



**Submission by
Service Employees' International Union-West
to the
2015 Workers' Compensation Act Committee of Review**

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INTRODUCTION

The mandate of the Service Employees' International Union (SEIU) is to improve the lives of working people and their families, and lead the way to a more just and humane society. We stand for economic and social justice, for dignity and respect, for having a voice on the job and in society, and for a secure job with the opportunity to advance.

SEIU-West is a province-wide local which was created in 2008. We represent approximately 13,000 members in Saskatchewan. An abundance of our members work in health care as we represent health care providers in Cypress, Five Hills, Heartland and Saskatoon Health Regions, as well as the health care providers who are employed in Extendicare facilities in the province. We have members who work in the community-based sector and provide a wide variety of public services including crisis support, addiction services, group home assistance and child care services. Our education support members work in Holy Family Roman Catholic Separate School Division #140, Chinook School Division #211 and Southeast Cornerstone School Division #209. In addition, we have members who work in both the private and allied sector as well as municipalities. Our members face many challenges in their day-to-day lives and we are here today to present on their behalf; we stand for dignity, respect and we promote a culture of safety and injury prevention in the workplace.

We are pleased to have the opportunity to provide our input to the Saskatchewan Worker's Compensation Act (WCA) Committee of Review process.

Our members place a high value on the important role of the Saskatchewan Workers' Compensation Board (Board), including the provision of workers' compensation programs and services and the development and delivery of injury prevention services.

We remain hopeful that our contribution will be valued and will have meaningful impact upon the final recommendations and we ask that this process of consultation be genuine in terms of the implementation of the final recommendations.

OVERVIEW OF RECOMMENDATIONS

- 1. REAFFIRM COMMITMENT TO THE MEREDITH PRINCIPLES AND THE NEEDS OF INJURED WORKERS**
- 2. RETAIN THE WCB BOARD AS THE FINAL APPEAL TRIBUNAL, BUT EXPAND THE BOARD'S MEMBERSHIP TO FIVE, AND SECURE AND CLARIFY THEIR TENURE**
- 3. INCREASE ACCESSIBILITY AND TRANSPARENCY OF THE OFFICE OF THE WORKER'S ADVOCATE**
- 4. INCREASE FOCUS ON WORKPLACE VIOLENCE, ESPECIALLY IN HEALTH CARE**
- 5. INCREASE FOCUS ON THE ROLE OF STAFFING LEVELS/WORKLOAD IN THE CONTEXT OF WORKPLACE INJURIES**
- 6. REMOVE THE CAP ON INSURABLE EARNINGS**
- 7. ENSURE THAT FUTURE WCB INVESTMENT SURPLUSES ARE REINVESTED IN PREVENTION, ENFORCEMENT, AND SYSTEM RESILIENCE**

1. REAFFIRM COMMITMENT TO THE MEREDITH PRINCIPLES AND THE NEEDS OF INJURED WORKERS

According to the Supreme Court of Canada, Canada's history is characterized by a "fundamental power imbalance" between employers and employees. Throughout the 20th century, in every jurisdiction in Canada, multiple pieces of legislation were passed with the purpose of "rectifying" that imbalance.¹ In SEIU-West's view, workers compensation legislation based on the Meredith Principles—which dates from the 1930s in Saskatchewan—is a fundamental part of that package of legislation. A workers compensation system that fully embodies the Meredith Principles is a necessary corrective to the tremendous imbalance of power, risk, and financial and legal resources that would otherwise be present between employers and workers.

SEIU-West encourages the Committee of Review to strongly and unequivocally endorse the Meredith Principles: no-fault compensation, collective employer liability, benefit security, and exclusive jurisdiction of an independent board. Unless these principles are regularly reaffirmed by authoritative bodies such as the Committee of Review, there is a real risk that they come to be taken for granted, become viewed as no longer needed, or be criticized as barriers to Saskatchewan's competitiveness or prosperity. We hope that the Committee's Final Report will emphasize the past, present, and future benefits to Saskatchewan people of a worker's compensation system that fully respects the Meredith Principles.

In our view, the true test of whether the Meredith Principles and their underlying corrective purpose are being respected lies in how the workers compensation system is treating the individual injured worker. We ask the Committee to reaffirm the need for the WCB to treat all injured workers with respect, dignity, and compassion. This reaffirmation should include a renewed commitment to the principle of giving the claimant worker the benefit of the doubt, as embodied in section 23(3) of the WCA. In our respectful submission, the 2010 Committee in its final report² undermined this principle in its discussion of "moral hazard" by suggesting that workers commonly make bogus WCB claims in advance of an anticipated layoff. A focus on primary prevention, reducing claim numbers and appeal processing times should not come at the cost of deterring deserving potential claimants or giving appropriate, fair, and compassionate service to injured workers whose claims have been accepted.

2. RETAIN THE WCB BOARD AS THE FINAL APPEAL TRIBUNAL, BUT EXPAND THE BOARD'S MEMBERSHIP TO FIVE, AND SECURE AND CLARIFY THEIR TENURE

As noted in our discussion of Recommendation 1 above, the Meredith Principles stipulate that decisions regarding entitlement to compensation benefits should be under the exclusive jurisdiction of a body that is independent from government and that includes worker and employer representatives. We have heard that there is pressure from some quarters in Saskatchewan to adopt the external, stand alone WCB appeal tribunal model seen in provinces such as British Columbia. In our view, adopting such a model in Saskatchewan would be a grave error.

According to our research, the current Saskatchewan model is the envy of many stakeholders in other provinces because of its relative informality, flexibility, and focus on the merits of the injured worker's case. Moving to an external tribunal model will inevitably result in a process that is more adversarial and lawyer-dominated, more precedent-focused, and ultimately more intimidating and less accessible to injured workers.

The fact that WCB Board members have both governance and appeal functions is an advantage, not a flaw, of the Saskatchewan model. These dual responsibilities enable the Board to view the worker's compensation system holistically, to spot and respond quickly to problematic trends. A good example

of this is the recent creation of the Appeal Commissioner position to address the growing backlog of appeals.

That being said, we have two concerns about the Appeal Commissioner position and the section of the WCA (section 18) that authorizes its creation:

- a) In general, section 18, headed “Power of the board to delegate and appeal of delegate’s decision” is an improvement over its predecessor section 21 in the pre-2013 WCA. The Board’s powers to delegate its functions to Board staff are better defined, as are the procedures for contesting decisions made by Board staff with delegated authority. However, we are troubled by section 18(6)(a) which states that when dealing with an application to review a delegate’s decision, the board “shall...determine the application in accordance with its policy directives”. We would like a clear statement in the WCA to the effect that nothing in this section should be taken as limiting or overriding the Board’s obligations under section 23(1) to “make its decisions on the real merits and justice of each case”, free of any obligation to follow legal precedent and section 23(3) to give the worker the benefit of the doubt where the evidence on each side “is approximately equal”.
- b) We view the Appeal Commissioner position as a temporary stopgap measure, and not fully consistent with the spirit and intent of the Meredith Principles. The permanent fix for the growing appeal backlog—a predictable consequence of a growing provincial workforce—is for the government to immediately exercise the authority it already has under section 9 (3)-(4) of the WCA to increase Board membership from three to five, by appointing an additional worker representative and an additional employer representative. In the longer term, the WCA should be amended to require a five-person Board made up of a Chair, two employer nominees and two worker nominees.

To guard against arbitrary or politically motivated changes to the board, and to reinforce both the appearance and reality of the Board’s independence from government, section 11(1)(a) of the WCA should be amended to clarify and strengthen the tenure of Board members. Instead of the current “hold office for a period not exceeding four years” the section should specify that Board members “hold office on good behaviour for a period of four years, unless reappointed under section 11(1)(b)”.

3. INCREASE ACCESSIBILITY AND TRANSPARENCY OF THE OFFICE OF THE WORKER’S ADVOCATE

In the early 1970s Saskatchewan became the first province to create a worker’s advocate office, independent from the WCB, with a statutory mandate to “assist any worker, or any worker’s dependant, with respect to any claim being advanced by the worker or dependant for compensation”.³ This innovation has since been copied by several other provinces. Many unions, including SEIU-West, lack the resources and expertise needed to properly assist their members with WCB claims, and routinely refer their injured members to the Office.

Both the WCB and the Ministry have statutory obligations to provide the Office with financial and other resources,⁴ yet neither seems to want to promote its invaluable activities. The Office does not have a clear standalone webpage. It is not prominently mentioned on any WCB or Government/Ministry webpage. Finding detailed, up-to-date contact information for the Office online was time-consuming and frustrating for SEIU-West’s experienced research staff,⁵ who knew that the Office existed. This information would not be readily accessible to an injured worker with basic online search skills and/or who was not aware of the Office’s name or existence.

To properly fulfill the spirit and intent of their own statutory mandates, both the WCB and the Ministry need to do more to promote the Office's existence, mandate, role, and activities. These efforts should be apparent in policies and procedures and the documents and materials of both organizations. In addition, both organizations must do more to facilitate, with additional resources as necessary, the Office's efforts to promote itself. As part of its own efforts to be more prominent, accessible, accountable and transparent, the Office should issue a detailed, annual public report on its activities, including such key performance measures as number of workers served, appeals participated in, client satisfaction measures, and number and type of public outreach activities engaged in.

4. INCREASE FOCUS ON WORKPLACE VIOLENCE, ESPECIALLY IN HEALTH CARE

Our research and discussions with our members suggest that workplace violence is a serious, growing, and neglected problem. Although the overall number of time-loss claims registered with WCB has fallen by 16% since 2011, the number of time-loss claims caused by assaults and other violent acts has risen by 16%.⁶ The problem of workplace violence is especially serious in workplaces covered by WCB's largest rate code G22, "Health Authorities, Hospitals, Care Homes", where nearly 90% of SEIU-West's members work. In 2014 more than 8% of injury claims in these workplaces were attributable to assaults and violence, third highest among all rate codes⁷. Some of the health care occupations SEIU-West represents have rates of 12-14% or more, among the top 10 for all occupations.⁸

There are strong reasons to believe that these figures greatly underestimate the prevalence and severity of physical and verbal violence directed at health care workers by patients, residents, clients, families and visitors. Multiple studies have shown that health care workers are reluctant to report incidents in which they are victims of violence; among the reasons cited for this reluctance are:

- time pressures caused by understaffing (which is itself a risk factor for violence, as further discussed in Recommendation 5 below)
- a belief that reporting is a waste of time, because nothing will be done
- a feeling that being assaulted is "part of the job".⁹

These feelings are made worse by "poor or non-existent institutional policies, procedures, staff training or supports".¹⁰ WCB has been aware of health care violence for some time, but has not given it sufficient attention or resources: it co-funded a study of violence against nurses in 2010, but does not appear to have followed through on any of the study's recommendations.¹¹

In recent years Saskatchewan's health care system has explicitly focused on providing care that is centred on the wants, needs, and privacy interests of patients/clients/residents and their families. SEIU-West endorses this focus, but we want to ensure that it does not come at the expense of the right of all workers to a safe workplace free from violence and harassment, and the right of workers injured by violence to fair and compassionate treatment by the worker's compensation system. Our research indicates that less than a third of the province's regional health authorities have implemented violence prevention programs. It is clearly not sufficient for WCB to leave this issue to employers or industry-based safety associations alone. WCB should devote more resources to the promotion and enforcement of violence-prevention measures. In addition, WCB's policies and decisions regarding return-to-work must take full account the risk of violence in the workplace to which the injured worker is returning, especially in cases where the original injury was caused by violence.

5. INCREASE FOCUS ON THE ROLE OF STAFFING LEVELS/WORKLOAD IN THE CONTEXT OF WORKPLACE INJURIES

There is growing evidence, especially from the health care sector, that workload and staffing levels are significant factors in the incidence and severity of workplace injuries. Short-staffing has been found to increase a health care worker's risk of being the victim of patient/resident/client and visitor-perpetrated violence,¹² as well as their risk of experiencing back pain.¹³ It is impossible to design and implement effective injury prevention programs without good data on the prevalence of the key contributing factors. Researchers who systematically reviewed the evidence on violence in hospital settings recommended that surveillance and reporting systems tracking violent incidents should ask about and record whether short-staffing was a factor in the incident.¹⁴ WCB should be systematically collecting data from workers and employers about staffing and workload factors in workplace injuries. Questions about the staff complement and workload at the time of the accident, and whether these played a role in the injury, should be part of the Worker's Initial Report of Injury and the Employer's Initial Report of Injury forms, and should be part of the inquiry throughout the process. Despite misguided concerns about "moral hazard", there is evidence that workers can be trusted to make accurate assessments of the adequacy of staffing levels, and questionnaires for assessing the adequacy of staffing levels, statistically validated in a variety of work settings, are available.¹⁵

6. REMOVE THE CAP ON INSURABLE EARNINGS

In submissions to the 2006 and 2010 WCB Committees of Review SEIU-West and other worker stakeholders expressed concerns about the WCA's cap on insurable earnings. The 2013 amendments to the WCA did not adequately address these concerns, and created new inequities.

Prior to the amendments the maximum insurable wage was \$55,000. Only Newfoundland, PEI and Nova Scotia had a lower cap. Saskatchewan's \$55,000 cap was just 114.6% of Saskatchewan's average wage, the second lowest percentage in Canada. The 2013 amendments allowed the Board to raise the cap to an amount equal to 165% of the average wage, but stipulated that this rise would be phased in over five years. Even once fully phased in (in 2018), this raise will still leave Saskatchewan only in the middle of the pack of its provincial counterparts. Moreover, this raise applies only to workers injured after January 1, 2014; workers injured on or before December 31, 2013 are subject to the original \$55,000 cap, adjusted annually according to changes in the average weekly wage. In other words, these workers are subject to a cap that will remain at approximately 115% of Saskatchewan's average wage.¹⁶

A fairer and more workable solution is to eliminate the cap completely, and to assess employers based on the full value of their payroll. This could be achieved by repealing sections 37 and 137 of the WCA.

SEIU-West members firmly believe that there should be no loss of earnings during the period of enforced convalescence or partial loss of employment due to a work-related injury or illness. This view is consistent with the spirit and intent of the Meredith Principles. Workers take on financial obligations and make commitments to their families based on their actual wages. The reduction in earnings experienced by injured workers who are forced to rely on workers' compensation is one of the major problems our members encounter when involved with the Board. Maintaining a normal income for themselves and their families would be of immense benefit to injured workers. The arbitrary, legislated cap on benefits does not allow adequate resources to maintain quality of life, raise a family, and live in dignity. Rather, it increases stress and anxiety for those who are recovering from work-related injuries and illnesses.

7. ENSURE THAT FUTURE WCB INVESTMENT SURPLUSES ARE REINVESTED IN PREVENTION, ENFORCEMENT, AND SYSTEM RESILIENCE

In 2014 the WCB experienced a windfall: unexpectedly high returns on its investments resulted in an asset surplus \$141 million beyond what its own funding policy requires it to carry. The Board initially announced that it would distribute 55% of the surplus to employers, and hold the rest as a hedge against “future uncertainties” such as lower oil prices, higher unemployment, and declining long-term investment returns. However, “after seeking feedback from employers and other key stakeholders”¹⁷, the Board changed its mind and decided to distribute 100% of the surplus to employers, with no strings attached. SEIU-West objects to both the substance and the process of this decision, and calls on the Committee to recommend statutory and/or policy changes to ensure that it will not be repeated.

With regard to the process of the decision, WCB press materials suggest that the decision was the result of extensive stakeholder consultation. However, no indication is given of the nature or extent of consultation with labour/worker representatives. Certainly SEIU-West, a significant stakeholder in some of Saskatchewan’s largest sectors, was not consulted.

As for the substance of the decision, SEIU-West believes that when WCB is the beneficiary of a large, rare, unexpected windfall, the majority of the money should be used to hedge against future lean years. The bulk of the surplus should have been invested in activities and programs that make the WCB and the province’s overall workers compensation and occupational health and safety system stronger and more resilient against the downsides of the very same volatility that occasioned the windfall in the first place. A significant portion of the surplus should have been used to provide the staff and other resources needed to increase the frequency of OH&S inspections. A portion could also have been devoted to enhancing training and prevention programs. Of all the various ways in which this surplus could have been used to strengthen Saskatchewan’s workers compensation system—such as implementing Recommendations 1 to 6 above—an unconditional distribution of 100% of the surplus to employers is the least effective, least transparent, and least consistent with the Meredith Principles.

CONCLUSION

SEIU-West is grateful for the opportunity to contribute to the Saskatchewan Workers’ Compensation Act – Committee of Review process. However, as readers may notice, our submission mirrors previous submissions. This is because, notwithstanding the changes made to the WCA in 2014, relatively little progress has been made on the recommendations of past Committees of Review. While we find this disturbing, we remain confident that the Committee will produce substantive recommendations grounded in the stakeholders’ submissions and the Meredith Principles. Above all we are hopeful that the province will show its commitment to meaningful consultation by acting promptly and faithfully to implement the Committee’s recommendations

Our members place a high value on the important role of the Board, including the provision of workers’ compensation programs and services and the development and delivery of injury prevention services. Our workers’ compensation system is too important to workers and their families to let it stagnate. We believe that the recommendations which we have outlined in this report would go a long way to significantly improve the system.

¹ Saskatchewan Federation of Labour v. Saskatchewan, [2015] 1 SCR 245, 2015 SCC 4 (CanLII), <http://canlii.ca/t/gg40r>, para. 56.

² Saskatchewan Ministry of Labour Relations and Workplace Safety. Workers' Compensation Act Committee of Review Final Report. 2011. <http://www.wcbsask.com/wp-content/uploads/2013/10/committee-of-review-final-report-2011.pdf>

³ WCA, s. 161(2).

⁴ According to s. 161(5) of the WCA, the Minister "shall provide any technical, clerical and other assistance that a worker's advocate may require in carrying out the duties of the worker's advocate". The WCB takes the view that under section 115(h)-(j) of the WCA the WCB is "obliged to fund the operations of the Office of the Worker's Advocate." See Saskatchewan Workers' Compensation Board. 2014 Annual Report. http://www.wcbsask.com/wp-content/uploads/2015/04/2014-WCB-Annual-Report_Draft-3_FINAL-RVSD_web.pdf

⁵ As of November 6, 2015:

- The Office's name did not appear on any of the drop-down menus on the WCB homepage. <http://www.wcbsask.com/>
- Entering "Worker's Advocate" in the Search field on the WCB homepage yielded one result, the WCB's Fair Practices Office.
- The Worker's Advocate was not mentioned on the "Submit an Appeal" on-line form https://myaccount.wcbsask.com/WCBPortalPage/page_forms_static_appeals.html?navigationAction=page_forms_static_appeals
- The most obvious path, assuming you knew of the Office's existence/name, would seem to be the "Worker Appeals" item in the "Workers" dropdown menu. However, the Office was not mentioned, not even under the heading "If you need help", until the very last line where, if you scrolled down that far, you found only the following brief statement: "You can also ask the Office of the Workers' Advocate to give you free and independent advice about your claim and your appeal." Clicking on the hyperlink takes you to the general Government of Saskatchewan homepage www.saskatchewan.ca
- Entering "Worker's Advocate" in the Search field on the Government of Saskatchewan page yields a list of results whose relevance is not immediately clear. We were finally able to find a list of phone numbers for the Office by some trial and error clicking through these results.

⁶ Based on totals in WCB's "Assaults & Violent Acts" category, minus the numbers from the several subcategories involving attacks by animals. WCB Statistical Supplements, 2011 through 2014. See WCB Publications. <http://www.wcbsask.com/about-wcb/corporate-resources/>

⁷ Excluding rate code A11 Light Agriculture, where 20.4% of claims were assault-related, almost all of them due to attacks by animals.

⁸ Saskatchewan Workers' Compensation Board. Statistical Supplement 2014. www.wcbsask.com/wp-content/uploads/2015/07/SS-Tables-2014-FINAL.pdf

⁹ Pompeii L, Dement J, Schoenfisch A, Lavery A, Souder M, Smith C, Lipscomb H. Perpetrator, worker and workplace characteristics associated with patient and visitor perpetrated violence (Type II) on hospital workers: A review of the literature and existing occupational injury data. *Journal of Safety Research* 44 (2013) 57–64.

¹⁰ Canadian Centre for Occupational Health and Safety. Violence Against Health Care Workers: It's Not "Part of the Job". CCOHS Health and Safety Report. 13:9 (2015). www.ccohs.ca/newsletters/hsrep_ort/issues/2015/09/ezine.html?id=32605&link=1#hsreport-ontopic

¹¹ Henderson A. Nurses experience of workplace violence: Towards effective intervention. WorkSafeBC & WorkSafe Saskatchewan, 2010. <http://www.worksafesask.ca/wp-content/uploads/2013/12/Nurses-workplace-violence.pdf>

¹² Pompeii L, Dement J, Schoenfisch A, Lavery A, Souder M, Smith C, Lipscomb H. Perpetrator, worker and workplace characteristics associated with patient and visitor perpetrated violence (Type II) on hospital workers: A review of the literature and existing occupational injury data. *Journal of Safety Research* 44 (2013) 57–64.

¹³ Kim SS, Okechukwu CA, Dennerlein JT, Boden LI, Hopcia K, Hashimoto DM, Sorensen G. Association between perceived inadequate staffing and musculoskeletal pain among patient care workers. *International Archives of Occupational and Environmental Health* (April 2014) 87:3 323-330.

¹⁴ Pompeii L, Dement J, Schoenfisch A, Lavery A, Souder M, Smith C, Lipscomb H. Perpetrator, worker and workplace characteristics associated with patient and visitor perpetrated violence (Type II) on hospital workers: A review of the literature and existing occupational injury data. *Journal of Safety Research* 44 (2013) 57–64.

¹⁵ See for example Warshawsky NE, Havens DS. Global Use of the Practice Environment Scale of the Nursing Work Index. *Nursing Research* 60:1 (2011) 17-31; and Parker D, Tuckett A, Eley R, Hegney D. Construct validity and reliability of the Practice Environment Scale of the Nursing Work Index (PESNWI) for Queensland Nurses. *International Journal of Nursing Practice* 16:4 (2010). 352-58.

¹⁶ Calculations based on Association of Workers' Compensation Boards of Canada. Maximum Assessable/Insurable Earnings History. 2015. http://awcbc.org/wp-content/uploads/2013/12/max_assess_earnings_history.pdf; Statistics Canada. CANSIM Table 282-0070 Labour force survey estimates (LFS), wages of employees by type of work, National Occupational Classification for Statistics (NOC-S), sex and age group, annual (current dollars).

¹⁷ Saskatchewan Worker's Compensation Board. Excess Surplus Distribution. (July 27, 2015) <http://www.wcbsask.com/excess-investment-surplus-distribution/>