

WCB CONSULTATION

Submission on Proposed Policy:
Partners in Injury & Disability
Prevention Program (COR)
“In Good Standing” Criteria

November 2015



Authority

This document is respectfully submitted on behalf of the Executive Officers of the BC Federation of Labour and represents the views of more than 500,000 affiliated members across the province of British Columbia.



Irene Lanzinger
President

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WCB Consultation

Submission on Proposed Policy: Partners in Injury & Disability Prevention Program
– “In good standing” Criteria
Certificate of Recognition (COR) | November 2015

Introduction

The BC Federation of Labour (Federation) appreciates the opportunity to provide our submission with respect to the Workers’ Compensation Board’s (WCB) policy proposed in the discussion paper entitled “Partners in Injury and Disability Prevention Program” (“Partners Program”), dated September 22, 2015, with respect to what constitutes “in good standing” for the purposes of receiving a rebate.

The Federation represents more than 500,000 members of our affiliated unions, from more than 1,100 locals, working in every aspect of the BC economy. The Federation is recognized by the WCB and the government as a major stakeholder in advocating for the health and safety of all workers in BC.

The Federation’s submission was prepared in consultation with its affiliates and supports the individual submissions of its affiliates.

Background

The current iteration of the Partners in Injury and Disability Prevention Program, or Certification of Recognition Program (COR), was approved by the WCB Board of Directors (“BOD”) in 2006. The program requirements are outlined in the WCB publication “The Certificate of Recognition Program Standards and Guidelines¹” (COR Standards) which states that the program is designed to recognize employers who are proactive about workplace health and safety, implementing an occupational health and safety management system (OHSMS),

¹ Workers Compensation Board of BC. (2011, January). *The Certificate of Recognition Program Standards and Guidelines*. Retrieved November 2015, from WorkSafeBC:
http://www.worksafebc.com/insurance/partners_program/assets/standards_guidelines.pdf [COR Standards]

which is stated as to exceeding the regulatory requirements, as well as incorporating quality assurance and continuous improvement.²

Employers must apply for COR through a certifying partner that is approved by the WCB, typically industry-based health and safety associations. To receive COR, employers must meet the requirements outlined in the COR Standards and pass the certification audit. Certification requires the employers to do annual maintenance audits and recertify after three years. The benefit to the employer is that they receive a 10 per cent rebate of their base assessment each year that they are certified and are “in good standing” with WCB.^{3 4}

Although the criteria establishing what constitutes “in good standing” for the purpose of receiving a rebate is provided in the COR Standards, this document is not considered a policy of the WCB Board of Directors (BOD) and is therefore not legally binding on decision makers. As such, and due to reportedly confusing standards, the “in good standing” criteria have been applied as discretionary by the Review Division (RD) and the Workers’ Compensation Appeal Tribunal (WCAT), resulting in inconsistent decisions with respect to whether or not a COR certified employer receives their rebate⁵. It has also led to an appeal decision at the WCAT where the Vice Chair apportioned the rebate entitlement, rather than using the all-or-nothing approach that is contemplated in the COR Standards.⁶

Due to the lack of a clear policy on the issue of “in good standing” as well as what should happen to the rebate if found not in good standing, the Chief Review Officer suspended all

² COR Standards, *supra* note 1 at 4, 5

³ Workers’ Compensation Board of BC. (2015, September). *Discussion Paper: The Partners in Injury and Disability Prevention Program (“Partners program”)*. Retrieved November 2013 from WorkSafeBC: http://www.worksafebc.com/regulation_and_policy/policy_consultation/assets/pdf/PartnersProgram.pdf [WCB DP]

⁴ COR Standards, *supra* note 1 at 6

⁵ See Review Division decision dated July 22, 2014, number [R0181091](#)

⁶ See Workers’ Compensation Appeal Tribunal decision by Warren Hoole dated December 16, 2014, number WCAT-2014-03712. Retrieved from: <http://www.wcat.bc.ca/research/decisions/pdf/2014/12/2014-03712.pdf> [WCAT]

reviews regarding COR rebates until the WCB clarified the policy. Therefore, the discussion paper⁷ is requesting submissions on proposed new policy to address this narrow issue of COR.

PINEO'S VISION – The Historic Compromise

Avard Pineo was appointed by the Government of British Columbia in 1915 to investigate the “modern systems of workmen’s compensation laws” in order to provide advice with respect to Bill (No. 26) – a Bill which he notes was “based on the principles of social justice” – which proposed BC’s first reform to the Workmen’s Compensation Act enacted in 1902. Pineo presented his shrewd analysis and recommendations in his final report⁸ (Pineo Report) provided to the Province of BC in 1916, which nearly 100 years later remains pertinent today.

Pineo made these opening comments with respect to what the “best system” should look like, setting the foundation for what is now known as BC’s version of William Meredith’s “historic compromise”⁹:

...while protecting the employer against personal-injury claims and ensuring the employee an enlarged and better measure of compensation, will in their common interest exercise a constant and direct force tending to improved personal relations between employers and their employees, and to the creation of better working conditions and the reduction of the opportunities for accident. [Emphasis added.]

It is important to remember that the compromise—properly implying that each group gave up something significant for this system—was intended to facilitate employers and workers coming together “in their common interest,” improving their ability to work together for occupational health and safety.

⁷ WCB DP, *supra* note 3

⁸ Pineo, A., Robertson, D., McVety, J. (1916). *Province of British Columbia Report of the Committee of Investigation on Workmen’s Compensation Laws*. Victoria: William H. Cullin, Printer to the King’s Most Excellent Majesty. Retrieved from http://worksafebc.com/publications/reports/historical_reports/pineo_report/default.asp [Pineo]

⁹ William Meredith described the phrase “historic compromise” in his 1913 report to the Ontario government entitled *Laws Relating to the Liability of Employers*. A copy of this report can be retrieved from [http://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1913%20Meredith%20Report%20\(Complete\).pdf](http://www.wcat.bc.ca/research/WorkSafeBC/WSBC_Hist_Rpt/1913%20Meredith%20Report%20(Complete).pdf)

Notably, although the employers continue to receive the benefit of protection from suit, the workers' side of the compromise, seemingly forgotten, continues to slip. It is upsetting to realize just how far our "modern system" has drifted from Pineo's insightful warnings and recommendations. In what ways?

1. Rather than a focus on "enlarged and better measures of compensation," workers' compensation benefits have been on the decline since the 1990s—coined by Terence G. Ison as compensation "deform"¹⁰—in favour of lowering assessments, or providing rebates, to employers.
2. The basic principle that employers and workers should work together; that workers have an equal stake, or right to participate, in occupational health and safety as employers do; has significantly eroded. The development, implementation and management of the COR program being a perfect example of this.

Key to this Submission are the progressive recommendations that Pineo and his committee made to replicating the system that was implemented at the time in Wisconsin, essentially bringing prevention regulation and enforcement under the same roof as workers' compensation. Pineo emphasized the importance of this by stating that:

...every consideration should be given to the fostering of conditions which will prevent or minimize the evils which give rise to the necessity for compensation.

The Federation feels it is fitting to remember of Pineo's vision of "Safety and Accident Prevention" to provide some context for discussions on the WCB's incentive program for employers.

¹⁰ Taken from Terence G. Ison's 2012 article "Reflections on workers' compensation and occupational health and safety". A presentation of this article can be found at <http://www.iwh.on.ca/prevention-incentives-2012/proceedings/ison>. Terrence G. Ison, the Chair of the WCB of BC from 1973 to 1976, was an internationally renowned expert in workers' compensation law and policy. Ison was a professor of law at Queen's university from 1996 to 1980 and at Osgood Hall Law School from 1980 to 1995. He is the author of many publications, reports, presentations, etc., and received the Ontario Bar Association Ron Ellis Award for his contributions and achievements in workers' compensation law. [Ison]

Pineo's Vision – WCB Oversight of "Safety Rules"

The Bill (No. 26) proposed to have class-specific employer associations recommend their own safety rules, which had to be approved by the WCB which would then be enforced by an employer paid inspector. Pineo pointed out that this was **not** a desirable system for BC.

Pineo instead proposed a system in which the WCB would have the authority to make rules and "the duty to see that those rules are carried out in practice." He opined that this enforcement would be "more uniform and accomplished at less expense in the aggregate than would be the case if each class of industry had its separate inspection staff."

Pineo's Vision – Joint Participation of Employers and Workers

He further describes how the rules should be made:

General rules as well as special rules applicable only to certain lines of industry are formulated at conferences at which the Board or its safety engineer is assisted by advisory committees, composed jointly of representatives of the employers and the workmen. [Emphasis added.]

What were the insights behind this recommendation? Pineo recognized that if employers and workers were part of the development of these rules it would ensure that the rules were applicable and also that it would be easier to achieve acceptance and support by the employer and the worker community:

The assistance obtained in this way from direct practical experience results in the framing of rules applicable to existing conditions. Another object attained which is equally important is the favourable attitude with which rules framed in this way are received by the general body of employers and workmen. Such rules are looked at not as being imposed on the industry by some body from the outside which may or may not have a very practical conception of the needs, but as having been **framed in a measure by the employers and workmen themselves in their own interests** through the co-operation of their own representatives. The effectiveness of such rules and the

comparative ease with which they are enforced is ample proof of the value of this method...

Pineo's Vision – No Conflict of Interest

The Pineo Report discusses at length the concerns of having a system in which third parties are involved. Pineo at that time was referring to private insurance companies, but the issues he identified are applicable to any third party, such as employer associations or consultants.

Clearly this cannot be accomplished by leaving the matter in the hands of those whose only interest in the business is in making a personal profit for themselves and a dividend for the company which they represent ...

We strongly recommend that no third party with conflicting private interests be permitted to come between the employer and the injured workman in their relations as such for the mere purpose of conducting a business for profit. [Emphasis added.]

Pineo – What would he think of COR?

Pineo's vision noted above may seem familiar to some as the seeming basis of our current workers' compensation system. So, how does this pertain to COR? Well, upon review of the WCB's incentive program it should also be obvious that COR is a key example¹¹ of a 100-year regression of the vision that Pineo so eloquently and wisely proposed.

The system that Pineo was arguing *against* is easily recognizable in the premise of COR:

- Employer associations establishing the rules for certification and the components of OHSMS (which appears to not even require the 'approval' of the WCB); abdicating the WCB's authority over "safety rules" and standards;
- Employers (through employer associations) essentially policing themselves – approving certifications, training, implementing, and auditing; abdicating the WCB authority and

¹¹ The Federation can cite many other examples of this, including the recent battle to regain the recognition of the significant role of workers in incident investigations.

duty to enforce. Also, as Pineo notes, enforced with less consistency and likely greater expense to the employers (by paid employer consultants);

- COR auditors in clear conflict of interest, whether internal employees chosen by the employer or external industry consultants paid by the employer; their interests based on personal profit or profit for the company they represent;
- Workers are nowhere to be seen in the program;
- Rebates siphoning money out of the accident fund, providing significant breaks to employers in return for negligible results to injury reduction; and
- Meanwhile, compensation benefits to workers were butchered in response to exaggerated predictions of inadequate money in the accident fund.

COR PROGRAM – Back to the Drawing Board

COR was developed in partnership with industry only¹²—the labour community was not provided with the opportunity to participate with the development or ongoing management of the program. As such, COR is missing key components that should be foundational to any OHSMS – components evidently supported by the Pineo Report as detailed above.

Over the years since its inception, the labour movement has continuously raised concerns with respect to the development and implementation of the COR Program, both in the workplace and at the WCB, offering to work with the parties to provide reasonable suggestions for improvement. However, all of these efforts were dismissed or ignored – it was clearly the intent of industry, with the support of the WCB, to plow forward with a flawed program despite these very valid concerns.

It should be no surprise then that this ultimately led to working people submitting a resolution to the BC Federation of Labour’s 55th Convention in 2012 that directed the Federation to pursue

¹² COR Standards, *supra* note 1 at 7

the **elimination of COR**. This resolution¹³ was passed unanimously by more than 2,000 delegates and adopted as Federation policy:

BECAUSE the WCB's Certificate of Recognition (COR) Program is contrary to the interests of working men and women of British Columbia; and

BECAUSE money intended for the compensation and rehabilitation of injured workers is being used to reward employers for establishing superficial safety management and return-to-work systems; and

BECAUSE the financial reward for employers ought to come from the actual and continued reduction of workplace accidents, injuries and fatalities; now

THE FEDERATION WILL actively and effectively pursue the elimination of the WCB's Certificate of Recognition (COR) Program; and

THE FEDERATION WILL encourage all affiliates to not participate in this program.

This resolution unmistakably reflects the labour movement's diametric opposition to incentivizing what is an employer's minimum legal obligations and due diligence in occupational health and safety¹⁴ and leads to the Federation's first submission in this report:

Submission #1

- *The Federation urges the Board of Directors to immediately suspend and eliminate the existing OHS COR and ensure that the Return to Work (RTW) COR remains suspended indefinitely.*

¹³ BC Federation of Labour. (2012). *Together for a Better BC-Summary of Proceedings-55th Convention*. Retrieved from: <http://bcfed.ca/sites/default/files/SUMMARY%20OF%20PROCEEDINGS%202012.pdf> at page 7.

¹⁴ Quoted from discussions and submission notes provided by Brian Campbell, BCFED Health & Safety Centre. [Campbell]

Workers – Where are they?

The COR Standards document reiterates many times that the key participants in the COR Program are: certifying partners, WCB, employers and auditors. The glaring absence of workers in this list, and throughout the contents and tone of the document, is one of the key principles behind the labour movement's significant concerns with respect to COR – there is not even a weak attempt of tokenism.

This is solidified by the ongoing anecdotal reports from workers in COR certified workplaces of the lack worker participation, in some cases even outright dismissal of the “idea” that workers have a valuable role in occupational health and safety. For example, our members are told that there is “employee” participation, but again these are representatives hand-picked by the employer and usually supervisory staff – not non-managerial workers. In many cases, the Union has raised the issue of these appointments and is told that the workers' place is on the joint health and safety committee. This of course means nothing as in these workplaces, the joint committees are essentially non-functioning; the employer passes every health and safety issue that is raised over to the “COR side” to deal with.¹⁵

The COR Program purports to recognize employers who exceed the requirements of the *Workers Compensation Act*¹⁶ (Act) and the Occupational Health and Safety Regulation¹⁷. However, the Act clearly establishes **workers right to participate** in workplace occupational health and safety. Section 130 the Act clearly establishes the duties of the joint committee or worker health and safety representative:

(a) to identify situations that may be unhealthy or unsafe for workers and advise on effective systems for responding to those situations;

(b) to consider and expeditiously deal with complaints relating to the health and safety of workers;

¹⁵ Special thanks to the BCGEU, UFCW and ILWU for sharing their stories.

¹⁶ *Workers Compensation Act*, RSBC 1996, c. 492; Retrieved from:
http://www.bclaws.ca/Recon/document/ID/freeside/96492_00

¹⁷ Occupational Health and Safety Regulation, B.C. Reg. 296/97; Retrieved from:
http://www.bclaws.ca/Recon/document/ID/freeside/296_97_00

- (c) to consult with workers and the employer on issues related to occupational health and safety and occupational environment;*
- (d) to make recommendations to the employer and the workers for the improvement of the occupational health and safety and occupational environment of workers;*
- (e) to make recommendations to the employer on educational programs promoting the health and safety of workers and compliance with this Part and the regulations and to monitor their effectiveness;*
- (f) to advise the employer on programs and policies required under the regulations for the workplace and to monitor their effectiveness;*
- (g) to advise the employer on proposed changes to the workplace or the work processes that may affect the health or safety of workers;*
- (h) to ensure that accident investigations and regular inspections are carried out as required by this Part and the regulations;*
- (i) to participate in inspections, investigations and inquiries as provided in this Part and the regulations;*
- (j) to carry out any other duties and functions prescribed by regulation.*

[All emphasis added.]

All of the duties and functions listed above would be essential components of any OHSMS and yet in the WCB's COR Program, workers are not included – or even contemplated – in any of these components of the program. This means that the current design of the **COR Program is in clear violation of the Act.**

There are many other sections of the Act which refer to the involvement of worker representatives, including Section 174 (1) which states that a worker representative must participate in the investigation process. It is clear that the Act contemplates that workers are a key stakeholder in workplace health and safety and that the participation of workers is essential to ensuring healthier and safer workplaces. This is due to the recommendations made in Pineo's Report – that the only parties to OHS aside from the WCB are the employers and workers, and that nothing should get between the two.

So what does “participation” mean? Well, according to the Merriam-Webster dictionary, the definition of participate is: “to be involved with others in doing something: to take part in an activity or event with others.”¹⁸ Nowhere in the legislation does it suggest that there is an alternate definition of the word, nor that “participation” would mean any less for a worker representative than that of the employer representative, and yet, over time, the interpretation and application of the Act has been eroded in the regulations, policy and practice of the WCB for the worker representative—the design of the COR program sadly illustrates this.

CSA Standard on OHSMS

Interestingly, the WCB recommends and endorses the Canadian Standards Association (CSA) Z1000-06 Occupational Health and Safety Management standard – superseded by Z1000-14¹⁹ in 2014 – in the WCB guideline G3.1 Occupational health & safety program²⁰ when discussing OHSMSs. The guideline gives recognition to the fact that the CSA standard was developed with representatives from the government, employer, and labour community.

CSA Z1000-14, a voluntary national standard – or national best practice – is light years ahead of the WCB in recognizing the role of workers in an OHSMS system. At the very beginning, the CSA standard sets the stage for the participation of workers in section 4.2.3²¹ where it states:

Worker participation is an essential aspect of the OHSMS in the organization. The organization shall

- a) ensure active participation in the OHSMS by workers and worker representatives (where they exist) at all levels of the organization, including those exposed to the

¹⁸ Merriam-Webster, Incorporated. (2015). *Participate*. Retrieved November 23, 2015, from: <http://www.merriam-webster.com/dictionary/participate>.

¹⁹ CSA Group. (2014, December). *Z1000-14 Occupational health and safety management*. [CSA]

²⁰ Workers Compensation Board of BC. (2009, February). *Guidelines Part 3 – Occupational health and safety programs*. Retrieved November 2015, from: <http://www2.worksafebc.com/publications/OHSRegulation/GuidelinePart3.asp#SectionNumber:G3.1>.

²¹ CSA, *supra* note 11 at 14

hazards, by providing workers and worker representatives with the mechanisms, time, and resources necessary to participate in, at a **minimum**, the processes of

- i. **planning** (Clause 4.3);
 - ii. **implementation** (Clause 4.4); and
 - iii. **evaluation, corrective action, and preventive action** (Clause 4.5).
- b) provide workers and worker representatives with timely access to information relevant to the OHSMS and processes for ensuring participation in the OHSMS; and
- c) encourage worker participation by providing mechanisms that
- i. support worker participation, such as identifying and removing barriers to participation;
 - ii. engage existing workplace health and safety committees or worker representatives; and
 - iii. ensure that workers and worker representatives are informed, consulted on, and given the opportunity to participate in all aspects of OHS associated with their work.

[Emphasis added.]

The language above embodies a best practice in worker participation, recognized and supported by all stakeholders around the policy development table of the CSA (which notably included policy staff from WCB BC). In addition, it supports and expounds on the legal requirements for worker participation set out in the Act, in Section 130 et al. If the WCB was serious about the participation of workers in health and safety in their workplace, their regulation, policy, practice, guidelines – and certainly their COR Standard – would reflect these tenets.

ISO Standard on OHSMS

To give this even more weight, the International Organization for Standardization (ISO) is currently developing a standard for OHSMS. Similar to the CSA, the ISO develops and publishes consensus-based, voluntary standards with a panel of experts, including representatives from the labour community which are considered world-class, international standards. The technical committee's – ISO/PC 283 Occupational health and safety management systems²²– draft language regarding working participation was as follows²³:

5.4 Participation, consultation and representation

The organization shall, establish, implement and maintain process(es) for participation and consultation in the **development, planning, implementation, evaluation and actions for improvement** of the OH&S management system by workers at **all applicable levels and functions**, and, where they exist, workers' representatives.

The organization shall:

- Provide mechanisms, time, training and resources necessary for participation and consultation;
- Provide timely access to clear, understandable and relevant information about the OH&S management system;
- Identify and remove obstacles or barriers to participation and consultation and minimize those that cannot be removed.

Note 1: Obstacles and barriers include failure to respond to worker input or suggestions, language or literacy barriers, reprisals or threats of reprisals and policies or practices that discourage or penalize worker participation.

²² For more information regarding the ISO/PC 283 see http://www.iso.org/iso/home/standards_development/list_of_iso_technical_committees/iso_technical_committee.htm?commid=4857129

²³ Note: there is no public draft of this standard at this time to reference. The language reflects the most recent available draft and may change prior to the final publish date.

Additional emphasis shall be given to the participation of **non-managerial workers** in the following:

- a) Determining the mechanisms for their participation and consultation;
- b) Hazard identification and assessment of risk (6.1, 6.1.1, 6.1.2);
- c) Actions to control hazards and risks (6.1.4);
- d) Identification of needs of competence/training and evaluation of training (7.2);
- e) Determining the information that needs to be communicated and how this should be done (7.4);
- f) Determining control measures and their effective use (8.1, 8.2, 8.6);
- g) Investigating incidents and nonconformities and determining corrective actions (10.1).

Note 2: Participation includes, as applicable, engaging health and safety committees and workers' representatives. [Emphasis added.]

Conflicting Interests – Whose design is this anyway?

To expand on the issues above, it is rather disturbing that the WCB has not developed the basic standards required for any OHSMS adopted by the certifying partners. Instead, it has been left to the certifying partners – in other words, employer associations – to determine their own standards based on audit tools that they develop in partnership with employers.

Even where the WCB did attempt to provide some direction for COR it falls short. For example, the COR Standards does not even mention *elimination or substitution* when discussing addressing hazards, which is the first step in their legal requirement, but rather jumps right to controlling the hazard. Once again, the CSA Standard presents a much better model for this in their section 4.4.2.2²⁴ under Preventative and protective measures.

Therefore, it should be of no great surprise that those with conflicted interests – employers, employer consultants, and employer associations – have **not** developed OHSMSs that include:

²⁴ CSA, *supra* note 11 at 17

- A. Active participation of workers;
- B. Standards set by the WCB that truly reflect requirements to exceed the Act and regulations;
- C. Mandates for proven continuous improvement to maintain certification;
- D. A culture of reporting hazards, incidents, near-misses, and injuries; and
- E. Joint and/or independent, non-conflicted auditing tools and auditors.

Pineo made it clear in his Report that it was necessary for true success of BC's workers' compensation system for it to be centralized under the WCB. The WCB should be setting "rules" and retaining the oversight to enforce the rules – in order that it really achieves the outcome of prevention of injuries, and not simply the protection of profits.

Conflicting Interests – A Culture of Claim Suppression

Claim suppression has been extensively researched and well documented across Canada, and internationally, as a very real (perhaps unintended) consequence of the experience rating system.

The WCB's COR Program does very little, aside from a brief mention in the COR Standards which the WCB now proposes to downplay in the policy, to address this issue and ensure that COR certified employers in no way suppress claims or claim costs.

As mentioned previously in this paper, many COR certified employers reportedly deploy all sorts of tactics to artificially suppress the filing of claims – direct intimidation, indirect intimidation (guilt, loyalty, fear of layoffs due to lost contracts, etc.) and incentives (which we call bribery). And why wouldn't they? With the amount of money that is on the line in rebates, never mind potential future contracts determined by the status of their certification, and no genuine measures in place to keep them honest—the temptation and benefits of claim suppression far outweigh any potential consequences.

Conflicting Interests – Why are the wolves watching the sheep?

The Federation cannot describe it better than the submission provided by Brian Campbell²⁵ to the Federation:

It would seem the wolves are now watching the sheep. In what is one of the most absurd aspects of the entire COR Program, representatives of employer associations or industry groups are in fact the ones who deem whether or not a particular firm or company should be entitled to receive an additional discount on top of the generous discount already afforded to them by the experience rating system. How is this direct conflict of interest not evident to all parties involved?

Now the imperative question here arises of “how many times has an auditor held up or disqualified a business or firm from attaining the rebate?” Absolutely nowhere in the copious amount of information provided by WCB for review of the program does it indicate how many, if any, firms were denied access to this rebate. What is the integrity of this audit process?

A quick scan of the firms currently receiving this incentive rebate revealed some infamous organizations:

- Babine Forest Products Ltd.²⁶ – receiving both OHS and RTW discount till 2016
- Lakeland Mills Ltd.²⁷ – receiving OHS discount till 2017
- New Gold Afton Mine²⁸ – receiving both OHS and RTW discount till 2016

²⁵ Campbell, *supra* note 14

²⁶ Carl Charlie, 42, and Robert Luggi Jr., 45, lost their lives in January 2012 at the Babine Forest Products sawmill explosion, 19 other workers were injured. A coroner’s inquest held in 2015 exposed the extent of the employer’s failure to ensure a health and safe workplace and made 41 recommendations for improvement.

²⁷ Glen Roche and Allan Little lost their lives in April 2012 at the Lakeland Mills sawmill explosion, 24 other workers were injured. A coroner’s inquest held in 2015 exposed the extent of the employer’s failure to ensure a health and safe workplace and made 33 recommendations for improvement.

²⁸ A company that was lauded for its outstanding health and safety commitment (given awards in 2010 and 2011) was found in 2013 to be significantly lacking through an audit process done by eight inspectors, including insufficient oxygen levels and overexposure to silica dust.

- Western Stevedoring Company²⁹ – receiving both OHS and RTW

How can an organization that has killed multiple workers, injured dozens more and destroyed the lives of so many families be given monetary reward from the Workers' Compensation Board?

This is indeed a good question. In the cases of both Babine and Lakeland, this would mean that they received their COR certification prior to the investigation being completed on the two sawmill explosions. In 2014, following the investigations, Babine received a penalty of \$1,011,639³⁰ and Lakeland received a penalty of \$724,163³¹. While these penalties can in no way make up for the tragic deaths of four workers or the more than 40 injured workers, it is absolutely sickening to think that in this same year these workplaces were eligible for a COR rebate, effectively offsetting these penalties.

There is simply no good rationale for providing workplaces such as these with the privilege of participating in the COR Program so soon after the deaths of workers due to their own reckless disregard and negligence of their obligations under the Act and regulation.

And where does the responsibility for “quality assurance” lie with respect to maintaining certification and receiving COR rebates – yes, you guessed it, once again with the conflicted employer representatives.

COR – Recognition for what?

It is unconscionable that the WCB is allowing the COR Program to continue with those shameful examples of its failure to provide unbiased and high standards for certification.

This begs the question – ***what are employers actually being recognized for?***

²⁹ Kevin Lowes, a 44-year old father, lost his life in May 2010 while working at Western Stevedoring's Lynnterm terminal. Western Stevedoring was fined \$145,000 after pleading guilty to two violations of the *Canada Labour Code* with respect to OHS.

³⁰ Retrieved from the WCB's Newsroom webpage for 2014:

http://www.worksafebc.com/news_room/features/2014/new_14_04_03.asp

³¹ Retrieved from the WCB's Newsroom webpage for 2014:

http://www.worksafebc.com/news_room/features/2014/new_14_07_29.asp

It is difficult to understand how involvement in the COR Program identifies employers who are exceeding the regulatory requirements and portraying continuous improvement, as professed in the COR Standards³², when the basic principles of the program are not in keeping with even basic requirements of the Act and regulation.

The Federation submits that COR is **NOT** a world-class, best practice or standard in OHSMS and therefore employers should not be applauded or rewarded for their participation in this program. COR is simply another way that employers, and the WCB, can demean and erode the important role (and right) of worker participation in workplace health and safety and the basic facets of a bona fide occupational health and safety program.

Research – What does it tell us?

The WCB commissioned a study³³ by the Partnership for Work, Health and Safety³⁴ to evaluate the effectiveness of COR with respect to work injury rates between 2005 and 2012. Chris McLeod, the lead researcher for the study produced a research brief³⁵ outlining the study findings which the WCB provided in their discussion paper at Appendix B. In addition, Chris McLeod presented his findings to the Federation's Occupational Health and Safety Standing Committee at a meeting on October 28, 2015.

The study found that there was an average of 12 per cent lower injury rate overall compared to employers who did not have COR certification. However, McLeod is very clear in his brief, and was very clear in his presentation, that interpretation of these results must be made with great caution.

³² COR Standards, *supra* note 1 at 4, 5

³³ McLeod C, Quirke W, Koehoorn M. (2015) *Evaluation of the effect of an audit-based occupational health and safety recognition program on firm work-injury rates in British Columbia, Canada*. Vancouver. Partnership for Work, Health and Safety, University of BC.

³⁴ A partnership between WCB and the University of British Columbia (UBC) in the School of Population and Public Health under the Faculty of Medicine at UBC, established in 2005.

³⁵ This can also be found on the Partnership for Work, Health and Safety website at <http://pwhr.sites.olt.ubc.ca/files/2015/08/COR-Research-Brief-2015.pdf>

McLeod noted that COR appears to be identifying “better performers,” but that COR is not necessarily responsible for the reduction. As COR is a voluntary program, it could suggest that employers who choose to join the program have a greater awareness of occupational health and safety and/or consider it of greater importance than other employers even prior to joining COR. McLeod stated the following in his research brief:

Our interpretation of this finding is that the COR audit process is effective at identifying firms with lower work injury risk; however, **caution should be exercised in inferring that certification itself caused any reduction in injury risk**. While the difference-in-difference evaluation design attempts to account for pre-certification differences in injury risk between certified and non-certified firms, we cannot rule out that certification served as a marker for existing OHS practices (or other factors) that drove changes in injury risk once a firm became certified. [Emphasis added.]

Although COR certified employers in the construction industry had an injury rate that was 12 per cent lower than non-certified employers, McLeod noted that for COR certified employers, the predicted estimated injury rate reduction post-COR is only about one injury prevented per 200 workers compared to pre-COR certification.

Of further interest in the research brief is the graph on page two which shows the effect on injury rates from year to year. The graph illustrates that the greatest improvement in serious injury rates was found in the first four years of the program. However, from 2009 to 2012, the comparative reduction in serious injury rate to the control group was noticeably less.

The Federation submits that the results of this study are inconclusive as to whether the COR program is having a causal effect in improving occupational health and safety, which is of no great surprise to the labour movement. It is our opinion that the study supports the labour movement’s view that COR has a negligible effect on occupational health and safety, especially relative to the financial output for this program and what is lost with respect to worker participation, workplace culture, etc. As pointed out in the brief, more evaluation must be done in order to know how COR is really effecting the employers’ OHS practices.

A RECIPE FOR SUCCESS IN OHS EXCELLENCE

It is pertinent to note that the paper thus far presents a **very limited critique** of the WCB COR Program to illustrate the urgent need to eliminate the entire COR Program as it exists today and develop, jointly with the employer and labour communities, a genuine, high quality OHSMS to be proud of.

However, is this really possible or is it just a fanciful idea dreamt up by the labour movement? Of course, the Federation submits that not only is it possible, but making the highest level of occupational health and safety the primary focus is in fact the only thing that makes sense for fiscally responsible employers to do.

Paul O'Neill – Safety First at Alcoa³⁶

Alcoa, the Aluminum Company of America, describes itself as “a global leader in lightweight metals technology, engineering and manufacturing.”³⁷ In 1987, Paul O'Neill became the new Chief Executive Officer and declared that his primary objective was improving their occupational health and safety record, aiming for zero injuries.

Although Paul O'Neill's plan was scoffed at and directly attacked by many in the business community, all the naysayers had to eat their criticism as Alcoa's profits soared under Paul O'Neill's leadership. In the thirteen years of his tenure, Alcoa's market capitalization rose by \$27 billion and its annual net income was five times what it was in 1987. More importantly, in addition to the financial benefits, over that same period of time Alcoa's lost time **injury rate dropped from 1.86 to 0.23.**

How did he achieve this? O'Neill took a strong leadership approach to health and safety. He demanded to be informed immediately of any serious injury or fatality that occurred in any of their operations around the world. Rather than trying to suppress worker involvement, O'Neill

³⁶ Information in this section is based YouTube interviews, retrieved from <https://youtu.be/56a3-Sc65M8> and <https://youtu.be/dPAyBgWLm0A>; as well as various online articles, including the EHS Today article (2013) by Josh Cable retrieved from <http://ehstoday.com/safety/nsc-2013-oneill-exemplifies-safety-leadership> and the Huffington Post article (2012) by Charles Duhigg retrieved from http://www.huffingtonpost.com/charles-duhigg/the-power-of-habit_b_1304550.html.

³⁷ See the Alcoa website: www.alcoa.com

encouraged workers to report hazards, injuries, and ideas for improvement. In fact, he invited workers to contact him directly with respect to any occupational health and safety concern, including management failing to follow through with OHS policies. In various interviews he is quick to point out that this invitation resulted in a flood of worker recommended improvements related to occupational health and safety equipment, policy and practice – most of which were implemented with significant results.

The Alcoa model provides a glimpse into the success that could be achieved by adopting an aggressive, jointly developed and managed certification program.

A New Certifying Partner – the BC Federation of Labour³⁸

The new program must, *at a minimum*, ensure that COR standards and principles truly reflect those that exceed the Act and regulation, enshrining the principles of the national and international standards on OHSMS. Of course, WCB oversight and the active participation of non-managerial workers must be at the core of any certification program.

How would such a world-class, joint certification program look? The Federation presented a model at a meeting with Board Senior³⁹ staff that we still assert as the only path to success. It is our position that employers should have to pass, and maintain, a joint audit process in order to achieve certification. In this model, the Federation would be recognized, and funded, as a certifying partner representing the interests of all working people in BC. The employer would achieve certification only after receiving the approval of both the industry and the worker certifying partners, based on the standards set by the WCB. This process would ensure the highest level of oversight and quality assurance – a certification recognizing bona fide excellence in occupational health and safety.

³⁸ This section was developed largely based on recommendations from Larry Stoffman, Director of Occupational Health and Safety, UFCW BC. Stoffman was the labour lead on the CSA Z1000-14 OHSMS technical committee as well as the labour representative on the Canadian delegation for the ISO OHSMS standard development.

³⁹ The meeting took place at the BC Federation of Labour offices in approximately 2014 and included Ian Munroe, Vice-President, Employer, Industry, and Worker Services for WCB, as well as Sheila Moir (then OHS Director for BCGEU), Larry Stoffman, and Nina Hansen, BC Federation of Labour.

Who would train the worker auditors? This model would require a mandatory internal audit system of the employers' OHSMS, with the full participation of non-managerial, trained worker representatives. It would only make sense then for the BCFED Health and Safety Centre⁴⁰ to be provided with additional funding to become the training centre for worker representative auditors.

Submission #2

- *The Federation urges the WCB Board of Directors to **suspend the entire COR Program**, as per [Submission #1](#), and develop a new COR Program, jointly with the employer and worker communities.*
- *The Federation asserts that as part of the new COR, the WCB must develop, or adopt, a basic OHSMS required for certification which must:*
 - *Exceed the requirements the Act and regulation;*
 - *At a minimum, meet the CSA National Standard for OHS Management Systems;*
 - *Incorporate active participation of non-managerial workers in every aspect of the OHSMS;*
 - *Actively encourage the reporting of OHS hazards, incident, near-misses, and injuries and include checks and balances to ensure that claim suppression and claim cost suppression is impossible;*
 - *Include a mandate for continuous improvement in order to maintain certification; and*

⁴⁰ The BCFED Health and Safety Centre is fully funded by the Workers' Compensation Board to provide education and training for Joint Health and Safety Committee members, both employer and worker representatives, union and non-union. For more information visit their website: <http://www.healthandsafetybc.ca/>

- *Ensure the highest level of quality assurance for certification, maintenance and recertification, with internal audits performed jointly by the employer and workers, and externally validated by WCB through the inspection process.*
- *The Federation recommends that the BC Federation of Labour be recognized and funded as the “certifying partner” for workers’ interests, in which employers seeking certification require the approval of both the industry and the worker certifying partners.*
- *The Federation asserts that the BCFED Health & Safety Centre, with additional resources, should be authorized to train and certify the worker auditors.*

“In good standing” Criteria

As the Federation and its affiliates do not support any aspect of the COR Program as designed today, it is very difficult to provide submissions on the narrow focus of the criteria for receiving a rebate. Due to the fact that COR does not even strive to meet the minimum requirements of the Act and regulation, the labour movement is not supportive of employers receiving any rebate.

The WCB discussion paper summarizes the decisions of the Review Division and WCAT with respect to COR rebates⁴¹ which is essentially:

- There is no policy establishing the “in good standing” criteria that the appellate bodies are bound by; and
- The “all or nothing” approach⁴² of the COR rebate system does not reflect the “proportionality and fairness” as provided for in the 2006 WCB BOD Resolution.⁴³

⁴¹ WCB DP, *supra* note 3 at 8, 9

⁴² WCAT, *supra* note 6 at 7

⁴³ WCB DP, *supra* note 3 at Appendix C

It is important to reiterate that the Federation's position is that the entire COR Program is faulty, therefore, the Federation and its affiliates submit that the only option is to completely suspend COR, as per our [Submission #1](#).

For the purpose of this consultation process, the Federation opines that the "status quo" should be maintained, as outlined in the WCB discussion paper⁴⁴, **and** the program be suspended in order to allow for a complete overhaul of COR. Why create policy on a faulty system that will only have to be reworked following a much-needed redesign?

Submission #3

- *The Federation strongly recommends the WCB BOD choose the proposed "Option 1: Status Quo", **suspend the COR Program** and develop the "in good standing" criteria as part of a new jointly designed program.*

It is with the above proviso that the Federation discusses the criteria for "in good standing" on the existing, flawed COR program.

Established COR Standards "in good standing" Criteria

The requirement to remain in good standing with the WCB in order to receive a COR rebate is established in standard 2.6⁴⁵ of the COR Standards. The standard provides the following conditions for an employer to be *ineligible* for their rebate:

- the employer has engaged in activity which would cause WorkSafeBC to consider imposing, or has resulted in WorkSafeBC imposing, an **administrative penalty** (see Prevention Policy D-12-196-1)
- the employer has **suppressed claims** for compensation or suppressed claims costs
- the employer has an **outstanding balance** related to its WorkSafeBC employer account
- the employer has **failed to register** with WorkSafeBC

⁴⁴ WCB DP, *supra* note 3 at 13

⁴⁵ COR Standards, *supra* note 1 at 38

- the employer has **not reported payroll** to WorkSafeBC for the audit year
- the employer has engaged in **other misconduct** considered by WorkSafeBC to be inconsistent with participation in the COR program.

To maintain the integrity of the COR program, any employer who is discovered to have **provided fraudulent information** at any point in the COR certification and rebate process, may lose COR status and be required to repay previously issued rebates.

Standard 3.9⁴⁶ further outlines the criteria that the WCB would consider when determining whether an employer is “in good standing”:

- is registered and is in the correct classification unit(s) (CUs)
- is up to date with respect to payment of assessment premiums
- does not have outstanding compliance issues.

As well as when the employer would be considered to be “not in good standing,” which repeats the requirements outlined above under standard 2.6.

Standard 3.12⁴⁷ also provides that the WCB has the authority to request an external verification audit if it considers the COR employer’s conduct “to be inconsistent with the performance of an employer utilizing a health and safety management system.” The standard implies that the WCB would revoke the certification if the audit was unsuccessful, which the Federation presumes would also negate their rebate. It seems that this may provide for a broader discretion for the WCB to determine whether an employer is “in good standing” than the bullets above.

⁴⁶ COR Standards, *supra* note 1 at 54

⁴⁷ COR Standards, *supra* note 1 at 58

WCB Proposed Policy AP1-42-4

The discussion paper proposes to establish a framework policy that encapsulates the “in good standing” criteria provided in the COR Standards in order to resolve the issue identified by the Chief Review Officer regarding the lack of policy and clarity regarding the criteria. A draft policy for the Assessment Manual, AP1-42-4⁴⁸, was included in the discussion paper for consultation.

The Federation has many issues with the proposed policy, arising from our overall objection to the COR Program as it is currently designed and implemented. It is for this reason that we do not support the establishment of a WCB policy until the program is completely overhauled, as per [Submission #1](#) and [Submission #2](#) above.

One example is the assertion that the certifying partner, not WCB, is to specify the OHSMS that the employer must implement. WCB has the overall responsibility for occupational health and safety in the province of BC, and this fact alone is enough to support that the WCB should be setting the base-line requirements of the OHSMS prescribed by the certifying partners. Certainly, the certifying partners could adjust the program for the unique needs of their industry, providing that the modifications were not lowering the baseline standards.

To add more weight to this argument, the COR program is no longer a small program paying under \$5,000 per year as it was in the start-up years. According to the WCB discussion paper, WCB paid more than \$40 million in rebates in 2013 and 2014, with administrative costs of approximately \$6.5 million⁴⁹ – this can only be expected to increase in coming years. In this respect, the Federation agrees with the comments of the WCAT vice-chair regarding the surprisingly laissez-faire attitude that the WCB has paid to this program “given the substantial financial significance of COR rebates to employers.”⁵⁰ The WCB should not be abdicating its authority set out in section 177 (2) (a) and (e) of the Act to establish standards and develop programs as part of its mandate:

⁴⁸ WCB DP, *supra* note 3 at Appendix A

⁴⁹ WCB DP, *supra* note 3 at 9, 10

⁵⁰ WCAT, *supra* note 19 at 7

(a) to exercise its authority to make regulations to **establish standards** and requirements for the protection of the health and safety of workers and the occupational environment in which they work...

(e) to encourage, **develop** and conduct or participate in conducting programs for promoting occupational health and safety and for improving the qualifications of persons concerned with occupational health and safety and occupational environment; [Emphasis added.]

Proposed “In good standing” Criteria

The WCB proposes to modify and add to the criteria established in the COR Standards, as noted above. The WCB proposes to modify the criteria noted in the previous section regarding suppressed claims and suppressed claim costs to:

- the employer has prevented or attempted to prevent reporting to the Board as outlined under section 177 of the Act;
- the employer has **reduced** claim costs in a manner that is contrary to the Act or Board policy⁵¹ [Emphasis added.]

The brief explanation provided in the discussion paper is that this more properly aligns with the language in the Act. The Federation is completely opposed to this change as presented. While there is no problem with referring to section 177, the terms “suppressed claims” and “suppressed claims costs” must be used. These terms are plain language, widely recognized and readily understood by all stakeholders, with connotations that must not be lost – in particular with respect to the COR Program which is renowned for these unintended consequences across *ALL* jurisdictions. This is the one small bone that was thrown out to workers with the creation of the existing program and now it is the only thing that is going to be removed?

⁵¹ WCB DP, supra note 2 at Appendix A, 3

The Federation is frankly appalled that the term “reduced”⁵² has replaced “suppressed”⁵³ – the connotations of which are **not equal** or interchangeable in any way. It is clear that the WCB has no intention of continuing to acknowledge the seriousness of claim suppression and claim cost suppression, but rather wishes to “*suppress*” these very real issues under a more palatable – to employers - façade.

Submission #4

- *The Federation vehemently opposes the removal of the references to “suppressed claims” and “suppressed claim costs.”*

The Board seeks to add the criteria that an employer is not in good standing if it has been convicted by a Court of a violation of the Act. The Federation takes no issue with the intent of this criteria, however, it should be expanded to include a violation of the regulations or an order, as per section 213 (1) of the Act, which states, “A person who contravenes a provision of this Part, the regulations or an order commits an offence.”

Submission #5

- *The Federation recommends that the Board of Directors add “regulation or order” to the criteria of a conviction by Court of a violation of the Act, in keeping with Section 213(1) of the Act.*

Notwithstanding the fact that the Federation believes the criteria outlined in the COR Standards to be insufficient, the proposed policy is glaringly absent of the criteria in which an employer can lose their COR certification or associated rebates aside from being “not in good standing” with the WCB. The policy simply notes that the employer must have a “valid COR certification,” with no definition of what that looks like with respect to COR rebates.

⁵² The Merriam-Webster Dictionary defines “reduce” as 1 b: to diminish size, amount, extent or number.

⁵³ The Merriam-Webster Dictionary defines “suppress” as 1: to put down (restrain or inhibit) by authority or force; 2: to keep from public knowledge: as to a: to keep secret or b: to stop or prohibit the publication or revelation of.

As noted above, COR Standards 2.6 discusses the consequences of the employer providing fraudulent information in order to achieve their COR certification. The following are sampling of other requirements not reflected in the proposed policy:

2.3 Employers must schedule and pass certification and maintenance audits in order to qualify for COR rebates (for OHS COR and/or RTW COR).

2.4 Employers must address any audit-identified deficiencies within their health and safety management systems (OHS COR).

2.5 Employers must submit the audit results and other required documentation to their certifying partner.⁵⁴

Discretion to Proportion Rebates

The Federation respectfully disagrees with the appellate decisions that opine that the WCB's administration of a full rebate or no rebate is inconsistent with the BOD 2006 resolution.

Although the resolution states that the WCB "may reduce, vary, adjust or refund assessments," it also clearly states that this will be "in a manner and to a level **determined by the Board.**"⁵⁵ It is our position that the WCB was therefore provided with the authority to determine how the program was administered.

The Federation further argues that this essential part of the program is well known to the employers who *voluntarily* apply for the COR program, as it is clearly stated in the COR Standards⁵⁶. In fact, the criteria in the COR Standards was agreed to by industry, through the industry-based health and safety associations, who were actively involved in the development of COR, as illustrated by the preface in the COR Standards:

Its publication marked an important milestone in the development of the Partners Program, signifying the completion of a complex process during which WorkSafeBC and

⁵⁴ COR Standards, *supra* note 1 at 35-38

⁵⁵ WCB DP, *supra* note 3 at Appendix C

⁵⁶ COR Standards, *supra* note 1 at 6, 38, 54 et al

the certifying partners **reached agreement on the criteria** for employers to obtain and be recognized for having a Certificate of Recognition.⁵⁷ [Emphasis added.]

Conclusion

The Federation appreciates the opportunity to provide a submission regarding the proposed policy to establish the “in good standing” criteria for the eligibility of the COR rebate. We are confident that the Board of Directors will seriously consider this Submission and revise the proposed policy based on our recommendations, in support of healthier and safer workplaces and work activities.

⁵⁷ COR Standards, *supra* note 1 at ii