



200 – 5118 Joyce Street
Vancouver, BC
V5R 4H1
t 604.430.1421
e bcfed@bcfed.ca
bcfed.ca

July 30, 2019

Via email: Info@wcbreview.ca

Janet Patterson
Reviewer
Workers' Compensation System Review
Workers' Compensation Board of BC

Dear Janet,

Re: Report: *Balance. Stability. Improvement. Options for the Accident Fund* prepared by Mr. Terrance J. Bogyo

The BC Federation of Labour (BCFED) would like to thank you for the opportunity to respond to the above-noted report.

The BCFED's response to the Bogyo report is not a detailed examination of the options and the rationale behind them. There simply has not been time to do an exhaustive analysis. The BCFED believes the timing of the release of the report, two days prior to the compensation deadline of July 19, 2019, provided limited time to respond and caused confusion for stakeholders.

The BCFED is pleased the Ministry of Labour and the Workers' Compensation Board (WCB) are committed to conducting a long overdue review of the compensation system in BC with the goal of implementing a worker-centred approach.

However, the BCFED and our affiliates would have preferred a single systemic review of the compensation and prevention system in BC. There have been three separate reviews conducted in a relatively short time frame:

- Paul Petrie (March 2018) Restoring the Balance: A Worker-Centred Approach to Workers' Compensation Policy. Petrie was appointed by the WCB Board of Directors (BOD) to review and provide recommendations to change compensation policy. The BOD committed to implementing all 41 recommendations. The consultation process is ongoing.
- Terrance Bogyo (December, 2018) Balance. Stability. Improvement. Options for the Accident Fund. Bogyo was appointed by the Chair of the BOD to recommend options under the *Workers' Compensation Act* to spend the surplus in the Accident Fund. The review was to balance financial stability, benefits for injured workers and health and safety standards.
- Janet Patterson (September, 2019) A Review of the BC Compensation System. The Ministry of Labour appointed Patterson to conduct public hearings and accept submissions from injured workers, worker advocates, labour and employers on changes that need to be made to the compensation system in order to refocus and re-align the system towards a worker-centred approach. The review was mandated to make recommendations for changes to the WCB culture, the claims systems and to legislation.

This approach lacks methodical organization. There are direct overlaps between the Petrie review, which was restricted to looking at compensation policy, the Bogyo review on legislative options to spend the \$2.6B surplus and the Patterson review. This overlap is evident in the Patterson mandate:

- a. The policy and practices used in the workers' compensation system relating to supporting injured workers return to work. (Petrie)
- b. An evaluation of current WorkSafeBC policy and practices through a Gender-based Analysis Plus (GBA+) lens.
- c. Modernizing WorkSafeBC's culture to reflect a worker-centric service delivery model. This model should incorporate a best practices, research-supported approach to managing physical and mental injuries caused by the workplace. (Petrie and Bogyo)

- d. Recommendations dealing with issues related to the improved case management of injured workers. (Petrie)
- e. What specific steps are required to increase confidence of workers and employers in the workers' compensation system, including but not limited to the Fair Practices Office, and in the other services provided by WorkSafeBC.
- f. 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 (Bogyo)

We run the risk of losing the main points of each of these reports and their recommendations if there is not a coordinated plan for implementation. Therefore, the BCFED recommends that Bogyo's "Options 2-9" not be implemented until the Patterson recommendations are released.

The BCFED generally supports Options 2-9 of the Bogyo report. On the matter of the surplus, the BCFED was clear in our submission to the Patterson review that we strongly disagree with any contemplation that it be returned to employers.

In our July, 2019 submission, we made the following legislative amendment recommendations for spending the surplus by increasing investments in injured workers and their families;

- all benefits on 100% of net earnings;
- adjust benefits according to CPI every six months;
- payment of interest on amounts owed to the worker;
- pension reform;
- establish a Fair Practices Office to restore worker confidence in the fairness of the compensation system;
- establish an Independent Medical Panel that administers the Independent Medical Examinations (IME) process; and
- create a worker health and safety center modelled on the Occupational Health Clinics for Workers in Ontario whose mandate it is to offer a worker-centred and community-

¹ <https://engage.gov.bc.ca/workerscompensationreview/terms-of-reference/>

based approach to medical evaluation and treatment for injured workers. A model 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.²

In the consultation with Bogyo, the BCFED made similar recommendations which have been included in the report in Section 8. Other Concerns, on Pages 47-48.

It was very clear in the consultation that the reviewer came to the meeting with a pre-existing list of recommendations and simply wanted feedback from the BCFED. The reviewer was not interested in other concerns and recommendations.

Although the BCFED generally supports the Options 2-9, we believe that these do not go far enough to improve the compensation benefits for all injured workers. For example, Bogyo failed to consider and recommend that benefits must be based on 100% of net earnings. This would have ensured that all injured workers would receive 100% of their benefits. Option 2, increasing the maximum from \$82, 700 to \$100,00 means only those workers will benefit.

In 2009 the BCFED produced our report “Adding Insult to Injury, The Impact on Injured Workers”³ of the 2002 changes to compensation. The report made 21 recommendations to restore benefits to injured workers and their families, and these recommendations were made in the spirit of moving forward to establish a system of benefits that reflected the intent of the Historic Compromise.

The BCFED believes the following statement in the report proves the reviewer is not interested in moving forward with a worker-centred approach but rather is continuing to diminish the fight to improve injured worker benefits:

“Those that seek an unwinding of past legislation on the basis of righting the perceived wrongs of the past will be similarly disappointed. The social, demographic, technological and economic reality have altered the environment; a return to the past is no longer practical nor advisable.”

² BC Federation of Labour Submission, *Ministry of Labour Review of the Compensation System, July, 2019.*

³ For a comprehensive review of the impacts of these changes on injured workers, see the following report: Guenther, S., Patterson, J., O’Leary, S. (2009) *Changes to the BC Workers’ Compensation System 2002-2008. The Impact on Injured Workers - Adding Insult to Injury.* This is available at <http://bcfed.ca/news/briefs/insult-injury>

All the cutbacks in compensation benefits, medical treatment and rehabilitation programs have meant the financial burden of workplace injuries have been born by injured workers and their families and the public system. This is a shameful violation of the “historic compromise.” For too long injured workers and their families have paid the price of a system purposefully stacked against them.

Conclusion

The BCFED is pleased with the opportunity to provide this submission. The options proposed in the Bogyo report for the surplus only partially address the issues of improving the compensation system for injured workers. The BCFED encourages the government and the WCB to seriously review our recommendations in this submission, and the recommendations in the Patterson review submission, for spending the surplus. The BCFED recommends that none of the options of the Bogyo report are implemented until after the Patterson recommendations are released.

Respectfully,



W. Laird Cronk
President

cc. The Honourable Harry Bains, Minister of Labour
Ralph McGinn, Chair of the WCB Board of Directors