achieve this goal.

Recommendation 5: CLAC commends the Saskatchewan government for the implementation of PRO 17/2014, which increases the maximum wage rate to \$65,130 per year as of January 1, 2015. CLAC recommends that the policy continue to remain in place but be monitored and adjusted as necessary to ensure that by 2019, the maximum wage rate will be equal to 165 percent of Saskatchewan’s average wage rate.

One form of statistical analysis that ought to be made available to stakeholders is a record of the number of claims where the current maximum wage replacement level of \$65,130 and future maximum wage replacement levels do not adequately replace the worker’s wage rate. For the purpose of formulating well-informed recommendations, this statistic should be included in the annual statistical supplements published by the WCB. On the surface, the current policy adequately addresses the recommendation brought forth in the 2011 report; however, it is important to know in practice if there is a small or significant

¹⁶ “Committee of Review Final Report,” 19.

¹⁷ Association of Workers’ Compensation Boards of Canada, “Maximum Earnings Covered and Methods of Adjustment – Summary – 2015.”

¹⁸ Government of Canada, Statistics Canada, “Earnings, average weekly, by province and territory.”

¹⁹ Saskatchewan Workers’ Compensation Board, “Procedure Manual,” Section 4, 21.

²⁰ Ibid.

portion of claimants who are still not receiving adequate wage replacement. This information would be useful for determining if the annual adjustments prior to 2019 should be expedited because a high percentage of claimants are below the desired income replacement benchmarks.

Recommendation 6: CLAC recommends that further annual statistical supplements published by the WCB record and track claims where the maximum benefit level does not replace the worker's wage rate.

BOARD COMPOSITION

In the 2011 report, Recommendation 24 states: "An additional two full-time members, one from labour and one from employers, be appointed to the WCB Board of Directors as soon as possible."²¹

However, since the report was released, the number of those sitting on the board has remained the same. At present, the board has three sitting members, with one member representing workers and one representing employers. In comparison to other jurisdictions in Canada, Saskatchewan has the lowest maximum number of members that can sit on a board of directors.²² Expanding the number of board members to the maximum as outlined in the legislation would enhance the role and capacity of the board when governing the WCB.

As set out in the board "Governance Policy," the main responsibilities of board members as outlined in the board mem-

ber specific accountabilities constitute a significant undertaking.²³ Adding additional members as permitted by the legislation would enable time and resources to be used more effectively and efficiently in WCB governance.

One consistent focus of the 2011 report and this submission is the WCB appeal process. When an appeal is at the board appeal tribunal stage, a quorum of the board is met when a majority of board members are present to hear the appeal.²⁴ Currently, this means that for all appeals, two of the three board members must be present. Having five board members would create more flexibility for the board in being able to hold hearings, even though a quorum would now require three members to be present. Two members could still abstain due to scheduling conflicts, resulting in shorter wait times for an appeal to be heard and a decision to be issued.

From a governance accountability perspective, increasing the number of current sitting members from three to five also helps to increase the flexibility of the board when managing cases in which a board member may have a real or perceived conflict of interest.²⁵

Recommendation 7: CLAC agrees with Recommendation 24 from the 2011 Committee of Review report. Appointments and a nomination process should commence with a mandate to have five members sitting on the WCB board of directors by the end of the 2016 fiscal year.

²¹ "Committee of Review Final Report," 22.

²² Association of Workers' Compensation Boards of Canada, "Board of Directors – Summary of Board Structure and Composition."

²³ Saskatchewan Workers' Compensation Board, "Governance Policy," 23.

²⁴ Government of Saskatchewan. *The Workers' Compensation Act, 2013*, SS 2013, c.W-17.11, s.14.

²⁵ For a comprehensive discussion of board member conflicts of interest, see "Governance Policy," 13-18.

In the process of determining the additional two members to sit on the board of directors, CLAC agrees with Recommendation 27 from the 2011 report that the current term limits of four years for board members and five years for the chair are reasonable in length and do not need adjustment, and that the terms of board members should be staggered to provide both renewal and continuity.²⁶ These terms are defined as maximums, and in the spirit of maintaining a balance of continuity and renewal, reappointments should be examined to determine if a term shorter than the maximum is desirable based on the list of representatives nominated as per the act.

Recommendation 8: CLAC agrees that Recommendation 27 from the 2011 Committee of Review report is a good governance practice to implement when additional appointments are made to the board of directors.

APPEALS

As stated in our introduction, the Saskatchewan government and other stakeholders involved in the process are to be commended for updating the *Workers' Compensation Act* in 2013. Many of the housekeeping items brought up from different stakeholders were addressed in the current legislation, in accordance with Recommendation 30 from the 2011 report.²⁷ One area that still needs development and clarity is the jurisdiction of the appeal process, as workers can still make errors as they seek an appeal of their case with the WCB.

The Fair Practices Office was created as an ombudsman body for the purpose of monitoring the relationship of claimants with the WCB. The current legislation states: "The Fair Practices Officer may, in accordance with the role and mandate established by the board, investigate and make recommendations relating to any matter pursuant to this Act, including claims or assessment matters, in which a worker, worker's dependant or employer is or may be aggrieved" (emphasis added).²⁸ As outlined in POL 21/2013,²⁹ the Fair Practices Office is not involved in any step of the appeal process, and POL 14/2013 states that a matter under appeal is not within the jurisdiction of the Fair Practices Office.³⁰

CLAC's concern is that our members and other workers might mistakenly invoke the appeal process when the issue at hand would be better served going through the Fair Practices Office, or vice versa. CLAC believes that the roles and responsibilities of the WCB and the Fair Practices Office in the appeals process need to be more clearly defined in the legislation. In addition, information about the appeals process and the Fair Practices Office should be communicated in a manner that is consistent with the roles and responsibilities of both bodies. This would help to streamline the appeal process and resolve areas of confusion about the different avenues by which workers' concerns with their claims can be addressed.

Recommendation 9: CLAC commends the Saskatchewan government for updating the *Workers' Compensation Act* according to Recommendation

²⁶ "Committee of Review Final Report," 33-34.

²⁷ *Ibid.*, 35-36.

²⁸ Government of Saskatchewan. *The Workers' Compensation Act*, 2013, SS 2013, c W-17.11, s.186.

²⁹ Saskatchewan Workers' Compensation Board, "Policy Manual," Section 9, 4.

³⁰ *Ibid.*, 9, 11.

30 from the 2011 Committee of Review report.
CLAC recommends a two-step process.

- i. Clarify the roles and responsibilities of the Fair Practices Office and the appeal process.
- ii. Align communication with the clarified roles and responsibilities of the two bodies.

CONCLUSION

Based on extensive research and five years of experience representing members in the construction industry in Saskatchewan, CLAC offers recommendations for changes to the *Workers' Compensation Act*. The changes proposed in this document update and clarify the existing legislation, with the goal of creating an efficient process for receiving workers' compensation and reducing the rate of workplace injuries in Saskatchewan. These proposals are reflective of CLAC's ongoing commitment to work with the gov-

ernment to see that a workplace culture that promotes workers' health and safety exists everywhere in Saskatchewan.

CLAC commends the government for the progress that has been made in the area of workplace safety, and for undertaking this review process. We thank the Committee of Review for its diligence, and we look forward to reading the report on recommended changes to Saskatchewan's *Workers' Compensation Act*.

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