

September 15, 2020

Honourable Harry Bains
Minister of Labour
Government of British Columbia
Room 342
Parliament Buildings
Victoria, BC V8V 1X4

Submitted via Email: Harry.Bains@gov.bc.ca

Dear Minister Bains:

Re: Report of Ms. Janet Patterson -- *New Directions: Report of the WCB Review 2019*

We are writing in response to Ms. Janet Patterson's report on BC's worker's compensation system which was submitted to you on October 30, 2019 and released publicly on August 26, 2020.

You will recall the employer community, represented by 46 small, medium and large business associations, withdrew from Ms. Patterson's review in August, 2019 citing an apprehension of bias. The circumstances surrounding the apprehension of bias and the subsequent withdrawal of 46 associations from Ms. Patterson review process were outlined in correspondence to Ms. Patterson copied to you, Premier Horgan and senior government officials on August 14, 2019. For your information and convenience, we have attached the original correspondence.

We have reviewed Ms. Patterson's report and have some comments on the document.

At page 3 of her report, Ms. Patterson incorrectly states the Employers Forum (alone) withdrew from her process. She does not acknowledge that a comprehensive 38-page submission and subsequent correspondence withdrawing from her process were signed by 46 business associations representing the full spectrum of small, medium and large employers in British Columbia. In ignoring this fact, Ms. Patterson understates the weight of the business community's original submission(s) and subsequent correspondence withdrawing from her process. At page 32 of her report, Ms. Patterson states that a written submission from the Employers Advisors Office, a public agency, adequately summarized "many of the issues and comments made by employers in their questionnaire responses". Ms. Patterson goes on to state:

"... these concerns *likely* represent the views of medium and small employers who have different business circumstances and perhaps less experience in compensation matters than the large employers represented by the Employers Forum".

Ms. Patterson mischaracterizes the business community's input in her report in two ways. First, both the submission to her process and subsequent correspondence withdrawing from it were

signed off by leaders of 46 associations representing small, medium and large employers; the Employers Forum led the business community response, but was only one of the 46 signatories. Second, the Employers' Forum also includes a number of business associations representing small, medium and large employers including, notably, leading cross-sectoral associations such as the Canadian Federation of Independent Business, the BC Chamber of Commerce, and the Business Council of BC (among a number of other sectoral associations). Combined, these associations represent the vast majority of the over 500,000 firms of all size in British Columbia that are affected by WorkSafeBC policies.

Our review of Ms. Patterson's report confirms that our decision to withdraw from her review was the correct one. The report recommendations are neither practicable, nor financially viable under the century old 'historic compromise' where workers traded the right to sue in tort in exchange for an employer-funded no-fault insurance system. Simply stated, if Ms. Patterson's report is implemented the financial stability and operational viability of BC's workers' compensation system will be jeopardized.

We therefore seek confirmation from you of the following:

- That your government is receiving the Patterson Report for information only;
- That Ms. Patterson's view of creating a "worker-centric" social program beyond the 'historic compromise' does not align with your government's vision for WorkSafeBC; and,
- That your Ministry will not engage in any further work on, or implementation of, recommendations contained within the report.


We look forward to your response. Thank you in advance for your consideration.

Sincerely,





Doug Alley
Managing Director

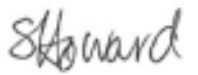



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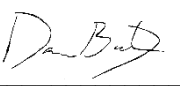



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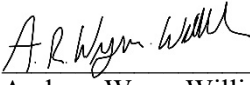



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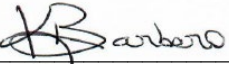



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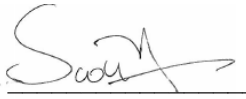



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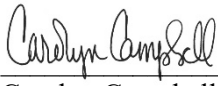



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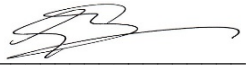



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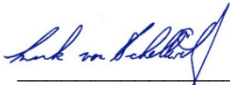



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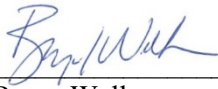



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Government Relations, BC

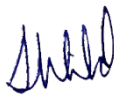



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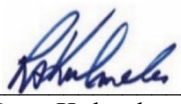



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CEO




Walt Judas
CEO




Fiona Famulak
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CC: Honourable John Horgan, Premier of British Columbia
Mr. Geoff Meggs, Chief of Staff to Premier Horgan
Mr. Don Wright, Deputy Minister to the Premier, Secretary to Cabinet and Head of the Public Service
Mr. Trevor Hughes, Deputy Minister of Labour

Attachments:

Correspondence to Ms. Janet Patterson, Reviewer, Workers' Compensation System Review,
August 14, 2019

Attachment – Correspondence to Ms. Janet Patterson, Reviewer, Workers’ Compensation Review, August 14, 2019.

Ms. Janet Patterson
Reviewer
Workers’ Compensation System Review
PO BOX 97122 Stn Main Richmond, B.C.
V6X 8H3

Via email: Info@wcbreview.ca

Dear Ms. Patterson:

Further to your ongoing Review of the BC Workers’ Compensation System, we received a Memo from you dated August 6, 2019 (as amended on August 8, 2019) which sets out the “selected issues” which the Reviewer will be seeking further consultation from the Key Stakeholders in the British Columbia Workers’ Compensation System (the “August Memo”). This response letter is endorsed by 46 sectoral and cross-sectoral business organizations which collectively represent small, medium and large businesses in virtually all aspects of the British Columbia economy.

The Employer Community is quite taken aback and dismayed with the extremely broad and far-reaching scope of these “selected issues” and, after giving the matter due consideration and consulting with various representatives within the Employer Community, we have determined that we have no choice but to cease all participation in the Review’s process, effective immediately. We have reached this decision based on the following considerations:

- (i) The Reviewer has previously referred to the scope of her Review as being “limited” (which, as noted on pages 1 and 2 of our previous submission to the Reviewer dated July 19, 2019, was consistent with the statement made by the Minister of Labour at a meeting of the Council of Construction Associations of B.C. on June 6, 2019, where he referred to the Review as being a narrow review which is designed to improve the effectiveness of WorkSafeBC, to improve the navigation of claims through the workers’ compensation system, and to review WorkSafeBC’s practices – and not to make wholesale changes to the workers’ compensation system).

In our view, the all-encompassing nature of the “select issues”, which the Reviewer now intends to consider as being within the scope of the Review, is fundamentally different from the Reviewer’s previous characterization of her Review being limited in its focus. To the contrary, with respect to the compensation scheme set out in Part 1 of the Workers Compensation Act, in our view the Reviewer has expanded the scope of the Review to cover all aspects of the compensation system – a Review which, in our opinion, is as broad and far-reaching as that previously conducted by the Royal Commission on Workers’ Compensation in British Columbia in its Final Report dated January 20, 1999, and the subsequent Core Services Review of Workers’ Compensation Board – Major Law and Policy Issues Final Report dated March 11, 2002.

- (ii) In its July 2019 submission to the Reviewer, the BC Federation of Labour stated the following (on page 4):

In 2009, the BCFED commissioned a group of the best and most experienced worker advocates to write a report on the impact of the 2002 legislative changes on injured workers and to make recommendations to repair the damage. This report “Adding Insult to Injury” remains the foundational document to this day. Indeed, many of the recommendations we will make in this report are from the 2009 document. We resubmit that paper with its recommendations along with this submission.

The current Reviewer was one of three co-authors of the Report commissioned by the BC Fed in 2009, entitled “Insult to Injury – Changes to the BC Workers’ Compensation System (2002-2008): The Impact on Injured Workers” (the “2009 ‘Insult to Injury’ Report”). On page 47 of the 2009 ‘Insult to Injury’ Report, the authors set out their “Conclusion” as follows:

It was tempting during the course of preparing this Report to pragmatically focus on only a few of the most destructive changes made in recent years to the compensation system in BC and to focus on only a few recommendations for correction. However, it became clear to us as we attempted to articulate the experiences of injured workers and their advocates that the changes were designed and have acted to work together to produce a whole much greater than the sum of the parts. That whole has so seriously undermined the workers’ compensation system in this Province that piecemeal correction cannot correct the systemic defects that have been produced.

We have described the current state of the system as a labyrinth littered with jurisdictional pitfalls and minefields, the result of a systematic attack on both benefits and the decision-making process. In our view, only a systematic approach can hope to remedy the result.

The authors then listed a Summary of the 24 Recommendations which, in their view, represented the “systematic approach” they believed were required to remedy the “systematic attack on both benefits and the decision-making process” to the compensation system in BC. What is most striking to the Employer Community is that the “selected issues” set out in the Reviewer’s August Memo encompass all (but one) of the 24 Recommendations set out by the authors of the 2009 ‘Insult to Injury’ Report.

In our view, this scenario raises an apprehension of bias in the Review process based on the fact that the Reviewer was one of the authors of the 2009 ‘Insult to Injury’ Report commissioned by the BC Fed which contained 24 Recommendations to provide a systematic approach to “correct the systemic defects” that the authors were of the view had been produced in the workers’ compensation system. The Employer Community raises the question as to how the Reviewer can at the present time consider, in an impartial and balanced manner, those “selected issues” set out in her August Memo on which she had previously, and emphatically, reached conclusions and made recommendations?

In conclusion, Item #3 of the March 4, 2019 Terms of Reference provides:

The review will be undertaken by an individual (Janet Patterson) with experience in the workers’ compensation system, who is appointed by the Minister and who will approach the review in an independent, impartial, and balanced manner.

For the reasons set out above, the Employer Community has lost confidence that the Review can be conducted in an “independent, impartial and balanced manner”. Accordingly, we have reached the decision to not participate any further in any aspect of the Review process. Although this decision was not made lightly, we can no longer lend any credibility to the Review by participating in a process which we believe lacks independence, impartiality and balance.

Sincerely,



Doug Alley
Managing Director



Greg D'Avignon
President & CEO



Richard Truscott
Vice President,
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Interim CEO



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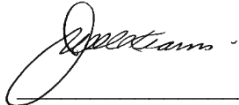


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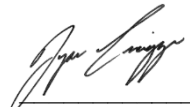



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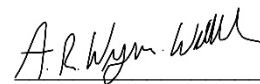



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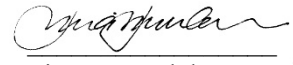


Walt Judas
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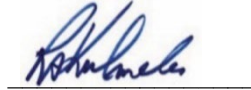



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CC:

Honourable John Horgan, Premier of British Columbia

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, Ministry of Labour

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

Mr. Andrew Wilkinson, Leader of the Opposition

Mr. Andrew Weaver, Leader of the Green Party