



October 9, 2020

2019 Statutory Review Committee  
Workers' Compensation System  
c/o Sharmane Allen

via email: [info@2019srwcs.ca](mailto:info@2019srwcs.ca)

Department of Immigration, Skills, Labour  
P.O. Box 8700, 4<sup>th</sup> floor, West Block, Confederation Building  
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**ATTENTION: SHARMANE ALLEN**

Dear: Ms. Allen:

**Re: Submission to 2019 Statutory Review Committee on behalf of  
International Brotherhood of Electrical Workers, Local 1620**

We make this submission to the Statutory Review Committee on behalf of all members of the International Brotherhood of Electrical Workers, Local 1620. We hope that you will consider our input as you review the workers' compensation system.

The nature of work performed by many of our members is complex, challenging, and inherently dangerous. Electrical work therefore requires significant training, which includes a priority and emphasis on safety policies and protocols. We strive to work safely on each job and each project, and are committed to providing and implementing policies and training to protect our members and the workplace generally. However, we do work in a risky and inherently dangerous environment; accidents do occur and sometimes to a catastrophic degree. Given the work directly with electrical currents, fatalities are possible. We recognize that the majority of electrical workers in this province are unionized and are well-compensated. As higher wage earners, our members suffer a greater harm financially when they are unable to return to electrical work (or another field) after an injury. Their high-risk employment affords workers and their families a comfortable lifestyle which is difficult, and likely impossible, to sustain in other employment if they are unable to return to electrical work following a workplace injury.

Our members are dedicated to and knowledgeable about the work in their fields, but they often do not have much experience with, information on, or knowledge of their options, the requirements, and the process in the event they experience an illness, injury, or disability. Specifically, most have no inherent knowledge of the intricacies of the workers' compensation program, including paperwork required, timelines involved, degree of compensation, etc. It is only after they've experienced an injury that workers

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have to navigate the complex system of legislation, regulations, guidelines, policies, procedures that govern their lives following injury. Of course, members seek assistance and support in these areas from the union. However, in some cases, after a lifetime of hard work at a risky job and earning a comfortable wage, they find themselves struggling to make ends meet and receive the treatment necessary with workers' compensation as their sole income following their injury. Workers also seek assistance of the union when benefits are denied, in their view unfairly, arbitrarily, or inexplicably. We have considerable experience assisting members accessing benefits and medical treatment within the system, assisting members through the appeal process, and assisting members through the lengthy process involved in the Review Process when they are denied their appeal.

For the most part, tradespeople in this province work physically hard all their lives, in many cases on mega-projects, outdoors, and in colder conditions. They endure physical hardships in environments where most of the population could not imagine working. When that project is over, for many tradespeople it's on to the next similarly brutal project. As our members age, especially given their working environment, the work becomes more difficult to physically complete and the job is more taxing on their bodies. Though well paid, in some cases the work is seasonal. For some members, that well-paid seasonal work is what sustains their families all year long. A loss or decrease in that income can be devastating.

The annual income for a unionized tradesperson working on a project (or fulltime in the year prior to his/her injury), can exceed \$100,000, and in some cases is up to \$200,000. While it has increased marginally over the last few years, the maximum salary recognized by WorkplaceNL for income replacement is currently \$66,980, regardless of the salary being earned prior to injury. That is an immediate reduction of approximately \$33,000 for an injured tradesperson earning \$100,000 annually. That amount is further reduced to establish net earnings, which WorkplaceNL uses to apply its 85% of net income formula to determine weekly rates. For the most part, a person earning a maximum salary within the field will receive approximately \$1,000 per week for the duration of their claim. In most cases, this amount does not increase through the duration of the claim, with the exception of a minor cost of living increase to workers on Extended Earnings Loss Benefits.

The Meredith Principles as noted in your discussion document are the foundation of the Workers' Compensation System, known worldwide as the Great Historical Trade-off. Workers waived their ability to sue their employers for injuries incurred on the job or at the workplace, in exchange for quick access reasonable and adequate income replacement, medical treatment, and rehabilitation services. In the trade, employers enjoy the protection that comes with the no-fault liability system; they are assured they will not incur a substantial or debilitating penalty, even in the most serious breaches or accidents.

The first principle of the Meredith Principles as noted in your discussion paper is, "No-fault compensation, which means workers are paid benefits regardless of how the injury occurred."

Therefore, in accordance with this principle, regardless of how the accident occurred, if a worker is injured in the course of their employment, that worker should be entitled to coverage under the Workers' Compensation System, both Earnings Loss and Medical Aid Benefits. It is our position that this principle should be applied liberally to the worker as a whole, regardless of any pre-existing conditions or previous injuries. If the worker was able to work at full capacity despite any limitations or restrictions he or she may have had prior to the injury, then that person should be compensated as such. If a workplace injury exacerbates a worker's prior condition such that the worker is no longer able to work, that worker should still be fully compensated under the no-fault system under this principle. It should not matter that the injury which occurred at work may not have similarly impacted an otherwise healthy individual.

There has been a huge trend in recent years by WorkplaceNL to apportion wages to injured workers who cannot return to their preinjury occupations, or possibly any occupation, taking into consideration any medical condition(s) that WorkplaceNL decides contributed to the disability. WorkplaceNL's policy on proportioning, Policy EN-02, states that the amount of compensation payable following a work injury will be based on the degree of disability and impairment attributable to the work injury. It further states that "Compensation for loss of earnings and functional impairment may be proportioned where an injury; or where an injury is aggravated, activated or accelerated by causes other than the injury. Where such factors are present WorkplaceNL will assess their effect and proportion benefit entitlement in accordance with the guidelines contained in this policy."

In our experience, most of our workers' injuries are serious and have a significant impact on their lives and ability to work. As previously discussed, our members work very hard over their lifetimes, often in harsh outdoor weather conditions, in very cold environments. This has caused or contributed to many of our workers developing arthritis. Despite the arthritis diagnosis and treatment, these workers have continued to be able to perform their job responsibilities to their employer's satisfaction, receive their full pay, be financially independent, support their families, and maintain the lifestyle to which they have become accustomed and to which they've planned their finances.

In our experience, when WorkplaceNL reviews an x-ray report and notes that a worker suffers from arthritis, it is taken as an opportunity to attribute a portion of the injury to that pre-existing condition and then pay the worker only the proportion of wages that it deems can be attributed directly to the workplace injury (under Policy EN-02). Typically, this can take a person's rate down by either 25, 50, 75 or even 100%. As a result, this worker may lose perhaps half of his/her WorkplaceNL rate. If it is a trades worker as explained above, they already are losing one third of their income as not being recognized as compensable before even being injured.

If a worker's condition did not affect his/her employment or income, or cause a previously established disability as confirmed by medical practitioners, then it is our position that no proportion of that worker's benefits should be attributed to that condition and deducted from the benefit paid. Policy EN-02 should be reviewed and adjusted to stop further penalizing injured workers. If the true definition of no-fault insurance is followed, then workers who are able to participate in their employment prior to an injury, should be fully covered for the impact of a work injury compounded upon their physical condition, no matter what that condition may be. The questions should be: if not for the work injuries, would this person have been able to continue working? Was their work life significantly impacted by the previous disability, and is there evidence of that? If not, then a seriously injured worker, who is unable to return to his occupation, or any occupation, and entitled to Full Earnings Loss Benefits to age 65, should not be subjected to having their wages further significantly reduced. How is this disabled person supposed to make up for the permanent loss of income when a work injury took them completely out of the workforce?

The greatest majority of our submissions to Internal Review (WorkplaceNL) and to the Workplace, Health, Safety and Compensation Review Division (WHSCRD) on behalf of our members are based primarily on two issues: first, denied claims due to employer objections that the workplace accident didn't result in the disability that worker has, and secondly the proportioning of benefits to workers typically based on a finding of basic arthritis. Both have severe effects directly on our members' incomes. In appealing decisions on behalf of our members, we have experience at both stages of the review process. With respect to timelines, getting a decision from the Internal Review Division is usually done quickly and within the established guidelines of 45 days. However, when appealing to the external review division, WHSCRD, the timelines are not followed. Throughout the last year, it was approximately a one year wait to get a hearing, and another approximately 60 days to receive a decision. One can only assume that this delay and the wait list will be longer for the foreseeable future given the world climate and the effects of the closures caused by the pandemic virus.

This is far too long to wait for a decision on entitlement and to start receiving benefits, especially for injured workers who have no income otherwise, or, at most, have entitlement to 16 weeks of EI Sick Benefits (if qualified). There appears to be a very long waiting list for review. Further complicating the matter is the complexity and confusion around when workers are eligible to appeal. Workers must operate within those strict guidelines or forfeit their rights to a review process. However, there does not appear to be any mandated timelines for the External Review Decision to provide injured workers, with no income, a decision on their appeal.

We are aware of a high turnover of Review Commissioners. As a result, there is an ongoing recruitment, appointment, and training process for new Review Commissioners. When a Review Commissioner leaves, these positions take an extraordinary amount of time to refill. Meanwhile, the list of workers waiting for a review of their decision grows, and wait times for hearings increases. This has a negative impact on the "Great Historical Trade-Off" discussed earlier, as workers are no longer

receiving timely and adequate compensation in exchange for waiving their rights to the court process. The employer, however, maintains its assurance of consistency no penalties. The benefit of the trade to workers is being lost with the wait lists for hearings and the wait times on decisions.

As a Union representing injured tradespeople, we feel that the "SYSTEM" can do better on their behalf and it should be a priority to improve this system to better serve the injured worker.

With respect to Earnings Loss Benefits, the Maximum Salary should be increased to reflect the actual salaries of injured workers, thereby actually deleting a "maximum" salary. Premiums should be paid to reflect actual salaries. Most of the bigger labour projects in this province operate on multimillion and even multibillion-dollar budgets, and employ some of the highest paid management in the world. Why should the actual workers injured on these projects be subjected to a cut in their incomes due to an injury incurred while doing the work on these megaprojects? The system does not dictate this. It is a bonus to the stakeholders. An option is to exempt these projects and the tradespeople working on special projects or megaprojects in the province from the "maximum salary" restriction for the purpose of determining premiums owed to WorkplaceNL, and for the purpose of establishing worker wage rates following an injury. Given that the Workers' Compensation System was fully funded at 124% in 2019, and employers received 0.21% discount on their premium rates to decrease the injury fund, consideration should be given to recognize the actual salaries that injured workers are losing as a result of their injuries.

In our opinion, part of the situation that contributed to WorkplaceNL becoming fully funded was the high number of claims that had been paid proportionately in accordance with Policy EN-02, due to the vague and overly broad wording in the policy. The text as written favours WorkplaceNL and the Employers, giving them an excuse and something to cite in order to deny a portion of the injured worker's claim that should otherwise be paid in full. We submit it is important to recognize a person's total working life that contributed to their physical condition. It is not the role of an insurance institution to use a worker's age and natural physical depletion against them in this process. We argue that Policy EN-02 does exactly that – gives the decision-maker and the employer an excuse to pay less benefits to an otherwise fully capable worker based on the "wear and tear" that comes with working in harsh conditions for a long career. In most cases, this comes near the end of a worker's career and that person will not be able to work again. We owe a duty to these workers who have given their entire careers to these difficult and risky jobs to fully compensate their income when they are injured near retirement.

For the remainder of this submission, we will follow the question as put forth by the Committee in your Discussion Paper. We will suggest remedies based on our knowledge and experience.

**Question 1:** Are any adjustments required to the workers' compensations system's Internal Review and External Review processes? If so, what changes would be beneficial?

In our opinion, any Requests for Internal or External Review that arise from a decision that terminates or significantly reduces a worker's Earnings Loss Benefits should be given priority, as opposed to other decisions that cover less impactful issues.

Requests for External Review should be granted a hearing within 45 to 60 days from the date of request. Realizing that this may be beyond the Review Division's capacity, consideration should be given to increasing the number of Review Commissioners in order to implement these timelines.

**Question 2:** Are processes and requirements surrounding both Internal and External Review clearly communicated to interested parties? If not, how can this be improved upon?

Most of our injured workers are tradespeople and lay people in terms of these processes. They are proficient in their fields, but not necessarily in the bureaucratic world of WorkplaceNL. It has been reported that they find communication from WorkplaceNL to be very intimidating, and for the most part they do not understand the Appeals Process, timelines, and the long-term effects it will have on them, their income, and their medical support. Decisions are usually multi-faceted, containing multiple issues. When the worker receives the decision, they often do not completely understand the implications down the road.

For example, consider a tradesperson who finally receives a decision after waiting weeks, and sometimes months, after submitting a claim for benefits. In that document they are told their claim has finally been accepted. However, they may also be advised that it was determined their injury was an aggravation of a pre-existing condition, or that only an injury to a single body part has been accepted. The decision may have also included a decision on their weekly rate of benefits. However, an individual not aware of the breadth of possible outcomes when submitting a claim may only take one thing away from that correspondence – "my claim has been accepted. I am finally going to be paid." Many workers are unaware that though a claim has been accepted, other decisions stemming from that acceptance are included in that document and those decisions may have significant ramifications on their health, income, and lifestyle forever. They may not know to appeal the decisions flowing from the claim acceptance until it has already negatively affected them.

A person involved in a bad accident or fall may have multiple body parts affected or injured, though there may be a concentration in the claim on one injury or body part initially. The fact that the other body parts or injuries have been omitted or were not the main focus in a claim may have a serious effect on the worker's future entitlement, especially when that worker seeks medical aid treatment or a PFI award for that body part or injury at a later date.

The weekly rate included in the initial decision may be based on incorrect earnings. However, the worker may be unable to ascertain if this is correct or not, as only the weekly rate is articulated in the letter, not the income used to establish that rate. Workers often have no idea of the impact of just one sentence in the letter: "the acceptance of a claim as an aggravation of a pre-existing condition." They do not realize this will result in the application of Policy EN-02 and being paid only a portion of their income by way of benefits. They do not know what information was used to make that determination, which makes it difficult to contest later. When a worker receives a secondary decision proportioning their benefits, it always includes the basis on which their claim was accepted, and therefore, proportionment applies, and since the worker didn't "appeal" the conditions on which their claim was accepted (ie. as an aggravation of a pre-existing condition), they are left without recourse.

It is our position that there are too many "decisions" being made and relayed in that initial letter, at a time when a worker is at their most vulnerable and most desperate for income. They are totally unaware of the long-term effects of such decisions and not contesting such decisions. Further, many are in such economic need that the thought of further delay is prohibitive. The delay alone makes any objection, further inquiry, or appeal and unrealistic option for the worker. The worker read and understood one thing: I am finally being paid something after waiting all this time. Why would I appeal?

Decisions concerning acceptance of a claim should be just that. If other decisions are to be made that have long-term effects on the life, duration, quantity or extent of a claim and benefits to a worker, then those decisions should be conveyed in separate decisions following input from the worker and possibly the worker's physician. There should be an ability to appeal each individual decision.

All workers should have a pamphlet sent to them along with the decision accepting or denying their claim that clearly outlines all of the information with respect to WorkplaceNL decisions, including the right to a review, both Internal and External, and the importance of timelines, the information regarding Workers' Advisors, and suggestions to seek help/assistance from their union organizations. Far too often workers lost in the process come to the union seeking assistance regarding negative decisions, only to find out that timelines have passed. They did not understand the importance initially and by that time it is too late for any advocacy on their behalf. The system as it is currently denies workers access to fundamental justice within the Workplace NL system. We have to be more cognizant of the positions we are placing our workforce in with the restrictions of this system.

**Question 3:** Are worker benefits being provided in a fair and efficient manner? If not, what are possible areas of improvement?

For the reasons outlined above, it is our opinion that higher wage earners are losing much more than lower paid workers when impacted by a work injury. For those reasons outlined, we suggest:

- Increase “maximum salary” to actual salary, either immediately, or after a specified period of time.
- Increase the ratio of salary paid to workers from 85% to 90%, as it was prior to being reduced years ago. There was cause to reduce the percentage at that time due to the strain on the system and depleting resources, however, given the health of the fund it is now time to return 90%.
- Review and amend Policy EN-02 which attributes some cause of the injury preventing the individual from working to a pre-existing condition, despite that pre-existing condition having no impact on the worker’s ability prior to the subject injury or accident. The policy should have no effect on a worker’s entitlement to long-term benefits if the condition had no effect on their ability to work and earn on a long-term basis, and if more likely than not they would have continued to work to the end of their career if not for the work injury.
- Never terminate a worker’s right to benefits without at least a months’ notice, where it is established they have no job available, or ability to return to their job due to their work injury.

**Question 4:** How well is the balance between provision of benefits and employer assessment rates being achieved?

In our limited experience with respect to this issue, we can only state that when the system consistently shows for years that the Injury Fund has been “whole” and continues to be over-funded, then the focus should be shifted to making the workers’ benefits more fully compensatory within the system. Workers should not have such a significant income reduction based on an injury that may have been entirely the result of employer error or policy. They have traded their right to pursue such negligence in civil court and in return should be guaranteed at least continued consistent wages for the length of time they are unable to work. Benefits were reduced as a response to strains on the system and the fund – 90% wages were reduced to 85%, benefits were proportioned, medical aid benefits reduced, massage therapy capped, and there was limited access to physiotherapy and chiropractic treatment, etc. It is now time to for the pendulum to swing back in order to fully compensate injured workers. Not only have we seen employers’ rates reduced in an economy that has seen everything else increase, but further, employers’ rates are being reduced under the guise of reducing the fund. When benefits are restored to what they were previously and workers compensated based on their actual salaries, then consideration can be given to then reducing employers’ payroll costs.

**Question 5:** With regards to maintaining financial sustainability, are there priority areas that need attention?

The overall system would be better financially sustained if all employers actually paid assessment rates based on actual salaries earned by all workers, not just up to the



maximum salary presently stipulated and used for the purpose of charging assessments and determining weekly benefits. If the system is better funded at this time, then charging appropriate assessments on actual salaries would allow for an ever better system which could provide adequate salary coverage for workers who earn higher salaries. There should not be a double penalty for a worker who earns over \$67,000 per year. In today's economy, that amount is not a "ceiling" salary but rather a more modest or average salary. A worker is already severely penalized at only receiving 85% of their net salary. It is unfathomable that losing \$33,000 off the top before commencing to establish an injured worker's rate at 85% of net is considered acceptable. The overall effect of paying benefits on actual salaries would be offset by all the additional monies received on assessments on salaries over the \$67,000, of which there are many.

**Question 6:** What role can stakeholders play in reducing the cost of the system?

It would be beneficial to have a more expedited External Review Appeals System. This should reduce bigger payouts if and when appeals are overturned. This, in turn, would allow workers to continue to receive their medical/rehabilitation treatment, thus reducing valuable recovery time from injuries. Injuries left to deteriorate without treatment may never return to the pre-injury condition and allow the worker to return to work. Injuries require immediate and sustained treatment to recover. The delay of a period of a year to 18 months is detrimental to recovery and therefore return to work, which has negative financial consequences to all parties.

**Question 7:** What recommendations would you make that could improve the overall Workers' Compensation System?

On behalf of the members of IBEW and all injured workers, we have outlined above some significant changes that would drastically improve the Workers' Compensation System. The system was designed to protect both parties, while providing adequate coverage and promote rehabilitation. Long, drawn out appeals benefit no one, including the system. The lengthy delays inherent in the current system is contradictory to its stated emphasis on "Early and Safe" practices and immediate access to continuing medical aid programming. Failures of that system include: huge gaps in a worker's income versus the benefits they receive; the case management of workers' claims; long delays in returning to work; and awaiting a decision for years. It is a failure of the system not to recognize that an increase to access to that system would benefit all parties overall.

**Question 8:** What recommendation should WorkplaceNL and/or the WHSCRD commence to improve the Workers' Compensation System?

WorkplaceNL and WHSCRD should both recognize the needs and challenges of the other agency. WorkplaceNL and the employers fund the system. Currently, WHSCRD cannot handle the flood of appeals within their system, thereby introducing serious delays in workers receiving their final decisions. Perhaps additional funding could be provided to allow for more staff in order to reduce the delays, and to eventually stabilize

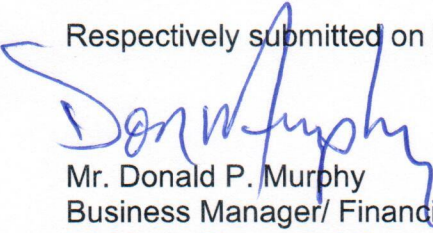
at a reasonable waiting time for workers following their claim. That time should not be greater than 60 days to a hearing and then 45 days to a decision.

### **Conclusion**

On behalf of all the members of IBEW Local 1620 of Newfoundland and Labrador, we wish to thank you for this opportunity to represent our members and to share with you, the Committee, the reality of how the Workers' Compensation System affects our members. In our view we have an important role in communicating the reality of being seriously injured, and the subsequent dire impact of the decision-making system and the appeals system. We believe there are improvements to be made, and that the fund is in the best position that it has been in for decades, which would allow for those improvements to be made responsibly, with a return to the benefits once enjoyed and deserved by all injured workers.

We wish you well in your deliberations over the coming weeks and look forward to the outcome of this 2019 Statutory Review of the Workers' Compensation System of Newfoundland and Labrador.

Respectively submitted on behalf of IBEW Local 1620, Newfoundland and Labrador.



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