



**SASKATCHEWAN
CONSTRUCTION**

ASSOCIATION

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**Submission to the Workers'
Compensation Act
Committee of Review**

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VISION

The SCA provides collaborative and trusted leadership that sustains a prosperous construction industry and a better quality of life for the people of Saskatchewan.

MISSION

The SCA exists to create extraordinary value for members through:

- Providing industry leadership;
- Encouraging investment in Saskatchewan;
- Growing opportunities for members; and
- Maintaining a sustainable organization.

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Introduction

The Saskatchewan Construction Association (SCA) is pleased to provide this written submission to the Committee of Review with respect to necessary changes to the Workers' Compensation Board (WCB) system in Saskatchewan. The SCA is the leading voice of Saskatchewan's construction industry. The construction industry is a vital link to growth and development, employing more than 55,000 people in Saskatchewan. The vast majority of these people work safely every day in challenging and changing conditions. Saskatchewan's construction industry is safer today than ever before. This is possible because of the growing commitment of Saskatchewan's construction employers to workplace safety.

As the leading voice of Saskatchewan's construction industry, the SCA is presenting on behalf of the more than 11,000 construction businesses in this province. These businesses, covered through WCB's B and R rate codes, have payroll in excess of \$2.8 Billion. In Saskatchewan, the construction industry is the third largest industry employer, and the third largest industry in terms of contribution to GDP.

WCB exists to insure employers against loss and to compensate workers for injuries occurring as a result of work. The compensation system, based on the Meredith Principles, has remained largely unchanged throughout its history in Saskatchewan. As the Committee of Review undertakes its work, we encourage a continued commitment to the Meredith Principles as the foundation of the WCB model. While this foundation should remain consistent, we would further encourage the Committee to consider embracing the need for change to the WCB system, particularly with respect to governance, as we look to build an insurance and compensation system that reflects the realities of a modern Saskatchewan.

We believe that WCB has a structural flaw within its governance system that fundamentally places too much distance between those governing the system and those they govern on behalf of. WCB is a system owned by employers and created to protect workers. There must always be a clear line between the interests of these two stakeholder groups and the actions of WCB. Unfortunately today, this is not always the case. Employers in particular feel distant from the decision-making within the WCB system.

Saskatchewan employers embrace the importance of ensuring safe workplaces and seek to ensure that every worker works safely every day. It is time that this reality be reflected in the culture and structure of WCB. It is time that employers be recognized by WCB and its employees as partners in creating safe workplaces.

Recommendations

Therefore, the SCA is pleased to submit a series of recommendations to the Committee of Review that are aimed to address this fundamental challenge. We believe that, when implemented, our recommendations will deliver a modern, effective, and engaged WCB system that will more fully satisfy the needs of its key stakeholders. Specifically, we are asking the Committee of Review to recommend the following four actions:

1. Governance modernization through a new Board structure;
2. Creation of a legislated stakeholder input process;
3. Separation of the Appeals function; and
4. Creation of an Employers' Advocate function.

Governance modernization

Saskatchewan's WCB has the smallest Board in the country, and is the only jurisdiction in which the Board members are full-time employees. Our model is out-dated, inefficient, and ineffective. It is time for a change.

Specifically, the SCA is asking the Committee of Review to recommend the following changes to the *Workers' Compensation Act* to modernize the Board governance:

- Change the maximum membership of the Board from five to nine;
- Change the Board from full-time employees to part-time volunteers;
- Maintain the Board as an even number of members representing both employers and workers and an independent Chairperson;
- Change the definition of the term "labour organizations" to allow for non-unionized workers to be represented on the Board;
- Change the manner in which Board member recommendations are made to the Lieutenant Governor in Council to allow for broad stakeholder input through legislated stakeholder committees; and

- Implement a process by which the Lieutenant Governor in Council receives recommendations for the Chairperson of the board from legislated stakeholder committees after the conduct of a professional search process.

The net effect of these changes would be that WCB would be governed by a nine-person part-time Board. The nature of this Board would ensure greater engagement of members with their relevant stakeholders, and would create the necessary distance to avoid perceptions of conflicts of interest between the Board and WCB administration. These changes would bring Saskatchewan more in line with other jurisdictions in Canada, and would ensure a modern approach to Board governance is in place at WCB.

Legislated stakeholder input

Historically, WCB has struggled to meaningfully engage with its diverse stakeholder groups. On the employer side this has often led to misunderstanding and frustration. Employers pay for 100% of all WCB costs, and therefore reasonably expect a voice in the way the system is structured, governed, and managed.

There exists today in Saskatchewan an appropriate model for legislated stakeholder input that can be borrowed to improve the effectiveness of WCB's stakeholder engagement. A look to the policies and practices committees required in the *Assessment Management Agency Act* (Section 11(2)) provides an example of how this could be done at WCB. To that end, the SCA is asking the Committee of Review to recommend changes to the *Workers' Compensation Act* as follows:

- Creation of a new section within the Act for the purpose of mandating the creation of stakeholder advisory committees reporting directly to the WCB Board of Directors;
- That there be two such committees mandated, with the ability for the Board to create more as needed;
- That the two mandated committees be an Employer stakeholder advisory committee and a Worker stakeholder advisory committee;
- That the committees be mandated to review all policies and practices of the WCB, to make recommendations to the Board on those policies and practices, to recommend Board member appointments to the Minister; and to recommend Chairperson appointments to the Minister;

- That the committees be empowered to make requests of the staff of WCB for the purpose of reviewing and developing proposals, supporting communication to employers and workers, and responding to requests for information; and
- That membership on the committee be pre-determined by employer and worker organizations and subsequently appointed by the Minister.

When implemented fully, this stakeholder advisory system will ensure that both employers and workers are directly engaged in the policies, practices, and governance of the WCB. As a system paid for by employers and designed to protect workers, this outcome is a reasonable expectation. Legislated stakeholder engagement will ensure WCB is accountable to its stakeholders and both efficient and effective at carrying out its mandate.

Separate Appeals

As we are recommending significant changes to the governance structure of the WCB, we want to continue to ensure that appeals are handled in a professional and appropriate manner both for employers and workers. To that end, we are asking the Committee of Review to recommend the creation of an Appeals Commission, appointed by the Lieutenant Governor in Council, on the recommendation of the stakeholder advisory committees, to handle the final level of appeals that are currently handled by the WCB Board.

We would support a model similar to that in place in Manitoba, in which the Appeals Commission includes representatives of the public interest (appointed, without recommendation, by the Lieutenant Governor in Council) and representatives of both employers and workers. Every appeal, whether simply a file review or an oral hearing, sent to the Commission should require a review by an Appeal Panel consisting of three members – an employer representative, a worker representative, and a public interest Chair. These Appeal Panels should have the full authority to subpoena and adjudicate as the WCB Board does now, with all decisions being considered final.

Prior to making a final recommendation on the creation of this Appeals Commission, the SCA asks the Committee of Review to request from Manitoba, details on the current costs of managing this appeals system. The Committee of Review is also asked to consider alternative mechanisms for achieving the same outcome – a separation of the appeals function from the governance structure of the WCB. For instance, the

Committee should look at whether it would be possible for this appeals function to be handled through existing appeals/adjudication mechanisms currently in place in Saskatchewan.

Employer Advocate

Employers perceive the existence of a Worker's Advocate position without a corollary Employer's Advocate position as a clear symbol of systemic bias within WCB. Creation of an Employer Advocate position would address this perceived bias and provide support to employers seeking to better understand and engage with the WCB system. The Employer Advocate office, like the Office of the Workers' Advocate (OWA) should be arm's length from WCB itself.

An Employer Advocate could provide employers with a similar level of service as that provided through the OWA for workers. This would include:

- Discussion with the employer about outcomes from decisions of WCB along with support in terms of understanding decisions and the claims and appeals process;
- Assistance to employers in preparing an appeal;
- Representation to employers at all levels of the WCB appeals process; and
- Education to organizations and employer groups on the Act, its regulations, and the role of the Employer Advocate.

Creation of an Employer Advocate office would assist employers in navigating the complexities of WCB, a common complaint from employers, while also addressing the perception of bias against employers that exists today. It is our belief that this would result in greater employer engagement and satisfaction with the WCB system and is a relatively easy step for WCB to take. We would encourage the Committee of Review to recommend the creation of this office.

Additional Items of Concern

The SCA is of the strong opinion that the Committee of Review should focus its efforts on recommending changes to the governance structure of WCB as outlined above in our four recommendations. It is our belief that many of the existing WCB policy concerns held by employers will be addressed more efficiently and more effectively when a new governance structure is in place.

While we encourage the Committee of Review to focus on this issue as its primary effort, we will also draw the Committee's attention to the following items of importance for our industry:

1. Applying a different rate code for office-only workers;
2. Clarifying the definition of a subcontractor for purposes of coverage and premiums;
3. Establishing separate rate codes for companies having implemented recognized safety programs;
4. Reversing the decision to require inclusion of owners/directors in coverage and premiums; and
5. Modifying the definition of a time-loss claim to exclude wage loss payments that are solely a result of medical appointments.

Conclusion

The work of the 2015 Workers' Compensation Act Committee of Review is of critical importance to securing the future of this crucial service to employers and workers. The WCB system can be modernized to more effectively compensate injured workers, insure employers, drive down injury rates, and engage stakeholders. We have seen the successful beginnings of such progress in Saskatchewan in the last few years, but much work remains to be done.

A modern governance model is the best place to start. A Board of Directors that better reflects the key stakeholders – both workers and employers – and focuses on the governance and oversight of the system is the best initial step. This Board can be supported properly through both an independent and professional appeals mechanism and a legislated stakeholder engagement input model. These three components, taken together, will ensure that WCB Saskatchewan is closer in line with its counterparts in other provinces but more importantly that its governance model is up-to-date.

At the same time, the creation of an Employer Advocate office would ensure that all impacted parties understand the policies, processes and consequences of the WCB decisions. This would ease the transition to a new governance model and, equally importantly, provide a degree of fairness that too many employers do not feel exists within the current framework. The SCA takes as obvious that the fact that many employers feel this way is a problem worth addressing in itself.

In order for the Committee of Review process to be deemed a success, it must tackle the issue of governance. We have provided one possible roadmap for success on this issue and we stand ready to support the Committee of Review further as needed in scoping out this initiative.

On behalf of the Saskatchewan construction industry, and its many employers and workers, we thank the Committee of Review for considering this submission and we look forward to the outcomes of your work.