

SUBMISSION TO

**2015 Workers' Compensation Act
Committee of Review**

November 2015



Merit Contractors Association
62 – 17th Street West
Prince Albert, SK S6V 3X3
P: (306) 764-4380
E: info@meritsask.com



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MERIT

**Workers' Compensation Act
Committee of Review**
400-1870 Albert Street
Regina, SK S4P 4W1

November 15, 2015

Dear Committee of Review Members,

MERIT Contractors Association of Saskatchewan appreciates the opportunity to submit the concerns of its member companies with a view to improving the efficiency and effectiveness of the Workers' Compensation Board.

There are over 10,000 construction firms operating in Saskatchewan. Over 90% of those companies employ fewer than 20 workers. In total, the industry employs more than 45,000 people province-wide, 80% of which operate on an open shop basis. MERIT Contractors association is the voice for these employers and, as such, we feel we represent the heart and soul of construction and small business in Saskatchewan .

Our members, and the vast majority of contractors, remain committed to the highest safety standards on our many jobsites throughout the province. We are very pleased to note that the number of worksite injuries has been on the decline, with the provincial injury rate decreasing by 49 per cent since 2002. We remain committed to Saskatchewan's compensation system based on the Meredith Principles which have for so long been the foundation of the WCB's structure.

However, we remain concerned about the efficiency and general lack of accountability within the WCB, and believe there are significant and meaningful improvements that must be made to improve outcomes, not only for employers and employees, but also the WCB, the government and the public.

As the Committee of Review undertakes its work this year, we respectfully submit a list of recommendations which we believe are most desperately needed in order to not only bring Saskatchewan's WCB system in line with other provinces, but also, into the 21st century.

Thank you for taking the time to review our submission.

Shaun Howdle, Chairperson
Merit Contractors Association of Saskatchewan

OVERVIEW OF RECOMMENDATIONS

1. Update and Modernize the governance structure of the WCB
2. Examine and improve the efficiency of the current appeals system
3. Improve employer responsiveness
4. Increase the accountability of the medical community
5. Clarify the definition of a subcontractor
6. Eliminate mandatory WCB coverage for directors

1. ISSUE: UPDATE AND MODERNIZE THE GOVERNANCE STRUCTURE OF THE WCB

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

In particular, the size of the Board must be addressed. In Western Canada, while Saskatchewan's Board is made up of only three members, the Board of WorkSafe BC consists of 9 members, the WCB of Alberta has 10 and the WCB of Manitoba has 10 as well.

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

There are many advantages to having a larger Board of Directors, including

- Wider base of expertise from which to draw when making decisions
- Wider stakeholder consultation built into the Board system via Director appointment
- Ability to develop focussed sub-committees for specific issues such as stakeholder engagement, audit, etc.
- Improved decision-making, based on consensus of a wider base of knowledge. Decisions are not held up by grid-lock of three Directors
- Improved communication among stakeholders
- Improve accountability and transparency

RECOMMENDATIONS:

a. Board Size and Composition

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

While representation from both employer and employee groups is essential to the Board, to, we believe additional representation is required to maximize the effectiveness of the new model. For example, the 9 member Board in BC includes two public interest representatives, an Occupational Health & Safety representative, a health system representative, a regulatory/legal representative, an actuary, and the Worksafe BC CEO in an Ex officio role.

Merit recommends that in addition to employer and employee reps, the Board include expertise by way of actuarial or insurance professionals, and safety experts to ensure a broad base of knowledge and input when making decisions.

b. Function of the Board of Directors

The prime function of the Board would be that of governance: to establish policy and monitor implementation, to determine strategic initiative and set direction, and generally oversee operations and ensure accountability. Sub-committees of the Board could be tasked with more specific directives, based on current needs.

c. Full Time vs. Part time

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

2. ISSUE: EXAMINE AND IMPROVE THE EFFICIENCY OF THE CURRENT APPEALS SYTEM

The current wait time for final appeal hearing of over a year is a disgrace to the Saskatchewan WCB. If the final appeal wait is over a year, you can be assured that the claim itself has been in the system for considerably longer. That means employer and employee have been in a holding pattern, waiting for resolution to an issue that has been, without doubt, life-altering. This must be addressed to maintain the credibility of the system.

It is the position of Merit Saskatchewan that the main issue with the current appeals process is the Appeals Tribunal and the Board are one and the same, creating a heavy workload for members.. Currently, the WCB Appeals Tribunal is to consist of two or more members of the Board who are unbiased, but since there are so few Board members, the current framework that is in place is simply not effective.

Furthermore, the rate of decision over-turn at the final appeal is much too high. It is our understanding that close to 70% of employer-based appeals are overturned by the tribunal. This signals issues with the process leading up to the final appeal, which must also be addressed.

It is clear that immediate change is needed in Saskatchewan.

RECOMMENDATIONS:

a. Modernized Appeals Process

Merit recommends forming an Appeals Tribunal that is separate from the Board, consisting of experienced professionals skilled in fair and timely adjudication of cases. This would require revising subsections 19 and 20 of the WCA to change the duties and jurisdiction of the Board.

Furthermore, we recommend immediate implementation of the following

- Added personnel or efforts to significantly reduce the current backlog of cases
- Policy that would ensure that final appeals are heard within 30 days of the collection of relevant information

As well, due to the importance of the appeals process, we believe a new, comprehensive section of the WCA should be created in order to clearly outline this function exclusively. As part of this new section, we recommend having the Lieutenant Governor in Council appoint the members of the Appeals Tribunal, after consultation with stakeholder advisory committees.

Having an Appeals Tribunal separate from the Board would bring Saskatchewan in line with other provinces. Currently in British Columbia, the WorkSafe BC Appeals Tribunal is separate from their Board and is comprised of more members than Saskatchewan's entire Workers' Compensation Board. We recommend the Appeals Tribunal include at least three members, as is the case in Manitoba.

b. Review Turnover Rate

MERIT Saskatchewan recommends the WCB Board undertake a review in order to better understand

1. why so many WCB cases are appealed. In 2014, 1335 appeals were filed. Getting to the bottom of the high volume of appeals will help in the quest for faster service and better outcomes for all parties.
2. why so many of the appeals at the Board level are overturned. If the system can be corrected earlier on in the process, the backlog of appealed cases should eventually dwindle.

3. ISSUE: IMPROVE EMPLOYER RESPONSIVENESS

Many employers report that they feel disadvantaged by the current system. Many Merit Saskatchewan employers report that they feel as though their position is marginalized in the WCB claims process. While workers are provided a workers' advocate through subsection 161 of the WCA, employers are not. Their integrity and credibility are often questioned if the employee's version of the story differs from the employer's.

While the WCB does provide vital service for injured workers, it is important to remember the vital role employers play throughout the process as well. We recommend the WCB take a number of steps to protect the interests of employers and enable them to be able to participate more effectively in partnership with the organization.

RECOMMENDATIONS:

a. *Change of Culture*

A change of culture needs to take place at the working level of the WCB. We believe that case managers must examine all aspects of an accident report, investigate adequately, and most importantly, listen to all sides fairly before a judgement is made on a claim.

b. *Employers' Advocate*

The vast majority of employers are small, many with 5 or fewer employees. These employers don't have the time or resources to research, appeal, or effectively manage claims. These employers are looking for a better opportunity to be heard through the adjudication process, and be provided the same level of consideration as employees.

In order to achieve the aforementioned goals, we believe subsection 161 of the WCA could be altered to contain general advocacy provisions in order to provide not only an advocate for workers, but also an advocate for employers and assist them in navigating their way through the often complex WCB system.

Since employers play an important role in the process, it is imperative their interests are protected and represented and considered of the same level of importance as workers. Currently, a lack of such a role suggests systemic bias against employers. Alternatively, an expanded/augmented role may be required for the Fair Practices Officer. As set out in subsection 186 of the WCA, the FPO is able to investigate and make recommendations to the Board relating to claims or assessment matters in which an employer may be aggrieved.

c. *Online Services*

We believe it would be beneficial for all parties involved if the online services for employers were upgraded in the following ways:

- Improve the functionality and performance of the WCB website. It should be possible for employers to generate reports on costs etc. from their online accounts.
- Enable electronic invoicing or the ability for employers to produce their own invoices. This does not currently exist and would greatly help employers better manage payments as there seems to be frequent instances of missing paper invoices.
- Make account information more accessible. As it stands now, employers can check online to see if they have an amount currently owing, but there is no indication of a due date. Employers are also unable to access a statement of accounts for future instalments.
- Implement automatic withdrawals for company WCB premium instalments. This would solve late payments.

4. ISSUE: INCREASE THE ACCOUNTABILITY OF THE MEDICAL COMMUNITY

It is MERIT Saskatchewan's view that communication between employers, physicians and the WCB needs to be dramatically improved. We have heard several reports that, due to the inaction of physicians, employees are not able to participate in return to work programs in a timely manner.

As it stands now, a number of problems exist in relation to the accountability of the medical community:

- Some physicians do not seem to understand how modified work programs operate and, as a result, they simply assign workers time off. This needs to change. Physicians need to understand the importance of getting the worker back on the job, both for the employer and the employee.
- Some physicians are not completing documentation for employers such as worker restriction documentation in a timely way. In some cases, by the time the restrictions are received, the employee may be back at work, and the opportunity is lost to reduce the time lost days.
- Employers are not always able to access workers' medical information in a timely fashion. Our members would like this to change in order to ensure they are providing workers with the optimum work restrictions for their current physical abilities.

If a physician does not provide necessary information regarding restrictions to the employer, then it costs everyone in the system money: the employer, the employee, and the WCB. This needs to be corrected.

RECOMMENDATION:

Physicians must be educated on the WCB process, not only to improve their accountability within the system, but also to provide them with clarity and a solid understanding of the repercussions of their delay. Ultimately, this will make their jobs easier.

In order to increase the accountability of medical professionals involved in the WCB process, it would help to revise subsections 55 and 57 of the WCA to require physicians to provide information not only to the Board, but to employers as well. Currently the legislation only outlines physicians' responsibilities to the Board, which does not help to ensure solid lines of communication between physicians and employers.

Physicians need to be held accountable in meeting their obligations to the WCB. If they are paid a premium for services they provide, then they should be held to the standards of timely communication as well. If they don't meet those requirements, then the WCB should examine a policy to reduce the premium payment to reflect that the conditions of service were not met.

5. CLARIFY THE DEFINITION OF A SUBCONTRACTOR

ISSUE:

We believe the definition of a subcontractor needs to be updated to reflect the current work environment. Much of the work that is done today, especially in the construction community, is done through subcontractors. However, the definition used by the WCB is distinctly different.

The current definitions, as outlined in sub-section 131 (2) of the WCA is "While engaged in work that the contractor or subcontractor has contracted with the principal, the worker of a contractor or subcontractor is deemed to be the worker of the principal unless the contractor or subcontractor is, with respect to that work, assessed, or added and assessed, as the case may be, as an employer."

It is our understanding that virtually anyone that provides a service to a business would be deemed a subcontractor. Business owners would need to secure a clearance from companies that are legitimate subcontractors right through to couriers and repair persons.

This type of definition and reporting is onerous on any business and clearly not useful or practical. As a result, many employers are undoubtedly reporting subcontractor payments incorrectly.

RECOMMENDATION:

We recommend subsections 131-133 of the WCA be revised to update the definition of subcontractor that is reflective of the current business environment.

We also recommend that the WCB examine the issue of single owner/operator subcontractors that have opted out of coverage being covered by other contractors. Our members would like a clearer understanding of the WCB's rationale as to why this policy has been put in place.

6. ISSUE: ELIMINATE MANDATORY WCB COVERAGE FOR DIRECTORS

The WCB's recent approval of a policy called "Coverage-Directors" (Policy 14-2014) requires mandatory coverage for all directors carried on payroll.

Many small businesses are incorporated, with the owner as Director. Whether it was intentional or not, this new policy had a dramatic effect on those owners. Where they were previously allowed to opt out of WCB coverage and secure their own insurance, they are now forced to carry WCB coverage. **Mandatory** coverage for Directors is not functional for most small businesses.

Furthermore, this change was implemented with very little consultation with the business community. As a result, many business owners do not understand or support the policy, but are forced to abide by it.

RECOMMENDATION:

Mandatory coverage for directors was introduced with little consultation or notice. It is our recommendation that the WCB revisit this policy and follow the lead of other provinces by providing directors the flexibility to purchase optional coverage as is available to business directors in both Alberta and Manitoba.