



**Submission to
The Workers' Compensation Act
Committee of Review**

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Introduction

The Canadian Union of Public Employees Saskatchewan Division (CUPE Saskatchewan) welcomes the opportunity to present our views and recommendations to the Saskatchewan Workers' Compensation Committee of Review. CUPE is Canada's largest union, representing more than 630,000 members across the country and more than 29,000 workers in Saskatchewan, including more than 13,000 healthcare workers.

We are grateful that the Workers' Compensation Act provides for this periodic review. It remains an important process for the workers of Saskatchewan as well as their dependents.

Our members work in hospitals, long-term care facilities, home care, mental health centres, community clinics, group homes, school boards, municipalities, libraries, child-care centres, universities, and other public sector workplaces. The work that they do exposes them to numerous hazards at their worksite and includes the potential for physical injuries, psychological injuries, and occupational disease.

CUPE is generally concerned with occupational health and safety and specifically with the elimination of workplace hazards. We believe that the elimination of hazards and the prevention of injuries, illnesses and fatalities are the key components to improving the workplace and decreasing the rates of injury and disease.

Unfortunately, our members face preventable occupational health and safety hazards every day. Many members and their families experience the irreparable harm of work related injuries and illnesses. They, more than anyone, are aware of the threats to their health and the obstacles in their way.

Any assessment of the workers' compensation system must begin with an acknowledgement that employers hold the balance of power in the workplace and that they must be legally responsible for workplace health and safety.

This submission will focus on the following areas: The Meredith Principles and WCB Governance; Prevention; Coverage and Benefits; and Funding, Surpluses, Training, and Resources.

The Meredith Principles and Board Governance

Meredith Principles

We are pleased that the WCB continues to acknowledge the importance of basing the workers' compensation system on the Meredith Principles. Ever since the creation of the province's workers' compensation system in 1930, the principles set out by Justice Sir William Ralph Meredith have guided the protection and compensation provided to workers for work related injuries and diseases.

CUPE supports the Meredith Principles for workers' compensation and maintains the system must remain a no-fault one based on the collective liability of employers as a group and should be governed by the benefit-of-the-doubt principle that favours workers. While we are certain that the Committee of Review and employers know the importance of the Meredith Principles, we believe that it is worthwhile to restate them for the record:

No Fault Compensation – workers are not required to prove blame for their injuries in order to receive compensation for those injuries;

Security of Benefits – a dedicated fund with enough assets to provide compensation to the worker for all future costs caused by the injury;

Collective Liability – costs are shared by employers through compulsory mutual insurance wholly paid by employers;

Independent Board – autonomous from government control, the Board is composed of worker and employer representatives, with the Board deciding claims and collecting assessments;

Exclusive Jurisdiction – workers and employers are protected against the cost, delay and uncertainty of litigation, by making Board decisions final and conclusive.

Unfortunately, we have seen a continued trend to move away from the principle that governments and their agencies exist to serve citizens, in favour of a corporate model that sees citizens as “customers” to be managed and controlled. In keeping with the Meredith Principles, workers should not be seen as insurance customers but as the people who build and maintain civil society and whom the WCB serves.

It is disappointing to find that even by the limited corporate measurements of the Balanced Scorecard model, the WCB's 2014 annual report reveals the WCB has had greater success in serving employers and optimizing costs than in serving injured workers (Saskatchewan WCB 2014 Annual Report, page 18).

Appeals Process

CUPE underlines that the balance of input from workers and employers should be maintained at all levels of the Board's mandate, including in the appeal process. CUPE is concerned that efforts to reduce the backlog of outstanding claims and appeals have occurred at the expense of fairness, due diligence, and the Meredith Principles of No Fault Compensation and Board Independence.

CUPE believes that the Board practice of having an Appeals Commissioner render final decisions on appeals contravenes the *Act* and defies the principles of worker representation and input in Board decisions.

CUPE also notes that while the number of appeals continues to rise, premiums continue to fall, having recently hit a 30-year low after nine consecutive drops. This is yet another signal that the WCB's responsibilities to workers are being undermined by private financial interests.

CUPE repeats its 2011 recommendation that the WCB Committee of Review conduct a full review of the appeal policies and procedures and conduct a review of the WCB work environment to ensure it is a healthy and not a toxic environment.

Structure of the Board

CUPE recommends expanding the Board from three to five full-time board members, with equal representation given to unionized worker representatives and employers. An expanded full-time Board, maintaining equal representation for stakeholders, would be better equipped to carry out the Board's vital duties with appropriate diligence and due process, while more adequately attending to the recommendations of the Committee of Review.

Stakeholder Advisory Committee

In addition to expanding the Board to five full-time members, CUPE advocates for the creation of a legislated Stakeholder Advisory Committee, with equal representation from workers and employer representatives, who would be appointed by their respective stakeholder groups.

The non-partisan Stakeholder Advisory Committee would review current issues, including budgeting and surpluses, WCB policies, and legislation, in addition to monitoring Board governance. This legislated, independent committee would advise the Board directly, increasing Board accountability, aiding in good governance, and ensuring that basic principles are maintained during adjudication and decision-making.

Prevention

The rate of workplace injury in Saskatchewan remains high, and the rate of injury is by far the highest for Health Authority, Hospital, and Care Home workers (rate code G22), 13,600 of whom are represented by CUPE (Saskatchewan WCB 2014 Annual Report, page 20). Moreover, the occupational category with the highest number of accepted WCB claims belongs to nurse aides, orderlies, and patient service associates, who comprise a great many of CUPE's 13,600 healthcare workers. More than any other workers in the province, CUPE healthcare workers are subject to unsafe work conditions.

The WCB's increased focus on healthcare workplaces has been important but there is clearly much more that needs to be done to respond to the health and safety concerns of healthcare workers in Saskatchewan.

The WCB has not significantly increased the budget for prevention in recent years, despite having sole responsibility for injury prevention since prevention services were transferred to the WCB from the Ministry of Labour Relations and Workplace Safety. Among the factors contributing to the high risk of injury in the healthcare sector are inadequate government funding, short staffing, and improper equipment. Healthcare employers need to be held accountable at all levels of their organizations, and there should be no hesitation on the part of the WCB to fine and/or prosecute employers who continue to be at the top of the list of "bad actors."

CUPE believes that resources and attention to prevention programming must not only expand but be improved. The Worksafe and Mission Zero programs have tended to target workers rather than to devote sufficient resources for monitoring employers to ensure they are adhering to regulations – and to holding employers accountable when they are negligent.

Coverage and Benefits

CUPE notes that the 2010 Committee of Review recommended that the *Act* apply to all workers in Saskatchewan with no exclusions. CUPE believes that inclusion in WCB coverage is a positive advance for workers in all occupations. CUPE recommends that a review of excluded occupations take place with the aim of including all occupations in WCB coverage.

CUPE further maintains that the system must remain no-fault and be governed by the benefit-of-the-doubt principle that addresses the power imbalance of workers in shaping workplace conditions.

CUPE recognizes that the previous WCB Committee of Review's recommendation to increase the maximum wage rate has been implemented. This is a welcome improvement. Nonetheless, Saskatchewan's maximum wage rate remains the third lowest in Canada. CUPE repeats the recommendation from our 2011 WCB submission for an increase in the maximum wage rate.

CUPE also repeats the recommendation that all costs to injured workers including benefits and pension plan costs be maintained out of compensation funds.

Surpluses, Claims, Training, and Resources

Surpluses

The WCB's 2014 annual report boasts that "For the first time since 2001, employers will receive an excess surplus distribution as a result of higher than expected returns from our investments" (Saskatchewan WCB 2014 Annual Report, page 15). CUPE maintains that the primary purpose of the WCB should be to address the health and safety of workers, not the bottom line of employers.

As concerns the 2014 WCB surplus in particular, CUPE asks how the total surplus could be declared, let alone rebates paid out to employers, when the WCB has ongoing liabilities for a backlog of unresolved claims and appeals.

CUPE reiterates its recommendation from 2011 that rebates to employers should be eliminated and that surcharges should be increased based upon actual worksite statistics rather than averaging over an entire organization.

Rejected Claims

CUPE further highlights that this surplus coincides, in the words of the 2014 WCB annual report, with "a significant increase" in the rate of rejected claims, from 11.4% in 2012 and 14.3% in 2013 to 18.2% in 2014 (Saskatchewan WCB 2014 Annual Report, page 19). This increase in rejected claims must also be seen in light of the estimated 30% of workplace injuries that go unreported.

Past surveys conducted among CUPE Saskatchewan members have revealed a high level of

frustration in their dealings with and treatment by the WCB. Many of our members reported choosing to go to work injured or sick or using sick time, short-term disability, or vacation time instead of going through the stress of a WCB claim and the appeal process.

Recommendations for Expanding Training, Research, and Resources

CUPE recommends that the recent introduction of online delivery of safety training be evaluated for its quality and effectiveness and, further, that WCB surpluses be dedicated to expanding the training and programming needed to improve occupational health and safety.

CUPE recommends the establishment of an Occupational Injury and Disease Centre that would operate at an arm's length from the Board. In addition to research, investigations, and medical assessments regarding workplace injuries, the Centre would address a deficit of research and information on communicable diseases and occupational disease.

CUPE also recommends that greater resources and attention be given to the mental health component of workplace health and safety. CUPE recommends that the presence and treatment of mental health issues be more fully incorporated into the WCB's mandate, in keeping with the rising recognition of the legitimacy and importance of mental health issues for workers.

In particular, Critical Incident Stress and post-traumatic stress disorder (PTSD) are significant problems for many CUPE members. Palliative care and seniors' care workers and people who work with children are all at a higher risk to experience a critical incident that if left untreated or unsupported could develop into PTSD. While CUPE advocates for *prevention* programs, such as peer counselling and time off for critical incidents, to prevent injuries so that workers do not need the compensation system for PTSD, these injuries are still happening. Such injuries to mental health are a direct result of incidents that happen in the workplace, and should be compensated.

On June 30, 2015, the Manitoba government passed Bill 35 which amends the Workers' Compensation Act to *presumptively* recognize post-traumatic stress disorder (PTSD) as a work related occupational disease for all workers. This is a step further than a similar change in Alberta that provides presumptive Workers' Compensation coverage of PTSD for first responders.

CUPE urges the Government of Saskatchewan to follow the example set by Manitoba and amend the *Act* to presumptively recognize PTSD caused by events at the workplace and for workers to receive compensation for PTSD without having to first prove their condition is work related.

In addition, CUPE recommends that the Board conduct an annual review of the effectiveness of all Safety Associations and publicize the results.

CUPE believes that implementing the above recommendations would more accurately reflect the mandate of the WCB and its guiding principles than does paying out rebates to employers.

Conclusion

CUPE recognizes improvements that have been made as a result of the Committee of Review's past recommendations. CUPE also recognizes that many of the Committee's past recommendations, and those of worker-based stakeholders, have not been implemented or addressed. CUPE supports the WCB Committee of Review process and values the principled work of those who serve on the Committee. At the same time, the broader transformation of the WCB from a democratic, accountable, and citizen-oriented organization to a corporate consumer-based insurance entity has continued to advance since 2011, despite key recommendations to the contrary from CUPE and other worker-based stakeholders in the process.

Rather than repeating the unaddressed recommendations outlined in CUPE's last submission to the WCB Committee of Review here, we would like to supplement the present submission with the re-inclusion of our comprehensive 2011 submission for consideration.

CUPE thanks the WCB Committee of Review for this opportunity to provide our input into the review of *The Workers' Compensation Act, 2013*.