



June 27, 2017

Mr. Mike Carr, Deputy Minister
Ministry of Labour Relations and Workplace Safety
300 - 1870 Albert Street
Regina, Saskatchewan S4P 4W1

**RE: Consultation on the Workers' Compensation Act Committee of Review Recommendations:
Board Governance and Appeals**

Dear Mr. Carr:

Merit Contractors Association of Saskatchewan is pleased to provide this written submission in response to the Government of Saskatchewan's request for feedback on the recommendations resulting from the WCB Committee of Review (2016) which would require legislative amendments.

We would like to thank the government for this opportunity and look forward to the results of the consultation.

ABOUT MERIT CONTRACTORS ASSOCIATION

Merit Contractors Association advocates for the interests of all open shop contractors in Saskatchewan. As the voice for open shop construction in Saskatchewan, Merit represents approximately 11,000 employers and 43,000 employees all of which benefit from the work that Merit does to ensure the construction environment is fair for all contractors. Our association works to ensure open tendering and a fair and level playing field for all contractors.

Our members remain committed to the highest safety standards on our many jobsites throughout the province. We also remain committed to Saskatchewan's compensation system based on the Meredith Principles, which have for so long been the foundation of the WCB's structure.

1. CONSULTATION ISSUE: BOARD GOVERNANCE

In the consultation paper, *Consultation on the Workers' Compensation Act Committee of Review Recommendations: Board Governance and Appeals*, the government has asked if the WCB governance structure should:

- Be maintained in its present form as a three-person board (independent full-time Chair and equal full-time representation of employers and workers);
- Be expanded to the maximum five members provided for in the legislation (independent full-time Chair and equal full-time representation of employers and workers);
- Be converted as recommended by the Committee of Review;
- Be converted to a more traditional governance board structure which would consist of a fulltime or part-time Chair and equal part-time representation of employers and workers; and
- Include representation of the public interest.

MERIT RECOMMENDATIONS - BOARD GOVERNANCE

Consistent with our submission to the COR (2016), Merit recommends that

- ✓ The governance structure be converted to a more traditional Board structure which would consist of a part-time Chair and equal part-time representation of employers and workers;
- ✓ The board is expanded to include representation of the public interest.

It is our belief that the governance structure of the Workers' Compensation Board must be updated, as the current structure is inefficient and ineffective and is certainly not reflective of the size and complexity of the WCB we know today.

The WCB in Saskatchewan has the smallest Board in Canada and is, in fact, about a third of the size of the boards in most other provinces. We believe the relatively small size of the WCB Board increases the perceptions of bias and conflicts of interest and prevents Saskatchewan workers, employers, and stakeholders from being served in the most efficient way possible.

We believe there are many advantages to having a larger Board of Directors, including

- ✓ Wider base of expertise from which to draw when making decisions;
- ✓ Wider stakeholder consultation built into the Board system via Director appointment;
- ✓ Ability to develop focused sub-committees for specific issues such as stakeholder engagement, audit, etc.;
- ✓ Improved decision-making based on consensus of a wider base of knowledge. Decisions are not held up by grid-lock of three Directors;
- ✓ Improved communication among stakeholders; and
- ✓ Improved accountability and transparency

Our recommendations to modernize the governance of the WCB and improve its effectiveness are as follows:

a) Board Size

Merit recommends the adoption of a more traditional Board governance model, as found in other provinces. We believe subsection 9 of the WCA should be changed to allow 9 to 13 Board members. Doing so would put Saskatchewan in line with other provinces and would enable the Board to better represent the interests of stakeholders.

b) Composition

Merit recommends equal representation from employers and workers, plus a neutral Chair. In addition to employer and worker reps, the Board should include expertise by way of actuarial or insurance professionals and safety experts to ensure a broad base of knowledge and input when making decisions.

While representation from both employer and employee groups is essential to the Board, we believe additional representation is required to maximize the effectiveness of the new model. For example, the 9 member Board in BC includes two public interest representatives, an Occupational Health & Safety representative, a health system representative, a regulatory/legal representative, an actuary, and the WorkSafe BC CEO in an Ex officio role. Manitoba follows a similar model.

c) Worker Representation

One of the flaws in the existing system is the absence of open shop worker representation on the Board. In Saskatchewan, 7 in 10 employees work in an open shop or non-union environment. Their views and interests are unique and often dramatically different from those of unionized employees. Yet the worker representatives are always sourced from unions.

Merit believes the vast majority of workers in Saskatchewan are, therefore, not appropriately represented on the Board. Merit would strongly recommend that worker representation should include open shop representation in proportion to the percentage of open shop vs. union employment in the province.

d) Director Selection

It is exceedingly important that a skills matrix and specific criteria be developed respecting the qualifications of Board members to ensure all aspects of governance are covered. Members with diverse backgrounds and skill sets are needed to ensure there are fulsome discussions as part of the strategic planning for the organization.

e) Function of the Board of Directors

The prime function of the Board would be that of governance: to establish policy and monitor implementation, to determine strategic initiative and set direction, and generally oversee operations and ensure accountability. Sub-committees of the Board could be tasked with more specific directives, based on current needs.

Additionally, we would further recommend that there be the ability to form Advisory Committees for specific purposes as the Board requires or sees fit.

f) Full Time vs. Part time

We recommend the Board member positions, including the Chair, change from full-time to part-time. Currently, Saskatchewan is the only province with a full-time Board, dividing its attention among a wide array of duties, including final appeal functions. The notion of full-time Directors eventually leads to the assumption that they are also employees. An effective Board is one that maintains its distance from everyday operations so that it can clearly set a strategic path.

2. CONSULTATION ISSUE: APPEALS SYSTEM

Within the parameters set up in the consultation paper, the government is also seeking input on whether there should be a change in the current structure to the final level of appeal.

Specifically, the government is looking for input on whether the final level of appeal (the Board Appeal Tribunal process) should be:

- Maintained in its current form (heard by the Board Appeal Tribunal); or
- Converted to an external appeal process which:
 - Is an independent, arm's length appeal bodies separate from other appeal bodies; or
 - Is incorporated in another independent arm's length appeal body, such as the Automobile Injury Appeal Commission.

MERIT RECOMMENDATION: APPEALS SYSTEM

Merit recommends:

- ✓ That the Board Appeal Tribunal process be converted to an independent, arm's length appeals body separate from other appeal bodies.

Wait time for appeals has been an issue in the past and the potential for increased backlogs is a weakness of the current system. The backlog of appeals means that employers and employees are put into a holding pattern, waiting for resolution to issues that are, without doubt, life-altering. This must be addressed to maintain the credibility of the system.

It is Merit's position that the main issue with the current appeals process is that the Appeals Tribunal and the Board is one and the same, creating a heavy workload for members. Currently, the WCB Appeals Tribunal is to consist of two or more members of the Board who are unbiased, but since there are so few Board members, the current framework that is in place is simply not effective. In addition, this structure may appear on the surface to be biased as the Appeals Tribunal is really reviewing the work of the system that they provide governance over.

Our recommendations to improve the appeals system of the WCB are as follows:

a) Board Appeal Tribunal

Merit recommends forming an Appeals Tribunal that is separate from the Board, consisting of experienced professionals skilled in fair and timely adjudication of cases. This would require revising subsections 19 and 20 of the WCA to change the duties and jurisdiction of the Board.

We strongly advocate that the appeals system be removed from the WCB infrastructure to ensure there is transparency and fairness. We believe that having an Appeals Tribunal separate from the Board would bring Saskatchewan in line with other provinces. Currently in British Columbia, the WorkSafe BC Appeals Tribunal is separate from their Board and is comprised of more members than Saskatchewan's entire Workers' Compensation Board. A similar model functions effectively in Manitoba.

b) Composition

We recommend the Appeals Tribunal include at least three full time members. To ensure increased workloads are handled in a timely manner, additional members would perform appeals on a part-time basis as required.

Every appeal, whether simply a file review or an oral hearing, sent to the Commission should require a review by an Appeals Panel consisting of three members – an employer representative, a worker representative, and/or a natural party or a public interest Chair. The Appeals Panel should have the full authority to subpoena and adjudicate as the WCB Board does now, with all decisions being considered final. The inquiry system of appeals should be continued as it provides all appellants equal opportunity to present their cases without added legal costs of an adversarial, litigious system.

Furthermore, we also recommend immediate implementation of a policy that would ensure final appeals are heard within 30 days of the collection of relevant information.

c) Scope and Responsibilities

Due to the importance of the appeals process, we believe a new, comprehensive section of the WCA should be created in order to clearly outline this function exclusively. Incorporated within the new section, we recommend having the Lieutenant Governor in Council appoint the members of the Appeals Tribunal, after consultation with stakeholders.

SUMMARY

We commend the government on its courage to modernize a system that is currently lacking the agility to meet the needs of today's employers and workers. We believe that the changes contemplated as part of this consultation will strengthen the WCB and allow it to be more responsive to the many challenges it currently faces.

On behalf of many employers and workers represented by Merit Contractors, we again thank the Saskatchewan government for the opportunity to provide our thoughts and input regarding the future of WCB in Saskatchewan and for the consideration of this submission. We look forward to the outcome and would welcome any further dialogue on our submission.

Sincerely,



Karen Low, Executive Director
Merit Contractors Association of Saskatchewan