

December 15, 2021

The Workers' Compensation Act Committee of Review
#200 - 1881 Scarth St.,
Regina, Saskatchewan
S4P 4L1.

Dear Committee Members

Thank you for the opportunity to submit feedback to The Workers' Compensation Act Committee of Review (COR). The Saskatchewan Chamber of Commerce (SCC) is an advocacy organization that represents the interests of over 10,000 individual businesses and industry associations across the province through the chamber network. As the voice of business in Saskatchewan, the Chamber shares the views and concerns of the broad business community.

The WCB represents a significant cost for many employers; therefore, it is important for the business community and other stakeholders to provide timely suggestions for updating and improving this significant piece of legislation. The SCC, and numerous other organizations, have participated in many CORs, providing initial comments and follow up feedback on recommendations. Unfortunately, this dedication of resources has not been met with consistent results. Broadly supported recommendations from previous CORs have not been fully implemented and it is not always clear why. There is not enough transparency as to how these decisions are made. As recommended in the 2016 COR report, the SCC still believes there is a need for increased accountability to stakeholders and interested parties respecting the suitability and status of the recommendations made by the COR.

To compile the SCC's 2021 submission to the COR, the Chamber consulted with its membership via phone and email, in addition to conducting a broad membership survey. Below is a summary of the feedback the SCC received.

Structure of the Board

The first recommendation from the 2016 COR that needs to be implemented is the revised Board structure. The 2016 COR recommended implementing a modernized Board structure consisting of three full-time and four part-time members. Initial movement towards an expanded Board was initiated with Bill 165, *The Workers' Compensation Amendment Act, 2018*. It is unclear why this broadly supported recommendation from the last COR has stalled. The SCC recommends that the implementation of the expanded Board continue. Building upon this new structure, the SCC recommends that the terms of Board members be staggered to facilitate smooth transitions for new members. The SCC also believes there is merit in limiting the number of terms a board member can serve and encourages the COR to look at options in this regard.

Consistent with what was communicated in the SCC's last COR submission, the Chamber is recommending the use of a formal skill-set matrix and a professional search process in identifying

qualified candidates for Board positions. This recommendation, combined with a new process that solicits greater stakeholder feedback on proposed Board candidates from a variety of sources, would ensure that the Board continues to attract high-quality candidates with the skills and experiences required for such a role. Soliciting a broad cross-section of stakeholder input will prove beneficial for finding the best people. Building upon this, the WCB needs to ensure that all actual and perceived political influence is separated from the Board to preserve its ability to offer sound and independent decisions on appeals and governance, a transparent skill-set matrix and a professional search process will strengthen the perception of this separation. Further to this, the SCC recommends that *The Workers' Compensation Act, 2013* be amended to clearly allow non-unionized workers to serve as employee representatives. This could be done by changing the definition of the term "labour organization" in the legislation. Such a measure would serve to increase and diversify the pool of qualified candidates eligible to serve as employee representatives and would also seek to balance the overrepresentation of more established labour groups on the employee side as well.

Finally, the SCC wants to restate its opposition to opening up the Board to the public interest. The SCC was pleased Bill 165, *The Workers' Compensation Amendment Act, 2018* did not include having public interest representatives serving on the Board. Employers are the sole funders of the WCB through their annual premiums and worker representation has a valid place. The Chamber maintains that non-industry representatives should not be granted the ability to make decisions that directly impact industry. There should continue to be no third-party representation on the Board.

Appeals

With respect to final-level appeals, the SCC sees merit in the concept of an independent avenue for appeals. Saskatchewan is the only jurisdiction in Canada where final-level appeals are determined internally by the Board. The SCC believes that having the Board as the final level of appeal is not appropriate as they review the work of the system that they provide governance over. The final level of appeal should be external to the WCB, consistent with all other jurisdictions across Canada. Nevertheless, prior to the implementation of an independent appeals process, the SCC recommends a cost benefit analysis be done to determine the potential impact on employer premiums. Also worthy of consideration in this analysis is the long-term ease of use by employers and the up-front costs involved in setting up a new external appeal process. Moving forward, the SCC encourages the WCB to explore the development of an external appeal process modelled after the one being used in Manitoba while also engaging with local industry groups to discuss and explore measures. The operation of any appeals process should follow the best available practices and principles while focusing on timely responses and transparency.

Strengthening Employer Resources

The SCC applauds the WCB for establishing the Employer Resource Centre in response to previous COR recommendations. Many employers have little or no experience with the WCB system, and do not have WCB experts in their employ. The Employer Resource Centre offers an important value to the employer community that has yet to be fully utilized. The SCC's WCB survey found that 63% of respondents were not aware of the Employer Resource Centre. While not necessarily within the mandate of the COR, the

SCC encourages the WCB to undertake efforts through organizations like SCC and others, as well as via direct promotion, to raise the profile of this service.

The Saskatchewan Chamber strongly disagrees with the 2016 COR recommendation that the Employer Resource Centre should not assist employers with appeals. In 2020, almost 70% of appeals originated from either a worker or a worker advocate. This is an imbalance; employers are often too uncertain of the appeals process, or too intimidated by the potential third-party costs of an appeal, to pursue invalid claims. The SCC recognizes that employers are responsible for gathering facts and making representation, nevertheless, they need a reliable resource to offer more specific and meaningful direction as they move through the process. This is particularly relevant for smaller employers who lack the expertise and the resources to purchase third-party assistance. The SCC envisions the full role of the Employer Resource Centre as providing one-on-one confidential assistance and advice without a direct fee to an employer on issues such as claims management or appeals. Clearly, processes to ensure employer confidentiality and independence for the Resource Centre staff from other areas of WCB must be implemented.

Increased Clarity, Consistency, and Information Sharing

The SCC acknowledges that operational considerations are not strictly within the mandate of the COR, however, the organization believes this is a valuable opportunity to raise these concerns. The SCC recognizes the efforts the WCB has put into improving customer service and organizational culture, but, as in most organizations, more can and should be done.

The pandemic revealed some limitations of the WCB's past improvements. Primarily, work still needs to be done on clarity of communications regarding new and changing policies. For example, across the consultations conducted by the SCC, the COVID-19 response from WCB in terms of Employer Relief Measures was widely misunderstood and perceived as being inconsistently applied.

Beyond the turbulence of the pandemic, some businesses reported to the SCC that they are still surprised at rate-renewal time when large shifts in premium rates appear, and that they lack a solid understanding of what their own WCB-related costs are. Employers also indicated they were not always advised when important decisions are made regarding eligibility and coverage for claims. Most concerning, some employers voiced the perceptions that they are viewed adversely by case managers. Employers need to be seen as a partner in the system with the same goal, which is to see everyone home safe at the end of the day and do everything within their power to help an injured employee on their journey to wellness.

The SCC recommends that the WCB increase its use of plain language in all written communications, as well as engage in follow-up conversations with employers to discuss policy and claim determinations. As a part of this, supplementary efforts need to be put in place to facilitate expanded awareness among case managers on the importance of employer communication. This should include the necessity of informing employers of proposed back-to-work transition plans, as well as helping employers identify and implement effective ways to manage or prevent future claims. Clearer communications should also be made to employers when a worker launches an appeals process impacting them.

The SCC understands staff turnover exists but working with multiple case managers was cited as a source of confusion and inconsistency multiple times. To address this, the SCC recommends the WCB develop more standardized practices based on the best available methods for case managers. This type of standardization would help in situations of transition.

Through its consultations with members, the SCC also heard concerns about when and what employers receive as communication throughout the claims process. As outlined above, plain communications and consistent staff practices will assist in addressing some of these concerns, but employers also need to be able to access more information. The complexity of applicable privacy legislation and standards creates challenges in this respect. Nevertheless, the SCC supports a balance of these considerations and encourages the COR to look at options in this regard.

Finally, over the course of consultation, the SCC heard repeated concerns from employers about the psychological injury claims process. All employers want employees to have the necessary supports available to them when they experience a workplace injury, but major concerns were expressed regarding the cost of these claims and how these claims are attributed to an employer's incident rating. The SCC believes this may not necessarily be an issue with WCB policy but again an issue with communication and the understanding among employers about the threshold necessary for WCB claim acceptance. The SCC recommends that clearer communications be undertaken in this regard as well.

Relations with the Medical Community

An issue from the 2011 COR recommendations also re-emerged during the SCC's consultations. Employers expressed frustration about the limited awareness among the medical community of the return to function options they have available. Employers and those managing claims need to know what an injured workers restrictions and limitations are in order to determine what work duties are available within those restrictions, not solely whether or not they are able to perform their usual duties. Anecdotally, employers perceived workers as more likely to be given medically required time off work during the pandemic due to a workplace injury as opposed to alternate duty considerations. The SCC recognizes the challenge of building better engagement with and awareness among the medical professions of WCB considerations, especially during the challenges of COVID-19. As the burden of the pandemic lifts, the SCC recommends enhanced efforts be taken by the WCB to strengthen the communications to physicians about their role and the requirements for timely and objective medical restrictions and limitations related to WCB.

Modernization and Automation

The SCC continues to monitor the administrative cost per time loss claim at the WCB. As the WCB is solely funded by employers, it is important to keep these costs manageable. Saskatchewan has been successful in reducing overall WCB claims, but processes and the number of people involved have not dropped in a coordinated way in response. The SCC has supported the continuation of these resources, as the Chamber identified the need for enhanced service in previous years. Nevertheless, the SCC recommends the WCB undertake a process to identify and streamline processes that can be automated and tracked electronically, such as letters of good standing, certifications, and clearances. Private companies and specific industries have already built some of these processes from necessity, but they

are piece-meal, and lack broad awareness. WCB needs to work with industries to build these systems in a more cohesive and streamlined way.

Injury Reduction Programs

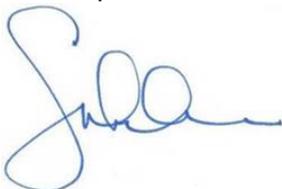
Support for the continuous improvement of healthy and safe workplaces is now a cornerstone of many corporate strategic plans. This dedication is founded on the principle that the effective management of health and safety is essential to the operation of a successful business. Saskatchewan's WCB should be given credit for helping employers make this connection by increasing knowledge about Saskatchewan's workplace safety performance and establishing financial incentives and penalties to spark action. However, Saskatchewan's WCB Time Loss Injury Rate from 2016-2020 contains an alarming trend wherein large public agencies, such as municipalities, education, healthcare, and government ministries, continue to have a high time loss injury rate and high incident rates of injury despite having predominately lower identified risk and lower injury risk profiles associated with the work carried out in public sector workplaces.

The financial implications of poor workplace safety are not trivial, and it is unfortunate that this penalty does not properly align in the public sector. Those assuming the direct financial burden are not those tasked with operations as the taxpayer is the final payee for all public sector employees. Further to this, the sheer number of public sector injury cases means additional resources are needed at the WCB. Overall cost efficiency could be improved if the public sector reduced its injury rate. Different actions are clearly needed to establish a culture of workplace health and safety throughout the public sector. The SCC believes this is where the WCB needs to engage in a targeted approach. The SCC supports the *Fatalities and Serious Injuries Strategy* currently focused on healthcare, transportation, first responders, construction, and manufacturing. The SCC recommends a similar strategic approach be designed and undertaken specifically focused on the broader public sector, while continuing to include healthcare.

Thank You

WCB premiums represent a considerable cost to businesses but also provide a valuable resource. By working together, we can create a system which fairly treats benefit recipients while minimizing employer costs, maintaining premium stability, and improving clarity. On behalf of the membership of the SCC, thank you for the opportunity to share our input and recommendations. We look forward to the COR's report and would welcome follow up questions the committee may have. For clarity on any of these recommendations, please contact Kristin McKee at kmckee@saskchamber.com.

Sincerely,



Steve McLellan, CEO
Saskatchewan Chamber of Commerce