

ADVICE TO MINISTER

<p>CONFIDENTIAL ISSUES NOTE</p> <p>Ministry: Labour</p> <p>Date: Feb. 1, 2018</p> <p>Minister Responsible: Hon. Harry Bains</p>	<p>WCA amendments re: presumption for mental disorders; cancer presumption for fed. firefighters</p>
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Suggested responses:

s.13

Background:

1) Presumption for mental disorders:

In general, a presumption under the *Workers Compensation Act* provides that if a worker has been employed in a particular occupation and develops a disease that is recognized as being associated with that occupation, the disease is presumed to have been due to the nature of their employment, unless the contrary is proved. The worker is thus eligible for workers compensation without having to gather scientific or medical evidence to establish that the disease arose out of their employment.

Currently, the WCA provides workers with compensation for a mental disorder, including post-

traumatic stress disorder (PTSD), if scientific or medical evidence is provided. Under the Act, there are two recognized situations of work-related mental disorders:

- a reaction to one or more traumatic events arising from the worker's employment; or
- primarily caused by significant work-related stressors, such as bullying and harassment.

The proposed legislative amendments will establish a new mental disorder presumption for the first situation – a reaction to specific events, but not for the second situation – 'chronic' or 'gradual onset' stress.

In March 2017, then-Opposition Labour Critic MLA Shane Simpson introduced a private member's bill proposing a PTSD presumption for first responders and other workers in B.C. The previous government did not move the bill forward. The current proposed amendments will be broader in scope than those proposed by Mr. Simpson by recognizing that other mental disorders besides PTSD can result from exposure to traumatic events.

Currently, seven Canadian jurisdictions (AL, SK, MN, ON, NB, NS, YK) have, or have proposed, legislation around PTSD/mental disorder presumptions. Of these seven jurisdictions, there is a mix between whether all workers are covered or just certain occupations; and whether both PTSD and other mental disorders are recognized. B.C. will be one of the best jurisdictions in Canada in terms of a broad application of the presumption.

Potential issues include:

- The announcement of the new presumption will likely revive media coverage of previous cases where emergency responders have reportedly committed suicide as a result of PTSD and lack of support.
- Lack of retroactivity, particularly for workers recently denied worker's compensation.
- Questions about what is being done to prevent these mental injuries; and lack of access to services in some parts of the province.

• s.13,s.16,s.17

2) Cancer presumption for federal firefighters:

The amendments will also extend the cancer presumption for municipal/local government firefighters to federally-employed firefighters, specifically those employed at Department of National Defense (DND) bases. This reflects a request from the federal Minister of Employment, Workforce Development and Labour received in September 2017.

Federal firefighters currently qualify for heart disease/injury presumption, but the cancer presumption has been limited to local government firefighters since 2005, due in part to a recognition that local firefighters combat fires in buildings, industrial settings and vehicles, and are potentially exposed to more carcinogens than other firefighters (such as forest fire fighters).

This amendment recognizes that DND firefighters are also potentially exposed to carcinogens, and frequently assist municipal firefighters at off-base incidents.

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<p>CONFIDENTIAL</p> <p>ISSUES NOTE</p> <p>Ministry of Labour Date: Feb. 13, 2018 Minister Responsible: Hon. Harry Bains</p>	<p>Unpaid Employees of Istuary Innovation</p>
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SUGGESTED RESPONSES:

s.13

BACKGROUND:

During the week of February 13, the Employment Standards Branch is contacting all former employees to provide an update and will be issuing payment cheques based on the amounts collected to date. To date, the Branch has recovered approximately 2.5% or \$70,000 from asset auctions and seizing funds from bank accounts. Employees will be paid out on a proportional basis with cheques ranging from roughly \$60 to \$1,000. This is bound to be disappointingly received by the former employees.

There has been major media interest in this story, including the New York Times, National Post, CBC and Global News.

The Branch will also continue to assert the judgement on Mr. Sun's property as a means of collecting unpaid wages.

These actions are a result of complaints and an ongoing investigation:

- On June 29, 2017, the Employment Standards Branch received a complaint from an employee alleging non-payment of wages. As a result of looking into this matter and the fact that additional complaints were filed, the Employment Standards Branch director decided to initiate an investigation on behalf of all employees to ensure compliance with the Act.
- That investigation was for the time period between December 2016 and August 25, 2017. Since commencing this investigation, the Employment Standards Branch has received an additional 128 individual complaints. These individual complaints are for wages owed after August 2017. The Branch continues to investigate these individual complaints and will issue a decision on the 128 individual complaints that cover the time period from August 26, 2017 to October 25, 2017.

The Employment Standards Branch has issued a number of decisions regarding Istuary Innovation Group and unpaid wages owed to employees:

- An initial decision was sent to the employer on Oct. 13, 2017 stating that the employer owes \$2.9 million in unpaid wages to 158 employees from December 2016 to August 2017.
- On November 10, the Employment Standards Branch issued a second decision regarding 34 related companies who can be associated with the Istuary Innovation Group. This decision allows these related companies to be treated as the employer liable for the owed wages.
- On November 10, the Branch also issued a Director's Determination against the primary director of Istuary, Yian (Ethan) Sun. Under the Act, Directors can be personally liable for up to 2 months wages, and in this case the director's liability has been calculated at approx. \$2.4 million.

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- The Branch has also placed a certificate of judgement on a multi-million-dollar property owned by the primary director, Ethan Sun. Sun is now suing against the judgement on his property on the basis that he did not own it at the time of the unpaid wages. The Branch, through Legal Services, is opposing Mr. Sun's attempt to have the judgment removed.

The Employment Standards Branch doesn't make its decisions public. The Branch delivers decisions on investigations and the complaints in accordance with the Employment Standards Act. Following the 30 days to appeal timeframe and process, the Employment Standards Branch will have a number of options to further pursue wage collection, including registering its decision in court.

Within the Ministry, there is concern that the Ministry will not be able to collect all the money owing, despite the multiple decisions, because collections attempts have indicated that there are assets to pay the debt.

Istuary Innovation was a Canadian technology company, specializing in software development and using local technology in global markets. The company was founded in 2012 and was located in downtown Vancouver with around 300 employees. Starting as a start-up incubator, the company grew to having operations in three countries, 30 cities and employing over 1,500 employees worldwide (according to company profile).

CASA Accomplishments

Highlights:

- The Confidence and Supply Agreement between the BC Green Caucus and the BC New Democrat Caucus is the basis of the stable government.
- This is a list of accomplishments based on cooperation between Government and the Green caucus as part of CASA.

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Minimum Wage and the Fair Wages Commission

Highlights:

- On Feb. 8, 2018 the Government announced that it is accepting the Fair Wages Commission's recommended schedule of increases to the minimum wage that will raise the rate to \$15.20 in June 2021.
- Some studies, including from the Ontario Financial Accountability Office and the Bank of Canada, argue job losses may occur from increasing minimum wage rates.

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Background:

Job Losses in Ontario:

- In September 2017, the Ontario Financial Accountability Office, the office that provides the Legislative Assembly with independent financial analysis, published a study that predicted the province would lose 50,000 jobs due to increases in the minimum wage.
- In January 2018, Statistics Canada Labour Force Survey results showed a loss of 51,000 part time jobs.
- The Ontario minimum wage increased to \$14 per hour on Jan. 1, 2018. The job losses were not in line with seasonal trends.
- Media and Opposition members may ask questions about the connection between Ontario's sudden increase and the predicted job losses.
- However, job data is highly variable month to month therefore it is impossible to draw conclusions from only one month.
- If the trends of job losses continue, more research can be done to investigate the impact in the rapid increase in minimum wage.
- Ontario announced in June, 2017 that it would be increasing the minimum wage from \$11.60 to \$14 per hour on Jan. 1, 2018 (+20.6%). The next increase would be to \$15 per hour on Jan. 1, 2019 (+7.1%)

Fair Wages Commission Report:

- On Feb. 8, 2018 the Government announced that it is accepting the recommended schedule of increases from the Fair Wages Commission (FWC) to the minimum wage that will raise the rate to \$15.20 in June 2021.
- The increases are:
 - June 2018: \$12.65 (+\$1.30)
 - June 2019: \$13.85 (+\$1.20)
 - June 2020: \$14.60 (+\$0.75)
 - June 2021: \$15.20 (+\$0.60)
- The increases are front loaded. The FWC did this because BC currently has strong economic conditions, mainly a relatively long and stable period of GDP and job growth. BC also has rising labour force participation.
- The FWC recommends the Government consider an additional \$0.15-\$0.20 increase to the final wage lift in 2021, depending on the economic conditions at the time.
- The FWC contracted David Green, a professor at the Vancouver School of Economics at UBC, to do a literature review of minimum wage and its effects on employment, prices, and earnings and wage distributions.
 - Employment/unemployment: no major impacts
 - Prices: no significant increases

- Wages and earnings: rising wages at the bottom tends to reduce wage inequality.
- Prof. Green found that any effects on employment are generally confined to teenagers, and that these effects do not reflect changes in the broader work force.
- He found that higher minimum wage lead to less turnover, and therefore more stable jobs.
- The FWC will be producing a second report that outlines recommendations for the 5 categories of workers who are exempt from minimum wage:
 - Liquor servers
 - Live-in home support workers
 - Piece workers (e.g. in agriculture)
 - Live-in camp leaders
 - Resident caretakers
- The FWC has also been tasked to examine the difference between the minimum wage and the living wage.
- A living wage is amount a two parent/two child household needs to cover basic expenses, such as rent, food, clothing, transportation and other costs.

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CONFIDENTIAL ISSUES NOTE

Ministry: Labour

Date: Feb. 27, 2018

Minister Responsible: Hon. Harry Bains

Federal funded second leave benefits

SUGGESTED RESPONSES:

s.13

BACKGROUND:

The federal government's 2018 budget includes a new employment insurance (EI) Parental Sharing Benefit of a five week "use-it-or-lose-it" benefit top-up when both parents agree to share parental leave. This new benefit can only be taken by the second (non-carrying) parent. This benefit will be available by June 2019 and will apply to two-parent families including adoptive and same-sex couples.

The new parental leave is intended to support parents in sharing the responsibilities of raising their young child and support mothers to return to work more easily (and sooner) if they choose.

This benefit would increase the duration of EI parental leave by up to five weeks in cases where the second parent agrees to take a minimum of five weeks using the standard parental option of 55 per cent of earnings for 12 months. Alternatively, where families have opted for extended parental leave at 33% of earnings for 18 months, the second parent would be able to take up to eight weeks of additional parental leave.

The idea of parental leave for a second parent would be similar to a policy in Quebec, which is the only province that pays for leave for new fathers. Quebec's very popular system provides up to five weeks of paid leave to new fathers and covers up to 70 per cent of their income. In 2016, 80% of Quebec fathers claimed or planned to take parental leave, almost triple the 28% in 2005. In the rest of Canada, which does not provide second parent leave, only 12% of the second parents take parental leaves.

Quebec's rules around second parent leave:

- If you are an employee and the father of a newborn child, you are generally entitled to 5 consecutive weeks of paternity leave. This leave cannot be transferred to the mother and cannot be divided between the parents.
- You can take paternity leave at any time, but it cannot begin before the week of the birth and must not end later than 52 weeks after the birth.
- You may take parental leave in addition to paternity leave.

The goal behind the new federal leave is to give parents more incentive to share child-rearing responsibilities so that new moms can more easily enter the workforce. The move is not only about fairness and gender equality, but about finding new ways to help more women enter the workforce as a way to bolster the entire economy since Canadian women with children are less involved in the labour market than their counterparts in many industrialized countries. In general, the participation rate of women in Canada's job market is largely unchanged from where it was in the early 2000s.

There is anecdotal evidence that women who are of child-bearing age or are pregnant are passed over for jobs or promotions, even though such actions are prohibited under the Canadian Human Rights Act. The move is believed to be making it easier for fathers to take time off to care for a newborn would help remove workforce barriers for women that are created by the expectation that they should take on the primary child-rearing role.

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**CONFIDENTIAL
ISSUES NOTE**

Ministry of Labour

Date: March 1, 2018

Minister Responsible: Hon. Harry Bains

Unpaid Employees of Purewal Blueberry Farms

SUGGESTED RESPONSES:

s.13

BACKGROUND:

In late 2016 and early 2017, Employment Standards Branch (ESB) received numerous complaints of non-payment of wages to farm workers. The ESB opened a group investigation file for these complaints. Given the number of complaints for this employer, in the spring of 2017 the director of Employment Standards initiated an investigation into the non-payment of numerous other farm workers employed by the three companies.

The investigation was very complicated as it involved reviewing a large amount of hand-written payroll records, and bank statements submitted by the employer.

On Nov. 24, 2017 the Employment Standards Branch issued a decision regarding unpaid wages owed to employees of Purewal Blueberry Farms Ltd. and two of its associated numbered companies: 0740656 B.C. Ltd., and 0178429 B.C. The decision determines that the employer owes \$1,115,849.36 million in unpaid wages to 180 employees who worked from 2016 to early 2017. The decision also levied \$1,500 in administrative penalties for contraventions of the *Employment Standards Act*.

The companies had 30 business days, or until Jan. 2, 2018 to appeal this initial determination with the Employment Standards Tribunal. They did not file an appeal.

ESB is now pursuing legal avenues to collect the outstanding monies. There is a sale of one property that is underway, and a foreclosure on another.

While the ESB was completing its investigation of the 2016 and early 2017 matters, issues with payment again arose from the 2017 blueberry season. So far, the branch has received records for 108 farm workers for the 2017 harvest season, and a subsequent investigation is currently underway.

As part of this current investigation, the ESB received information from the Mexican Consulate that 11 Mexican temporary foreign workers employed by Purewal Blueberry Farms have not been paid. ESB has been in contact with the Consulate and has encouraged the Consulate to direct these individuals to the Employment Standards Branch to file complaints. Many have filed complaints.

Purewal Farms has received media coverage (Globe and Mail, Business in Vancouver) about problems with accommodations for workers and outstanding wages owed and unpaid levies. Complaints about accommodations have been directed to the federal government departments responsible for temporary and seasonal agricultural worker programs, as well as provincial ministries of Health and Agriculture.

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CONFIDENTIAL ISSUES NOTE

Ministry of Labour

Date Updated: March 1, 2018

Minister Responsible: Hon. Harry Bains

Babine and Lakeland Sawmill Explosions

SUGGESTED RESPONSES:

s.13

BACKGROUND:

In January 2012, an explosion at the Babine Forest Products sawmill in Burns Lake claimed two lives – Carl Charlie and Robert Luggi – and injured 19 others. Three months later, in April 2012, an explosion at the Lakeland sawmill in Prince George killed two workers – Alan Little and Glenn Roche – and injured another 22 people.

Babine Forest Products

On Feb. 28 2018, Babine Forest Products has submitted an appeal to the \$1.01 million fine levied against them for an explosion at its sawmill that resulted 20 injuries and the in the death of two workers, Robert Luggi and Carl Charlie on Jan. 20, 2012.

Babine announced they would appeal the fines in 2014. Crown counsel stated they would not pursue criminal charges against the company.

On Jan. 10, 2014, the Criminal Justice Branch (CJB) announced that no charges would be approved against Babine. Once it was confirmed that a prosecution would not be proceeding, WorkSafeBC began its process of considering an appropriate administrative penalty and claims cost levy.

On Jan. 21, 2014 WorkSafeBC issued an Inspection Report to the employer containing 5 Orders against Babine for violations of the Act and Regulation that led to the January 20, 2012 explosion and fire. These violations are the basis for the administrative penalty and claims cost levy. The WorkSafeBC Incident Investigation Report is here: www.worksafebc.com/news_room/features/2014/new_14_01_16.asp

Information regarding violations is contained in an Inspection Report issued to Babine Forest Products on Jan. 21, 2014. These documents are available from WorkSafeBC's Freedom of Information and Protection of Privacy Office and available online.

On April 3, 2014, WorkSafeBC issued orders that include the imposition of an administrative penalty and a claims cost levy against Babine Forest Products Ltd. as they were found to be in violation of the Workers Compensation Act and the Occupational Health and Safety Regulation. Babine has appealed the penalty.

Under the authority of Section 196 of the Workers Compensation Act an administrative penalty has been imposed for \$97,500.00. And, under Section 73(1) of the Act, a claims cost levy has been imposed for \$914,139.62. The balance due is \$1,011,639.62.

On Lakeland

Currently, Hampton Affiliates is appealing its \$750,000 fine related to an explosion at the Lakeland Sawmill.

On Feb. 19, 2014, WorkSafeBC formally submitted their Report to Crown Counsel to CJB for an assessment of whether charges should be laid against Lakeland Mills Ltd.. Based on the evidence provided the Branch has concluded that there is no substantial likelihood of conviction for any charges recommended by WSBC.

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On April 14, 2014, the CJB announced that no charges would be approved against Lakeland. Once it was confirmed that a prosecution would not be proceeding, WorkSafeBC began its process of considering an appropriate administrative penalty and claims cost levy.

On May 12, 2014, WorkSafeBC issued an Inspection Report to the employer containing four Orders against Lakeland for violations of the Act and Regulation that led to the April 23, 2012, explosion and fire. These violations are the basis for the administrative penalty and claims cost levy.

On July 29, 2014, WorkSafeBC issued orders that include the imposition of an administrative penalty and a claims cost levy against Lakeland Mills sawmill in Prince George, for violations of the Workers Compensation Act and the Occupational Health and Safety Regulation.

The total amount due is \$724,163.28, including a \$97,500 administrative penalty under the authority of Section 196 of the Workers Compensation Act, and, under Section 73(1) of the Act, a claims cost levy has been imposed for \$626,663.28.

Information regarding violations is contained in an Inspection Report issued to Lakeland Mill on Jan. 27, 2014. These documents are available from WorkSafeBC's Freedom of Information and Protection of Privacy Office and are available online.

Additional Background

On Feb. 13, 2014, the provincial government released the Babine Explosion Investigation: Fact Patterns and Recommendations, report conducted by John Dyble, Deputy Minister to the Premier and head of the public service.

The report found that WorkSafeBC paid insufficient attention to important legal precedents that underpin the legitimate gathering of evidence for prosecution purposes, even though the Criminal Justice Branch had previously shared its concerns on collection of evidence.

On Thursday, January 16, 2014, Premier Clark asked Mr. Dyble to begin a review of the case, establish the facts and deliver recommendations to the Premier in the event mistakes were made. Dyble's recommendations fall into four categories:

1. Measures to improve interaction between investigating and prosecuting agencies
2. Improvement of policies, procedures and communications within WSBC
3. Enhanced training and improved working relationships
4. Moving forward