



August 2, 2019

Ralph McGinn
Chair, Board of Directors
WorkSafeBC
P.O. Box 5350 Station Terminal
Vancouver BC V6B 5L5

Dear Mr. McGinn:

**Re: Bogyo Report: Balance. Stability. Improvement. Options
For the Accident Fund**

The Employers' Forum would like to respond to the recently released report written by Terry Bogyo titled: *"Balance. Stability. Improvement. Options for the Accident Fund"*.

By way of background, the Employers' Forum, established in 1992, is an organization representing employers from major sectors of the provincial economy, including forestry, oil and gas, manufacturing, construction, retail, agriculture, marine, tourism, services, professions, technology, food processing, road builders, utilities, transportation, trucking, security, education, health, municipal and other public sector employers. Our members are small, medium and large employers. The primary focus of the Employers' Forum is the British Columbia workers' compensation system. We currently represent over 75 employers and employer organizations. Our current membership list is available at the Employers' Forum [website](#).

The process behind the report is of considerable concern. We understand Mr. Bogyo was engaged by you, as Chair of the Workers' Compensation Board, to write a report for the Board of Directors which identifies options to spend surplus funds accrued by WSBC in prior years. While Mr. Bogyo included elements of his Terms of Reference in page 2 of the preamble which speak to fiduciary responsibility, we remain unclear on the originating mandate of this report. Specifically:

- Was Mr. Bogyo directed to find options to spend a specific amount on compensating injured workers, or was he simply asked to identify areas where he believed changes are necessary?
- If asked to spend to a targeted level, how was that level determined?

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- Was any consideration given to funding injury prevention initiatives, innovation and research, or was the mandate narrowed to simply spend accrued funds?

While Mr. Bogyo made himself available during his research period, we remain extremely disappointed with the lack of structured consultation. Originally, Mr. Bogyo was not going to meet with stakeholders to receive feedback, but a few stakeholders asked to be consulted with once they heard his review was underway. The Employers' Forum conversation with Mr. Bogyo was relatively short, and only a few options were discussed in any detail. There were no written Terms of Reference for his review which was very different from the Petrie Review and the current Patterson Review where feedback from the employer community and all stakeholders was sought and encouraged.

The lack of consultation and transparency is not Mr. Bogyo's issue *per se*. Rather, it would seem he was responding to a vaguely defined review sought by WorkSafeBC under an unrealistically short timeframe. Fully seven months after receipt by the WorkSafeBC Board of Directors, a number of informal and a formal request for its release, and vague references to the report in the Terms of Reference 1(f) for Ms. Patterson's ongoing review, it has apparently informed policy and legislative deliberations at WorkSafeBC, within the Ministry of Labour and, we gather, the provincial Treasury Board. The report was finally posted to the Patterson Review website on July 18, 2019, one day before the close of Ms. Patterson's consultation process on July 19 and one day AFTER the Employers' Forum supported by 45 employer organizations made its formal submission. I think you would agree this is not acceptable, despite Ms. Patterson granting an extension to accommodate further submissions on Terms of Reference 1(f) in her Review which references the Bogyo report.

Mr. Bogyo's report does include some excellent work outlining the underpinnings and financial construct of the compensation system, yet the report merely provides a list of concepts and options which are not linked to an overall vision for the direction for the workers' compensation system. We believe some of the recommendations put forward by Mr. Bogyo merit further deep examination and discussion as they address issues that we have previously identified as problematic. Meanwhile, other options identified in Mr. Bogyo's report threaten the very stability and financial solvency of the workers' compensation system.

At this juncture, and mindful that proper stakeholder consultation has not been undertaken on the concepts within the "Bogyo Report", we would like to highlight some **initial considerations** for you, the Board of WorkSafeBC, and the provincial government which are critically important:

- 1) The notion of a **surplus** must be more fully understood. Current analysis may indicate a surplus of widely varying amounts, but the question of how a surplus is defined in the BC workers' compensation system remains. Is it simply the amount in excess of funds needed to meet certain obligations, or is it any amount above a 110%, 120%, or 130% funded threshold? Should WSBC adopt insurance industry capital adequacy levels (we

note the Board of Directors of WSBC established a Capital Adequacy Reserve of 130% in 2017)? To examine this concept outside the practical operational reality faced by WSBC is very problematic. As noted by Mr. Bogyo, WSBC weathered the global financial crisis of 2008-2010 very well due to its solid financial position. Making spending choices without a cohesive vision and without shared priorities invites instability within the current workers' compensation system which is a well-functioning, "best in class" system.

- 2) In our view, of the various options identified in Mr. Bogyo's report, **retroactivity** is extremely problematic. The employer community has generally expressed the view that refunds or rebates of a notional WSBC surplus should not be paid to employers. In a similar vein, we do not support any form of retroactivity being paid to workers. In Mr. Bogyo's words: "WorkSafeBC's strong financial position is not accidental *but it is fortuitous.*" WSBC's diligence and focus has mitigated risk, and change at this point to spend a notional surplus created in part by fortune is ill-advised.

Past experience in BC suggests that retroactive spending creates future financial problems. The half billion-dollar ICBC and BC Hydro rebate programs of the early 2000s demonstrate that when Crown Corporations shift focus away from forward-looking operations to retroactive spending, the result is capital inadequacy, capital and operational funding issues, and significant rate pressures. Experience within the BC workers' compensation system has shown that spending retroactively such as rebates to customers or ratepayers, payments to injured workers, or rebates to employers that fund the program leads to intense cost pressures which are antithetical to principles of sound financial management.

- 3) WSBC faces significant **cost headwinds** going forward. Last year was the first assessment year for the Canadian Actuarial Standards Board's requirement for compensation funds to recognize latent occupational disease liability. In 2013, WSBC was required to absorb a balance of \$329 million, a rate slightly over 3% of liabilities. In 2018, this rate was increased for prior liabilities to approximately 4% for the next 5 years, resulting in a \$194 million increase for 2018 alone. This amount is unpredictable and is outside WSBC's smoothed financial statements.

The prediction of **actual costs** related to long latency of occupational diseases also remains elusive. For example, epidemiological assessments for asbestos related deaths were predicted to peak in 2005 falling thereafter, but this has not occurred. An aging population also presents challenges for recovery from injury, and a rapidly changing job market creates challenges for injured workers to transition to different employment. We note that during a presentation to our group in the second quarter of 2017, WSBC's Senior Vice President advised us that the heavy, protracted snow accumulation in winter 2016-17, particularly on the south coast and southern Vancouver Island led to a measurable

increase in aggregate injury rates and claims costs. Given that the workers' compensation system is subject to the vagaries of external actuarial bodies and markets, known uncertainty in key cost-drivers, and susceptibility to factors such as weather, contemplating spending billions of dollars of a notional surplus retroactively on the basis of a report which has not received proper input from stakeholders is very ill-advised.

4) It is critical to address the apparent **philosophical sentiments** expressed in the report and the stakeholder views summarized throughout the document. There is a perception that the workers' compensation legislative reforms in 2001-2003 were undertaken with a view to limiting economic exposure and to take benefits away from injured workers. In fact, all reforms passed during this period, except for one, sought to bring British Columbia's workers compensation benefit levels and scheme into line with other Canadian jurisdictions. The one exception, the change to methodology for cost of living adjustments, was done to address the emerging economic sustainability of the system at the time. That the system is now stable and sustainable should not alone be justification to spend the surplus. Rather, a surplus represents an opportunity to evaluate and determine how best to address emerging needs and trends within the workplace and workers' compensation moving forward. The forward-facing costs identified by Mr. Bogyo represent a 10% increase to premiums going forward. *This is in addition to any increase in premiums required for factors outlined above, and other unknown and unanticipated costs.*

We believe heightened prudence is called for in the workers' compensation system, particularly with economic forecasts being revised downward due to a dramatic cooling of urban housing markets and mill closures and curtailments in the forest sector. We also question the wisdom of spending surplus funds in the absence of comprehensive stakeholder engagement in light of recent indications that the provincial government has entered into a period of austerity as provincial revenues tighten.

All forward-looking options identified by Mr. Bogyo are worthy of further detailed close examination, analysis and comprehensive stakeholder feedback. We urge the Board of Directors of WorkSafeBC and, by extension, the Government of British Columbia to take the time necessary to engage properly with key communities of interest in BC's workers' compensation system before there is any further internal consideration of, or action taken on, Mr. Bogyo's report.

We look forward to discussing this Report and how best to maintain the sustainability and stability of the system with you, and would be pleased to meet with you at your earliest convenience.

If you have any questions, please contact me at in my office at 778-265-8813 or on my cell: 604-790-0126. We look forward to meeting with you.

Yours truly,

A handwritten signature in blue ink, appearing to read "Doug Alley". The signature is stylized and cursive.

Doug Alley
Managing Director

CC:

Honourable Harry Bains, Minister of Labour

Mr. Don Wright, Deputy Minister to the Premier, Secretary to Cabinet and Head of the BC Public Service

Mr. Trevor Hughes, Deputy Minister of Labour

Mr. Fazil Mihlar, Deputy Minister, Jobs, Trade and Technology

Ms. Anne Naser – President and CEO, WorkSafeBC