



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

November 2015

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Introduction

On behalf of over 10,000 members, the Saskatchewan Union of Nurses (SUN) appreciates the opportunity to submit recommendations to the 2015 *Workers' Compensation Act* Committee of Review.

Injuries in healthcare continue to remain much higher than other industries in Saskatchewan. SUN is very interested in, and committed to, ensuring that a progressive system is in place to both prevent workplace injuries and to ensure that injured nurses are properly compensated for any injuries suffered in the workplace.

Although the number of reported workplace injuries in healthcare is reduced, SUN is well aware that many workplace injuries are not reported. Many SUN members with disabilities have medical conditions that directly relate to their workplace, but were never reported as workplace injuries.

Our submission will focus on several themes: Coverage and Benefits; Prevention; Service Delivery and Customer Service; and, Structure and Governance.

Theme 1: Coverage and Benefits

Issue: Coverage

The 2006 WCB Committee of Review recommended that a review and report of occupations not currently required to be covered by WCB be provided. In its *2014 Stakeholders Report*, WCB reports that the “project to review the excluded industries was suspended in 2010...” and “is expected to remain in abeyance pending the 2015 Committee of Review.” The 2010 Committee of Review recommended that the *Act* apply to all workers in Saskatchewan with no exclusions.

SUN believes that inclusion in WCB coverage is a positive advance for all workers. SUN continues to recommend that a review of the current exclusions take place with an aim of eliminating existing exclusions. This review should be circulated to stakeholders and advanced to government to recommend expansion of coverage.

Issue: Benefits

The previous WCB Committee of Review recommendation to increase the maximum wage rate has been implemented. This new provision of *The Workers' Compensation Act, 2013* is a commendable improvement.

However, in comparing the maximum wage rates of other provinces, Saskatchewan's maximum wage of \$65,150 for 2015 is the third lowest in Canada, with the Canadian average at \$76,450. SUN members who are injured at work should not have to endure the hardship of dealing with an injury, compounded by a significant drop in earnings.

SUN recommends this Committee of Review consider further increases to the maximum wage base.

Issue: Pre-Existing Conditions

SUN recommends that WCB not deny claims based on degenerative or pre-existing changes in medical conditions.

As an example, if a registered nurse has been working regularly and is then off work due to a workplace injury, the claim should not be denied due to other pre-existing medical conditions. The medical conditions did not prevent the nurse from working until the injury occurred and should not limit or lead to the denial of the claim.

Theme 2: Prevention

Issue: Prevention

Saskatchewan continues to have a high rate of injury. In particular, healthcare continues to have the highest rates of injury in the province. The injury rate in healthcare is declining, from 10.52% in 2013 to 9.47% in 2014, with 3,992 injuries. This is still much higher than the industry with the second highest rate of workplace injuries, which is construction, with 1,386 injuries in 2014.

WCB has been focusing on healthcare employers for safety and prevention. This is important. SUN believes that additional initiatives must be undertaken to more effectively reduce workplace injuries in healthcare.

The prevention budget of WCB has increased minimally over the past number of years. Prevention services were moved from the Occupational Health and Safety branch of the Ministry of Labour Relations and Workplace Safety to WCB. This results in WCB taking full responsibility for prevention services. The services provided by WCB must be sufficient to educate, monitor and evaluate effectiveness of prevention programs.

WCB rates continue to be reduced. A cost effective WCB is important to all stakeholders. However, until such time as Saskatchewan's workplace injury rates are no longer among the highest in Canada, prevention of injuries is a higher priority than reduction of rates.

More funding should be dedicated to concrete incentives for prevention.

WorkSafe Saskatchewan also does valuable work in preventing injuries. WorkSafe's awareness campaigns are prominent and effective in raising awareness of workplace safety. To reduce injuries and engage in safe workplace practices, SUN recommends that more funding and staff be allocated to WorkSafe for education and training to supplement the awareness campaigns.

Issue: Safety Associations

Safety Associations exist for certain industries; to date there are seven Safety Associations. A recommendation from the previous WCB Committee of Review asked for active pursuit of the creation of additional Safety Associations. This recommendation remains a valuable one; SUN urges the creation of Safety Associations for industries currently without them.

In addition, it may be useful to evaluate the effectiveness of existing Safety Associations to provide an assessment of their efforts to date.

Issue: Safety Training

Safety training now includes a number of on-line sessions. Since this is a change to the delivery of training since the last Committee of Review, SUN recommends that an assessment of the effectiveness of this mode of education for safety practices be conducted, along with review of the quality and cost-effectiveness of training provided by outside entities.

This method of delivery should be compared to alternative approaches, such as staffing the WCB Prevention department to allow in-house staff to perform all safety and prevention training.

Issue: Establish a Centre of Occupational Injury and Disease

A Centre of Occupational Injury and Disease would be one entity that would provide expertise and consolidation of research, investigations, and medical assessments regarding workplace injuries. This type of facility would house experts in workplace safety and prevention and

rehabilitation. The Centre could provide specific return to work assessments by experts in occupational injuries.

Given surpluses generated by WCB, funding is available to develop this type of long term solution for WCB operations.

Theme 3: Service Delivery and Customer Service

Issue: Communication

The previous WCB Committee of Review recommended that more information be provided to injured workers to outline, in detail, the financial implications of decisions.

SUN members continue to report that they have difficulty understanding how their WCB income was determined, the exact salary basis that was used by WCB, and the implications to their benefits.

SUN members do not receive WCB directly. The WCB income is provided via the employer. This renders further confusion to ascertain if the accurate amount of income has been provided.

SUN recommends that WCB increase the clarity of information provided to injured workers with respect to the calculation of benefits, and consider issuing payments directly to the injured worker to increase transparency.

Issue: Privacy

The previous WCB Committee of Review recommended that further action be taken to address privacy issues. In its *2014 Stakeholders Report*, the WCB reports that recommendations are “being reviewed as part of a larger initiative on privacy issues.”

Given the sensitive nature of the medical and other personal information that WCB holds in trust, SUN encourages continued work to maximize the protection of privacy.

Issue: Return to Work

WCB must monitor return to work consistently to ensure that the return to work program is effective, safe, and successful for the injured worker.

A 2010 WCB Committee of Review recommendation was that “WCB be able to accurately monitor return to work programs and ensure they are being effectively applied and administered” and that this process should include monitoring and evaluation. SUN would encourage additional work to comply with this recommendation.

SUN believes that return to work programs should not force injured workers back to work prior to full recovery. Return to work programs should be supported and include involvement from the injured worker, WCB staff, and employer representatives. WCB should continue financial support during the graduated return to work program.

Issue: WCB Processes and Customer Service

A current focus of WCB is to reduce backlog, while at the same time minimize costs.

Backlogs impair the interests of injured workers, and should be reduced. However, it is important that efforts to reduce backlogs do not come at the expense of rendering fair, thorough, and quality decisions that treat injured workers with justice.

SUN believes that a crucial element in resolving backlogs is to improve claims development. When claims are developed so that the relevant facts of the claim are sought, and the process adheres to the principles of rules of evidence and fairness as outlined in the *Act*, time is saved on adjudication of the claim, preventing backlogs on the front end.

WCB staff at the initial stages of the claim must be adequately trained and be allowed time to properly gather evidence to have all decisions based on facts. WCB staff must be further trained on WCB policies to ensure that their decisions are consistent with those policies.

SUN recommends that funds should be invested in increases in staff and training where needed.

Continuous evaluation of customer service is critical to ensuring that workers and employers are receiving the service they require. It is also critical that customer service surveys must include not only those whose claims have been accepted, but also those whose claims have not been accepted.

While internal assessment of customer service as part of the balanced scorecard is important, independent assessment is also critical to ensuring confidence and transparency in the fairness of the process.

Issue: Medical Services

As part of the continuous improvement that WCB aims to practice, as articulated in the Mission Statement, additional work can be undertaken on medical services.

That improvement can and should include evaluation of the medical services provided to WCB, with a particular focus on evaluation of physician work done for WCB. In addition, work performed by WCB tertiary centres should be evaluated for effectiveness and cost.

Issue: Mental Health

Many WCB claims involve a mental health component. Many injured workers experience degrees of depression which can impede their recovery and return to work.

SUN recommends that WCB processes include an early assessment of the presence of mental health issues in WCB claims in order to provide the necessary resources where needed.

Theme 4: Structure and Governance

Issue: Mandate and Principles

The Meredith Principles cite “Independence of the Board” as one of the five critical principles governing WCB.

For this reason, *The Workers’ Compensation Act, 2013* provides that the Board consist of equal numbers of worker and employer representatives, along with a Chair of the WCB Board. The balance of worker and employer input is in all facets of the Board function, and is a key component of the *Act*.

In the spirit of the *Act*, a worker and employer representative must address all appeals. Sections 18 and 20 of the *Act* gives the Board authority to make decisions. SUN believes that the balance of input from workers and employers should be maintained in the appeal process. It is fundamental that decisions must be made in a fair manner, after due diligence has been provided to develop the claim properly, in keeping with the rules of evidence set out in the *Act* and the Inquiry Model of Tribunal decision making practiced by WCB.

SUN recommends that these principles for fair and just decision making not be diminished by pressures to reduce backlogs. WCB needs to ensure that WCB decisions, at all stages, be assessed for compliance with the principles set out in the *Act*.

Issue: Governance

Both the Meredith Principles and *The Workers' Compensation Act, 2013* outline the independence of the WCB Board. In order to maintain trust for both workers and employers, the Board should be at arm's length.

To facilitate proper governance, due consideration must be given to the appointment of Board members. Members should be selected for their experience and ability to exercise the substantial authority of the Board to act with the same powers as the Court of Queen's Bench. Board members should be required to undertake ongoing education regarding adjudication of decisions, tribunal decision making based on the principles of the Inquiry Model, and board governance principles.

To facilitate the expertise required, SUN encourages that appointments to the Board should generally be made for the maximum four- or five-year terms, with possibility of renewal, rather than shorter terms.

Finally, the legislation contemplates that the Board operate as a Tribunal. All Board members should be fully involved in all Board decisions; the Chair should not make decisions in isolation without other Board members and the Board should strive to operate on a consensus model where all members have equal decision-making authority.

Issue: Stakeholder Advisory Committee

The Meredith Principles seek to ensure that "the system is governed by an independent Board which can fairly serve and respond to the needs of workers and employers without partisan political influence" (2014 Stakeholders Report, page 5).

A key recommendation to fulfill the responsibility to serve and respond to the needs of workers and employers would be the creation of a Stakeholder Advisory Committee.

A Stakeholder Advisory Committee would consist of equal worker and employer representatives, appointed by their respective stakeholder groups. The Committee would report directly to the Minister of Labour Relations and Workplace Safety, and its function would be set in legislation.

The Committee can serve a number of important functions. As an ongoing group, the Committee would become familiar with WCB issues, developing expertise. This expertise could be utilized to review current issues, such as surplus distributions, WCB policies, Experience Rate Reviews and legislation. The Committee could ensure that Committee of Review recommendations are properly addressed, and report to the Minister on WCB operations.

Proper governance also includes evaluation of Board functioning. Stakeholders at present do not have a mechanism to assess if the Board is functioning properly in terms of proper Board governance and adjudication principles. The Stakeholder Advisory Committee provides a mechanism to undertake this evaluation.

Issue: Appeals

The Workers' Compensation Act provides for equal representation by worker and employer groups regarding WCB activities.

Sections 18 and 20 provide the right for all decisions to be appealed to the Board. The *Act* does not contemplate single decision makers or delegating this authority to render appeals. The Board has the same powers as are vested in the Court of Queen's Bench, and the *Act* does not contemplate delegating this responsibility and authority.

Therefore, SUN recommends that the practice of having an Appeals Commissioner render final decisions cease. SUN does not support this position because it is a single decision maker and a final decision maker, in conflict with the intention of the *Act*.

The aforementioned Stakeholder Advisory Committee would be the appropriate body to review the current practices around appeals. In conducting this review, it would be beneficial if the practices of other Workers' Compensation Boards in Canada be reviewed to assess best practices.

SUN recommends that all Board decisions be fully explained in writing in order to provide the rationale for decisions to claimants. Further, WCB decisions should be published, as is currently done in a number of other jurisdictions, including British Columbia, Alberta, Manitoba and Nova Scotia. This would provide transparency, accountability and education regarding the essence of WCB decisions.

Issue: Committee of Review Process

The Committee of Review process is an exemplary method to ensure the effective functioning of Saskatchewan's Workers' Compensation system. In order to maintain the effectiveness, openness and transparency of this critical work, SUN recommends a number of improvements.

First, Committee recommendations must be acted on in a more timely manner.

Second, recommendations should not be dismissed or rejected without explanation.

Third, the status of recommendations must be more fully communicated. While a basic update is provided in Stakeholders Reports, more information is required. A detailed, recommendation-by-recommendation update should be published annually, complete with detailed rationale where the decision has been taken not to implement specific Committee of Review recommendations. In keeping with the recommendation to create a Stakeholder Advisory Committee, this update can and should be provided by this new committee.

Conclusion

SUN fully supports the WCB Committee of Review process. It is an effective manner in which all stakeholders can focus on WCB's operations and the provisions of *The Workers' Compensation Act, 2013* to seek improvements.

This submission has not listed all of the recommendations from the previous two WCB Committees of Review (2006 and 2010). While many recommendations have been adopted, there remain a number that have not been fully implemented to date. SUN encourages further work to comply with these recommendations, and that future Committee of Review recommendations be acted upon in a timely fashion.

SUN thanks the WCB Committee of Review for this opportunity to provide our input into the review of *The Workers' Compensation Act, 2013*.