

# Claim Suppression: The Elephant in the Workplace



An Addendum to the 2018 report:

## **"Restoring the Balance: A Worker-centred Approach to Workers' Compensation Policy"**

to the Board of Directors

Workers' Compensation Board

Paul Petrie March 9, 2022

## Introduction

This is an Addendum to my 2018 report *Restoring The Balance: A Worker-centred Approach to Workers' Compensation Policy*<sup>1</sup> to the board of directors of the BC Workers' Compensation Board<sup>2</sup> (WCB).

In that 2018 report I addressed the issue of claim suppression in a limited way given the 8 week period to complete my review and the limitation of available data to address the claim suppression issue. I recommended that the WCB initiate an independent review of claim suppression by a qualified organization with a scientific methodology to determine the nature and extent of claim suppression. To the WCB's credit they commissioned the recommended review.

The commissioned independent report, now released, is "*Estimates of the Nature and Extent of Claim Suppression in British Columbia's Workers Compensation System*"<sup>3</sup>. The findings in the Claim Suppression Study (Study) indicate a high level of under-reporting of work-related injuries or diseases. And even with the challenges for documenting claim suppression, the Study found evidence of a significant level of claim suppression activity that likely occurs in BC workplaces.

This Addendum addresses this new evidence of under-reporting and claim suppression and its implication for policy more fully than was possible in my 2018 report.<sup>4</sup>

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<sup>1</sup> *Restoring The Balance: A Worker-centred Approach to Workers' Compensation Policy*, found online at: <https://www.worksafebc.com/en/resources/about-us/reports/restoring-balance-worker-centered-approach?lang=en>. The 2018 report was commissioned in consultation with the Minister of Labour.

<sup>2</sup> Although the Workers' Compensation Board is now operating as "WorkSafeBC", the Workers Compensation Act refers to the Workers' Compensation Board as the legal entity under the Act and I refer to the Workers' Compensation Board (WCB) to identify the overall workers' compensation system covered by the Act in this Addendum. The "Board" is also the common term used in the Rehabilitation Services and Claims Manual (RSCM II) to refer to the Workers' Compensation Board and the WorkSafeBC administration.

<sup>3</sup> "Estimates of the Nature and extent of Claim Suppression in British Columbia's Workers Compensation System"; Dec. 2020. Found online at: [https://www.iwh.on.ca/sites/iwh/files/iwh/reports/iwh\\_report\\_claim\\_suppression\\_bc\\_dec\\_2020.pdf](https://www.iwh.on.ca/sites/iwh/files/iwh/reports/iwh_report_claim_suppression_bc_dec_2020.pdf). The research was supported by funds from the BC WCB Research Program.

<sup>4</sup> I should note that this addendum was not requested by the WCB or by the Minister of Labour and has been completed as a *pro bono* follow-up contribution to my 2018 report. The cover art is by my 10-year old granddaughter.

## Claim Suppression: The Elephant in the Workplace

In the 1917 "Historic Compromise" on which the BC workers' compensation system is built, workers gave up their right to sue negligent employers for workplace injuries in exchange for prompt compensation for all workplace injuries to be fully funded through assessments paid by employers into the accident fund. The *Workers Compensation Act (Act)* prohibits any activity that compromises an injured worker's entitlement to compensation and requires employers to report all workplace injuries that require medical treatment.

Under-reporting of work-related injuries and suppression of injured worker claims undermine the foundational principles on which the BC workers' compensation system is based by depriving injured workers of due entitlement under the Act while "relieving" employers of their obligation under the Act to cover the costs of all work-related injuries. The integrity of the BC workers' compensation system rests on this balance of rights and responsibilities.

### **The Claim Suppression Study**

In their December 2020 Claim Suppression Study the Institute for Work and Health (IW&H) and Prism Economics detailed the results of their three-part research into claim suppression and claim under-reporting including:

- A worker survey based on a randomly selected study group of 699 workers who had experienced a work-related injury between 2017 and 2019 from an Ipsos pool. The sample was adjusted to represent the BC workforce and included Cantonese, Mandarin and Punjabi speaking workers. The survey provided an estimate of the degree to which non-claiming or under-claiming of work-related injuries is an indicator of claim suppression.
- An employer survey of 150 employers conducted by Ipsos from a representative sample of BC industries based on their share of WCB claims with an adjustment for the construction, transportation and warehousing industries based on their higher claims rates. The employer survey was designed to identify possible indicators of claim suppression.
- A WCB claim survey that reviewed 1,043 no-time loss claims to identify indicators of lost time from work that was not claimed. The claim survey also reviewed 601 time-loss claims that were rejected, suspended or abandoned to determine if there was evidence that suppression was involved in the worker's decision not to proceed.

The Study authors are careful to point out that:

*While neither survey evidence nor file analysis enable us to draw definitive conclusions about under-claiming, misrepresentation and claim suppression, these research procedures nevertheless do provide us with a basis for estimating the approximate magnitude of the risk that work-related, time loss injuries were not reported accurately (or at all) and that the affected workers did not receive the compensation to which they were likely entitled under the Workers Compensation Act. (Study p. 12)*

### **I. The Worker Survey**

The worker survey provides an excellent method to estimate the extent of under-claiming in a representative sample of BC workers. The worker survey included a randomized sample of 699 workers who experienced a work-related injury between 2017 and 2019. The study provided extensive data from the worker survey and many of the key findings are summarized in Appendix A to this report.

Of the 699 who experienced a work-related injury, 85.6% (595) missed one or more days from work. Of the 595 workers who missed time from work only 37.5% (223) applied for workers' compensation benefits while 366 (61.5%) did not apply (Finding #1 Appendix A).

#### *(a) The impact of under-claiming*

Before addressing the reasons for this significant under-claiming we need to consider the impact of this finding on the overall system as well as the costs associated with this key finding. One way to gage the broader impact of this finding is to apply this data from the randomized survey to WCB claim statistics for 2019 to estimate the approximate magnitude of the risk that work-related time-loss injuries were not claimed by the injured worker.

There were 52,226 "short-term disability" (STD) claims with 1 or more days lost from work that were first paid by the WCB in 2019. It would be simplistic and inaccurate to suggest that since the representative sample of injured workers indicated that 37.5% of the sample filed a claim with the WCB, then the 52,226 time loss claims would repre-

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sent 37.5% of the total number of work-related injuries in 2019. This would suggest that there were approximately an additional 85,000 (61.5%) unclaimed time loss injuries. However, some adjustments are required to provide a more realistic and reliable estimate of unclaimed time-loss injuries in 2019.

The WCB classifies some new claims as a "serious injury" based on the severity of diagnosis and these make up 13% of all STD claims. It is less likely that a serious injury will go unclaimed and it is appropriate to reduce the preliminary estimate of 85,000 unclaimed time-loss injuries to take into account a proportion of claims that involve "serious injuries". To err on the side of caution, I have used a 26% reduction to reflect the percentage of serious injuries. This reduces the preliminary estimate of 85,000 by 22,100 to an adjusted rate to 63,900 unclaimed time-loss injuries.

A second adjustment is required to take into account the percent of claims that are generally denied during the adjudication process. The WCB claims "disallow" rate for 2019 was 7.3%. I assume that unclaimed injuries would likely have a higher claim denial rate if adjudicated. I have applied a further 21% reduction to the 63,900 adjusted rate assuming a significantly higher claim denial rate for unclaimed time-loss claims. This reduces the previous adjusted rate by a further 14,058 to the adjusted rate of 49,842. **Out of an abundance of caution, I have estimated the unclaimed time-loss injuries in 2019 at 45,000 with a likely range between 40,000 and 50,000 unclaimed time-loss injuries. This represents 46.3% of the total projected disabling injuries in 2019 taking into account unclaimed injuries.**

This estimate falls somewhat above the 40% rate of under-claiming rate found by Shannon and Lowe in their 2002 study<sup>5</sup>, and significantly below the 65.4% under-claiming rate in the more recent (2020) study by Nadalin and Smith<sup>6</sup>. After reviewing the literature and the data in the Claim Suppression Study, the authors conclude:

*We cannot say with certainty, therefore, whether the [under-claiming rate of 61.5% in the] survey undertaken for this report over-estimates or accurately estimates the incidence of under-claiming WorkSafeBC benefits. In any event, there is no reason, based on the survey data to suggest that the actual*

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<sup>5</sup> Shannon H, Lowe G. How many injured workers do not file claims for workers' compensation benefits? *American Jn. of Industrial Medicine*, 2002;42:467-473.

<sup>6</sup> Nadalin V, Smith PM. Examining the impact of occupational health and safety vulnerability on injury claim reporting in three Canadian Provinces. *American Jn. of Industrial Medicine*, 2020;63: 435-441.

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*under-claiming rate would be less than the 40% estimated by Shannon and Lowe and it may be higher. (Study p. 118)*

While the projected 45,000 unclaimed work-related injuries in 2019 is not a precise or definitive estimate, based on the data in the randomized worker survey in comparison with other published surveys, it is a plausible estimate.

A key principle underlying the workers' compensation system is that the accident fund is wholly funded through assessments on employers and covers the costs of all workplace injuries, disablement and death. In principle workers, their families and the general public do not pay these costs. Based on the survey's documented under-claiming it is possible to estimate the extent of claim costs for unclaimed injuries that are borne by workers, their families, the taxpayer-funded Medical Services Plan and other income support programs including employer sick leave and disability programs outside the accident fund.

The total cost of STD claims accepted and paid in 2019 was \$566,546,957 or an average of \$10,848 per STD claim. It would be simplistic and inaccurate to project the cost of the estimated 45,000 unclaimed injuries using the \$10,848 average cost per unreported work-related injury.

Table 10 of the Study provides a detailed breakdown of the number of days lost for the 217 workers who lost 2 or more days and did not file a claim (Finding #2 Appendix A). By calculating the average number of days lost for each category in table 10, there is an estimated 1,697 total days lost for the 217 worker or an average of 7.8 days per claim. To err on the side of caution I have used an average of 5 days lost per claim to estimate the cost of unclaimed injuries.

**When we apply an average of 5 days lost for the estimated 45,000 unclaimed time loss injuries in 2019 we get an estimated 225,000 lost days for unclaimed work injuries in 2019.**

If we base the compensation rate on average earnings of \$60,000, we get a daily compensation rate of approximately \$200 per day. If we include \$25 a day to cover medical expenses and use \$225 per day to represent the average cost per day for an unclaimed injury we get an average cost per injury of \$1,125 for a 5-day claim. **When we apply the \$225 per day injury cost to the estimated 225,000 lost days, we get approximately \$50,000,000 borne by injured workers, their families and the public**

**through the taxpayer-funded Medical Services Plan and other income support programs covered outside the accident fund.**

Shifting the cost of these workplace injuries outside of the accident fund and largely onto workers and the general public is contrary to section 118 of the Act which states, "No contribution from workers". This shifting of tens of millions of dollars of injury costs onto workers and the general public is inconsistent with the foundational principles of the Act and in my view undermines the integrity of the workers' compensation system.

*(b) Evaluating claim suppression*

How is this major breach of the Workers' Compensation Act possible? The Claim Suppression Study results help answer that question. The Study defines 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 or claiming WorkSafeBC benefits to which he or she would likely be entitled...*

(Study p. 116)

Section 73 of the Act specifies that any action by an employer or supervisor must not by agreement, threat, promise, inducement, persuasion "or by any other means" seek to discourage, impede, or dissuade a worker from reporting an injury or an allegation of an injury, "whether or not an injury or illness occurred or is compensable under the Act." Claim suppression takes place on a continuum from overt suppression to more subtle and more covert actions that inhibit the filing of a claim and support the non-filing of a claim where disablement results in the course of employment.

The Study authors acknowledge that, "Under-claiming may be the result of improper pressure or inducement on the part of an employer."<sup>7</sup> As the Study authors note:

*The distinction between worker non-claiming, employer under-reporting and employer-induced claim suppression is complicated by the interpretation of what constitutes inducement. Many subtle factors may or may not be seen as inducement. (Study p. 23)*

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<sup>7</sup> Claim Suppression Study p. 10.

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The Workers' Compensation Board has the "exclusive jurisdiction" to determine whether or not that disablement arose out of the employment and the provisions of the Act define what claim reporting activity is required and what actions are prohibited.

### *(c) Employer under-reporting*

Of the 684 workers who experienced a work-related injury 75% (512) said they reported the injury to the employer and 25% (172) did not report the injury to the employer (Finding #4 Appendix A). Of the 512 workers who reported the work-related injury to the employer, 68.6% (351) indicated the employer did not submit a form 7 report to the WCB (Finding #6 Appendix A). It is not clear from the worker survey why over two-thirds of employers who received a report of a work-related injury apparently did not submit a form 7 report to the WCB. Presumably the employer will be aware of any instance where a worker misses time from work, particularly when a precipitating incident occurs at work whether or not the worker formally reports the injury to the employer.

Section 150(1) of the *Act* requires that, "...an employer must report every injury to a worker that is or is claimed to be an injury arising out of and in the course of the worker's employment." Section 150(6) states that, "an employer who fails to make a report under this section commits an offence...."

The WCB has the "exclusive jurisdiction" to determine whether or not a disabling injury arose out of the employment. Any attempt by the employer to pre screen possible worker entitlement and not file a report of injury is inconsistent with the requirements in the *Act*. An employer's failure to meet its responsibility to report all injuries under section 150 of the *Act*, if enforced, would attract a penalty of up to \$5,647.74 under section 236 of the *Act*.

The employer's form 7 report includes this question: "Do you have any objection to the claim being allowed?" with a very convenient "yes" or "no" tick box option and an invitation to provide additional details. My 32 years of direct involvement with worker's confidential claim<sup>8</sup> shows that employers often challenge acceptance of claim files, and when they do the WCB adjudicative staff thoroughly investigates the claim and issues a reviewable or appealable decision. My experience indicates that more often than not it is the worker who ends up appealing the decision and often succeeds with the appeal.

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<sup>8</sup> see resume attached as Appendix 4



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The worker-survey results show that the chances of a claim being accepted are greatly decreased when the employer does not file a form 7 report with the WCB. When the employer filed a form 7, the worker received WCB benefits in 72% of the cases and when the employer did not file a form 7 only 5% of the workers received WCB benefits and 95% did not (Finding #7 and #8 Appendix A).

I consider that an employer's failure to report a known work-related injury to the WCB as required by section 150 of the *Act* is a form of claim suppression.

### *(d) Reasons for not claiming compensation benefits for work injuries*

Claim suppression "by any means" is illegal under s. 73 of the *Act*. Therefore, activities by the employer that suppress claims are generally hidden and it is impossible to get a definitive measure of the full extent of claim suppression by employers. The Study authors used a range of measures to estimate the extent of overt claim suppression. They reported that 13% of all surveyed workers reported that the employer pressured them not to report a claim (Study p.65).

The Study authors focused their analysis of reasons for not claiming compensation benefits on the 217 workers with 2 or more days lost from work but who did not apply for workers compensation benefits (Finding #3 Appendix A). This group of 217 workers represents 53.7% of the 404 worker who missed 2 or more work days as a result of an unclaimed work-related injury.

The worker survey indicates that 28.6% (62) of the workers who met the 2+ days lost criteria "did not know" they were entitled to compensation benefits. Another 16.6% (36) said they "didn't know how to apply" for compensation benefits (Finding # 10 Appendix A). The Study results show that the lack of knowledge plays an important part in unclaimed work-related injuries. In her 2019 report *New Directions Review*<sup>9</sup> commissioned by the Honourable Harry Bains, Minister of Labour, the reviewer Janet Patterson recommended:

*"...an education campaign for employers and workers around the issue of claims suppression and what constitutes claim suppression, with a posting in every workplace. The goal of the campaign would be ensure that the full re-*

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<sup>9</sup>*New Directions: Report of the WCB Review 2019*, found online at:<https://www.worksafebc.com/en/resources/law-policy/reports/new-directions-report-wcb-review-2019/report?lang=en> and released to the public in August 2020.

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*porting of workplace injuries is encouraged and is also supported by the workplace culture." (p. 141)*

In response to evidence of claim suppression in a 2013 report to the Manitoba Minister of Labour,<sup>10</sup> the Manitoba WCB developed an effective education program and prepared a impactful claim suppression brochure that can serve as a model for such an education program.<sup>11</sup>

Section 149(2) of the *Act* requires workers to report to the employer every occurrence of an injury or disabling occupational disease as soon as practicable. Section 150(2) of the *Act* requires the employer to report any injury requiring medical treatment to the WCB.

Section 21(2)(f) of the *Act* requires every employer to make a copy of the *Act* and the regulations readily available for review by all workers and to keep posted a notice advising where the copy is available for review. That form (PL29) references Section 21(2)(f) with a space to designate where the *Act* and regulations can be reviewed. That 8x11 form covers only the top half of the page with the bottom half left blank.

### Recommendation #1

**That the WCB redesign the Section 21(2)(f) form (PL29) to include:**

- **the worker's responsibility to report all injuries to the employer (*Act* s. 149(2));**
- **the employer's responsibility to report an injury or occupational disease to the WCB within 3 days of notification (*Act* s. 150); and**
- **the prohibition against the employer discouraging, impeding or dissuading a worker from reporting an injury or illness to the WCB by any means (*Act* s. 73) and reference to the applicable penalty where a violation is found.**

### Recommendation #2

**That the WCB initiate an education campaign for employers and workers around the issue of claims suppression as outlined in the 2019 Patterson *New Directions Review* to the Minister of Labour. The education program should**

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<sup>10</sup> *Fair Compensation Review: A review of the impact of the Manitoba WCB assessment rate model on fair compensation for workers and equitable assessments for workers*; Paul Petrie, January 30, 2013. Report commissioned by the Minister of Labour.

<sup>11</sup> Manitoba WCB Claim Suppression brochure can be found online here: <https://www.wcb.mb.ca/claims-suppression-brochure>

**include a new brochure along the lines of the previously referenced claim suppression brochure produced by SafeWork Manitoba.**

Section 150 of the *Act* requires the employer to report "every injury that is or is claimed to be an injury arising out of and in the course of the worker's employment." As previously indicated the WCB has the "exclusive jurisdiction" to determine whether a claim is eligible for compensation under the *Act* and any effort by the employer to pre-determine eligibility is contrary to the legislation. The employer has the option of advising the WCB of any concerns regarding possible entitlement to compensation on the form 7 employer report of injury. The worker survey indicated 6.9% of the workers did not apply for compensation because their employer told them they were not eligible for WCB benefits (Finding #13 Appendix A). In my view, this practice is inconsistent with section 150 of the *Act* and is likely a form of claim suppression.

The worker survey indicated that 4.1% of the workers who claimed their employer pressured or threatened them not to apply (Finding #15 Appendix A). This may seem to be a small percentage, yet its impact on the workplace culture will be magnified particularly if there is no enforcement by the WCB. The survey showed that 7.8% of the workers said they would get into trouble if they applied for compensation (Finding #14 Appendix A). This is likely a reflection of the workplace culture where the employer's behaviour has reinforced this belief. Another 20.3% of workers indicated "it was not worth the trouble to apply" (Finding #11 Appendix A). This may also be a reflection of a workplace culture that inhibits claim reporting.

### **Recommendation #3**

**That the WCB develop a claim suppression audit tool to be applied where there is evidence of possible claim suppression in a workplace to determine whether violations have occurred and whether penalty consideration is warranted.**

A reliable and fair claim suppression audit tool could provide evidence of systemic claim suppression that would merit enforcement action and penalty consideration.

The worker survey indicated that 3.2% of the workers did not apply due to co-worker pressure related to a safety bonus and raises an important prevention issue (Finding #16 Appendix A). I appreciate that many safety recognition programs are well intentioned and not designed to suppress claim reporting. However, there is evidence that

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some safety incentive programs can inhibit claim reporting particularly when they rely on reported injuries to determine rewards for the workers.<sup>12</sup>

Safety programs that have the effect of inhibiting claim reporting through peer pressure are a form of systemic claim suppression. The Study indicated that bonus plans that reward a group of workers for being accident-free appear to provide an incentive to workers to discourage fellow employees from reporting incidents or submitting claims. The Study authors state, " Almost half of the employers that operated accident-free bonus schemes also engaged in overt claim suppression behaviour." (Study p.122) The authors suggest that the WCB provide guidelines or policies on the design and operation of accident-free bonus plans.

### **Recommendation #4**

**That the claim suppression brochure referenced in Recommendation #2 include a section on safety incentive programs that promote claim suppression and also include a dedicated tip line for reporting claim suppression activities.**

## **II. Employer Survey**

### *(a) Employer under-reporting*

The survey of 150 employers was conducted by Ipsos from a representative sample of employers in BC with an adjustment for higher risk industries. The survey documents that of the 107 employers who had a sick leave or medical benefits plan, 1 out of every 5 employers (21.5%) said they allowed their workers to access benefits through these plans instead of claiming WCB benefits (Finding #17 Appendix A). Over half (52.3%) said they did not engage in this practice and another 25.2% said they didn't know if this was allowed. Section 119 of the *Act* titled "Compensation cannot be waived" provides that any agreement with a worker to waive or forgo any compensation entitlement under the *Act* is prohibited. The practice of paying an injured worker's wages while the worker is off work for an unreported work-related injury or covering the worker with sick leave benefits for an unreported work-related injury is inconsistent with the *Act* and in my view constitutes a significant form of claim suppression.

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<sup>12</sup> for example see: <https://www.safetyandhealthmagazine.com/articles/5501-whats-your-reward>

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Finding #19 indicates that 11.3% of the employers believed that employers in their industry only report work-related time loss claims "sometimes". Another 6% believe employers "rarely or never" report these injuries to the WCB. Finding #21 shows that more than 1 out of 4 employers (26.7%) believe that other employers in their industry misrepresent time loss workplace injuries as no time loss claims "all the time or almost all the time".

The Claim Suppression Study authors conclude:

*"...there is a widespread perception among surveyed [employers] that many time loss injuries are not reported to WorkSafeBC or are misrepresented as no time loss incidents." (p. 78)*

Employers have a right and a responsibility to reduce unnecessary compensation costs where it does not compromise the worker's entitlement to compensation under the *Act*. One of the established ways to exercise this right is to provide safe and productive light duty employment that will not harm the worker's recovery. In my 2018 report to the Board of Directors, *Restoring the Balance*, I provided several recommendations regarding light duty employment for the WCB to consider. These included two recommendations to relieve the individual employer's cost of WCB rehabilitation measures (recommendations #16 and #19). These recommendations would assist in arranging safe light duty opportunities, so that WCB rehabilitation costs would not be included in the experience rating of those employers. I address additional recommendations related to alternative light-duty employment later in this Addendum.

There is a clear correspondence between the worker survey reports of widespread under-claiming of disabling work injuries with a significant component involving either overt or subtle claim suppression activity by the employer, and the employer survey that reports the perceptions by employers of claim suppression and claim misrepresentation among employers in their industry. The findings in each of these surveys reinforce the reliability and validity of each survey. These findings also indicate that there is a culture of claim suppression in many BC workplaces.

This raises the question: who benefits from claim suppression? The Study authors observed that:

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*Employers may have an interest in misrepresenting a Time Loss claim as a No Time Loss claim because the latter is less likely to have an adverse impact on experience rating or the likelihood of an inspection. (Study p. 82)*

### (b) *Experience rating*

Under the WCB experience rating program the assessment premiums paid by employers are based on the collective claim costs for each industry rate group. The base assessment is calculated to cover all claims cost for that industry rate group. Employers whose injury claim costs are higher than the rate group average pay a surcharge over the base rate. Employers who have a lower than average claims cost experience receive a discount on the base rate. Employers who actively engage in claim suppression artificially and illegally reduce their assessment rate at the expense of employers who meet their reporting responsibilities. Employers who cheat the workers' compensation system tilt the playing field and gain a competitive advantage over those employers who report all claims. Simply put, experience rating rewards those employers who cheat the system and penalizes those employers who meet their reporting obligations under the *Act*.

When the "new experience rating system"<sup>13</sup> was introduced in 2000 the WCB assured employers and workers that:

*Experience rating is designed to enhance equity within each rate group by minimizing subsidies between individual employers. As a result of improving equity within the rate groups, experience rating provides financial incentives that lead to safer workplaces.<sup>14</sup>*

The WCB also asserted, "Self-insurance is not a goal of experience rating." The WCB discussion paper stated:

*...the desired outcome of experience rating is not self-insurance but, rather, improved safety reflected through reduced injury costs. Experience rating is one way for the Board to encourage employers to improve their safety, and greater self-insurance is one of the effects of experience rating that provides such en-*

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<sup>13</sup> Practice Directive 5-247-3(A) in the WCB Assessment Manual provides a detailed description of the experience rating program.

<sup>14</sup> "Experience Rating Discussion Paper" p. 1 available online at: <https://www.worksafebc.com/en/resources/insurance/discussion-paper/experience-rating-discussion-paper?lang=en>

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*couragement. Increased self-insurance is certainly a consequence of experience rating, but it is not an intended goal.*

The euphemistic term "self-insurance" in this case serves as a proxy for claim suppression.

In theory, experience rating was intended to reward employers who maintain safer workplaces with lower premiums while those with more workplace accidents and injuries because of inadequate safety programs would be penalized with higher premiums. There is compelling evidence that this improved safety effect is not achieved.

A recent review of the literature on experience rating in workers' compensation systems indicates that in practice experience rating appears to fall short of the objective of promoting the implementation of safety and health programs in the workplace. The authors state:

*Although experience rating is intended to stimulate safer workplaces, a growing body of literature reveals that it has not achieved that affect and that, in some cases, it has contributed to unsafe workplaces. The absence of a safety effect may arise because employers focus on managing reported claims rather than prevention. Also, financial incentives may discourage employers from reporting injuries and put those employers who do report at an economic disadvantage relative to their peers. Furthermore, there is evidence that experience rating stimulates employer behaviours which can undermine the physical and mental health of injured workers.<sup>15</sup>*

The findings in both the worker survey and the employer survey point to a significant degree of claim suppression in BC workplaces. There are indications that experience rating provides both an incentive and financial reward for employers who do not meet their reporting responsibilities under the *Act* and who engage in claim suppression. Experience rating also penalizes employers who meet their responsibilities under the *Act* and falls far short of the goal of "enhancing equity within each rate group."

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<sup>15</sup> Mansfield, L.; et. al.; "A Critical Review of Literature on Experience Rating in Workers' Compensation Systems", *Policy and Practice in Health and Safety* 2012; Vol. 10.1; P. 4. published online [here](#). Also see: "Workers' Compensation Experience-Rating Rules and the Danger To Workers' Safety in the Temporary Work Agency Sector"; MacEachen Ellen; et. al. in *Policy and Practice in Health and Safety*; 05 Jan 2016, Pages 77-95 | Published online at: <https://www.tandfonline.com/doi/abs/10.1080/14774003.2012.11667770?src=recsys>

### **Recommendation #5**

**That the WCB initiate an independent review of the WCB's experience rating system to determine whether and to what extent this system provides an incentive for claim suppression and promotes inequity among employers.**

Given the extent of under reporting of workplace injuries and misrepresentation of some time-loss injuries, I recommend bolder action to address the systemic claims suppression documented in both the worker and employer surveys.

### **Recommendation #6**

**That the WCB consider an amendment to the experience rating policy to charge the first two weeks of any time-loss claim to the industry rate group to be funded collectively by that rate group rather than individually by each employer.**

The two-week period following an injury is critical in establishing a safe and productive light duty opportunity for the injured worker and securing the worker's continued attachment to his or her employment. Employers who arrange for safe, productive light duty employment that will not harm or delay the worker's recovery should not be penalized by the aggressive experience rating formula. Collectively covering the first two weeks of wage loss for any claim would also reduce the current incentive to not report injuries or to misrepresent time loss injuries as no-time-loss claims under the current experience rating plan.<sup>16</sup>

#### *(c) Enforcement*

Section 95 of the *Act* authorizes the WCB to impose an administrative penalty where the employer has not complied with an OHS provision in the *Act*. Section 73 of the *Act* prohibiting claim suppression activity is included in the OHS provisions in Part 2 of the *Act*. Compensation claims policy indicates that the WCB may impose an administrative penalty up to a maximum of \$710,488.79 and is calculated proportionately based on the

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<sup>16</sup> The current experiencing rating formula charges an employer only 10% of the cost of any one claim over \$120,000 with the remaining 90% being shared collectively by all the firms in the rate group. The collective funding of a portion of a claim is well established in policy.



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size of the employer's payroll.<sup>17</sup> WCB policy also authorizes the WCB to make a reasonable estimate of any potential or actual financial benefit obtained by the employer from committing the violation and add this amount to the administrative penalty up to the statutory maximum.

The WCB Practice Directive #C12-2 provides guidance for enforcement under section 73 of the Act regarding claim suppression activities and section 119 prohibits any agreement with the employer to forgo the worker's WCB benefits. That Directive notes that when workplace injuries are not reported by the employer, the employer benefits from "a more positive experience rating since the actual claim cost data is not accurately reflected."

I requested information on WCB enforcement of injury reporting and claim suppression under sections 73, 150 and 262 of the Act from the Board's Freedom of Information Office<sup>18</sup>. Table 1 contains the WCB response for the number of investigations, and number and amount of penalties for enforcement regarding claim suppression activities under section 73 of the Act.

**Table 1**  
**Claim Suppression Enforcement - section 73 Act**

<b>year</b>	<b># of investigations</b>	<b># penalties/citations</b>	<b>amount collected</b>
<b>2018</b>	<b>263</b>	<b>2</b>	<b>\$1,559.53</b>
<b>2019</b>	<b>279</b>	<b>1</b>	<b>\$15,453.71</b>
<b>2020</b>	<b>228</b>	<b>1</b>	<b>\$2,92082</b>
<b>2021</b>	<b>157</b>	<b>0</b>	<b>0</b>

The WCB data shows very limited enforcement activity for claim suppression under section 73 of the Act from 2018 to 2021. The number of investigations have declined by 40% over the four years with less than 1% of the investigations leading to either a penalty or a citation. The enforcement data provided by the WCB indicates a surprisingly low number of investigations when considered in light of the findings in the Claim

<sup>17</sup> This policy was introduced in 2000 by the Panel of Administrators to coincide with the New Experience Rating System.

<sup>18</sup> Appendix C contains the WCB responses to my requests for enforcement information.

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Suppression Study. The total of \$19,995.49 in penalties for the 997 investigations shows an overall average of less than \$22 per investigation which suggest either a large number of the investigation are directed to inappropriate targets or the criteria for imposing a penalty are exceedingly stringent. The WCB data indicate the enforcement activity for s. 73 is not sufficient to provide a deterrent for employers who engage in claim suppression activities.

WCB enforcement of the employer reporting requirements shows a similar low level of investigation with no investigations in 2020 and 2021. The WCB indicated that a record of the number of violations and the number of penalties for section 150 "does not exist and could not be produced".

**Table 2**  
**Enforcement of employer claim reporting - section 150 Act**

<b>year</b>	<b># of investigations</b>	<b># violations</b>	<b># penalties</b>
<b>2018</b>	<b>3</b>	—	—
<b>2019</b>	<b>1</b>	—	—
<b>2020</b>	<b>0</b>	—	—
<b>2021</b>	<b>0</b>	—	—

The available data indicates the current enforcement of the claim suppression prohibition and the claim reporting requirement in the Act are woefully inadequate to meet the challenge of widespread underreporting, significant claim misrepresentation and unacceptable claim suppression.

A different picture emerges when the WCB enforcement of the employer's responsibility to register with the WCB for collection of assessments is considered. One way to measure this is when a worker files a claim for an injury and the injury employer is not registered with the WCB. Section 263 authorizes the WCB to collect the compensation payable in respect of an injury during the period of default. Table 3 summarizes the enforcement of "Injury costs prior to registration."

**Table 3**  
**Injury Costs Prior to Registration**

year	# of add'l assessments	sum of add'l assessments
<b>2018</b>	<b>184</b>	<b>\$960,233.75</b>
<b>2019</b>	<b>138</b>	<b>\$695,594.81</b>
<b>2020</b>	<b>109</b>	<b>\$756,211.20</b>
<b>2021</b>	<b>115</b>	<b>\$566,585.34</b>

The enforcement data provided by the WCB shows an apparent disinterest in enforcing the statutory protections prohibiting claim suppression and employer reporting requirements and a far greater interest in recouping claim costs from unregistered employers. Stated differently, the WCB has paid a great deal more attention to collecting additional assessments from unregistered delinquent employers than it has to registered employers who fail to report worker injuries as required by the *Act*.

More must be done to safeguard the rights of injured workers and to provide a fair and equitable assessment system that does not penalize employers who meet their reporting responsibilities under the *Act* and does not reward employers who don't comply with the workers' compensation system. The WCB has a fiduciary responsibility to protect both worker and employer rights under the *Act*. To meet that responsibility I recommend a targeted program to reduce and, to the extent possible, eliminate claim suppression in the BC workers' compensation system.

**Recommendation #7**

**That the WCB establish a special Claim Suppression Unit with trained investigators from Claims Services, Prevention Services and Assessment Services to enforce the provisions of the *Act* that prohibit claim suppression.**

The resources to support the Claim Suppression Unit should be proportionate to the documented nature and extent of claim suppression in the Claim Suppression Study and other available data. While the primary objective of this unit should be to gain voluntary compliance with the *Act*, where violations are established sufficient penalties to serve as a persuasive deterrent are needed. The Claim Suppression Unit should also

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have an education capacity as outlined in Recommendation #2 to ensure that workers are aware of their rights under the *Act* and employers are encouraged to fully comply with the *Act*.

As previously noted, penalty assessments for claim suppression under section 95 of the *Act* can be sizeable if enforced. Currently, penalties collected under section 95 are deposited into the general accident fund. Section 239(2) of the *Act* provides that the WCB is solely responsible for the management of the accident fund and must manage it with a view to the best interests of the workers' compensation system. The current approach of depositing penalty funds in the general accident fund does little to address the inequity between employers who meet their reporting responsibilities and those employers who gain a competitive advantage from cheating the system. This inequity could be reduced if the funds collected from claim suppression penalties were credited to the industry rate group where the offending employer is registered.

### **Recommendation #8**

**That the WCB credit the funds collected for claim suppression violations to the industry rate group in which the offending employer is registered.**

## **III. WCB Claim File Surveys**

### *(a) Analysis of no time loss claims*

To evaluate possible misrepresentation of claims, the Claim Suppression Study completed an analysis of 1,043 "no time loss claims" accepted by the WCB to estimate the likelihood that injuries reported to the WCB as no time loss claims actually involved lost working time. Section 150 of the *Act* requires the employer to file a report to the WCB of "every injury" that is or is claimed to be work related and requires medical treatment<sup>19</sup>.

Of the 1043 claims accepted as no time loss claims, only 419 (40.2%) contained a form 7 employer report (Finding #22 Appendix A). It appears from the Study data that there was little in the way of investigation by the WCB to explain this wide discrepancy. Policy item #94.14 in the RSCM II states:

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<sup>19</sup> The "Report of Injuries Regulations" established under section 150(7) and section 237 of the *Act* requires the employer to report all injuries requiring medical treatment.

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*An employer is always given an adequate opportunity to submit a form 7 Employer's Report before a claim is adjudicated in its absence.*

Policy item #94.15 outlines a complex 3 step process carried out over a 12-month period for applying "penalties for failure to report". As can be seen from the enforcement data in Table 2, this process, if carried out, has not resulted in any penalties. The significant number of accepted no time loss claims without either a form 7 or form 6 raises questions about those claims that would merit further investigation and possible enforcement.

The Study reports on the nature of the injury for the 1043 claims accepted as no time loss and shows that 30% (316) had lacerations; 10.8% (113) had back strains; 2.7% (28) had fractures and 1.1% (11) had concussions (Finding #25 Appendix A). The researchers reviewed the type of injury reported and concluded that, "no strong conclusions can be drawn from the data." The Study goes on to state:

*However, some of the reported injuries are more likely to be associated with lost working time. For example, it seems improbable that all of the persons reporting back strain (113) or concussion (11) or fractures (28) were able to return to work the next day. Study p. 91.*

It is worth noting that in 24% (250) of the no time loss claims the worker sought treatment at hospital, presumably the emergency department.

Of the 739 accepted no time loss claims that had a form 8 physician's report, 42.2% (312) estimated the expected time off work. Of these 312 files 73.7% (230) indicated 1-6 days off work and 26.3% (82) estimated more than one week off work (Finding #24 Appendix A).

The Study authors had a team of WCB claims staff review the form 6 and form 7 along with the related medical data to determine whether it was likely that the injury was consistent with a no time loss injury. The WCB staff review team "had reservations" about 54 (5.2%) of the files and identified another 220 (21.1%) that had insufficient information or ambiguities that made it, "impractical to proffer an opinion as to whether the injury described in the file was consist (sic) with no lost time." (Study p. 92)

The authors had WCB staff analyze the claims to identify a range of "risk flags" that might indicate that these claims actually involved time loss. Based on these staff reviews the researchers concluded that the risk of misclassification ranged, "...some-

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where between 4.1% and 12.1% of accepted no time loss claims actually pertained to incidents that involved lost working time." (Study p. 94)

The Study data indicates that closer scrutiny is warranted where there is medical evidence or other evidence to indicate that a reported no time loss injury likely involved lost time from work.

### **Recommendation #9**

**That the WCB review its criteria for undertaking investigations of no time loss injuries where there is some evidence of actual time loss from work.**

Reporting a claim that involves actual lost time from work as a no time loss claim is a type of claim suppression that results in misrepresentation of the claim costs associated with the time loss. By hiding the costs associated with the actual time loss, non-compliant employers can circumvent the experience rating system and reduce their experience rating premium at the expense of employers in their rate group who fully report their injuries and associated time loss in accordance with the *Act*.

As previously noted in the employer survey, employers believed that over a quarter (26.7%) of employers in their industry report time loss claims as no time lost claims all the time or almost all the time. Another third of surveyed employers believe that employers in their industry report time loss claims as no time loss claims "sometimes" or "often, but not always". Only 30% of surveyed employers said they believe that employers in their industry "rarely or never" report a time loss injury as a no time loss claim (Finding #21 Appendix A).

When employers in an industry are gaining an economic advantage by reporting actual time loss injuries as no time loss claims and there is little in the way of enforcement action to address that violation of the *Act*, it is an invitation for other employers to follow suit to remain competitive. Employers have every right to control costs by providing alternate light duty employment that is safe and productive and will not harm or delay the recovery process. Arranging such genuine light duty opportunities takes time and resources especially for medium and smaller employers. The two-week window in Recommendation #6 would provide collective relief from the impact of the claim costs while this light duty is being arranged.

*(b) Alternate light duty claims*

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A distinction must be made between unreported and misrepresented claims. An unreported claim is one where the employer does not meet its statutory duty under section 150 of the *Act* to file a report for a workplace injury requiring medical treatment. A misrepresented claim is one where the worker misses time from work but the employer reports the claim as a no time loss claim.

There is a grey area where some employers with effective disability management programs are able to offer the disabled worker suitable alternate light duty employment that is safe, productive and will not worsen the injury or delay the worker's recovery. In this case where the worker is able to continue working without missing time from work, the employer's injury report as a no time loss claim is in accordance with the WCB policy on light duty employment. I understand that the Board's coding practices allows reporting of a serious injury claim as a no time loss claim as long as suitable light duties are offered and accepted.<sup>20</sup>

However, where the worker misses time from work and the employer reports a no time loss claim and the employer continues the worker's wages through a sick leave or disability program, or provides the worker with a "straw job" while the worker sits in the lunchroom or is offered non-productive or demeaning alternate employment, the employer's report is considered a misrepresentation of the claim and is a form of claim suppression.

As detailed in the *2019 New Directions Review* the issue of light duty employment following an injury "has been a flashpoint for both workers and employers."<sup>21</sup> Employers with large payrolls face significant experience rating costs for every short-term time loss injury claim. Medium and smaller employers often lack the necessary resources and flexibility to arrange timely light duty employment opportunities.

My proposal to "suspend" the application of experience rating for the first two weeks of any claim will provide some relief for larger and smaller employers alike and temper the stress that an injured worker feels when pressured to accept a demeaning "straw job" or wishes to consult his or her physician on the medical suitability of the light duty job. The two-week window will level the playing field for large and small employers alike.

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<sup>20</sup> Policy item # 34.11 in the RSCM II provides guidance on acceptable light duty employment.

<sup>21</sup> *New Directions: Report of the WCB Review, 2019* p.149.

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The *New Directions Review* outlines "best practices" process for light duty claims which provides excellent guidance for ensuring safe and productive light duty employment.

### **Recommendation #10**

**That the WCB fully implement the best practices outlined in recommendation #51 and Appendix 21 of the *New Directions Review* to ensure that a return to work before maximum medical recovery is suitable for an injured worker.**

The *New Directions Review* also emphasizes that effective light duty arrangements often require individual assessment to evaluate whether the physical demands of the light duty position correspond to the medical limitations. The National Institute for Disability Management and Research in partnership with the Pacific Coast University for Workplace Health Sciences provides internationally recognized assessment tools and certified training that is recognized as the gold standard for disability management programs. The *New Direction Review's* recommendations #52 to #56 provide a solid foundation for support and implementation of effective disability management programs and merit full implementation.

### **Recommendation 11**

**That the WCB support implementation of effective disability management programs in partnership with the National Institute for Disability Management and Research.**

As detailed in the *New Directions Review*, there is little in the way of protection for workers against retaliatory action by an employer when the worker files a claim for compensation<sup>22</sup>. That review recommends an amendment to the *Act* to provide protection to individual workers analogous to the protection against retaliatory action for exercising any right or carrying out any duty in accordance with the Occupational Health and Safety provisions in the *Act* or the OH&S regulations. Attention to this important issue, first raised by the Workers' Compensation Appeal Tribunal in 2015 is long overdue.

The WCB form 8/11 "Physician's Report" provides very limited space to respond to the question: "What are the current physical and/or psychological limitations?". In my 2018

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<sup>22</sup> *New Directions Report*, p.140-141.



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report *Restoring the Balance*, I recommended that the WCB develop a detailed "Abilities and Limitations Form" for completion by the treating physician at the request of WCB staff to be paid out of the accident fund similar to the form implemented by the Ontario WSIB. It appears that the WCB has not yet fully addressed this recommendation although it has prepared a "Recovery at Work Starter Kit" for employers that contains a useful "Function Abilities Assessment" form. However, this form is initiated at the request of the employer and paid for by the employer.

While that may be a useful tool for the employer, a Functional Abilities Assessment form requested and paid for by the WCB in appropriate cases becomes part of the worker's claim file and provides guidance for the worker, the employer and WCB staff for establishing safe, productive alternate light duties. This form will be especially appropriate where there is an indication that the nature of the injury would likely result in time loss or the recovery process may be complex. As noted in the *New Directions Review* many workers reported being offered "straw jobs" where the worker is paid to sit around in the lunch room to avoid compensation costs. The Functional Abilities form can also be useful in resolving disputes regarding the medical suitability of light duty employment.

### **Recommendation # 12**

**That the WCB establish a process for WCB staff to request a Functional Abilities Assessment from the worker's treating physician paid for out of the accident fund.**

#### *(c) Analysis of discontinued claims*

The Study authors also analyzed 601 claims that had been suspended (493) , rejected (43) and not adjudicated (65) which I refer to collectively as discontinued claims. The authors noted that in almost half of the files (44.6%) where the Form 6 indicated lost working time and medical attention, the Form 7 was absent. The authors state:

*At a minimum, this represents puzzling employer behaviour. While there may be a valid explanation for the failure to submit a Form 7, the absence of a Form 7 in these circumstances also may indicate an intention to discourage the claim. (Study p. 104)*

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The Study analyzed the 93 discontinued files where both the worker's form 6 and the employer's form 7 indicated that the worker missed work beyond the day of injury. The Study authors state:

*It is puzzling that none of these 93 files proceeded notwithstanding that that Form 6 and Form 7 concur that the worker missed work time beyond the date of the incident. (Study p. 105)*

The Study indicates that the WCB staff who reviewed the discontinued claims concluded:

*...that 5 of the claims almost definitely pertained to a Time Loss injury and that 126 of the claims likely pertained to Time Loss injuries. These 131 files represented 21.8% of the total sample of 601 files. (Study p. 115)*

Based on their review of a number of risk factors for potential claims suppression the Study authors observed that 11.8% to 18.6% of rejected or abandoned time loss claims could be considered problematic. Additional evidence on other claim files suggest a risk that claim suppression may have occurred. ( Study p.115)

### **Recommendation #13**

**That the WCB review its criteria for investigating suspended claims where there is evidence of time loss from work to ensure that the decision to discontinue the claim is not the result of claim suppression activity.**

### **Conclusion**

The Claim Suppression Study has provided reliable data to show that there is a significant level of claim suppression in many BC workplaces. Yet claim suppression in its various forms is not widely discussed and there are no comprehensive programs to address this systemic problem. A search of the WCB website for "claim suppression" does not disclose any specific link for this topic. Claim suppression in BC is the elephant in the workplace.

As detailed earlier in this Addendum, when claim suppression data are applied to the 2019 WCB claims statistics, we can reasonably project that approximately 45,000 workplace injuries likely went unclaimed in 2019. The costs associated with these unclaimed

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injuries can be reasonably estimated at \$50,000,000 or more and are borne primarily by the injured workers, their families and the general public through the taxpayer Medical Services Plan and other income support programs outside the accident fund.

I have highlighted specific findings from the Study (summarized in Appendix A) that have informed this Addendum and support the recommendations offered for the Board of Directors consideration. These recommendations are listed in Appendix B for quick reference. While I have attempted to reflect both the content and context of the Claim Suppression Study, I encourage the interested reader to access the full 127 page Study since it covers some issues not addressed in this Addendum.

In my view the Claim Suppression Study is excellent research that meets the well established high standards of the Institute for Work and Health and builds on the sound methodology of the prior claim suppression studies by Prism Economics. I commend the Board for commissioning this study. Any errors in interpretation or analysis of the Study in this Addendum are mine alone.

While it may be tempting for some to conclude that claim suppression is endemic among BC employers, in my view that would be wrong. Many BC employers meet their reporting responsibilities under the Workers Compensation Act and do their best to restore injured workers to safe, productive employment when recovery from the injury allows. However, the evidence shows that some employers do not meet their reporting responsibilities and discourage, impede or dissuade workers from claiming compensation by agreement, threat, promise, inducement or persuasion. By doing so, non-compliant employers reduce their experience rating assessments at the expense of employers who comply with their responsibilities under the *Act*.

If claim suppression is the elephant in some BC workplaces, experience rating is the food that sustains the elephant. The current BC experience rating program rewards employers who do not meet their reporting responsibilities by unlawfully suppressing the true cost of injuries in their workplaces. These non-complying employers may receive a discount on their base rate assessment and as a result employers who comply with reporting requirements may pay a surcharge over the base rate. This system induced inequity is contrary to the principle of employer equity based in the historic compromise and established in the *Workers Compensation Act*.

To address this inequity I have recommended (Recommendation #5) that the WCB initiate an independent review of the BC experience rating system to determine whether

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and to what extent this system provides an incentive to suppress claims and promotes inequity among employers. I have also recommended (Recommendation #6) that the WCB consider an amendment to the current experience rating policy to charge the first two weeks of claim cost for a time loss injury to be funded collectively by that rate group rather than charged to the individual employer's account.

This collective funding of the claim cost for the first two weeks of a claim will allow employers to arrange for safe and productive light duty opportunities that will not harm or delay the injured worker's recovery. More generally it will increase employer equity among all employers in the industry rate group. Most importantly, this change to the experience rating formula will reduce the incentive to suppress claim reporting and misrepresentation of time loss injuries as no time loss claims.

The current experience rating system was introduced by the Panel of Administrators in 2000 for the expressed purpose of improving employer equity and safety performance. At that time the enforcement of the prohibition on claim suppression in the *Act* attracted a significant administrative penalty assessment under the *Act* to discourage claim suppression. However, the available data on enforcement shows that penalty assessments have not been used to enforce the claim suppression prohibition in the *Act*. From the available information it appears that there is little enforcement of the claim suppression prohibition under the *Act*.

Given the apparent lack of systematic enforcement of claim suppression activity by the WCB, I have recommended (Recommendation #7) that the WCB establish a special Claim Suppression Unit to enforce the provisions in the *Act* that prohibit claim suppression. I have also recommended that the WCB develop a claim suppression audit (Recommendation #3) to be applied where there is evidence of possible claim suppression to document whether and to what extent there is claim suppression for enforcement purposes. Recommendations #5 and #6 regarding experience rating and recommendations #3 and #7 on enforcement when taken together provide key cornerstones in developing a systematic claim suppression strategy to ensure that workers are not deprived of their right to compensation and employers who deny that right are held accountable.

Action by the WCB Board of Directors on these four recommendations would send a clear signal to the parties of interest in the employer and worker communities that the WCB takes the issue of claim suppression very seriously and is prepared to take action to protect the rights of injured workers to compensation under the *Act*.

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In 2000 when the Panel of Administrators approved the current experience rating system they indicated the purpose was to "enhance equity" for employers within each rate group and to provide "...financial incentives that lead to safer workplaces." Based on the findings in the Claim Suppression Study the current experience rating system accomplishes neither of these objectives. The available evidence indicates that the current experience rating system has provided an incentive for under-reporting and claim suppression and promoted what the WCB has called "self-insurance" where some employers refuse to fully participate in the compensation system in contravention of the *Workers Compensation Act*. This non-compliance by some employers is at the expense of all other employers who meet their reporting responsibilities and to the detriment of injured workers who bear the brunt of this covert "self-insurance" approach .

This "self-insurance" approach that denies injured workers access to the workers' compensation system was not the only intrusion of a restrictive insurance approach into workers' rights established under the historic compromise. As detailed in the 2019 *New Directions Review* by Janet Patterson:

*After 2002, the Board began to identify itself as a special type of insurance company created by the Government.*<sup>23</sup>

Patterson pointed out that:

*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.*<sup>24</sup>

The *New Directions Review* charts a path forward that when implemented will restore the principles in the historic compromise that protects the rights of injured workers and provides the necessary supports for a fair, equitable and sustainable workers' compensation system.

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<sup>23</sup> *New Directions: Report of the WCB Review 2019*. op. cit. P. 47

<sup>24</sup> *New Directions Review* P. 48

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The workers' compensation system is now at a critical crossroads: will the integrity of the foundational principles in the historic compromise be restored or will the BC workers compensation system be allowed to continue to drift toward a corporate insurance system where a worker's right to compensation is further eroded? This begs the further question. If the government and the Board continue to maintain the insurance system approach with minor tinkering around the edges of that system: will employers continue to be protected from any right of action against the employer resulting from an injury, disablement or death arising out of employment?

**APPENDIX A Selected findings from the Claim Suppression Study**

The following summarizes some of the key findings from the Claim Suppression Study that have informed the analysis in this report.

**I. The Worker Survey findings**

1. Of the 699 workers who experienced a work related injury 595 (85.6%) missed 1 or more days from work. (table 10). Of the 595 workers who missed 1 or more days from work, 223 (37.5%) applied for WC benefits and 366 (61.5%) did not apply. (table 10).
2. Number of workers who missed two or more days from work and did not file a WCB claim. (from Table 10, Study pp. 44-45)

Days lost	# of workers	Average # of days lost	total days lost
2 to 4 days	126	3.5	441
6 to10 days	40	8	320
11 to 15 days	12	13	156
more than 15 days	39	20	780
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Total	217	7.8	1,697

3. The researchers based their analysis on the workers who missed 2 or more days from work to exclude incidents with just 1 lost day from work that the worker "... might have regarded as insufficiently serious to warrant submitting a claim." Of the 404 (57.8%) workers from the sample who met the threshold of 2 or more lost days, 217 (53.7%) did not apply for WC benefits and 45.5% of the sample who missed 2 or more days from work did apply. (table 10)
4. Of the 684 workers who experienced a work-related injury 512 (75%) said they reported the injury to the employer and 172 (25%) did not report the injury to the employer. 15 workers did not respond to this question. (table 23)
5. Of the 699 workers with a work-related injury 194 (27.7%) were aware that their employer had submitted a form 7 report of injury to the WCB; 351 (50%) indicated the employer did not submit a form 7 report; and 154 (22%) were not aware if the employer had submitted a form 7. (15 workers did not know) (table 25)

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6. Of the 512 workers who reported the work-related injury to the employer 351 (68.6%) indicated the employer did not submit a form 7 report to the WCB. (table 25)
7. Of the 194 cases where the worker was aware that the employer had submitted a form 7 report 140 (72.2%) received WC benefits and 54 (27.8%) did not receive benefits. (table 25)
8. Of the 351 cases where the employer did not submit a form 7 report 19 (5.4%) received WC benefits and 332 (94.6%) did not receive benefits. (table 25)
9. Of the 154 cases where the worker was not aware if the employer had submitted a report of injury 38 (24.7%) received WC benefits and 116 (75.3%) did not receive benefits. (table 25)
10. 62 (28.6%) of the workers who met the 2 + days lost criteria "did not know" they were entitled to workers' compensation benefits. Another 36 (16.6 %) said they "didn't know how to apply" for workers' compensation benefits. (table 16)
11. 44 (20.3%) said "it was not worth the trouble to apply" but did not indicate what that trouble was. (table 16)
12. 38 (17.5%) said the employer or the employer's sick leave plan covered their lost wages. (table 16)
13. 15 (6.9%) indicated the employer said they were not eligible. (table 16)
14. 17 (7.8%) said they would get into trouble if they reported their injury. (table 16)
15. 9 (4.1%) said their employer pressured or threatened them not to apply. (table 16)
16. 7 (3.2%) said fellow workers pressured them not to apply to avoid losing a bonus. (table 16)

## II. The Employer Survey findings

17. Of the 107 employers who provided a sick leave/disability and/or a medical benefits plan 23 (21.5%) said they allowed their workers to use sick leave/disability and/or



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medical benefits plan instead of claiming WCB benefits while 56 (52.3%) said they did not. Another 27 (25.2%) said they didn't know. (table 35)

18. 16 (10.7%) employers said they provide a bonus or incentive program to maintain an accident free workplace. (table 36)
19. In response to the question — how often do you believe employers in your industry report a work-related time loss injury to the WCB (table 37):
  - 98 (63.3%) all the time or almost all the time
  - 22 (14.7%) often, but not always
  - 17 (11.3%) sometimes
  - 9 (6.0%) rarely or never
21. In response to the question — how often in your industry do you believe that a time-loss injury is reported to the WCB as a no time-loss injury with the lost wages being covered by a sick leave plan or other arrangement to cover lost wages (table 37):
  - 40 (26.7%) all the time or almost all the time
  - 20 (13.3%) often, but not always
  - 28 (18.7%) sometimes
  - 45 (30.0%) rarely or never

### III. The WCB Claim File Surveys

22. Of the 1043 claims accepted as no time loss claims, 697 (66.8%) contained a form 6 worker report; 419 (40.2%) contained a form 7 employer report; and 739 (70.9%) contained a form 8 physician's first report. There were 222 (21.3%) of the accepted no time loss claims that had neither an employer nor a worker form 6 application for compensation. (table 41)
23. Of the 697 claims where the worker filed a form 6 worker report, 381 (54.7%) specified the type of medical attention sought for the injury. Of this 381 (multiple answers permitted), 250 (65.6%) sought treatment at hospital and 267 (70.1%) sought treatment from a physician or medical clinic. (table 47)
24. Of the 739 accepted no time loss claims that had a form 8 physician's report, 312 (42.2%) estimated the expected time off work. Of these 312 files 230 (73.7%) indicated 1-6 days off work and 82 (26.3%) estimated more than one week off work.

## Claim Suppression: The Elephant in the Workplace

(table 46). The 312 no time loss claims with medical evidence indicates that time loss may have occurred in 30% of the 1043 claims filed as no time loss claims. (table 46)

25. Table 47 of the study reports on the nature of the injury for the 1043 claims accepted as no time loss injuries. 668 ((64.0%) of the no time loss claims had the following diagnoses: lacerations 316 (30.3%); back strain 113 (10.8%); fracture 28 (2.7%); and concussion 11 (1.1%).
26. Of the 601 claim files in the sample, 477 (79.4%) contained a form 7. Only 250 files(41.6%) contained Form 6s.
27. More than 80% (209) of the discontinued claims with a form 6 indicated that the worker was off work beyond the date of the incident. It is also noteworthy that 141 (56%)of the 250 files with form 6s indicated that the worker reported both missing work and going to a hospital, clinic or physician as a result of the incident.
28. In the total sample of 601 discontinued claims the employer objected to 179 (29.8%) of the claims. Stated more directly the employer objected to the claim in 37% of the 477 cases where a form 7 was filed.

These findings focus on the data that inform the recommendations contained in this Addendum to my 2018 report to the WCB Board of Directors. Those who are interested in the claim suppression issue are encouraged to access the full Claim Suppression Study at: <https://www.iwh.on.ca/scientific-reports/estimates-of-nature-and-extent-of-claim-suppression-in-british-columbias-workers-compensation-system>

## **Appendix B: Summary of recommendations**

### Recommendation #1

That the WCB redesign the Section 21(2)(f) form (PL29) to include:

- the worker's responsibility to report all injuries to the employer (*Act* s. 149(2));
- the employer's responsibility to report an injury or occupational disease to the WCB within 3 days of notification (*Act* s. 150); and
- the prohibition against the employer discouraging, impeding or dissuading a worker from reporting an injury or illness to the WCB by any means (*Act* s. 73) with reference to the applicable penalty where a violation is found.

### Recommendation #2

That the WCB initiate an education campaign for employers and workers around the issue of claims suppression and what constitutes claim suppression as outlined in the 2019 Patterson *New Directions Review* to the Minister of Labour. The education program should include a new brochure along the lines of the previously referenced claim suppression brochure produced by SafeWork Manitoba.

### Recommendation #3

That the Board WCB develop a claim suppression audit tool to be applied where there is evidence of possible claim suppression in a workplace to determine whether violations have occurred and whether penalty consideration is warranted.

### Recommendation #4

That the claim suppression brochure referenced in recommendation #2 include a section on safety incentive programs that promote claim suppression and also include a dedicated tip line for reporting claim suppression activities.

### Recommendation #5

## Claim Suppression: The Elephant in the Workplace

That the WCB initiate an independent review of the WCB's experience rating system to determine whether and to what extent this system provides an incentive for claim suppression and promotes inequity among employers.

### Recommendation #6

That the WCB amend the experience rating policy to charge the first two weeks of any time loss claim to the industry rate group to be funded collectively by that rate group rather than individually by each employer.

### Recommendation #7

That the WCB establish a special Claim Suppression Unit with trained investigators from Claims Services, Prevention Services and Assessment Services to enforce the provisions of the *Act* that prohibit claim suppression.

### Recommendation #8

That the WCB credit the funds collected for claim suppression violations to the industry rate group in which the offending employer is registered.

### Recommendation #9

That the WCB review its criteria for undertaking investigations of no time loss injuries where there is some evidence of actual time loss.

### Recommendation #10

That the WCB fully implement the best practices outlined in recommendation #51 and Appendix 21 of the *New Directions Review* to ensure that a return to work before maximum medical recovery is suitable for an injured worker.

### Recommendation 11

That the WCB support implementation of effective disability management programs in partnership with the National Institute for Disability Management and Research.

### Recommendation # 12

## Claim Suppression: The Elephant in the Workplace

That the WCB establish a process for the Board to request a Functional Abilities Assessment from the worker's treating physician paid for out of the accident fund.

### Recommendation #13

That the WCB review its criteria for investigating suspended claims where there is evidence of time loss from work to ensure that the decision to discontinue the claim is not the result of claim suppression activity.

### **Appendix C Enforcement data provided by the WCB**

*On November 22, 2021 I requested some general information for the WCB Policy and Regulation Division which had provided extensive and helpful information and analysis for my 2018 report to the Board of Directors.*

*Below is the December 15, 2021 e-mail response from the WCB's Head of Law and Policy.*

Thank you for the email with your questions regarding claims suppression. For ease, I have set out our response to your questions in bold font:

1. Has the Board taken any action on the claim suppression issue since receiving the Prism report?
2. Is any further action planned on the claim suppression issue as a result of this report?

**Response:**

- **The potential for the under-reporting of claims and claims suppression exists for all workers' compensation boards in Canada. The IWH notes that the B.C. findings are consistent with prior research studies undertaken in this area in other provinces.**
- **WorkSafeBC commissioned the study to better understand the nature and extent of claims suppression in B.C.'s workers' compensation system. It is an issue WorkSafeBC takes very seriously.**
- **WorkSafeBC is reviewing the study from the Institute for Work & Health and is considering the findings.**

In the 2019 "New Directions" report the Reviewer recommended that the Board undertake an education campaign for employers and workers around the issue of claims suppression including a posting in every workplace.

3. Has the Board taken any action in response to this recommendation?

**Response:**

**As a government directed review, the report continues to reside with the Minister for review and consideration.**

I understand that the Board has implemented a new process to address all allegations of claims suppression.

## Claim Suppression: The Elephant in the Workplace

4. Can you provide a copy of this process and any recent and current data regarding incidence of reports received, investigations of alleged claim suppression, and enforcement of claim suppression activity?
5. Are there any other reports or information that would assist me in more fully understanding the Board's current response to this important issue?

Response:

**Records that are not available on [worksafebc.com](https://worksafebc.com) can be requested by making an access to information request to our Freedom of Information and Protection of Privacy Office. A request can be made using the [request for access to records](#) form (please click to follow the link) and emailing it to our Freedom of Information office at [fipp@worksafebc.com](mailto:fipp@worksafebc.com) or faxing to the number included in the form.**

Ian Shaw  
Head of Law and Policy

*On December 23, 2021 I wrote to the Board's Freedom of Information and Protection of Privacy Office with the following request.*

I am currently in the process of updating my March 31, 2018 report to the WCB Board of Directors "Restoring the Balance: A Worker Centred Approach to Workers Compensation Policy" regarding recommendation #21 in my report related to claim suppression. The Board has now completed the recommended independent study of claim suppression by the Institute for Work and Health and my FOI request will inform my update for the Board of Directors based on the findings in the IW&H Claim Suppression Study. I would greatly appreciate the FIPP Office assistance with the following request.

1. How many investigations has the Board completed under section 150(6) of the Act for the years 2018, 2019, 2020, and 2021?
2. How many violations of section 150(6) have been found for the years 2018, 2019, 2020, and 2021?
3. How many fines have been levied and collected for violations under section 150(6) for the years 2018, 2019, 2020, and 2021?
4. What is the total amount of fines collected for violations under s. 2018, 2019, 2020, and 2021?
5. How many interim adjudications did the Board make under section 150(8) of the Act for the years 2018, 2019, 2020, and 2021?

## Claim Suppression: The Elephant in the Workplace

6. How many additional assessments were levied and collected under section 262(2) of the Act for the years 2018, 2019, 2020, and 2021?

7. What was the total \$ amount of additional assessments under s. 262(2) for the years 2018, 2019, 2020, and 2021?

8. How many investigations did the Board complete under section 73(a) and section 73(b) of the act for the years 2018, 2019, 2020, and 2021?

9. How many violations did the Board find under section 73(a) and 73(b) of the Act for the years 2018, 2019, 2020, and 2021?

10. How many administrative penalties did the Board impose under section 73(a) & 73(b) of the Act as provided in RSCM policy item #94.20 for the years 2018, 2019, 2020, and 2021?

11. What was the total \$ amount of the administrative penalties imposed for violations of section 73(a) and 73(b) of the Act for the years 2018, 2019, 2020, and 2021?

Thank you for your assistance with this request. I would be happy to answer any questions or provide clarification related to this request.

Paul Petrie, retired

former Deputy Chief Appeal Commissioner

WCB Appeal Division

*The FIPP Office provided the following helpful response to my request*

**Freedom of Information and Protection of Privacy  
Office**

Mailing address: PO Box 2310 Stn

Terminal, Vancouver BC V6B 3W5

Phone 604.279.8171 |

1.866.266.9405 | Fax

604.279.7401 |

Email: [FIPP@worksafebc.com](mailto:FIPP@worksafebc.com)

February 11, 2022

**Attention: Paul Petrie**

Dear Paul Petrie:

**Re: Freedom of Information Request – WCB-2021 - 1788**



## Claim Suppression: The Elephant in the Workplace

I am writing in response to your request for access to information under the Freedom of Information and Protection of Privacy Act (FIPPA). You requested Board statistics relating to the issues of claim reporting and claim suppression under sections 150, 73 and 262 of the *Workers' Compensation Act* (the Act).

Note that no single record exist in the custody or under the control of WorkSafeBC that responds to your request. In order to provide a response we reached out to various WorkSafeBC departments including Field Investigations, Prevention Field and Analytics and Data Lifecycle Services (ADLS) to determine if a responsive record could be created. Some of the information you requested could be produced using WorkSafeBC systems, as contemplated by section 6 of FIPPA, however not all information you requested could be produced. Also, as a result, it is possible some inconsistencies exist in the data presented below.

1. How many investigations has the Board completed under section 150(6) of the Act for the years 2018, 2019, 2020, 2021?

Field Investigations systems indicate the following number of investigations:

<b>Year</b>	<b>Investigations</b>
2018	3
2019	1
2020	0
2021	0

2. How many violations of section 150(6) of the Act have been found for the years 2018, 2019, 2020, 2021?

A record of this information does not exist and could not be produced.

3. How many fines have been levied and collected under section 150(6) of the Act for the years 2018, 2019, 2020, 2021?

4. What is the total amount of fines collected for violations under s. 150(6) for the years 2018, 2019, 2020, 2021?

No data exist in WorkSafeBC systems on fines levied or collected under s. 150(6).

## Claim Suppression: The Elephant in the Workplace

5. How many interim adjudications did the Board make under section 150(8) of the Act for the years 2018, 2019, 2020, and 2021?

No data in WorkSafeBC systems identify adjudication under section 150(8). Technically we can produce a report to show all claims adjudicated without an Employer Report (F7) however it would not be accurate to conclude claims adjudication without F7 in all cases would be "interim adjudication" as contemplated under section 150(8). Therefore the record you are seeking cannot be produced.

6. How many additional assessments were levied and collected under section 262(2) of the Act for the years 2018, 2019, 2020, and 2021?

7. What was the total \$ amount of additional assessments under s. 262(2) for the years 2018, 2019, 2020, and 2021?

Section 262 (2) is an extra penalty charged for late filing of an injury. In the ADLS data analysis, this is defined as "Injury cost prior to registration".

ADLS produced the following data:

<b>Year</b>	<b>Count of Additional Assessments</b>	<b>Sum of Additional Assessments</b>
2018	184	\$960,233.75
2019	138	\$695,594.81
2020	109	\$756,211.20
2021	115	\$566,585.34

8. How many investigations did the Board complete under section 73(a) and section 73(b) of the Act for the years 2018, 2019, 2020, and 2021?

Field Investigations produced the following statistics from their systems, listing the number of investigation resulting from referrals by Prevention Field, Claims and the WorkSafeBC Tip Line.

## Claim Suppression: The Elephant in the Workplace

<b>Year</b>	<b>Investigations</b>
2018	263
2019	279
2020	228
2021	157

9. How many violations did the Board find under section 73(a) and 73(b) of the Act for the years 2018, 2019, 2020, and 2021?

Note that in all cases where Field Investigations finds some evidence of claim suppression the employer is educated and a written letter is provided to the employer pertaining to s. 73. A copy of the letter is saved on the employer file in Work-SafeBC systems. If a complaint meets the evidentiary threshold the file is forwarded to the Prevention Field department for a final determination and consideration of Orders, Administrative Penalties or Warning Letters.

10. How many administrative penalties did the Board impose under sections 73(a) and 73(b) of the Act as provided in RSCM policy item #94.20 for the years 2018, 2019, 2020, and 2021?

11. What was the total \$ amount of the administrative penalties imposed for violations of sections 73(a) and 73(b) of the Act for the years 2018, 2019, 2020, and 2021?

ADLS together with Prevention Field produced the following data (warning letters included):

<b>Year</b>	<b>Count of Penalties/Citations</b>	<b>Sum of Penalties/Citations</b>	<b>Count of Warning Letters</b>
2018	2 citations	\$ 1,559.58	
2019	1 penalty	\$15,453.71	1
2020	1 penalty	\$ 2,982.20	1
2021	0 penalties/citations	\$ 0	1

12. How many STD claims for one day for the year 2019?

## Claim Suppression: The Elephant in the Workplace

ADLS reported: 5,554 claims.

If you disagree with our response you have 30 days from receipt of this letter to request a review by the Information and Privacy Commissioner (IPC). You can contact the Office of the IPC at 250-387- 5629 or visit their web site at [www.oipc.bc.ca](http://www.oipc.bc.ca).

If you have any questions, please email [FIPP@worksafebc.com](mailto:FIPP@worksafebc.com)

or call me at 604-244-6343.

Yours sincerely,

Christel Nouwt  
Sr Manager Access to Information and Privacy

## **Appendix D Paul Petrie Resume March 2022**

Paul Petrie has served in a number of positions in the B. C. Workers' Compensation System over the last 40 years including Deputy Chief Appeal Commissioner with the WCB Appeal Division, Vice-chair with WCAT, Director of the Workers Advisors Office, Prevention Research Coordinator, and Vocational Rehabilitation Consultant. He also served as OH&S coordinator for the Ministry of Labour, research coordinator with the Construction Industry Health and Safety Council, and executive director for the Occupational Health and Safety Agency for Healthcare (OHSAH).

He has provided consultative services to a number of Workers Compensation Boards including Alberta, Yukon and the Northwest Territories and for the BC Government Employees Union and the Health Sciences Association of BC. In 2013 he completed a review of the Manitoba WCB assessment rate model on "Fair compensation for workers and equitable assessments for employers" for the Manitoba Minister of Labour.

He has done post graduate work in social research and medical sociology at the University of Maine (MA Honours), the University of Connecticut and McGill University (PhD programs). He has taught part-time at Douglas College and Capilano University and was Director of Labour Programs at Simon Fraser University.

He was the founding vice-president of the BC Council of Administrative Tribunals and a director of the Council of Canadian Administrative Tribunals (CCAT). He has presented papers on prevention and compensation issues at the 1987 ILO World Congress on Occupational Health and Safety in Stockholm and the 2014 ILO World Congress in Frankfurt. In 2018 he completed a compensation policy review for the BC WCB Board of Directors: "Restoring the Balance: A Worker-centred Approach to Workers' Compensation Policy."

He is retired and living on South Pender Island where he volunteers for conservation groups and works closely with the WSÁNEĆ First Nation on reconciliation programs including the [TETÁCES Climate Action Project](#) and the TETÁCES Revitalization

## Claim Suppression: The Elephant in the Workplace

Project. He is an avid gardener and Face-times religiously with his grandkids in California and Vancouver. He is currently taking drawing lessons from his 10 year old granddaughter Ada who provided the cover art for this Addendum.

Paul Petrie, South Pender Island, B.C. [pmpetrie@shaw.ca](mailto:pmpetrie@shaw.ca)