

BRITISH COLUMBIA REGIONAL OFFICE

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July 25, 2019

Via E-mail: Info@wcbreview.ca

Ms. Janet Patterson

Dear Ms. Patterson:

**Re: WorkSafeBC (“WCB”) Compensation System Review Worker Position
Canadian Union of Public Employees (“CUPE”) Submission Addendum
Bogyo Report Balance. Stability. Improvement. Options for the Accident Fund.**

I. INTRODUCTION:

I. PURPOSE OF REVIEW:

Thank you for requesting stakeholder feedback on the review of the WCB Compensation system in including the proposed Options on the surplus from the Accident Fund.

CUPE appreciates the opportunity to comment on this extremely important review and hopes that the recommendations from this review will be implemented immediately.

This Addendum comments on the recently released Bogyo report “*Balance. Stability. Improvement. Options for the Accident Fund. Final Report*” dated December 06, 2018.¹ The report provides a comprehensive review of the Accident Fund and proposes nine Options from pages 52 to 75.

This Addendum does not comment on each of the proposed nine Options in the Bogyo report for the reasons outlined below. CUPE will provide a comprehensive submission on these Options, upon request, however we believe that this would be premature.

MARK HANCOCK

National President/Président national

CHARLES FLEURY

National Secretary-Treasurer/Secrétaire-trésorier national

DENIS BOLDUK, FRED HAHN, JUDY HENLEY, DANIEL LÉGÈRE, MARLE ROBERTS

General Vice-Presidents/Vice-présidences générales

I.II. STAKEHOLDER INFORMATION:

CUPE is Canada's largest Union with over 680,000 members across the country and has more than 70 offices. CUPE represents workers in many sectors including health care, emergency services, education, early learning and child-care, municipalities, social services, libraries, utilities, transportation, airlines and more. There are nearly 97,000 members in over 160 Locals in B.C.

I.III. EXECUTIVE SUMMARY:

CUPE has several concerns pertaining to the use of the surplus. These include the following:

1. Premature to Implement the Options:

CUPE does not have a position on the proposed Options because it is premature to determine what Options are best suited until a review of and implementation of both the Janet Patterson system review² and the *Restoring the Balance: A Worker-Centred Approach to Workers' Compensation Policy* report published April 2018 occurs. The WCB has also requested stakeholder feedback on the *Restoring the Balance: A Worker-Centred Approach to Workers' Compensation Policy* report as per the release of the new Discussion Paper. Stakeholder feedback is due September 23, 2019.³ There is a direct overlap of these reviews as shown by the following example (e.g. bullet 4) from the Janet Patterson system review mandate:

- “the system’s policies and practices that support injured workers’ return to work;
- WorkSafeBC’s current policies and practices through a gender- and diversity-based analysis (commonly referred to as GBA+);
- modernization of WorkSafeBC’s culture to reflect a worker-centric service delivery model;
- the case management of injured workers; and
- any potential amendments to the Workers Compensation Act arising from this focused review.”

² See <https://news.gov.bc.ca/releases/2019LBR0003-000557>

³ WorkSafeBC. Public Hearings and Consultations. See <https://www.worksafebc.com/en/law-policy/public-hearings-consultations/current-public-hearings-and-consultations/proposed-evidence-decision-making-policy-amendments>

2. The Composition of the Board of Directors Needs to be Changed:
CUPE and many other stakeholders have strongly advocated for a Board of Directors that is comprised of at least 50% worker representatives. Until this occurs, any use of or application of the surplus will likely be inequitable and will fail to address the issues and findings of the Bogyo report, the Janet Patterson system review and the *Restoring the Balance: A Worker-Centred Approach to Workers' Compensation Policy* report. Worker issues and solutions can only be addressed by having an equal number of workers on the Board of Directors.
3. BC Federation of Labour Submission:

CUPE agrees with the arguments made by the BC Federation of Labour at pages 23 to 26 of their submission dated July 2019:

“6. How to manage the surplus

While worker benefits have been drastically reduced by 13%, the WCB surplus has grown. Currently, \$6.5B is held in reserve and means the WCB is funded to 155%, well over their target of 130%. In addition to the reserves, there is a \$2.9B surplus. The employers, meanwhile, have the lowest base assessment rate in Canada at 1.55%. This is an outrage. While injured workers have paid the price in reduced benefits and supports since 2002, all in the name of cost-cutting, the profits for this public organization mirror those of private industry.

Employers are pushing to have the surplus returned to them even though most of the surplus comes from investments. The BCFED strongly disagrees with the employers' position and in our oral submission presented legislative amendment recommendations for spending the surplus by increasing investments in injured workers:

- base all benefits on 100% of net earnings; top priority;
- adjust benefits according to CPI every six months;
- payment of interest on amounts owed to the worker;
- pension reform; Loss of Earnings, Permanent Functional Impairment, the dual system and reinstatement of lifetime pensions;
- provide that chronic pain is assessed and compensated like other disabilities;
- establish an independent Fair Practices Office to restore worker confidence in the fairness of the compensation system;

- establish an Independent Medical Panel that administers the Independent Medical Examination process;
- create a worker health and safety center modelled on the Occupational Health Clinics for Workers in Ontario whose mandate is to offer a worker-centred and community-based approach to medical evaluation and treatment for injured workers. Such a model would be very different than the for-profit, private services that are currently used by the WCB; and
- the BCFED be funded as a certification partner in order to add balance and worker equity in the oversight of the COR program.

The BCFED believes it is crucial that this review provides an opportunity for us to understand the effect of the 2002 legislative and policy changes not only for injured workers but for all of society.

Employers paying less and shirking their responsibilities have resulted in the public purse picking up the pieces as injured workers move from productive, tax paying participants in the economy to a reliance on public supports. The reliance on the public system has been termed the “welfarization” of disability income.

In 2010, the Ontario Network of Injured Workers Groups conducted an “Injured Workers and Poverty Survey.” Over 300 injured workers completed the survey. The survey found that nearly 90% of injured workers had full-time jobs when they were injured and post-injury, only 9% were working full-time. There was a notable decrease in their annual wages and a 52% increase in low-income wage earners.

The study found there were drastic consequences as injured workers and their families journeyed into poverty:

- increased reliance on foodbanks;
- no longer could afford to have a vehicle;
- family breakdown;
- half of the injured workers had to sell their homes and move into cheaper accommodation;
- physical and mental health deteriorated and 80% of the respondents felt their health was “fair” or “poor”;
- over half of respondents said they could not afford to buy prescriptions;

- two-thirds of the injured workers reported they were not able to get all the health services they needed post-injury and they had to rely on their families for care; and
- injured workers had feelings of guilt, shame and desperation.

No such research has been done in BC, but we would be naïve to think the same does not hold true here. Anecdotally, worker advocates have reported a steady increase in the number of injured workers seeking support from the public system including access to: public health care, employment insurance sick-leave benefits, income and disability benefits, housing assistance and low-income tax credits, and Canada Pension Plan disability.

All the cutbacks in compensation benefits, treatment and rehabilitation programs have meant the financial burden of workplace injuries have been born by injured workers and their families or the public system. This is a shameful violation of the “historic compromise.”

4. Bogoyo Report Principles and the Historic Compromise:

It is important to remember what Bogoyo stated decades ago:

“Protecting, caring for and providing compensation to workers are important, noble and morally responsible endeavours.”

This is the starting point for workers compensation.

It is not “noble or morally responsible” to return surplus monies to Employers. The surplus has been collected by the WCB as a result of anti-worker Policies and legislation and on the literal deaths, disease and injuries of and to workers. To give the surplus back to Employers is the antithesis of protecting and caring for workers, survivors and dependents. Bogoyo agrees with this as per page 78 of the report where he states, in part, that:

“There are also many policy and administrative issues that could be addressed in future reviews. Changes in policy are the exclusive purview of the Board of Directors; administrative changes also involve the senior leadership of WorkSafeBC. Both the Board of Directors and the administration will, no doubt, continue to engage stakeholders to identify the changes most urgently in need of reform.

Our workers’ compensation system is intended to benefit workers, employers and the people of British Columbia. The set of options presented here provides a means of achieving greater symmetry in achieving that intent. Employers have already benefited directly from the strong funded status through lower overall premium rates and direct offsets to those rates; they will continue to do so as conditions allow. Through these options, workers will share to a similar extent but over a longer, future timeframe through specific changes to the defined compensation and benefits under the legislation.

All British Columbians benefit from a strong workers' compensation system that supports safe workplaces and provides injured workers and survivors with improved compensation that reduce externalized costs to taxpayers and communities. This set of options is responsive to the changing realities of the workplace and balances the benefits of a strong funded position with the need for stable, predictable premium rates—all in the best interests of the workers' compensation system.” (Emphasis added)

II. REASONS FOR ORGANIZATION POSITION:

As stated by CUPE, the BC Federation of Labour, advocates, worker's compensation legal advocates and workers:

“compensation should be paid to injured workers without regard to fault; there should be security of payment of compensation; administration of the scheme and adjudication of claims should be handled by an independent commission; and, compensation should be provided quickly and without court proceedings”.⁴

Unfortunately, the WCB is rapidly moving away from these principles.

If the surplus is returned to Employers, this will only expedite this movement. The changes in 2002 and 2003, compounded by Bill 14⁵ and annual Policy reviews, have rendered the current system of workers compensation in BC unrecognizable from pre-2002.

The Options proposed for the surplus only partially address these problems.

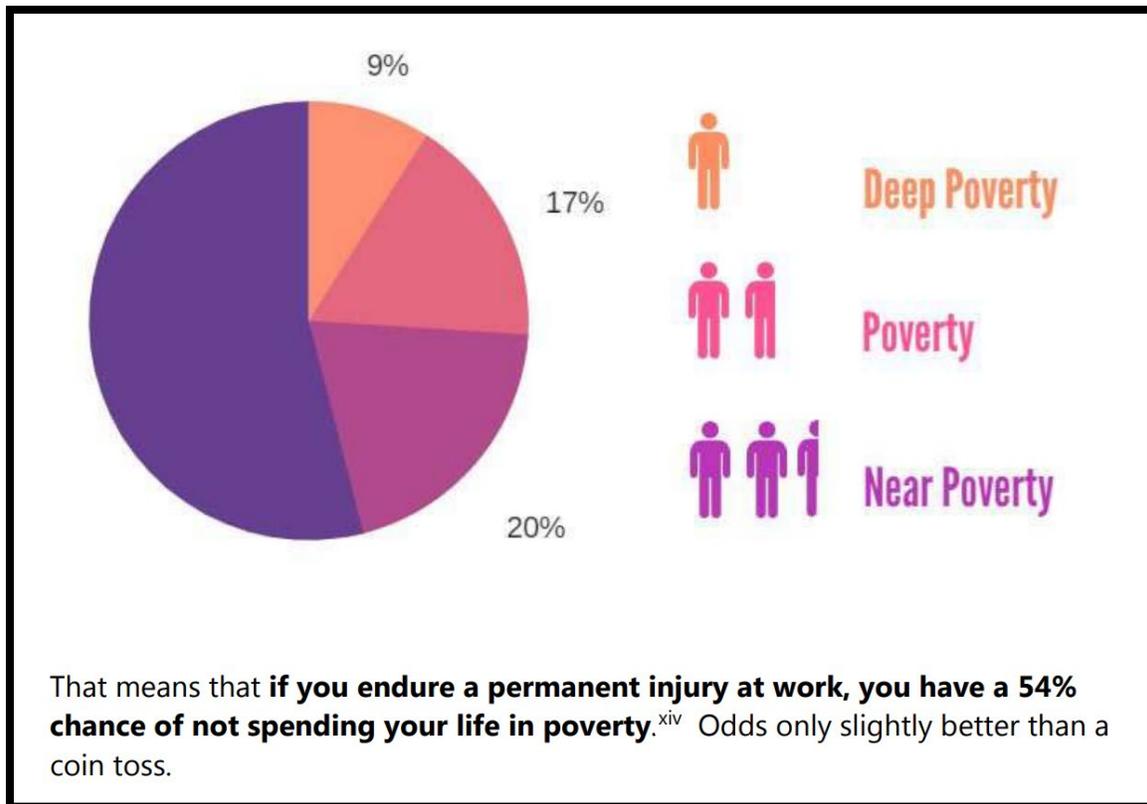
⁴ “Changes to the BC Workers' Compensation System (2002- 2008): The Impact on Injured Workers” (April 22, 2009). See <https://bcfed.ca/sites/default/files/attachments/1520-09br-Insult%20to%20Injury.pdf>

⁵ Bill 14 – Workers Compensation Amendment Act – 2011. See <http://www.bclaws.ca/civix/document/id/lc/billsprevious/4th39th:gov14-3>. CUPE does not agree with the resulting legislation, Policies, Practice Directives, OHS Regulations and OHS Guidelines.

II.I. RESTORING THE BALANCE:

The numerous changes arising from 2002 and 2003^{6,7} need to be reversed. While the Bogoyo report cites many statistics, the June 2019 report “*Phantom Jobs & Empty Pockets What really happens to workers with work-acquired disabilities?*”⁸ provides a damning indictment of workers compensation in Ontario and in Canada. As per the report “By WSIB’s own statistics, almost half of permanently injured workers have neither jobs nor workers’ compensation benefits.” The following Figures illustrate this:

Figure 1:



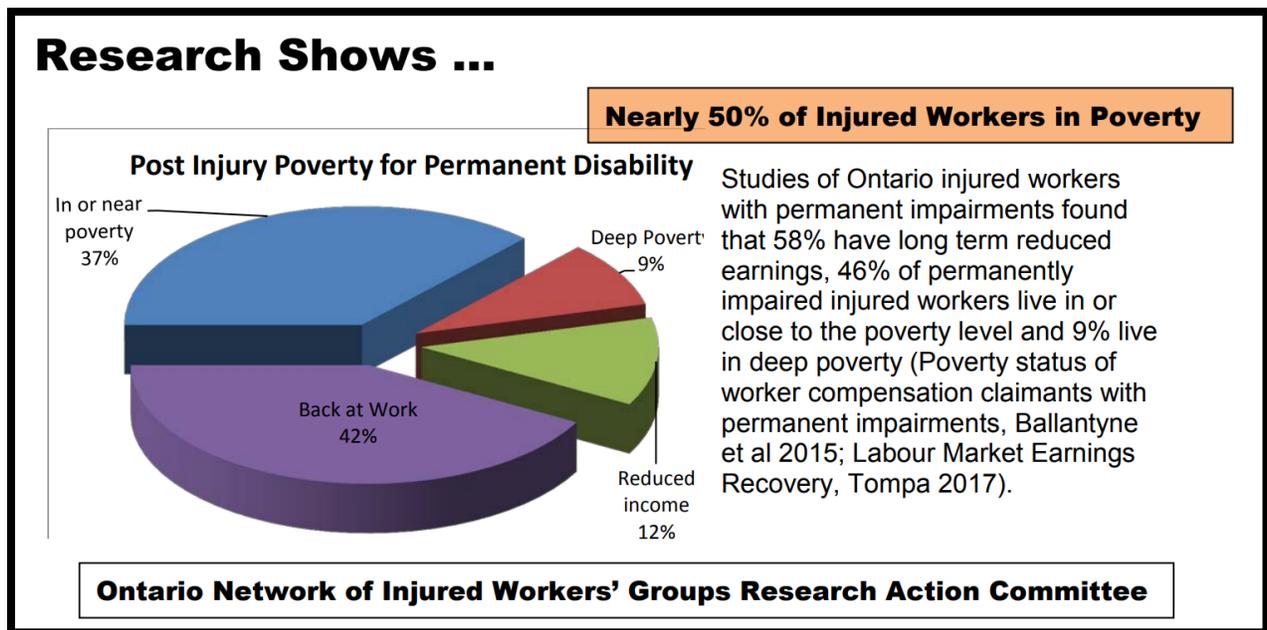
⁶ *Workers Compensation Act* in 2002 - Bills 49 and 63, the *Workers Compensation Amendment Act* (No. 1 and No. 2). See <http://www.bclaws.ca/civix/document/id/lc/billsprevious/3rd37th:gov49-1> and <http://www.bclaws.ca/civix/document/id/lc/billsprevious/3rd37th:gov63-1>

⁷ Changes to the BC Worker’s Compensation System 2002 – 2003 The Impact on Injured Workers Adding Insult to Injury. See <https://bcfed.ca/sites/default/files/attachments/1520-09br-Insult%20to%20Injury.pdf>

⁸ Ontario Network of Injured Workers’ Groups. Injured Workers Online. See https://injuredworkersonline.org/wp-content/uploads/2019/05/ONIWG_2019_PhantomJobsEmptyPockets.pdf

Figure 2:

This was echoed in the 2014 study by Ballantyne et al.⁹ injured workers have poverty rates between 17% and 26% - much higher than the general population and approximately the same as poverty rates among persons with disabilities. The data does show lower incomes and a higher rate of poverty after an injury (particularly for those workers with low incomes before the injury). This does not even consider the very high number of workers (more than 40%¹⁰) who do not even report injuries or make claims. As per Shannon and Lowe (2002)¹¹:



“Of 2,500 respondents, 143 had incurred an eligible injury, of whom 57 (40%, 95% CI 32-48%) had not filed a WC claim. Severity of injury was the strongest predictor of not claiming.”

To address the surplus first, in isolation, would be counter to the principles of a system review.

⁹ Ballantyne, P.J., Casey, R., O’Hagen, S.T., & Vienneau, P. (2014). Poverty status of worker compensation claimants with permanent impairments. *Journal of Critical Public Health*. Retrieved July 24, 2019 from <https://www.tandfonline.com/doi/abs/10.1080/09581596.2015.1010485?journalCode=ccph20>

¹⁰ More recent surveys have rates as high as 100%.

¹¹ Shannon, H.S. & Lowe, G.S. (2002). How many injured workers do not file for workers’ compensation benefits? Retrieved July 24, 2019 from <https://www.ncbi.nlm.nih.gov/pubmed/12439869>

As stated above, the reports to the BC Federation of Labour by Stan Guenther, Janet Patterson and Sarah O’Leary e.g. “*Changes to the BC Workers’ Compensation System (2002- 2008): The Impact on Injured Workers*” (April 22, 2009) must be considered. These are the starting points. To haphazardly have reviews and Consultations without any type of coordination risks the main points of each Consultation being lost or invalidated.

II.III. MERITS AND JUSTICE:

As stated in CUPE’s submission on Merits and Justice, the WCB must base their decisions, including non-appealable decisions,¹² on the merits and justice of the claim (recognizing that there is a new Consultation on this issue titled “Proposed evidence and decision-making policy amendments” due September 23, 2019.¹³ This must include properly funding the system, with the changes proposed in CUPE’s submissions.

II.II. PETRIE¹⁴ RECOMMENDATIONS:¹⁵

Petrie states at page 10 of his report, under “A Worker-Centered Approach to Decision Making”, that:

“A worker-centered approach for injured and disabled workers is one that takes into consideration the worker’s individual circumstances in applying policy and making decisions about benefit entitlement and rehabilitation measures. It is designed to maximize the worker’s recovery from the injury or disease and to restore as close as possible the worker to his pre-injury employment status without a loss of earnings.”

Recommendation #1 specifically stated that:

“I recommend that the Board of Directors consider amending policy #2.20 to explicitly incorporate the requirement in section 99(2) that, “the Board must make its decision based on the merits and justice of the case.” That amendment can provide for the adequacy of the investigation of the relevant facts and circumstances of the issue to be decided and take into consideration the evidence of the worker in all cases.”

¹² Contrary to WCB practice and decisions, findings such as restrictions and limitations, etc, should be appealable decisions.

¹³ WorkSafeBC. See <https://www.worksafebc.com/en/law-policy/public-hearings-consultations/current-public-hearings-and-consultations/proposed-evidence-decision-making-policy-amendments>

¹⁴ Paul Petrie *Restoring the Balance: A Worker-Centered Approach to Workers’ Compensation Policy*.

¹⁵ See <https://www.worksafebc.com/en/resources/about-us/reports/restoring-balance-worker-centeredapproach?lang=en>

An underfunded system will always fail to base workers compensation on merits and justice. The default will be cost containment and efficiency at any cost.

II.II.I. Province of British Columbia Report of the Committee of Investigation on Workmen's Compensation Laws Presented March 1st, 1916 Avar V. Pineo, David Robertson, Jas H. McVety:¹⁶

Page one of this Report summarizes what the basis for workers compensation should be, namely:

“To the Honourable William John Bowser, Attorney-General of British Columbia.

Sir, – The undersigned Committee, appointed on the 27th day of September 1915, for the purpose of making investigations in the United States and Eastern Canada, on behalf of the Government of British Columbia, touching the operations of modern systems of workmen's compensation laws, has completed its inquiry, and now begs to tender its report. Having been instructed to undertake these duties for the purpose of acting in an advisory capacity in connection with the proposed workmen's compensation legislation in this Province, the Committee has proceeded on the assumption that whatever legislation is passed will be based on the principle of social justice which underlies the Bill (No. 26) introduced at the last session of the Legislature – namely, that industry should bear the burden of its accidents, and that the cost should be assessed on the employers to be ultimately distributed among the consumers of the products of the respective industries the same as other elements of the cost of production.” (Emphasis added)

Over 100 years later, the assumption is now based on the principles of efficiency at any cost and cost containment. If the surplus is returned to Employers, this is another example of the status quo being maintained on the backs of workers.

II.II.II. Province of Ontario Final Report on Laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries, and as to how far such laws are found to work satisfactorily by the Honourable Sir William Ralph Meredith, C.J.O., Commissioner 1913:¹⁷

¹⁶ See

[https://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1916%20Pineo%20Report%20\(Complete\).pdf](https://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1916%20Pineo%20Report%20(Complete).pdf)

¹⁷ See

[https://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1913%20Meredith%20Report%20\(Complete\).pdf](https://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1913%20Meredith%20Report%20(Complete).pdf)

Justice Meredith addressed the issue of injustice and bad or unfair laws over 100 years ago. He stated, in part, that:

Pages 23 -24:

“In these days of social and industrial unrest it is, in my judgment, of the gravest importance to the community that every proved injustice to any section or class resulting from bad or unfair laws should be promptly removed by the enactment of remedial legislation and I do not doubt that the country whose Legislature is quick to discern and prompt to remove injustice will enjoy, and that deservedly, the blessing of industrial peace and freedom from social unrest. Half measures which mitigate but do not remove injustice are, in my judgment, to be avoided. That the existing law inflicts injustice on the workingman is admitted by all. From that injustice he has long suffered, and it would, in my judgment, be the gravest mistake if questions as to the scope and character of the proposed remedial legislation were to be determined, not by a consideration of what is just to the workingman, but of what is the least he can be put off with; or if the Legislature were to be deterred from passing a law designed to do full justice owing to groundless fears that disaster to the industries of the Province would follow from the enactment of it.”

All of which is respectfully submitted.
W.R. MEREDITH, Commissioner.”

(Emphasis added)

This was echoed by Justice Tysoe¹⁸ in reference to pensions where he stated that there must be:

“a recognition of social justice, and this whether it is provided by society as a whole, by industry, or by some other segment of our population.” (Emphasis added)

Unless drastic steps are taken, including properly using the surplus to address fundamental inequalities and system failures, the Historic Compromise¹⁹ itself at risk. Social justice should not have a dollar sign. It is the foundation of workers compensation.

¹⁸ PROVINCE OF BRITISH COLUMBIA Commission of Inquiry Workmen’s Compensation Act Report of the Commissioner. The Honourable Mr. Justice Charles W. Tysoe, 1966. See https://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1966tysoe-report.pdf

¹⁹ The Association of Workers’ Compensation Boards of Canada. See http://awcbc.org/?page_id=57

²⁴ See <http://www.qp.gov.bc.ca/rcwc/research/chaklader.pdf>

III. CONCLUSION:

As stated previously, it is not noble or morally responsible to return surplus monies to Employers. The surplus has been collected by the WCB as a result of anti-worker Policies and legislation and on the literal deaths, disease and injuries of workers. To give the surplus back to Employers is the antithesis of protecting and caring for workers, survivors and dependents and it would be another example of the erosion of the Historic Compromise.

Respectfully submitted,



Tom McKenna
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cc: Paul Faoro, President, CUPE BC Division
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