

# MAINTAINING BALANCE IN WORKSAFEBC

## CFIB submission on potential reforms to the workers' compensation system

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In advance of the pending official review of the Workers' Compensation Act (WCA) in late 2019, the Canadian Federation of Independent Business (CFIB) is putting forward its recommendations to preserve a balanced, stable, and sustainable workers' compensation system in the province.

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### Introduction

On behalf of CFIB and our 10,000 independent business members across BC, we appreciate the opportunity to present our recommendations for changes to the workers' compensation system. Thank you for opening up the review to employer consultation. In a survey of our members, 80 per cent of small business owners believed a consultation should take place before any recommendations were made to the government<sup>1</sup>.

However, we are concerned the current consultation lacks objectivity, as we recently indicated in correspondence to Minister Bains. Specifically, we are troubled by the lack of employer representation, which is vital for a balanced review process. As you will read throughout our submission, we believe balance throughout the review is of the utmost importance in order to ensure the system works for both employees and employers.

Our members in BC are located in every region of the province, with diversity in activity that closely parallels that of the provincial economy. Our members are regularly surveyed in order to determine their positions and priorities on key issues and policies which affect their business. In addition, CFIB representatives meet with nearly every single member in person at least once a year, providing additional opportunities to take the pulse of BC's dynamic small business sector.

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<sup>1</sup> CFIB, CFIB Post-Budget Survey, Feb 27-Mar 19, 2019, n=450

This submission is structured as follows:

- Context on the Workers’ Compensation System from the employers’ perspective with special consideration of small business owners;
- Discussion of the inclusion of Duty to Accommodate into the Workers’ Compensation Act;
- An outline of areas of the workers’ compensation system where there is room for improvement; and
- A summary of our recommendations for the WCA.

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## The Current Context

### The Need for Balance

The workers’ compensation system in BC is based on a “historic compromise.”<sup>2</sup> The idea behind this compromise is that employers collectively fund a system to compensate workers in the event of a workplace injury. In return, workers revoke the right to sue their employer if they are injured on the job. At its core, this concept is predicated on both sides (employers and employees) making concessions. The system will never be perfect for either party as it is founded on compromise. Employers make concessions by funding the system, while employees make concessions in the benefits they receive.

As a result, even in the pursuit of making the system more “worker centred”, the reviewer must consider the needs of employers to retain balance. In a recent survey, 98 per cent of small business owners agreed the cost of any changes needs to be measured and reported and that any changes that come with new costs need to be sustainable (see Figure 1). Because so many employers agree this is a main concern moving forward, it is vital that the review carefully consider the costs of any changes recommended.



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<sup>2</sup> Paul Petrie, Restoring the Balance: A Worker-Centred Approach to Workers’ Compensation Policy, 2018. <https://www.worksafebc.com/en/resources/about-us/reports/restoring-balance-worker-centered-approach?lang=en>

Figure 1:

**Please indicate if you agree or disagree with the following statements on WorkSafeBC. (select one for each line)**



Source: CFIB, BC Provincial Survey – Issues and WCB, July 4 – July 18, 2019, n=622

Prior to 2002, the workers’ compensation system in BC had become very expensive. Therefore, changes were necessary to ensure the fund was sustainable for employees’ benefits and to relieve some of the financial pressure facing business owners. In response, the provincial government at the time made a series of changes to the system between 2002 and 2008. Some argue those changes went too far. However, the solution to an imbalance in the system is not to simply put too much weight in the other basket. Doing so would merely lead to even more changes being necessary in the future. We strongly believe that in any recommendations to the government, stability and sustainability must be primary concerns. In this belief, we agree in principal with the findings of the Bogyo Report<sup>3</sup>.

Because of the system’s basis on compromise and the need for stability and sustainability, CFIB urges this latest official review to carefully consider the costs of its recommendations. In the Petrie Report, we counted at least twelve recommendations that would dramatically increase the monetary costs of running the system<sup>4</sup>. While employers want to ensure their employees are receiving fair compensation if they are injured in the workplace, adopting so many costly measures at once is unsustainable in the long run. As in the past, making many costly changes will likely result in a future equal and opposite reaction. The current review needs to look at attaining a balance, not tipping the scales in one direction or the other.

<sup>3</sup> In the introduction Terrence Byogo acknowledges the financial context of the report: that we live in a rapidly changing world with precarious financial markets. As well, he asserts that stability is one of the most important themes in developing options for the review, along with balance and improvement.

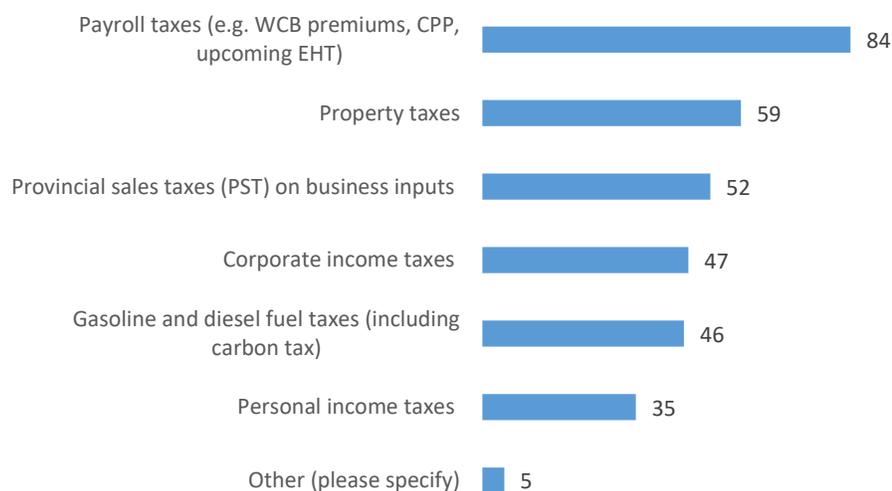
<sup>4</sup> Paul Petrie, Restoring the Balance: A Worker-Centred Approach to Workers’ Compensation Policy, 2018. <https://www.worksafebc.com/en/resources/about-us/reports/restoring-balance-worker-centered-approach?lang=en>

In order to ensure any changes instituted do not lead to an undesirable opposite reaction, we agree with the Bogyo Report’s implication that any action should not be taken hastily. Instead, we must be thoughtful and methodical in order to consider different options for change. We also agree with the Bogyo Report’s assertion that changes **should not** be applied retroactively, as doing so would put undue strain and costs on the system.

Some may believe the system can absorb the costs by passing them down to employers through premiums. However, because WCB premiums are essentially a payroll tax on business owners, increasing premiums will introduce a significant hardship on small business owners, and ultimately be borne by employees. Even the BC government has stated, “employer-paid payroll taxes and employer-paid health care premiums are generally reflected in reduced wages”<sup>5</sup>. In fact, 84 per cent of small business owners have indicated that payroll taxes are the most difficult tax for their business to absorb, over 20 points more than the percentage who said provincial sales taxes and property taxes (see Figure 2).

Figure 2:

**Which types of taxes are the most difficult for your business to absorb?**



Source: CFIB BC Provincial Issues Survey, Nov 22-Dec 17, 2018, n=734

In response to higher premiums, employers will need to take mitigating measures. These could include reducing the number of hours they provide employees or decreasing investments in their business. This response would be detrimental to both employees and the workers’ compensation system itself. Because WCB premiums are based on employee’s assessable income, any reduction in the number of hours for employees would pull back the number of hours employers pay premiums on – all happening while WSBC would be needing more funds to sustain an expanding and more costly system. For these reasons, funding changes to workers’ compensation in BC is not as simple as increasing premiums. In recommending the government

<sup>5</sup> BC Ministry of Finance, Budget and Fiscal Plan 2018/19-2020/21, 2018.

make changes to the system, the review must prioritize the changes that are most important and provide the government with a well thought out cost-benefit analysis.

**Recommendations:**

- **Emphasize stability and sustainability** in any recommendations for reform to the government. To achieve this, **consider the cost of those recommendations** to balance the interests of employers and employees.

**WSBC’s Funded Position**

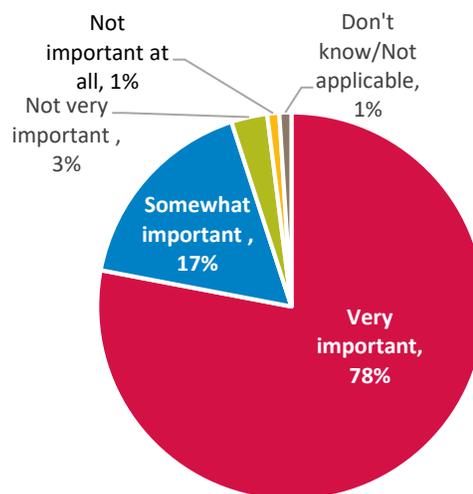
In 2018, WorkSafeBC’s (WSBC) assets exceeded liabilities by \$6.4 billion, meaning they had attained an asset to liability ratio of 153 per cent. Thus, we can conclude WSBC is currently well above even its own funding target of 130 per cent<sup>6</sup>.

It is important to note the current funding position of WSBC is not primarily the result of changes in benefits for employees. In fact, numerous components have contributed to the funding surplus. In recent years, the largest component contributing to the surplus has been favourable investment returns and decreasing injury rates.

For years, small business owners have pointed to the over-funded position of WSBC as a serious issue. In a survey of small business owners in 2017, 78 per cent of business owners indicated it was very important WSBC provides rebates to business owners to reduce the program’s significant surplus (see Figure 3). Because of this, for years, CFIB has advocated on behalf of our members for a [full or partial] refund of the overfunded position. However, it is more important to business owners that any changes made to workers’ compensation do not eliminate the surplus, making it necessary for employers to pay more in premiums.

Figure3:

**How important is it to your business that the provincial government takes the following immediate actions? WorkSafeBC should provide rebates to business owners to reduce the program’s \$6.4 billion (153%) surplus in 2017.**



Source: CFIB BC Post-Budget Survey, Feb 27-Mar 19, 2018, n=450.

<sup>6</sup> WorkSafe BC, 2018 Annual Report and 2019-2021 Service Plan, 2019. <https://www.worksafebc.com/en/resources/about-us/annual-report-statistics/2018-annual-report/2018-annual-report-2019-2021-service-plan?lang=en>

Although our main priority for WSBC is keeping employer’s premiums at their current levels, we recognize there are other components of WCB that need improvement. In our 2015 assessment of workers’ compensation systems across the country, BC tied with Manitoba for the lowest score on the coverage sub-index. The coverage sub-index refers to the amount of protection the system provides both employers and employees.<sup>7</sup>

The private sector payroll component of the coverage sub-index considers a province’s private sector payroll that is subject to workers’ compensation. For this indicator, the higher the percentage of total private sector payroll subject to workers’ compensation, the lower the score. This is because as workers’ compensation systems expand the number of occupations subject to workers’ compensation, the burden on small business owners to pay for workers’ compensation on low risk occupations increases. Instead, the worker’s compensation system should emphasize covering those in occupations with a high risk of injury – a priority that was specified in the Petrie Report.

The Petrie Report indicated the system needed to improve upon benefits as a percentage of earnings. However, we disagree with the report’s suggestion that “basing benefits on 90 per cent of net income” is insufficient for two reasons. First, we do not believe basing benefits on net earnings, as opposed to gross earnings, is insufficient because this practice is consistent with workers’ compensation systems across the country. Second, the Petrie Report implies 90 per cent is too low a percentage to base benefits on. Yet BC’s system ties with Alberta, Saskatchewan, Manitoba, and Quebec for basing benefits on the highest percentage of net earnings<sup>8</sup>.

Figure 4:  
**Workers’ compensation benefit levels across the country**



Source: CFIB Analysis of Workers’ compensation Systems, 2019

#### Recommendation on funded position:

- **Do not** introduce changes to the program that eliminate the current surplus so that the premiums paid by employers increase.

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## Duty to Accommodate

One of the main issues considered by the review is whether duty to accommodate should be absorbed into the WCA. Although employers want to accommodate their employees should workplace injury occur, we do not believe the way to achieve this is by explicitly putting duty to

<sup>7</sup> Marvin Cruz and Sarah Gebretsadik, CFIB. 2015. A Small Business Assessment of Workers’ Compensation: 2015 Small Business Workers’ Compensation Index.

<sup>8</sup> WCB-Alberta, Worker’s Handbook, 2018. WCB-Saskatchewan, Benefits for injured workers, 2019. WCB-Manitoba, Understand your Benefits, 2019. WSIB-Ontario, Loss of Earnings Benefit, 2019. CNESST Work related injury or disease, 2019. WCB-New Brunswick, A Guide for New Brunswick Workers, 2017. WCB-Nova Scotia, Claim Benefits and Services, 2019. WCB-PEI, Wage Loss, 2019. Workplace NL, Wage-Loss Benefits, 2019.

accommodate into the act. In fact, we believe explicitly putting duty to accommodate is unnecessary and would not be good practice.

We believe that incorporating the duty to accommodate into the act is unnecessary for two reasons. First, the duty to accommodate has already been recognized by the Supreme Court of Canada and is contained in the BC Human Rights Code. Therefore, the duty to accommodate already applies to all employers in the province without being explicitly stated in the WCA. Second, WCB case managers already take measures to promote the organization’s goal of “keeping employees at work” by pressing business owners to find alternative duties for employees who are injured in the workplace. Because the duty to accommodate already applies to all employers and case managers already emphasize this duty in principle, incorporating it into the act would not fundamentally alter the behaviours of either the WCB or employers, making it a redundant regulation.

Introducing redundant regulations, like the duty to accommodate, into the act would simply create red tape. In the next section we discuss red tape in greater detail, but as far as incorporating duty to accommodate into the WCA is concerned, it is important to note the additional regulation could lead to potential complications and/or delays that stand in the way of getting employees back to work.

We are also concerned about the potential of jurisdictional overlap represented by introducing the duty to accommodate into the act. The duty to accommodate is already enshrined in the BC Human Rights Code. Moreover, the human rights regime already has a way in which they interpret and apply this rule. Introducing the duty to accommodate into the workers’ compensation act as well could lead to different interpretations and applications of it, inducing confusion and frustration among business owners and employees. Additionally, we do not believe the workers’ compensation system has the same capacity or broad mandate to emphasize the duty to accommodate that the human rights regime does.

**Recommendations:**

- **Do not** enshrine the “duty to accommodate” into the Act.

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## **Eliminate red tape**

Employers and employees alike are affected by red tape in their dealings with the workers’ compensation system. Obviously, rules and regulations are required in order to ensure employers and employees have an understanding of how the system works and what the overall framework requires. When talking about red tape, we are referring to conflicting rules, redundant paperwork, or poor customer service from staff who are not able to help guide business owners and employees through the process.

Government rules, paperwork and interactions with WSBC staff are included in every interaction business owners have with WSBC, from registering one’s business to submitting a claim after a workplace injury. Unnecessary rules and red tape hurts productivity and takes

away from the ultimate goals of the workers’ compensation system. For business owners, red tape diverts their focus away from what they should be doing, which is building their business, creating jobs, and growing the economy. For employees, excess red tape can delay receiving financial assistance and takes their focus away from healing and returning to work. Therefore, eliminating red tape is essential to creating a workers’ compensation system that works for both employers and employees. In this section we will discuss three areas of focus for WSBC to minimize red tape. However these are not the only areas with room for WSBC to improve. Undoubtedly, there are many more.

## **Communicating with business owners**

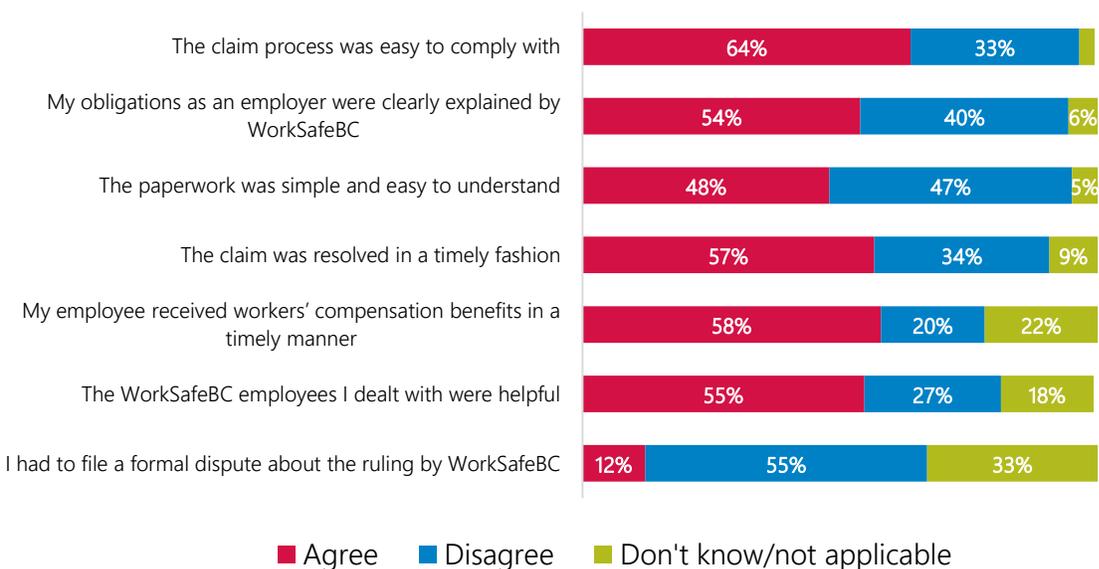
The first area where WSBC can eliminate red tape is in the methods they use to communicate with business owners. The main methods WSBC currently uses to communicate with employers and employees are frontline staff, forms and paperwork, and the website. In using of all these tools there are opportunities for the WCB to eliminate red tape.

### **Interactions between staff and business owners**

The first area where WSBC could eliminate red tape in their communications with employers and employees is ensuring their employees provide high quality customer service to these two groups. Employers communicate with Board Officers throughout the claim process – often when they need information to fill out WSBC forms. However there are concerns about the amount of time it takes for Board Officers to return calls and whether their responses adequately answer business owner’s questions. This is an example of poor customer service that slows down the process of getting claims through the system. In a recent survey, over one quarter of small business owners felt the WSBC staff they interacted with were not helpful throughout the claim process. This lengthens the claims process and the amount of time for which employees are not receiving benefits. In the same survey, one-third of business owners felt the claim was not resolved in a timely fashion and one-fifth of business owners felt their employee did not receive worker’s compensation in a timely manner (see Figure 5).

Figure 5:

**Thinking back to when you filed a claim with WorkSafeBC, please indicate whether you agree or disagree with the following statements describing your experience. (select one for each line)**



*Source: CFIB, BC Provincial Survey – Issues and WCB, Preliminary Survey Data Tabulated July 11, 2019, July 4 – July 11, 2019, n=241*

## Paperwork

The second area where WSBC could get rid of red tape in their communications with employers and employees is by eliminating duplicate forms. For example, when there is an incident in the workplace an employer must submit an incident report. If a claim is made in reference to this incident, the employer must complete a formal investigation then submit a form that is identical to the first form they submitted to WCB with the findings of their investigation. Often nothing has changed between the first and the second form they submit. Anything there is to be gained from this form can be learned from the employer submitting it only once – either before or after conducting an investigation. Having duplicate forms represents a great opportunity cost in terms of the employer’s time, in addition to the time of WCB staff who must then read the same form twice.

## Rules and regulations

The third area where WCB could eliminate red tape in their communications with employers and employees is by reviewing rules and ensuring they are written in plain language. This is a small step that could go a long way to making the system and its processes more easily understood by employers and employees alike. In a survey of small business owners, 91 per cent said they would be supportive of this measure (see Figure 6). Small business owners often do not have a legal department or HR department to interpret complicated rules, and anything done to simplify the process benefits both the employer and employee.

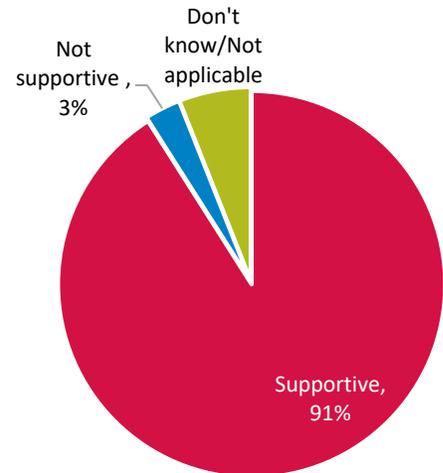
## The classification system

The classification system is another area where business owners have indicated WSBC could eliminate red tape. When businesses register with WSBC, they are assigned a classification based on their business’ primary undertaking. This determines the base rate they pay into the system.

Despite the important role that classification plays in determining the amount businesses pay into the system, this is an area business owners strongly indicate needs improvement. As it stands, there are simply too many classifications rates, making it difficult for businesses to understand where they fit. In a survey of small business, 86 per cent of business owners supported simplifying WSBC employer classification system and 79 per cent of business owners supported improving the appeal process for WSBC employer classification disputes (see Figure 7).

Figure 6:

**How supportive is your business of putting WorkSafe BC rules in plain language?**



Source: CFIB Survey on BC Regulation and Paperburden, Nov 23-Dec 1, 2015, n=438

Figure 7:

**How supportive is your business of each of the following actions that the provincial government can take to reduce red tape?**



Source: CFIB Survey on BC Regulation and Paperburden, Nov 23-Dec 1, 2015, n=438

## No new red tape

Finally, in addition to getting rid of red tape currently within the system, the review should ensure that any recommendations made to the province do not unduly increase the amount of paperwork and regulations on business owners. This is especially important when considering the inclusion of “duty to accommodate” into the act. Earlier we discussed the reasons we do not support including the duty to accommodate into the act, however if it is absorbed into the act, it would likely lead to changes to the existing appeal and claim process. If this is the case, the review must ensure the changes are made to minimize the impact of the resulting red tape on employers and employees. Redundant processes and conflicting or confusing rules will do no one good and in some cases could negatively impact employees.

### Recommendations:

- Place importance on the **customer service employers and employees receive** from Board Officers when they have questions about their claims by improving interactions between WorkSafe BC staff and business owners, eliminating duplicate paperwork, and putting rules and regulations in plain language;
- Streamline the rate classification process for employers; and
- Ensure that all recommendations to the government **will not increase the amount of red tape faced by business owners.**

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## Conclusion

In recent history, WSBC has been massively overfunded. For example, in 2018 WSBC reached an asset to liability ratio of 153 per cent. The current funded level indicates opportunities exist for changes to bring the system into balance. In recommending changes, the review must weigh the needs of employers as well as the needs of employees. Doing so is in keeping with the historical basis of the system, which is a compromise between the rights and needs of employers and employees. Additionally, the principles of stability and sustainability, which are vital for the continuation of workers’ compensation in BC, must be considered in all recommendations the review makes to government. With all of this in mind, CFIB issues the following recommendations to the review:

- **Emphasize stability and sustainability** in any recommendations you make to the government. To achieve this, **consider the cost of recommendations** to balance the interests of employers and employees;
- **Do not** introduce changes to the program that eliminate or even surpass the current surplus so that the premiums paid by employers increase;
- **Do not** enshrine the “duty to accommodate” into the Act;

- Place importance on the **customer service employers and employees receive** from Board Officers when they have questions about their claims by improving interactions between WorkSafe BC staff and business owners, eliminating duplicate paperwork, and putting rules and regulations in plain language;
- Streamline the rate classification process for employers; and
- Ensure that all recommendations to the government **will not increase the amount of red tape faced by business owners.**