



**NAPE**

Newfoundland and Labrador Association of Public and Private Employees

**SUBMISSION TO THE  
STATUTORY REVIEW  
COMMITTEE ON  
WORKER'S  
COMPENSATION**

**October 2020**

# INTRODUCTION

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The Newfoundland and Labrador Association of Public and Private Employees (NAPE) represent a membership of approximately 25,000 workers across the province. Our union is the largest and most diverse union in the province. Our members provide a wide-range of vital goods and services to the people of the province. Our membership includes a very broad range of workers from both the Public and Private Sector. Among our Public Sector workers we represent Health Care Workers, Conservation Officers, Correctional Officers, Probation Officers, Social Workers, Administrative Support workers, Data Entry & Word Processing Equipment Operators, Court

Clerks, Caretakers, Maintenance and Security workers, Student Assistants, Liquor Store Workers, Group Home Workers, Youth Corrections Officers, , Heavy Equipment Operators, Engineers, Labourers, Lab X-Ray Workers, and Home Support Workers. In the Private Sector we represent members which include Hotel Workers, Workers at Labatt's Brewery and Browning Harvey Ltd., Poultry Workers at Country Ribbon Inc., Purity Factories Ltd., to name a few.

Our union would like to thank the Committee for opportunity to present on our perspectives as they relate to this important review process.

Unfortunately, our union is no stranger to the impacts of unsafe working conditions. In the past decade alone, three NAPE members have tragically lost their lives in workplace accidents. Aside from these tragic incidents, NAPE members are too often the victim of workplace accidents in injuries that have a wide range of impacts on our members, physically, mentally, and financially.

Many of our members work in areas where their risk of injury is very high. NAPE workers suffer high instances of musculoskeletal injuries, sprains, strains, repetitive motion and mental health injuries. In and have lost their wage benefits. Many are left confused, mentally drained, frustrated, extremely stressed and financially ruined. Some lose their families and homes and are forced to file for personal bankruptcy.

Many workers who depend on necessary medical aid support to aid in their recovery of their injuries have had those benefits reduced or discontinued. Workers who have returned to work and suffer recurrences are finding it very difficult to have their claims accepted for their recurrences.

In 1913 the Meredith Royal Commission established the fundamental principals of workers' compensation which was incorporated into all provincial legislation. For injured workers, it brought with it the guarantee of compensation for as long as earnings were impaired; a no fault system; Employer funded collective liability; and establishment of WCC Boards. Workers, were, thus, spared the expense and delay of going to Court when they suffered an injury in the workplace, and lost their right to sue employers in exchange for the establishment of Workers' Compensation.

Through legislative changes, these fundamental principals of Workers' compensation have been undermined by the erosion of workers' rights under the act.

Injured workers, over the years, have had to bear the burden of cost cutting and budget deficits under employer pressures for Workers Compensation to reduce benefits, while Employers receive lower rates, and Prime Rebates, with little evidence that our workplaces remain safe or that injuries are less serious. It appears that employers, not workers, are spared the legal costs of being sued, and workers ended up on the losing end of the deal.

This Statutory Review is very important, however, concerns have been expressed on the impact of the 2020 review as the recommendations from 2013 review has yet to be fully responded to by Government and injured workers are suffering as a result. The changes flowing from the 2013 Statutory Review which have been implemented came to fruition due to the continued lobby of Unions in the province.



# RESTORE BENEFITS

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It is imperative that the level of benefits must be restored to injured workers. Wage loss benefits must be based on 100 % of net and the cap removed on wages.

If a worker becomes ill and has available sick leave benefits, they are compensated at 100% of their wages. When they are injured in their workplace they are reduced to living on a wage at 85% of net. This causes many workers to dismiss injuries when they occur in hopes that they will not be required to live on reduced income. Workers are living from pay day to pay day, and do not want to be on Workers' Compensation benefits. Why should they be penalized because of an injury at their workplace?

This causes a negative effect on sick leave benefits which are constantly under attack at bargaining tables by employers. Sometimes, employers turn a blind eye when workers use sick leave benefits, but should be filing a Workers' Compensation claim.

The employers benefit when workers neglect to file claims because their experience ratings and premiums remain unaffected. Employers can be labelled as abusers as does often the injured worker. NAPE does not support the notion that injured workers abuse the system. It is difficult to comprehend that any worker would willingly subject themselves to reduced income and the barrage of assessments and examinations often required of injured workers. Surely workers would not open themselves to the mental stress of being caught up in a system that no longer serves them as was originally intended.

## Maximum Compensable Earnings

NAPE's position is that the maximum wage cap should be removed. In many industries where wages are higher than the maximum compensable earnings of \$66,980.00 employer assessments increase revenue to Workers Compensation, and their workers will gain the benefit of their actual earnings. Workers who have been successful in their careers to secure well paying jobs, should not be penalized by such wage restrictions. If these workers become injured they should be compensated at their full earning capacity.

## Canada Pension Offset

There must also be changes in the offset of Canada Pension disability benefits of injured workers.

Workers who are entitled to Canada Pension disability benefits must pay premiums in order to receive this benefit. This is a benefit they have earned, and should not be used as a cost reduction for Workers Compensation.

## Labour Market Re-Entry

The Labour Market Re-entry process is the one aspect of Workers' Compensation which causes the most grief to injured workers. After being injured and having reached their maximum medical recovery, workers are often devastated when it is established that they are unable to return to their job. After their Functional Capacity Evaluation and a job opportunity is identified in the labour market, a job match is provided with the cooperation of the job market information. If it is established that the worker is physically and mentally capable of performing the work, then capable earnings capacity is established for that cluster of jobs by the labour market. One can only imagine the effect of being told that they are no longer entitled to benefits because they have been assessed to have a full work day tolerance and a certain level of strenuousness, and are capable of earning income in jobs that are identified by a process unfair to workers. The stress of dealing with financial ruin, and the effect on families as a whole is incomprehensible. They are never given the opportunity to actually perform the work they have been deemed capable of doing, yet they lose their benefits.

## Labour Market Re-Entry

Identified earnings should be based on actual employment opportunities offered to the worker, not ghost jobs. Workers should not lose their benefits on the basis of identified capable earnings, without having had the benefit of the opportunity to work in that job and truly establish their ability to earn, before an earning capacity is established.

Through the assessment of an external Labour Market Reentry provider, work is identified for workers found capable of working in clusters of jobs, based on general determination of ones ability to earn in the absence of the truth of Job Matching. These Labour Market Reentry external providers determine that where there are restrictions experienced by the worker, they can be provided with accommodations in areas where the restrictions would otherwise rule them out of these clusters of jobs.

The ability of any potential employer to actually provide accommodations does not have to be proven or taken into consideration. It is just a paper match. This paper match then becomes the tool to discontinue or drastically reduce the workers' benefits.

Our legislation must change and improve the present process for identifying capable earnings.

The financial strain to injured workers is unfair as injured workers look to continuing to be productive members of the society.

## Rehab and Retraining

Workers' Compensation legislation gives the Commission considerable discretionary power in determining rehabilitation and education or training. NAPE often works closely with employer representatives, Workers Compensation and Injured workers in the process of rehabilitation. Retraining opportunities are often overlooked when the worker can actually retrain to return to work with their pre-injury Employer. Where job opportunity is available with new skills, employers should support the re-training and the employment of their valued employees in whom they have likely already invested.

However, there are employers who have much to learn in this area and would benefit from further education and training.

Retraining is not always an option for injured workers. This benefit rests on the pre-injury earning capacity which ultimately determines the Commissions responsibility to spend the monies to retrain. Low income earners often lose out on this benefit because the cost benefit analysis proves deeming to be more cost effective than retraining.



# DUTY TO ACCOMMODATE

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Although NAPE has worked with employers who are involved in rehabilitation and assisting employees in return to work, other employers are unwilling to participate and need much education in the area of rehabilitation and accommodation.

It is often the desire to keep control on their premiums which forces employers to participate.

While some employers are committed to early intervention and easeback programs that are designed to assist the workers return to work, all employers are bound under the “duty to accommodate” to take extensive measures to accommodate workers who have been injured, and return them to the workplace, to their regular or equivalent earnings

## Mental Health Stress and Injuries

As part of their jobs, many workers, including a large number of NAPE members, personally face or witness dangerous, threatening, violent, and/or traumatizing situations. These situations can have a deep and lasting impact that can lead to mental health injuries and illnesses including Post-Traumatic Stress Disorder (PTSD).

We must remember that what happens at work doesn't just stay at work; it doesn't just go away when the uniform comes off or when the shift is over. These workers need and deserve supports in place to deal with their work-related mental health injuries. We need to break down the stigma that exists in our workplaces around mental health.

In 2018, NAPE released a position paper titled 'A Call for presumptive legislation: Post Traumatic Stress Disorder, Occupational Stress Injuries, and the Wellbeing of the Workforce'. This working paper was prepared by Dr. Rosemary Ricciardelli and Dr. Alan Hall of Memorial University. The report was submitted to the government to better inform their workplace mental health review.

The report can be found here:  
<http://www.nape.ca/article/a-call-for-presumptive-legislation/>

The workplace mental health position paper commissioned by NAPE used quantitative and qualitative data from other Canadian jurisdictions to support recommendations for how the province should move forward with legislation on this front. The paper's key recommendation was for the province to enact comprehensive presumptive legislation for all workers, not just first responders

A significant amount of work was undertaken by NAPE (the position paper, a significant, province-wide public relations campaign, and extensive government) lobbying which resulted in a significant and positive changes in Policy EN-18, Mental Stress. Recent changes have been made to recognize mental stress where there is a reaction to multiple sudden and unexpected traumatic events (cumulative effect). The policy has removed the "inherent risk of the job" consideration. Diagnostic requirements have been modified to include but limited to acute stress disorder; post-traumatic stress disorder; adjustment disorder; or an anxiety or depressive disorder. In addition, WPNL will consider a claim for adjudication if an appropriate regulated health care professional, (i.e. Physician, nurse practitioner, psychologist or psychiatrist) provides DSMV diagnosis.



## Mental Health Stress and Injuries

All workers have presumptive protection if they suffer from Mental Stress Injury (PTSD) covered by Policy EN-18 which came into effect on July 1, 2019.

The struggle of Mental Stress does not end there. It is NAPE's position that The definition of stress as a compensable injury must be broadened to include any stress arising from other forms of Mental Stress, such as stress suffered as a result of severe workplace conditions. Harassment and discrimination must also be accepted. There have been changes in other provinces in response to constitutional challenges that were based on the equality rights provisions in the Constitution/Charter under Section 15 and Human Rights legislation to include chronic stress. Recent changes to the Occupational and Safety Act to recognise Violence and Harassment in the workplace and the enactment of these changes lays greater responsibility on employers to keep employees safe from these injuries. However, the Mental Stress policy does not recognize these types of stress and the time is now to change this under the light that has been shed on this injustice to workers.

## Repetitive Strain Injuries

NAPE represents many workers both in the public and private sector who are subject, by virtue of their daily working conditions, to repetitive strain injuries. Historically, these injuries are realized over a period of time and often cannot be related to any single event.

Research clearly supports that cumulative trauma injuries and repetitive strain injuries can be related to work of a repetitive nature. Many jobs subject to these type injuries are female dominated. Any move by the commission to restrict these injuries to a specific event would be discriminatory and unacceptable.

# CONCLUSION

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Workers' Compensation is a right, not a privilege. Workers should have under that right the protection of their income for their period of disability, the cooperation of their employers in their return to work and other rehabilitative initiatives and the right to go home at the end of the day safe from injury and harm, physical or financial.

The financial dilemma in which the Board presently finds itself appears to have been the driving force behind much of the most recent decisions, and is grossly unfair to workers. While this Statutory Review has been established, the recent decisions of the Board on workers claims leads one to believe that again workers benefits and rights are under attack and seen as

the cost savings mechanism to address the shortfall. Employers reap the benefits under Prime Rebates for following the law, while workers continue to suffer.

We urge the Review Committee to reject any cost cutting measures at the expense of injured workers. We recommend that principals on which Workers' Compensation was established be restored to return justice and dignity to workers who have no other choice but depend on a system no longer adequately protects their rights or benefits.



# NAPE

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We must all work together every day to ensure that our workplaces are safe because one life lost / one injury is one too many.