WCB at the Crossroads: Experience Rating, Claims Suppression and Collective Liability

An addendum to my 2018 Report "Restoring the Balance:
A worker-centred approach to workers compensation policy"

Introduction

In 2018, I was commissioned by the Minister of Labour and the Workers Compensation Board's governing Board of Directors to carry out a summary review of the WCB compensation claims and rehabilitation policy and to provide recommendations to make that policy more worker-centred. My report, "Restoring the Balance: A worker-centred approach to workers 'compensation policy," made thirty-four recommendations to bring that policy more in line with the needs of injured workers[1].

The WCB Board of Directors implemented many of the policy recommendations including my recommendation that there be an independent research study into the nature and extent of claim suppression in B.C. The Board of Directors commissioned a study by the Institute of Work & Health ("IW&H claim suppression study") which reported their findings in 2020.[2] The IW&H claim suppression study found extensive "under-reporting" of workplace injuries and a significant level of illegal claim suppression.

Compensation research indicates that "experience rating", the prevailing method of funding the compensation system, can provide a financial incentive to discourage employers from reporting workplace injuries[3]. Research also indicates experience rating as a funding method may also stimulate employer behaviours which can adversely impact the physical and mental health of injured workers[4]. In the late 1990's

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[1] Report available on line at: https://www.worksafebc.com/en/resources/about-us/reports/restoring-balance-worker-centered-approach?lang=en

[2] *Estimates of the nature and extent of claim suppression in British Columbia s workers compensation system"; 2020, Institute for work and Health* — "The Claim Suppression Study". https://www.iwh.on.ca/scientific-reports/estimates-of-nature-and-extent-of-claim-suppression-in-british-columbias-workers-compensation-system

[3] Ison, T.G. (1986). The significance of experience rating. Osgood Hall Law Journal, 24, (4) 723-742. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2129183. Also see Ison T.G. (2013). "Reflections on Workers' Compensation and Occupational Health and Safety". 26 C.J.A.L.P. p. 1-22.

[4] Mansfield, L., MacEachen, E., Tompa, E., Kalcevich, C., Endicott, M., & Yeung, N. (2012). A critical review of literature on experience rating in workers compensation systems. *Policy and Practice in Health and Safety, 10*(1), 3-25. Now available online at: https://doi.org/10.1080/14774003.2012.11667766

the WCB Panel of Administrators fully embraced experience rating as BC's funding mechanism for the workers compensation system[5].

In 2022, I provided an addendum to My 2018 report — "Claim Suppression: the elephant in the workplace" — which summarized key findings from the IW&H claim suppression study.[6] In that addendum, I offered 13 recommendation for consideration by the WCB Board of Directors to reduce the incentive to under-report workplace injuries and to illegally suppress compensation claims. These recommendations included measures to better enforce the provisions in the *Workers Compensation Act* (*Act*) that prohibit claim suppression activities.

In the three years since my 2022 addendum, I have gathered WCB data through Freedom of Information requests to evaluate enforcement activities on under-reporting and claim suppression by the WorkSafeBC administration. It is apparent from this further review that the WorkSafeBC administration has not implemented significant enforcement measures to stem the tide of claim suppression or policy measures to reduce the impact of experience rating on compensation entitlement for injured workers.

This is my final addendum to my 2018 Report "Restoring the Balance". In it, I lay out my further review of experience rating and claim suppression. Based on this review I call on the WCB's Board of Directors to discontinue the corrosive policy of experience rating and initiate the steps necessary to restore the original funding model of collective liability which provides a more equitable funding mechanism for employers and a less adversarial system for injured workers.

Later in this addendum I rely on the experience of a worker who suffered life-threating and life-changing injuries to illustrate some of the human impacts that the experience rating system can have on injured workers. Paul Henczel's book, *Crushed Alive*, expresses in his own words some of the challenges workers face in navigating the workers compensation system under the shadow of experience rating.

The B.C. compensation system: as the pendulum swings

In the early part of the twentieth century, provincial governments in Canada adopted workers 'compensation legislation in response to the increasing toll of death and disablement from the industrial revolution. The foundation of provincial compensation systems was based on the social contract between the organized worker and employer communities where injured workers gave up their legal right to sue negligent employers for workplace injuries and illnesses in exchange for no-fault compensation funded by

[5] "Experience Rating: WCB discussion paper", available online at: https://www.google.com/search?client=safari&rls=en&q=Worksafe+BC+experiencing+rating&ie=UTF-8&oe=UTF-8

[6] available online at: https://assets.nationbuilder.com/workereducation/pages/51/attachments/original/1648094008/Claim_Suppression_Review____March_2022-3_(1).pdf?1648094008

employers and administered by an independent agency rather than the courts. It is commonly known as “the historic compromise”.

This historic compromise between worker and employer interests had its challenges. As might be expected, the policy preferences for the workers ’ compensation system often swings with the political winds, requiring intervention from time to time. To manage those challenges provincial governments sometimes appoint a royal commission or other formal inquiry to restore the balance of interests.

In British Columbia, there have been four royal commission reports on workers’ compensation (Sloan-1942, Sloan-1952, Tysoe-1966, and Gill-1999)[7]. Since the 1999 Gill Royal Commission, there have been several key reports. The 2002 Winter Report led to significant cuts to compensation benefits for injured workers. This was followed by the more comprehensive Patterson Report[8] in 2019 which provides a framework for significant reform of the BC workers compensation system and still awaits implementation. The pendulum continues to swing.

The transition from collective liability funding to experience rating

Collective liability

For the first 60 years, the workers ’compensation system in BC was funded primarily by a mechanism based on the collective liability model where all employers in a particular industry covered the costs for all injuries in that industry on an equitable basis.

In practice, this meant that all employers in an industry (for example residential construction) paid the same “average assessment rate” per $100 of payroll and this “average assessment rate” was based on the collective claims cost for all employers in that industry.

The funding mechanism of “collective liability” provided a fully insured accident fund for compensation benefits and services for injured workers and stability for employer payroll assessment rates. As Mr. Justice Tysoe noted in his 1966 Royal Commission report, “Stability of rates is desirable.” (p. 98)

Collective liability funding also provided an incentive for industry wide prevention measures. Hazards common to a particular industry can form the basis for an industry specific regulation to control that hazard. For example, fall protection for construction resulted from an industry wide focus on this hazard, based on the industry wide

[7] Royal Commission Reports can be accessed through this link: https://www.worksafebc.com/en/law-policy/law-and-policy-archives/reports

[8] Janet Patterson, *New Directions: Report of the WCB Review 2019. Available online at:* https://www.worksafebc.com/en/resources/law-policy/reports/new-directions-report-wcb-review-2019/report?lang=en

frequency for that type of injury. Industry associations often supported and promoted industry specific measures. A key objective under collective liability was to control the hazards before the injury occurred.

The adoption of full experience rating

The experience rating system for collecting employer assessments adopted by the Panel of Administrators in 2000 reorganized industry sectors into "classification units," placing the focus on insurance principles rather than a prevention focus.

Under experience rating each classification unit has a base assessment rate, but that rate is "adjusted" up or down for each employer in that classification unit depending on that individual employer's accumulated claims cost record over the previous 3 years. The adjustment can range from a 50% assessment "rebate" if the employer's claims cost is $0 to a 100% assessment "surcharge" if the employer has an exceptionally higher claim cost than the industry average. Where the employer's experience rate falls within this range can have a huge impact on the employer's annual assessment payment to the WCB.[9]

The adoption of experience rating has had a dramatic impact both on how employer assessments are calculated and also on prevention initiatives and workplace safety. Although experience rating was initially intended to stimulate safer workplaces, recent research shows that it has not achieved that effect and "…in some cases it has contributed to unsafe workplaces."[10] This funding change resulted in a significant change in focus for the employer and for the Board. Under collective liability, the focus was on collective prevention action at the industry level with the objective of controlling the hazards to prevent injuries in the first place. Under experience rating the focus shifted to the individual employer's claim cost record and on controlling the claim cost after the injury has occurred.

The introduction of experience rating, as a funding mechanism, has had an even more dramatic impact on benefit entitlement for injured workers in BC and on the integrity and functioning of the compensation system itself. This is the subject of this addendum.

Claim suppression study

[9] The WCB Experience Rating Plan is detailed in the 2020 "Practice Directive 5-247-3(A)" in the WorkSafeBC Administration's Assessment Manual. The experience rating calculator can be found online at: https://ercalcanon.online.worksafebc.com/Default.aspx

[10] Mansfield, L., MacEachen, E., Tompa, E., Kalcevich, C., Endicott, M., & Yeung, N. (2012). A critical review of literature on experience rating in workers compensation systems. *Policy and Practice in Health and Safety, 10*(1), 3-25. Now available on line at: https://doi.org/10.1080/14774003.2012.11667766

The 2020 IW & H claim suppression study defined claim suppression as any overt or subtle actions by an employer or its agent which have the purpose of discouraging a worker from reporting a work-related injury or disease. The study provided scientifically designed worker and employer surveys and examined WCB claim records to identify under-reporting and claim suppression in the B.C. compensation system. The study documented extensive under-reporting of workplace injuries and significant claim suppression activities in B.C. workplaces. Based on this research, the study indicated that the under-reporting rate for time-loss work injuries likely ranged between 40% and 60% of all workplace injuries requiring time off work.

By using a conservative estimate of unreported claims at 45% of all workplace injuries from the claim suppression study coupled with claims data from the 2019 annual report, I calculated that there were approximately 45,000 time-loss injuries not reported to the WCB in 2019 alone. For the estimated 45,000 unreported time-loss claims in 2019, I conservatively estimated that there were at least 225,000 lost days from work. Using a conservative measure of $225 cost per day we get $50,000,000 in 2019 borne by injured workers, their families and the public through taxpayer funded Medical Services Plan and other income support programs covered outside the WCB accident fund.[11]

What systemic conditions allow or foster such extensive under-reporting of workplace injuries and significant illegal claims suppression activities? In my view, there are two factors: the financial incentive provided by experience rating to control claim costs after the injury has occurred and the lack of enforcement of the provisions in Section 73 of the Act prohibiting claim suppression activities "by any means".

This addendum will focus on the primary role of experience rating and its significant impacts, including on employer activities around workplace injuries and benefit entitlement for injured workers. Independent research[12] shows that experience rating:

- provides a financial incentive to employers to under report work-related injuries and illnesses.
- has fueled a significant level of illegal suppression of claims for workplace injuries.
- can promote premature return to work before the worker can safely perform their work duties; and
- can provide a financial incentive to dispute legitimate claims often with hired consultants with experience in adversarial practices.

The WorkSafeBC administration's lack of effective enforcement of the basic requirements of the Act prohibiting under-reporting and claim suppression activities is also a factor which I will review as well.

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[11] The detailed calculations are contained in my 2022 addendum "Claim Suppression: The Elephant in the Workplace".

[12] For example see Ison (1986); Ison (2013); Mansfield (2012).

Failure to enforce reporting requirements

An employer's failure to report a time-loss injury to the WCB is a violation of the legal reporting requirements in section 150 of the BC *Workers Compensation Act*. Failure by an employer to meet this legal reporting requirement can result a penalty of $6,557.34[13] for a first offence under section 150(6) of the Act. Freedom of information (FOI) data show that these provisions are not systematically enforced. According to FOI data:

- In the 4-year period between 2018 and 2021, there were 4 investigations of employer reporting requirements under the enforcement of section 150 of the Act and no penalties imposed for failure to report time-loss injuries.

- In 2024, 20,264 claims were adjudicated without an employer's report of injury and there were zero (0) investigations under section 150(6) of the Act for an employer to meet its legal requirement to provide an employer's report of injury.

Based on documented evidence of tens of thousands of unreported injuries every year, this is a shocking lack of enforcement by WorkSafeBC's administration, the agency responsible for ensuring compliance with the employer reporting requirements in the *Act*.

Failure to enforce claim suppression prohibition

Claim suppression in BC is prohibited by section 73 of the *Act*. Section 73(1) of the BC *Act* prohibits an employer or supervisor from discouraging, impeding or dissuading a worker from reporting an injury, illness or hazardous condition to the Board by any means whatsoever. Section 95 of the *Act* provides for a penalty of up to $798,857.87[14] for an offence under section 73 (1) of the *Act*.

Freedom of information data show that between 2018 and 2021 there were 927 investigations by the Board under section 73(1) of the *Act* mostly related to reports of hazardous conditions and the right to refuse unsafe conditions. Over this 4-year period there were only 4 penalty assessments imposed by the Board for violation of section 73(1) for a total amount of $19,934.06 or $4,983.50 per penalty.

In November 2022 the Provincial Government added a new section 73(2) to the *Act*. This new section prohibited an employer or supervisor from discouraging, dissuading or impeding a worker from "making an application for compensation or receiving compensation". This was considered necessary by some to close a legal loophole, which they maintained could allow claims suppression.

[13] This 2019 penalty amount is subject to consumer price index annual adjustments.

[14] This 2019 maximum amount is subject to consumer price index annual adjustments.

In my view, the difference between the prohibition against preventing a worker from reporting an injury or illness and the prohibition against preventing a worker from making a claim for compensation is a distinction without a significant difference, since a worker reports an injury or illness to the Board by making an application for compensation for that injury or illness. Interestingly, a national health and safety publication[15] touted this minor change to the legislation with the headline "B.C. updates workers comp law to stamp out claim suppression…". In my opinion, this reflects the political spin attached to this cosmetic change.

In practice, the legislative change did not result in any significant increase in enforcement of section 73 by WorkSafeBC's administration. A 2025 Freedom of Information request indicated that for 2024:

- there were 8 investigations completed by WorkSafeBC under section 73(1) of the *Act* with 4 penalties imposed averaging $6,700 each.

- There were 6 investigations under the new section 73(2) of the *Act* with zero (0) penalties imposed by the Board.

Overall, the Board's failure to enforce the basic requirements of the Act prohibiting claim suppression must be seen in the context of experience rating and how, as a funding mechanism, it has changed both employer conduct and the Board's approach to compensation. The Board's lack of enforcement of the *Act*'s requirements and protections is, in my view, an underlying cause of extensive under-reporting of workplace injuries and illnesses and of deep-rooted claims suppression.

The impact of experience rating on compensation entitlement

Experience rating strikes a three-fold blow to injured worker's entitlement to benefits and rehabilitation under the *Workers Compensation Act*.

- First, claims that are suppressed or un-reported illegally deprive the injured worker and their family of their right to compensation payments.

- Second, experience rating has inhibited the inquiry system at the heart of workers compensation entitlement and reintroduced the adversary system where legitimate claims are often systematically opposed to keep claim costs down.

[15] *OHS Canada;* Nov. 1, 2022 https://www.ohscanada.com/features/b-c-updating-workers-comp-law-to-stamp-out-claim-suppression-require-re-employment/

- The third blow to injured workers is the pressure for workers to return to work as soon as possible, often before they can safely perform their job duties, exposing them to reinjury.[16]

Decision making in workers' compensation has a primary objective to ensure compensation entitlement is granted fully and fairly where it is due under the *Act*. The secondary imperative is that due benefits should be administered in a cost-effective manner that protects the integrity of the accident fund. In my 50 years of experience in and around the BC workers 'compensation system I have observed a subtle, but systematic shift in the decision-making focus with the transition from collective liability to experience rating.[17]

In my experience, decision making under collective liability encouraged decision makers to focus more as "guardians of entitlement" by granting due entitlement after inquiring into the circumstances of the claim. Decision making under experience rating encourages decision makers to focus more as "defenders of the accident fund" putting the onus on injured workers to prove their case. The challenge for policy makers is to ensure that the primary purpose of the legislation — to grant due entitlement to compensation benefits under the Act — is given priority while ensuring that entitlement is delivered in a cost-effective manner.

The distinction between decision making and decision makers is an important one. There are many decision makers employed by WorkSafeBC's administration who are committed to providing compensation entitlement where it is due and restoring injured workers to safe, productive and sustainable employment. Under experience rating these decision makers must themselves navigate the bureaucratic hoops and administrative hurdles that the compensation system under experience rating now requires. The computerized adjudication system introduced in 2008 that tracks and evaluates their benefit entitlement decisions is only one of these hurdles. Managerial oversight of the decision making process is also a factor that was identified when I conducted the 2018 review.

A return to a collective liability funding model would allow these decision makers to better meet their legal obligations as guardians of entitlement and reduce the pressure requiring a greater focus on being defenders of the accident fund.

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[16] The issue of restoring injured workers to safe, productive and sustainable employment is an important issue, particularly considering the rehabilitation provisions introduced by Bill 41. This issue is beyond the scope of this addendum and is better addressed by those who are directly involved in dealing with the emerging impact of Bill 41 on injured workers.

[17] Twenty-eight of those years were either as a workers 'adviser/advocate before 1990 or as an appeals adjudicator after 1990. I conservatively estimate that I was entrusted to handle over 4,000 cases either as an advocate or as an appeals decision maker with full access to documentation on the injured worker's confidential claim file.

The claim cost preoccupation under experience rating has become ingrained into the culture of the B.C. workers' compensation system. It permeates the decision-making process at the mundane claim management level where a decision on whether to accept a secondary condition in a complex claim can have significant cost implications for the employer's experience rated assessment and more importantly for the injured worker's benefit entitlement.

Experience rating also brings the adversary system back into play and undermines the inquiry system that was a cornerstone of the historic compromise. The transition from collective liability funding to experience rating funding sensitizes employers to the costs associated with each claim and incentivizes them to minimize those costs wherever possible and all to often by whatever means available. Employers who engage in under-reporting and illegal claim suppression gain a competitive advantage over responsible employers that fully meet their reporting requirements.

Experience rating in action: one worker's case study

The overall impact of experience rating on benefit entitlement for injured workers is extensive and in some individual cases can be tragic. Paul Henczel's book *Crushed Alive*[18] describes some of these impacts on injured workers under a compensation system that is driven by experience rating. I use excerpts from his book to illustrate some of these impacts from the perspective of an injured worker.

On February 9, 2010, Paul Henczel's life hung by a slender thread. Here is how he described it:

> *I was being crushed.*
> *Like in a terrible dream, I tried to scream but I wasn't sure if any sound passed through my lips. All I could hear was the crunch and gurgle of my bones and flesh being compressed beneath thousands of pounds of wood. The pressure in my head was so intense I wondered if it was on the verge of exploding.*
> *Is this how I'm going to die? I wondered. Is this it?*

Earlier I noted that experiencing rating provides a financial incentive for employers to dispute claims and has changed the compensation "entitlement" system itself. Mr. Henczel's case was no exception.

Early on in Mr. Henczel's claim a dispute arose about how long he was unconscious while crushed by thousands of pounds of large logs. One of his most serious injuries was the traumatic brain injury resulting from the lack of oxygen for a prolonged period. He had multiple rib fractures, and his right lung was punctured and collapsed, and he had a fractured sternum.

[18] Paul Henczel, *Crushed Alive* (2019); Affective Communications. Quoted with permission.

There was clear evidence that he was deprived of oxygen for well over 5 minutes, but the employer disputed this, apparently to question the severity of the injury. The compensation board followed the employer's lead. Henczel notes:

> *My insurance company has always attempted to minimize the time I was unconscious without oxygen, ignoring the facts.* (p. 53)

Mr. Henczel's near death experience that occurred in slow motion left him with a significant Post Traumatic Stress Disorder.

> *In July 2012, my insurance company concluded that all my physical injuries had healed and that my ongoing problems were due to "a pain disorder" implying that my pain was all in my head. That just made things worse because I knew that was not true. Furthermore, my practitioners, including my psychologist, knew this was not true. She always reported that everything I was experiencing was symptomatic of my PTSD and my medically documented physical injuries.* (Crushed Alive, P. 79)

Early in Mr. Henczel's case the "insurance company" pressured him to get physically demanding physiotherapy so he could return to work as soon as possible. He wrote:

> *I was pushed into physiotherapy too soon, made to do exercises someone with my injuries should not do …. Anytime my heartrate would increase, my migraines and post-concussive symptoms would follow immediately.* (Crushed Alive p. 34)

One of the vexing problems Mr. Henczel had to endure was the denial of his right shoulder injury by the "insurance company." He wrote that shortly after the accident:

> *Some of the worst pain I have ever felt came in the emergency room right before my CT exam. When the doctors had to raise both my arms over my head, it made my right shoulder feel like it was being ripped from its socket. From that moment, I knew I had a problem with my shoulder.* (Crushed Alive p. 61)

When his "insurance company" doctor didn't recognize the right shoulder problem, Mr. Henczel paid for an independent medical examination which documented atrophy of the right para-spinal muscles and "… *gross abnormalities of the right shoulder complex*." (P. 61).

Mr. Henczel points out that eight weeks after that independent exam was provided to his case manager:

> *…the insurance company case manager and medical advisers concluded that my shoulder injury had healed. (*p. 61)

> *Unfortunately, it took close to four [more] years to obtain the MRI of my right shoulder. That MRI revealed tears to my rotator-cuff and labrum tendons and tendonisis in two other tendons.*
>
> *The insurance company medical advisors [then] concluded that my documented shoulder lesions were the result of the aging process.* (p. 62)

After several successful appeals Mr. Henczel concludes:

> *Although my insurance company finally acknowledges my shoulder injuries, I am [at the time of publication] still awaiting approval for surgery. That company's neglect and denial of my injuries has been a complete injustice.* (p. 62)

Later in *Crushed Alive*, Mr. Henczel reflects on how he possibly survived that enormous slow motion crush of wood on February 9, 2010 and sheds some light on the significance of his shoulder injury:

> *I have only one explanation as to what could have possibly aided in my survival. My right arm and shoulder were crossed in front of my sternum, and took the brunt of the impact and force. I believe if my arm was not crossed in front of my body the way it was, my chest and major organs would have received the direct impact. This would have probably killed me. This is just my opinion, but I believe it makes sense.* (p. 109)

Based on my experience with individual compensation cases over the course of my 50 years in and around BC's compensation system, the treatment Mr. Henczel experienced of systematic denial at the hands of his "insurance company" is not unusual. To be sure, very few claims are as complex as Mr. Henczel's, and not all workers receive the same level of systematic denial that Mr. Henczel experienced. However, based on my direct experience too many injured workers are faced with a subtle, and sometimes not so subtle, system of denial of due entitlement under the shadow of experience rating.

Mr. Henczel refers to the compensation system as the "insurance company" and this is especially insightful. The transition from collective liability to an experience rating system has attracted many of the negative trappings often associated with the insurance industry. In my experience the compensation "insurance" system ensures that the accident fund is now managed with a view to minimizing claim costs for employers, all too often at the expense of due entitlement to the injured worker.

In September 2024 B.C. employers called for the WCB to distribute to employers the $2 billion "surplus" achieved under experience rating. Instead, the WCB used the "surplus"

to subsidize employers 'experience-rated assessments[19]. A 2023 media report indicated the WCB: "spent $1.7 billion on subsidizing payments for employers from 2019 to 2023 alone."[20]

As compensation system reviewer Janet Patterson pointed out in her 2019 comprehensive report *New Directions: Report of the WCB Review*[21]:

> *After 2002, the [compensation] Board began to identify itself as a special type of insurance company created by the Government….*
>
> *Absent from the insurance model is any recognition that workers and employers are stakeholders, and equal stakeholders, in a compensation system. Employers are premium paying "customers" and the system's role is to provide "coverage" (not compensation) for insured events (injury). The obligation for oversight is for the "well-being" of the compensation system. Workers as legitimate participants are invisible.* (p. 47-48)

The shift from collective liability funding to experience rating has subtly but systematically shifted BC's workers 'compensation system from an "entitlement" focus based on the original inquiry system established under the historic compromise to a "disentitlement" focus under the adversary system incentivized by experience rating.

Restoring the balance

The imbalance in the B.C. workers 'compensation system has reached a critical juncture. Compelling independent and reliable evidence shows that the current experience rating funding mechanism is providing a financial incentive for far too many employers to under-report workplace injuries and to engage in illegal claim suppression. The financial incentive impact of experience rating is contrary to the purpose of the *Workers Compensation Act* to grant compensation for all injuries and illnesses arising out of a worker's employment. This financial incentive undermines the integrity of BC's workers 'compensation system itself.

But it gets worse. The available evidence shows that the enforcement of the employer claim reporting requirements and the prohibition against claim suppression are virtually non-existent. In my view, this lack of effective enforcement should serve as a major

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[19] WorkSafeBC should provide rebates with $2billion surplus: lobby group", Vancouver Sun, September 1, 2024. online at: https://www.cbc.ca/news/canada/british-columbia/worksafebc-surplus-small-business-1.7310770

[20] "What to do with WorkSafeBC's Giant Pot of Money?"; The Tyee, October 2023. Online at: https://thetyee.ca/News/2023/10/03/WorkSafeBC-Pot-Money/

[21] Janet Patterson, *New Directions: Report of the WCB Review 2019. Available online at:* https://www.worksafebc.com/en/resources/law-policy/reports/new-directions-report-wcb-review-2019/report?lang=en

embarrassment to WorkSafeBC's administration. The WCB has recently established an OH&S "team" to investigate claim suppression under section 73 of the *Act* along with a range of other issues. There has been some media coverage resulting from this initiative.[22]

Claim suppression investigations are largely complaint driven and are processed somewhat bureaucratically from the claim adjudicator who may receive the complaint. The complaint is referred to the adjudicator's manager, then to the field investigation department, and eventually to the OH&S team's prevention officer to address the complaint. WorkSafeBC's administration did not see the advantage of my 2018 recommendation #20 that the administration adopt a streamlined referral where the claim adjudicator would document the allegation of claim suppression and refer it directly to the Board's legal department for direction and action. Based on the available evidence, the "process" adopted by WorkSafeBC's administration it is, in my view, too little and too late. The horse left the barn a long time ago.

In the 2012 Ontario report "Funding Fairness"[23], author Harry Arthurs addressed the emerging evidence that experience rating in Ontario was creating incentives for abuse such as claim suppression. Arthurs concluded that this evidence of claim suppression created "a moral crisis" for the Ontario Board since it had "failed to take adequate steps to forestall or punish illegal claim suppression practices." (p.81). Arthurs added:

> Unless the WSIB is prepared to aggressively use its existing powers — and hopefully new ones — to prevent and punish claim suppression, and unless it is able to vouch for the integrity and efficacy of its experience rating programs, it should not continue to operate them." (p. 81)

The BC compensation system is in a far worse position now than Ontario was in 2012. WorkSafeBC has received clear and compelling evidence in the IW&H claim suppression study documenting the nature and extent of claim suppression in B.C. The failure of WorkSafeBC's administration to take substantial measures to stop under-reporting and claim suppression in response to this compelling evidence, makes it a complicit partner in the "moral crisis" that now undermines BC's compensation system.

The B.C. Provincial Government provides oversight on the Workers' Compensation Board and is ultimately responsible for ensuring that the B.C. workers 'compensation

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[22] Dacre, C. (2024, May 23). *WorkSafeBC fines Kelowna company over 'claim suppression'.* Castanet. https://www.thesafetymag.com/ca/topics/safety-and-ppe/furniture-manufacturer-fined-for-allegedly-dissuading-worker-from-reporting-injury/491317.
For more detailed local coverage of this interesting case see: https://www.castanet.net/news/Kelowna/488770/WorkSafeBC-fines-Kelowna-company-over-claim-suppression-#:~:text=WorkSafe

[23] Harry Arthurs, *Funding Fairness;* available online at https://www.wsib.ca/sites/default/files/2019-03/fundingfairnessreport.pdf

system is administered in accordance with the purpose of the *Workers Compensation Act.* The available evidence shows that WorkSafeBC's administration has pursued a path through experience rating that undermines the very integrity of BC's workers' compensation system.

In the late 1990's the WCB's governing Panel of Administrators enacted the new policy to fully implement an experience rating funding mechanism. Based on my 50 years of direct experience with the BC workers compensation system, it is my opinion that experience rating has failed injured workers and has betrayed the fundamental principles of the historic compromise initially established between the worker and employer communities.

More than four years after the IW&H claim suppression study, the WorkSafeBC administration has not taken any substantial measures to reverse the impact of experience rating on injured workers. The time has come to echo Harry Arthurs ' guidance and address the "moral crisis" fostered by experience rating and discontinue the corrosive policy of experience rating.

In my 2018 report to the Minister and the WCB Board of Directors, "Restoring the Balance", I made 34 recommendations, most of which the WorkSafeBC administration has implemented. In my 2022 addendum— "Claim Suppression: the elephant in the workplace" — I summarized key findings from the IW&H claim suppression study and offered 13 recommendations for WorkSafeBC's administration to consider. Those recommendations were directed primarily toward preventing under-reporting of workplace injuries and illnesses and claim suppression activities. Those recommendations were largely ignored by WorkSafeBC's administration.

For the reasons provided in this addendum, I now call on the WCB Board of Directors to discontinue the policy of experience rating and to take the necessary steps to reinstate collective liability as the primary funding mechanism for the BC Workers 'compensation system.

I therefore add the following recommendation to my original report:

Recommendation 35.

That the WCB Board of Directors initiate the steps necessary to transition from the current experience rating system to a collective liability focused funding mechanism in consultation with representatives from the worker and employer communities and with injured workers.

Since the move to fully embrace experience rating in the 1990's was a policy decision by the then governing Panel of Administrators, it is open to the now governing WCB Board of Directors to set in motion the steps necessary to change this policy.

As a first step, the Board of Directors may wish to study the collective liability funding mechanism in the Yukon. The Yukon's "Super-Assessment Policy" offers a creative "modification" to experience rating, using a collective liability focus[24]. The Yukon Super-Assessment policy provides leadership in Canada to re-establish the principle of collective liability and places the priority on incentives that promote prevention initiatives and control of the hazards that cause injuries in the first place rather an incentive on controlling the claim costs after the injury has occurred.

BC's Provincial Government has the final responsibility to ensure that the *Workers Compensation Act* is administered to achieve the primary purpose of the legislation to provide full and fair compensation for workplace disablement and restore injured workers to safe, productive and sustainable employment. The WCB Board of Directors have the primary responsibility to establish policy direction that will ensure that injured workers receive the compensation benefits that they are legally entitled to under the *Act*. I urge the Board of Directors to act decisively on this important policy issue.

Paul Petrie
April 17, 2025

[24] Yukon WCB "Super-Assessment Policy", available online at: https://www.wcb.yk.ca/policies/employer-assessments/5-8-super-assessment