COCA | Council Of Construction Associations

July 22nd, 2019

Ms. Janet Patterson
Info@wcbreview.ca

**RE: COCA Feedback on Bogyo Report Implications**

Dear Ms. Patterson:

I am responding on behalf of COCA, which represents 20 construction associations, with members from all parts of British Columbia, from every sector and from every size of company, both union and non-union.

In this submission, COCA is commenting on the report *Balance. Stability. Improvement. Options for the Accident Fund prepared by Mr. Terrance J. Bogyo.* (the Report).

This Report was completed on December 6, 2018 but was not made public until July 19, 2019.

The recommendations in the Report have been estimated by WorkSafeBC to have a one-time cost of $2.4 billion and ongoing costs starting at $176 million per year.

We appreciate that this Report is separate and independent from your work.

However, policy makers may decide to read and act upon both reports as a single unit.

Financial Integrity and Sustainability

Before commenting on the individual Options within the Report, we believe it is essential to consider the overarching issue of the financial integrity and sustainability of BC's workers' compensation system.

The terms of reference for the Report contain this requirement:

> *"(b) In conducting the review and with respect to any options proposed by the Contractor, the Contractor must take into account the requirements of section 39 of the Act and actuarial rate-making principles; the longer terms risks to funding levels and capital adequacy due to events such as financial downturns, increases in morbidity due to slowly developing occupational diseases, increases in treatment costs and any other relevant factor; and the "smoothness" of year-over-year changes in employer rates". (Report, p. 2)*

Mr. Bogyo elaborates on this requirement and the elements of risk in several areas of the Report. The following quotation describes the risks well:

> *"In the post "global financial crisis" world, managing in the "new normal" environment is not without continuing risk. There are arguments for continuing with the status quo. Volatile markets, sudden disasters, and emerging hazards are ever present; economic cycles persist and threaten employment security of workers and financial stability of employers; trade wars, climate change is disrupting the workplace environment as well as posing risks to the Accident Fund investments. Demographic and societal change are altering who works and for how long. Technology is overturning traditional patterns of work and presenting both challenges and opportunities across wide sectors of the economy. Any of these risks can undermine the financial stability of the workers' compensation system, threaten its ability to compensate workers, and diminish the ability of WorkSafeBC to maintain, promote and enforce health and safety standards that benefit workers and others in the workplace." (Report, p. 9)*

This cautionary note is repeated with varying language on pages 20, 24-26, 28, and 35-37 of the Report.

Mr. Bogyo also notes the consequences of significant assessment rate increases. When the cost rate for claims exceeds the Premium rate:

> *"This higher premium collected increases revenue to the Accident Fund, increasing the employers' cost of production and may limit employers' options to invest in new plants and equipment, create new jobs, improve wages and benefits and return profits to shareholders." (Report, p. 21)*

We completely agree with all of these serious concerns.

We support Mr. Bogyo's comments about maintaining the financial integrity of the worker's compensation system.

In fact, when a number of employer associations lobbied for using the "surplus" Accident Fund Reserves to send rebates to employers, COCA strongly and publicly opposed this action. We published a column in the Journal of Commerce in 2016 which contained essentially the same reasons that we have now for maintaining the Accident Fund Reserves at their current levels.

We took this position during the period of the BC Liberal government.

We have the same reasons now for opposing the Report recommendations that would result in a huge depletion of the Accident Fund Reserve.

We continue to argue for financial prudence.

Mr. Bogyo quotes an excerpt from the Journal of Commerce column written by COCA in 2016. "One employer-referenced exhibit noted the value of positive investment returns and adequate reserves (referred to as 'cushions'):

> *"...[I]nvestment returns (from investing employers' assessment payments) are used to subsidize the rates so that a pattern of good returns will result in lower rates.[emphasis added]*
>
> *Conversely, years with poor or negative rates of investment returns can trigger the need for sudden and sustained assessment rate increases, unless there is a reasonable "cushion" built into the reserve system.*
>
> *In the context of these important considerations, the last 10 years have provided instructive examples. WorkSafeBC's funded ratio dropped by 27 per cent during the economic downturn of 2008-2009. A starting point in the 100-110 per cent range at the time would have left the system significantly underfunded at that point and potentially could have necessitated rate increases in response.*

> *The strong funded position at the beginning of the 2008-2009 downturn enabled WorkSafeBC to mitigate rate pressure experienced due to rising claims costs in 2013-2015."* (Dave Baspaly, "An in-depth analysis into WorkSafeBC's financial state," Journal of Commerce, July 4, 2016)" (Bogyo Report, p. 41)

Since 2016, there has been a dramatic increase in worldwide volatility.

The basic argument we used in 2016 is even more relevant now. We live in a world of increasing international tensions and uncertainties. Currently, the two most powerful countries in the world — the United States and China —are engaged in sporadic trade wars.

Canada and British Columbia are caught in the middle.

To an extent we have not seen before, the United States itself has acted against Canadian (and BC) interests with punitive tariffs and other measures in order to bolster its own perceived needs and interests.

And random, unforeseeable events such as the Canadian arrest of Meng Wanzhou, the daughter of the founder/owner of Huawei have a major ongoing impact. While Ms. Wanzhou is being held under the terms of Canada's extradition treaty with the U.S., China is suddenly treating Canada like an enemy nation.

China has stopped the import of several Canadian products, costing Canadian businesses and workers hundreds of millions of dollars.

These examples are relevant because they reveal the vulnerability of a strongly interconnected world economic structure.

We also face additional competition for the production of goods and services from maturing economies worldwide. Our manufacturing industries continue to shrink and this shrinkage will have an impact on construction and many other areas of our economy.

The stock markets also seem to undergo turbulence for reasons known and unknown. The Accident Fund is heavily dependent upon these stock markets. For example, investment returns on the Accident Fund dropped from 10.5% in 2017 to 2.1% in 2018.

The Bogyo Report also notes:

> *"The invested assets are subject to market forces; returns may fall short of those needed, expected and planned for. Market volatility alone can result in large swings in the value of the Board's investments (as the example noted earlier of a swing of $750 million in October 2018 illustrates). Prolonged declines in markets can erode the funded position quickly even if revenues and economic activity in the province remain constant in the short run." (Report, p. 28)*

These are all sound reasons for a very careful consideration of the financial impacts of any proposed changes to policy or legislation.

Comments on Options

As noted in out comments above, we support several of the recommendations, in whole or in part. We believe that these supported items would restore balance to the workers compensation system.

However, we strongly believe that it would be highly irresponsible of WSBC and the government to accept and act upon the remaining recommendations.

The estimated one-time cost of $2.4 billion and the ongoing, escalating costs of $176 million per year will place BC employers in an uncompetitive situation. (All dollar estimates from WorkSafeBC, quoted from within the Report.)

There is also the serious risk of discouraging investment in our Province. The recommendations, as a whole, would have a major negative impact during a time of uncertainty.

We have used the Report's sequence of recommendations and provided our comments in the same order.

1. ***Option 1****, The* ***status quo****, would see no change to the basic parameters of compensation and benefits.*

   We agree that this option is not acceptable. There are changes that are needed to rebalance the worker's compensation system in BC. We comment on these individually in the Options below.

2. ***Option 2**, **Increase the maximum insurable and assessable earnings to $100k per year**. This addresses a shortfall in the coverage. More than 20% of workers in BC report earnings above the maximum insurable earnings increasing their financial vulnerability in the event of prolonged work-related disability.*

   We agree with this option. Workers compensation was established as a means of insuring against workplace injury and disease. The level of coverage should reflect the range of earnings within the work force.

   Other major Canadian WCBs have adopted insurable and assessable earnings at about this level. (Alberta is at $98,700; Manitoba is at $127,000 for assessable earnings and no maximum for insurable earnings; Ontario is at $92,600.)

3. ***Option 3**, I**ncrease presumed age of retirement from age 65 to 70**. This addresses a fundamental societal shift in employment patterns since the 2002 reforms that established a presumed retirement age of 65. This option would increase this reference age to 70 and provide greater coverage for the increasing numbers of workers working beyond age 65.*

   We are in <u>qualified</u> agreement with this option. The retirement age has increased and larger numbers of workers are working beyond age 65.

   But we strongly recommend that the change only be applied to future claims, from the date on any legislative change – not retroactively.

   Applying retroactivity to any of these Options is financially irresponsible. Benefits should be paid for by current employers. And current employers should not be burdened with retroactive enrichments.

   Also, the use of retroactivity sets a dangerous precedent. It opens the door for some future government or administration to retroactively claw back benefits.

   <u>The cost of this retroactivity would be $690 million.</u>

   <u>We do not support retroactivity.</u>

4. ***Option 4*, *Provide a one-time adjustment to restore the value of currently paid pensions to their purchasing power in 2002 or more recent year when the pension was established*.**

   We strongly disagree with this option. We oppose making changes retroactively for the reasons cited in Option 3.

   <u>The cost of this retroactivity would be $650 million</u>.

   <u>We do not support retroactivity.</u>

5. ***Option 5*, *Revise the cost of living provision of the legislation by altering the current CPI-1% such that full CPI would apply unless the Accident Fund falls below the established fully funded level*.** *This reflects policies in many defined benefit pension plans and will increase the flexibility of the board of directors to act in the best interests of the workers' compensation system.*

   We support this recommendation but only with no retroactivity. The adjustment should be done only once per year using the British Columbia CPI.

   All changes should be going forward.

   <u>The cost of this retroactivity would be $657 million.</u>

   <u>We do not support retroactivity.</u>

6. ***Option 6***, *Assumption* ***of maximum earnings in the event of a work-related death***. *This option would ensure survivors and dependents receive the maximum benefit possible*

   We do not support this option. We recommend that further study and evidence be assembled and presented on this very complex issue.

7. ***Option 7*, *New lump-sum payable to the Estate of a fatally injured worker.*** *This option recognizes the work-related death regardless of survivors with a one-time amount payable to the estate and would give standing to the Executor of an estate to initiate a claim.*

We strongly object to this option.

With respect, the rationale given for this option is completely contrary to the founding principles of workers' compensation.

"**Rationale**: Every life has value. Other provisions provide benefits for survivors and dependents; however, some fatality cases may have no survivors or dependents who are financial dependent or entitled to other compensation. This proposal would apply to all accepted fatality cases and be payable to the estate. This would ensure all cases of work- related fatality are recognized with an equal amount of compensation. If there are no dependents or survivors, the executor could apply for, receive and distribute the benefit as part of the assets of the estate. "(Report, p. 68)

Workers compensation death benefits are intended to benefit those people who have been <u>dependent</u> on the deceased worker for financial support. This is usually the spouse and children. There is no justification at all for passing along any compensation benefit through the Executor of the estate to people who have not been dependents.

<u>The cost for this inappropriate payment would be $31 million and an ongoing annual cost of $9 million.</u>

8. ***Option 8*, *Increased powers to secure and preserve assets for the Accident fund*.** *This set of changes improves the ability of WorkSafeBC to secure funds owed by delinquent and bankrupt employers and to retain funds for the Accident Fund in a way similar to other large public pension plans.*

   We partly agree with this option. We object to the recommendation to give WorkSafeBC the ability to "hold directors liable for unpaid assessments relative to corporate debt". (Report, p. 70) We believe that this puts an unreasonable burden on the directors and would result in expensive and time-consuming legal disputes.

   We support the remaining recommendations to improve the collection of delinquent or insolvent accounts. Responsible employers should not have to pay the costs for delinquent or insolvent employers – and the flight of Directors from corporate Boards.

9. ***Option 9**, **Permit diagnostic and treatment expenditures prior to claim acceptance**. This option formalizes the ability of WorkSafeBC to authorize and pay for diagnostic and treatment prior to claim acceptance in cases where timely treatment is likely to lessen or prevent more serious harm or disability.*

   We do not support this option.

   Workers compensation is for accepted claims, not claims that have not yet been adjudicated. The worker with the undecided claim is able to get treatment from the BC medical system of doctors and hospitals that is available to the general public.

   This idea sets the stage for a large number of claims from people who just want to "jump the cue" because WSBC clients receive accelerated, preferential medical care. In any case, there would be no downside for anyone making a claim in order to get preferred medical care or treatment that might not be covered by the BC medical plan.

   This option has not been costed.

Conclusion

As with our previous response to you, COCA also would like to be part of the ongoing process of these reviews.

We recommend that a small Advisory Committee (one worker representative, one employer representative, one government representative, with alternates) be formed to assist with the consideration and development of these issues.

Thank you for the opportunity to provide our comments.

Sincerely Yours,

Dr. Dave Baspaly
President, Council of Construction Associations