

## Review Committee written presentation (Stephanie Dohey)

First, I'd like to thank the Statutory Review Committee for your time and effort in reviewing the current Worker's Compensation system. I'm presenting my case history in order to tell you my story, and, for me, it's a difficult and emotional story. I'm 35 and, at 27, I became disabled and lost a lot of my quality of life. It wasn't my fault. And it could have been avoided. Instead, I'm diagnosed with severe and persistent chronic pain with functional disability. Permanently. If the Worker's Compensation system was different, if the regulations were enforced and the facts of cases checked, my life could be different right now. If Worker's Compensation had regulations ensuring caseworkers both document the very first injury report from a doctor and reach out to injured employees when that doctor's injury report is received, if they checked if vendors were registered in this province, or if they took action to make sure that big businesses only hired registered vendors, my life would be different.

To quickly summarize the basics, I worked for Bloomstar Bouquets, a large floral business that distributes flowers and also acts as a vendor in Costco stores, and I was injured in the workplace in 2013. As it turned out, Bloomstar was not registered with Worker's Compensation at any point in its history in this province until after my injury. My doctor submitted her first medical form January 23, 2013. There was no response. The report went unnoticed and undocumented by my caseworker. My doctor submitted her second injury report form Friday, February 1, at about 2:30 PM. By 8:30 AM Monday morning, my claim was denied because I hadn't sent in my injured worker's report yet. That gave me about three business hours to submit my report. The regulations give the injured worker three months as the deadline. As I'm told, the first person to see my file had trouble reading my street name, so my whole case was denied. But they only looked at the second form, not the first. That would've provided

confirmation of my address. Worker's has recently confirmed to me that, although my phone number is legible on my doctor's report, no call was made to me. Nowadays, it's "office practice" to make contact with the injured worker after receiving the appropriate injury report, but they can't tell me for sure if that was the practice in 2013. All they can tell me is that caseworkers have never had to do it, now or then. There is no regulation about it. They say that they were waiting on my injury report form to confirm my address, and they couldn't send me the injury report form because they didn't have my address. They couldn't send me form six because I hadn't submitted form six yet. And, that's all correct behaviour according to regulation.

If there was a regulation in place making sure that intake adjudicators and caseworkers confirmed the receipt of intake documents and ensured contact with the injured employee after receiving the appropriate doctor's report of injury, then a caseworker would have told me what the system expected of me in order to start my claim. They could've told me about the form they were waiting on, rather than denying my claim and not even informing me of that denial, much less the reason why. The denial letter was sent to my doctor's office and didn't offer any explanation. A regulation could have saved me the emotional chaos of having to fight employers and Worker's Compensation. I went back to work with restrictions, but nobody to help me deal with my employer or work duties, and, by the time I went back for my follow-up appointment, my condition had deteriorated to the point where I needed medical leave. My doctor initially suggested taking 4 to 6 weeks off, but I had no claim, I hadn't even heard from Worker's Compensation, and I couldn't afford to take that much time off work. I was still waiting on Worker's Compensation to help me. So, instead, my doctor recommended two weeks off and then I had to go back and earn a paycheck. I didn't want to lose my job. At that point, my life

could have taken a very different path from where I am right now. These aren't all the problems in my case, but it gives you enough background to get started.

### **Ensuring that vendors are registered and act on injury reports**

In January 2013, I was the full-time Newfoundland worker for Bloomstar and I had just been given a small raise. Bloomstar's website identifies them as one of the largest flower companies in North America. I had been working there for over a year when I developed pain in my forearms. My doctor diagnosed tendinitis and recommended two weeks of medical leave. I took the medical leave and did my best to work with the physical restrictions my doctor wrote on her report form when I returned to my job. Shortly after I went back to work, my hours were reduced from 43 to 20 a week, stating problems with my performance that I had never heard before. My employer fired me two months later. I've been told regulations actually don't allow caseworkers to reach out to the employer before the worker submits their own injury report form, but some background check on an injury employer being registered or not is necessary. I was the first one to act on anything. While I was fighting my case, I called the Nova Scotia Worker's Compensation system and they told me that Bloomstar was registered in that province. But, somehow, they were allowed to slip in this province and, as far as I know, only this province. Why were we the only place? Worker's Compensation needs to make sure that businesses are registered and that big businesses that employ vendors only hire registered vendors. The least that can be done is to confirm the business' registration upon receipt of the initial medical report. We can't be the only province to allow this kind of mistake.

### **Need for open communication with OHS representatives**

When I was going over my case documentation for an external review later in 2013, and at this point working a different job in the same building, I realized that my injury employer indicated in their initial form that they reported my injury to an Occupational Health & Safety representative. They also made a mistake and checked a box saying that they had less than 20 employees. That mistake means that the section of the Workers Comp regulations where an employer can be found non-cooperative did not apply to them. But that's not correct. If they had checked the correct box, they would have been found noncooperative after terminating me and would have owed Worker's Compensation and myself up to one year of my pay at my preinjury rate. But nobody noticed. And since they weren't registered with Worker's Compensation at the time, I thought that reporting to OHS was unlikely. I asked Bloomstar for the name of the person they reported to and they said Costco would have that information. I emailed Costco headquarters and they replied, did not address my OHS question, and said that any inquiries I may have with respect to Worker's Compensation should not be directed to them because I was not a Costco employee. I clarified that my question was not related to Worker's Compensation and asked again who their OHS representative was. Their next reply confirmed that they do require vendors to have Worker's Compensation insurance in the province. They also said they were disappointed to hear my injury did not get attended to in a timely manner. And they hoped I got better. But I didn't get better. And that was it. I've checked and rechecked my emails with them from years ago, and I still don't know who the OHS representative was. Or if my injury was actually reported to OHS. I was the only one to catch these mistakes. The fights were left up to me. Again and again.

There needs to be communication between Worker's Compensation and Occupational Health & Safety representatives. That was another juncture where my disability and pain could potentially have been prevented if Worker's had confirmed information in the documents instead of, as it appears, accepting false information. It shouldn't be my job to fact check my file.

### **Negligence in the intake process**

My doctor submitted her injury report form to Worker's Comp. on February 4 and, on my next visit, she told me my claim had been denied. That was the only communication from Worker's Compensation. No reason for the denial was given. I was still working with Bloomstar and afraid to push for my claim too much, but, when I followed up after my termination in April, I found out that my February 4 claim was denied because my address couldn't be "confirmed." It was hard to read my street name on that form. But, my doctor submitted her first report in January. January's doctor report, which legibly showed my address, was on the only other document in my file. But it wasn't used to confirm my address. I was the next to follow-up on the situation on April, after my termination and three months after my injury. I was the one to follow up, not Worker's Comp.. For some reason they were allowed to drop the ball from January until April, when I picked it up again. How is this not a violation of my rights? How is this the right system?

Denying my claim because there was no application, or worker's injury report form, sent to me is, in itself, paradoxical. Worker's Compensation couldn't send me my injury report form so my claim was denied because I hadn't submitted my injury report form yet. In essence, that says that they couldn't send me form six because I hadn't submitted form six. And since my doctor submitted the form on a Friday afternoon and my claim was denied Monday morning, they didn't give me a lot of time to submit it. As a matter of fact, by that logic, every claim that

goes through the system can be automatically denied unless the doctor and injured worker simultaneously submit their forms. And it's all according to regulation.

There is no regulation in place that makes sure a caseworker contacts the injured worker. I have been told that it is a common "office practice," but Worker's Compensation couldn't tell me when that came into effect, and it was not enforced anyway. I asked them how many other claims got dropped this way and was told there's no way to know. No way to know how many other injured workers didn't even get their cases started. Is that practical or logical? How many other cases got dropped because a caseworker wasn't obliged by regulation to reach out to an injured worker? How many other people were too afraid to fight for their cases? Shouldn't there be a regulation? *Why am I paying a lifetime sentence for slipups in office practice?* I find it ludicrous that there are so many regulations telling the worker what they can and cannot do but there's no regulation telling caseworkers or intake adjudicators that they need to talk to an injured employee after they receive the medical form, nor is there a regulation giving them a deadline for it, nor is there a regulation that guarantees action on or documentation of the initial injury report. How backwards is this system? What's the sense in having rules for the employee and the employer if the system in place can do what it wants?

That day in January was when I needed help. I went back to work with restrictions, restrictions that I had to ask for and implement myself without any help, and two weeks later when I returned to my doctor, my injury was so much worse that I required medical leave. I couldn't afford to take as much medical leave as she originally suggested. Not without Worker's Compensation. And I still had no one to help me return to work safely after that. All these years trying to cope with the anger and grief that Worker's Compensation has caused me, I've been telling myself that maybe the injury becoming permanent was my fault, because that was the

only way I could let go of that devastation, even a little bit. To focus the anger on myself instead of on the system. I thought to myself, maybe I waited too long to go to the doctor by February 4. The damage was probably done by the time I needed medical leave. Part of that is true. The damage was probably done by the time I needed medical leave. But it wasn't my fault. I went to the doctor as soon as I could. Because Worker's Compensation didn't do their job, I had to keep working without medication and what was initially tendinitis turned into a permanent disability with severe chronic pain. I did everything I was supposed to do. I thought the system denied me for no logical reason in February, but it turns out they completely dropped me at the intake stage in January.

So many mistakes have been allowed to happen. Around the same time that I was found non-cooperative (see section below), I told my caseworker that my main concern with having my claim denied was not being able to get physiotherapy. In June, five months after my injury was first reported, my claim was accepted for healthcare costs only. It was July when the caseworker told me that I was recently approved for physiotherapy treatments. A week later, when I started physio appointments, the physiotherapist's immediate concern was the delay in my treatment and the fact that my injury was in both arms. I finally started getting regular physiotherapy treatment seven months after my injury, and months after I'd started my new job. For context, having gone so long without treatment, my injury was no longer called tendinitis by the time I got physiotherapy, because tendinitis is an inflammation problem. Once the damage was done to my arms, it became tendinosis, which means damage is done on a cellular level. About six months after my injury, my physiotherapy noted that if I had been treated earlier when the symptoms began, it would have healed faster. But six months after my injury, he felt that the scar tissue was part of the tendon and fully formed. My strength did marginally improve with physiotherapy, but

that scar tissue will never go away and it will always cause disability and pain. There obviously needs to be a steadfast regulation that ensures caseworkers have contact with the injured worker after the appropriate medical forms have been submitted by a physician and the caseworker needs to tell the injured worker what they are entitled to. I thought the system was there to help me. Instead of looking out for me, Worker's Compensation neglected and placed the complete burden on me. I was left alone and hurting. And I'm still hurting, and I'll never get any sense of justice or resolve.

### **Non-cooperative finding**

In July 2013, Worker's Compensation communicated to me that I had one week to return to work with my injury employer or I would be found noncooperative. How was I to return to work to an employer that had terminated me, to work that I was no longer physically capable of doing, to work that had injured me seven months prior and nothing about the working conditions had changed, and with no Early and Safe Return to Work plan? I had a different job at that point. I would've had to quit my current job to go back to my injury employer after they fired me and after I insisted that they registered with Worker's Compensation. Another factor in my labelling of noncooperative was that I had not taken part in an Early and Safe Return to Work plan. But I was never offered any Early and Safe Return to Work plan. I did everything I could, according to regulation 54.1, to mitigate my injury, even using my personal student insurance for five physiotherapy sessions when my claim was denied. Then my insurance ran out. And I couldn't afford more treatment.



## **Labour Market Re-entry and Fit for Work process**

In 2015, my doctor took me off work again because of the tendinosis. After a couple of months off, I was put through the Labour Reentry and Fit for Work process. I was made to do physical tests that put me in pain, over and over again. My body was pushed and pushed. During the Fit for Work assessment, I had to keep doing exercises involving my arms until either I said stop or the worker watching me told me to stop. She never said stop. Since I was the only one who decided I had to stop, my pain and disability were assessed as subjective. I was put in pain for hours of physical testing and assessment, put out of commission for days afterwards in terms of my disability, all to be told it was subjective. Impartial parties are needed in these assessments. Those tests don't show disabilities like mine. I can't show you anything to prove my pain and how this disability affects my life beyond someone coming to watch me every day and seeing how I live and the things I need to work around. So, it's labelled subjective. It's not fair to have somebody meet me for the first time, have me perform random tasks, and then call my condition subjective.

When Worker's Compensation thought I had been off for too long, they told me to go into Labour Re-entry and attend a meeting with somebody who would research what jobs were available that I could work, given my abilities. This person found a research assistantship job at Mun that offered more than \$20 an hour and said this proved that I could be out there earning that money right now and was therefore no longer entitled to time off with compensation. What I told her and what she didn't listen to was that research assistantships are only for graduate students who are registered as full-time and doing courses on campus and that they had a very limited number of hours. I worked them in the first two years of my graduate degree and I was no longer eligible. I knew better than she did who was eligible and who wasn't. But she insisted

that the job listing was proof that I could be out there working a similar job, if not that exact job. I could not. The Labour Reentry process didn't even consider my work restrictions at the time. I ended up having to find three different part-time tutoring jobs so that I could work for couple of hours and then rest for a couple of hours, as my body required and as my doctor recommended. But that didn't matter to Worker's Compensation. I wasn't a human being who was hurt and suffering and being pushed; I was case number and that was it.

### **Respecting pain as well as loss of function and offering appropriate support**

Perhaps chronic pain sensitivity training would benefit caseworkers. Moreover, mental health support should be available and easily accessible for chronic pain sufferers with Worker's Compensation cases. It should also be provided to the caseworkers. In doing a small amount of research for this presentation, I came across a startling statistic regarding death and chronic pain. Although the study I'm referencing is from 1991 and uses a limited number of American cases to estimate national chronic pain suicide averages, so there are academic faults that could be pointed out, the facts are still there and they say there is actually a higher risk of suicide with chronic pain sufferers with Worker's Compensation cases as compared to chronic pain sufferers without association to Worker's Compensation.

"Completed suicide in chronic pain" by Fishbain, Goldberg, Rosomoff and Rosomoff in *The Clinical Journal of Pain* reports they calculated the averages per year of completed suicide in chronic pain patients in the Caucasian, age 35 to 64 years demographic, and those averages include 57 white men per year and 79 white men with Worker's Compensation cases. The article reports that white men in chronic pain are "twice as likely as their counterparts in the general population to die by suicide" (Abstract) and white Worker's Compensation men with chronic pain are three times as likely. Shouldn't those statistics be reversed? Shouldn't chronic pain

sufferers be *less likely* to commit suicide if they have Worker's Comp. "on their side"? The idea of the system was created to help the worker, but the practice of the system does just the opposite. The Worker's Compensation system needs to respect pain, not just lack of function. They don't see that pain and function are tied together. There is no respect or compassion or support for the pain and the constant mental strain that it brings.

### **Permanent disabilities need compensation outside of profession**

This disability and pain affect so many areas of my life and costs me so much money, but only a limited amount of ergonomic equipment related to my profession is covered by Worker's Compensation. And, if I ever need another medical leave, I am entitled to 55% of the pay I earned as a minimum-wage worker when I was 27, regardless of my income now or in the future. That compensation equals to about \$850 a month. And I wouldn't be allowed to have any supplementary income. I spend so much money on equipment and things unrelated to the workplace. A mattress that even lessens the pain a little bit when I'm trying to sleep; appliances to chop food and open cans; lightweight appliances and dishware; towels without too much weight; and preprepared food on days when I can't cook. The list goes on. It's not fair that I'm permanently disabled and it affects every area of my life but I'm only covered with my ergonomic equipment related to job, and even that gets questioned.

### **Injured worker's loss of legal rights**

According to Worker's Comp. regulations, once an employer starts making payments to the injury fund, the worker loses the right to sue the employer over the injury. From my perspective, that is literally buying away my legal rights. There should be some leeway for

certain situations. I lost my legal rights to sue my employer because I insisted that my claim go forward. The employer starts making payments, and I lose any right to sue. I was trying to do what I thought was right, reporting my injury to Worker's Compensation and my employer and fighting for my case, and it turns out that I've received, because of that, pennies compared to what I deserve. I actually would have been better off not reporting to Worker's Compensation, because then I could've sued. But now I lost that right. Even the initial dropping of my intake file, the injured worker has to have some defined rights there. There were so many ways and so many systems in place that I thought were there to help me and literally ignored me in my time of need. And, in my circumstances, I have no legal recourse. Because I can't afford any legal help.

## **Conclusion**

I'm here today to plead for changes to the system that would have allowed me to live a normal life and to try and make sure what happened to me doesn't happen to anybody again. The current system has been emotionally damaging as well as physically damaging for me, and I don't have any option where either of those ever go away. I will never heal or regain my function; I will never stop being in pain; I will never have any sense of resolve or justice. Worker's Compensation wasn't there for me. It was the job of Worker's Compensation not just to support me but to protect me. They didn't.

I implore you to do anything you can to ensure that companies are registered with Worker's Compensation and caseworkers treat the cases with increased focus on fairness and efficiency. Going into my story, the difficulty, unfairness of the situation, I needed someone needed to be in my corner. My life didn't have to end up like this. According to everything I've been told, by this time, my pain is physical and neurological. I've been in pain for so long that

my brain is wired for it now. If I am at 7 or 8/10 on my pain scale every day, the best I can ever hope for is to work long and hard to get to a steady 4 or 5/10. I was injured at 27. I'm now 35. For the rest of my life, I will live like this. A couple of people doing the right thing could have prevented all of that. Can you imagine the sense of injustice? The anger and the sadness, on top of the pain and disability? Knowing that I will never get a sense of resolve or justice? How do you get that out of your head? Can you imagine being 35 years old and dreading the rest of your life in pain? Every step of the way I've had to fight. And I'll never heal, physically or emotionally. I'm in pain every day for the rest of my life.

All of these points add up to my argument that the process of fighting for one's case and rights within the present system causes large amounts of undue stress on the injured worker, on top of the pain and loss of function they may be dealing with. Any change or contribution that could lower that stress, I cannot put into words what it would mean. It will literally save lives. The process has to be easier and the injured party kept informed and felt heard. Worker's Compensation needs to contact the injured worker upon receipt of the first medical form, inform them of their rights to medical benefits and make sure they have open access to the regulations. It's not fair that the system knows the rules and the worker doesn't. It's like every ball that the system let drop, I had to pick up and start juggling. And it's too much for me. If it's too late for me and my case, the least I can do is try to make sure it doesn't happen to anybody else.