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2019 Statutory Review Committee
 Workers Compensation System
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 AIB 4J6

Further to my April 20, 2020 submission, my recommendations are based on my observations since COVID-19 and as a volunteer with victims of Mesothelioma who authorized me to share information about their claims and provide any supporting documentation which may be of value to the Committee but I take full responsibility for the opinions expressed.

For 70 years, the Workers' Compensation Act has played a vital role for employers, unionized and non unionized workers and has evolved with the times to become a Canadian leader in progressive Occupational Disease Legislation. Currently, the Commission is experiencing its first global pandemic, involving thousands of essential workers and volunteers so the Act will continue it's evolution.

For a pandemic like COVID-19, please consider the following recommendation:

1. The Minister responsible for WPNL should be mandated to issue a broadly communicated, public announcement ensuring essential workers have the full support of the Workers' Compensation Act including :

- a) tax free wage loss, rehabilitation, dependency, and survivor benefits and a PFI award for any functional impairment**
- b) coverage for recurrences of COVID-19**
- c) medical testing, treatment, personal and home care, escorts, transportation, and accommodations**
- d) liability protection for any action performed in good faith**
- e) coverage for Mental Stress and PTSD**
- f) accessibility information on how to obtain benefits and service**

This is protection that is only available from Workers Compensation Commissions or Boards. A public announcement fulfills the public's right to know that those who care for us are being cared for and demonstrates NL politicians' support of all essential workers and their families. It also provides workers with the confidence that if they contract COVID-19, they and their families will be looked

after. The announcement would also boost morale, eliminate unnecessary distractions, permit workers to focus on their responsibilities without having to “choose between protecting Public Health and getting paid” to quote Minister Tom Osbourne, and encourage participation in Wave 1, Wave 2, Wave 3 or COVID-20 of COVID-19.

For this virus, we have a collective, social and moral responsibility with a role for all, especially WPNL, which already has the organization, the connections with Governments and stakeholders, plus medical committees for victims of Industrial Disease.

2. Revise the definition of 'worker' to include all essential workers and volunteers who during this pandemic may:

- a) come in contact with the public or contaminated inanimate objects**
- b) have chronic or pre-existing conditions which weaken the immune system**
- c) be required to self-isolate or quarantine for health or precautionary reasons**
- d) travel to work with or reside with another co-worker**

Such protection will decrease the motivation for those who may feel compelled to keep working or return to work when it is safer for all if they stayed home.

The Salvation Army in Port aux Basque, received media coverage for assisting truckers but while their paid staff were covered by WPNL, the volunteers were not.

In NL, essential employees are determined by the employer while essential workers are determined by the Province. Our Emergency Measures Act and WPNL cover the RCMP, NL Constabulary, firefighters, ambulance operators, search and rescue personnel, and permit the designation of other persons or services as essential, and not liable for any loss or damage suffered in good faith. WPNL accepted COVID-19 with a presumption clause of work relatedness for these workers and Health Care providers. This is of paramount importance since claims will be accepted as a result of their employment, unless proven otherwise. It also provides swifter and more consistent adjudications of claims, implementation of benefits and the equally important services for these workers, while reducing stress for stakeholders and the number and length of appeals. However, for COVID-19, this list of essential workers requires a revision to include those in sectors of the economy not covered by Workers' Compensation: independent operators, members of the gig economy, cleaners, construction workers, delivery drivers and volunteers who are deemed essential but risk:

- ... health
- ... futures
- ... lives

... the health, futures and lives of family members, dependents and significant others in their bubbles

They are caring, dedicated, courageous citizens who believe in service over self for our most vulnerable:

- ... the sick
- ... the youth
- ... the elderly
- ... the disadvantaged
- ... the socially or geographically isolated

but may lack an employer's responsibility for Occupational Health and Safety, leadership, organization, preparation, discipline, and personal protective equipment. But all of the above fail to ensure the safety of any essential workers including our military, regardless of their role, knowledge and experience. Those presently absent from the Act are often the lowest paid, most precarious, vulnerable, least protected, least visible and less appreciated but "ESSENTIAL WORKERS DON'T WANT TO BE ESSENTIAL SACRIFICES"

3. Revise Part VII, Industrial Disease to clearly state this Section is enacted to recognize a specific class of claimants who are entitled to a different level of consideration due to the debilitating effects, seriousness and progressive nature of the disease.

This empowers WPNL to be more flexible and responsive to emotional, psychological, social and spiritual needs. However, Part VII is applied when determining whether a claim is compensable, and not a factor in Medical Aid or Rehabilitation services. If this was the sole intent, it would be enacted under Sections already in the Act rather than an entirely Part which renders Section 88 b and 88 c obsolete and misleading, by remaining in the Act.

According to the Chief Review Commissioner, WPNL'S application of the Act was accepted by the BREEN decision, and may require your review and Legislative change. This would also require revising the definition of Industrial Disease to include a medical condition or pandemic, that in the opinion of the Commission, requires a worker to be temporarily or permanently, removed from exposure to a substance or environment that may be a precursor to an Industrial Disease.

I also recommend WPNL purchase priority beds in facilities such as the Lionel Kelland Hospice Centre in Grand Falls-Winsor for victims of COVID-19 and terminal Industrial Diseases. This would enable them to receive the care they deserve and remove some pressure from our overburdened healthcare system and families.

Another item requiring legislative change for COVID-19 is the discontinuation of age restrictions on a widow's monthly survivor benefit so it doesn't stop at age 65 or 65 plus 2 years and is payable for life.

4. Revise the definition of MEDICAL Aid to include:

a) a proactive, generous, liberal approach to identify and support any special needs arising from the virus. Victims of COVID-19 and severely injured or diseased workers, already hospitalized or receiving Personal or Home Care, are in a vulnerable state due to their disabilities, and may require additional assistance. However, some like a Mesothelioma patient, in a weak condition, in danger of being removed from home, family, friends and community to maintain social distancing and health, experience many other obstacles. This requires a priority review of all present Personal and Home Care recipients and mandating decision makers to consult a Medical Officer on all Personal Care cases involving victims of COVID-19 or a terminal Industrial Disease.

b) the emotional, psychological, social, spiritual and individual needs resulting from self-isolation, quarantine or being diagnosed with a terminal disease like Mesothelioma and extend Personal Care during periods of hospitalization when the spouse or family member is the authorized health care designate and whose presence itself is of paramount importance to a dying spouse and a service that health care providers are unable to perform.

WPNL's position that being with a dying partner in Palliative Care is an individual choice, and insufficient evidence to demonstrate that any care provided, could not be obtained from staff. However, WPNL did not consider reports from a Cancer Patient Navigator, Palliative Care Nurse, or Social Worker as relevant evidence and direct requests from the widow to gather this information were unsuccessful.

WPNL accepts Mesothelioma claims and medical aid costs effective the date of diagnosis, but Personal Essential Care is reserved for when a loss of earnings capacity is incurred or when one is impaired by a functional abnormality, or loss to the point where assistance from others is required. It omits the effects of being diagnosed with a terminal Industrial Disease or consider it under "other things it may authorize or provide" and according to the Chief Review Commissioner lacks reference to the role of any type of provider or even who is to conduct the assessment of one's Individual Needs.

c) granting workers entitlement to increased home heating costs for their primary residence and other Personal Care from their chosen provider, by placing workers' needs, ahead of the need for an employment contract with a Home Care Agency.

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However, the Labour Standards ACT Act provides minimum standards of employment and for it to apply, there has to be a contract of service in which an employer is able to control and direct the manner or method by which a worker fulfills the duties. Therefore, these worker and employer responsibilities cannot be placed on them years later, especially for periods not included in the contract or before one even existed.

Recognize Palliative Care as a distinct form of essential personal care to assist the most vulnerable of victims, care for themselves, in a safe manner in private homes or health care facilities. This is Client Centered Care, recognizing the total person when a terminal illness is diagnosed. Such care requires a multidisciplinary approach to focus on the physical, emotional, psychological, social and spiritual needs while respecting personal, cultural, lifestyle and spiritual beliefs, avoid further injury and prevent future complications related to industrial diseases.

6. Revise and Enforce Sections 57 and 58.

a) Require all medical reports diagnosing COVID-19 and terminal Industrial Diseases to be submitted the date of diagnosis, to a hot-line at WPNL for priority adjudication, Supervision and Control of Medical Aid. This would enable WPNL to identify others, who may have been exposed at the same work site, for follow up testing which would also remove a burden from widows who worry about their husbands co-workers and families wherever they may be. When a report arrives, four months following diagnosis, other treatments such as chemotherapy or radiation may have already commenced without consideration of other possible treatment options. It also causes delays investigating and implementing services such as Personal care which can require post-hospital arrangements to accommodate individual needs.

b) Subsequent medical reports should include those from Palliative Care Nurses, Cancer Patient Navigators and Social workers whose care wasn't considered relevant evidence by WPNL.

c) Educate Health Care Providers on the requirement to assist workers with applying for worker's compensation and the authority contained in Section 58 to obtain medical reports, which would save a considerable amount of red tape, money and delay. This education should also include information on the WPNL billing system and how to avoid out of province claims being paid by MCP which occurred in a Mesothelioma case.

7. Mandate the utilization of the Inter provincial Agreement which another jurisdiction denied for a Mesothelioma victim who resided within an hours drive of a WPNL office and his Cancer Clinic. This Agreement is very beneficial to employers and workers deserve their intended benefit.

8. Enforcing GP-02 which requires injured workers to be treated as Clients of the Commission and revise it to include family members who serve as personal care providers.

As a Client, the Commission is responsible for explaining the Act, its benefits and services but above all to not make a bad situation worse with undue stress, unnecessary delays while interpenetrating, determining, implementing, controlling, supervising health care and rehabilitation. When adjudicating a Mesothelioma claim, WPNL requested a dying man to locate witnesses to his asbestos exposure in Labrador decades ago to collaborate his claim. This can be extremely stressful when the accident employer has ceased operations and so many witnesses have passed away. Therefore, the services of a WPNL investigator should be available to assist the adjudicator and the victim in this endeavour.

9. Enforcing AP-01 Internal Review and amending it to include priority reviews for Covid-19 and those diagnosed with a terminal Industrial Disease. Internal Review represents the final decision of WPNL and the Director has exclusive responsibility for all related matters so if a Director fails to follow Legislation, the Board is not responsible and unavailable to assist.

Internal Review decisions are subject to review by WHSCRD and with due diligence, should rarely be returned for failure to follow AP-01. This includes properly identifying the issue of appeal. For example, one may complete all the necessary documentation identifying the issue of appeal but Internal Review is able to input the decision maker's interpretation of the issue and that becomes the decision; WCRHD has the power to review. This denies one's right to know their concerns were to be heard, understood, received sufficient analysis and proper weighing.

It is also not acceptable to acquiesce to poor quality decision-making because an appeal system exists or the decision maker is a coworker and union member. This is not due-diligence nor an approach that is morally justified, adding additional expense to the system, placing undue stress on the victim and the family while decreasing the integrity of the Commission, the Minister and Government. Priority appeals are also required in an attempt to resolve all outstanding issues before the victim dies. This will decrease stress on survivors since appeals can continue for years and the stress adds to their loss. I would also recommend an assessment of the level of education necessary to understand decisions and compare it to the average age of victims of injuries and diseases.

10. Create a separate fund (Collective Liability) from which all compensation for COVID-19 be paid, saving individual employers, especially those in health care, from sky-rocking accident experience ratings. In our experience rating system, this decreases the incentive for employers to contest workers' claims costs for benefits and services or claim another employer is responsible and distracts all concerned from what they need to focus on in this uncertain time.

Prime Minister Trudeau emphasized that health and safety is our #1 concern and increased production of Personal Protective Equipment, defined Essential Workers, provided a wage top up program, promoted sick leave sick for essential workers and stated that essential workers, earning minimum wage during this crisis, deserved a wage increase. But they also need Provincial Workers Compensation Commissions "TO SERVE AND PROTECT THEM".

WE ARE ALL IN THIS TOGETHER. As a society, we value the contributions of all essential workers and volunteers providing front line service and other critical goods such as food, medicine, spiritual needs, personal and home care and especially support for the disabled, in a battle against COVID-19 which is for our health, economy and way of life. Some play our part by remaining in our bubbles, but essential workers let humanity shine with their individual sacrifices for our collective well being. They deserve "equality before the law, and the right to equal protection and benefit, to maintain human dignity" without reliance on food banks or GoFundMe pages. "Sorrow on the day of mourning is not enough" and to quote Dr. Haggie "Hope is not a plan." In a Province with 46% of its population serving as volunteers, prior to the battle of COVID-19, an elderly population and a high rate of chronic disease, reliance on essential workers, volunteers and WPNL will continue. To provide cost relief from COVID-19 claim liabilities, all citizens should share the costs through funding from our Governments through Employers Assistance Programs for COVID-19 and the \$350 million Prime Minister Trudeau announced for training in volunteer agencies.

Ernest Elliott