

Workers' Compensation Act Committee of Review

Regina, Saskatchewan

November 10, 2015



**Restaurants
Canada**

The voice of foodservice | La voix des services alimentaires

Introduction

Restaurants Canada is a growing community of 30,000 foodservice businesses, including restaurants, bars, caterers, institutions and suppliers. We connect our members from coast to coast, through services, research and advocacy for a strong and vibrant restaurant industry. Canada's restaurant industry directly employs 1.2 million Canadians, is the number one source of first jobs, and serves 18-million customers every day. In a Saskatchewan context, we represent the interests of the province's \$2.2 billion foodservice sector that employs 45,800 people in nearly every community in the province.

The restaurant sector constitutes the vast majority of the Saskatchewan Workers' Compensation Board's S22 rate code and is one of the key sectors in the Service and Hospitality Safety Association. To be clear, Restaurants Canada supports and encourages the continued commitment to the Meredith Principles (no-fault compensation, security of benefits, collective liability, exclusive jurisdiction and administration by an independent board). Indeed, our recommendations for changes to Saskatchewan's workers' compensation system, primarily although not exclusively with regard to significant changes to the governance model, are made with the desire to support and improve on the adherence to those principles. Fundamentally, we are seeking a more transparent, responsive and modern governance model that reflects the realities of contemporary Saskatchewan, our additional recommendations and comments are primarily issues that, while needing to be addressed, are examples of concerns that we believe would already have been addressed if the WCB was already operating with a modern board governance model.

Recommendations

Restaurants Canada is pleased to submit the following recommendations, in the interests of Saskatchewan's more than 2300 foodservice operators, in the hope that a resulting modern, transparent, engaged and effective WCB system will more fully satisfy its key stakeholders.

A. Modernized Governance Structure

With just three members, not only does Saskatchewan's WCB have by far the fewest members on its Board of Directors of any jurisdiction in the country, it alone amongst the country's 12 boards (Northwest Territories and Nunavut share a Board) has full-time board members.

Board Size – Canadian WCBs

Quebec: 15	Nova Scotia: 10
Newfoundland & Labrador: 12	Ontario: 10
Manitoba: 11	Prince Edward Island: 9
New Brunswick: 11	Northwest Territories/Nunavut: 7
Alberta: 10	Yukon: 7
British Columbia: 10	Saskatchewan: 3

Making Board members full-time employees of the organization they are meant to govern does not lend itself to good governance, independence, transparency, or connection to the community whose interests they are intended to represent. Equally the incredibly small size of the Board also poses governance, independence and transparency challenges. The Board of Directors model as it currently exists does not work. Restaurants Canada is asking that the Committee of Review recommend:

1. Creation of a Board of Directors that is no smaller than 8 members and no larger than 12 members with:
 - a. An equal number of employer and employee representatives – 3-5 Directors each;
 - b. An independent Chair (with two Vice-Chairs, one each from amongst employer and employee Directors); and
 - c. The President & CEO as a Non-Voting, Ex-Officio member.
2. The Board of Directors serve on a part-time basis (except the Ex-Officio President & CEO).
3. Establishing mandated Stakeholder Advisory Committees for both the Employer and Employee communities, and that the committees should be broadly representative of all rate codes (this would likely require the Employee Stakeholder Advisory Committee to include both union and non-union representatives).
4. That Employer and Employee Directors should be appointed by the Lieutenant-Governor-in-Council from recommendations made by the respective Stakeholder Advisory Committees.
5. The Board Chair should be appointed by the Lieutenant-Governor-in-Council upon joint recommendation from the Stakeholder Advisory Committees.

Furthermore, Restaurants Canada believes that it is best that the appeals function be removed from the Board of Directors and instead be undertaken by a separate Appeals Panel. Restaurants Canada therefore asks that the Committee of Review also recommend:

- 6.** Creation of a WCB Appeals Panel that is no smaller than 9 members and no larger than 15 members with:
 - a. An equal number of employer, employee and public interest representatives – 3-5 Members each.
- 7.** The Appeals Panel serve on a part-time basis.
- 8.** That all appeals panels consist of one member from each of the employer, employee and public interest representatives, with the public interest representative serving as Chair.
- 9.** That employer and employee Appeal Panel Members should be appointed by the Lieutenant-Governor-in-Council from recommendations made by the respective Stakeholder Advisory Committees.
- 10.** That the public interest Appeal Panel Members should be appointed by the Lieutenant-Governor-in-Council upon joint recommendation from the Stakeholder Advisory Committees or other such method as to ensure their independence.

B. Legislative Compliance

The current policy used by the WCB in handling fatalities is not in compliance with existing legislation.

Section 134 (1) sub-sections a. through c. make it clear that the Board shall set its premium rates in a manner that is sufficient to pay "... the compensation with respect to injuries to workers in the businesses within the class..." This does not allow for cross-subsidization of industries for fatality claims. Cross-subsidization is permissible for administrative and/or health and safety program costs only. The current policy of assigning fatality costs equally across all rate codes does not reflect the higher risk of fatalities that some industries have and is not compliant with the Act as currently written. Restaurants Canada asks that the Committee of Review recommend:

- 11.** That Saskatchewan's WCB be directed to comply with the Workers Compensation Act as written and that if it continues to be non-compliant that appropriate sanctions be imposed.

C. Rate Setting & Funding Levels

Currently the WCB undertakes actuarial reviews of its rate setting model; however this process, by definition, does not test the management assumptions that lay the ground for establishing funding levels and setting rates. For example projected real and nominal rates of return for investments are established

by management, but are not tested for their accuracy or reasonableness. And, changes in medical costs are projected linearly within a three year window, while changes in compensation claims costs are projected linearly within a five year window – put another way, the model is less robust to decreases in claims and compensation costs than it is to increases in medical costs.

Furthermore, WCB, by policy, currently sets its targeted funding level between 105% and 120% plus or minus 2% – so in reality the targeted funding level is between 103% and 122%. These levels, a “cushion” if you will to mitigate the risk of employers funding falling below 100%, are determined solely by the WCB Board of Directors and their assessment of employer’s comfort level with the risk. As summarized in the Asset Liability Study dated June 15, 2015 carried out for the WCB by Eckler Consultants + Actuaries, funding targets and ranges for Canadian workers’ compensation boards are all over the map.

Funding Targets of Canadian WCBs (Eckler Asset Liability Study)

	AB	BC	MB	NB	NL	NS	NWT	ON	QC	YT	PEI	SK
Max	128.0%	132.5%	130.0%		120.0%		140.0%			128.1%	110.0%	120.0%
Target				110.0%	110.0%	100.0%	125.0%	100.0%	100.0%	124.8%		
Min	114.0%	105.1%	110.0%		100.0%		110.0%			121.5%	100.0%	105.0%
2013 YE	134.3%	124.6%	134.0%	138.2%	106.6%	71.4%	116.4%	65.4%	95.3%	152.6%	115.4%	119.3%

Restaurants Canada would also like to bring to the attention of the Committee of Review that the S22 Rate Code has been overcharged by the current rate setting model for 13 straight years by amounts ranging from 11% to as high as 35%. Additionally it is worth reminding the Committee of Review that WCB recorded a surplus worth in excess of \$141-million in 2014-15 and is currently projected to again be above 123% funding by approximately \$91-million in 2015-16.

The Asset Liability Study undertaken by Eckler also pointed out that the WCB currently makes no provision to recognize “... unrealized gains and losses on investments as well as the impact of a market related rate of return on the benefit liabilities and claim cost expense” and that it should consider doing so.

It is therefore Restaurants Canada’s request that the Committee of Review recommend:

- 12.** That the WCB regularly engage independent auditors to review the reasonableness of the Board’s management assumptions that impact on both the rate setting model and the WCB’s funding levels. And that WCB management be obliged to report on which recommendations have been accepted and those which have not, and to explain the reasons behind such decisions.
- 13.** That the WCB take immediate steps to recognize, in a responsible and prudent fashion, some reasonable percentage of unrealized net gains (losses) from investments.

- 14.** That the WCB establish a maximum funding level of 120%, a minimum funding level of 100% and a target funding level of 110%.
- 15.** That the WCB adopt a policy that a refund to employers be automatically triggered whenever the Board's Annual Report reports funds are in excess of the maximum funding level; that the refund be issued within six months of the end of the fiscal year in which the surplus is reported; and that the refunded amount be made up of all funds in excess of the target funding level (i.e. 110%).

Conclusion

The work of the 2015 Workers' Compensation Act Committee of Review is of utmost importance in securing the move from a tired, unresponsive, out-of-step board model to a modern, well-governed and transparent Workers' Compensation Board that all Saskatchewan people deserve. While we have made 15 recommendations to the Committee of Review, all really boil down to the need for a dramatically improved governance model; if the time ever existed for a working Board that time has long since passed – it is time for Saskatchewan to adopt a policy governance board model for its WCB.