

MINISTRY OF LABOUR REVIEW OF THE COMPENSATION SYSTEM

July 2019



Authority

This document is respectfully submitted on behalf of the Executive Officers of the BC Federation of Labour and represents the views of more than 500,000 affiliated members across the province of British Columbia.

Our members work in every sector of the economy and in every community in British Columbia. Everyday they go to jobs that may put them at risk of serious physical and psychological injury, occupational disease or death.

The BCFED is recognized as a major stakeholder by the Workers' Compensation Board (WCB, the Board).

We advocate for all BC workers for stronger preventative legislation and for full compensation for injured workers and their families.

We applaud the government's decision to conduct this long overdue review of BC's compensation system. The BCFED, our affiliates and worker advocates have lobbied the Liberal government and the WCB for nearly two decades to have the system brought back from the brink of disaster for injured workers.



W. Laird Cronk
President

Background

In our oral submission to the compensation review, BCFED President Laird Cronk began his presentation with an overview of the history of workers' compensation in British Columbia, believing it is important to understand the original intent and how far we have shifted away from those principles.

In the 19th century, British Columbia was primarily a resource-based economy, with logging, fishing, and mining the largest industries. Working conditions were deplorable, including nearly non-existent health and safety protections for workers, no employer accountability or liability, and very little government oversight.

From the beginning, labour and progressive political activists lobbied side by side for a workplace health and safety prevention and enforcement regime that allows every worker to return home healthy and safe each day, and for injured workers and surviving dependents to be made whole with full compensation regardless of fault.

These tireless efforts led to the successful introduction and adoption of BC's first *Workmen's Compensation Act* by two progressive Members of the Legislative Assembly (MLAs) in 1902.¹ While much improved, this legislation left much to be desired and lobbying efforts persisted for significant improvements.

A tripartite Select Committee² was formed in 1915, chaired by Avarad B. Pineo. The report of the committee, commonly referred to as the "Pineo Report," contained recommendations that led to the birth of our modern day workers' compensation system.³ The reformed Act, which came into effect on January 1, 1917, was touted as the most comprehensive and progressive legislation in North America at that time.

¹ Chaklader, A. (1998). *History of Workers' Compensation in BC: A Report to the Royal Commission on Workers' Compensation in BC*. Vancouver. Retrieved from: <http://www.qp.gov.bc.ca/rcwc/research/chaklader.pdf>.

² James H. McVety, Chairman of the BC Federation of Labour, was appointed to represent labour and David Robertson, from the forestry industry, was appointed to represent employers.

³ Pineo, A. (1916). Report of the Committee of Investigation on Workmen's Compensation Laws. Victoria. King's Printer. Retrieved from: [http://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1916%20Pineo%20Report%20\(Complete\).pdf](http://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1916%20Pineo%20Report%20(Complete).pdf) [Pineo Report]

BC's amended Act was largely in line with Sir William Meredith's recommendations adopted by the Ontario legislature,⁴ often referred to as the "historic compromise,"⁵ with some key differences:

- workers in most industries would be covered;
- injured workers would be provided with first aid and medical treatment; and
- safety and accident prevention administration become a principle function of the Board.

It is important to note that woven through the entire Pineo Report was an emphasis on the need to improve employer and worker relations. The committee clearly believed that one way to achieve this was to acknowledge both stakeholder groups in the system and ensure that they were equally and jointly involved in workplace health and safety.

In tandem with that was the foundational acknowledgement by Meredith, echoed by systems based on his principles, that workers' compensation is not akin to private insurance, but is in fact an economic and social system:

...the very basis of this legislation is that it is social, there is no use disguising the fact. One of the main objects of it is to prevent injured employees and their dependents being made a burden upon the public.⁶

Over the years that followed, labour and worker-friendly MLAs continued to advocate for reform, including actively participating in the four public inquiries and commissions into the Board between 1942 and 1988, achieving modest improvements in compensation and prevention.

⁴ Meredith, W.R. (1913). *The Meredith Report*. Ontario. Retrieved from: <http://www.ontla.on.ca/library/repository/mon/26005/203796s.pdf>. [Meredith Report]

⁵ Labour and workers' advocate communities have long considered the "historic compromise" as mainly myth. A review of the changing jurisprudence at the time in favour of significant worker awards, in comparison to the extremely modest benefits proposed, gives credence to the view that employers gained more in the "compromise" than workers did. In the current BC system, any idea of "compromise" has been completely lost. [reproduced from conversations with Jim Sayre and Stan Guenther]

⁶ Excerpt from the record of Meredith's 17 sitting; reproduced in Robert Storey's April 18, 2011 submission to the Workplace Safety and Insurance Board's Funding Review Commission, *The "Meredith Principles" – Economic or Humanitarian*, at page 11. [Storey]

In the early 1990s, the New Democratic Party (NDP) government conducted a number of long overdue reviews and commissions of the workers' compensation system – both prevention and compensation – which resulted in progressive changes to the system. This included a tri-partite review of the governance structure which led to the significant achievement of a Board of Directors (BOD) composed largely by an equal number of employer and labour representatives.

By the time of the 1999 Royal Commission, nearing the end of the NDP's governance, although still in need of some progressive reform, British Columbia was leading the country in occupational health and safety and workers' compensation law and policy.

This all changed in 2002 when the BC Liberal government made major changes to the system following two core services reviews prompted by an aggressive employer lobby. These changes included unprecedented concessions proffered under the myth of a financially unsustainable system, resulting in a significant negative impact on occupational health and safety and the fair compensation of injured workers and their surviving dependents.

In 2009, the BCFED commissioned a group of the best and most experienced worker advocates to write a report on the impact of the 2002 legislative changes on injured workers and to make recommendations to repair the damage. This report "Adding Insult to Injury" remains the foundational document to this day.⁷ Indeed, many of the recommendations we will make in this report are from the 2009 document. We resubmit that paper with its recommendations along with this submission.

In the 18 years that have followed, the situation has devolved from bad to worse. The dismantling of the composition of the BOD created an immediate imbalance in the system – the representative voice of labour was systemically removed. The effectiveness of this move is reflected in the overall change in the culture and administration of the Board, with the focus on ensuring that their "customers," the employer community, are satisfied. Senior management

⁷ 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>

proudly refer to the Board as an employers' insurance system—protecting the employers' interests and advocating to return any “surplus”⁸ to employers, is top of their agenda.

This new regime of the employers' entitled supremacy has become so entrenched into the employer community, as well as the Board senior leadership and staff, that any assertion that workers should have equal influence in the system and equal, active participation in workplace health and safety, is met with shock, confusion, outrage and fear.

In the same vein, demands for improvements in benefits to injured workers—even up to the imperfect former provisions—are quickly dismissed “owing to groundless fears that disaster to the industries of the Province would follow from the enactment of it.”⁹ Workers have become little more than an afterthought in the “workers” compensation system—the “social/humanitarian heritage” forsaken.¹⁰

This is clearly a significant departure from the wisdom and vision of the Pineo committee of a system designed in the common interest of both stakeholder communities—a vision based on Meredith's principle that “half measures which mitigate but do not remove injustice are ... to be avoided.”¹¹ This vision was upheld in every subsequent review of the Workers' Compensation Board until the Liberals took power in 2001.

Now, more than 100 years later, the working people of British Columbia have an opportunity to provide input to the government's compensation review, to be part of the bold shift required to repair our broken compensation system—a system that is based on independence, accountability and responsibility, equity, and fairness.

Introduction

The compensation review is an important component of the Minister of Labour Harry Bains' mandate to “improve fairness for workers, ensure balance in workplaces and improve

⁸ The gross surpluses realized by the Board over the past number of years have been made largely off the backs of injured workers as a result of the gutting of the compensation benefits.

⁹ Meredith Report, *supra* note 4 at 22

¹⁰ Storey, *supra* note 6 at 33

¹¹ Meredith Report, *supra* note 4 at 22

measures to protect the safety of workers at work so that everyone goes home safely and that workers and families are protected in cases of death or injury.”¹²

The minister has directed the chair of the WCB Board of Directors (BOD) to affect a systemic culture shift to ensure the workers’ compensation system is more “worker centred,” that injured workers be treated with compassion, respect and dignity.

Merits and Justice – the Foundational Principle

The BCFED stated the following in our 2019 submission on the Petrie recommendation to amend policy #2.20 to incorporate the requirement that the Board “must make its decision based on the merits and justice of the case”:

Adding discretion back into decision making is foundational to the concept of a worker centered approach to support injured workers. However, it would foster a system which demonstrated respect and empathy for injured workers and treated them as individuals, not as passive recipients subject to rules. This is a necessary part of constructing a worker-centered compensation system.

This is explained in Insult to Injury:

Until 2002, the Workers’ Compensation Act provided a broad discretion and direction to decision -makers and appeal bodies to make decisions based on the “merits and justice” of the case.¹³

In a striking departure from such a time-honored and reasonable approach, the core reviewer recommended and the Liberal government enacted legislation to remove this discretion both from decision makers and from the two levels of appeal, making WCB’s policies binding. These amendments to the *Workers Compensation Act* (WCA, the Act), gave the politically appointed

¹² From the Confidence and Supply Agreement of May 2017, Section 2(d)

¹³ 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>

BOD the right to develop binding law. The WCB has used this authority to create policies that have eroded workers' benefits.¹⁴

The BCFED considers the restructuring of the Act and the constant flow of policies have had the sole purpose of diminishing workers and their representatives. The BCFED considers amendments to the Act critical to redressing the wrongs and the imbalance against workers that have existed since 2002.

The BCFED strongly recommends removing WCA Section 99(2) and Section 250(2) that rendered the WCB's policies binding on decision makers and reinstate the consideration of the merits and justice of each claim.

The BCFED submission will respond to each of the elements to be assessed in the mandate of the review.

1. The policy and practices used in the workers' compensation system relating to supporting injured workers to return to work

Worker advocates and injured workers continue to assert frustrations with the adjudicative process of the WCB, including timeliness of service, decision-making and implementation, multiple handoffs and uneven decision making. Injured workers often experience delayed care, limited treatments and care that ends before they are fully recovered.

The WCB must change their approach to treatment plans from a rigid one-size-fits-all to an approach that recognizes and responds to the unique needs of each injured worker.

A worker-centred approach means that injured workers and their personal physicians must be consulted and involved in the development of treatment plans and throughout the different

¹⁴ *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>

stages of the plan. The WCB should be actively monitoring the service providers and checking in with the injured worker to ensure quality of the treatment.

Delays in determining eligibility can result from medical disputes, which arise when there is a difference of opinion between the treating physician and the WCB medical advisor. It is imperative that these disputes are resolved quickly.

The “Insult to Injury” report best describes the impact of the 2002 changes to the compensation system, as having led to the “virtual elimination of the WCB’s vocational rehabilitation resources and programs.” A fundamental role of the compensation system is to support injured workers to recover from injury and to return to the workplace, thereby restoring their ability to earn a living.

Accompanying these policy changes was a drastic cut to the vocational rehabilitation budget which was reduced from \$130 million in 2002 to \$3 million in 2006, a 98.8 % drop.¹⁵ In 2018, the WCB spent \$1.7 million on vocational rehabilitation programs. After adjusting for inflation, this is still 40 % below the 2002 spending levels.¹⁶

British Columbia is the only jurisdiction in Canada other than Nunavut and Northwest Territories where there is no legislative requirement in the Act obligating employers to rehire injured workers. The closest we have is Section 16 of the WCA:

To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.¹⁷

¹⁵ : 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>

¹⁶ WorkSafeBC 2018 Annual report and 2019-2021 Service Plan

¹⁷<https://www.worksafebc.com/en/law-policy/workers-compensation-law>

Petrie, in his report “Restoring the Balance,” believes this gives the WCB “wide latitude to enact policy to restore injured workers to suitable employment that is safe, productive and durable to minimize any financial losses that the worker will incur as a result of a compensable disablement.”¹⁸

But rather than taking this “fair, large and liberal construction”¹⁹ interpretation of Section 16, the changes implemented in 2002 resulted in the WCB writing policies which constrained the vocational rehabilitation programs rather than ensuring that workers were assisted to return to meaningful and durable work. These policies did not consider the worker’s abilities, the requirements of the job, ensuring the pre-injury job was made safe and if there was a suitable job available. Rather workers are “deemed” able to return to work.

The BCFED believes it is time the WCA be amended to add a re-employment obligation thereby ensuring the WCB can enforce return to work for injured workers.

Any discussion of return to work must include consideration of the duty to accommodate. In the Rehabilitation Services and Claims Manual, Vol 2, Chapter 11, 87.00 states that “where the worker cannot return to the same job, the employer will be encouraged to accommodate job modification or alternate in-service placement.” But the WCB’s authority to “encourage” an accommodation by the pre-injury employer is strictly limited.

Currently in BC, the duty to accommodate falls under human rights legislation. This is a complex issue and the labour community has been discussing the pros and cons of how to fix the problem, and whether or not to amend the WCA to address the issue of duty to accommodate or not.

The panel that reviewed Alberta’s compensation system recommended that the duty to accommodate go into their compensation legislation.

¹⁸ Paul Petrie (March 2018) Restoring the Balance: A worker-centred approach to workers’ compensation policy

¹⁹ Paul Petrie (March 2018) Restoring the Balance: A worker-centred approach to workers’ compensation policy

88.1(20) For the purposes of section 22 of the Alberta Human Rights Act, (a) the Board shall notify the director of the Alberta Human Rights Commission if a matter under this section is being dealt with by the Board under this section, and (b) the Appeals Commission shall notify the director of the Alberta Human Rights Commission if a matter under this section is under appeal to the Appeals Commission.

The Human Rights Commission can then dismiss a related human rights complaint under s. 22(1.1) of the *Alberta Human Rights Act*:

(1.1) Notwithstanding section 21, where it appears to the director at any time that a complaint (a) is one that could or should more appropriately be dealt with, (b) has already been dealt with, or (c) is scheduled to be heard, in another forum or under another Act, the director may refuse to accept the complaint or may accept the complaint pending the outcome of the matter in the other forum or under the other Act.

It's not hard to see how this could quickly transfer a big chunk of workplace human rights jurisdiction to the Board, which is worrisome as indicated by the comments from the Alberta review panel:

While WCB and Human Rights Commission may both hear complaints regarding duty to accommodate, WCB is required to provide the Human Rights Commission with notice that it is dealing with a dispute regarding this issue. It is not expected that parties will be able to re-argue the same issue regarding duty to accommodate before both WCB and the Human Rights Commission.²⁰

There is a concern that if the WCB starts enforcing human rights obligations and the duty to accommodate, that may preclude workers from pursuing human rights complaints in other venues. The BCFED asks the Review Panel to closely review this matter, consider the effectiveness of such legislation in other jurisdictions and provide a workable solution that

²⁰ <https://www.alberta.ca/wcb-review.aspx>

would allow the Board to take effective action against employers who impede vocational rehabilitation efforts by refusing to accommodate the worker while also ensuring that workers can pursue other human rights remedies where appropriate.

2. An evaluation of current WCB policy and practices through a gender-based analysis plus (GBA+) lens.

The BCFED supports the consideration of the application of gender-based analysis to the workers' compensation system. Current WCB legislation, policies and practices in both compensation and prevention disadvantage workers in equity-seeking groups, including women, workers of colour, immigrant workers, workers who identify as LGBTQ2S, Indigenous and workers with disabilities.

The WCB doesn't consider differences based on gender (social factors) and sex (biological factors) in either the prevention of injuries or the adjudication of claims.

We will use Musculoskeletal Injuries (MSIs) or Activity Related Soft Tissue Disorders (ASTDs) to demonstrate the differences between the impact of risk factors and the resulting injuries between men and women. These types of injuries account for the highest number of claims in professions where the workers are predominately women, such as health care, administrative work, childcare and retail. Overuse and repetitive strain injuries rarely have a specific time of injury and are more likely to build up over time, meaning contributing factors are less clear. Less clarity as to cause has resulted in a high number of these claims being denied, leaving workers, mostly women, without compensation. No compensation for women results in greater economic burden, because women in Canada earn less than their male counterparts. In 2018, Statistics Canada found that Canadian women were making 87 cents for every \$1 earned by men.²¹

Women experience different types of MSIs than men, as found in research done by the Institute of Work and Health (IWH):

²¹ <https://www150.statcan.gc.ca/n1/pub/89-28-0001/2018001/article/00010-eng.htm?HPA=1>

Women who do the same tasks as men often face a higher risk of musculoskeletal disorders (MSDs) in their neck and upper limbs. That higher risk may be due to both biological (sex) differences as well as differences in social roles, activities and behaviours (gender), and it's important that these differences be examined and understood in order to develop effective injury prevention approaches.²²

It would be reasonable to expect that these differences in injury patterns must be recognized in the adjudication of claims and particularly in the development of treatment plans.

In our recent submission on ASTDs, the BCFED pointed out the application of the merits and justice principle to the adjudication of ASTD claims is critical. The WCB urgently needs to update outdated policy, guidelines and practice directives that are based on American research from the 1990s. Changes are needed to ensure all risk factors that contributed to the injuries are considered and that they are adjudicated both as a physical injury and an occupational disease.

The 2018 Petrie report and our recent submission on ASTDs highlighted the need for a more comprehensive consideration of all risk factors. Petrie saw the need to look at the requirements of the ergonomic regulations mandating all employers to have an ergonomic program that focuses on preventing these injuries.²³

We know that equity-seeking workers are more likely to experience workplace violence, including bullying and harassment. In 2017 the WCB received 1,699 enquiries and complaints of bullying and harassment.²⁴ Since the bullying and harassment policy was introduced in 2013 these numbers have remained the same. The BCFED and our affiliates have been lobbying for many years for improvements to the violence prevention regulations and the bullying and harassment policy.

²² <https://www.iwh.on.ca/media-room/news-releases/2016-jun-23>

²³ Paul Petrie (March 2018) Restoring the Balance: A worker-centred approach to workers' compensation policy

²⁴ <https://www.worksafebc.com/en/resources/about-us/annual-report-statistics/2017-stats?lang=en> Page 76

Workplace violence and bullying and harassment- when not prevented -by the employer can be a cause of psychological injuries and the BCFED recommends that WCA Section 5.1 be repealed as it limits benefits for these injuries. The legislation treats psychological injuries differently than other injuries by saying they must be predominately caused by a significant workplace event, such as bullying and harassment. “Predominate cause” creates an unreasonable threshold to eligibility.

And workers must be diagnosed by either a psychiatrist or psychologist. Prior to the changes in 2012, workers with psychological injuries claims could be diagnosed by their own doctor which expedited the process and workers could be compensated and treated much quicker.

Section 5.1(1)(c) exempts mental disorders [or psychological injuries] that are “caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.” No other injury type has such an exemption. Given the imbalance of power in favour of the employer, workers have little chance of a successful claim if their employer has not prevented incidents of bullying and harassment or inappropriate management actions.

These requirements create barriers that make these claims difficult to file for workers suffering from mental health or psychological injury. In 2018, 4,404 mental disorder claims were filed, 937 were allowed, 937 disallowed and 1,268 were suspended. These figures were provided by the WCB upon request of the BCFED. The large number of suspended files was troubling as was the explanation for the suspensions provided by the WCB:

A significant number of claims are suspended by the worker and do not proceed through the decision-making process. This happens after the claims are registered and is generally the worker's choice to not proceed with the requirements of the claims investigation, including obtaining a diagnosis from a psychologist or psychiatrist. If the worker chooses to do so, suspended claims may proceed through the process at a later date.

These requirements create barriers that make these claims difficult to file for workers suffering from mental health or psychological injury. Injured workers are concerned about privacy as their employers have the right to see their medical records. Injured workers have reported the difficulty of having to tell their story to a completely unknown medical professional and find the medical diagnosis process invasive. For those workers from equity-seeking groups the barriers become insurmountable.

The BCFED recommends that WCA Section 5.1 be repealed.

The BCFED is pleased with the NDP government's decision in 2019 to expand the original list of presumption of psychological injuries which included occupations: correctional officers, emergency medical assistants, firefighters, police officers, and sheriffs. The list now includes emergency dispatchers, licensed practical nurses, nurse practitioners, registered nurses, registered psychiatric nurses, and health care assistants (care aides). The presumption has not gone far enough and must include all workers no matter the industry they work in. Workers in community and social services, health care workers, retail and hospitality workers must be included in the presumption legislation.

3. Modernizing the WCB's culture to reflect a worker-centric service delivery model

Changing the WCB governance

Modernizing the WCB's culture to put the focus on workers must begin with a change in governance. It is the position of the BCFED that the WCB BOD structure must be immediately be amended in legislation to ensure that the stakeholders are equally and predominately represented on the BOD.

The current composition of the BOD, as per Section 81 of the WCA, with one token worker representative, does not provide for equitable, responsible or accountable governance and decision-making at the WCB.

The NDP government has made some changes to the BOD with the addition of a second member from the worker community. But there is only one labour representative on the current BOD. These changes have not established equity for workers, and the current BOD remains dominated by public interest positions, commonly filled with professionals, most of whom can be placed as employer representatives. BC is the only jurisdiction in Canada with only one worker representative, except for Saskatchewan, who has a three-person only Board.

This structure has eliminated the concept of workers being equal stakeholders in the workers' compensation system. In his 1988 report, reviewing the BOD's structure, reviewer Monroe made this statement of principle:

There is no question that workers and employers have a rightful claim to a predominant position on the Board of Governors. ²⁵

And Monroe considered the issue of professionals and public interest positions:

Nor do we think that professional groups should have places reserved for them on the Board of Governors. Medical or other professional advice can easily be otherwise obtained. Indeed, there is some danger that the existence of "professional governors" would result in the range of professional advice being too narrow

While the parties with the most immediate interest should hold majority sway, the broad public perspective should have a formal say. Related to the foregoing is the realization that in both historical and modern terms, the Workers' Compensation Act is an enormously important piece of social legislation. Certainly, the Act is very much concerned with occupational health and safety in individual industrial enterprises, and with claims for compensation by individual

²⁵ [https://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1988%20Munroe%20Report%20\(Complete\).pdf](https://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1988%20Munroe%20Report%20(Complete).pdf) Page 4

*workers who have suffered job-related illnesses or injuries. But the Act is also the embodiment of a social principle in which society as a whole has a stake.*²⁶

The BCFED recommends the following structure for the WCB BOD, in keeping with the other jurisdictions in Canada:

- 1 chairperson - appointed in consultation with both stakeholder groups;
- 3 worker representatives - appointed from recommendations provided by labour;
- 3 employer representatives - appointed from recommendations provided by employers;
- and
- 3 public interest representatives - including 1 injured worker, 1 actuarial, and 1 legal expert in human rights appointed in consultation with the stakeholders.

The voice of the injured worker, the true customer of the workers' compensation system, is a valuable addition to the BOD, keeping the organization on track with respect to their social responsibility and to help shift to the worker-centred approach.

In BC we have a vigorous consultation process, largely as a result of years of lobbying by the BCFED and our affiliates. The Practices and Policy Consultation Committee (PPCC) is mandated to provide advice on compensation policy development and regulatory amendments. The PPCC consists of equal numbers of employer and worker representatives and senior WCB staff.

The BCFED concurs with the Alberta compensation review panel, who recommended that members of the BOD also sit on PPCC.²⁷ At a minimum this should be a labour and an employer BOD representative. This committee provides an excellent opportunity for the BOD to hear directly about issues and concerns from workers and employers rather than through the filtered lens of senior staff.

²⁶ [https://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1988%20Munroe%20Report%20\(Complete\).pdf](https://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1988%20Munroe%20Report%20(Complete).pdf), Page 4

²⁷ <https://www.alberta.ca/wcb-review.aspx>

The BCFED recommends that members of the WCB BOD, likely a labour and an employer representative, sit on the PPCC committee.

Changing the name

In 2002, as part of the sweeping changes to the compensation system the WCB rebranded itself to be “WorkSafeBC.” This was a marketing ploy, intended like all the other changes to diminish workers. “WorkSafeBC” represents the erosion of benefits for injured workers and the name puts an onus on workers to “work safe” rather than on employers to provide safe work.

The BCFED and our affiliates have passed unanimous resolutions at every convention since 2002, urging members to use the legal name, Workers’ Compensation Board or the WCB and not use the term “WorkSafeBC.” Unfortunately, over 18 years, the term “WorkSafeBC” has worked its way insidiously into the common lexicon and vocabulary.

The BCFED strongly recommends changing the name of the organization back to the legal name Workers’ Compensation Board or WCB as an important step in moving the organization to a worker-centred approach.

Integration of the compensation system and prevention services

The BCFED strongly supports a more robust integration of the compensation system and prevention services.

Indeed, the Pineo report recognized the fundamental link between compensation and prevention:

Another matter to which the Committee devoted considerable attention, one which we think should be given a very prominent place as an essential element in an adequate compensation system, is that making provision for bringing about conditions which tend to the reduction of industrial accidents. ²⁸

²⁸ <https://www.worksafebc.com/en/resources/about-us/reports/pineo-report?lang=en>

From 1917 to 2001, BC was considered a leader in health and safety law and policy. BC's Occupational Health and Safety Regulation (OHSR) also underwent drastic cuts after 2001 when the Liberal government committed to reducing "red tape" by at least one-third, removing hundreds of important, prescriptive health and safety regulations. The WCB has consistently replaced prescriptive regulations with performance-based regulations and in recent years began a trend of creating "policies" for issues that should be properly included in the regulation, for example, the Bullying and Harassment policy that has done little to reduce these incidents.

We have already mentioned the disconnect between the adjudication of ASTDs and the requirements of the ergonomic regulation to prevent these injuries.

BC has one of the best ergonomic regulations in Canada, after a 10- year fight by the labour movement pushing back against vehement opposition from employers, resulted in the implementation of the ergonomic regulation in 1999.

In a meeting with the labour representatives from the PPCC and prevention services to discuss our concerns about the prevention activity in the enforcement of the ergonomics regulation, the WCB admitted they should be putting more resources into enforcing employers' compliance. In 2017, out of 35,000 inspection orders, about only 275 were written on ergonomic issues. This lack of prevention activity is particularly worrisome given that in 2017, ergonomic-related claims made up 35% of time loss claims and 20% of total claims costs, the largest category of claims.²⁹

The BCFED recommends the WCB:

- begin a vigorous enforcement campaign to enforce the ergonomic regulation;
- develop a policy to require all ASTD claim adjudication to include an investigation into the employer's compliance with the ergonomic regulation; and

²⁹ WorkSafeBC 2017 statistics report, pages 70-71

- increase the number of ergonomists to provide education, expertise and support to the WCB prevention officers who will be involved in the enforcement campaign.

Prevention officers have reported they are concerned about a lack of expertise in ergonomics when they are conducting inspections. The WCB lacks professional support with only a small number of ergonomists to provide services to employers and to inspection officers.

The worker-centred approach must be applied to prevention and the BCFED believes the following recommendations will assist in this goal:

- the WCB must develop strong prescriptive regulations that are easily understood by all parties;
- the WCB must discontinue the trend to create policies on health and safety hazards that should be in regulation; and
- the WCB must allocate more resources to prevention services, thereby ensuring there are well-trained officers on the ground enforcing regulatory requirements, writing orders and being supported to recommend penalties for non-compliance.

A worker-centred service delivery model must ensure the respectful treatment of injured workers at all stages of the claims process. Injured workers report they are treated with suspicion, are unable to regularly contact their case managers, voice messages are unanswered, and steps in the claim process are not clearly explained. We have also heard that some staff have been rude and insensitive when communicating with injured workers. One of the foundational principles of the compensation system is that it is no-fault, but it seems that we have moved from that to a system now based on blaming and shaming injured workers.

The BCFED strongly recommends the WCA be amended to include a code of conduct to ensure changes to the attitudes, expectations and behaviour of all parties. After the 2017 review, Alberta chose to add a code of conduct to its *Workers' Compensation Act* providing direction to workers, employers and the WCB on appropriate ways to interact.

Modernizing for a worker-centric service delivery model requires the WCB to provide claims processes that are clear, accessible and understandable for injured workers and their advocates.

Modernizing the service delivery model requires a thorough evaluation of the case management process for injured workers.

This brings up the matter of appropriate resources allocated to provide timely and full service to injured workers and their advocates.

The BCFED recommends the following to increase the effectiveness of the WCB's claims management system:

- education of all WCB staff, including upper management, regarding the social/humanitarian purpose of the workers' compensation system and appropriate, respectful treatment of injured workers and their advocates;
- provide enough staff to meet deadlines in a timely manner;
- encourage staff to use their skills and knowledge to use a holistic and consultative approach with injured workers, their advocates and their union; and
- ensure there is effective communication and information sharing with the injured worker and their advocate throughout the claim process.

4. Improved case management

We have already discussed in the previous section the importance of shifting the relationship of compensation staff in their interactions with injured workers.

The BCFED wants to be clear that we are not finding fault with the front-line workers of the WCB. In fact, many members of the Compensation Employees' Union (CEU) provide excellent service to injured workers. We have focused on the systemic and organizational structures that have removed their decision-making abilities in favour of the strict application of WCB policies.

Staff have been without education, training, resources and supports required to adequately serve the needs of injured workers.

According to the CEU, the workloads of case managers and vocational rehabilitation consultants are unsustainable. Some workers are receiving hundreds of calls a day. Staff who are away on vacation or off on sick leave are not replaced and the work is simply distributed amongst co-workers. WCB staff are frustrated that more importance is placed on collecting data than the quality of their work. This impedes their ability to provide excellent service to injured workers. The CEU is concerned about the impact of these issues on their members' psychological health.

The BCFED recommends that the BOD direct the WCB to increase funding to hire more case managers, vocational rehabilitation and administrative staff.

The WCB compensation system must ensure that there is respect for and value placed on the evidence of workers, respect that workers have valuable information regarding their injuries, their treatment options and their vocational rehabilitation plan.

In her study, *Preserving Workers' Dignity in Workers' Compensation Systems: An International Perspective*, Katherine Lippel quotes one of her former studies:

*A Quebec study [Lippel, 2007] identified three primary issues that explained many of the negative health consequences reported by the workers: stigma, imbalance of power and lack of social support. Workers, including some workers whose claims had been accepted without contestation, reported being "treated like a criminal" or feeling like David confronting Goliath. They expressed with 93 different terms the negative emotions associated with the process; positive experiences were expressed in 23 terms, including feeling "lucky" to have been supported by their union or "proud" to have made it through the process.*³⁰

The BCFED concurs with the position of the BCGEU in their submission on improvements that need to be made to the claims review and appeals systems. The review and appeals system that

³⁰ American Journal of Industrial Medicine 55:519–536 (2012)

was introduced in 2002 became increasingly complex, and inaccessible to injured workers. Decision are being made that are not easily understood and this along with repeated delays in the review/appeals system has led to increased frustrations for injured workers and their advocates. The BCFED agrees with the BCGEU submission that legislation must be amended to enable the Workers' Compensation Appeal Tribunal to reconsider decisions on the basis of common-law grounds and not be restricted only to new evidence.

5. Steps to increase confidence of workers and employers in the workers' compensation system

Paul Petrie in his report listed examples he heard from the worker community regarding claims suppression:

- threats of dismissal if a worker filed a claim for wage loss;
- assigned to non-productive “work” in the lunchroom;
- punch in on time clock and allowed to go home for the day; and
- use of mandatory drug testing when reporting an injury as a means of suppressing a claim.³¹

Claims suppression are illegal under Part 3, Division 10 Section 177: Employer or supervisor must not attempt to prevent reporting” of an injury, an illness or a death.

As Petrie was mandated to review compensation policy, he was to able make only recommendations to amend policy # 94.20 which addresses violations under Section 177.

The BCFED considers that workers must be protected against discrimination and retribution under legislation.

The BCFED recommends WCA Part 3, Division 6, Prohibition Against Discriminatory Action must be amended to address the following:

³¹ <https://www.worksafefbc.com/en/resources/about-us/reports/restoring-balance-worker-centered-approach?lang=en>, P. 32

- include protections from discriminatory action for injured workers filing compensation claims as well as for claims suppression by the employer; and
- allow the WCB to collect discriminatory action awards from the employer on behalf of the worker and hold in trust pending the outcome of an appeal.

The Alberta compensation system review recommended an amendment to the WCA to provide for a statutory review every five years. When asked workers, employers and other stakeholders all wanted to be sure that the system was keeping up to date. A mandated review is seen as an effective way to ensure this happens. Some other jurisdictions have legislated regular reviews, such as Saskatchewan every five years, Newfoundland and Labrador every five years and Manitoba every 10 years.

The legislative review process is more reactive, responding to external pressures such as Coroner's Inquest recommendations, worker fatalities or serious injuries, change in other jurisdictions. A mandated review schedule will increase the confidence of workers and employers in the legislative process.³²

Therefore, the BCFED recommends the WCA be amended to mandate a review of every five years.

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

³² <https://www.alberta.ca/assets/documents/WCB-Review-Final-Report.pdf>

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.³³

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.³⁴

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,

³³ <https://metcalfoundation.com/wp-content/uploads/2013/12/Welfareization-of-Disability-Incomes-in-Ontario.pdf>

³⁴ <https://injuredworkersonline.org/resources/papers-and-presentation/page/2/>

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.”

Conclusion

The BCFED is pleased with the opportunity to provide this submission. The BCFED considers this review of the compensation system of the utmost importance. For too long injured workers and their families have paid the price of a system purposefully stacked against them. The BCFED urges the chair of the review to seriously consider the recommendations set out in this submission.

We look forward to the recommendations of the review panel and commit the resources of the BCFED and our affiliates to sending a strong message to government that these recommendations must be implemented.

Anything less would be a betrayal of injured workers and their families.