C F I G F C E I

CANADIAN FEDERATION OF INDEPENDENT GROCERS · FÉDÉRATION CANADIENNE DES ÉPICIERS INDÉPENDANTS
105 GORDON BAKER ROAD, SUITE 401, TORONTO, ON M2H 3P8

June 11, 2020

Ms. Louise Kim
Senior Manager, Policy, Regulation & Research Division
WorkSafeBC
Vancouver, BC
Sent by e:mail: policy@worksafebc.com

Dear Ms. Kim,

The Canadian Federation of Independent Grocers (CFIG) appreciates the opportunity to provide our comments to the Discussion paper '**Adding Diseases Caused by Communicable Viral Pathogens, Including COVID-19, to Schedule 1 of the *Workers Compensation Act (Act).'***

CFIG members are independent businesses, some of whom are large format retail grocers, but primarily, our membership is largely populated by small and medium size grocers. These retailers must compete in an overly consolidated food industry, within both the retail and supplier sectors. Within that challenging context, independent grocers buy local, hire local, support local initiatives and activities, while living in the communities that they serve.

As well, it is important for decision makers to understand that our members exist in and provide food for a myriad of communities in Canada, in which there is no other grocery store, nor a store within reasonable commuting distance for residents in those areas. As such, they are an important lynchpin in providing food security for people in more rural and remote regions, both here in British Columbia and in Canada.

Over the course of the last several weeks, Canadians have been challenged to respond and adapt to COVID-19 and nowhere has this been more aptly demonstrated than in our retail grocery stores. Our members have invested in plexiglass, enhanced cleaning and safety protocols, sanitizers, facemasks and putting in place new in-store measures to facilitate social distancing.

These additional expenses, together with the migration away from cash to contactless payments, with a corresponding increase in interchange fees levied on retailers, have had a significant cumulative cost impact on our members, most of whom operate on margins of about 1.5% overall, lower than in other sectors of the economy. While not strictly relevant to the questions raised in the discussion paper, at the same time, decision makers must consider the unintended consequences of policy changes that could carry significant financial consequences.

As the discussion paper points out: "*At this time, no other Canadian jurisdiction has legislation, policy or regulation establishing a presumption specific to COVID-19 claims."* We would suggest that is the case for good reason. The current policy approach of all Canadian jurisdictions to COVID-19 is to adjudicate claims on a case-by-case basis on the merits of the claim, which is as it should be. Indeed, due to the fact that this is a new virus, with insufficient and continually evolving medical and scientific research, it is at best, a nebulous presumption that a positive test result can automatically be linked to a person's workplace.

The only basis one can conclude for advocating a new presumptive link between COVID-19 to the workplace can automatically be made, is that according to the consultation document, the stated policy objective of including COVID-19 claims in Schedule 1 of the Act, is that it *"would ensure WorkSafeBC would not be required to produce or analyze similar evidence of work-relatedness…"* and instead, shift the responsibility for that Sisyphean exercise, on to the employer. For most of the small and medium size employers in BC, that would be particularly onerous and costly.

The desire of WorkSafe to shift the responsibility for producing evidence, may in large part be due to the fact that as pointed out in Appendix A of the 'Rapid Review':
"The level of evidence on this important subject is currently low, as is the consistency of findings between this small mix of studies." The report goes on to note that *"Based on the limited analytical epidemiologic research currently available, the conclusion of this rapid review is that there is no consistent association between work with a specific occupation and a greater risk of COVID-19 infection."*

The inescapable conclusion of this observation is that COVID-19 is a public health issue, not a workplace issue. As well, the policy framework of WorkSafeBC sets out that "*the Board of Directors may add a disease to Schedule 1, along with a corresponding process or industry where scientific and medical evidence establishes there is a substantially greater incidence of a particular disease in a particular employment that there is in the general population*." This policy mandate must be juxtaposed against the fact that no such scientific and medical evidence yet exists that would establish a causative link to the workplace. It does, however, seem to be clear that as Dr. Henry asserted, there is "community spread". The virus can be spread in household settings, public spaces, transit systems and a myriad of different activities in daily life. Why all those components are ruled out as sources of transmissions is a flawed and indefensible presumption.

C F I G F C E I

CANADIAN FEDERATION OF INDEPENDENT GROCERS · FÉDÉRATION CANADIENNE DES ÉPICIERS INDÉPENDANTS
105 GORDON BAKER ROAD, SUITE 401, TORONTO, ON M2H 3P8

As well, the discussion paper states, *"Typically, when WorkSafeBC makes additions or changes to Schedule 1 of the Act, a full-scale review of the medical and scientific literature through a systematic review is undertaken. Systematic reviews take between 12-18 months to complete before WorkSafe BC proceeds with Schedule 1 changes."* Notwithstanding the current dearth of evidential research, the Board has also curiously directed that "an expedited review process of approximately 6 months, as opposed to the normal 12 to 18-month review period, be adopted.

We must also be cognizant of the fact that when a person tests positive for COVID-19, this does not take place in a health vacuum---treatment and compensation for those individuals is available under all the legislative and support measures already in place and which have been augmented during the COVID-19 pandemic. As such, the rush by WorkSafeBC to shift costs to the employer, when many of those businesses are going to be struggling on a long road to recovery, is perplexing.

An additional point of concern around those costs should also entail recognition of the Administrative monetary penalties that are assessed for contraventions of the Act. Section 95(2) spells out that OHS penalties would include a minimum of 0.5% of total payroll based on the previous year's payroll and include multiples and variances that can be added to the penalty. Given the lack of evidence that exists in the context of COVID-19, a Schedule 1 occurrence is not only subjective, but for many small and medium size businesses, a penalty of this magnitude is simply not sustainable.

Accordingly, it is the recommendation of CFIG that the only sound and defensible course of action is to adopt **Option 1: Status quo.** In our view, Option 2, which would amend Schedule 1 and add a presumption, would undermine the perception of fairness and the adjudicative principles that must be the cornerstones of WorkSafeBC policies.

CFIG would welcome the opportunity to engage in a more substantive consultation process with WorkSafe BC and the employer community. Thank you for your consideration.

Sincerely,

Gary Sands
Senior Vice President

Copy: Hon. John Horgan, Premier
Hon. Lana Popham
Hon. Harry Bains
Hon. Michelle Mungall