



September 28<sup>th</sup>, 2020

Members of the Workers' Compensation Statutory Review Committee:

The Newfoundland and Labrador Federation of Labour (NLFL) has a proud history of representing the interests of union members and workers since 1936. The NLFL represents more than 70,000 members from every sector of our economy and from every community in Newfoundland and Labrador (NL). As an organization dedicated to improving occupational health and safety (OHS), the NLFL starts from the premise that one work-related fatality is one too many, and that most injuries and occupational diseases are preventable. With the expertise of our 70,000 members we continually advocate for safer workplaces and for worker safety.

The NLFL advocates for improved workplace rights, stronger laws, and improved policies and practices related to injury prevention, occupational health and safety, and workers' compensation. Our advocacy is informed by the work we do on a number of fronts.

The NLFL houses a Safety Sector Advisor; a dedicated position that supports the work of the safety sector associations in NL representing forestry, fish harvesting and manufacturing/processing. We also house two Workers' Advisors who advise and assist injured workers with their claims.

Mandated by the NLFL Constitution, we have standing committees devoted to both **Occupational Health and Safety** and **Workers' Compensation** issues. These committees are comprised of members from our affiliate unions.

Attached you will find the NLFL's submission to the 2019 Workers' Compensation Statutory Review Committee. We thank you for this opportunity to participate in the review of the workers' compensation system in NL. Workers' compensation is a critical part of our social infrastructure. Our submission is reflective of government's criteria, under the Review's "*Terms of Reference (ToR)*" and, more importantly, of the voices we represent - our affiliates, injured workers, researchers, and other OHS experts in the province and beyond with whom we regularly work. Input from these diverse groups has informed our understanding of the issues and the recommendations we are presenting to you.

Worker health and safety and workers' compensation are paramount concerns for workers. The NLFL is a key stakeholder in the field of OHS in the province and we regularly provide advice and input to WorkplaceNL (WPNL) on numerous issues. We expect employers to live up to their obligation to ensure workplaces are safe. We look to WPNL to advance the best prevention strategies. We call on governments to enact the strongest laws and the strictest enforcement measures possible, so that workers can return to their loved ones safe and healthy at the end of each and every workday.

If workers are injured, or if their health is damaged by work, we expect the OHS system to compensate them for lost wages and earning capacity; to care for them in the short and longer term as needed; to support their families; to investigate the causes of injuries, illnesses and deaths; and actively engage in efforts to prevent future incidents. We expect these things to be done in a way that remains true to the principles under which workers' compensation was founded.

The system must do everything possible to prevent injury. It must provide as much support as possible to help injured workers return to their previous employment with no loss in pay. Where this is not possible, the system must help workers retrain, so that they can re-enter the labour force in positions that best match their skills and capacities. In the event of disability that prevents them from returning to work, the system must ensure they have the supports they need to live in dignity. In the event of a work-related fatality, the system must adequately and appropriately compensate the families left behind.

We have considered the main issues as proposed in the "Discussion Paper". Our submission is focused on four major themes; fairness, prevention, transparency and accountability. There are substantial weaknesses in the current NL compensation system in each of these areas. These weaknesses must be addressed if we are to reduce the threat of injury and death, strengthen the workers' compensation system and prevention, and develop a system that remains true to the principles under which workers' compensation was founded. Our submission is called *Putting Workers at the Centre of the Workers' Compensation System*, because Meredith was clear so many years ago that anything less was contrary to the core principles of the workers' compensation system. The Meredith Principles are as relevant today as they were over 100 years ago.

Sincerely,



Mary Shortall  
President, Newfoundland and Labrador Federation of Labour

# **Newfoundland and Labrador Federation of Labour**



## **“Putting Workers at the Centre of Workers’ Compensation” Submission to the 2019 Workers’ Compensation Statutory Review**

**September 28<sup>th</sup>, 2020**

# “Putting Workers at the Centre of Workers’ Compensation”

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## **Introduction**

### **1. Workers' Compensation: Fairness, Prevention, Transparency and Accountability**

Our submission focuses on fair compensation and the need for improved prevention, with an emphasis on the importance of transparency and accountability. It starts from the linked assumptions that one work-related fatality is one too many and that no one wants to see a worker injured or made ill because of their work. We all want to see a drop in the number of work-related injuries, illnesses and fatalities in Newfoundland and Labrador (NL) and thus we want WorkplaceNL (WPNL) to succeed with its prevention efforts. On April 28<sup>th</sup> of each year, on the National Day of Mourning, as the latest statistics are made available, we are sadly reminded that more needs to be done to improve workplace and worker health and safety in NL and nationally.

Working age Newfoundlanders and Labradorians spend half or more of their waking lives at work. They are potentially exposed to diverse physical, mental, biological, ergonomic and chemical hazards. A fair and effective workers' compensation system is thus integral to achieving a caring and just society with a strong, healthy and productive labour force. Achieving this requires us to place injury prevention and support of the injured/ill worker and the dependents of those who have died at work, at the heart of our workers' compensation system.

The NL Federation of Labour (NLFL) welcomes pro-active prevention efforts from WorkplaceNL that aim to make workplaces as safe as they can be for all workers. Success stories that highlight the effectiveness of these efforts should be shared publicly, as widely as possible. When those efforts don't succeed or gaps in prevention efforts become obvious, existing efforts need to be rigorously evaluated using a continuous improvement model. The NLFL looks to the Service NL OHS Division to use its authority and rigorously penalize negligent employers for failing to ensure their employees' well-being. Information on those who fail to do this should be public knowledge. Finally, for those workers who die, are injured or made ill at work, we expect WPNL to fully and appropriately support them and their families.

The NLFL believes that the current compensation system needs improvement if it is to meet the needs of workers who become injured, ill or disabled by their work. Our submission documents our concerns with the existing system and provides concrete recommendations for improvement covering primary prevention, as well as suggestions for legislative amendments to improve compensation benefits, programs and supports.

Our submission addresses the key themes identified in the Statutory Review discussion paper: financial sustainability, balance of payments and support for injured workers. It starts as always, with the Meredith Principles and the need to go beyond half measures. We would be remiss if we did not reflect on the impact COVID-19 is having on workers' lives and their health and safety; thus we discuss the need to identify appropriate prevention measures and compensation,

including implementation of conclusive presumptive recognition for this and other infectious diseases.

We offer recommendations for key changes in each of the areas of fairness, prevention, transparency and accountability that could help us better achieve the 'true aim' of workers' compensation. Adopting our recommendations would better serve the needs of all workers, including injured workers and their families. It would also, as Meredith stated, "prevent their becoming a charge upon their relatives or friends, or the community at large."

## **2. Getting Back to Principles**

The Meredith Principles are the foundation of our workers compensation system. Designed by Sir William Ralph Meredith in 1913, these principles were based on a historic compromise between workers and employers. Injured workers relinquished their right to sue a negligent employer, in return they were guaranteed compensation benefits.

The five **Meredith Principles** are:

1. *No-fault compensation:* Workplace injuries are compensated regardless of fault. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury. Fault becomes irrelevant, and providing compensation becomes the focus.
2. *Collective liability:* The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.
3. *Security of payment:* A fund is established to guarantee that compensation monies will be available. Injured workers are assured of prompt compensation and future benefits.
4. *Exclusive jurisdiction:* All compensation claims are directed solely to the compensation board. The board is the decision-maker and final authority for all claims. The board is not bound by legal precedent; it has the power and authority to judge each case on its individual merits.
5. *A Public System with an independent board:* The governing board is both autonomous and non-political. The board is financially independent of government or any special interest group. The administration of the system is focused on the needs of its worker and employer clients, providing service with efficiency and impartiality, and providing a social safety net for those injured or made ill as a result of their work and for the families of those who die because of their work.

The “true aim” of the workers’ compensation system designed by Justice Meredith, captured in his 1913 final report, must never be forgotten. Justice Meredith wrote “...the true aim of a compensation law is to provide for the injured workman and his dependents and to prevent their becoming a charge upon their relatives or friends, or the community at large.”

It is essential that we ensure our system meets the “true aim” provision, that it works effectively for all kinds of workers, and that we avoid what Justice Meredith called half measures. Given the diverse make-up of today’s workforce, we can confidently assume Justice Meredith would be equally concerned about all injured workers. Furthermore, in his words, “half measures that mitigate but do not remove injustice are, in my judgement, to be avoided.”

In developing this submission, we asked ourselves and our affiliates whether the current workers’ compensation system in NL succeeds in honouring Justice Meredith’s ‘true aim’, or if indeed, half measures are the order of the day. Unfortunately, it appears that half measures are all too common. Our recommendations are designed to help change this.

**Now is the time to start building a more robust, transparent, workers’ injury/illness/fatality prevention and compensation system.**

It is our position that evaluations of the success of the workers’ compensation system are too focused on reducing the number of compensation claims and employer assessment rates, and not focused enough on achieving safer workplaces, protecting the health and safety of workers and on fair compensation. We call on WPNL to more effectively demonstrate that workers are well protected and supported, from prevention through to return to work and, where this is required, longer-term disability. We believe this can be achieved through a robust prevention plan that embraces meaningful changes in policies and practices, strong surveillance and rigorous evaluation. The financial sustainability of workers’ compensation is best served through effective injury prevention. Safer workplaces and fewer injuries will result in a reduced number of claims and a healthier bottom line.

### **3. COVID-19 and the Need for New Pandemic Legislation**

Measures to address the COVID-19 pandemic have ranged from business closures and layoffs to working from home. This approach has required the support of many essential and frontline workers for whom working from home is not an option. The services these workers provide are essential for infection control and treatment, care of the sick, children and the elderly, and ensuring basic goods and services are available. Their willingness to go to work in the midst of the pandemic allowed others to stay home, thereby reducing the spread of infection and ultimately the duration and negative health consequences of the pandemic.

In more normal times, many of these essential workers might have exercised their right to refuse unsafe work. Instead, they have gone to work hoping that their journey to and from work and

jobs would be safe; that with access to appropriate, employer-provided infection control measures, including personal protective equipment (PPE), they would not fall victim to the COVID-19 virus.

As Canadians we are fortunate to have access to a public health care system should we become ill from COVID-19. Many of those economically impacted by the virus are able to access EI and special government benefits. Those required to work, however, have to trust that their workplace is safe and that they will have access to the PPE needed to prevent or significantly limit exposures.

Workers with symptoms are expected to self-quarantine and contact public health and their employers – to not go to work – despite the likelihood of lost income.

The pandemic reminds us of the importance of the three basic worker rights and why they exist:

1. The right to know about the hazards in the workplace. Workers must be provided with the equipment and receive the training to stay safe while at work.
2. The right to participate in decisions that could affect their health and safety.
3. The right to refuse work that could endanger their health and safety or that of co-workers.

This virus knows no boundaries. Many essential workers are at risk at work, at home and in the community. If a worker becomes infected, they have the potential to infect others and workers' fears about infection and spreading infection are a key source of mental stress.

Essential workers must therefore be assured that should they contract the virus, their health and their financial needs will be taken care of, including having access to a place to stay as they quarantine away from their families. Workers' compensation must be available to those workers should they become ill, and available to their families if they should die. Furthermore, where workers have no entitlement to paid sick leave, workers' compensation support must be available immediately.

At present, any worker who is tested and found to have been infected with the virus at work can apply for workers' compensation to cover a portion of their lost wages to help with the recovery. But what happens if a worker gets sick and has no access to a test and yet, according to public health rules, they must self-isolate and stay away from work for 14 days? What happens if their exposure at work is from an infected transient delivery person who is asymptomatic? Will they be able to prove that they were made sick at work? If they are exposed while travelling to work will they be eligible for compensation? The challenge here is that these workers are only travelling to work because they have been deemed essential. Of course, when the economy opens up, all workers who must go their workplace will be in the same situation.

These questions are relevant now and will continue to be into the future. Public health and science authorities have predicted there will be future pandemics. Workers' compensation will



need to be modernized in order to address situations where essential workers are put in harm's way with no real option but to go to work. This is precisely the kind of situation that conclusive presumptive coverage is designed to address. Presumption reduces adjudication time for claims and ensures that workers and their families have the resources they require should they need to self-isolate or become ill.

Establishing conclusive presumptive coverage would simplify the claims process and allow the injured worker to receive the assistance they need as expeditiously as possible. It would also help reduce the mental stress experienced by these workers.

This is the plan in British Columbia. Included in that coverage are potential exposures during the journey to work for a work-related pandemic illness like COVID-19.

**Recommendation:** The government of NL amend the *Workplace Health, Safety and Compensation Act* to provide conclusive presumptive coverage for work-related pandemic illness to those workers deemed essential.

#### **4. How to Improve Fairness in Workers' Compensation**

Ultimately, any worker injured or made ill through their work has to turn to Workers' Compensation for support and accommodation. Most workers never think of workers' compensation until they are forced to deal with it. For many injured workers, the experience is not what they expected, especially when it comes to financial benefits.

The NLFL believes it is time we put the worker back at the centre of workers' compensation and a key step in achieving this goal is to improve the fairness of the system. The Meredith Principles were designed to ensure that injured workers would be taken care of, from both a health and monetary perspective, so that they could properly recuperate and return to work when healthy and able.

One of the five principles of Workers' Compensation is "no-fault" compensation. It is understood that should a worker get injured while at work, they can expect to be compensated and supported while recovering. However, "no fault" does not mean "no cost".

Once an injury is officially recognized as work-related, the worker soon learns they must accept an Income Replacement Rate of 85% (a loss equivalent to 15% of their net income). If the worker's income is more than the legislated Maximum Compensable Annual Earnings (MCAE) of \$66,980 that income is not recognized. Furthermore, the cost of contributions to workers' health or pension plans while off work is not covered by workers' compensation. In addition, seasonal workers risk losing access to Employment Insurance if they go on compensation, and also risk reduced benefits when benefits are based on averaged earned income over the year, even

though they only have access to seasonal work. The reality for too many injured workers is that the current workers' compensation system places them in a financial bind. This can lead to stress, force them to choose between going to work and financial pain to the point of poverty, and by encouraging to stay at work even when ill, can potentially lead to further injury and serious medical issues. All because of a workplace injury or illness.

Below are examples of some unfair situations injured/ill workers can find themselves in:

**Worker A** is a minimum wage worker who can barely make ends meet even when working full-time and is hit with a workplace injury. Their doctor tells them to stop any heavy lifting and continuous physical activity. At 85% of net income of an \$11.65 per hour minimum wage, reliance on workers' compensation benefits results in direct financial hardship. They can no longer afford to pay for basics like food, rent or heat. The employer has no light work duties that would allow Worker A to return to work. Worker A is now forced to turn to social assistance to help cover their basic costs.

**Worker B** earns a good annual salary of \$100,000. This worker experiences a violent incident at their workplace and has been medically diagnosed with Post-Traumatic Stress Disorder (PTSD). The doctor has recommended that Worker B not return to work and should seek further medical support. Thankfully, Workers' Compensation recognizes presumptive coverage for PTSD. Worker B will be entitled to an 85% income replacement rate (IRR), but only to the Maximum Compensable Assessment Earnings (MCAE) of \$66,980. Worker B quickly realizes this will result in a tremendous loss of income and that their compensation benefits will not allow them to meet their monthly mortgage, automobile, light and power and other family-related payments. In addition, Workers' Compensation will not cover the cost of contributions to the company's health or pension plan while Worker B is off work potentially threatening future pension income and access to health benefits outside of the compensation system. After some deliberation Worker B decides to return to work, against their doctor's advisement, and to rely on the employer's less than adequate sick leave provisions. This puts them at risk of failing to qualify for compensation in the future should their health deteriorate due to worsening of the original injury.

**Worker C** is a seasonal worker in a shellfish plant. Worker C finds the work is hard on the body, and has difficulty breathing. After visiting their local doctor, Worker C is prescribed an inhaler to help with respiratory issues. To stop the problem from getting more serious, the doctor advises the worker to give up working at the shellfish plant. However, Worker C relies on work income to cover basic expenses and needs the work to qualify for EI when the fish plant is shut down. Worker C applies for and is deemed eligible for Workers' Compensation benefits only to discover that after 13 weeks at 85% IRR their file is reviewed and further payments are based on their earnings for the 12 months prior to the injury. This re-calculation can dramatically reduce their workers' compensation benefits resulting in a financially untenable situation. Instead of continuing on compensation, Worker C decides to return to work and use puffers and other medications to get through the season and then file for employment insurance (EI) to help cover living expenses and medical expenses during the off season. Meanwhile Worker C gets

progressively sicker each year and begins to experience respiratory problems throughout the year with breathing problems now triggered by exercise, chemicals and other exposures.

Each of these situations violates the true aim and intent of the Meredith Principles. **Meredith was clear that injured workers should not become a burden to their family or society.** These kinds of financial penalties for injury essentially call into question the 'no-fault' principle of workers' compensation. Workers injured at work should not be forced to choose between a livable income and their health. The current system only increases the possibility that injured workers will ignore medical advice and continue working, putting their longer-term health at risk.

Why should injured workers be financially penalized as a result of a workplace injury or illness, especially when they are not at fault? This is unacceptable, and even more unacceptable when the injury fund is in surplus and employer assessment rates have been so dramatically reduced over the past few years.

According to WorkplaceNL's 2018 Annual Performance Report,

*The Injury Fund has been fully-funded for five years. In that time, there has been a 38 per cent decrease in the assessment rates paid by employers to fund the system, including a discount of \$0.21 per \$100 payroll in 2019.*

The primary purpose of the injury fund is to take care of injured workers, and yet year after year, employer assessment rates have been lowered; while it took five full years to introduce a legislative change whereby injured workers gained a modest increase in the income replacement rate. **This imbalance needs to be rectified.**

The NLFL believes that major changes to workers compensation legislation and policies are needed. First, there should be one system for all workers based on the principles that no injured worker receives less than a full-time minimum wage equivalent while on compensation; and no worker should be doubly penalized for going on compensation by receiving only a share of their original income and through a cut to their benefits for exceeding the MCAE. The MCAE should be eliminated, particularly given that NL has one of the lowest MCAEs in Canada. Overall, workers' compensation benefits should ensure workers are properly compensated and supported so that they are never forced for financial reasons to return to a workplace that is making them progressively sicker.

### **The Income Replacement Rate (IRR)**

Before April 2018, NL had the lowest Income Replacement Rate (IRR) in Canada at 80%. This legislated choice was made when the injury fund was in a deficit during the 1990s. In effect, injured workers were made to pay a disproportionate price to help with revitalizing the fund.

Year after year, the NLFL advocated for an increase to the IRR, and at the 2013 Statutory Review it was recommended the province increase the IRR to 85%. As has happened all too often in the past, the vast majority of the Statutory Review recommendations were not enacted or were

acted on only slowly. It was not until April 1, 2018, five years after the completion of the 2013 review that the government implemented a legislated amendment to increase the IRR to 85%.

While this increase was welcome, NL continues to have one of the lowest income replacement rates in Canada. Six jurisdictions provide a 90% IRR.

At the December 2019 NLFL Constitutional Convention, a resolution to increase the income replacement rate for injured workers was brought to the convention floor for debate. When the question was called, the message from the over 300 delegates was clear: no worker should face a financial burden as a result of a workplace injury. The resolution in support of an IRR increase to 100% of net income passed unanimously.

**Recommendation: Any worker injured or made ill from work should be compensated at 100% IRR until such time as they are able to return to work and their pre-injury earnings.**

#### **Maximum Compensable Assessment Earnings (MCAE)**

While there is no mention of maximum benefits in the Meredith Principles, workers compensation legislation currently states that injured workers will receive an IRR of 85% of their net-income up a maximum gross (pre-tax) income of \$66,980. This places an extra penalty on many high-paying jobs, many of which are considered dangerous, such as mining, oil and gas and construction.

Towards the end of each year, WPNL announces the next year's Maximum Compensable Assessment Earnings (MCAE). The legislation mandates MCAE to be adjusted annually, taking into account the annual Consumer Price Index (CPI). The 2019 MCAE of \$65,600 increased to \$66,980 in 2020, which according to the WPNL announcement, is the highest MCAE in Atlantic Canada. However, while the MCAE in NL is slightly higher than New Brunswick's, it is dramatically lower than in the remaining provinces outside of Atlantic Canada.

Currently, the MCAE for Manitoba is \$127,000; Alberta is \$98,700; Ontario is \$95,400; NWT and Nunavut are \$94,500; Yukon is \$90,750, Saskatchewan is \$88,906 and BC is \$87,100. In July, the BC government announced that they plan to increase the MCAE to \$100,000. At the NLFL's December 2019 convention, a resolution addressing the MCAE issue was debated. The delegate vote was unanimous that the ceiling must immediately increase to \$90,000 with annual CPI adjustments.

**Recommendation: That the Maximum Compensable Assessment Earnings be increased immediately to \$90,000 with an annual CPI adjustment.**

## **A Minimum Wage Floor**

While the MCAE is viewed as a ceiling for workers compensation, the NLFL believes that injured workers also need a floor for determining compensation benefits. The COVID-19 experience exposed the fact that a large number of “essential” workers are low-income workers; many earn minimum wage, and many are involved in part-time, precarious work. If any of these workers are injured or become ill at work, their compensation would mean a 15% drop in income, making it very difficult, if not impossible for them to pay their bills. Following the lead of Quebec, legislation should be amended to ensure that no injured worker receives less in workers’ compensation benefits than the province’s minimum wage.

**Recommendation:** That the *Workplace Health, Safety and Compensation Act* be amended to state that no injured worker can receive less than the province’s minimum wage when on compensation.

Two other changes are needed to improve the financial fairness of the workers’ compensation system, top ups and retirements benefits.

## **Top Ups**

It is time to repeal the workers’ compensation legislation that directly interferes with a union’s ability to negotiate provisions in a collective agreement, to assist members with the cost of pensions and other benefits the worker would lose when injured and in receipt of Workers’ Compensation benefits (See section 81.1 and 81.2 of the *Act*). It is common practice for collective agreements to provide Supplemental Unemployment Benefit (SUB) plans and top-ups to Employment Insurance, maternity, parental, sick leave and short-term disability, as well as workers’ compensation benefits.

Since the 1990s, NL has been the only province to violate the right to free collective bargaining guaranteed by law. Delegates at the NLFL December 2019 convention voted unanimously to pass a resolution calling on the Government of NL to allow for such benefits to be negotiated equal to other jurisdictions in Canada.

**Recommendation:** That unions be able to negotiate supplemental benefits that would help injured workers, and that Sections 81.1 and 81.2 of the *Workplace Health, Safety and Compensation Act* be withdrawn.

## **Retirement Benefits**

The NLFL is calling for a review of recent amendments to section 75 of the *Act*, introduced on January 1, 2019. The new “Retirement Benefit” amendment was intended to improve retirement benefits for injured workers. However, consultations with our members and injured workers have shown that instead, the amendment has further exacerbated the problems with an already flawed process, and has resulted in an unfair rate that reduces pensions to poverty levels. At the age of 65, injured workers and their survivors are left with a minimal percentage in a lump sum payment that is not even close to the pension rate they would be entitled to if not for their workplace injury. We believe this legislation needs to reflect the spirit and intent of workers’ compensation legislation that provides injured workers and their families a fair and equitable pension.

It is the position of the NLFL that injured workers and their families should be entitled to fair and equitable retirement benefits that consider individual circumstances, and accurately reflect the amount an injured worker would have been entitled to if no injury had occurred.

Currently, upon turning 65, many injured workers are, instead, ultimately penalized. Although perhaps not the intention, the reality is that various claimants, younger and older, are left to suffer. Many injured workers preferred the former process. There is no “grandfather clause” to cover these workers. Under the current legislation, workers are given a lump sum payment and then their workers’ compensation ceases. This is causing enormous hardship for too many injured workers and their families.

Retirement benefits should reflect the actual pension amount the worker would have received if they had continued to work and contribute to their pension plans. A surviving spouse should be entitled to a survivor’s benefit the same as they would be with the Canada Pension Plan (CPP).

In the 2013 Statutory Review, the NLFL recommended a review of the pension replacement benefit with the goal of creating a new benefit that is fair and reasonable to injured workers.

The NLFL is once again calling for a review that includes consultation with injured workers, and that considers the impact on injured workers and their spouses.

**Recommendation:** That WorkplaceNL review the “Pension Benefit Replacement” under the *Workplace Health, Safety and Compensation Act* to ensure that when an injured worker is unable to contribute to their Employer Sponsored Pension Plans (ESPP) and Canada Pension Plan (CPP), as a result of workplace compensable injury, that they are entitled to “Pension Loss Replacement” that is equal to the actual loss an injured worker is experiencing, and reflect the actual pension amount the worker would have received if they had continued to work and contribute to their pension plans, regardless of the period of time of disablement.

### **The Office of the Workers' Advisor (OWA):**

It is important that injured workers are treated fairly by the workers' compensation system. The Office of the Workers' Advisor (OWA) was established for this very reason. The OWA is a free service that provides expert advice and information on workers' compensation issues to injured workers and their families in NL. These advisors are employed by the NLFL, and their work is funded by WPNL. Currently, there are two advisors who provide this service; one in St. John's and a second in Grand Falls-Windsor.

The OWA can advise injured workers and/or their dependents of their rights and obligations under workers' compensation legislation. The OWA can also advocate on behalf of injured workers and/or their families with WPNL and provide advice and assistance on both the Internal and External Review processes. Finally, the OWA provides a communication channel between injured workers and/or their dependents and WPNL.

The NLFL is proud to house the OWA. The OWA continues to benefit thousands of injured and sick workers every day from all over NL. The OWA staff are recognized for their ability to provide expert advice in a non-judgemental and caring manner, at a time when injured workers are often stressed about their future and concerned about their ability to provide for their family.

The caseload demands for the OWA have been growing year after year for some time and have become too much for the two staff (See appendix – letter to Tom Mahoney). A review of the case load shows a dramatic increase in client demand. In 2018 there were 1029 clients who availed of the OWA services; 2019 saw 1603 client cases, an increase of 574. In addition to the increase in client cases, there has also been a marked increase in the requests for assistance in appeals, especially at the review division (WHSCRD).

Newfoundland and Labrador is the only jurisdiction in Canada that does not provide representation for injured workers and/or their dependents throughout the workers' compensation system, including through to the WHSCRD. With only two advisors, the current pace of work is neither fair to the advisors nor injured workers. A review of the OWA offices across the country tells us that these advisors' client caseloads far exceed the average workload in any province/territory in Canada, making it more urgent than ever to increase the number of Workers' Advisors in the Province.

**Recommendation:** Expand the scope of the Office of the Workers' Advisor to enable them to represent injured workers and/or their dependents at the Workplace Health, Safety and Compensation Review Division (WHSCRD).

**Recommendation:** Review the Office of the Workers' Advisor staffing requirement, and provide sufficient staff to enable comparable, comprehensive services and representation of injured workers in NL, in line with other provincial/territorial jurisdictions across Canada.

### **Early and Safe Return to Work (ESRTW)**

Early and Safe Return to Work (ESRTW) is a key component of workers' compensation. The goal of ESRTW is to ensure the injured worker is treated fairly and is capable of returning to work in a safe manner. It is crucial that workers' compensation eliminate the possibility of re-injury. Once a worker is able to return to the workforce safely and without economic penalty, then ESRTW becomes key.

All employers and workers are obligated under Section 89 of the *Act* to co-operate in a worker's early and safe return to suitable and available employment with the injury employer. The role of the employer is critical. According to the *Act*, the employer has the responsibility to provide "suitable employment that is available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings." (See section B)

The Client Services Policy RE-05 explains that WPNL is responsible for communicating the re-employment obligation to the workplace parties and ensuring compliance. The problem for many workers is that the re-employment obligation is not met. Too many employers are claiming undue hardship. As a result, too many workers are finding that they are not able to return to the workplace and to earn their pre-injury income. WPNL has the authority to investigate claims about undue hardship, to ensure the validity of these claims and, if necessary, to determine non-compliance and enforce applicable penalties. This issue is one of fairness for the worker and accountability for the system.

**Recommendation:** That WorkplaceNL enforce Return to Work (RTW) policies to ensure employers are meeting the legislative requirement to provide employees a suitable job that restores the worker's pre-injury income.

### **Labour Market Re-entry (LMR)**

Once an employer informs WPNL that they are not able to accommodate an injured worker at their workplace, the injured worker is then referred to a Labour Market Re-entry (LMR) assessment service, to identify future work possibilities. Here too, we would expect the worker to be treated fairly, with dignity and respect, and we look for workers' compensation to be accountable for a positive outcome.

Currently, LMR services are contracted out to external providers. As a result, it becomes very difficult to determine whether the LMR program is actually helping workers the way it should, or if it is being used as a tool to lower workers' income replacement earnings.

We are unable to ascertain how many injured workers actually return to work at or near their pre-injury earnings level, and to assess how effective the tools are that measure injured workers' Return to Work (RTW) functional abilities. We have not seen a rigorous evaluation of the system



by WorkplaceNL that would address these gaps and confirm the success of these programs from the standpoint of injured worker and the Meredith Principles.

Our understanding is that Functional Assessments consider the injured worker's ability to sit, stand and walk. Other abilities such as reaching, bending, crouching etc. are assessed but not considered in RTW planning. Therefore, an injured worker with a shoulder injury could be assessed to RTW for 8+ hrs with no consideration of their ability to reach. Only their sit, stand and walking abilities would be considered.

Too many injured workers, unable to return to work with their pre-injury employer at pre-injury rates, enter the LMR process only to be deemed "capable of earning" in a job that does not exist. As a result of these "phantom" jobs, their workers' compensation benefits are either significantly or fully cut.

Further, through consultation, we have identified the following concerns with LMR, which we believe must be addressed:

- Failure to ensure RTW with the pre-injury employer is exhausted;
- The policy criteria for suitable employment are too broad (for instance, suitable employment can be anywhere in NL, no matter where the worker lives);
- LMR assigns "fault" in a "no fault" system;
- There is concern that Experience-rating (PRIME) may discourage employers from hiring injured workers, thus reducing their opportunities for real and meaningful employment;
- External LMR providers may be focused more on employer (client) costs rather than the safe return to work of injured workers and worker concerns; and
- There is an over-reliance on Functional Capacity Evaluations to determine whether a worker can truly perform the work.

LMR fails workers. Reducing their benefits by "deeming" for jobs that don't exist is simply wrong and unfair. LMR does not provide true indicators, or a process to allow WPNL to properly track what has happened to injured workers and to respond to their needs, pointing to problems with accountability.

We believe that LMR services should be offered internally and not through external providers, and that what happens to LMR workers must be tracked to determine if they have found suitable employment. By merely deeming the benefits of injured workers, workers' compensation is failing injured workers, and in our opinion, the result is an egregious erosion of the Meredith principles which address "no-fault" and "guaranteed benefits."

**Recommendation:** That WorkplaceNL eliminate external providers and have LMR work done internally, and that workers in the LMR system be tracked and their information maintained to ensure successful LMR. Further, that a review

**of the concerns with LMR outlined in our submission be addressed with the goal of ensuring that injured workers remain in meaningful employment, based on relevant assessments, pre-injury earnings, and appropriate skills.**

### **The Principle of Proportionment**

The principle of proportionment is another fairness issue. WPNL uses proportionment to assess whether a worker's disability or impairment is attributable to the work injury. What often occurs, however, is the proportionment assessment is used to deny an injured worker their full entitlement.

Take, for example, a long-time manual labourer who experiences a workplace incident that leads to a back problem. They are initially approved for workers' compensation benefits but following an MRI, it is found that there was some degeneration of the spine prior to the accident. WPNL can then assess that the worker's back pains were not caused by the fall at work but are due to ongoing degeneration ("pre-existing conditions"), and will proportion (reduce) the worker's benefits.

The NLFL believes that using this principle to deny or reduce an injured worker's compensation benefits is, once again, contrary to Judge Meredith's intent that the injured worker should be properly compensated and not allowed to become a burden to their family or society at large. If a worker was able to do their work prior to their injury, then the compensation they are due should not be reduced post-injury. Furthermore, the proportionment principle is used to justify and unnecessarily penalize injured workers, especially older workers, for aging, or for wear and tear on their body after many years of work.

**Recommendation: That WorkplaceNL eliminate their proportionment policy and instead, ensure all injured workers are fully compensated.**

### **Bullying and Harassment**

OHS legislation (Section 22 – Section 24.2) requires employers to develop, implement and maintain a harassment prevention plan. Every worker is entitled to employment free from workplace bullying and harassment.

The NLFL welcomes the discussion of workplace bullying and harassment and how such activity impacts the mental health of workers. We were pleased to see changes to the Mental Stress Policy (EN-19) that recognized a worker is entitled to workers' compensation benefits as a result of cumulative exposure to work-related traumatic events.

We were, however, disappointed that workplace harassment and bullying were not included in the definition of cumulative traumatic events. Research has proven that workers subjected to such behaviour can experience mental stress, most especially anxiety and depression disorders.

Holding employers responsible for mental stress injuries that arise out of bullying and harassment would, we contend, provide a strong impetus to eliminate such hazards and secure safe and healthy workplaces for all workers.

A number of other provinces compensate for stress arising out of bullying and harassment. In Alberta, adjudicators are expected to investigate any claims. Saskatchewan has established a rebuttable presumption for all forms of psychological injury through work.

In Ontario the Workplace Safety and Insurance Board (WSIB) recognizes that, “to be eligible for WSIB benefits, your chronic mental stress must be predominantly caused by a substantial work-related stressor. Here are some examples of work-related chronic mental stress: A teacher is the subject of demeaning comments from her vice-principal on a regular basis, quite often in front of her teaching colleagues and develops an anxiety disorder as a result. A housekeeping attendant is the subject of inappropriate and harassing comments from several co-workers on a regular basis.” <https://www.wsib.ca/en/chronic-mental-stress>

**Recommendation: That claims for mental injury submitted by workers who experience workplace harassment or bullying should be provided due consideration, like any other workers’ compensation claim. New legislation must recognize that any worker diagnosed with an anxiety disorder, as a result of workplace bullying or harassment should be entitled to workers’ compensation benefits.**

### **Using Scientific Evidence to Evaluate Compensation Claims**

A major study on work-related cancers, “*Using Scientific Evidence and Principles to Help Determine the Work-Relatedness of Cancer*,” was released in July 2020. Commissioned by the Ontario Government, the study found that over 90% of occupational cancers are unrecognized and uncompensated by the Ontario workers’ compensation system (WSIB).

The author, Dr. Paul Demers of the Occupational Cancer Research Centre, has recommended that Ontario restore its independent Occupational Disease Panel, including stakeholder representatives from employers and workers, with the purpose of establishing fair criteria for evaluating compensation claims. Dr. Demers has called for a review of outdated policies that often use smoking as a reason to deny a claim when there is clear evidence of exposure to well-known cancer-causing substances. In responding to this study, the President of the Ontario Federation of Labour (OFL) reminds us that, “Failure to recognize occupational diseases not only

harms those workers making claims, it harms future prevention efforts.” In addition, “It also imposes very significant costs on the taxpayer which should properly be paid by employers through the WSIB.” The OFL is calling for increased funding for the province’s occupational health clinics to investigate suspected cancer clusters.

**Recommendation: That WorkplaceNL review and modernize its policies for evaluating compensation claims related to occupational cancers and ensure they are using updated, fair criteria based on the latest scientific evidence. Serious consideration should be given to establishing an independent occupational disease panel.**

## **5. Prevention is the Key to Financial Sustainability**

Effective prevention is key to reducing injuries, fatalities and occupational disease. It benefits, in turn, the WPNL injury fund and allows WPNL to better support injured workers, and to invest in innovative prevention measures. This virtuous cycle is the core to improving cost savings and overall financial sustainability.

WorkplaceNL has done exemplary work managing the injury fund and employer assessments. Recent Annual Performance Reports highlight that injury rates are at an all-time low; that over 90% of employers are injury free; that the workers’ compensation fund is fully funded; and that employer assessment rates have dropped 38% over the past five years. In the 2018 Annual Performance Report, Board of Director’s chair John Peddle stated that employer assessment rates were at their lowest in over 35 years.

There is, however, another set of occupational health and safety statistics that include statistics on **serious injuries, illnesses and work-related fatalities**. These statistics paint a different picture from that outlined above and highlight the need to invest more in improving our prevention work.

As indicated by WPNL:

- There was a 21% increase in serious injuries between 2007 and 2016 (Advancing a Strong Safety Culture in Newfoundland and Labrador, p.5);
- There were 1,286 serious injury claims between 2013 and 2017 (Serious Injury fact sheet), with another increase reported in the 2018 Annual Performance Report (p. 35); and
- On average, 13 workers in NL are injured or fall ill due to their work every day (Annual Performance Report 2017 p. 36).

In terms of work-related deaths, the numbers are equally stark. Between 2014 and 2018, there were **127** work-related deaths in NL; 33 workers died as a result of a traumatic accident and 94 died as a result of exposure to a harmful substance that resulted in an occupational illness. In 2019, an additional 26 workers died either during work or as a result of work. Ten workers died

as a result of an accident and 16 from occupational disease bringing the overall total, over a six-year period, to **153**.

Looking at the past five years, we know that, on average, one worker suffers a work-related fatality every two weeks. WPNL has acknowledged that worker fatality rates in Newfoundland and Labrador are among the highest in Canada (See Advancing p. 5).

We need to remind ourselves that these statistics include only the injuries, illnesses and fatalities that are officially acknowledged. The Canadian Centre for Occupational Health and Safety (CCOHS) states that “these statistics only include what is reported and accepted by the compensation boards. There is no doubt that the total number of workers impacted is even greater,” <https://www.ccohs.ca/events/mourning/> (2019 Day of Mourning).

A serious injury or occupational illness can completely change the life of a worker and their family. When a worker dies on the job, there are families, friends and co-workers who are directly impacted and left to mourn the loss of a loved one, forever.

### **Evaluation of WPNL Prevention Initiatives**

Reducing the number of fatalities, injuries and occupational diseases requires the development of a strong and effective prevention system that is continuously evaluated and improved. WPNL is involved in an array of prevention initiatives, including advertising campaigns, webinars and workshops, and targeted initiatives with employers, all of which contribute to improving health and safety indicators. We believe it is time to evaluate these prevention initiatives to determine whether workplaces are increasingly safer as a result of WPNL prevention work. Rigorous evaluation of the effectiveness of WPNL prevention activities would help identify what is working and what is not working, and identify gaps where we can improve occupational health and safety prevention efforts.

A recent WPNL review of the safety sector associations identified multiple strengths with the balanced, employer and worker, approach to industry safety. The review provided 14 recommendations aimed at improving safety performance transparency and accountability. One of the recommendations approved by the WPNL board was to evaluate the safety sector program every five years. We believe all the prevention programs at WPNL would benefit from a similar evaluation.

**Recommendation:** That a rigorous evaluation of the effectiveness of the current WorkplaceNL prevention initiatives be undertaken on a regular basis. The results of this evaluation must be made available to the public.

## Prevention and Occupational Disease

The NLFL categorically rejects the view that occupational disease is a problem of the past. While progress has been made on reducing exposures to some carcinogens, allergens and other agents responsible for occupational disease, others are still very much with us and new chemicals are being introduced all the time, the health effects of which are still unknown.

The 2019 **Burden of Occupational Cancer in Canada Report**, produced by the Occupational Cancer Research Centre in Ontario, contains some sobering findings:

- Exposures to cancer causing agents in the workplace are responsible for over 10,000 cancers each year in Canada.
- The leading carcinogens are solar radiation, asbestos, diesel engine exhaust and crystalline silica.
- The province with the highest attributable fraction of lung cancer caused by silica exposure is **Newfoundland and Labrador**.
- The highest attributable fractions of lung cancer by diesel engine exhaust are Nova Scotia, New Brunswick and **Newfoundland and Labrador**.

Other kinds of occupational disease include occupational respiratory diseases, noise-induced hearing loss and dermatitis. Occupational allergy and asthma to snow crab was studied in NL more than a decade ago, and at that time roughly 15% of study participants had a positive diagnosis. Detailed recommendations were made for changes.

The crab asthma study, completed in 2004, also clearly documented the problem of under-reporting and why it exists (research on work-related musculoskeletal injuries among these workers came to similar findings). It is likely that despite low numbers of accepted compensation claims, occupational allergies, asthma and other respiratory problems continue to be common among workers. We have no record or report of any targeted surveillance or prevention program for this sector, or an evaluation of this program if it exists.

We know even less about occupational asthmas and occupational allergies including contact dermatitis among other types of workers in the province; including in the health, manufacturing and bakery sectors. This means shellfish processing, and other workers, their families and the publicly-funded health care system, are likely carrying a large share of the personal and financial costs associated with occupational disease as elsewhere in Canada. This is unfair and a violation of the Meredith principles.

Noise-induced hearing loss claims are common in multiple sectors, pointing to the need for improved prevention in this area as well. Furthermore, the large number of claims and high cost for work-related musculoskeletal or 'soft tissue' industries in the province is a reminder that vigorous injury prevention is needed.

No one, anywhere, should be complacent about occupational illness and disease and the ongoing need to prevent them. Occupational diseases are among the most devastating work-related injuries in terms of their impacts on workers and their families. They are costly to the compensation system, even in the context of under-reporting and under-compensation. Achieving effective and demonstrable prevention of occupational disease should be an essential ingredient in a strong prevention system. Similarly, soft tissue injuries continue to be the most commonly compensated injury in the province. It is important we improve our injury prevention initiatives around ergonomics. The NLFL recently partnered in a national scoping review study on programs for preventing occupational disease funded by WorkSafeBC, led out of Memorial University, and carried out by leading Canadian researchers in the field of occupational disease. An article summarizing the findings was published in 2020 in the *American Journal of Industrial Medicine* (<https://onlinelibrary.wiley.com/doi/abs/10.1002/ajim.23107>).

The scoping review identified evidence of successful interventions in the prevention of four kinds of occupational disease: noise-induced hearing loss, occupational cancer, occupational asthma and occupational contact dermatitis. The review divided interventions into those focused on the use of legislation and regulations; a hierarchy of controls approach; those more focused on monitoring, surveillance and screening; those focused on education and training; and multi-faceted interventions that relied on a combination of these initiatives (Keefe et al. 2020).

The findings indicate that the absence of an integrated, multi-faceted approach appropriately designed for a particular problem and sector has the potential to cost a great deal of money, but achieve relatively little in terms of gains. There is a significant risk that half measures in the area of prevention may look good on paper without making a great deal of difference in preventing occupational disease. Workers and their families cannot afford half measures and these would amount to a violation of the Meredith principles.

Similarly, research on ergonomics has highlighted the limitations of standardized ergonomics training and interventions that are limited to tools such as webinars, and brief visits by professionals to workplaces with individualized adjustments to workstations, often done without follow-up and without attention to the larger system of production and clear buy-in and engagement by senior management.

There are alternative models like Participatory Ergonomics (PE), where trained ergonomists play a facilitating role in working with both workers and workplaces to identify hazards, observe how jobs are actually done, draw on the knowledge of workers and others to identify high risk activities and ways those can be eliminated/modified, and at the same time invest in building ergonomics knowledge and capacity in the workplace to support ongoing monitoring and interventions in their absence.

Participatory ergonomics, or some version of this approach, could be a core element in a more robust soft tissue injury prevention strategy for the province, and may be essential for addressing the prevention challenges associated with dealing with diverse small and medium-sized

enterprises, and often rural and remote worksites. A freely-available, peer-reviewed PE toolkit is available on the website at Memorial's SafetyNet Centre for Occupational Health and Safety Research ([https://www.participatoryergonomics.mun.ca/PE\\_Toolkit/index.php](https://www.participatoryergonomics.mun.ca/PE_Toolkit/index.php)).

Effective prevention programs for occupational disease and musculoskeletal injuries need to be carefully designed with the active engagement of workers, and rigorously evaluated, including through effective surveillance of outcomes in order to ensure fairness and accountability. This has not been done in NL.

There is thus a need to fully and accurately evaluate the state of workplace injury prevention in the province, to identify shortcomings in the system, fix them and improve prevention. Safer workplaces and work practices are the real key to achieving the WPNL mandate and supporting the Meredith principles while also ensuring workers' compensation financial sustainability.

**Recommendation:** That WorkplaceNL replace their existing prevention strategy with a well-designed, well-resourced, multi-faceted set of initiatives and strategies designed in consultation with workers, unions, employers and OHS experts. These should be customized for key safety challenges like occupational disease and soft tissue injuries and rigorously evaluated and fine-tuned going forward.

### **The Importance of Surveillance and Data Sharing in Prevention**

A multi-faceted prevention system for occupational disease and soft tissue injuries benefits from a stronger system of surveillance and the sharing of claims data. This happens on a regular basis in British Columbia through the collaboration between WorkSafeBC and the PopHealth Unit at the University of British Columbia; and has resulted in many key studies that have helped inform practices at WorkSafeBC and the wider community. The depositing of WPNL claims data in the Newfoundland and Labrador Centre for Health Information (NLCHI) would allow individual researchers to link claims with other health data. This was done for the Baie Verte asbestos registry.

The sharing of data would lay the foundation for better surveillance of occupational diseases and soft tissue injuries in NL. It would help to identify those diseases and injuries as well as any clusters at the community level. It would also facilitate follow-up and a deeper analysis of the occupational diseases and injuries.

The WPNL research fund could help build multiple datasets for the prevention of injury and occupational disease. Such surveillance would give us a fuller picture of the burden of illness caused by work; and a better sense of the changes that are needed to ensure the sustainability of the compensation system by letting us better anticipate emerging issues.



It would also start to generate data on the proportion of work-related health problems and costs that are currently covered by the public health care system and by individual workers, as opposed to the compensation system – an essential ingredient in actually achieving the Meredith principles.

This type of surveillance system would be low cost, with targeted analyses funded using the WPNL research fund and would allow the province to start to leverage all of the investments that go into building multiple datasets for the prevention of injury and occupational disease.

Canada as a whole has a weak system for surveillance of injuries, disease and fatalities. This is a problem for NL because meaningful comparisons across jurisdictions, industries and jobs are important for both documenting key sources and types of injuries/illnesses that require attention, and for assessing how well we are doing relative to other provinces. Because NL has many small workforces in each of the job and industry categories, a strong national surveillance system would give us access to more accurate information on injury and illness trends, particularly in the relatively small workforces. It would also harness federal resources for the province.

**Recommendation:** That WorkplaceNL lobby the federal government to establish a strong, national surveillance system for occupational injury and disease that allows for comparisons across industries and provinces/territories, and that makes it possible to link compensation claims data with health data derived from medical records.

### **The Role and Importance of Research in Prevention Planning**

If it is going to enhance its in-house research and prevention planning, and enhance that capacity in industry in the province, it is critically important for WPNL to invest in helping postsecondary institutions increase the recruitment and retention of stronger OHS research and training capacity, within the province, and then make use of that capacity in its prevention programs. This will, in turn, strengthen postsecondary training opportunities for workers and managers and give the prevention system, including WPNL, Service NL, employers, trade unions and the sector councils better access to up to date research on occupational disease and occupational health relevant to NL.

Investment in provincially-focused research and the design and evaluation of tools designed for the NL context will, as it has in the past, open up opportunities to leverage substantial federal research and internship funding; as well as compensation board research funding from other provinces such as WorkSafeBC, in order to strengthen the injury and illness prevention and surveillance capacity in the province. A good example of this leverage occurred most recently through a collaboration between Memorial researchers and the NL Fish Harvesting Safety

Association (NLFHSA) on research on weather and fishing safety, noise-induced hearing loss and dynamic stability and fishing vessels.

**Recommendation:** That WorkplaceNL actively engage Memorial's SafetyNet, Memorial's OHS researcher community and the College of the North Atlantic to evaluate its current prevention and surveillance programs around occupational disease and soft-tissue injuries and fully investigate other opportunities for research collaborations that will benefit prevention plans.

### **Prevention and Occupational Health Clinics**

Although improved and more complete surveillance will help improve the efficiency and effectiveness of prevention initiatives and the fairness, accountability and transparency of the compensation system, more needs to be done to address the gaps in the system. The NLFL has long advocated to establish an **Occupational Health Clinic** staffed with an occupational physician, industrial nurses, occupational hygienist and ergonomist similar to the Occupational Health Clinics for Ontario Workers (OHCOW) that have been operating in Ontario for 30 years.

Occupational health clinics, like OHCOW, focus on identifying and addressing occupational hazards including chemical, biological, physical, ergonomic and psychosocial hazards. They have a clinical arm that diagnoses and treats workers who come to the clinic and provides expert clinical support to workers' advisors around claims. This is particularly important for the more than 50% of workers in NL who are not represented by unions. Many of these workers are precariously employed and thus more vulnerable to injury and illness and less able to voice their concerns or file a claim, without fear of repercussions.

The clinic would give individual workers, worker reps on health and safety committees and unions a place to go to present and discuss their concerns. Staff would also help workers know the hazards in their workplaces and their health-related consequences. Workers would then be better equipped to participate in a meaningful fashion in designing and implementing interventions to eliminate, control or minimize occupational disease exposures.

Clinic staff would work with staff from WPNL, as well as worker and employer representatives on sector safety associations to help them identify key hazards using improved surveillance and other data; including data from clinical practice with workers, and from engagement with interested employers. Clinic staff could collaborate in the development and evaluation of injury and illness prevention strategies customized for a particular sector and hazard. Finally, they could provide expertise and support to Service NL inspectors when confronted with particularly complex occupational health issues.

Clinic staff could also help train rural health professionals in occupational health and, when the province moves to multi-disciplinary health centres, they could help ensure there is OHS-related

capacity in the health centres. This is done in Québec in the Community Health Clinics (CLSCs). An occupational health clinic could host interns from Memorial University and CNA, thus providing improved opportunities for research and training in the field of OHS in the province.

An occupational health clinic in NL would require an investment. Given the potential capacity for the clinics, the cost is estimated to be \$1.5 million annually, which is quite modest when we consider that PRIME rebates are in excess of \$15 million annually. Also, the 2019 WPNL Annual Report shows revenue at \$329.8 million and expenses at \$265.5. There is certainly room to fund a much-needed occupational health clinic.

OHCOW has informed the NLFL that they are more than willing to assist the government and WPNL in developing an occupational health clinic here.

**Recommendation:** That WorkplaceNL invest in and support, on an ongoing basis, a worker and community focused, independent occupational health clinic to help identify and address occupational hazards and provide medical examinations for a full range of work-related illnesses.

## **6. Workplace Safety and the Importance of Transparency and Accountability**

Public inspection reports and public accounts of workers' illnesses, injuries and fatalities are important tools that can help ensure healthy and safe workplaces.

The most effective way to ensure the financial viability of the workers' compensation system, and also lower employer assessment rates, is to actively reduce the number of injuries, and especially serious injuries, illnesses and fatalities. We believe improved transparency and full accountability is necessary to achieve this goal.

Currently, the provincial government publicly discloses health inspections of food establishments, and as Service NL states; "Various food establishments licenced under our Food Premises Act are inspected by Environmental Health Officers. Furthermore, their website attempts to categorize food premises so that users can access the required information more easily."

These inspection reports identify both "critical" (i.e. need to rectify immediately) and "non-critical" (i.e. need to be fixed within a certain period of time) issues. Reports from the past two years are readily available. Earlier reports can be attained upon request.

### **OHS Inspections**

The NLFL is recommending that a similar practice be enacted at the Occupational Health and Safety branch of Service NL. Just as it is fundamentally important to public safety that food

establishments be regularly inspected and publicly reported, it is equally important to worker safety and prevention that OHS inspectors enforce safe workplace practices, standards and procedures, and make these publicly available as well. It is our opinion that workplace safety would be enhanced if such reports were posted on the Service NL website. It would also allow workers and the public to identify both safe and unsafe worksites.

The province of Manitoba sees public reporting as a good safety tool, and as such every stop work order, administrative penalty and conviction is made public. As the Manitoba Labour & Regulatory Services - Workplace, Safety & Health website explains, "Stop work orders, administrative penalties, prosecution and convictions are applied as behaviour-changing tools to encourage safe work practices." Alberta also makes available on their website, the OHS administrative penalties that encourage compliance. WorkSafeBC makes available up-to-date incident summaries with the purpose "to alert employers and workers to hazards in their industry." Details are edited so as to protect the privacy of workers involved.

Increased transparency and reporting would demand more accountability of those workplaces that are in violation of OHS legislation. Young and new workers have a right to know if an industry or workplace they are seeking employment has a track record for ensuring a safe and healthy environment.

**Recommendation:** That all Service NL Occupational Health and Safety (OHS) Division stop work orders, administrative penalties, prosecutions and convictions be posted on the Service NL website for two years and made accessible to the public.

### **Injury Updates**

As a public institution, WPNL should be more forthcoming about the state of workplace health and safety in our province. Each year on April 28<sup>th</sup>, the National Day of Mourning, WPNL releases the number of fatalities for the previous year. The media release reports the number of workers that died from accidents and from occupational disease. However, the cause of these deaths or the industry involved is never released. Similarly, we are given no information about the many serious injuries that happen in workplaces, neither what kind of injuries, nor which industries.

Transparency and accountability must be hallmarks of all public institutions, especially those that deal with the well-being of workers and citizens. We believe that regular updates on serious injuries and fatalities would force employers and workers to focus more attention on improving health and safety. The reports would also reinforce the importance of a strong safety culture. Such transparency has been in effect in other jurisdictions in Canada. In British Columbia, for example, the BC Forestry Safety Association dedicates a page in their quarterly newsletter explaining the cause behind "Work-related Deaths and Injuries."

**Recommendation:** That WorkplaceNL make public, on a quarterly basis, the number of work-related fatalities and injuries, and the industry where they occurred.

### **Full Public Disclosure on PRIME Rebates**

PRIME is a WPNL program that provides substantial rebates to companies if they commit to safety and effectively lower their claims costs. Since its inception in 2005, PRIME rebates have returned over \$150 million to employers.

In the recent review of PRIME, the NLFL outlined many concerns about this program, including our belief that PRIME encourages claims suppression, aggressive Return to Work (RTW) practices and income/wage deeming which we have been previously addressed in this submission.

We reject the theory behind experience rating that says that workplace safety will be improved through financial incentives. Instead, we believe that PRIME undermines the very legitimacy of our workers compensation system and should be dropped or significantly changed.

Experience rating marks a departure from the historic compromise by introducing incentives that are in direct conflict with the fundamental principles of Meredith, most significantly that it reintroduces fault to a system that was intended to be no-fault, and that it erodes the principle of “collective” liability.

Manitoba and Ontario have found that claims-based rebates lead to claim suppression. We have argued that no rebate should be given until a company passes an upfront, independent safety audit. It is critical that employers properly demonstrate through a safety audit, that they are a health and safety champion prior to any refund going their way.

The PRIME review document, “Creating Opportunities for Safer Workplaces,” revealed major weaknesses in the program. In 2017, total refunds (Practice and Experience) were in excess of \$16.9 million. Yet 39% of employers did not participate in the PRIME program. And for those that participated, “Few firms are actually audited relative to the total number of PRIME eligible firms.” When it comes to injuries, the document states some 83 employers had 30 or more injury claims, representing 44% of total claims.

The document does state, “A more concerted effort is required to address high-risk and high-claim employers.” It is shocking to learn that while PRIME sets a standard below OHS legislation, many employers still do not meet this lower standard. The NLFL believes that the \$150 million invested in PRIME since 2005 could have been put to better use in advancing health and safety initiatives, such as investing in an occupational health clinic and more rigorous enforcement, among other measures. This has to change going forward.

These red flags need to be addressed. OHS legislation needs the strictest enforcement. It is important that the public know what workplaces are responsible for the multiple injury claims.

The review informs us that 300 firms had an injury claim accepted every year since 2010. We believe these employers should be named.

On the other side of the coin, WorkplaceNL foregoes millions of dollars annually in assessment funds. Many employers, most large, are receiving significant PRIME rebates for safety yet not even their own workers know they are receiving these rebates. If a particular employer is doing an exemplary job at keeping their workplace safe, and is committed to worker safety, then let's recognize them as a beacon to follow. This would challenge other companies to follow suit. If Newfoundland Power can advertise the beneficiaries of their rebate program, so should WorkplaceNL. If Public Health can publicize the food establishments they review then the public should be equally informed about workplace reviews. Transparency and accountability will benefit us all.

**Recommendation:** That WorkplaceNL fund an independent review that examines existing research on experience rating and how it erodes the Meredith principles while encouraging claims suppression in NL, and whether alternative premium models would better create safer workplaces.

**Recommendation:** WorkplaceNL make public the rebate amount and the name of companies who have benefitted from the PRIME program.

### **Government Action**

Transparency and accountability is very much a government issue. It is disconcerting to note that many of the recommendations from past Statutory Reviews were never acted upon or discussed in our House of Assembly. This was discussed at the 2019 NLFL Convention and the following recommendation was passed unanimously.

**Recommendation:** The Government of NL be required to respond to the recommendations from the Statutory Review Committee within six months of receiving the committee's report.

## 7. Putting Workers at the Centre of Workers' Compensation

Newfoundland and Labrador is a small province with a relatively small but diverse labour force of 226,000, in March 2020, spread across 18,500 employers, large and small. This is a labour force not much larger than that found in a medium-sized Canadian city. There are significant challenges with spatial dispersion, reliance on some particularly hazardous industries such as fish harvesting and processing, mining, forestry and manufacturing.

It's time to put workers at the centre of the workers' compensation system. NL can take the lead and ensure that our system works for all workers in this province. In an ever-evolving world of work, a true commitment to safe and healthy workplaces, the strongest prevention strategies available, and making a real difference require innovative thinking, improved transparency and accountability and rigorous and continuous evaluation. Ensuring input and engagement by workers is essential to achieving these objectives, to ensuring the compensation system is reinforcing workers' basic right to be informed and engaged in OHS and essential to achieving a system that adheres to the Meredith principles.

Fatalities and serious workplace injuries and illnesses are preventable. The NLFL believes strongly that more can be done to make workplaces in NL as safe as they possibly can be and to demonstrate that this is, in fact, the case. We know that sound legislation, strong rules and regulations, strict and transparent enforcement, effective and ongoing surveillance, good training, ongoing education and awareness programs, active joint OHS Committees, and rigorous and effective evaluation using a continuous improvement approach are essential to achieving positive safety cultures and to helping reduce workplace injuries and fatalities. There is neither room nor grounds for complacency; rather there is a critical need for strategic and effectively designed interventions supported by appropriate investments, in order to ensure the occupational health and safety of NL workers.

After we have achieved the kind of fair, prevention focused, accountable and transparent compensation system argued for in this submission, we will be in a position to celebrate **Worker D**. Worker D will have the knowledge required to confidently assess whether he or she works in a safe and healthy workplace; will be supported through a strong OHS committee and OHS system in their efforts to address safety threats as they emerge; will be confident that OHS is indeed a priority of the employer and of the compensation system; will have access to a trained professional team in a worker-led OHS clinic, should they fear they are being made ill by their work; and will be able to take comfort in knowing that if they are injured or made sick by their work that, in the spirit of the historic compromise that produced the workers' compensation system, they and their families, will be assured of help with the claims process, prompt and fair compensation, and of the full support and protection of the system. They and their families will also be assured of rapid and effective interventions to prevent future injury or illness. Workers and their families deserve no less.

## 8. Summary of Recommendations

### Conclusive Presumption for Pandemic Illness

**Recommendation 1:** The government of NL amend the *Workplace Health, Safety and Compensation Act* to provide conclusive presumptive coverage for work-related pandemic illness to those workers deemed essential.

### How to Improve Fairness in Workers' Compensation

**Recommendation 2:** Any worker injured or made ill from work be compensated at 100% IRR until such time as they are able to return to work at their pre-injury earnings.

**Recommendation 3:** That the Maximum Compensable Assessment Earnings be increased immediately to \$90,000, with an annual CPI adjustment.

**Recommendation 4:** That the *Workplace Health, Safety and Compensation Act* be amended to state that no injured worker can receive less than the province's minimum wage while on compensation.

**Recommendation 5:** That unions be able to negotiate supplemental benefits that would help injured workers, and that Sections 81.1 and 81.2 of the *Workplace Health, Safety and Compensation Act* be withdrawn.

**Recommendation 6:** That WorkplaceNL review the "Pension Benefit Replacement" under the *Workplace Health, Safety and Compensation Act* to ensure that when an injured worker is unable to contribute to their Employer Sponsored Pension Plans (ESPP) and Canada Pension Plan (CPP) as a result of workplace compensable injury, that they are entitled to "Pension Loss Replacement" that is equal to the actual loss an injured worker is experiencing and reflect the actual pension amount the worker would have received if they had continued to work and contribute to their pension plans, regardless of the period of time of disablement.

Further, to ensure that a surviving spouse be entitled to a Pension Replacement "survivors" benefit which is equal to their eligible entitlement under the ESPP and CPP.

**Recommendation 7:** Expand the scope of the Office of the Workers' Advisor, to enable them to represent injured workers and/or their dependents at Workplace Health, Safety and Compensation Review Division (WHSCRD).



**Recommendation 8:** Review the Office of the Workers' Advisor staffing requirement and provide sufficient staff to enable comparable, comprehensive services and representation of injured workers in NL in line with other provincial/territorial jurisdictions across Canada.

**Recommendation 9:** That WorkplaceNL enforce Return to Work (RTW) policies to ensure employers are meeting the legislative requirement to provide employees a suitable job that restores the worker's pre-injury income.

**Recommendation 10:** That WorkplaceNL eliminate external providers and have LMR work done internally, and that workers in the LMR system be tracked and their information maintained to ensure successful LMR. Further, that a review of the concerns outlined in our submission be addressed with a goal to ensure that injured workers remain in meaningful employment, based on relevant assessments, pre-injury earnings and appropriate skills.

**Recommendation 11:** That WorkplaceNL eliminate their proportionment policy and instead, ensure all injured workers are fully compensated.

**Recommendation 12:** That claims for mental injury submitted by workers who experience workplace harassment or bullying should be provided due consideration, like any other workers' compensation claim. New legislation must recognize that any worker diagnosed with an anxiety disorder, as a result of workplace bullying or harassment should be entitled to workers' compensation benefits.

**Recommendation 13:** That WorkplaceNL modernize its policies for evaluating compensation claims related to occupational cancers and ensure they are using updated, fair criteria based on the latest scientific evidence. Serious consideration should be given to establishing an independent occupational disease panel.

### **Prevention is the key to financial sustainability**

**Recommendation 14:** That WorkplaceNL replace their existing prevention strategy with a well-designed, well-resourced, multi-faceted set of initiatives and strategies designed in consultation with workers, unions, employers and OHS experts. These should be customized for key safety challenges like occupational disease and soft tissue injuries and rigorously evaluated and fine-tuned going forward.

**Recommendation 15:** That a rigorous evaluation of the effectiveness of the current WorkplaceNL prevention initiatives be undertaken on a regular basis. The results of this evaluation must be made available to the public.

**Recommendation 16:** That WorkplaceNL lobby the federal government to establish a strong, national surveillance system for occupational injury and disease that allows for comparisons across industries and provinces/territories, and that makes it possible to link compensation claims data with health data derived from medical records.

**Recommendation 17:** That WorkplaceNL actively engage Memorial's SafetyNet, Memorial's OHS researcher community and the College of the North Atlantic to evaluate its current prevention and surveillance programs around occupational disease and soft-tissue injuries, and fully investigate other opportunities for research collaborations that will benefit prevention plans.

**Recommendation 18:** That WorkplaceNL share claims data with Newfoundland and Labrador Centre for Health Information (NLCHI) and employ research funds to support prevention surveillance on occupational disease and illness.

**Recommendation 19:** That WorkplaceNL invest in and support, on an ongoing basis, a worker and community focused, independent occupational health clinic to help identify and address occupational hazards and provide medical examinations for a full range of work-related illnesses.

### **Workplace Safety and the Importance of Transparency and Accountability**

**Recommendation 20:** That all Service NL Occupational Health and Safety (OHS) Division stop work orders, administrative penalties, prosecutions and convictions be posted on the Service NL website for two years and made accessible to the public.

**Recommendation 21:** That WorkplaceNL make public on a quarterly basis, the number of work-related fatalities and injuries, and the industry where they occurred.

**Recommendation 22:** That WorkplaceNL fund an independent review that examines existing research on experience rating and how it erodes the Meredith principles while encouraging claims suppression in NL, and whether alternative premium models would better create safer workplaces.

**Recommendation 23:** WorkplaceNL make public the rebate amount and the name of companies who have benefitted from the PRIME program.

**Recommendation 24:** The Government of NL be required to respond to the recommendations from the Statutory Review Committee within six months of receiving the committee's report.



November 18<sup>th</sup>, 2019

Mr. Tom Mahoney  
Executive Director Worker Services  
WorkplaceNL  
P.O. Box 9000  
St. John's, NL  
A1A 3B8

Dear Tom,

Thank you for making time to meet with me to discuss the Office of the Workers' Advisor, and concerns I have around their workload, as well as the expanding nature and needs of the growing number of injured worker claims in Newfoundland & Labrador (NL).

The Office of the Workers' Advisor (OWA) was created to assist injured workers and their families to deal effectively with workers' compensation issues, and to have a positive impact on the overall function of the system. One of the key responsibilities of the OWA is to inform workers of their rights and responsibilities under the legislation. In doing so, workers can be assured that their best interests and concerns are represented by an organization that understands their respective needs and expectations; and that is committed - just like Justice Meredith was, to a system that ensures injured workers receive security of benefits on lost wages, so that they do not become a financial burden on their families or their communities.

The NLFL is proud to house the OWA. It makes complete sense to us to have injured workers identify our office as a place where they can come to seek assistance in manoeuvring through the Workers Compensation system. Since 2010, and even with an increase in funding in 2014, we have always spent more on the OWA than the funding we receive from WorkplaceNL.

We are proud of and committed to this important work. The OWA continues to benefit thousands of injured and sick workers all over NL. We are proud, as a partner and stakeholder, to say that together we have made a difference in these workers' and families' lives.

Whether unionized or not, injured workers know that they can count on the OWA to provide expert advice in a non-judgmental and caring manner. They know the Workers' Advisor is there for them throughout what can often be an intimidating process. They also know that the Newfoundland and Labrador Federation of Labour (NLFL) speaks for all workers.



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The toll that an injury takes on a worker is immeasurable. There is a physical/mental impairment to the individual, as well as an impairment in lifestyle and family relationships. There is a psychological impact on the worker and their family, due to the stress of not being able to work and live with the same quality of life as before their injury.

The legislation is complex – there are many rules and procedures. Often injured workers experience depression, anxiety, feelings of low self-worth. Family life is disrupted. These factors are present in every single case that the OWA deals with, every single day.

The OWA has dealt with thousands of cases for injured workers since its origin in August 1993. We have been very fortunate to have had very dedicated Workers' Advisors since the onset.

Over the past few years, the work of the NL Office of the Workers' Advisor has become increasingly more challenging.

Theresa Minnett and John Reardon work extremely hard, often beyond their paid work hours, to accommodate the number of injured workers they deal with and claims they process, which often involve multiple contacts with many people. Some claims require a more intense level of assistance and advice, and more frequent attention to both the worker and their family.

Each case requires extensive file review on sometimes very complicated medical cases. They deal with people who are struggling with their health and well-being, with their financial situation, and many other issues that come into play. They have become adept at mediation and conflict resolution, which is also a big part of their job.

They are both extremely skilled and qualified at their jobs, as they help injured workers manoeuvre a sometimes "tangly" and often intimidating system.

Both have built successful track records based on trust, integrity, quality service and respect for injured workers.

In more recent years, specifically 2018 and January to October 2019, the office has seen an increase in service demand, client volume, and a change in the nature and scope of injuries; which is creating a need for more assistance to enable them to maintain the service that the OWA is mandated to provide.



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**We are asking for the ability to build upon the incredible work they do, by increasing the number of workers' advisors and for expanding their role to enable them to prepare and present appeals at WHSCRD.**

With their increased workload, it is difficult for them to maintain their work in the same manner that they are used to, and in a manner expected of them by WorkplaceNL, the NLFL and most importantly, by their clients - injured workers.

I asked the Workers' Advisors to report why they think their work has changed over the past year or so. I also reviewed the service delivery results from the Workers' Advisor Reports submitted to WorkplaceNL (below).

<u>*2018 Client Service data</u>	<u>2019 Client Service data</u>	<u>Total Service Increase</u>
All Cases 1029	All Cases 1603	574 (all cases)
Cases Closed 237	Cases Closed 327	90 (cases closed)
New Cases Month 248	New Cases Month 280	32 (new cases)
Appeals Month 121	Appeals Month 184	63 (appeals)
Contacts Month 3785	Contacts Month 3925	140 (Contacts)
Actions Month 1507	Actions Month 4363	2856 (Actions)

Both Theresa and John have stated that they have an obligation to professionally and thoroughly deal with changing trends and processes relating to work injuries, illnesses, and WCB claims. They need time during their workday to read, absorb, learn, reflect and use new information to assist injured workers. Instead, they spend their own time at night and on the weekends trying to keep up with the major decisions, changes in policies and laws, and reflecting on their clients' needs and how they can best address them.

At work, they are spending more time on the phone with injured workers, and professionals who deal with their cases, and less time meeting them face-to-face and supporting them through every step of the process. They struggle to ensure all their clients' needs are met in a timely and efficient way. They do just that – but at a price to their own personal time and well-being.

That is both unfair to them and the injured workers they serve.

Many injured workers face barriers in making and managing claims, accessing information, understanding the system, understanding the steps and preparing for, and participating in, the various appeal processes.



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The increase in service demand in part can be explained because of the challenges and barriers that many injured workers face; including literacy, low educational skills, lack of family support, mental health, and poverty issues.

These issues impact not only service delivery demand but also the injured workers ability to represent themselves in a complicated and litigious Workers' Compensation System.

There has also been a change in the nature of the claims that injured workers are making, and the number of cases that are being denied. The increasing complexity of issues requires additional time to resolve, resulting in time constraints in the Workers' Advisors' ability to thoroughly review files, and prepare persuasive review submissions.

With recent changes to the legislation and regulations, especially around PTSD presumption and mental stress injuries, more workers are now coming forward to make claims on these issues.

The Advisors have noticed an increase in the number of injured workers requesting assistance applying for PTSD claims, both new and re-openings. There has also been an increase from injured workers experiencing mental health issues as a result of their work injury.

The ability to capture the necessary data to support the increased workload is limited by the categories section of the data base. In 2018-2019, the OWA appropriately served 20 clients with PTSD claims and 30 clients with mental health issues secondary to their injury.

The Workers' Advisors believe that mental health injuries issues have been under reported. They are expecting future increases because of recent policy changes.

There has also been an increase in employer paid representation at the initial claim intake and case management stage; which may help explain in part, the noted increase in claims, and claims management denials i.e. medical aide requests, etc.

The increase in denials to workers obviously increases the request for assistance with appeals.

Increasingly, Workers' Advisors need to make earlier contact at intake adjudication and claims management levels.



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An increase in case management contact is also evidenced on claims where workers are on restricted communication.

The increased workload has also limited the Workers' Advisor's ability to fulfill their contractual agreement to develop and implement education and training programs to;

- increase knowledge among workers of the Worker's Compensation system;
- increase awareness among workers of the need for workplace accident prevention; and
- promote the Workers' Advisor's program across the province, in particular to existing community organizations.

This obligation under our funding agreement is a very important one, yet there has not been much available time to plan or deliver on these objectives.

Additionally, the OWA in Grand Falls-Windsor is awaiting scheduling of 12 WHSCRD hearings for former Baie Verte miners and their families. The OWA is also assisting with another 12 former Baie Verte miners' and their families' claims at WorkplaceNL.

The ability to process these appeals at WHSCRD was an exception made to the Agreement between WorkplaceNL and the NLFL; to expedite claims from former workers at Baie Verte Mines who are nearing death, or who have already died.

There has also been a marked increase in requests for assistance with WHSCRD. Injured workers and their families, and or friends, are attempting to represent themselves and need guidance with their claim presentation.

In the past, injured workers had access to the **Government Members Appeals Office** who provided representation at WHSCRD Appeals Tribunal. This support service no longer exists, leaving injured workers with no representation in a very intimidating Tribunal process.

Injured workers often turn to their Members of the House of Assembly (MHA's) for representation at WHSCRD appeals. MHA's offices seldom have the time, capacity or even the knowledge of the "system" to adequately represent the injured workers. Many MHA's may also not be aware of the Commission's legislation and policies.



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The number of MHA representations at WHSCRD appears smaller. Several MHAs however, who do represent injured workers, are also seeking our assistance with claim arguments at WHSCRD, through the OWA.

Currently, WHSCRD appeals Tribunal are experiencing long delays in hearing appeals. Part of these delays can be attributed to lack of injured worker representation at this level.

When injured workers have no representation, and have to schedule and reschedule hearings until they can find someone to help them, this is a very intimidating process for them.

The tables below show that most WHSCRD appeals are registered by injured workers.

This data demonstrates that in 2018 there was a 15% increase in injured workers self-representing while there was a 23% decrease in MHA representation, even though there were 30 less hearings.

This illustrates that injured workers have increasingly less access to representation for the WHSCRD appeal process, while the employer often has access to paid representation.

It has been reported across jurisdictions that access to representation at Offices of the Workers' Advisor/Advocates has improved the efficiency of the appeal process for all stakeholders.

Even though the OWA has provided advisory services to injured workers and their families since 1993, when the review process is exhausted at WorkplaceNL, injured workers and their families are left without representation at this last level of appeal (WHSCRD).

Injured workers and their families have expressed feelings of loss, helplessness and intimidation, while coping with the impact of injury or death, in attempting to fight a legal system alone without support or skills.

**We believe that the role of the Office of the Workers' Advisor should be expanded to permit them to represent injured workers and or their families at the (WHSCRD) appeal process.**





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We believe that this would ensure a balanced representation at the external appeal level for all injured workers and increase efficiency and service delivery times at WHSCRD.

### WHSCRD Applications filed by Claimant Type

Claimant	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017
Dependent	5(2%)	3(1%)	5(2%)	8(4%)	7(3%)
Employer	34(11%)	23(8%)	28(11%)	19(8%)	38(15%)
Worker	288(88%)	274(92%)	241(88%)	216(89%)	220(83%)
<b>Total Appeals</b>	<b>327</b>	<b>300</b>	<b>274</b>	<b>243</b>	<b>265</b>

### Worker Participation by Representative Type

Year	Self		Consultant		Legal Counsel		MHA		Union		Other		Total Worker
	#	%	#	%	#	%	#	%	#	%	#	%	
2017-18	55	41	21	16	7	6	19	14	26	20	8	6	<b>136</b>
2016-17	40	24	19	12	5	3	42	26	49	30	11	7	<b>166</b>

### Employer Participation by Representative Type

Year	Self		Consultant		Legal Counsel		Total
	#	%	#	%	#	%	
2017-18	4	31	8	62	1	8	<b>13</b>
2016-17	28	59	15	32	5	11	<b>48</b>

A Cross Jurisdictional review was recently completed of Workers' Advisor/Advocate Offices across Canada (see table below).

Each office provides comprehensive representation throughout the workers compensation review process; with some having the mandate to represent through to the court of appeals process.

Nova Scotia is an exception, as there is an additional office to assist injured workers and their families with claim process and education and awareness initiatives - The Office of the Worker Counsellor (2 Advisors).



These Counsellors' positions are also employed by the Federation of Labour in Nova Scotia and are responsible for 77 appeals between two advisors per year; while the same number OWA positions in Newfoundland & Labrador are responsible for 184 yearly appeals

Currently NL is the only province in Canada that does not provide injured workers with representation at the WHSCRD level of appeal.

Furthermore, employers often have the financial ability to seek out representation at this level of appeal. Employers have the assistance of the Employer Advisors, and may also have the benefit of legal counsel and HR specialists to assist them.

This becomes very intimidating to injured workers who are confronting the challenges of injury and who do not have the education or expertise to adequately represent themselves.

Province	Workers' Advisors	New Appeals
Alberta	24	1104
British Columbia	40	2247
Manitoba	7	138
New Brunswick	10	163
Newfoundland & Labrador	2	149
Nova Scotia	12 Workers' Advisors 2 Office of the Workers Counsellor	482 = WHSCRD appeals 77 = Internal Appeal
Nunavut & NWT	2	10
Ontario	59	3187
Prince Edward Island	1	46
Saskatchewan	16	382
Yukon	2	18

Injured workers are sometimes referred to "fee-for-service" providers by their government members and others. However, they may not have the financial resources to hire a representative and thus are left to represent themselves.



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Injured workers should never have to choose between appealing a claim, and other financial decisions, especially when they have experienced a loss of income.

There is something fundamentally wrong in a “no fault” system, when employers can hire lawyers and other professionals to challenge an appeal, yet injured workers are left to their own devices, and often against incredible barriers.

To summarize, the NLFL is asking WorkplaceNL to consider the following:

- An increase in the number of Workers’ Advisors funded by WorkplaceNL (WPNL), and working in the Office of the Workers’ Advisor(OWA) at the Newfoundland and Labrador Federation of Labour (NLFL); and
- An increased scope of work for the Office of the Workers’ Advisor (OWA) to enable the Office to assist and represent injured workers at the Workplace Health, Safety and Compensation Review Division (WHSCRD).

Our request that includes adequate funding for more Workers’ Advisors and an expanded role, in our opinion, will permit the OWA to continue to serve injured workers and their families in the manner that they have always been served by the Office.

Injured workers deserve no less.

I look forward to hearing from you on this Tom, and thank you once again for taking the time to review my request. I am willing to put forward a formal proposal as required, and will await further comment/instruction from you on next steps.

Sincerely,

Mary Shortall  
President, Newfoundland & Labrador Federation of Labour

CC. Dennis Hogan, Chief Executive Officer WorkplaceNL

JR/MS  
Unifor 597



# Work-Related Deaths & Injuries

## The First Quarter of 2020 Ends with No Work-related Deaths in the BC Forest Industry

### Recent work-related incidents reported to WorkSafeBC

The following sample of work-related incidents recently reported to WorkSafeBC may help prevent similar incidents in your workplace.

#### HARVESTING

**Injury:** Multiple injuries

**Core Activity:** Mechanized tree falling / Integrated forest management

**Location:** Northern B.C.

**Date of Incident:** 2019-Dec

An equipment operator was servicing a feller buncher in a turnaround at the end of a spur road. A dead spruce tree fell from the standing timber and struck the worker. The employer's emergency transport vehicle (ETV) transported the injured worker from the logging block to first aid at the local sawmill. The worker was then transferred to an ambulance and taken to hospital.

**Injury:** Fractures and lacerations (1 worker)

**Core Activity:** Log hauling

**Location:** Interior B.C.

**Date of Incident:** 2020-Jan

An empty log hauler was travelling on a forest service road to a logging operation. The log hauler failed to negotiate a corner and rolled over an embankment, injuring the driver. The prime contractor for the logging operation transported the driver to hospital.

**Injury:** Close call

**Core Activity:** Integrated forest management

**Location:** Interior B.C.

**Date of Incident:** 2020-Jan

As mobile logging equipment was being walked down a forest service road, the machine contacted the neutral line of a high-voltage power system and broke a power pole. Snow loading may have caused the power lines to sag.

**Injury:** Multiple fractures

**Core Activity:** Manual tree falling and bucking / Integrated forest management

**Location:** Vancouver Island/Coastal B.C.

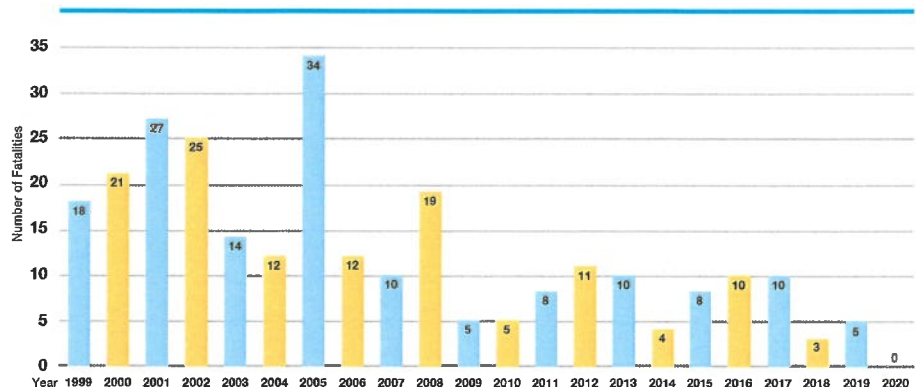
**Date of Incident:** 2020-Apr

A faller who had felled a hemlock tree (14" in diameter) was struck and injured by the top of a dangerous tree that was limb-tied to another adjacent standing tree. The faller was treated on site by Level 3 first aid and then transported to hospital by helicopter.

**Injury:** Close call

**Core Activity:** Integrated forest management / Tugboat service

WSBC Accepted Harvesting Work-related Death Claims



This information represents the number of work-related deaths by year in BC, up until April, 2020.

**Location:** Interior B.C.

**Date of Incident:** 2020-Mar

Two workers on a 30', 4 tonnes tugboat were positioning a floating raft of logs. The tugboat became unstable and sank. The two workers were not injured and were rescued by co-workers.

**Injury:** Injuries to head and arm

**Core Activity:** Integrated forest management

**Location:** Northern B.C.

**Date of Incident:** 2020-Mar

A heel boom log loader was on a steep slope hoe-forwarding full-length felled trees to the road edge. The log loader slid 30 to 40 feet down the slope, lost stability, and flipped over, coming to rest onto the boom side. The operator, who had been wearing the seat belt, escaped through the main access door. The operator was treated by the first aid attendant at the work site, then transported to hospital.

**Injury:** Fractured arm

**Core Activity:** Manual tree falling and bucking

**Location:** Vancouver Island/Coastal B.C.

**Date of Incident:** 2020-Mar

A faller was removing dangerous trees in a silviculture block before scheduled thinning activities began. The faller had completed the falling cuts on a dangerous tree and was travelling down the escape trail when a limb struck his upper body. The faller received first aid on site, and was then transported to hospital by ETV (emergency transport vehicle).

**Injury:** Multiple fractures

**Core Activity:** Manual tree falling and bucking / Integrated forest management

**Location:** Vancouver Island/Coastal B.C.

**Date of Incident:** 2020-Mar

A hand faller was trying to overcome a falling difficulty when a previously cut-up tree (a hemlock, 12 inches in diameter) fell in an unintended direction and struck the faller. The faller was treated by first aid on site, then transported to hospital by helicopter.

**Injury:** Burns

**Core Activity:** Integrated forest management

**Location:** Lower Mainland

**Date of Incident:** 2020-Mar

A worker in a logging camp had returned to the employer-provided accommodation (a fifth-wheel RV) after the work day. The worker was inside the RV when an explosion and fire occurred, injuring the worker. The worker was transported by boat to a town, transferred to a waiting ambulance, and taken to hospital.

#### MANUFACTURING

**Injury:** Concussion

**Core Activity:** Chip hauling

**Location:** B.C.

**Date of Incident:** 2020-Feb

A wood chip truck driver was struck by the top swing door while unloading wood chips from the trailer. The driver, who temporarily lost consciousness, received first aid on site before being transported to hospital by ambulance.

**Injury:** Injury to head

**Core Activity:** Sawmill

**Location:** Lower Mainland

**Date of Incident:** 2020-Mar

A sawmill worker was discovered collapsed at a work station moments after being observed standing at the station. The worker was transported to hospital by ambulance.

**Injury:** Smoke inhalation (3 workers)

**Core Activity:** Sawmill

**Location:** Lower Mainland

**Date of Incident:** 2020-Mar

A fire started in a compressor room. Workers evacuated the building and the fire department extinguished the fire. Three workers experienced smoke inhalation.

**Injury:** Crush injury to finger

**Core Activity:** Sawmill

**Location:** Interior B.C.

**Date of Incident:** 2020-Mar

A worker was changing a saw blade when a piece of the equipment moved, pinching the worker's finger.