

**Addendum to the Employer Community
Submission
to the
Workers' Compensation System Review**

Prepared for:
Janet Patterson, Reviewer

July 30, 2019

Addendum to the Employer Community Submission to the Workers' Compensation System Review

Response to TERMS OF REFERENCE #1(f)

On July 18, 2019, the Reviewer advised us, by email, that the December 6, 2018 Final Report to the Board of Directors of WorkSafeBC prepared by Mr. Terrance Bogyo, entitled “Balance. Stability. Improvement. Options for the Accident Fund” (the Bogyo Report”), was now available and posted on the Reviewer’s web-site. As this email was received after the Employer Community Submission to the Reviewer had been submitted, the Reviewer provided us until July 30th to submit an Addendum to address the Reviewer’s Terms of Reference #1(f). The following are our comments in response to Terms of Reference #1(f).

Term of Reference 1 (f) reads as follows: “Whether there are any other urgent compensation issues that were not addressed in the final report to the Board of Directors of WorkSafeBC on how to manage the unappropriated balance in the Accident Fund.”

1. General Comments

In her July 18th email, the Reviewer stated that she was “precluded from addressing matters raised in the Bogyo report itself, under my TOR”.

Based on the above statement, we will not be responding in this submission to the merits of the various options for the Accident Fund which were raised in the Bogyo Report. However, the Employer Community wants to raise several general comments arising from the Bogyo Report which, in our view, would be applicable to the present Review being conducted by the Reviewer.

- (a) On several occasions, the Bogyo Report acknowledged the importance with respect to maintaining the financial integrity and sustainability of the B.C. workers’ compensation system. For example, one of the three themes, which were given priority for the purposes of developing the options set out in the Bogyo Report, was “stability” – which was described as follows on page 10:

Stability: maintaining the sustainability and comparability of the system.

The Bogyo Report identified (on page 9) the following “risks” that exist in the world’s “new normal” environment which could undermine the financial stability of the B.C. workers’ compensation system:

In the post “global financial crisis” world, managing in the “new normal” environment is not without continuing risk. There are arguments for continuing with the *status quo*. Volatile markets, sudden disasters, and emerging hazards are ever present; economic cycles persist and threaten employment security of workers and financial stability of employers; trade wars, climate change is disrupting the workplace environment as well as posing risks to the Accident Fund investments. Demographic and societal change are altering who works and for how long. Technology is overturning traditional patterns of work and presenting both challenges and opportunities across wide sectors of the economy. Any of these risks can undermine the financial stability of the workers’ compensation system, threaten its ability to compensate workers, and diminish the ability of WorkSafeBC to maintain, promote and enforce health and safety standards that benefit workers and others in the workplace.

The Bogyo Report also recognized the potential negative impacts which may arise from increases in the workers’ compensation premiums collected from B.C. Employers (on page 21):

This higher premium collected increases revenue to the Accident Fund, increasing the employers’ cost of production and may limit employers’ options to invest in new plants and equipment, create new jobs, improve wages and benefits and return profits to shareholders.

It is the position of the Employer Community that this concept of maintaining financial integrity and sustainability of the B.C. workers’ compensation system is one which must be factored into any recommendation made by the Reviewer in the present Review.

- (b) The Employer Community is generally supportive of the options raised in the Bogyo Report which seek to address areas of compensation benefits provided to injured workers in B.C. which
 - (i) are lagging behind the level of the comparable compensation benefits provided in other Canadian jurisdictions (in particular, the concepts in Option #2 – to increase the maximum insurable and accessible earnings level in B.C. – and Option #5 – to raise the cost of living premium in the legislation), or
 - (ii) are out of line with fundamental shifts in society with respect to employment patterns (in particular, the concept in Option #3 – to increase the presumed age of retirement of age 65 which is currently set out in the legislation).

In this regard, the Employer Community is certainly prepared to cooperatively participate with other stakeholders (i.e., Government, WorkSafeBC and labour/worker representatives) in the consideration and development of the above options for the purpose of implementation of these concepts into the legislation.

- (c) Some of the options raised in the Bogyo Report, if adopted, would result in having retroactive application to injured workers whose claims for compensation have reached finality – i.e., there are no outstanding issues to be determined in the claim at either the

initial adjudication or the appellate levels within the B.C. workers' compensation system.

The Employer Community is strongly opposed to the concept of any "retroactive" application with respect to any changes introduced to the B.C. workers' compensation system - whether such changes arise from the Bogyo Report, or from the present Review, otherwise. It is the Employer Community's position that any changes to the B.C. workers' compensation system which may arise from such reviews should only be applied

- (i) to an "active" claim in which the subject matter affected by the change remains subject to adjudication at the initial or appellate level of the workers' compensation system, or
- (ii) to new claims which may be commenced after any applicable change has been implemented.

2. "Other urgent compensation issues"

In answer to the question raised in Terms of Reference #1(f) – whether there are any other urgent compensation issues that were not addressed in the Bogyo Report on how to manage the unappropriated balance in the Accident Fund – the response by the Employer Community is an unequivocal "NO" – i.e., there are no "other urgent compensation issues" within the B.C. workers' compensation system that need to be addressed. We raise the following points in support of the Employer Community's position:

- (a) As recognized in the Bogyo Report (at page 9), many of the compensation and benefit parameters in the B.C. legislation are among the highest levels among workers' compensation systems:

Many of the compensation and benefit parameters "hard coded" into the legislation remain among the highest levels among workers' compensation systems. The 90% of net compensation rate, for example, is equivalent to or greater than the compensation rates of neighbouring and comparator jurisdictions. ...

...

WorkSafeBC has historically provided compensation and benefits consistent with the upper range provided by other workers' compensation systems. ...

Similarly, the following is stated on page 52 of the Bogyo Report:

The parameters of the wage-loss and permanent disability provisions continue to meet and exceed those provided in other jurisdictions for most workers.

- (b) It is our understanding that many organizations within the Labour Community are seeking a return to the pre-2002 level of workers' compensation and benefit parameters. For example, the following is stated on page 45 of the Bogyo Report:

Rolling back the provisions of the 2002 reforms has been a consistent message from labour; a return to pensions for life of the worker was raised as an issue in the consultation.

It is anticipated that the Labour Community and/or Worker Community may well advance an argument to the Reviewer that the return to the pre-2002 level of compensation and benefit parameters represents "other urgent compensation issues" not addressed in the Bogyo Report. If such an argument is raised, it is the Employer Community's position that the Bogyo Report itself has rejected the concept of a return to the pre-2002 level of compensation and benefit parameters as having any urgency based upon "today's reality and trends in workers' compensation legislation". In particular, we refer to the following excerpt on page 11 of the Bogyo Report:

The options described in this paper will not satisfy all stakeholders. ... Those that seek an unwinding of past legislative decisions on the basis of righting the perceived wrongs of the past will be similarly disappointed. The social, demographic, technological and economic realities of today have altered the environment; a return to the past is no longer practical nor advisable. The options proposed here are supported by a rationale sensitive to today's reality and trends in workers' compensation legislation.

3. If the Reviewer perceives there are "other urgent compensation issues"

In the alternative, if the Reviewer perceives that there are other "urgent" compensation issues that were not addressed in the Bogyo Report, we raise the following comments for the Reviewer's consideration:

- (a) The Employer Community requests the Reviewer provide us with the specificity related to any other compensation issues, not addressed in the Bogyo report, that the Reviewer perceives as being "urgent", and a reasonable opportunity to file a further written submission to provide the Reviewer with the Employer Community's input and perspective regarding those issues.
- (b) It is the Employer Community's position that any comprehensive consideration of other compensation issues, which the Reviewer perceives as being "urgent" pursuant to Terms of Reference #1(f), must include a consideration of the cost implications to the B.C. workers' compensation system associated with any potential change to the current compensation or benefit level. In other words, as was the case in the Bogyo Report, the theme of "stability" – i.e., maintaining the financial integrity and sustainability of the B.C. workers' compensation system – must be factored into any consideration given to other compensation issues which the Reviewer may perceive as being "urgent".

CONCLUSION

Again, we thank the Reviewer for allowing us this extension to file this addendum to our July 19, 2019 submission. As we stated in our July 19 submission, we look forward to further discussions with the Reviewer.

Should you require an elaboration or further information with respect to any matter dealt with in this submission, we would request that you contact Doug Alley, the Managing Director of The Employers' Forum at doug@employersforum.org or (778) 265-8813.

Sincerely,



A handwritten signature in blue ink, appearing to read "Doug Alley", written over a horizontal line.

Doug Alley
Managing Director