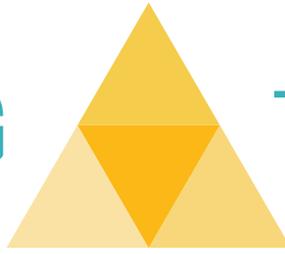


WORKING



TOGETHER

ALBERTA WORKERS' COMPENSATION BOARD (WCB) REVIEW

PROGRESS REPORT



NOVEMBER 2016



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MESSAGE FROM **THE PANEL**

As the members of the Workers' Compensation Board (WCB) Review Panel, it is our privilege to provide Albertans with this *Progress Report*.

The last comprehensive review of the WCB was conducted more than 15 years ago. The world has changed a great deal in that time. Recognizing this, our Panel has been working hard during the past number of months to learn as much as we can about the current workers' compensation system.

As part of this information gathering, we reached out to workers, employers, health professionals, unions, industry associations, and many others, and we asked them to share their views and perspectives. We are pleased with the level of response that we have received, and we appreciate the time that people have taken to participate in our review process so far.

The input we have received is insightful and thoughtful. It is clear that workers' compensation is valued by workers, employers and all Albertans. People see many opportunities to make Alberta's system the best it can be, and they have shared several ideas for improvements.

This report provides a high-level look at what we have been hearing so far. Over the coming weeks and months, we will be using the input we've gathered as a basis for further analysis. As we move into next stages of our review, we will be working together with stakeholders to examine complex issues in more detail, with the goal of developing our final report and recommendations to government by spring 2017.

To everyone who has participated in and contributed to our review so far, we offer our profound and sincere thanks.

ABOUT THE **WCB REVIEW**

As part of the review of Alberta's agencies, boards and commissions, the Government of Alberta has appointed the Panel to conduct a formal review of the workers' compensation system, which includes the Workers' Compensation Board (WCB) - Alberta, the Appeals Commission for Alberta Workers' Compensation and the Medical Panel Office.

The review will help ensure that the WCB provides fair compensation and meaningful rehabilitation in a way that is sustainable and affordable.

The WCB Review Panel will not be looking at specific claims as part of the mandate. If you have questions or concerns about a specific claim, please contact the WCB at www.wcb.ab.ca.

ABOUT THIS **DOCUMENT**

Our Panel's review of the workers' compensation system is extensive and involves several activities over many months.

This document is intended to provide Albertans with a high-level picture of our work so far. The *Progress Report* outlines what has taken place to this point in the review, and it highlights issues and themes that our Panel has consistently heard about from people across the province. It also describes the next steps we intend to take in our work.

THE REVIEW SO FAR

Since our Panel was established in March 2016, we have been focused on learning and listening.

To supplement the experiential knowledge of its members, our Panel has been gathering information about many complex issues in Alberta's workers' compensation system. We want to have a thorough understanding of how the system presently works, including its existing strengths and where the opportunities are to make it work better.

The views of Albertans are an important part of this information gathering. Workers, employers, health professionals, and many others are impacted by the workers' compensation system. They all have stories and experiences to share about the system, and perspectives about how the system can meet the needs of workers and employers in the future.

Over the past few months, our Panel has used several mechanisms to gather these views and perspectives.

To enable Albertans to learn about the review, we established a website that provides information about our work and about Alberta's workers' compensation system (www.alberta.ca/wcb-review.aspx). Visitors to the website can subscribe to receive updates about the review through email.

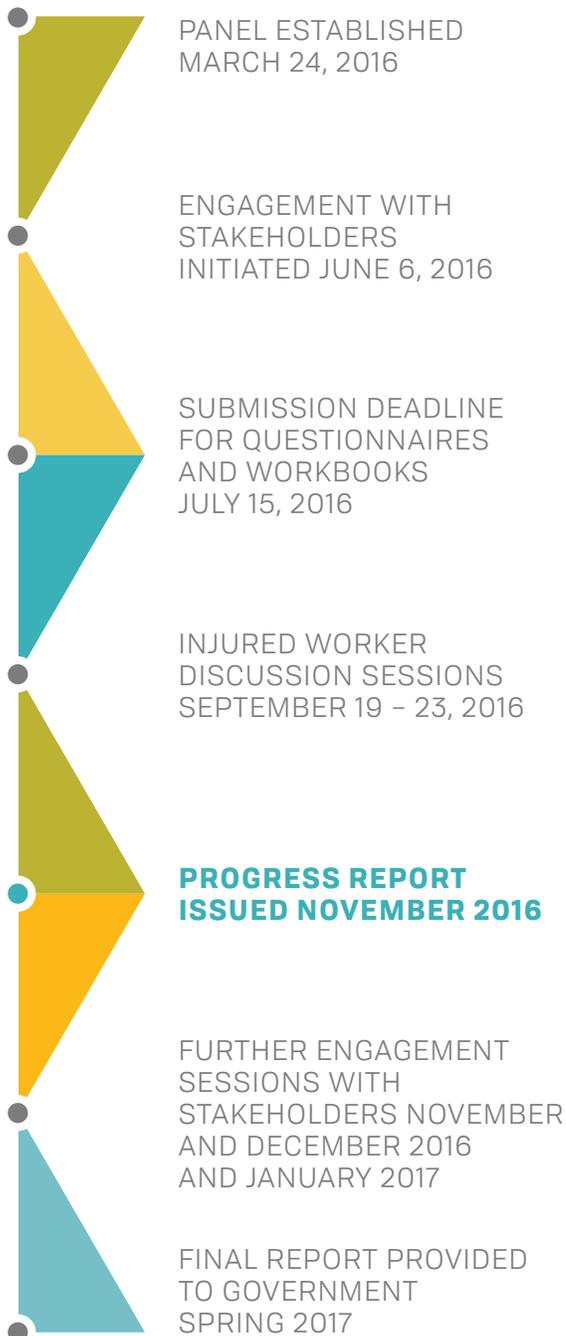
In June, we published *A Guide to the Review of the Workers' Compensation System* and a companion *Workbook* on the website. Together, these documents outlined major concepts in Alberta's workers' compensation system and asked questions about particular issues of interest under six pillars:

- The WCB Claims Process
- WCB Benefits
- Review and Appeal of WCB Decisions
- WCB Governance
- Prevention of Workplace Injury and Illness
- Funding and Financial Sustainability

Also in June, we published a series of online questionnaires on the website, which asked a variety of questions about issues under the six pillars. Tailored online questionnaires were available for a number of different audiences, including:

- Injured Workers
- Employers
- Unions
- Industry Associations
- Safety Associations
- Healthcare Professionals
- Workers
- Interested Albertans, and
- Workers' Compensation system employees.

KEY DATES/MILESTONES



A total of 1,759 responses to the online questionnaires were received, and a total of 68 *Workbook* responses were received. Many responses were made by individuals. Some responses were made by organizations that represent hundreds or thousands of members. In addition to these responses, the Panel also received 203 written submissions from stakeholders and interested Albertans so far, in which they raised issues and suggested changes to the workers' compensation system.

Due to their injuries or illnesses, injured workers are not always in a position to make written submissions. In recognition of this, and to help ensure we put a "human face" on issues in the workers' compensation system, our Panel met with groups of injured workers in Edmonton, Calgary and Lethbridge. Four meetings were held in which we had the privilege to meet and speak with a diverse group of individuals who graciously shared their experiences with Alberta's workers' compensation system. They helped us see firsthand how the system directly impacts the lives of Albertans and their families, and they offered insights about the system's strengths and opportunities for improvement.

The input gathered from all of these sources continues to be analyzed. It is helping us identify a number of complex issues that we intend to study in greater detail over the coming months.

WHAT WE'VE BEEN HEARING

We heard positive things about Alberta's workers' compensation system. People appreciate that the system exists and is there for injured workers when they need it. They also generally see the workers' compensation system as a preferable alternative to litigation between employers and workers over job-related injuries and illnesses.

There is widespread agreement that the workers' compensation system can be improved in several ways. Stakeholders provided suggestions for improvement to the WCB claims and appeal processes, WCB benefits, the transparency of information across the system, and several other areas.

A key concern expressed by people is that, over time, the system has evolved in a way that focuses more on the "bottom line" than on the "Meredith principles" that served as its original foundation. This perceived shift – away from a service culture and towards an insurance culture – appears to lie at the root of several concerns raised by stakeholders.

It has been argued that Alberta's WCB works well compared to its counterparts in other Canadian provinces. Some workers and employers who have interacted with workers' compensation systems in other provinces say that Alberta's system is better managed, more fiscally stable and offers better value for money. At the same time, there are those who argue Alberta's system is more administratively complex and more challenging to deal with from a customer service perspective.

Many of the issues addressed in our Panel's *Workbook*, online questionnaires and injured worker sessions evoked strong emotions and opinions. In this section, we provide a summary of what we have been hearing. It is important to note this is not an exhaustive summary of all input, but is intended to highlight themes and concepts that have consistently and frequently emerged.

While this input includes concerns and challenges that were raised, it also discusses parts of the system that people observed as working well. Our Panel will be considering how existing strengths in the system can be leveraged to help address challenges and improve the system overall.

"Number one is that we have it here to use when we need it. We are fortunate as some countries do not."

– Injured Worker

THE WCB IN ALBERTA

- **There is ease in reporting claims online, but incomplete reporting causes delays in the process.** People have good things to say about the online reporting systems used by the WCB. The use of an electronic process enables employers and workers to initiate the claims process relatively easily. However, the claims process can hit a snag if information is not reported early, fully and frankly. Incomplete reporting by workers, employers or health professionals can delay helping the injured worker, and delay the processing of a claim as WCB staff need to go hunting for the necessary data. It can also result in unfair treatment of the injured worker and increased costs for employers, if information gathered later on suddenly changes the claim.

- **The claims process works well when claims are minor and straightforward, but the process is not ideal for claims that are complex.** Claims involving minor injuries and clear circumstances tend to be processed smoothly, with few disputes or concerns on the part of workers or employers. When a claim becomes complex, the process bogs down and concerns arise from workers and employers. When there are disputes with WCB decisions the claims process can become lengthy, causing great anxiety to the injured worker, who is also dealing with their injury or illness, and also to their employer. Delays result in lost income to the worker and a prolonging of their pain and suffering. People say a more streamlined approach for complex claims would be preferable.

“I believe that Workers’ Compensation works well for persons with short term injuries. Should you be injured with a more substantial injury that may be long term or permanent it does not work well at all.”

- Injured Worker

- **While the claims experience can be positive for some, for others it can be extremely negative.** There are people who describe their experiences with the

“WCB is administered like an insurance company where the bottom line is to deny, deny, deny.”

- Injured Worker

WCB claims process in positive terms. Many others describe their experiences in very negative terms, such as “disrespectful”, “angering”, “frustrating” and even “dehumanizing”. A widespread view is that the WCB operates its claims process in a way that presumes injured workers are lying about their injuries or illnesses, and looks for any possible reason to deny an injured worker’s claim, lower their compensation, refuse their requests and “cut them off”. Some feel the

WCB deliberately makes its process complex so that injured workers will abandon their claims out of frustration. For example, it is said the WCB will demand injured workers obtain information (such as notes from physicians) to “prove” their condition and its relationship to their employment, only to be told the information they have provided is “still not good enough”. Others feel the WCB’s culture is focused on saving money rather than compensating injured workers. They say this is evident in the way some WCB personnel display rudeness and a lack of compassion when communicating with injured workers and managing their claims. Still others characterize the WCB as a bully, saying it abuses its authority by routinely threatening to terminate workers’ benefits if they dare to question its demands. Compounding this, it is said that the WCB’s decision-making process is not clear to people, which further fuels distrust, anger and frustration. People say that all aspects of the WCB claims process should be transparent, so that injured workers and employers can both easily navigate the process and understand how decisions about claims and compensation were arrived at by WCB personnel.

- **There is an appreciation that the WCB can provide timely treatment for injured workers, but there are concerns it does not allow people to choose their own health providers or professionals.** Timely and accurate diagnosis and treatment is seen as important and, where available, is seen as positive by both employers and workers. Where this treatment has been provided outside the public health system, concerns have been raised. The system comes with needing to visit WCB-retained health professionals and WCB health clinics. People say they would like to have more choice in which health professionals they visit for diagnosis and treatment. With more choice they could obtain medical treatment that might be a better fit for them (whether in terms of location, quality, or even bedside manner). One observation is that a worker's personal physician or health care team is already familiar with their medical history and, therefore, arguably in a better position to help them recover quickly. On the other hand, it is noted that changing the system in this way could have cost implications that could impact the financial sustainability of the system.

“It should be up to the patient to choose their doctor. The goal should be to return the injured employee back to their position at 100% recovery. Too often this process is rushed and a re-injury occurs because of a poor initial assessment.”
 - Industry Association

- **The Medical Panel process is seen as a positive development, but disagreements in medical opinion can create major conflicts.** People say that when a worker's

“The WCB doctor's findings were the opposite of every medical professional I went to see. It was blatantly obvious that he sided with them not to approve my claim, because he worked for them.”
 - Injured Worker

personal health professional disagrees with the opinion of the WCB-retained health professional, things become contentious. Such disagreements are often about a worker's readiness to return to the workforce, but they can also be about the nature of the workers' injury or illness in the first place. There are concerns the WCB does not show sufficient respect for the opinions of workers' personal physicians, and instead defers too readily to the opinions of WCB-retained health professionals. People question the objectivity of these professionals' opinions, since they are paid by the WCB. All of this contributes to an adversarial atmosphere when it comes to disagreements about medical opinions.

People who have used the Medical Panel process say that it generally works well, and that its independence can help resolve conflicts. However, there are concerns that workers are not able to refer matters directly to the Medical Panel.

- **Legislated presumptions about injuries and illnesses are helpful, but this area needs attention.**

People generally support the existence of presumptions about injuries and illnesses. However, it is an area that is seen as having 'fallen behind'. For example, it is said that presumptions about post-traumatic stress disorder should apply to more workers beyond first responders, as there are many other occupations who face such concerns. There are different views about whether presumptions should be expanded. On one hand, there are benefits to having presumptions in place, as they avoid placing an onus on the worker to 'prove' their injury or illness came from employment. On the other hand, it is noted that presumptions need to be carefully structured to avoid abuse in the system. One suggestion is that presumptions be rooted in scientific evidence and be decided upon by an independent panel of medical experts.

“As our population ages, there are a lot of complications that can add to an injury – pre-existing conditions, underlying conditions that were previously non-problematic.”
 - Staff in Workers' Compensation System

- **Aging in the workforce stands to make claims more challenging in the future.**

“Our employee hurt his shoulder and WCB cleared him to go back to full duties even though his shoulder was still in great pain.”

- Employer

The average age of workplaces stands to increase as Alberta’s population ages and people stay in the workforce longer. This will present further complexity for claims, particularly those involving pre-existing conditions. Employers and workers are wondering how age-related pre-existing conditions will be considered and handled by the WCB. Right now there are worries that employers will be penalized (via higher premiums) for hiring older workers, which could unintentionally contribute to age discrimination in hiring workers. There are also worries that injured workers will have their

claims denied or handled in ways that are less favourable to them. People say the WCB needs to do more work on this front, so that there are clear rules and consistency when it comes to claims.

- **Better communication all around would help make the system better.** Improving the clarity and frequency of communication throughout the workers’ compensation system would help reduce disputes. One suggestion is that communication styles used by the WCB could be improved. It is important to remember that injured workers and employers are not just clients to be managed, but that they lie at the centre of the entire system. Accordingly, they should be served with dignity, care, attention, patience and respect. Improving communications amongst the WCB, the Appeals Commission, health professionals, workers and employers would help make disputes less adversarial and help the claims process move more smoothly.

“With proper communication with the employee, employer and WCB case manager, we should be working as a team.”

- Employer

- **Enhancing understanding of the workers’ compensation system would be valuable.** People suggest that more education and awareness-raising efforts could help manage expectations, reduce disputes and make the claims process run more efficiently. Ideally, workers and employers should clearly understand what the WCB is intended to do, and what it is not intended to do. Workers should know what they are entitled to receive under WCB coverage, so that there are no surprises if they need to make a claim. Employers should know their obligations towards workers and in regards to safety, and they should understand how the system works. It is said that many issues which give rise to disagreements and delays in the claims process are often rooted in unclear, incomplete or incorrect information.

- **The emphasis on return to work is good, but it can be too aggressive at times.**

“The 6 week time frame for treatment is often insufficient for an issue to be resolved. It gets tiresome having to fight for a treatment extension.”

- Health Professional

People appreciate that the WCB aims to return injured workers to the workforce. Individuals naturally want to be healthy and productive, and for the most part they want to get back to their pre-accident jobs. At the same time, workers and employers express concern that there are instances of workers returning to work too soon, either because they are motivated financially or because they are pressured to do so. This can result in an injury flaring up again or a new injury occurring. It can also present a safety risk to other workers in the workplace. On a similar

note, people express concerns about the physiotherapy used by the WCB. Although there are those who appreciate its speed and quality of service, there are others who report that it can sometimes be too aggressive and make a worker's injury worse. It is said that while the workers' compensation system should maintain an emphasis on return to work, this needs to be approached in a measured way and balanced with a healthy dose of common sense.

• **Determining a worker's fitness to return to work can be a major point of conflict.**

People say that for minor and straightforward claims, an injured worker's return to work is not particularly problematic. Often the worker heals in a relatively short period of time and goes back to their original job. For more complex claims, a worker's fitness to return to work can become a serious conflict point. Sometimes workers are assessed as ready to return even though they do not personally feel ready, or their personal physician says they are not ready, or the employer believes they are not ready. Some people say that the WCB ignores such concerns and deems the worker fit to return anyway. This forces the worker to make a choice between losing their benefits

"There is too much emphasis placed on the objectivity of the medical findings."

- Union

or returning to the workforce and risking their health; and it forces the employer to re-integrate a worker whom they believe should not be there and might pose a safety risk to others. Other people say the WCB is making decisions about worker fitness based on statistics, rather than looking at the individual and appreciating that each person recovers in their own way depending on their age and genetics. It is said

that the WCB should determine a worker's fitness to return to work having full regard for the views of employers, workers and health professionals.

"The system relies too heavily on physician opinions and not enough on common sense."

- Employer

• **Vocational rehabilitation services need enhancement.**

"We need to actually hear the worker and entertain their ideas for their own future not just the job targets on the database. We need to get creative and give people control in their own lives."

- Staff in Workers' Compensation System

People generally support the concept of vocational rehabilitation services, but there are concerns about its current impact. People acknowledge there are external factors that make the work difficult by nature, including periods of economic downturn that negatively impact the job market. However, people also say there are internal issues that could be addressed. A concern is that vocational rehabilitation services places too much focus on working

to profiles in a database, rather than considering a worker's competencies, transferable skills and interests for their future. It is also suggested that these profiles lack diversity and are a poor reflection of Alberta's labour market. Another view is that workers' frustrations with the service are rooted in misunderstandings that the service will find new employment for a worker, when in fact its role is to make the worker employable.

"I find our skilled tradesmen are being retrained for either a safety consultant or an equipment operator, hardly do I ever see any other job option. These positions are below the skills they have behind their trade and way lower wages than their trade."

- Employer

• **Better accommodation by employers would be constructive, and workers need to be willing participants in returning to the workplace.**

“I feel that when there is suitable modified duties this works well... Sometimes the worker only wants to do their job and won’t think outside the box to learn something new.”

– Staff in Workers’ Compensation System

The concept of returning to “modified work” is generally seen as worthwhile, but in practice it can be challenging. Some people say that employers need help to accommodate returning workers in meaningful ways. Returning a worker should not be a choice between placing them in their original job or having them sit around doing very little. There may be ways that workers can engage in modified work that employers cannot see

or do not realize is allowable. Other people say Alberta’s workers’ compensation legislation should include a requirement that employers accommodate the return of injured workers. Still others say there needs to be recognition that modified work is simply not available in some industries and workplaces. Another observation is that a worker’s successful return to modified duties requires their full and active participation. Placing a worker in modified duties can be challenging if the worker does not yet wish to be back at work or has difficulty accepting that their physical limitations prevent them from returning to their date-of-accident job. This can give rise to real concerns about worker depression, anxiety and mental health. One suggestion is that the WCB should do more to help workers with the psychological difficulties that can come with losing a previous vocation, so that workers can be more successful in moving forward in the workplace.

“Generally, we have been able to successfully bring employees back to pre-disability work and duties during a graduated return to work.”

– Employer

“There aren’t enough fines or penalties to employers who do not follow the modified duties guidelines.”

– Union

• **Workers’ compensation is supposed to be no fault, but the system needs to accommodate fairness.**

“I feel as though the current system permits false claims, or is taken advantage of by workers. I think this is something that needs to be evaluated, and find a way to help eliminate this.”

– Staff in Workers’ Compensation System

One of the fundamental principles of workers’ compensation systems in Canada is that of “no fault”. Workers and employers widely agree that this principle needs to be observed in Alberta’s system. However, there are concerns that WCB policies have had the effect of moving away from the principle of “no fault”. For example, it is said that the WCB’s eligibility criteria for certain types of claims place too much onus on a worker to “prove” their injury or illness arose out of and in the course of their employment. A true “no fault” system, it is argued, would accept the worker’s claim by default, and pay benefits unless it is proven that their injury or illness was not employment-related. Another observation is that a returning worker is automatically

given temporary total disability benefits if they are terminated or suspended, regardless of the reason, which then counts against the employer. It is argued that injured workers who return to the workplace should lose benefits if they are terminated or suspended

“I think WCB should hold employees more accountable for their own behaviours. Incidents that are clearly a lack of attention to safety on the part of the employee should no longer be covered.”

- Employer

for just cause. Yet another observation is that a worker who is hurt on the job due to their substance use or disregard for safety procedures is entitled to claim WCB benefits and cause a hike in their employer's premiums. It is argued that the WCB is effectively finding "fault" by penalizing the employer with higher premiums, even though the employer may have done everything in their power to run a safe workplace. For some people, the core principle of "no fault" is hard to reconcile with modern notions of responsibility and professionalism, particularly since today's workforce is, on average, much more educated than it was when workers' compensation systems were established in Canada.

WCB BENEFITS

- **Adjusting the maximum insurable earnings may make sense, but be wary of higher costs and other implications.** Some people who have received benefits from the WCB say they have not had concerns with the level of financial compensation provided. The replacement earnings they received met their needs temporarily, until they returned to work. However, people also point out that there are many workers in Alberta who routinely earn more than the WCB's insured maximum. These workers can find themselves in financial straits if they are injured at work and must rely on WCB benefits. Some people wonder why the WCB has a cap on insurable earnings, particularly if employer premiums are calculated based on workers' earnings. Others wonder why the WCB only pays a percentage of earnings (90%) rather than 100% wage replacement. Some people say that workers' compensation is intended to provide compensation, not act as an insurance program, and so full wage replacement would be more appropriate. Other people say that providing a percentage of earnings provides an incentive for workers to return to work and get back to full earnings.

“In our experience if workers receive high benefits from WCB they deliberately attempt to stay on WCB benefits. Low benefits with training is more beneficial than high benefits with no training.”

- Employer

- **The scope of covered earnings could be examined.** There are calls for the WCB to take a more holistic approach when determining a worker's earnings. One view is that the current calculation fails to recognize all of the compensation that workers receive at their jobs. For instance, some workers are provided transit passes and other forms of non-monetary compensation, which they depend upon and which have intrinsic value. Still others receive dental and other family benefits, which are very valuable and still required by a worker's family even if the worker is on WCB benefits. Some people say the WCB should consider these types of items when determining a worker's covered earnings. Others say that the current approach works fine, and worry that adjusting earnings calculations would result in higher premiums for employers.

“When claims are approved our members often receive less in compensation than the job they were employed at when the injury occurred...Compensation should be based on actual earnings...”

- Union

- **Adjusting benefits for career progression would be welcome, but could be challenging to do fairly.** Some people say that WCB benefits should automatically adjust in recognition that an injured worker would have increased their earnings over time. It is argued that young workers are particularly disadvantaged by the current system, as their benefits risk being stuck at very low levels if they are seriously or permanently injured. Other people say it would be difficult for the WCB to factor career progression into WCB benefits since the system needs to be fair for all workers (i.e., career progression needs to be either recognized for everyone or not recognized for anyone). While career progression would almost certainly have happened for some injured workers, it would not necessarily have been a sure thing for others. Still others warn that acknowledging career progression in benefits could have serious cost implications for the whole workers' compensation system.

- **Examine benefits after 65 years of age.** Another tricky area is what happens to WCB benefits when a worker reaches 65 years of age. Today, many workers are deliberately choosing or planning to work past the traditional 'retirement age' of 65. Individuals also do not retire like they used to in the past. Although they might leave their 'first career' in their fifties or sixties, they may decide to enter a second career at that point. Furthermore, faced with fewer pension benefits, volatile investment markets and rising costs of living, many workers today simply cannot afford to stop working at age 65. Some people say the WCB should adjust its policies to reflect these contemporary realities. It is said that the WCB currently makes it too difficult for an injured worker to receive benefits past age 65, even if they would have continued working past that age. However, other people say that there are no guarantees that a worker would have continued to work past 65 years of age. Even if they would have, it makes sense for WCB benefits to end at a certain point because the workers' compensation system is not intended to serve as an old age pension. On that note, people observe that other programs already exist to assist individuals who have passed the traditional retirement age (such as the Canada Pension Plan or a private pension plan.)

“Injured employees ought to be able to receive some type of benefit past 70.”

- Union

- **Long term claims should be adjusted for changing conditions.** In what appears to be a common refrain, there are few concerns when a claim is straightforward or involves a minor injury. The difficulties tend to arise when a claim involves a serious injury or illness that raises the possibility of long-term compensation over many years. People say that long-term compensation is an area that should be examined because many things can change over time. There are those who say long-term benefits should track any changes in collective agreements and that WCB benefits should be adjusted to match those changes.

- **Deeming of earnings is controversial.** An area that evokes strong views from people is the WCB's practice of deeming earnings for workers. People generally express support for the philosophy behind the practice; that is, if a worker is capable of working then they do not require full WCB benefits, as they can theoretically earn some money in the workforce. At the same time, people see the WCB's current deeming practice as problematic. There are concerns that workers are deemed capable of earnings based on "fake jobs" or "phantom jobs" that are unrealistic given the worker's education and work

“The WCB's only focus in providing vocational services is to identify a job the case manager can use to estimate a worker's earnings capacity upon.”

- Union

“I was never comfortable with the fact that we deemed more workers as dispatchers each year than there were dispatchers in the province.”

– Staff in Workers’ Compensation System

history. There are also concerns that the deeming process is driving the work of vocational rehabilitation services. This leads to significant disputes between workers and the WCB, and stress and anxiety for everyone involved. People say that instead of focusing on finding a template to deem a worker to, the system should focus on getting the worker back into the workforce productively. This means the entire process needs to take a realistic view of Alberta’s labour market.

- **Examine other benefits.** People say that other benefits, beyond wage replacement, would benefit from examination. For example, people want to be assured that spousal and dependent benefits are appropriate given the costs of living and the fact that many injured workers were the primary wage earners in their families. Similarly, people think it is important to ensure fatality and serious injury benefits are at levels that make sense for the times. It is also suggested by people that the WCB should be more flexible in negotiating one-time payouts to injured workers. (For example, for injured workers who simply do not wish to return to the workforce.) In some cases, one-time payouts might be more cost-effective than forcing an injured worker through numerous processes (e.g., vocational rehabilitation, deeming, etc.) that can be contentious, adversarial and stressful for everyone, including the injured worker.

REVIEW AND APPEAL OF WCB DECISIONS

- **The concept of a claims review process is good, but the current DRDRB may not be the right model.**

“The DRDRB needs authority to change decisions without customer service overriding at the manager level.”

– Staff in Workers’ Compensation System

People support the concept of having a process in place to review decisions about claims. However, people question whether the current Dispute Resolution and Decision Review Body (DRDRB) is the right mechanism for such a process. One view is that DRDRB staff must check with many internal parts of the WCB organization (such as case managers, supervisors, etc.)

“The DRDRB is a useless level of review.”

– Union

when reviewing a claim. Another view is that the DRDRB almost always agrees with the original decision that it is reviewing. Some argue that the DRDRB should instead be an independent body that has the inherent authority to change WCB decisions, without consulting with or obtaining permission from WCB staff. Others say that frustrations with the DRDRB are rooted in misunderstandings about its purpose. It is argued that the DRDRB is intended to be an internal review, not an independent adjudication; if this is accepted, then the value of the current DRDRB process is more readily seen. Other people suggest shortening the length of time that the DRDRB is allowed to make a decision, since it is a required step before going to the Appeals Commission and any delay impacts an injured worker’s life.

“I find that I am always attending a hearing with the Appeals Commission as I am very rarely satisfied with a decision of the DRDRB. I find the DRDRB will not change a decision from case management.”

– Employer

- The Appeals Commission process is generally supported, but its scope needs to be clarified.** There appears to be general support for the Appeals Commission process. It is regarded as an independent body that has the power to change WCB decisions. However, there is a view that the scope of the Appeals Commission needs to be clarified. Some people feel the Appeals Commission has at times overstepped its bounds and rendered decisions that go beyond the issues under appeal. Others say the Appeals Commission is not always consistent in following legislation and WCB policies. There are mixed views about how these concerns should be resolved. Some people believe the Appeals Commission should be empowered to examine all aspects of a claim. Others say this would be unfair and make it harder to prepare for an Appeals Commission hearing, since anything about a claim would conceivably be on the table. Still others say that limiting the Appeals Commission to the subjects under appeal would create inefficiency, because every individual aspect of a claim would need to go through the DRDRB before it could be considered by the Commission. In addition to these views, there are concerns that decisions made by the Appeals Commission are not always followed by the WCB. People say that the authority of the Commission needs to be clear, and be respected by all.
- Make the whole appeal process less adversarial, and more timely.** Some people like the appeal process as it is now, since it provides a degree of formality that brings a sense of seriousness to the issues under discussion. On the other hand, people express concerns that the Appeals Commission process has become overly litigious. In some cases, one party will use a lawyer while the other party cannot afford to do so. This creates a power imbalance, which some argue makes the process adversarial. Some people say that a better approach, either through alternative dispute resolution or other avenues, would be for everyone that has interests in a dispute to have a constructive dialogue. Sitting down and negotiating through the interests of the employer, the worker and the WCB could lead to less contentious resolution of claims issues. It could also bring about swifter resolution of claims disputes. People have concerns that the current appeals process can take a long time. This can seriously impact injured workers who do not receive benefits while their claim is under appeal.
- Workers would like to have assistance with reviews and appeals, but have questions about the independence of the Office of the Appeals Advisor.** There

“The OAA should come out of another GOA Ministry... Members do not tend to want to use the OAA as they do not see them as employee advocates but rather as Board advocates.”

- Union

are several views about the Office of the Appeals Advisor (OAA). On one hand, people see the value of having access to advisors who can help them with reviews or appeals of their claims. Injured workers are dealing with pain and suffering and are focused on recovery, so it is helpful for them to have assistance in navigating the review and appeal processes. On the other hand, there are concerns about the OAA’s fairness and objectivity, since it is a department of the WCB. Some injured workers who have used the OAA wonder whether their advisor worked hard in their interest, or was working in the interest of minimizing costs to the WCB. Some say

the OAA should be made independent of the WCB, so that it is not placed in a conflict of interest and workers can have greater confidence in the advice they receive. However, other people note that it is helpful for the OAA to be a part of the WCB because it can readily and easily access all pertinent information about a worker’s claim. If the OAA were made independent, access to information might not be that easy, and this could impede the effectiveness of the advising.

• **Employers appreciate assistance with reviews and appeals, and they would like to see more.**

Employers say they value the assistance provided by the Employer Appeals Consulting Service (EACS) and would like to see the service expanded. Small and medium-sized employers appear to particularly appreciate EACS. People say the WCB needs to remember that smaller employers are very cost-sensitive and do not always have extra money lying around to hire lawyers for appeal processes. Smaller employers are also focused on building and running their businesses. They do not always have the extra staff or time to sift through legislation or policies, and so they appreciate having access to EACS. Some say that employers should be able to obtain the same advising and assistance services that injured workers are provided, including representation at appeals.

“The EACS is a good first step, but needs to be more in line with the services workers receive from the Office of the Appeals Advisor.”

– Employer

WCB GOVERNANCE

• **Representation to the Board should be examined.**

“I would suggest that the representatives could be better selected through their stakeholders and believe that the board members should have more involvement with their specific stakeholder group to appropriately represent their interests.”

– Employer

There are mixed views about the WCB board of directors. Some people say they do not expect to interact with board members. Since the board is supposed to be focused on governance, rather than micro-managing operations, there is not much advantage in having extensive contact with them anyway. Other people express a view that the WCB’s board members are not as representative of their stakeholders as they could or should be. There are suggestions that board members should be directly selected by the stakeholders of whom they are intended to be representative. There are also those who argue that the WCB’s board members should be selected based on necessary skills, competencies and experience, rather than be representation-based.

• **Performance measures should not drive claim decisions.**

People have much to say about the WCB’s use of performance measures in the organization’s operations. Some note that performance measures are used by many organizations for helping provide guidance and tracking whether the organization is doing what it is supposed to do. However, since performance measures can influence behaviours – particularly when they are tied to remuneration – they need to be chosen very carefully. There are concerns that certain performance measures and targets currently used by the WCB are influencing the assessment and management of claims. Some people argue that the performance measures are encouraging or pressuring WCB staff to deny claims, close out claims quickly, ignore medical advice, and force injured workers back to the workplace before they are ready. Other people suggest that the WCB should not use any performance measures. Still others say that performance measures might be acceptable, but they should not be tied to staff bonuses.

“When you get a good case manager it’s a system that can be fair and good for a worker. However there are many case managers who look to cut people off putting corporate targets above all else.”

– Union

- **The policy development process can be confusing.** One of the responsibilities of the WCB board is setting policies that guide the organization. People have concerns about the content of some WCB policies, and they have questions about the process used by the organization to develop or amend policies. For instance, people say they are unclear whether and how the board evaluates policies it has enacted, to assess how well a policy is achieving its intended goals and what unintended impacts it might be having.

PREVENTION OF WORKPLACE INJURY AND ILLNESS

- **Do more work on preventing workplace injuries and illnesses.** People say that it is preferable for workers not to be injured in the first place. The WCB is seen as a reactive organization by its very nature; it is the place that gets involved after a worker has been injured. Some say that the WCB could do more proactively – through education, information resources and other efforts – to reduce incidents of workplace injuries and illnesses. Others say this would be an awkward fit for the WCB, as it may not have the necessary expertise to perform this function.

“Injury management focus and not health management focus. I see a reactive program with not enough focus on prevention.”

– Health Professional

- **Other provinces use unified organizations, but that approach may not be appropriate in Alberta.** It is noted that some other provinces use a single organization as both their workers’ compensation board and their occupational health and safety entity. Some people like the concept of this model, suggesting it would make for better integration and fewer workplace injuries. Others say that Alberta’s WCB should remain separate from Alberta’s Occupational Health and Safety (OHS). It is argued that OHS has an enforcement function, and that it would be inappropriate to give the WCB this kind of power (which would happen if the two organizations were merged as one). They also argue that with the organizations kept separate, employers and workers can have confidence that their access to the workers’ compensation system will not be clouded or impeded over concerns about regulatory compliance.

“There needs to be more WCB presence in the field. OHS officers and regulators are rarely seen but WCB Safety Officers (if they even exist) are never seen or heard from in the workplace.”

– Employer

- **Financial incentives can be motivating, but do not necessarily make safer workplaces.** There are mixed views about the WCB’s use of financial incentives in encouraging safer workplaces. Some people argue that incentives are very motivating, and employers are more likely to have safer workplaces if they know they will save money for doing so or pay higher costs for not doing so. Other people argue that the experience rating used by the WCB in calculating employer premiums already performs this function, so other WCB incentives are not necessarily needed. One observation is that a safety culture is more important than having a safety program written down, and that incentives are only meaningful if they encourage the culture.

“Incentive programs should be reviewed as the balance must be struck between benefit and the zeal of employers to control costs which has set the stage for an adversarial relationship...”

– Safety Association

• **The poor performance surcharge might encourage safety improvements, but it is reactive and may have unintended consequences.**

There are concerns about the WCB's use of a poor performance surcharge. Some people say it does not do much to encourage prevention of workplace injuries, because it is not applied until workers have already been injured. Other people say that an employer that is paying the surcharge has an incentive to reduce workplace injuries so that the surcharge is lifted. Still others express concern that the poor performance surcharge might be doing more harm than good for workers. They argue that it may be inadvertently encouraging claims suppression that deprives injured workers of their benefits. People suggest it would be worthwhile to evaluate the need for and wisdom of the surcharge.

“I think that charging companies a penalty for poor performance promotes a culture of covering up injuries in order to avoid penalty and fear of reporting issues.”

– Safety Association

• **Safety programs should be evaluated.**

“There is too much emphasis on compliance with programs (i.e. making sure the paperwork is done) instead of actually doing something about injuries before they happen.”

– Employer

The WCB provides funding to safety programs. People have several opinions about which safety programs are effective and which are not. Some suggest that the Partners in Injury Reduction program is effective while the Certificate of Recognition program is not. Others disagree with this assessment. There are concerns that neither of these programs are designed with smaller employers in mind. There are also mixed views about the quality and effectiveness of various safety associations. Amid these varying opinions, people would like to have some objective evaluation, so they can see for themselves how safety programs and associations stack up.

• **Further enhance the usefulness of data.**

People have positive things to say about data that is collected by the WCB and made publicly available. Industry groups and employers say they make use of the data to adjust and improve their safety policies and programs. One concern is that some data points are reported without detailed breakdowns; for example, it is said there are often no explanations about whether injuries or illnesses were due to employer oversight, employee carelessness or pre-existing conditions. Another observation is that it can be difficult to compare data from Alberta's WCB with data from other workers' compensation systems, because data points are calculated and reported differently. Being able to make cross-jurisdictional comparisons would be helpful for understanding where there are opportunities for Alberta workplaces to improve, particularly for employers that operate in multiple provinces. One suggestion is that efforts be undertaken to harmonize data collection and reporting amongst the workers' compensation systems of Alberta and other provinces and territories.

“The data does not have root cause. This is the most important data to implement an intervention and it is missing.”

– Union

FUNDING AND FINANCIAL SUSTAINABILITY

- **Transparency about employer premiums is important.** Not everyone fully understands how employer premiums are calculated. This can lead people to distrust the premium setting process or take a view that premiums are too high. Some people say the WCB could be more transparent about how experience ratings are determined for individual employers.
- **There are mixed reviews about how the WCB Accident Fund is managed.** People express a range of opinions about the guidelines currently used by the WCB in managing the Accident Fund.

“We believe that the ‘green zone’ of 114% to 128% is unfair to employers as it collects more money than what is required to run the WCB.”

– Employer

Some wonder whether surpluses in the Accident Fund are a signal that employer premiums are too high to begin with. Others believe that a healthy surplus in the Accident Fund is a positive thing, as it provides a hedge against a sudden economic downturn or major loss event. Still others believe the Accident Fund is managed too conservatively, and that significant surpluses are not needed. It is argued that if the Accident Fund falls below full funding, the WCB can always assess a levy

on employers to boost its balance. To some people, this approach would be preferable if it meant that employer premiums could be lower. There are also suggestions that any surpluses in the fund could be used for benefit and program enhancements, rather than be distributed.

- **Consider how Industry Custom Pricing affects smaller employers.** Industry Custom Pricing (ICP) has supporters and opponents. ICP programs tend to place greater accountability with individual employers by increasing the weight of the experience rating. Some people support this feature, saying it enhances employers’ incentives to have safer workplaces. Other people dislike this feature, saying it places smaller employers at a disadvantage as they do not always have the same fiscal capacity as larger employers to put extensive programs in place. There are also concerns about the process used by the WCB to implement an ICP program through an industry-wide vote. Since the WCB bases the vote on insurable earnings, a handful of large employers can effectively pull the rest of an industry’s employers into an ICP scheme against their will.

- **Consider changes to how lost time claims are determined.** It is said that a significant number of claims are short in duration. Often a worker will be away from work for only one or two days. Despite being very short, this can be recorded by the WCB as a lost time claim, which has implications for the employer’s claim record and their premiums. Having lost time claims can also impact on an employer’s business activities, such as their eligibility to bid on contracts, even if the claims were minor and very short in duration. Some people say

“Many times a worker just needs one day at home to rest after an incident. It’s unfortunate that it is classified as lost time.”

– Employer

that changes should be considered in determining lost time claims, so that workers still receive wage replacement but administrative complexity is reduced. One suggested idea, is to have employers pay for a worker’s first 1-3 days of their claim; and in return, if the worker comes back during that duration, their claim is not recorded as a ‘time loss’ claim.



WHERE WE GO FROM HERE

The views and perspectives from Albertans will set the stage for the next phase of our Panel's work.

We welcome input and ideas regarding issues in Alberta's workers' compensation system. Albertans are encouraged to make submissions to our Panel until January 3, 2017.

Over the next few months, our Panel will continue to analyze the input received. Using this information, our Panel will identify complex issues that would benefit from more detailed study and exploration.

In November and December 2016, we expect to meet with a variety of stakeholders, including employers, unions and industry associations, to delve more deeply into a number of complex issues in the system. These conversations will help our Panel explore possible options to build on the system's strengths and improve it for the future. They will also help us understand the potential implications for employers and workers of making changes to the system.

In January 2017, our Panel will convene a symposium on data in the workers' compensation system. This will provide stakeholders with an opportunity to discuss how data collection and usage can be enhanced to support workplace safety and reduce incidents of work-related injuries and illnesses.

Our Panel will complete its information gathering and engagement activities in January 2017 and turn its attention to analyzing the input and evidence we have gathered. We expect to produce our final report and recommendations for the Government of Alberta in spring 2017.

We encourage workers, employers, and all interested Albertans to stay in touch with the review by subscribing through the WCB Review website (www.alberta.ca/wcb-review.cfm). Your participation is key to our success, and we appreciate the time and thoughts you contribute to this important work.



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