

Response to:

Consultation on the Workers' Compensation Act Committee of Review Recommendations

Presented to:

Mr. Mike Carr, Deputy Minister
Ministry of Labour Relations and Workplace Safety

June 30, 2017



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The Canadian Union of Public Employees (CUPE) - Saskatchewan represents 30,000 members working in a variety of public service occupations across the province including: health care, K-12 school system, universities, libraries, municipalities, community-based organizations, and various boards and agencies.

Introduction

CUPE Saskatchewan is in receipt of correspondence dated May 24, 2017, from the Minister of Labour Relations and Workplace Safety, inviting feedback on the legislative recommendations of the Workers' Compensation Act Committee of Review.

The correspondence seeks feedback only on three of the eleven recommendations made by the Committee of Review in their report of November 10, 2016:

1. Modernization of Board structure (Recommendation 2);
2. Establishment of an Employer Resource Centre (Recommendation 8); and
3. Amendments to comply with the provisions of *The Freedom of Information and Protection of Privacy Act* and update the WCB's privacy policy to align with the changes (Recommendation 7).

Of the three recommendations above on which the government is seeking feedback, the Minister notes in his correspondence: "The Government is focusing consultations on Board governance and the appeals process."

Furthermore, the Minister requests the following through his correspondence:

"Given the various approaches of these Committees of Review, I would ask your organization to give particular consideration to the recommendation of the Committee of Review as well as the alternative of a final level of appeal external to the Workers' Compensation Board. This could take the form of an independent appeal body, or as part of an existing appeal body, for example, the Automobile Injury Appeal Commission."

Supplemental to the Minister's correspondence is a consultation paper prepared by the government, entitled: *Consultation on the Workers' Compensation Act Committee of Review Recommendations, Board Governance and Appeals*. In this consultation paper, the government states with respect to Recommendation 8 and Recommendation 7 that "no further consultation will occur" on both of these recommendations on which the correspondence of May 24, 2017, is seeking "feedback", and that the "consultation paper is intended to assist you in preparing your feedback on the Committee's recommendations and possible alternatives with respect to Board governance and the appeals process."

Accordingly, CUPE Saskatchewan's feedback will focus primarily on Recommendation 2 made by the Committee of Review addressing Board structure and the appeals process of the Saskatchewan Workers' Compensation Board (WCB).

CUPE observes that the Committee of Review process is an important and comprehensive process dedicated to ensure that the workers' compensation system remains focused on how

to best serve injured workers, with equal representation from employers and labour nominees through the Saskatchewan Federation of Labour and Saskatchewan Provincial Building & Construction Trades Council. The Committee of Review process provides a forum for injured workers and their family members and unions, as well as the business and the general public, to provide their insights into the workers' compensation system. The Committee of Review took time to receive and review submissions, held public consultations, and produced a detailed report that makes eleven overarching recommendations that were reached through consensus, with the unanimous support of both business and labour representatives. The government therefore, in CUPE's opinion, should implement these recommendations.

Background

A Committee of Review, comprised of equal employer and employee representatives, is struck every four years to conduct a review of Saskatchewan's workers' compensation system by legislative requirement.

The 2015 Committee of Review process, with committee members appointed on February 25, 2015, resulted in a final report released to the public on November 10, 2016.

In their final report, the Committee makes 11 overarching recommendations which have the unanimous support of the Committee members.

Board Structure and Appeals Process (Recommendation 2)

The Committee of Review, in their report released on November 10, 2016, recommend the following on Board structure and governance:

Recommendation 2

Modernize Board structure to reflect the diversity of skill sets required to guide the work of the WCB. This can be achieved through:

Investing time in improving performance by gauging the effectiveness of WCB against its performance metrics.

Developing a formal skill set matrix and recruitment process for choosing Board members.

Expanding the Board structure to include seven members – three full-time members and four part-time members with equal representation from both employer and employee groups (page 17).

While the Board currently has three members, the legislation provides for a five-member Board. The Committee of Review's unanimous recommendation is that the Board be expanded from the current three-member Board with the addition of four part-time members.

The Committee of Review, in their report, provide indication of their thoughtful consideration and deliberations on the issue, stating: "The recommendation respecting governance and structure of the Board of Directors proved the most challenging" (Workers' Compensation Act Committee of Review 2016 Report, page 2).

In making its recommendation, the Committee concluded that the expansion of the Board along with maintaining an in-house appeals process was important to the overall objective of how to best serve injured workers.

"We feel meaningful improvements, including a shift in culture, can be made to the compensation system by implementing a modernized Board structure consisting of three full-time members and four part-time members. The three current full-time Board members would comprise the dedicated appeal tribunal" (Workers' Compensation Act Committee of Review 2016 Report, page 2).

In making their recommendation on Board structure, the Committee of Review was mindful of injured workers' access to appeals, stating: "This recommendation also ensures injured workers are provided timely assistance by maintaining an internal appeals tribunal with worker and employer representation" (Workers' Compensation Act Committee of Review 2016 Report, page 2).

In addressing the appeals process, the Committee of Review emphasized that the final level of appeal should be maintained in-house and with the Board, and should not be removed to an external body or party as suggested by the Minister's correspondence of May 24, 2017, in contradiction to the Committee of Review's recommendation.

"We believe the appeals structure must remain within the WCB and be comprised of full-time members. No changes in structure are being recommended in this regard. We envision three-full time Board members will continue to form the Board's Appeal Tribunal as well as participate in governance duties. The addition of four part-time members, two employee representatives and two employer representatives, will strengthen governance, increase accountability and provide an independent viewpoint that is unfettered by involvement in appeals and day to day interactions with management." (Workers' Compensation Act Committee of Review 2016 Report, page 15-16).

It is clear the Committee of Review thoughtfully considered divergent opinions on Board structure in conjunction with the impact on an injured workers' access to appeal, and concluded unanimously that an expanded Board and internal appeals process with the final level resting with the Board was the best approach to serve injured workers.

Evidence relating to the cost of access and decision turnaround time also bolsters this recommendation by the Committee of Review to maintain the final level of appeal in-house rather than an externalized or arms-length body.

In the WCB Board's Labour Representative Report of May, 2017, Board Member G. Hamblin notes the WCB Board Appeals Tribunal's cost per appeal is currently \$3,773, whereas an externalized appeals process such as the Automobile Injury Appeal Commission *is nearly five times as costly* at \$18,782 per appeal. Moreover, the externalized Automobile Injury Appeal Commission has a turnaround average of 2.4 years, whereas the WCB Board Appeals Tribunal continues to improve turnaround time. The Committee of Review recommends in their report for a standard decision turnaround time of 30 days (Recommendation 3, page 19). According to the WCB Board report, "the Saskatchewan WCB Board Appeals Tribunal delivers the fastest turnaround time in Canada". It goes on to state: "No other jurisdiction in Canada comes close to delivering this level of service, as most, using the same criteria, take a year or more to put decisions in the hands of injured workers and employers."

Externalization of the appeals process not only brings increased cost to the process of appeals, but it also presents barriers to accessing the appeals process in the first place. For instance, the government suggests externalization of the final step of WCB process could take the form of the Automobile Injury Appeal Commission, yet to even file an appeal with that commission costs \$75 for an application fee (<http://www.autoinjuryappeal.sk.ca/Forms>). While an application for a fee waiver exists, the waiver itself is income tested and according to the form requires household assets to be below \$10,000. Currently, to access the final step of a WCB appeal does not require an application fee. This example alone, CUPE observes, shows how externalization of an appeals process only presents additional hardships and hurdles for injured workers.

Thus, it is clearly more accessible and more affordable to maintain an internal final level of appeal heard by the WCB Board Appeal Tribunal rather than an externalized, so-called "arms-length" or "independent" body which evidence suggests leads to increased costs, increased delays and turnaround time; and, in CUPE's opinion, externalization removes accountability and interferes with access for injured workers to appeal. Furthermore, CUPE observes that the WCB Board Appeals Tribunal is set out through legislation to be sufficiently independent.

CUPE fully supports the recommendation of adding four part-time seats to the WCB Board of Directors with equal representation from employer and employee groups.

These additional seats would be beneficial in a number of ways. More seats would provide the opportunity for a broader based level of expertise for the Board. The additional four part-time seats strengthen governance and oversight capacity of the WCB Board of Directors, and it allows the three full-time members of the Board to dedicate more time to appeals.

CUPE stands opposed to the externalization of the appeals process and final level of appeals. Workers compensation was established to provide benefits to injured workers in an accessible manner that avoided litigation.

CUPE is extremely concerned that an externalized appeals process would inevitably lead down the litigation path with drawn out legal wrangling and the inescapable fees that ultimately accompany these processes, and leads to the problem of inaccessibility in terms of costs and representation. Most working people, particularly those injured and missing a pay cheque, simply cannot afford the costs and delays of an externalized appeal process. Externalization also accompanies the problems of accountability to the public and balanced representation of employees and employers on the appeal body.

Employer Resource Centre (Recommendation 8)

The committee of Review recommends in its final report to provide more resources to employers:

Recommendation 8

Establish an Employer Resource Centre, coordinated through the Office of the Workers' Advocate, dedicated to helping employers navigate the workers' compensation system (page 27).

Clarifying its recommendation, the Committee of Review states: "This is not designed to be a parallel resource to the advocate services provided to injured workers, rather one to help employers navigate the compensation system" (Workers' Compensation Act Committee of Review 2016 Report, page 26).

Should the government establish an Employer Resource Centre, CUPE believes it should be strictly limited to assisting employers in understanding their obligations and completing and providing appropriate documentation required and related to injury claims. However, CUPE would be opposed to assisting employers with resisting claims of injured workers or those employers seeking assistance making appeals.

Compliance with The Freedom of Information and Protection of Privacy Act (Recommendation 7)

The Committee of Review, in their report, recommend the following regarding privacy and the WCB:

Recommendation 7

Repeal sections 173 and 174 of The Workers' Compensation Act, 2013 to comply with the provisions of The Freedom of

**Information and Protection of Privacy Act and update
the WCB's privacy policy to align with the changes (page 25).**

In making this recommendation, the Committee of Review considered the importance for injured workers to have access to their information and providing clarity to a WCB case management worker on what information can be released. The Committee also heard from the Privacy Commissioner on the issue. Regarding its recommendation, the Committee states: "this legislative amendment is necessary to ensure that injured workers have access to their information while ensuring that safeguards are in place to protect claimants' files" (Workers' Compensation Act Committee of Review 2016 Report, page 25). The Committee further states they: "feel this recommendation fits better with an open and customer centered compensation system".

CUPE agrees that *The Workers Compensation Act* and WCB's privacy policy should comply with The Freedom of Information and Protection of Privacy Act, and the government should enact the Committee of Review's recommendation.

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